

MEMORANDUM

Date: December 2, 2020
To: Transfer 84102
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to consolidate water rights 13-60B, 13-61B and 13-274 onto a smaller place of use. These rights, in combination, authorized 216 acres of irrigation. The proposed place of use covers 80 acres. Application also proposes to update the ownership records for the three rights. However, the Applicant, Dan Sharp, did not provide any filing fees for the ownership change. Therefore, the ownership records will not be updated at this time. Applicant can pursue an ownership change after the transfer approval.

Authority to File: Application was filed by Dan Sharp. Sharp provided deeds for his property, but Sharp only owns approximately five acres of the original 216-acre place of use. Water rights 13-60, 13-61B and 13-274 were described in the 1981 Worm Creek Decree. The decreed owner of the entire 216-acre water rights was Lyman Sharp (Dan Sharp's grandfather). 139 acres of the 216-acre decreed place of use were located in the south half of Section 12, T16S, R39E. Dan Sharp provided copies of deeds confirming that Lyman Sharp never owned any ground in the south half of Section 12. At the time of the Worm Creek Decree, Lyman Sharp was irrigating the 139 acres through a rental agreement. Based on recent cases from the Idaho Supreme Court, Lyman Sharp, as the decreed owner of the rights, had the authority to transfer the rights off of the south half of Section 12. According to Dan Sharp, the rental agreement for the 139 acres expired in the early 1990s. From that time forward, water rights 13-60B, 13-61B and 13-274 have been used on the remaining place of use (80 acres). Lyman Sharp, in practice, moved the water rights off of the south half of Section 12, but did not file an application for transfer to confirm that change. This application is intended to address that issue.

Dan Sharp does not own all of the 80 acres at the proposed place of use. Most of the acres are owned by the W Pauline Beckstead Survivors Trust. On March 4, 2020, a neighboring property owner, E&M Trust filed Application for Transfer 83930 proposing to move the 139-acre portion of the three water rights to other land. Application 83930 was protested by Dan Sharp and by the Beckstead Trust. In its protest, the Beckstead Trust asserts that it owns 72 irrigated acres of the three water rights. E&M Trust protested this application (84102). The contested cases 83930 and 84102 were consolidated. During the pre-hearing conference for the contested case, the representatives for the Beckstead Trust, confirmed that the trust supports the changes proposed in this application (84102). This application was protested by E&M Trust. The protest was withdrawn without condition.

Water Right Validity: The 1981 Worm Creek Decree only described 77 irrigated acres in the NE 1/4 of Section 12. The proposed place of use includes 80 acres in the NE 1/4 of Section 12, the entire area owned by Dan Sharp and the Beckstead Trust.

Water right 13-274 bears a 1903 priority date and is rarely available. Therefore, the only rights that are consistently available during the irrigation season are 13-60B and 13-61B. These rights in combination authorize the diversion of 0.25 cfs. This would be sufficient to irrigate approximately 12 acres. Based on aerial photos, at least 12 acres have been consistently irrigated at the proposed places of use. Because of the lack of water to fill water right 13-274, forfeiture is not an issue.

Injury to Other Water Rights: Application was protested by E&M Trust. However, the protest was withdrawn without condition. The Watermaster of Water District 13A was notified of the transfer and did not provide a response.

Enlargement of Use: The transfer proposes a significant reduction in the irrigated place of use for the three water rights. The standard irrigation demand for the area is 0.02 cfs per acre and an annual diversion volume of 3.5 acre-feet per acre. These limits will be carried forward. Water right 13-274, which is rarely available, will be reduced to account for the reduction in rate and volume.

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.