

MEMORANDUM

Date: December 13, 2021
To: Transfer 85479
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer changes the place of use for BLR rights 34-778 and 34-10190, and changes the place of use and point of diversion for a 135 acre portion of right 34-2477A. Together they will share a 327 acre combined place of use.

Authority to File:

The applicants, Kirk and Jacob Jolley, have the authority to file. The two applicants signed the application, along with Lewene Clark. At the time of transfer submittal, rights 34-778 and 34-10190 were owned by Rafter J. Cattle Co., LLC, according to the Department's database. Kirk Jolley is the registered agent for Rafter J. Cattle Co., LLC, according to the Idaho Secretary of State's office. The pre- and post-transfer place of use for 34-778 and 34-10190 were owned by Rafter J. Cattle Co., LLC, according to Custer County taxlot data.

At the time of transfer submittal, right 34-2477A was owned by Jennie and Orville Smith, according to the Department's database. The pre-transfer place of use was owned by the Orville, Jennie, and Marie Smith Family Limited Partnership, according to Custer County taxlot data. A Will Agreement, dated January 15, 2021, and included in the application, demonstrates Lewene Clark's authorization to sign on behalf of the Limited Partnership. The Will Agreement also states that all of Jennie Smith's real property was left to Lewene and the Limited Partnership upon Jennie Smith's death in 2015.

The post-transfer place of use and point of diversion for the split portion of 34-2477A were owned by Rafter J. Cattle Co., LLC, according to Custer and Butte County taxlot data. Ownership of 34-14856 (split portion of 34-2477A) will be updated after transfer approval

Water Right Validity:

The water rights are valid for transfer.

Rights 34-778 and 34-10190 were decreed in 2001. Review of post-decree aerial photography demonstrates that not all of the place of use has been consistently irrigated. The applicants assert that conveyance losses have not allowed them to irrigate their entire place of use, despite having diverted their decreed rates. This is an acceptable defense to forfeiture under Idaho Code 42-223(6).

34-2477A was decreed in 2001. A roughly 7 acre portion of the right proposed for transfer has not been consistently irrigated, according to aerial photography. Lewene Clark asserts that conveyance losses prohibited her from irrigating those acres. This is an acceptable defense to forfeiture under Idaho Code 42-223(6).

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. An amendment was received after initial advertisement. Readvertisement was not necessary because the changes were not substantial.

The Watermaster for Water District 34 was notified of the transfer and did not comment. The Watermaster did not object to the amendment.

A simulation of the transfer was performed in ESPAM 3.4. Depletions to all modeled reaches of the Snake River were less than 10% of historical, and in no reach was more than 2 AF/trimester depleted. Mitigation is not required.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. Neither rate, volume, nor irrigated acres are authorized to increase. The acres of 34-2477A transferred acres were stand-alone groundwater rights at the pre-transfer place of use. Surface water rights of varying priority dates covered 414.5 acres of the 601-acre place of use, leaving up to 186.5 acres covered by 34-2477A alone. 135 of those stand-alone acres are moved by this transfer. Water rights 34-198A, 34-317A, 34-331 and 34-12363A were added to the transfer as associated rights to updated combined limit conditions.

Water right 34-12363A is an enlargement of water right 34-2477A. Prior to the transfer, these two rights were limited to the irrigation of 601 acres a combined rate of 6.01 cfs and a combined annual diversion volume of 2,103.5 af. This equates to 3.5 af/acre. This transfer moves over half of water right 34-2477A (the base right) off of the combined place of use, leaving only 3.41 cfs associated with the 466 remaining acres. 3.41 cfs diverted over the full irrigation season (215 days) only yields 1,454.2 acre feet less than the standard headgate volume of 1,631 acre-feet (3.5 af/acre x 466 acres). The combined limits for water rights 34-2477A and 34-12363 will be updated to reflect the rate-based volume limit.

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.