

MEMORANDUM

Date: December 20, 2019
To: Transfer 83369
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to add a point of diversion to water right 13-974, which is owned by West Cache Irrigation Company. West Cache is a large canal company that straddles the Idaho-Utah state line. Most of the company's irrigated acres are in Utah. Water right 13-974 was included in the 1920 Bear River Decree. The 1920 Decree described one point of diversion, the main canal for West Cache Irrigation. In 1996, West Cache filed Application for Transfer 4914, seeking to add a pump station point of diversion to water right 13-974. The new pump station was located near Cornish, Utah, just across the Idaho-Utah state line. The transfer was approved in December 1996.

The pending Application for Transfer proposes to add another Utah pump station to water right 13-974. The new pump station will be located at Cutler Reservoir, over 12 miles south of the Idaho-Utah state line. The application states that the Cutler pump(s) will be limited to a maximum diversion rate of 12 cfs. The filing fee was commensurate with a change of 12 cfs. There will be no change to the place of use for the company. Currently, the company has a general service area (the service area described in the 1920 Decree), but has not established a digital boundary under Idaho law.

The State of Utah required West Cache to file an exchange application for the new Cutler Pump point of diversion. The exchange application (identified as Utah Application 25-11572) was filed at the same time as this transfer application. The Utah application was protested, but the protests were resolved. I have coordinated with the Utah Regional Manager throughout the process. The Utah approval is consistent with our approval. Both states will coordinate to make the appropriate changes to the Bear River accounting model.

Authority to File: West Cache is the owner of record for water right 13-974. The company is registered to do business in Idaho and Utah. The application was signed by Sid Munk, one of the directors for the company.

Water Right Validity: Water right was described in the 1920 Bear River Decree. Water right has been used consistently since then.

Injury to Other Water Rights: In 1996, there was a concern about whether the watermaster for Water District 11 could accurately account for a single water right diverted at two locations. Since that time, the Department has developed a computerized accounting program that easily accounts for multiple points of diversion under a single water right. All of the water diverted under water right 13-974 is treated as though it was diverted at the West Cache main canal. In other words, the pump station diversion is added to the main canal diversion. IDWR hydrology staff confirmed that the proposed point of diversion could be added to the accounting. The Bear River is a gaining stream. There is more natural flow available at the proposed pump station than there is at the main canal. Because the total diversion by West Cache (main canal + 2 pump stations) would be accounted for at the head of the canal, there should be no injury to other water rights as a result of the proposed change.

Enlargement of Use: There is more natural flow available at the added point of diversion. Therefore, there is some risk of enlargement. At the main canal diversion in Idaho, there is always sufficient water available for diversion because of storage releases from Bear Lake. However, there is a limited amount of natural flow available. By adding the pump station diversions to the main canal diversion, the accounting program eliminates the risk of enlargement due to an improved water supply. A condition will be added to the right limiting the diversion to the amount of water (natural flow) available at the original point of diversion. An adjustment may be needed to maintain the integrity of the state line stream gage on the Bear River.

During the review of Application 83369, I discovered two errors in Transfer 4914. First, Transfer 4914 expanded the season of use for water right 13-974 to the standard season of use for the area (4/15-10/15). The 1920 Bear River Decree established a season of use for all water rights on the Bear River (4/20-9/30). This season of use has been strictly enforced by watermasters over the years. It is inappropriate to change the season of use for water right 13-974 without making the same adjustment to all other rights described in the 1920 Decree. If the season of use is to be expanded beyond the limits set by decree, it should be done through a general remark added to all water rights within an adjudication.

Second, Transfer 4914 imposed a annual diversion volume limit of 51,912 acre-feet. This volume was based on the local field headgate requirement (3.5 af/acre) ($3.5 \text{ af/acre} \times 14,832 \text{ acres} = 51,912 \text{ af}$). The Department should not have imposed the field headgate requirement as a canal headgate diversion volume limit. Large canals often divert more than 3.5 acre-feet per acre because of operational losses. 3.5 af/acre should only be included as a field headgate requirement, not as a canal headgate volume limit. The 51,912 acre-foot volume limit was improperly added to water right 13-974 and should be removed from the right.

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.



