

MEMORANDUM

Date: February 11, 2004
To: Transfer 71056 File
From: Corey Skinner
Re: Evaluation of Sufficiency of Information Submitted

Transfer 71056 (filed in April of 1991) in the name of Sutton, Sellgren, and Sellgren involves some Basin 37 (Big Wood) Surface rights used on a golf course north of Ketchum. There are several items that have prevented processing of the application over the years. A brief history of actions that have been taken involving the application and the rights involved with the application is as follows...

October 1988 Claims 37-158C, 37-274, 37-276B, 37-892A (all Big Wood River rights), and claim 37-4269 (unnamed stream) filed in the name of Seaboard Idaho Inc. Claims filed for irrigation use of lands located along east side of Highway 75, just north of Ketchum. Claims filed for various acreage amounts with various degrees of overlapping acres.

December 1990 Seaboard conveys claims 37-158C, 37-274, 37-276B, 37-892A), and 37-4269 to Sutton, Sellgren, and Sellgren via Quitclaim Deed.

April 1991 Claims 37-158C, 37-274, 37-276B, and 37-892A (all Big Wood River rights) amended into the name of Sutton, Sellgren, and Sellgren and place of use for these four claims amended to 96 acres (assumed to all be overlapping). Transfer application filed in the name of Sutton, Sellgren, and Sellgren Inc. proposing changing the place of use of rights 37-158C, 37-274, 37-276B, and 37-892A to 96 acres of irrigation (some additional tracts and different acre distribution than the 96 claimed acres). *Note that the ISOS Business Entity website indicates that the Sutton, Sellgren, and Sellgren Corporation status is forfeited as of December 01, 1983.* David M. Sellgren, who indicated he was president of Sutton, Sellgren, and Sellgren, signed the claim amendments and transfer application. The filing fee for the transfer application was \$50.00.

January 1992 Doug Jones of IDWR sends letter to David Sellgren raising the issue of ponds being located on the property involved with the transfer application. Doug's letter indicates that the ponds were first used in 1988 and that no water rights exist for the pond use(s). *Note that 1997 NAPP photography shows some ponds on the property, but 1998 NAPP photography shows several additional ponds on the property.*

Spring 1992 Claims 37-158C, 37-274, 37-276B, 37-892A (all Big Wood River rights), and claim 37-4269 (unnamed stream) amended to add aesthetic use as a water use in addition to irrigation use. Aesthetic uses are identified on several of the tracts where irrigation use is claimed. *Note that the transfer application was not amended and still proposes only irrigation use(s).*

July 1993 Ownership change submitted to IDWR proposing change in ownership of claims 37-158C, 37-274, 37-276B, 37-892A (all Big Wood River rights), and claim 37-4269 (unnamed stream) from Sutton, Sellgren, and Sellgren, Inc. to David M Sellgren. No documentation was

submitted with the ownership change form, but David Sellgren signed the form as former and new owner/claimant(s). This ownership change was processed by IDWR in January of 1995.

February 1998 Corey Skinner of IDWR sends letter to David Sellgren of Sutton, Sellgren, and Sellgren inquiring about status of application. Letter is returned to IDWR with new forwarding address for Mr. Sellgren. Letter sent back to Mr. Sellgren at new forwarding address.

March 1998 Meeting between Corey Skinner of IDWR and David Sellgren held to discuss status of transfer application and issues relating to processing of the application. Mr. Sellgren leaves meeting and no clear indication is given to IDWR regarding the processing of the transfer application.

January 6, 2004 Letter sent to David Sellgren outlining application deficiencies and giving 30 day deadline for the submittal of information to address the deficiencies.

As of this date, the Department has not received a response from David Sellgren. A summary of the sufficiency of the application is as follows...

- **Authority to File:**

Applicant is not listed as current owner of right on IDWR records. The application is filed in the name of Sutton, Sellgren, and Sellgren. The IDSOS Business Entity Search shows that this corporation has had a forfeited status since 1983. The SRBA claim records involved with the application are in the name of David Sellgren. Application hints that water is to be transferred off of subdivided land, but the application and maps are not clear as to what land (parcels) the water is coming from. If this is indeed the case, nothing was included indicating that the land was sold without water rights. The application also states that the lands from which the water rights are proposed to be transferred are subject to a lien, deed of trust, mortgage, or contract. A notarized letter from the holder of any liens, deeds of trust, mortgage, or contracts was not included with the application.

- **Water Right Validity:**

Rights have not been decreed in the SRBA. Claims involved with the application have been amended to add a new use (aesthetic) since the application was filed. The application does not reflect this new amended use. Examination of NAPP photography indicates the presence of additional ponds and water features from 1987 to 1988 indicating that some of the aesthetic use may not be able to be covered by a claim amendment (at least some of the new use added after commencement of SRBA).

- **Injury to Other Water Rights:**

Existing aesthetic use for ponds and water features is not covered by the transfer application. Actual use, not covered by transfer application, could raise injury issues. The transfer application proposes the irrigation of 96 acres of property, and the Snake River Basin Adjudication claims reflect 96 acres of irrigation and aesthetic water uses. Examining past aerial photos from prior to November of 1987 reveals that significantly less than 96 acres appear to be irrigated.

- **Enlargement of Use:**
Existing aesthetic use for ponds and water features is not covered by the transfer application. Actual use, not covered by transfer application, could raise enlargement issues. Maps included with the application are not clear as to what was irrigated before the transfer, and what is proposed to be irrigated after the transfer. Insufficient information submitted with the application to make a decision on potential enlargement. The transfer application proposes the irrigation of 96 acres of property, and the Snake River Basin Adjudication claims reflect 96 acres of irrigation and aesthetic water uses. Examining past aerial photos from prior to November of 1987 reveals that significantly less than 96 acres appear to be irrigated.
- **Local Public Interest:**
No negative impacts anticipated other than validity, injury, and enlargement issues raised above.
- **Beneficial Use/Conservation of Water Resources:**
More than likely a sprinkler system is used to irrigate the golf course.

The application as currently proposed involves portions of four Big Wood River water rights, 37-158, 37-274, 37-276, and 37-892. Department records indicate that an additional claim, 37-4269, from an unnamed stream appears to at least partially overlap the four Big Wood River water rights involved with the transfer. This claim includes a remark stating "water from all rights is commingled and distributed through one system to sprinkler irrigate golf course & common area within Big Wood Subd." Note that the transfer application does not list all of the water rights for use in the system that is proposed to be changed.

The application and the map do not clearly indicate the location(s) of the lands involved with the application. The application states that the reason for the proposed change is to "take water from subdivided land to allow expansion of golf course". Note that no information was provided with the application addressing the subdivided land where the water is to be transferred from. In addition, if the ownership of these subdivided areas has changed, any appurtenant water rights may have been sold with the property.

Review of the application finds there is plenty of inconsistency with criteria set forth in Section 42-222 Idaho Code and recent transfer processing guidance preventing processing of this application.