

MEMORANDUM

Date: June 28, 2022
To: Transfer 85750
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer changes the points of diversion and places of use for a split portion of two independent groundwater rights, 35-7720 and 35-12467B, and changes the nature of use for the combined 25-acre split portions to Mitigation by Non-Use. The transferred rights mitigate for the depletion associated with Permit 25-14512, which authorizes the irrigation of 25 acres in Pepperwood Crossing Subdivision No. 3.

Authority to File:

The applicant, J & L Holdings, LLC, has the authority to file. The application was signed by P. Lynn Dixon, the Manager of J & L Holdings, LLC, according to the Idaho Secretary of State.

The entire post-transfer place of use, and the post-transfer point of diversion in the NESE, were owned by J & L Holdings, LLC, at the time of transfer approval according to Jefferson County taxlot data. The points of diversion in the SESE were owned by Rocky Mountain Utility Company, LLC, whose registered agent is Jim Bernard, according to the Idaho Secretary of State. According to the application for transfer, Jim Bernard is developer of the subdivision and owns the company that operates its water system. At the time of transfer submittal, water right 35-7720 was owned by PT Elliott, LLC, according to Department records. The pre-transfer place of use for the split portion of right 35-7720 was also owned by PT Elliott, LLC, according to Jefferson County taxlot data. A Net Water Listing Contract with Exclusive Right to Sell was included with the application, signed by Carl Zitlau and Roger Warner, authorizing Rocky Mountain Water Exchange to sell the portion of 35-7720 and 1-7017 on behalf of PT Elliott, LLC. Carl Zitlau and Roger Warner are the registered agents for PT Elliott, LLC, and Rocky Mountain Water Exchange, respectively, according to the Idaho Secretary of State. In turn, the applicant has signed an Agreement for the Purchase and Sale of the right with Rocky Mountain Water Exchange.

At the time of transfer submittal, right 35-12467B was owned by Wayne Jensen, according to Department records. The pre-transfer place of use, the E1/2 of the NWSW of Section 4, was owned by Wayne Jensen, according to Bonneville County taxlot data.

Wayne Jensen signed a Net Water Listing Contract with Exclusive Right to Sell with Rocky Mountain Water Exchange. The Contract was also signed by Roger Warner. In turn, Rocky Mountain Water Exchange signed an Agreement for Purchase and Sale of a Water Right with J & L Holdings for the 20 acres split as part of this transfer. The Agreement was signed by Lynn Dixon and Roger Warner. Ownership of the transferred portions will be updated after the transfer approval.

Water Right Validity:

The water rights are valid for transfer. Right 35-7720 was decreed in 2004. Review of aerial photography demonstrates no clear and convincing evidence of forfeiture. The right was leased to the Water Supply Bank in 2019 and 2020. Right 35-12467B was decreed in 2002. Aerial photography demonstrates consistent post-decree irrigation.

Injury to Other Water Rights:

The transfer was advertised and protested by the surface water coalition on various grounds. The protest was withdrawn with the stipulation that this transfer not be used as an offsetting transfer in the future. The Watermaster of Water District 120 was notified of the transfer and did not oppose its approval. A simulation of the transfer was performed in ETRAN3.3. No modeled reach of the Snake River was depleted more than 2 AF/Trimester, or more than 10% of historical, according to the simulation. No mitigation is required.

Enlargement of Use:

No enlargement of use will occur as a result of this transfer.

At the pre-transfer place of use, 35-12467B is stacked with Osgood Canal Company shares. At the post-transfer place of use, the split portion will mitigate a permit that will be stacked with Rudy Canal Company shares. A review of the two companies' rights indicates enlargement issues are not a concern because the water right suites are similar. Each company has various Snake River rights, but their largest rights are highlighted here. Osgood Canal Company's primary right, 1-181D, has a priority date of 6/16/1900 and is for 100 cfs to be used on 5,000 acres. Rudy Canal Company has two primary rights, 1-162E and 1-243, to be used on a total of 4,583 total acres. 1-162E has a priority date of 8/13/1888 for ~91 cfs and 1-243 has a priority date of 6/1/1905 for 120 cfs.

35-12467B lists a combined limit with right 35-13294 that is additive and will be reduced appropriately. 35-7720 is stacked with 1-7017 at its pre-transfer place of use. 1-7107 has a priority date of 3/14/1978 and is therefore rarely available. The 5-acre portion of 1-7107 stacked with the 5 acres of 35-7720 will be abandoned as part of this transfer's approval.

Typically, when the Nature of Use changes as part of a transfer, the Department requires that applicants demonstrate the average annual volume of the right diverted over the past five years. The new Nature of Use is then limited to that volume. In this case, the Nature of Use is being changed to Mitigation by Non-Use to offset a concurrently approved Irrigation permit. Because the transferred rights are being held for use as Mitigation for their same decreed use, the Department is not requiring the applicant to demonstrate the average volume diverted.

Volume nor irrigated acres are authorized to increase as a result of this transfer's approval. Concurrent approval of Permit 25-14512 authorizes additional instantaneous rate for the irrigation of subdivision lots. A condition was added to permit 25-14512 specifically highlighting the Mitigation-by-Non Use provided by 25-14510 and 25-14511. In-home use of water in the Pepperwood Crossing subdivision is provided by right no. 25-14497.

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.