

MEMORANDUM

Date: March 17, 2022
To: Transfer 85632
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the place of use and point of diversion for water right 34-633. The proposed point of diversion is located in the same quarter-quarter as the existing point of diversion. The right will be combined with seven existing water rights at the proposed place of use, providing additional rate from Congdon Springs, but authorizing no new irrigated acres.

Authority to File:

The applicant, John Lezamiz Family Limited Partnership, has the authority to file and update ownership of the water right. The application was signed by John Lezamiz, owner and manager of the John Lezamiz Family Limited Partnership. The proposed place of use and point of diversion are owned by the applicant, according to Custer County taxlot data.

Prior to the transfer, the right was owned by Seefried Ranch, LLC. Seefried Ranch also owns the existing place of use according to Custer County taxlot data. Seefried Ranch conveyed water right 34-633 to John Lezamiz Family Limited Partnership via a Quit Claim Deed, submitted with the application. The Deed was signed by Holly Seefried, registered agent for Seefried Ranch, according to records from the Idaho Secretary of State.

Water Right Validity:

The water right is valid for transfer. It was decreed in 2001. Review of post-decree aerial imagery demonstrates consistent irrigation at the existing place of use. According to Seefried, the existing place of use has not been irrigated using water right 34-633 for many years. The existing place of use has been irrigated with ground water right 34-2356. Forfeiture is not a concern.

Injury to Other Water Rights:

On March 11, 2022, IDWR requested additional information from the applicant related to the historical use of water right 34-633. The applicant contacted Holly Seefried for information about water right 34-633. The following information was provided by Holly Seefried:

Seefried has managed the existing place of use for water right 34-633 since 2011. Prior to 2011, water right 34-633 was used for irrigation by combining the right with other water supplies (storage water from Mackay Reservoir). The last time water right 34-633 was used for irrigation was 2011 or possibly 2012. The attempt to irrigate in 2011/2012 was "highly unsuccessful." Since 2012, water right 34-633 has only been used for stockwater.

In 2011, when Seefried took over management of the property, they discovered that the surface water pump (used to divert right 34-633 from the ditch) was not connected to a power source and was not operable. All wires had been disconnected from the power panel. Further, the mainline from the pump was not connected to the irrigation system. Seefried attempted to flood irrigate pivot corners in 2011 or 2012, but it wasn't successful. According to Seefried, "reliable and consistent delivery of Congdon Springs water right 34-633 to [the existing place of use] is impossible." Irrigation of the existing place of use

"would require a miracle." "This water right [34-633] is of no use to the Seefrieds and can no longer be used for its intended purpose on the property that it is allocated to."

Water right 34-633 authorizes stockwater and irrigation use. Although the irrigation component of the right has not been used for many years, the stockwater portion of the right has been delivered. According to Seefried, water was diverted for stockwater use in 2017 and 2019. Records from BLRID confirm delivery of stockwater to Seefried in 2017.

Water right 34-633 is the second most-senior right on Congdon Springs Creek. The senior most right (34-232, 0.80 cfs) is owned by Lezamiz. The application proposes to combine water right 34-633 with water right 34-232 onto a combined place of use. There are fifteen water rights from Congdon Springs or Congdon Springs Creek with priority dates junior to water right 34-633. The most junior irrigation right on Congdon Springs Creek bears a priority date of September 3, 1971. The water supply in Congdon Springs Creek is not sufficient to satisfy all of the water rights on the creek. According to Seefried, if the proposed transfer were not approved, water right 34-633 would not be used (except for stockwater). If the water right remained at its current location, junior water rights would have a more-reliable water supply. If the proposed transfer were approved, the water supply for these junior water rights would be reduced below the amounts that have been available in the last ten years.

In order to prevent injury to existing rights from Congdon Springs Creek, the following condition should be added to water right 34-633: "During times of scarcity on Congdon Springs or Congdon Springs Creek, the irrigation use under this right bears a priority date of September 4, 1971."

Enlargement of Use:

No enlargement of use will result from the transfer approval. Prior to the transfer, water right 34-633 described the same place of use as ground water right 34-2356. Water right 34-2356 authorizes the diversion of 2.98 cfs. The two rights carry a combined diversion rate limit of 2.98 cfs. Water right 34-2356 represents a full water supply for the 149 combined irrigated acres. For at least ten years, water right 34-2356 has been used exclusively to irrigate the place of use. If the transfer is approved, it will not change the amount of water diverted and used under ground water right 34-2356.

The proposed place of use is covered by seven irrigation rights. Three of these rights (34-2350, 34-2418 and 34-14312) authorize the diversion of 3.24 cfs from ground water. These three ground water rights provide a full water supply for the 173.9 acres irrigated at the proposed place of use. Therefore, water right 34-633 will be moving from a stacked position to a similar stacked position.

