

MEMORANDUM

Date: April 6, 2020
To: Transfer 81352
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

Amended transfer application proposes to change the point of diversion and place of use for water right 21-4071A. Historically, water right 21-4071A was used to supply culinary water for one home and to offset the evaporation losses with a 0.9-acre pond near the home. Application proposes to move the domestic use to a neighboring property to offset evaporative losses at a new 1.0-acre pond. The culinary use will be dedicated to evaporative loss.

Water rights 21-4071, 21-4071A and 21-11478 are all appurtenant to the existing place of use. Each of these three rights describe domestic use at one home. Water rights 21-4071 and 21-11478 are owned by the United States Forest Service and the existing place of use is on USFS land. Historically, there has only ever been one residence at the existing place of use. The home was constructed on USFS land under a special use permit. The special use permit has expired and the home has been removed from the USFS property. It is clear that water rights 21-4071, 21-4071A and 21-11478 represent the same domestic use for one home. In combination, these rights would be limited to a maximum diversion volume of 13,000 gpd.

During conferences for the contested case, representatives from the USFS stated that they supported splitting the 13,000 gpd authorization in half. Applicants could proceed with a transfer if water right 21-4071A were limited to 6,500 gpd. Water rights 21-4071 and 21-11478 were included in the transfer as associated rights. These two rights will be limited to 6,500 gpd.

Authority to File: Applicant, Bunts & Singles LLC demonstrated the authority to file. Decree owners, Peterson, conveyed water right 21-4071A to Bunts & Singles through a 2016 deed.

Water Right Validity: Water right is valid. Water right was decreed in 1999. Home is visible in aerial photos through 2015.

Injury to Other Water Rights: Water right 21-4071A is diverted from the same spring source as senior water rights (21-2054B, 21-12854, 21-12939, 21-13226, 21-13233) owned by James Hagenbarth. Application was advertised and was protested by Hagenbarth and by Fremont Madison Irrigation District. After lengthy settlement negotiations, Hagenbarth withdrew his protest through an Amended Settlement Agreement in March 2020. The agreement states that Bunts & Singles will convey water right 21-4071A to Hagenbarth after the transfer approval. Further, Bunts & Singles will convey Permit 21-13254 (filed in conjunction with this transfer) to Hagenbarth. Hagenbarth agrees to divert his irrigation rights through the proposed pond on the Bunts & Singles property to maintain and refresh the pond. The Settlement Agreement includes many provisions that are outside of the water right conditions and will be enforced by the parties.

Enlargement of Use: Applicant demonstrated that the historical beneficial use under water right 21-4071A exceeded 6,500 gpd. Water right 21-4071A will be limited to 6,500 gpd in the transfer approval. Overlapping rights, 21-4071 and 21-11478, will be limited to 6,500 gpd. It is unknown whether there has been any historical beneficial use under these other rights.

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.