

Cefalo, James

From: Cefalo, James
Sent: Friday, June 3, 2022 12:26 PM
To: Chris Robinson
Cc: Luke Marchant; Chris Redman; Cade Willoughby; Jeff Young
Subject: RE: Application for Transfer 85968 (Arimo Corp.)

Chris,

Thanks for the clarification. If the proposed spring source is connected to Cohn Creek and Marsh Creek throughout the year, then the diversion and use of water under the proposed permit (new water right) could injure existing water rights on Marsh Creek and the Snake River. As you know, beginning this year, Marsh Creek is being regulated based on the curtailment priority date on the Snake River. Throughout the winter, the American Falls reservoir right is entitled to the water in the Snake River and its tributaries above the reservoir. During the irrigation season, the curtailment priority date for the Snake River downstream of Blackfoot is usually 1900. Permit 29-14466, if approved, would rarely be available, especially during the winter months, when American Falls Reservoir is filling.

You suggested dedicating a greater portion of the stockwater part of water right 29-4424 to the new stockwater system. Water right 29-4424 bears a senior priority date, avoiding the curtailment concerns described above. However, the stockwater element of water right 29-4424 is currently limited to 13,000 gallons per day and cannot be enlarged beyond that amount.

One option would be to convert part of the irrigation portion of water right 29-4424 from irrigation to stockwater. This was done for the Potter Creek system. The converted portion, however, would still be limited to irrigation season of use from April 1 to October 31. In your earlier email, you mentioned that the feeding season would run from October to May, so converting a portion of right 29-4424 from irrigation to stockwater may not be the best idea. Perhaps additional irrigated acres could be dried up and held unused to mitigate for the stockwater use outside of the irrigation season. American Falls is generally filling during April and sometimes May and could benefit from additional water flowing from Cohn Creek into Marsh Creek (as a result of dried-up irrigated acres).

Another option would be to split the stockwater system in half. Half of the troughs could be supplied water from the spring (up to 13,000 gallons per day). The other half of the troughs could be supplied from an exempt ground water well (up to 13,000 gallons per day).

You will probably want to consult with Luke again on the path forward. I apologize that I didn't raise these concerns earlier. It was my understanding that the transfer/permit were intended to function like the Potter Creek system. I would have raised these concerns earlier if I had known that the Permit was intended to provide water above and beyond the 13,000 gallons per day described in water right 29-4424.

On a related note. It looks like the American Falls Reservoir water rights might not fill this year. Permit 29-14340, for your small reservoir on Potter Creek, requires you to release the water from the reservoir or rent water from the Water District 1 rental pool to cover the 27 acre-feet stored in your reservoir if the American Falls Reservoir rights are not satisfied. Permit 29-14340 states that the evaluation should occur on or before July 1st. The American Falls Reservoir rights will continue to accrue water over the next couple of weeks. I just wanted to remind you that you will need to check on the reservoir fill amounts by July 1st (assuming your small reservoir has been built and is storing water).

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Thursday, June 2, 2022 11:10 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Luke Marchant <lmarchant@holdenlegal.com>; Chris Redman <credman@theensigngroup.com>; Cade Willoughby <cwilloughby@theensigngroup.com>; Jeff Young <jyoung@theensigngroup.com>
Subject: Re: Application for Transfer 85968 (Arimo Corp.)

James,

My comments are below in red.

Best,

Chris
801-599-4397

From: James Cefalo <James.Cefalo@idwr.idaho.gov>
Date: Wednesday, June 1, 2022 at 3:06 PM
To: Christopher Robinson <crobinson@theensigngroup.com>
Cc: Luke Marchant <lmarchant@holdenlegal.com>, Chris Redman <credman@theensigngroup.com>, Cade Willoughby <cwilloughby@theensigngroup.com>, Jeff Young <jyoung@theensigngroup.com>
Subject: RE: Application for Transfer 85968 (Arimo Corp.)

Chris,

Thank you for tracking down those numbers. They confirm that you have been diverting as much as 13,000 gallons per day, as authorized under the stockwater element of water right 29-4424.

We can move forward with the transfer approval, limiting the stockwater use under the transferred portion of water right 29-4424 to 0.02 cfs and 13,000 gallons per day. By limiting the rate to 0.02 cfs (which can only produce 13,000 gallons per day), there is no need to adopt an annual volume limit for the water right.

I have a follow-up question on your email. You say that the transferred portion of right 29-4424 and the new permit (29-14466) could be used to divert 26,000 gallons per day. I thought Permit 29-14466 was intended to be a back-up to the transferred portion of right 29-4424, similar to how we handled the stockwater system on Potter Creek.

CFR: Unlike the Potter Creek situation, Cohn Creek is an excellent source of water, has its origin and full reach on our private land, is based upon a very senior water right (1880 priority) and will never fail (never say never, but unlikely 😊). So our filing for 29-14466 was not intended to be duplicative, but additive.

We need at least 26,000 gallons per day (or at least that amount annualized) given our feedlot expansion plans. Most of that utilization would be outside of the summer season when water is dear.