The seven water rights at the proposed place of use bear a combined limit condition, restricting the rights to a total diversion rate of 6.28 cfs and the irrigation of 173.9 acres. The transfer will not increase the total number of irrigated acres. In order to prevent enlargement of water right 34-633, the right, in combination with the seven rights at the proposed place of use must be limited to a combined diversion rate of 6.28 cfs. Further, water right 34-633 and ground water rights 34-2350, 34-2418 and 34-14312 must carry a combined diversion rate limit of 3.24 cfs. These combined rate limits will preserve the existing relationship between water right 34-633 and overlapping full-supply ground water rights.

Conservation of Water Resources:

No issues identified. Applicant will use sprinkler irrigation.

Local Public Interest:

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.

Cefalo, James

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Tuesday, March 15, 2022 10:46 AM
To: Cefalo, James
Cc: lezamizjohn@gmail.com
Subject: RE: Application for Transfer 85632 (Lezamiz Family Ltd Partnership)
Attachments: Holly Seefried Response.pdf

James,

See the attached response to your email from Holly Seefried.

Let me know if you need additional information.

Greg Sullivan
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Twin Falls, Idaho 83301
208-736-8543

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

Greg,

I am completing a final review of Application for Transfer 85632 and have some follow-up questions about the application. In your cover letter you state: "Water from Congdon Springs is very unreliable. Delivery from water right 34-633 to its current place of use has not occurred in many years. The conveyance ditches and points of diversion are not functional, have been filled in over the years or simply do not exist anymore." These statements are not consistent with the information I have gathered from other water users in the area. Water right 34-633 is the most senior water right from Congdon Springs. It is always available, at least in part, at the authorized point of diversion. Representatives from the Big Lost River Irrigation District state that Congdon Springs water has been delivered to the Seefried property as recently as 2017. Bruce Warner, another water user on Congdon Springs, told me that Congdon Springs was used by Dave Nelson, predecessor in interest to Seefried.

John Cefalo should have talked to Bill or Holly Seefried concerning this matter, NOT "other water users in the area" that have NOTHING to do with this property!

Water right 34-633 is NOT the "most senior water right from Congdon Springs." The priority date for 34-633 is 6/1/1896. John Lezamiz owns the oldest right, right 34-232 with a priority date of 6/1/1886, (10 years older) as shown by a simple search of IDWR water rights.

Records from the Big Lost River Irrigation District indicate that Congdon Springs water was delivered to Bill Seefried in September and October 2017. Because 2017 was such a good water year, Most Big Lost River rights were available at the same time water was delivered from Congdon Springs to Seefried. It is not clear from the BLRID records whether Seefried was actually using water from the Big Lost River, Congdon Springs, both, or neither. Records from BLRID, show that Congdon Springs water was also delivered to Dave Nelson (predecessor in interest to Seefried) in 2012.

Water delivered through this right in 2017 & again in 2019, was used ONLY as stock water. The last year that Seefried's attempted to use Congdon Springs water to irrigate with was in 2011, or possibly 2012, as a flood stream to cover corners. This was highly unsuccessful. Delivery of this right is VERY unreliable because it is on the end of the delivery ditch. Dave Nelson died March 18, 2010, & Nelson Ranches was dispersed to his heirs in the spring of 2011. Water from this right WAS NOT delivered to Dave Nelson or Nelson Ranches in 2012, for this property. It may have been delivered to Seefried's in an attempt at flooding corners, but most likely was delivered to Seefried's in the form of stock water in the fall & not used as irrigation water. This property was not in Seefried's name in 2012 but they were running it. They had a lease agreement with Heather Nelson, (Dave's wife) & had sole responsibility for it. As of the start of 2011, Seefried's had sole control of this property & no connection with Randy Nelson's inherited portion of Nelson Ranches that had previously been able to help get this water right delivered. Seefried's do not have a Big Lost River right of any kind for

this property. Seefried's do have a Big Lost River water right that is delivered to other property that they own in the Big Lost River Valley. (Again, all he had to do was contact me)

A couple of weeks ago, I spoke with Randy Nelson. He said that he ran the Dave Nelson farm for a couple of years after Dave died. According to Randy, Seefried (his sister) took over management of the farm around 2012/2013. He also said that the ditch pump was removed shortly after Seefried took over management of the farm. If the ditch pump were removed, it is not clear how water from Congdon Springs was used in 2017.

Again, Dave Nelson died in March of 2010. Randy Nelson, (Dave's son) ran Nelson Ranches for the 2010 season only. In the spring of 2011, Randy no longer wanted to run Nelson Ranches & it was divided amongst his heirs which included Holly Seefried, (Randy's sister). The property in question was still owned by Heather Nelson, (Dave's wife) but operation for this property was taken over by Holly Seefried & her family. Seefried's now own it outright, along with the water rights to it.

In the past, Congdon Springs water MAY HAVE been delivered successfully to the property in question, however, it was still being operated under the entire Nelson Ranches enterprise & was able to benefit from the fact that several rights were available to add to the right to get it delivered. That is no longer the case & has not been since 2011, when Nelson Ranches ceased to exist as one property.

Seefried's did remove the disconnected, unworking "ditch pump" in 2014.

