

## MEMORANDUM

**Date:** September 4, 2020  
**To:** Transfer 84137  
**From:** James Cefalo  
**Re:** Review & Evaluation of Sufficiency of Information

This transfer proposes to change the point of diversion and place of use for a 4-acre portion of water right 22-7681. The new water right (split portion) has been assigned water right number 22-14379. The proposed point of diversion is located 10 miles southeast of the existing point of diversion. The proposed point of diversion is in the mouth of the Trail Creek canyon, at a location 500 feet higher in elevation than the existing point of diversion (in the middle of the Teton Valley).

### Authority to File:

Thomas and Lexie Hill are the current owners of record for water right 22-7681. Application for Transfer 84145 (found in file for water right 22-7681) includes an Option Agreement for Purchase and Sale of Water Right, which gives Rocky Mountain Water Exchange (RMWE) an option to purchase up to 40 acres of water right 22-7681 from Thomas and Lexie Hill. Application 84137 included a Purchase and Sale Agreement between RMWE and Love Family Ventures for the 4-acre portion of water right 22-7681. Application 84137 was filed by Love Family Ventures LLC and was signed by Rob Harris, attorney for Love Family Ventures. The proposed place of use and point of diversion are owned by Love Family Ventures according to the Teton County parcel map.

### Water Right Validity:

Water right 22-7681 was licensed in 2000. Aerial photos show consistent irrigation of the four acres proposed to be changed by this application.

### Injury to Other Water Rights:

The application was protested by Trail Creek Sprinkler Irrigation Company (TCSIC) and by Friends of the Teton River (FTR). Both protests were withdrawn without condition. In conjunction with its protest withdrawal, FTR provided a letter expressing concerns that the proposed point of diversion will shift the depletion effects of the proposed ground water use from the Teton River to the Trail Creek watershed. Given the significant change in elevation, it is likely that the depletion effects of pumping water right 22-14379 will be expressed in Moose Creek (which flows by the proposed place of use) or in Trail Creek, rather than the Teton River. Moose Creek flows through the proposed place of use and is tributary to Trail Creek. The confluence of Moose Creek and Trail Creek is 500 feet upstream of the TCSIC primary diversion on Trail Creek.

Water District 1 has some records for the flows in Moose Creek, Trail Creek and the TCSIC diversion on Trail Creek. Based on water district records, the peak flows on Moose Creek can exceed 200 cfs. Peak flows on Trail Creek can exceed 500 cfs. These peak flows occur during the snowmelt runoff period (late May - early July). Even if the entire proposed diversion rate were expressed as a depletion to Trail Creek, the effect during the snowmelt runoff period would be very small (1/100th of 1%).

Once the snowmelt runoff period ends, the flow in Moose Creek and Trail Creek declines significantly. Moose Creek flows can drop to less than 30 cfs and Trail Creek to less than 40 cfs. During the irrigation season, TCSIC diverts most if not all of the flow in Trail Creek. Any flow remaining in Trail Creek sinks and does not connect to the Teton River. During the late irrigation season, any depletion to Moose Creek or Trail Creek (upstream of the TCSIC diversion) would have a direct impact on TCSIC. TCSIC is the senior water user on Trail Creek and would be the injured party if there were any depletions on Trail

Creek. Assuming a flow of 40 cfs in Trail Creek and a full depletion impact above the TCSIC diversion, the depletion is still very small (1/8th of 1%). Given its proximity to the TCSIC Trail Creek diversion, it is unlikely that the depletionary effects would all occur upstream of the TCSIC diversion. In addition, the depletion effects will be less than the full authorized diversion rate. Therefore, 0.05 cfs represents the maximum depletion effect. The actual depletion effect will be something less than that amount. TCSIC protested the application and withdrew its protest after discussions with the applicant, signifying that TCSIC was satisfied that the proposed diversion would not impact its water rights.

During the non-irrigation season, flows in Trail Creek sink before connecting to the Teton River. Therefore, depletions to Trail Creek become a depletion to the Teton Valley aquifer. There is no water district for ground water rights in the Teton Valley.

Enlargement of Use:  
No issue identified.

Local Public interest:  
FTR argues that it is not in the local public interest to allow ground water rights to be moved into the tributaries of the Teton Valley. If a significant amount of water were moved into the tributary canyons, there could be localized impacts on stream flow. There has not been any trend or pattern to move ground water rights to the tributary canyons.

FTR also argues that Love Family Ventures should not be rewarded with a transfer approval. Love Family has irrigated the proposed place of use, without a water right, for many years. Section 42-222 does not contain a requirement that transfer applicants be model citizens. Often, transfer applications are filed to address unauthorized uses. Although an unauthorized use does not create a presumption of approval during the transfer process, it does not create an additional obstacle for a transfer applicant. Love Family can pursue transfer applications to address unauthorized uses without violating the local public interest element.

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.