Permit 29-14466 will bear a 2021 priority date. During times when the Cohn Creek spring is connected to Cohn Creek and Marsh Creek, Permit 29-14466 would only be available when all other downstream rights are satisfied. This may only occur for a short time in the early summer. The transferred portion of right 29-4424 is a senior right (1880 priority

date) and would always be available, as long as the proposed spring source is connected to Cohn Creek. If the spring becomes disconnected from Cohn Creek, then the transferred portion of water right 29-4424 cannot be used.

CFR: I'm not sure who the spring would become disconnected from Cohn Creek, unless you're meaning that Cohn Creek goes dry and doesn't make it to Marsh Creek. Please clarify.

The two rights work in tandem. If the spring is connected to Cohn Creek and Marsh Creek, then the transferred portion of right 29-4424 is available, but Permit 29-14466 is likely not. If the spring becomes disconnected from the creek, then Permit 29-14466 is available, but the transferred portion of right 29-4424 is not. The two rights would not be diverted at the same time. I am planning on conditioning both rights to state that the rights, in combination, are limited to a daily diversion volume of 13,000 gallons. This would match what we did on the Potter Creek stockwater rights.

CFR: As stated above, we need to be able use both water rights at the same time. Perhaps we should increase the 29-4424 stockwater component to 0.04 CFS, which I think would translate to 26,000 gallons per day. We of course would like to annualize that.

Is there no way to use 0.04 CFS of 29-4424 AND 13,000 gallons per day from 29-14466?

This would likely give us the most flexibility.

Could you please comment on this approach?

Luke,

Would you also please chime in?

Thanks,

CFR

If you intended something different with these companion applications, let me know. Otherwise, we will move forward with the approvals.

 IDAHO DEPARTMENT OF
WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

From: Chris Robinson <crobinson@theensigngroup.com>

Sent: Wednesday, June 1, 2022 9:03 AM

To: Cefalo, James <James.Cefalo@idwr.idaho.gov>

Cc: Luke Marchant <lmarchant@holdenlegal.com>; Chris Redman <credman@theensigngroup.com>; Cade Willoughby <cwilloughby@theensigngroup.com>; Jeff Young <jyoung@theensigngroup.com>

Subject: Re: Application for Transfer 85968 (Arimo Corp.)

James,

We met this morning on zoom.

Here's our last five years' usage:

<u>Year</u>	<u>Mother Cows & Bulls</u>	<u>Calves (400 to 800 lbs)</u>
2021	630	2,000
2020	630	700
2019	630	
2018	630	
2017	780	

Most of the utilization is from October 15 through May 31 and in the 2017 through 2019 years much was watered on sources different from Cohn Creek (the system only covered the area west of Union Pacific Railroad).

We now have extended the stockwatering system over basically the whole ranch.

Beginning in 2020, we started to background weaned calves through the winter at Arimo.

We intend to do more and more of that (to eat our own farm production).

Given your explanation below, I think we should go with the using just 0.02 CFS from 29-4424, limited to the 13,000 gallons per day.

With the companion application 29-14466, we would have a total limited of 26,000 per day, which should be ample.

During the feeding season (Oct through May), we can get by with ~1 gallon/day/hundredweight/head (so an 600 # yearling would drink six gallons/day)

We can put totalizing meters on the two pump stations and we'll certainly stay within the 26,000 gallons per day on an annualized basis and likely on a daily basis.

Does this sound reasonable to you?

Thanks for bringing this to our attention.

Best,

Chris
801-599-4397

From: Christopher Robinson <crobinson@theensigngroup.com>

Date: Tuesday, May 31, 2022 at 6:35 PM

To: James Cefalo <James.Cefalo@idwr.idaho.gov>

Cc: Luke Marchant <lmarchant@holdenlegal.com>, Chris Redman <credman@theensigngroup.com>, Cade Willoughby <cwilloughby@theensigngroup.com>, Jeff Young <jyoung@theensigngroup.com>

Subject: Re: Application for Transfer 85968 (Arimo Corp.)

James,

I now understand what you're asking.

Luke, the Ranch Managers, and I will meet in the morning and get back to you pronto.

We have been operating a small feedlot on the ranch for the last several years which has increased the number of head.

In addition, we have worked with NRCS to put in a stockwater system which helps avoid over-utilization of riparian areas.

But as I said, let us get together tomorrow and then we'll be back to you.

Thanks for taking time to reach out.

Best,

Chris
801-599-4397

From: James Cefalo <James.Cefalo@idwr.idaho.gov>
Date: Tuesday, May 31, 2022 at 3:21 PM
To: Christopher Robinson <crobinson@theensigngroup.com>
Cc: Luke Marchant <lmarchant@holdenlegal.com>
Subject: RE: Application for Transfer 85968 (Arimo Corp.)

Chris,

I don't think we need to meet. I'm happy to provide my concerns and the basis for my request in this email.

Application 85968 proposes to increase the number of stock troughs on the Cohn Creek stockwater system from a handful of stock troughs covering seven quarter-quarters to 60+ stock troughs covering sixty-two quarter-quarters. The proposal would increase the area served by the stockwater system by nearly ten times.

