

MEMORANDUM

Date: September 8, 2022

To: Transfer 86422

From: James Cefalo

Re: Review & Evaluation of Sufficiency of Information

This transfer application proposes to change the point of diversion and place of use for water right 34-929. The proposed point of diversion will be a pump station or open ditch located at the southwest corner of the property, where Antelope Creek intersects with the proposed place of use.

Authority to File: Applicant, Western Frontier Ltd, owns the existing and proposed places of use according to Custer County taxlot data. Western Frontier is the current owner of record for water right 34-929. Application was signed by Terri Pritchett, managing member for Western Frontier.

Water Right Validity: The SRBA Court issued a partial decree for water right 34-929 in 2001. Aerial imagery does not show consistent irrigation of the property. In fact, none of the images from 2001 to today show any sign of irrigation. On August 12, 2022, I sent an email to Terri Pritchett asking her to describe the historical irrigation of the property or to identify a defense to forfeiture. On September 8, 2022, Pritchett sent a letter presenting several arguments why the right should not be considered forfeited.

In earlier correspondence, Pritchett confirmed that the diversion works at the original point of diversion was washed out during a flood year, likely prior to 2001. Pritchett argues that she has paid annual assessments to Water District 34 every year. Payment of water district assessments is not a defense to forfeiture. Pritchett argues that the watermaster and IDWR have never met with her to discuss how to repair the damaged diversion works. It is not the watermaster's job or IDWR's job to design or repair the diversion works. Pritchett argues that the water will be used for wildlife habitat and that her use is more beneficial than downstream uses. Neither of these arguments is a defense to forfeiture.

Pritchett notes that Antelope Creek moved into a separate channel during a flooding event, dewatering the channel where the original point of diversion was located for a time period. Channel movement around the existing point of diversion is shown in the aerial imagery. She also notes that the creek is now lower than the original point of diversion. Pritchett also notes that roads on the neighboring property have cut off the ditch channel. This is also shown in aerial imagery. Movement of the creek channel (away from the point of diversion) and manipulation of ditches on neighboring properties are circumstances out of the control of the property owner. In addition, water right 34-929 bears a 1914 priority date and is only a high water right in the Big Lost River drainage. Water right 34-929 would only be deliverable for a short window or not at all in drought years (2001, 2002, 2003, 2007, 2012, 2013, 2021). Given the circumstances beyond the control of the water user and the delivery limitations of the water right, the Department does not have clear and convincing evidence of forfeiture at this time.

Injury to Other Water Rights: No issues identified. Proposed point of diversion is located less than 1/2 mile downstream of the existing point of diversion. There are no authorized points of diversion between these locations.

Enlargement of Use: No issues identified. Place of use is being rearranged to better reflect the irrigable acres on the property.

Local Public interest / Beneficial Use/Conservation of Water Resources: No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.