

MEMORANDUM

Date: May 6, 2020
To: Transfer 80793
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the nature of use, place of use and points of diversion for water rights 13-885A, 13-886A, 13-887A and 13-889C. These water rights have a complex history. Please refer to an October 27, 2011 letter from IDWR in the backfile of water right 13-885A for a summary of the history of the water rights. These rights, in addition to water rights 13-885B, 13-886B, 13-887B and 13-889D are diverted from Cottonwood Creek, conveyed in a trans-basin pipeline and injected into the head of Stockton Creek. This trans-basin diversion has been in place for over 50 years.

Meadowlark Ranch LLC owns an off-stream reservoir (800 acre-feet) near the head of the Stockton Creek drainage. This reservoir has been in place since the 1970s. Water right 13-7127 authorizes the storage of 600 acre-feet and the diversion of water from Current Creek, a tributary of Stockton Creek, to fill the reservoir. The flow in Current Creek is not sufficient to maintain the reservoir. Meadowlark's predecessor in interest (Miller Family Real Estate - MFRE) began routing the Cottonwood Creek irrigation water rights (13-885A, 13-886A, 13-887A and 13-889C) through the reservoir to maintain reservoir levels.

On March 15, 2011, MFRE filed Application 13-7784, seeking a permit to divert water from Cottonwood Creek and Stockton Creek through the reservoir to maintain water levels. The application was protested by Merrill Ranch Partnership, Brent Abbott and PacifiCorp. The protests were resolved through a Settlement Agreement in May 2012. The agreement stated that MFRE would dry up 9.3 acres under water rights 13-885A, 13-886A, 13-887A and 13-889C to offset the losses associated with the reservoir. In addition, MFRE agreed to file a transfer application to change the remaining portions of the four water rights from irrigation to storage in the reservoir.

Application 80793 proposes to add Irrigation Storage and Mitigation to the four water rights. However, the application also proposed to maintain irrigation as an authorized beneficial use and to simply add new beneficial uses to the rights. The 2012 Settlement Agreement and Permit 13-7784 are clear that all of the irrigation use must be converted to mitigation or storage use. Irrigation storage is included on the approval, but direct irrigation has been removed as an authorized use.

Authority to File: Meadowlark Ranch has the authority to file. Meadowlark is the current owner of record for the water rights and is the owner of the existing and proposed places of use for the rights. Points of injection have been in place for many years. The point of redirection (pump station) to divert water from Stockton Creek for irrigation from storage is located on Meadowlark property.

Water Right Validity: Water rights were included in the 1920 Bear River Decree. Water rights 13-885A, 13-886A, 13-887A and 13-889C have been diverted from Cottonwood Creek and delivered to the reservoir for many years. Aerial photos are inconclusive about the extent of historical irrigation. Acres at the proposed place of use have been cultivated, but it is not clear whether they have been consistently irrigated. Some years (2009) show active irrigation. Other years do not. Records from Water District 13M show that the water rights have been delivered, in full, every year. The Department does not have clear and convincing evidence of forfeiture at this time.

Injury to Other Water Rights: No apparent injury issues. Water right 13-7784 requires strict measurement of all points of diversion, injection and rediversion. Department published notice of this transfer application and protests were filed by Joan Oliver, Craig McGregor, Cleveland Irrigation Company, BLM and Merrill Ranch. Protests from McGregor and Cleveland Irrigation were withdrawn on the condition that water rights 13-884, 13-888 and 13-889A are declared forfeited. Protests from BLM and Merrill Ranch were resolved by Meadowlark agreeing to move a proposed point of rediversion downstream approximately one mile to a proposed pump station on Meadowlark's property. Meadowlark filed an amended application on April 30, 2020, proposing to change one of the points of rediversion to a pumping station in the NESW of Section 13, T13S, R38E. The Department determined that additional public notice for the amended location for the proposed point of rediversion was not necessary. There are no other users on Stockton Creek between the original point of rediversion and the proposed point of rediversion. Department contacted the other active water user on Stockton Creek, Brent Abbott, to discuss the application. Mr. Abbott stated that he did not object to the transfer as long as the pump station is equipped with a flow meter.

Enlargement of Use: The 1920 Bear River Decree stated that water rights 13-884, 13-885, 13-886, 13-887, 13-888 and 13-889 are limited to the irrigation of 624 acres. Only some of the water rights were moved from the Cottonwood Creek drainage to the Stockton Creek drainage in the 1950s. Since the time some of the rights were moved from the Cottonwood Creek drainage to the Stockton Creek drainage, it has been unclear how many of the 624 irrigated acres were moved. There has been no irrigation taking place at the original place of use in the Cottonwood Creek drainage. Application 80793 proposes to have the water rights remaining in the Cottonwood Creek drainage (13-884, 13-888 and 13-889A) declared forfeited for non-use, making it possible to confirm that all of the 624 irrigated acres were moved into the Stockton Creek drainage. As part of the public notice process for this application, the Department sent direct notice to all property owners at the existing place of use for water rights 13-884, 13-888 and 13-889A (in the Cottonwood Creek drainage), notifying them of the proposal to declare those rights forfeited as part of the transfer approval. Joan Oliver was the only current property owner to respond in writing. Ultimately, she agreed that the rights on her property had been forfeited. The Department has determined that all of the 624 available irrigated acres were moved into the Stockton Creek drainage. That leaves no acres available for irrigation under water rights 13-884, 13-888 and 13-889A. No irrigation has taken place under these rights for over 50 years. To prevent enlargement of irrigated acres, these rights will be declared forfeited as part of the transfer approval.

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.