

MEMORANDUM

Date: October 6, 2020
To: Transfer 84426
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer changes the point of diversion and place of use for a 2-acre portion of right 29-294D. The application proposed to transfer 3.4 acres of water right 29-294D. However, 1.4 of the 3.4 acres proposed to be transferred have not been consistently irrigated. The 1.4 acres are now under hardened surfaces (buildings or roads) and have not been irrigated for at least 10 years. The 1.4 acres associated with roads and buildings will be removed from the remaining portion of water right 29-294D.

Authority to File:

The applicant, Harold Armstrong, has the authority to file.

At the time of transfer submittal the water right was owned by Linda and Norris Murdock, according to the Department's database. Application included a "Contract Agreement to Transfer and Purchase 0.07 cfs of Water Right 29-294D," signed by Linda and Norris Murdock which authorized Armstrong to file an application to transfer up to 0.07 cfs of water right 29-294D. Per that contract, ownership of the transferred portion of the water right will be updated after transfer approval.

The existing place of use for water right 29-294D was originally owned as a contiguous piece by the Murdocks, but has been subdivided and sold off as home lots. The Murdocks sold the property to Acres Unlimited, LLC, at an unknown date between 2004 and 2012. Acres Unlimited, LLC developed the subdivision. A series of 2012 quitclaim deeds included with the application convey ownership of water rights 29-294D and 29-13385 from the lot owners to Murdock Properties, LLC. Norris Murdock is the registered agent for Murdock Properties, LLC, according to the Idaho Secretary of State. Upon transfer approval, the 2.0-acre portion of water right 29-294D will be conveyed from Murdock Properties LLC to Armstrong.

The post-transfer place of use and point of diversion are owned by the Armstrong Family Trust (comprised of the Applicant and his siblings), according to Bannock County taxlot data. A document included in the application was signed by the relevant parties in the Trust, allowing the transfer to place the water right on their land.

Water Right Validity:

2.0 of the 3.4 acres in the application are valid for transfer. 29-294D was decreed in 2004. The Murdocks argue that they were unable to obtain the full diversion rate from Rapid Creek due to problems with the conveyance system. Work on the ditch was performed to increase the flows, but was unsuccessful. While this may be a valid defense to forfeiture for some of the water rights, it is not a valid defense to forfeiture for the acres that are now covered by buildings, concrete and pavement. The reason for non-use of this area (1.4 acres) is entirely due to the development of the subdivision, which was completely in the control of Murdock. Murdock chose to subdivide the land and sell off home lots. Murdocks knew that once homes, roads, and driveways were constructed, the acres would be removed from irrigation. The subdivision has been in place since at least 2009. The 1.4 acres associated with the hardened surfaces are not valid for transfer and will be removed from water right 29-294D through the transfer approval. Applicant was notified of the issue during a telephone conversation and did not object.

Because the proposed place of use is smaller than 5 acres, the applicant will be able to retain 0.03 cfs per transferred acre. Applicant will be able to transfer 2.0 acres and 0.06 cfs of water right 29-294D. Further, because the remaining portion of water right 29-294D will be less than 5 acres. The remaining portion of the right will also retain 0.03 cfs per acre.

Injury to Other Water Rights:

Injury to other water rights will not result from this transfer's approval. The transfer was advertised and no protests were filed. The Watermasters of WD29 and WD29D were notified of the transfer and did not comment. Rapid creek remains connected to the Portneuf River throughout the irrigation season. Therefore, the existing and proposed points of diversion remain hydrologically connected throughout the irrigation season.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. 29-294D was stacked with Rapid Creek right 29-13385, 4/2/1947 priority date, at the pre-transfer place of use. The split portion will be unstacked from that right and stacked with 29-2224K, a relatively senior 10/4/1919 Portneuf River right, at the post-transfer place of use. Rate, volume, nor irrigated acres are authorized to increase.

Prior to the transfer, water rights 29-294D (0.10 cfs) and 29-13385 (0.10 cfs) carried a combined diversion rate limit of 0.15 cfs. Because 0.06 cfs of senior water right 29-294D will be transferred off of the existing place of use (and will be fully diverted at the proposed place of use), there is only 0.09 of the combined diversion rate remaining for water rights 29-294D and 29-13385. The combined rate limit and the diversion rate for water right 29-13385 will be adjusted accordingly.

Conservation of Water / 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.