I am looking for more specific information about the use of Congdon Springs water on the existing (Seefried) place of use since Seefried has managed the property.

(Then why didn't he ask me?)

As stated previously, this property was owned by Dave Nelson, & under the umbrella of Nelson Ranches, when Dave died in March of 2010. Randy Nelson, Dave's son, ran Nelson Ranches for 1, (one) season. In 2011, Randy no longer desired to run the entire operation, so Nelson Ranches was dispersed to the heirs of Dave Nelson. The property in question remained in Dave's name but was owned by Heather Nelson, Dave's wife. Holly Seefried, Dave's daughter & also an heir to Dave's estate, & her husband Bill entered into a lease agreement with Heather to have sole control of the property in question. (They now own it outright). The property consists of two 80-acre parcels, one on either side of the road. Both parcels used to be under wheel lines. In 2006, the wheel lines were removed, and half-circle pivots were installed, one on each 80-acre parcel.

So...Here are the specifics

In 2011, when Seefried's first started working this property, they found the pump that MAY HAVE been used at one time to put Congdon Springs water, (OCCASIONALLY) through the wheel lines was NOT CONNECTED to a power source. It was NEAR a power pole & LOOKED like it would work but WAS NOT HOOKED UP & was, in fact INOPERABLE. Several years later, while burying mainline, Seefried's also found that the main line that came off of that pump had also been disconnected. In 2014, Seefried's did remove this pump. It was NOT CONNECTED, OF NO USE & INOPERABLE.

As previously stated, many times, RELIABLE & CONSISTANT delivery of Congdon Springs water right 34-633 to this property is IMPOSSIBLE! Delivery MAY have happened at one time in the past, but without the help of additional water added when this property had the benefit of being under the Nelson Ranches umbrella, this right CANNOT be relied upon to irrigate this property. It cannot even be relied upon to deliver a consistent stock water stream.

When was the last time Congdon Springs water was used for irrigation on the existing place of use for right 34-633?

As stated, prior, Seefried's tried to flood the corners of this property, UNSUCCESSFULLY, in 2011 &/or possibly 2012. It didn't work. They could not get the water delivered reliably. They spent hours working on the ditch through Lezamiz's & Colson's in the fall 2019 just to try to get a consistent stock water stream. They usually had nothing & a couple of times, after complaining to the BLRID, it was running over the banks. 2019 was the last time Seefried's asked for this water.

If Congdon Springs water cannot be used anymore, why not? Has infrastructure been removed from the ditch?

The main conveyance ditch is still in place. The only ditches that have been filled in are the ditches that Seefried's attempted to flood irrigate with. Those ditches were off the main ditch & ran in the field. Those ditches are the ditches that have been filled in. The main conveyance ditch is still in place & Seefried's now use hand line & a small wheel line to irrigate the corners that they could not flood irrigate. They irrigate with a deep well because their deep well provides a reliable, consistent irrigation source.

Has the mainline tying together the pump from the surface water ditch and the ground water well been removed?

The main line that tied the surface water pump & ditch to the ground water well was NOT in working order or even connected to power or water source when Seefried's took over operation of this property in 2011. There was a pump sitting on an upended 55 gallon barrel near a power pole & small pond that MAY have

once been used to pump Congdon Springs water, however, when Seefried's took over operation, this pump was NOT wired to the panel. It only had the appearance of being connected. ALL the wires had been disconnected, (or it was never hooked up to begin with) & the panels only provide power to move the 2 pivots. No main line was connected. The pump was removed in 2014 by Seefried's.

What sections of the ditch have been filled in between Congdon Springs and the existing place of use?

The main ditch is NOT filled in, it is still in place as is the pond that may have once been used to feed the pump that was not connected to power. The ONLY ditches that have EVER been filled in are small ones that were fed off the main ditch & used in unsuccessful attempts to flood irrigate corners.

What kind of work would be required to resume using water from Congdon Springs?

For Seefried's to get a reliable, consistent stream of water from right 34-633 that would allow them to irrigate through their pivots would require a miracle. By itself & at this time, water right 34-633 is unable to do any more than provide an inconsistent stock water stream. Without the benefit of added water to get this right to the end of the ditch, there is no way to get it there. In years past, Seefried's had the BLRID do some work on the ditch, (under protest of the then BLRID manager). The ditch has been burned several times, ditchers have been run through it, Seefried's have shoveled, burned & spent hours on their backhoe trying to get a stream of water. All to no avail. Seefried's have asked if they can use this right as a source of recharge, possible mitigation, or to trade or transfer it so they could use it on their other property in the Big Lost River Valley. All of these ideas have been shot down. This water right is of no use to the Seefried's & can no longer be used for its intended purpose on the property that it is allocated to. Hence, this transfer.

Answers to these questions will help me complete an injury and enlargement analysis under Idaho Code, Section 42-222.

I know it may take some time to track down this specific information from Seefried. Please provide the additional information by April 8, 2022. Feel free to call if you have any questions. Please forward this email to the Lezamiz family. The application did not include an email address for the partnership.