

MEMORANDUM

Date: July 6, 2022
To: Transfer 86096
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the place of use and point of diversion for water right 22-12784. Downstream of the existing point of diversion, Darby Creek splits into two streams: Darby Creek and Dick Creek. The proposed point of diversion is on the Dick Creek channel.

Authority to File:

The applicant, Ferrarone Family Living Trust, has the authority to file. Mark Harrington is the owner of record for water right 22-12784 and the owner of the existing place of use for the right. The post-transfer place of use was owned by the applicant, according to Teton County taxlot data. An Agreement for Purchase and Sale of a Water Right, included in the application, was signed by Mark Harrington and JB Ferrarone, Trustee of Ferrarone Family Living Trust. The Agreement authorized this transfer. A Warranty Deed conveying the water rights will be executed after transfer approval, after which ownership will be updated. The proposed point of diversion is an existing diversion on Dick Creek, used to deliver water rights 22-2124A and 22-4083, which are held by Ferrarone Family Living Trust. The application was signed by JB Ferrarone.

Water Right Validity:

The water right is valid for transfer. The right was decreed in 2008. Review of post-decree aerial photography demonstrates consistent usage of the right.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and was not protested. The Watermaster for Water District 1 was notified of the transfer and did not provide comment. Prior to the transfer, the right was diverted from the Cherry Grove Canal. Cherry Grove Canal Company authorized the right's removal from their canal in a letter included in the transfer application. The post-transfer source is Dick Creek, a branch of Darby Creek. Moving 22-12784 into Dick Creek creates the potential for injury because water right 22-12784 would become the most senior water right on Dick Creek. Based on an injury analysis provided with the application, the applicant is seeking to improve its priority date relative to the Teton River. Every summer, the flow in Darby Creek drops to a point where the creek becomes disconnected from the Teton River and is regulated separate from the Teton River rights. By that time, water right 22-12784 is no longer available. To prevent injury to existing water rights on Dick Creek or Darby Creek the right will be conditioned to only be available when Dick Creek and Darby Creek are connected to the Teton River and are being regulated in conjunction with Teton River water rights. Further, a condition was added to the right limiting the diversion to the amount of water available at the original point of diversion.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. At the pre-transfer place of use, the transferred right was stacked with water right 22-13974, a 15.5-acre irrigation right from a local spring. The two rights overlapped over 15.5 acres. That means 31.5 acres of water right 22-12784 was not stacked with any other right. At the 120-acre post-transfer place of use the right will be stacked with water rights 22-2124B and 22-4083. These rights authorize a combined 83 acres of irrigation within the 120-acre permissible place of use. Right 22-12784 will be combined with water rights 22-2124B and 22-4083 over 15.5 acres. All three rights will bear a combined acre limit of 114.5 acres. The stacked rights at the post-transfer place of use are senior to the right at the pre-transfer place of use. 22-13974 (pre-transfer) has a priority date of October 31, 1945. 22-2124B has a priority date of October 11, 1937, while 22-4083 has a priority date of November 29, 1942.

Rate nor irrigated acres are authorized to increase as a result of this transfer's approval.

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.