

MEMORANDUM

Date: January 13, 2022
To: Transfer 85565
From: Cooper Fritz / James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This application proposes to change the place of use, points of diversion, and add points of diversion for a 9.3-acre portion of water right 29-13892, and all of water rights 29-14197 and 29-14198. The proposed place of use is divided between twenty lots in the Prairie Estates Subdivision.

The original application proposed to describe twenty points of diversion (one for each subdivision lot) in anticipation of splitting the water rights twenty times. Each lot will have a separate irrigation system. In the past, the Department has required a separate transfer application for each separate irrigation system. The Department agreed to process the transfer under a single application, as long as the applicant paid the filing fee for separate transfer applications. Because this type of application is likely to come before the Department again, due to the increased development, this application was a test case to see if there were efficiency gains in processing the changes under a single application. Ultimately, the Department staff found that there were no efficiency gains to a single application. The application still took a substantial amount of work. Approving one transfer does not accurately reflect the total amount of work invested in the application processing. At the end of the year, this approval will count as one transfer, even though it took much more time than a standard (single) application. Further, it was very challenging dealing with forty water rights in one application. It was very challenging to avoid mixing right numbers or elements. The approval document was triple checked to ensure accuracy. Finally, approving all of the changes in one document increases the risk of inefficiency at the end of the process. If there is an error in one of the water rights, the entire 85-page approval document will have to be re-issued. Over all, the test case confirmed that the Department's practice of requiring a separate transfer application for each separate irrigation system should continue to be followed, even for subdivisions.

Authority to File:

The applicant, A. W. Hardy Family Investments has the authority to file. The application was signed by TJ Budge, attorney for the applicant. At the time of transfer submittal, rights 29-14197 and 29-14198 were owned by the applicant, according to the Department's database. 29-13892 was owned by Robert Rowland. The pre-transfer place of use for the split portion of 29-13892 was owned by Power Materials, LLC, according to Power County taxlot data. A 2009 ownership change demonstrates that Robert Rowland withheld the water right in the sale of the land to Power Materials, LLC.

A Water Right Purchase and Sale Agreement involving the 9.3 acres of 29-13892 proposed for transfer is included with the application. That agreement is signed by Robert Rowland and agrees to sell the portion of the water right to the applicant within 30 days of this transfer's approval.

The post-transfer place of use is owned by 20 various entities, the individual owners of lots within the subdivision. Each owning entity has signed a Counterpart Signature Page to a Water Rights Agreement, authorizing the right to be placed onto, and points of diversion be drilled upon, their land. Ownership will be updated after travel approval.

Water Right Validity:

The water rights are valid for transfer. 29-13982 was decreed in 2004. Review of the acres proposed for transfer, via aerial photography, demonstrates consistent post-decree irrigation. 29-14197 was split from 29-13982 in 2017 as part of Transfer 81291. That transfer moved 29-14197 to this transfer's pre-transfer place of use. 29-14198 was decreed in 2002. It was moved to this transfer's pre-transfer place of use as a result of Transfer 81297, approved in 2017.

A more-than five year gap is noted in the use of 29-14197 and 29-14198, according to a review of aerial photography at their pre- and post-2017 transfer places of use. The post-transfer place of use was Prairie Estates Subdivision. Applicant identified circumstances beyond its control that led to the delay in water usage at the proposed place of use. The subdivision's development was delayed because of a re-platting process that occurred between 2016 and late summer 2019. Subdivision lots cannot be sold until plats are finalized (Idaho Code 50-1316). The water was therefore unavailable for use from Transfer 81297's approval until August 2019. Lots have now been sold, homes constructed and irrigation commenced at the proposed place of use. Forfeiture is not an issue.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and no protests were received. A simulation of the transfer was performed in ESPAM 2.2. Impacts to modeled reaches of the Snake River were all less than 2/AF/trimester and depletions to the reaches were less than 10% of historical effects. Therefore, no mitigation is required.