The authorized stockwater diversion rate for water right 29-4424 is 0.19 cubic feet per second (85 gallons per minute). Water right 29-4424 bears a condition limiting the stockwater use to 13,000 gallons per day. At a diversion rate of 85 gallons per minute, it would only take 2.5 hours (150 minutes) to divert 13,000 gallons. If a water user diverted 0.19 cfs for an entire day, the water user could divert 122,800 gallons per day. This is enough water to supply stockwater for 10,000 cattle.

The combination of the significant increase in the area served by the stockwater right and the large diversion rate for stockwater raises a concern that the stockwater use under the water right 29-4424 could be expanded beyond the water right limits. There are a couple of ways to prevent over-diversion. One way would be to adopt an annual volume limit for the right. This volume limit would be based on the historical beneficial use occurring under the water right. In addition, I would require you to install a totalizing measuring device at the point of diversion. This will allow the watermaster for Water District 29H to confirm that the diversion does not exceed the daily or annual volume limits for the right. Information about the stockwater use occurring over the last five years would help me quantify an appropriate annual volume limit.

Another way to prevent over-diversion would be to limit the diversion rate for the water right. Currently, water right 29-4424 authorizes the diversion of 1.14 cfs for irrigation and 0.19 cfs for stockwater. In total, water right 29-4424 authorizes a diversion rate of 1.14 cfs. Therefore, there is overlap between the irrigation rate and the stockwater right. A portion of the diversion rate (0.19 cfs) could be used for either irrigation or stockwater. Application 85968 proposes to dedicate 0.19 cfs of the right exclusively to stockwater. The irrigation element of the right would be reduced to 0.95 cfs. The proposal to dedicate 0.19 cfs of water right 29.4424 to stockwater (at the expense of the irrigation portion of the right) is surprising. Usually, when there is a combined irrigation/stockwater rate, water users try to preserve as much rate for irrigation as possible. You may choose to limit the stockwater diversion rate to 0.02 cfs. If

a water user were to pump 0.02 cfs for an entire day, the water user could divert 13,000 gallons per day (the daily volume limit already on the stockwater portion of the right). The companion Application for Permit 29-14466 only proposed a diversion rate of 0.02 cfs.

If you want to transfer 0.19 cfs for stockwater use, then please provide information about the stockwater use on the property over the last five years. This will help me calculate an appropriate annual volume limit. If, on the other hand, you want to avoid annual volume limits and measuring devices, I can approve the transfer with a 0.02 cfs (9 gpm) rate for stockwater use. This would match the 0.02 cfs diversion rate proposed in Application 29-14466.

Let me know which path is preferable.

James

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From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Tuesday, May 31, 2022 10:30 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Luke Marchant <lmarchant@holdenlegal.com>
Subject: Re: Application for Transfer 85968 (Arimo Corp.)

James,

Would you have time tomorrow morning at 8:00 am for a quick zoom with Luke and me, to go over your request as well as to explain what we're trying to do?

I can send the invitation if that works.

Best,

Chris
801-599-4397

From: Christopher Robinson <crobinson@theensigngroup.com>
Date: Tuesday, May 31, 2022 at 10:14 AM
To: James Cefalo <James.Cefalo@idwr.idaho.gov>
Cc: Luke Marchant <lmarchant@holdenlegal.com>
Subject: Re: Application for Transfer 85968 (Arimo Corp.)

James,

Thanks for reaching out.

I will have to get with our ranch manager and we will compile a table.

Please standby.

Chris
801-599-4397

From: James Cefalo <James.Cefalo@idwr.idaho.gov>
Date: Tuesday, May 31, 2022 at 9:03 AM
To: Christopher Robinson <crobinson@theensigngroup.com>
Cc: Luke Marchant <lmarchant@holdenlegal.com>
Subject: Application for Transfer 85968 (Arimo Corp.)

Chris,

I am completing the final review of Arimo Corp.'s Application for Transfer 85968, proposing to change the point of diversion and place of use for the stockwater portion of water right 29-4424. To complete the enlargement review, I need information about the recent use occurring under the stockwater portion of water right 29-4424.

In 1983, Arimo Corp. filed a statutory claim pursuant to Section 42-243, Idaho Code for irrigation and stockwater use from Cohn Creek. The claim was assigned water right number 29-4424. The statutory claim described stockwater use for 300 beef cattle. In 1990, Arimo Corp. filed a claim for water right 29-4424 in the Snake River Basin Adjudication. The SRBA claim described stockwater use for 725 beef cattle. The SRBA Court issued a partial decree for water right 29-4424 on March 22, 2004.

How many cows have been supplied water under water right 29-4424 (from the Cohn Creek system) each year in the last five years? For the number of cows identified, has that number of cows been on the property for the entire year? Or, has the stockwater use over the last five years been seasonal (limited to certain months of the year)? I suspect the Idaho Dept of Agriculture has information about the total number of cows and season of use, but records about animals are highly protected in Idaho. I thought it might be easier to ask you for an estimate on the number of cows and season of use.

James

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