

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Two diversions merge to form a single ditch. Lockable control structure approx 100 yards down ditch. These diversions were decreed incorrectly in SRBA, no physical change to system is proposed.

- b. Who owns the property at the point(s) of diversion? USFS

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: existing ditch, predates forest. No physical changes to system.

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

N/A

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** - ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. The *Map Tool*, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

8. **SIGNATURE** - The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Michael C. Dougherty
Signature of applicant or authorized agent

MICHAEL C. DOUGHERTY
Print name and title if applicable

8/10/2019
Date

Jane E. Dougherty Sandstrom
Signature of applicant or authorized agent

Jane E. Dougherty Sandstrom
Print name and title if applicable

8/10/2019
Date

9. **FEE** - ☒ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the Application for Transfer Instructions.

\$100

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments.

Received by [Signature]

Date 8/15/19

Fee paid 100 Date 8/15/19

Received by [Signature]

Receipt # C107592

Preliminary review by _____

Date _____

Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐

Name on W-9 _____

W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 75-14641

Current Owner: JANE E DOUGHERTY SANDSTROM
MICHAEL CHARLES DOUGHERTY

Priority Date: 6/12/1906

Origin: Water Right

Status: Active

Basis: Decreed

Source

FOURTH OF JULY CREEK

Tributary

SALMON RIVER

Beneficial Use

From To

Diversion Rate

Annual Volume

STOCKWATER 01/01 to 12/31

0.02 CFS

IRRIGATION 08/02 to 11/01

0.89 CFS

IRRIGATION 04/01 to 08/01

1.19 CFS

Total Diversion

1.21 CFS

Location of Point(s) of Diversion

FOURTH OF JULY CREEK

NE1/4SE1/4

Sec. 9, Twp 24N, Rge 22E B.M.

LEMHI County

FOURTH OF JULY CREEK

NW1/4NE1/4

Sec. 16, Twp 24N, Rge 22E B.M.

LEMHI County

Place of Use

IRRIGATION Within LEMHI County

T24N R22E S16

SWSW

3.90

T24N R22E S21

NENW

0.80

T24N R22E S21

NWNW

25.50

Total Acres: 30.2

Place of Use: STOCKWATER same as IRRIGATION

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. N08 The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

Decreed Date: 11/17/2008

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 75-14313

Current Owner: MICHAEL CHARLES DOUGHERTY
JANE E DOUGHERTY SANDSTROM
Priority Date: 6/12/1906
Origin: Water Right
Status: Active
Basis: Decreed

Source

FOURTH OF JULY CREEK

Tributary

SALMON RIVER

Beneficial Use

From To

Diversion Rate

Annual Volume

IRRIGATION 08/02 to 11/01

0.26 CFS

IRRIGATION 04/01 to 08/01

0.34 CFS

Total Diversion

0.34 CFS

Location of Point(s) of Diversion

FOURTH OF JULY CREEK

NE1/4SE1/4

Sec. 9, Twp 24N, Rge 22E B.M.

LEMHI County

FOURTH OF JULY CREEK

NW1/4NE1/4

Sec. 16, Twp 24N, Rge 22E B.M.

LEMHI County

Place of Use

IRRIGATION Within LEMHI County

T24N R22E S16	SWSW	1.40	T24N R22E S16	SESW	6.00
T24N R22E S21	NENW	0.90	T24N R22E S21	NWNW	0.40

Total Acres: 8.7

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. This right is a split from former right 75-118 .

Decreed Date: 11/17/2008



Hersley, Jean

From: Hersley, Jean
Sent: Thursday, October 31, 2019 12:28 PM
To: Yenter, Cindy; Clark, Cynthia Bridge; Cassel, Amy; Golden, Kala
Subject: Applications for Permit and Application for Transfer

Applications for permit 74-16222 & 75-14965 will be published on November 7 and 14 with the protest end day of November 25.

Application for Transfer 83534 will not be published. This transfer was filed to update the legal description of the point of diversion (POD) that has historically been used. Your comments are appreciated.

Documents will be scanned by the end of the day.

Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 31, 2019

IDAHO DEPT FISH AND GAME
ATTN: JEFF RICHARDS
99 HWY 93 N
SALMON ID 83467

RE: Application for Permit No. 74-16222 & 75-14965
Application for Transfer No. 83534
Water Right Nos. 75-14313 & 75-14641

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right applications. You can find a copy of the application at:

<http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of application 74-16222 & 75-14965 as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Application for Transfer 83534 will not be published. This transfer was filed to update the legal description of the point of diversion (POD) that has historically been used. Your comments are appreciated.

Please contact this office if you have any questions regarding the applications.

Sincerely,

Jean Hersley
Technical Records Specialist II



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 31, 2019

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
900 NORTH SKYLINE SUITE B
IDAHO FALLS ID 83402

RE: Applications for Permit No. 74-16222 & 75-14965
Application for Transfer No. 83534

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right applications. You can find copies of the applications at:

<http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of the applications as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of these applications, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Application for Transfer 83534 will not be published. This transfer was filed to update the legal description of the point of diversion (POD) that has historically been used. Your comments are appreciated.

Please contact this office if you have any questions regarding the applications.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean Hersley'.

Jean Hersley
Technical Records Specialist II

Hersley, Jean

From: Hersley, Jean
Sent: Thursday, October 31, 2019 12:02 PM
To: Jeff Richards
Subject: Comments for Applications

Application for Permit No. 74-16222 & 75-14965
Application for Transfer No. 83534
Water Right Nos. 75-14313 & 75-14641

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right applications. You can find a copy of the application at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of application 74-16222 & 75-14965 as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Application for Transfer 83534 will not be published. This transfer was filed to update the legal description of the point of diversion (POD) that has historically been used. Your comments are appreciated.