Enlargement of Use:

No enlargement will result from this Transfer's approval. Rate, volume, nor irrigated acres are authorized to increase.

Water right 29-14197 is a split of water right 29-13892. Rather than having two split pieces of the same parent right assigned to each lot, the Department decided to recombine right 29-14197 and 29-13892 prior to the transfer and calculate splits from the recombined right 29-13892. In total, 25.6 acres of right 29-13892 will be moving to the Prairie Estates Subdivision.

Each lot will have a split portion of water right 29-14198 and a split portion of water right 29-13892. Attached to this memo is a spreadsheet summarizing the numbers and elements of the split rights. The spreadsheet also includes the combined totals for each subdivision lot. All of the splits were accomplished prior to the transfer approval. The rights were brought into the transfer to update the elements consistent with the application amounts. The spreadsheet provided with the application included some math errors. These errors were corrected in the transfer 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.

Summary of Water Rights After Splits

6/23/1977

10/28/1953

Block	Lot	Lot Size (acres)	Split from 29-14198	Rate (cfs)	Volume (af)	Acre Limit	Split from 29-13892	Rate (cfs)	Volume (af)	Acre Limit	Total Rate (cfs)	Total Volume	Total Acres
1	2	5.0	29-14198	0.01	2.0	0.5	29-14443	0.01	1.6	0.4	0.02	3.6	0.9
1	3	2.0	29-14431	0.01	2.8	0.7	29-14444	0.01	2.4	0.6	0.02	5.2	1.3
1	4	2.0	29-14425	0.01	2.8	0.7	29-14445	0.01	2.4	0.6	0.02	5.2	1.3
1	5	2.0	29-14426	0.01	2.8	0.7	29-14446	0.01	2.4	0.6	0.02	5.2	1.3
1	6	2.0	29-14427	0.01	0.4	0.1	29-14447	0.01	0.8	0.2	0.02	1.2	0.3
1	7	2.8	29-14428	0.02	4.8	1.2	29-14448	0.02	3.6	0.9	0.04	8.4	2.1
2	1	2.6	29-14429	0.02	4.0	1.0	29-14449	0.01	3.2	0.8	0.03	7.2	1.8
2	2	3.6	29-14430	0.03	6.0	1.5	29-14450	0.02	5.2	1.3	0.05	11.2	2.8
2	4	7.8	29-14424	0.06	15.2	3.8	29-14451	0.06	12.4	3.1	0.12	27.6	6.9
2	5	8.9	29-14432	0.07	17.6	4.4	29-14452	0.06	14.4	3.6	0.13	32.0	8.0
2	6	5.9	29-14433	0.03	6.4	1.6	29-14453	0.02	5.2	1.3	0.05	11.6	2.9
2	7	7.4	29-14434	0.06	14.0	3.5	29-14454	0.05	11.6	2.9	0.11	25.6	6.4
2	8	4.2	29-14435	0.03	7.2	1.8	29-14455	0.03	6.4	1.6	0.06	13.6	3.4
2	9	3.5	29-14436	0.02	4.8	1.2	29-14456	0.02	3.6	0.9	0.04	8.4	2.1
2	10	3.4	29-14437	0.02	4.4	1.1	29-14457	0.02	3.6	0.9	0.04	8.0	2.0
2	11	4.1	29-14438	0.03	7.2	1.8	29-14458	0.02	5.6	1.4	0.05	12.8	3.2
2	12	4.1	29-14439	0.02	4.0	1.0	29-14459	0.01	3.2	0.8	0.03	7.2	1.8
2	13	5.4	29-14440	0.04	10.0	2.5	29-14460	0.04	8.4	2.1	0.08	18.4	4.6
2	14	2.7	29-14441	0.02	4.4	1.1	29-14461	0.02	3.6	0.9	0.04	8.0	2.0
2	15	2.5	29-14442	0.01	3.2	0.8	29-14462	0.01	2.8	0.7	0.02	6.0	1.5
Totals		81.9		0.53	124.0	31.0		0.46	102.4	25.6	0.99	226.4	56.6