

MEMORANDUM

Date: June 7, 2022
To: Transfer 85776
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

The purpose of this transfer is to change a point of diversion for water right 29-342. The applicant plans to discontinue and decommission its diversion from Birch Creek. Applicant proposes to allow Birch Creek to flow into Marsh Creek and divert the water from an existing pump station on Marsh Creek. Additionally, the applicant owns water rights 29-14124 and 29-14264 that are currently diverted from the proposed Marsh Creek diversion. These Marsh Creek rights are very junior, however, and are rarely available.

Authority to File:

The applicant is the current water right owner of record. Bannock County tax lot data shows the applicant as the owner of the proposed point of diversion. The application was signed by Steve East who is an authorized agent for the applicant. The applicant has authority to make the change.

Water Right Validity:

The right included in this transfer was decreed in the SRBA in 2004. Review of 2009, 2013, 2017, and 2021 aerial photography shows growing vegetation on the current place of use. Forfeiture does not appear to be an issue.

Injury to Other Water Rights:

Other rights do not appear to be injured by the proposed change. The quantity authorized to be diverted will not change as a result of the transfer. The application was advertised without protest. The water master was notified and did not provide a comment.

Enlargement of Use:

There are no overlapping water rights on the place of use. This transfer raises major enlargement concerns, but the approval can be conditioned to address those concerns. Marsh Creek is a more reliable source than Birch Creek. The right holder must be limited to the amount of water available at the original point of diversion from Birch Creek. On June 3, 2022, an agent for IDWR measured the flow in Birch Creek at the original POD and reported a flow of 1.90 cfs, already less than the authorized diversion rate for right 29-342. The flow will continue to drop over the summer. Applicant will be required to install measuring devices at multiple locations on Birch Creek to confirm the amount of water available under right 29-342.

Right 29-342, which is never curtailed, will now be diverted from a pump station used to divert junior Marsh Creek rights that are rarely available. Adding a senior right to a pump station for very junior rights creates a risk of enlargement. Conditions will be added to the approval requiring the Applicant to isolate the diversion and measurement of water right 29-342. The watermaster must still be able to close and lock the diversion infrastructure for the junior Marsh Creek rights.

IDWR should conduct a field exam in August 2022 to confirm that the conditions of the transfer approval have been satisfied.

Local Public interest:

No issues identified.

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.