

MEMORANDUM

Date: October 24, 2019
To: Transfer 83566
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This is the second of three transfers submitted simultaneously. This transfer changes the place of use and points of diversion for a 95-acre portion of various combined water rights. The remaining 55 acres authorized under these right are rearranged in the third transfer (Transfer 83628). The other transfer, Transfer 83607, moves water right 34-397 off of the proposed place of use for this transfer.

Authority to File:

The applicant, Marilyn Mowrey-Lambert, has the authority to file. Marilyn Mowrey-Lambert signed the application. According to Butte County taxlot data, the applicant is the owner of the existing place of use. The proposed place of use is owned by Jensen Family Cattle, LLC. Jay Jensen, registered agent for Jensen Family Cattle, initiated the transfer and signed companion transfer 83607. A small part of the proposed place of use is owned by Drew Jensen, Jay Jensen's son. Department records (specifically Drought Emergency Transfer TC-34-143) includes a Water Right, Well & Easement Agreement between Lambert and Jensen wherein Lambert agrees to convey ground water rights 34-2386 and 34-7233 to Jensen.

Water Right Validity:

The water rights are valid for transfer. They were all decreed in the SRBA in 2001. The existing 150-acre place of use has only been partially irrigated since that time. Ground water rights 34-2386 and 34-7233, which in combination cover the entire 150-acre existing place of use, were included in drought emergency transfers in 2014. These rights were diverted in full in 2014. Water right 34-2386 was also included in a 2015 drought emergency transfer. Given the 2014 drought emergency transfers, the Department does not have clear and convincing evidence of forfeiture at this time.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and protested by Idaho Power Company (IPCo). IPCo argued that water right 34-7233, which bears a priority date of 3/6/1986 is a trust water right and should include conditions noting the trust water status. An investigation into water right 34-7233 revealed that the right originally had a priority date of 8/15/1979. The priority date was advanced to 1986 because of a late proof of beneficial use. Based on the actual development date for water right 34-7233, the right is not trust water. IPCo was notified of this history and withdrew its protest.

The application required an analysis using the ESPAM 2.1 model. A simulation of the transfer using ESPAM 2.1 yielded that impacts to modeled reaches of the Snake River were below the threshold required for mitigation.

The Watermaster of Water District 34 was notified of the transfer and did not oppose it.

No injury will result to the Munsey Canal (pre-transfer point of diversion) or the East Side Ditch (post-transfer point of diversion). This transfer, when combined with Transfer 83607, swap essentially the same amount of water between the two points of diversion.

Enlargement of Use:

No enlargement of use will result from this transfer's approval.

At the time of transfer submittal, three Big Lost River rights (34-264, 34-265, and 34-434) combined to cover 150 acres. Two separate ground water rights overlapped these Big Lost River rights: 34-2386 (83 acres) and 34-7233 (67 acres). This transfer moves 95 acres of the three Big Lost River rights. It also moves the entirety of groundwater right 34-7233, and 28 acres of groundwater right 34-2386. As a result, the remaining water rights have a combined limit listing four rights, while the transferred rights list a combined limit for five rights.

Rate, volume, nor irrigated acres are authorized to increase.

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.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT	)	
NO. 34-7233 IN THE NAME OF	)	
FARMERS HOME ADMINISTRATION	)	ORDER OF REINSTATEMENT

This matter having come before the Idaho Department of Water Resources as a result of receiving a statement of beneficial use of water under lapsed Permit No. 34-7233, the Department finds and concludes as follows:

FINDINGS OF FACT

1. On October 16, 1979, the Department of Water Resources issued Permit No. 34-7233 to Spencer W. Toone.
2. On January 25, 1982, the Department received an Assignment of Permit assigning all of the right, title and interest in the permit to William H. Toone.
3. On July 31, 1984, the Department sent a proof due notice to the permit holder, and, on October 15, 1984, the Department sent a lapse notice to the permit holder since neither proof of beneficial use nor a request for extension of time had been received from the permit holder.
4. On November 7, 1985, the Department received an Assignment of Permit assigning all of the right, title and interest in the permit to Farmers Home Administration.

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5. On March 6, 1986, the Department received proof of beneficial use which was submitted by the permit holder.

6. The permit holder subsequently sent power supply records, ASCS aerial photos, as-built inspection reports, development plans, a construction contract and a sales order for the sprinkler system to the Department. These documents clearly prove that the sprinkler system irrigating the land under the permit had been installed and operated prior to the date when proof was due and as clearly proved the extent of development at the time proof was due.

7. On July 1, 1986, the Department received a letter from Farmers Home Administration explaining that the failure to submit proof of beneficial use was caused by financial difficulties of William Toone and a conveyance of the land to Farmers Home Administration during the fall of 1984, which caused confusion at the time proof of beneficial use was due.

CONCLUSIONS OF LAW

1. Section 42-218a(2), Idaho Code, provides that the Director of the Department may reinstate a permit upon which proof has been received subsequent to the sixty day period after notice of lapsing if a permit holder clearly establishes the extent of beneficial use made during the time authorized by the permit and upon a showing of reasonable cause for failure to timely submit proof of beneficial use.

2. Proof of beneficial use was received by the Department after the expiration of the sixty days reinstatement period granted in the notice of lapsing.

3. The permit holder submitted documents which clearly establish that the permit holder developed the system during the time period allowed by the permit, and also clearly established the extent of the development.

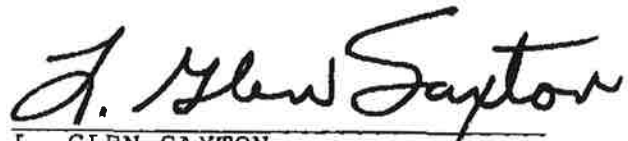
4. The permit holder also submitted reasonable cause for submitting late proof in that the property was changing ownership at the time proof of beneficial use became due.

5. Permit No. 34-7233 should be reinstated, and, under Section 42-218a, Idaho Code, the priority date should be advanced to March 6, 1986, the day that proof of beneficial was received.

ORDER

IT IS HEREBY ORDERED that Permit No. 34-7233 be reinstated and that the priority be advanced to March 6, 1986.

Dated this 11th day of August, 1986.


L. GLEN SAXTON
Chief, Operations Bureau