

MEMORANDUM

Date: July 1, 2021
To: Transfer 84171
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the point of diversion and place of use for an 11-acre portion of water right 34-7226C in order to irrigate 11 acres at a proposed recreation area near Moore.

Authority to File:

The transfer application was signed by the Butte County Commission Chairman. Butte County is the current water right owner of record. Butte County parcel data shows that Butte County owns the existing place of use. In November 2020, Butte County acquired ownership of the proposed place of use. Butte County provided a copy of the executed and recorded deeds for the proposed place of use.

Water Right Validity:

The SRBA Court issued a partial decree for water right 34-7226C in 1997 and issued amended partial decrees in 2002 and again in 2012. The 2002 amendment was to address a season of use issue. The 2012 amendment was to add a condition stating that the right benefits from a subordination under certain hydropower rights.

In 2015, Butte County filed Applications for Transfer 79809, 79813 and 79909 proposing to move irrigated acres to three cemeteries in Butte County. The Department held that water right 34-7226C was valid for transfer because less than five years had elapsed since the amended partial decree was issued.

There is no evidence that the existing place of use for water right 34-7226C has been irrigated since the amended partial decree was issued (2012). On September 17, 2020, IDWR sent Butte County a letter asking for additional information related to the use or non-use of the right. Butte County sent a response letter to IDWR on July 1, 2021. Butte County confirmed that the existing place of use has not been irrigated from 2012 to today. Butte County asserts a defense to forfeiture under Section 42-223(6) - circumstances beyond the control of the water user.

I conducted a detailed review of the records available in the Department's files. The backfile for water right 34-7226 includes a well log for the existing point of diversion. The existing well is 200 feet deep, but only has water bearing layers from 2 feet to 65 feet below land surface. In other words, the well was completed in the shallow aquifer. The original owner, McAfee, filed Application for Permit 34-7226 to cover the use from the well. When the Department completed a beneficial use field exam in 1991, it did not conduct a measurement of the system. Instead, the Department calculated the theoretical yield of the well. Because the theoretical diversion rate (12.34 cfs) was much greater than the permitted rate (4.52 cfs), the Department did not perform an actual measurement.

I found data for five measurements of the McAfee Well: 1996 = 1.60 cfs, 2000 = 2.60 cfs, 2001 = 2.40 cfs, 2003 = 1.11 cfs, 2006 = 1.96 cfs. None of these measurement come anywhere close to the theoretical capacity of the system (12.34 cfs). After the SRBA Decrees and the three transfers described above, there are currently 4.26 cfs of water rights associated with the well. The three water rights at the McAfee Well are 34-7226B (1.52 cfs), 34-7226C (1.264 cfs) and 34-7226D (1.48 cfs).

There is a long-term ground water level monitoring well located approximately one mile south of the McAfee Well. Based on water level records, the aquifer levels between 2000 and 2020 are 10-40 feet lower than the ground water levels existing in 1972. The smallest diversion measurements (2003 = 1.11 cfs, 2006 = 1.96 cfs) correlate to years when the aquifer was at its lowest level (40 feet below the 1972 level).

From the first SRBA partial decree (issued in 1999) to today, the McAfee Well has not had the capacity to satisfy water rights 34-7226B, 34-7226C and 34-7226D at the same time. This conclusion is based on the aquifer levels in the neighboring monitoring well. Although there have been short time periods of aquifer recovery, the aquifer has generally been 20-40 feet below the levels reported in 1972.

Because the well can only supply one water right at a time, Butte County has chosen to defer to the other water users in the well. In other words, the county has chosen not to demand water from the McAfee Well to allow the other users in the well to have enough water to farm. This argument is only valid up until and including 2015. From 2016 to today, the McAfee well has not been used at all. Application 84171 was filed in June 2020, less than five years after the end of the 2015 irrigation season.

Given all of the factors described above, I could not find clear and convincing evidence of forfeiture.

Injury to Other Water Rights:

Other rights should not be injured by the proposed changes. The ESPA transfer tool was used to determine potential impacts on the Snake River. The model results showed that mitigation is not required because impacts were less than two acre-feet per trimester on each Snake River reach. The transfer application was advertised and no protests were filed. The watermaster was notified of the application but did not provide comment.

Enlargement of Use:

The proposed change will not result in enlargement because neither rate, nor volume, nor irrigated acreage will increase as a result of the transfer. Right no. 34-7226C is used together with four Big Lost River rights within a combined place of use. However, the surface water rights do not fully overlap the right being transferred. The surface water rights total 120.4 acres within a 141.3-acre place of use, leaving 20.9 acres irrigated exclusively with ground water. The 11-acre portion of right no. 34-7226C included in this transfer does not overlap the associated surface water rights. The acres irrigated by the Big Lost River rights and the remaining portion of right no. 34-7226C will be reduced accordingly in order to prevent enlargement. The number of acres stacked with Big Lost River rights will not change.

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.