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

BRIAN C. STEED
Executive Director

BOYD P. CLAYTON
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

For Exchange Application Number 25-11572 (E5931)

Exchange Application Number 25-11572 (E5931) in the name of West Cache Irrigation Company was filed on June 14, 2019, to exchange 132.0 cfs of water as evidenced by Idaho Water Right Number 13-00974. The water is to be released from their Riverdale diversion in Idaho located approximately North 66000 feet West 2640 feet from the NE Corner of Section 4, T14N, R1E, SLB&M and, in lieu thereof, 132.0 cfs of water will be diverted from surface sources located: (1) South 593 feet and East 870 feet from the N4 Corner of Section 30, T13N, R1W, SLB&M, and (2) North 83 feet and East 328 feet from the S4 Corner of Section 34, T15N, R1W, SLB&M. The water is to be used for the irrigation of 14000 acres from April 15 to October 15. The water is to be used within the service district of West Cache Irrigation Company in Utah.

Notice of the exchange application was published in The Herald Journal on August 22 and 29, 2019, and was protested by Bear River Canal Company and PacifiCorp. A hearing was not held.

The protestants' "friendly" protests requested that the exchange be clearly accounted for in the [Lower] Bear River System accounting model to ensure there is no enlargement of the underlying water right. The protests also requested that the application remain unapproved until such time as all necessary permits, easements, and permissions from PacifiCorp required because of FERC jurisdiction are secured. The applicant has contacted PacifiCorp relative to the placement of one of the pumps within the jurisdictional project on Cutler Reservoir.

The basis for this exchange right is an Idaho water right and a contract between the applicant and PacifiCorp for Bear Lake storage water. Under this Exchange Application the applicant seeks to leave water, to which it is entitled, in Bear River in Idaho and divert a like amount in Utah, at its same priority.

The diversion of water under this exchange is limited to those times when water is available for diversion under the priority and at the original point of diversion from the Bear River of Idaho Water Right Number 13-00974, and/or under the contract with PacifiCorp.

It is the opinion of the State Engineer that this exchange application can be approved without adversely affecting existing rights. The applicant is put on notice that diligence must be shown in pursuing the development of this application, which can be demonstrated by the completion of the project as proposed in the exchange application.

It is, therefore, **ORDERED** and Exchange Application Number 25-11572 (E5931) is hereby **APPROVED** subject to prior rights and the following conditions:

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- 1) Total diversion under this exchange application is limited to 132.0 cfs of water for the irrigation of 14000 acres from April 15 to October 15.
- 2) The applicant shall construct or install and maintain controlling works and a metering device as required by Section 73-5-4 of Utah Code. The diversion of water under this application will be made under the direction of the Lower Bear River Commissioner. Any additional expenses incurred by the commissioner in distributing water under this application shall be borne by the applicants.
- 3) The applicant shall be responsible for obtaining all necessary permits for implementing the application. This includes obtaining a permit to alter a natural stream from the Division of Water Rights if required.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before APPROPRIATION SECTION INSERTS PROOF DUE DATE HERE, or a request for extension of time must be acceptably filed; otherwise, the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

Under the authority of Section 73-3-20 of the Utah Code, the applicant is required to submit a proof of diversion and beneficial use of water upon 60 days notification by the State Engineer. The proof shall be in the same form and contain the same elements as required for appropriation or permanent change of water under Section 73-3-16 of the Utah Code Annotated.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right.

Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

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Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this exchange application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right, please contact the Division at the phone number below.

Your contact with this office, should you need it, is with the Northern Regional Office. The telephone number is 435-752-8755.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review with the appropriate District Court. A Request for Reconsideration must be filed in writing with the State Engineer within 20 days of the date of this Order. The written request shall be filed in-person, by mail, or electronically. If the request is filed electronically, it shall be submitted to waterrights@utah.gov, which is the authorized general email for the Division. However, a Request for Reconsideration is not a prerequisite to filing for judicial review. A petition for judicial review must be filed within 30 days after the date of this Order or, if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this _____ day of _____, 2019.

Boyd P. Clayton, P.E., State Engineer

Mailed a copy of the foregoing Order this _____ day of _____, 2019 to:

West Cache Irrigation Company
1207 S 400 E
Trenton UT 84338

Bear River Canal Company
1407 W North Temple, Suite 110
Salt Lake City UT 84116