

MEMORANDUM

TO: Transfer No. 84146

FROM: Justin Ferguson

DATE: January 28, 2021

RE: Evaluation of Application for Transfer

Proposal Summary

An application has been received by IDWR from Fourth of July Creek, LLC requesting the place of use for water right 75-14463, located in T24N22E Sec. 30, to be moved to five corresponding parcels located in both T24N22E Sec. 29 and Sec. 30 for the use of surface water from Fourth of July Creek. Additionally, a second point of diversion was also being proposed in the lower Fourth of July Creek located in the NENW quarter-quarter of T24N22E Sec. 29 to be closer to the designated places of use.

Upon being advertised, the application was protested based on the location of the second point of diversion and other water concerns. An agreement was reached such that the interested parties would withdraw their protest on the condition that the second point of diversion be removed from the application and combined limits be placed on the right to address an overlap issue. As this was acceptable to Fourth of July Creek LLC, the application can move forward toward approval.

Contact person for the application is Jordan Smith or Bill Allen for Fourth of July Creek and Lori Graves of SPF Water Engineering as their representative.

Summary of Information Submitted

Authority to File:

Review of IDWR records indicates the water right is currently held by Fourth of July Creek, LLC. Additionally, based on the parcel data of Lemhi County, it appears Fourth of July Creek, LLC is also the current land owner to all the acreage involved with this application. Idaho Secretary of State Information indicates Mr. Jordan Smith as a registered agent for the LLC and is authorized to sign the application on behalf of the LLC. At this time there are no concerns of the applicant's authority of file this proposal.

Water Right Validity:

The partial decree for the parent water right 75-135 was issued in September of 2009, with an ownership change and split in 2016 which led to the development of water rights 75-14463 and 75-14844. From a review of satellite imagery, it appears water right 75-14463 has been used, in full, as recently as 2015. As such, the right is presumed to be valid since the full beneficial use has occurred within the last five years.

Injury to Other Water Rights:

Based on the information provided in the application, there does not appear to be an expansion of the historic total amount of acreage being irrigated. Further, the acreage where the proposed water right portions will be moved to are either directly adjacent to the historic place of use or nearby.

The original proposal included the addition of another point of diversion from the lower section of Fourth of July Creek, closer to the designated place of use. Upon being advertised, the application was protested by water users within the lower stream where the additional point of diversion was being proposed. The concern was that the lower canal could not support the additional flow associated with this water right. Both the applicant and Protestants were able to agree that, if the second point of diversion was removed, the application could move forward. As such, the second point of diversion will not be approved.

Enlargement of Use:

Overall, based on the information provided in the application package, there does not appear to be concerns for enlargement. The overall acreage will be preserved across the different parcels as will the volume and rate based on the decreed water right values. It is of note that there is an underlying water right no. 75-14146, neither right was decreed with any combined limit with the water right being proposed for transfer. The applicant did not provide any reason that the two rights should be unstacked but also did not propose moving any portion of 75-14463 away from the acres irrigated under 75-14146. Because no evidence has been provided the two rights can be unstacked and, the information provided by the protestants suggesting the acreage has been historically irrigated under both water rights a combined limit should be placed on 75-14463 to limit its used with 75-14146 to ensure enlargement does not occur through the this transfer and subsequent splits of the right due to the pending sale of these parcels.

Local Public Interest:

Based on the information provided by the applicant, the application appears constant with the local public interest within the area. Overall, because there does not appear to be additional acreage being established, no additional strain will be placed on the fish, wildlife, or recreational resources of the area. Additionally, there are not immediate concerns of water quality issues stemming from this proposal as the intent is to establish irrigation upon the sale of each parcel by its respective owner. The removal of the second POD and addition of combined limit conditions as previously discussed satisfied the concerns of local irrigated and water users that submitted protests. From the information provided, this application proposes a change consistent with the local public interest.

Beneficial Use/Conservation of Water Resources:

The water right, upon the approval of this transfer, will continue to be limited to the local area standard rate per acre and volume per acre consistent with the conservation of water resources. As such, application proposal is consistent with both the beneficial use and conservation of water resources in Idaho.

Summary

Water Right Overlap

While there does appear to be an overlap between water rights 75-14146 and 75-14463, the acreage outlined in the transfer application does not include any changes to the overlapped acreage. As such, should a future proposal be submitted by the applicant, the relationship between the two rights within the overlapping area may warrant further investigation.

Water Supply Bank

At this time, water right 75-14463 is not leased to the Water Supply Bank. No further action is necessary.

Discussion

The following changes should be made to the conditions of water right no. 75-14463

- Update condition C18 to T19.
- Add standard transfer conditions T07 and T08
- Add condition R63
- Add standard measuring and lockable device conditions 01H, 215, 198
- Remove the split and rounding text condition, neither are necessary
- Add condition X35 limiting the use to 34.6 acres when combined with 75-14146

According to information available at the time of review, the application is consistent with the criteria of Idaho Code § 42-222. Based on the preceding discussion the application should be approved as reflected by the draft approval.