

MEMORANDUM

TO: Transfer File No. 71162

FROM: Lori Graves

DATE: 4/1/2004

RE: Evaluation of Sufficiency of Information Submitted

Brief: Applicants propose adding an existing well to their irrigation system. The site is located south of Missouri Ave and west of Rim Rd in the Lake Lowell area.

Contact person for the applicant is Don Brandt, President of Brandt Agency.

Authority to File: Current water right records are in applicants' name. The transfer was signed by Don Brandt. The applicant is a registered business entity with the Secretary of State with Don Brandt listed as President, Joan Brandt as V. President and Marilyn Brandt as Secretary.

Water Right Validity: Right 63-3582 presumed to be valid based on pending SRBA recommendation.

Right 63-11176B presumed to be valid. SRBA is not applicable to this right developed after 1987. Recent beneficial use confirmed via 2000 aerial photo.

These two rights were also recently verified as a result of a complaint investigation conducted in 2001/2002 for water right 63-3582.

Injury to Other Water Rights: None anticipated.

Enlargement of Use: No change in nature of use has been proposed.

Local Public Interest: No negative impacts are anticipated.

Beneficial Use/Conservation of Water Resources: Applicant proposed beneficial use consistent with conservation of water resources in Idaho.

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

Additional Information: The application was submitted listing the original water right acreage and cfs amounts listed for license 63-3582 rather than the amounts recommended in the SRBA. Don Brandt amended the application 4/2/2004 to reflect current records.

Comments will be sent to Tom and Patsy Hamilton because they filed the complaint referenced above in 2001 regarding water right 63-3582.

Discussion: Applicants received a drilling permit in 2003 for a new well to replace an existing irrigation well used for the water rights listed on this transfer. The drilling permit required that the old well be properly abandoned. The new well failed to produce as much water as the old well. Rather than abandoning the old well, applicants decided to use both wells. They received a notice of violation 2/18/2004. This transfer is the result of the attached consent order and agreement in which the department stated that they would make a reasonable effort to expedite the processing of the transfer.

The irrigation well originally served water rights 63-11176A, 63-11176B and 63-3582. When these rights were combined, they were limited to 3.69 cfs, which was the amount licensed in 1971 for water right 63-3582. In 1995, an exam was conducted on rights 63-11176 A & B. A booster pump had been removed from the system, which reduced the system capacity to 3.35 cfs. Don Brandt contested the licensing recommendations and the system capacity for all three rights, when combined, was settled at 3.69 cfs. Owners of water right 63-11176A filed transfer no. 69387 in 2000 to drill their own well rather than share the original well with Brandts. Don Brandt was notified that approval of the transfer would result in the original well being limited to a maximum diversion capacity of 3.49 cfs when rights 63-11176B and 63-3582 were combined. Don Brandt protested and then withdrew his protest. Transfer no. 69387 was approved for .20 cfs for irrigation of 10 acres from a separate well, which should have resulted in limiting the diversion capacity from the original well to 3.49 cfs when rights 63-11176B and 63-3582 are combined. These two rights should have been conditioned to reflect this reduction once transfer no. 69387 was approved, but they were not because of a dissention between the owners. Because the owners cannot agree, transfer 69387 was approved with the 3.69 combined right limit, now involving two separate wells. Through parallel processing, Pam and Jeff discussed the issue and agreed that the limit between the three rights should remain. Brandt can divert a maximum of 3.69 cfs under rights 63-3582 and 63-11176B, Hamilton can divert .20 cfs under 63-11176A, but when combined can only divert a maximum of 3.69 cfs at the same time. I called Pam 3/28/04 to discuss the implications that could result from this condition because it involves two separate wells and two neighbors that do not get along. Pam stated that the issue had been addressed with Norm and Karl during the approval of transfer 69387. As a result, both water right owners will have to agree to modify the condition before the condition can be changed.

The SRBA recommendation for 63-3582 listed some acres in tenths, however, the shape file map created for the recommendation did not. Both equate to 167 total acres. The whole acres listed on the shape file map were used for this transfer.

Don Brandt was told that the transfer fee could be based on the system limitation of 3.49 cfs (\$370). He insisted that he pay for the 4.32 cfs cumulative value of the rights (\$410) because he feels that he should be allowed one inch per acre based on the original system capacity measured in 1971. He did not want to pay the lesser amount, even though I told him that that is the amount that the rights will be limited to.

Additional information can be found in file 63-11176A and also the Brandt complaint file located at Western Region.

No other rights are used on the property.

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 conditions listed on the draft transfer approval should be applied.