

MEMORANDUM

TO: Transfer File No. 70262

FROM: Lori Graves

DATE: 12/3/02

RE: Evaluation

Brief: Eagle River has applied for storage of 107 af ground water per application 63-12598 tributary to the Boise River that would accrue to shallow excavated ponds. Accrued ground water will not be diverted from storage. The ponds have a total surface area of 8.4 acres, 7.1 acres of which are within the Ballentyne service area and have historically been irrigated with water delivered by Ballentyne. This transfer proposes to change the use of water rights historically used to irrigate the 7.1 acres of land within the Ballentyne service area that are to be converted from irrigation to excavated ponds.

Authority to File: The land where the ponds are located is owned by Eagle River LLC. Warranty deeds have been provided.

Water Right Validity: Applicants filed an SRBA claim 5/5/1989. Beneficial use occurred (where the ponds are proposed) within five years prior to that date as confirmed on 1987 aerial photography. A comprehensive forfeiture analysis has not been done on the remaining part of the right. The claim has not been recommended for decree.

Injury to Other Water Rights: This transfer acts as mitigation for ground water application 63-12598. Consumptive use of ground water due to evaporative loss from the ponds is estimated to be 3.5 afa/acre, with all but a de minimus amount to occur between 3/15 and 11/15 each year. Historical consumptive use of the Ballentyne water right during the irrigation season due to evapotranspiration also is estimated to be 3.5 afa/acre. As a result, the transfer will maintain the p/u of the water right by delivering water to one or more of the ponds during the irrigation season to recharge the ground water source and directly offset evaporation from exposed ground water from the ponds on a one-to-one basis, without any change in the historical consumptive use of the water right. Based on the assumptions of this plan, injury should not be an issue.

Enlargement of Use: The number of acres to which the water right will be applied and the net consumptive use of water will not increase. The 7.1 acres to be changed from irrigation to ground water recharge accounts for the surface area of the ponds along with transfer no. 70266 for New Union Ditch Co. Since the p/u will remain unchanged, there is less potential for enlargement.

Local Public Interest: The transfer proposes to apply all affected by the transfer to beneficial use, and will continue beneficial use of the water right within the boundaries of the Ballentyne service area for its shareholders while, at the same time, facilitate the use of ground water without depleting the resource.

Beneficial Use/Conservation of Water Resources: The proposal is consistent with water right standards for the area involved.

Review of the application finds there is no clear inconsistency with criteria of I.C. § 42-222 preventing processing of the application.

Additional Information: Please refer to Attachment C of the transfer application for a thorough review narrative prepared by Mike Creamer, applicant's attorney. I feel the narrative adequately addresses the issues involved.

The SRBA claim combined rights 65-234, 235, 236, 237 and 239D. These rights need comments once the transfer is approved since right 63-234 is not yet decreed. As specified in attachment C, applicant's water consists of several water rights that they deliver within their service area. They designated 63-234 as the representative right for the transfer for simplicity.

Data entry acted on the correct record.

Conditions: Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the following conditions of approval should be applied:

1. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.