Please contact this office if you have any questions regarding the applications.

Sincerely,

Jean Hersley
Technical Records Specialist II

MEMORANDUM

Date: October 9, 2019
To: Transfer 83534
From: Alex Dalgleish
Re: Review & Evaluation of Sufficiency of Information

Purpose:

The Department received transfer application 83534 from Jane Dougherty Sandstrom and Michael Dougherty on August 15, 2019. The application seeks to move points of diversion (POD's) for rights 75-14313 and 75-14641. The applicants claim that the POD's were decreed incorrectly under the SRBA in 2008. However, in 2006, Jane Sandstrom and Michael Dougherty submitted a notice of claim to water right 75-14313. In this claim, the POD's were in the same Public Land Survey (PLS) locations as the court later decreed. Likewise looking at the decree of parent right of 75-14641, the POD's were ruled in the same locations as right 75-14313.

Before the transfer was submitted to the State Office, the applicants met with Cindy Yenter in the Salmon Office to discuss their proposed changes. She sent an email to Jean Hersley on 8/16/19 recommending that the applicants only pay the \$50 fee since there would be no changes to the water rights except corrections and updates to the POD's. This reduced fee is described in Idaho Code 42-221 O.8.

After reviewing the information supplied by the applicants as well as email correspondences, Cindy Yenter wrote a memo summarizing that the POD's for rights 75-14313 and 75-14641 were decreed incorrectly. This memo also serves as her recommendation to move the POD's to the corrected historical locations that this transfer proposes. Cindy visited the ditch (known as ditch # 1) with Mr. Dougherty and they both collected GPS coordinates to additionally support the proposed POD locations that have historically been used. On 10/1/19, the Dougherty's sent an email to the Department including a letter from Glen May. Mr. May is the previous owner of the Dougherty property and states in his letter that the POD's have not moved since he bought the property in 1960.

POUs:

There will be no change to the place of use under this proposed transfer.

PODs:

There are two existing POD's for rights 75-14641 and 75-14313. The POD's were decreed in the NESE quarter-quarter Sec 9 and the NWNE quarter-quarter Section 16, both in Township 24N Range 22E. This transfer proposes to move both existing POD's to the NWSE quarter-quarter Section 16 Township 24N Range 22E. The two proposed new POD's are on a ditch next to Fourth of July Creek.

Cindy Yenter helped draft the transfer application. According to her, the applicants collected GPS coordinates of the proposed POD's. The more northern POD requested by this transfer has GPS coordinates of N45 degrees 24.586' W113 Degrees 51.614 while the POD just downstream has GPS coordinates of N 45 degrees 24.565' W113 degrees 51.619.

Authority to File:

The application was signed by Jane Dougherty Sandstrom and Michael Dougherty. They are both current owners of water rights 75-14313 and 75-14641. According to Department records, the property at the current POD's and proposed location where the applicants' request to move the POD's is owned by the United States Forest Service (USFS). More specifically, the Salmon-Challis National Forest.

Water Right Validity:

Water right 75-14313 was partially decreed in the SRBA on 11/17/2008. Right 75-14641 was split from parent right 75-14312 in March of 2010. Parent right 75-14312 was also partially decreed in the SRBA on 11/17/2008. Both 75-14313 and 75-14312 were decreed with Fourth of July Creek as the source and use water for irrigation. A review of aerial imagery indicates that irrigation use is consistent in the last 5 years. Forfeiture is not an issue.

Injury to Other Water Rights:

After the transfer, the water right record will more accurately reflect irrigation use. These water rights are not within a water district and therefore are not regulated by water master. The proposed POD's are on property owned by the USFS. The only water right POD in-between the current POD's and proposed POD's is right 75-119 owned by Don Bellamy. This right is being processed under transfer No. 83538. There will not be an increase in irrigated acres under this transfer. No injury is anticipated.

Enlargement of Use:

There will not be an increase in acres, rate or volume. This proposed transfer requests to move the decreed POD's down ditch # 1 adjacent to Fourth of July Creek.

Local Public interest:

There are no apparent issues with local public interest. This transfer will not be subject to advertising since there is no apparent effect on the original or hydraulically connected water source or effect on other water rights.

Beneficial Use/Conservation of Water Resources:

This proposed transfer appears to be consistent with the conservation of water resources in Idaho.

Effect on Economy the Local Area:

No adverse impacts are anticipated.

Effect on Agricultural Base of the Local Area:

The proposed transfer shows no negative impacts on the local agriculture.

Dagleish, Alex

From: jdsandstrom@centurytel.net
Sent: Tuesday, October 1, 2019 9:41 AM
To: Yenter, Cindy
Cc: Mike Dougherty; Dagleish, Alex
Subject: May letter on 4th of July Creek Ditch
Attachments: Glen May statement ditch_diversion 4th of July Creek 0923 2019.pdf

Cindy,

Per our discussion I have attached a letter that Glen May signed with information regarding the ditch that irrigates our property on Fourth of July Creek. Glen is 94 years old and has a solid memory regarding irrigation in this area. He is the previous owner of our property and still lives in his original home on the creek, in fact he participated in the spring ditch opening into his 80s. In talking with him he knows that the ditch and diversions irrigating our property are in the same place as when he bought the place in 1960. While his memory is clear, at 94 he is now not that physically mobile so asking him to go to a notary would be a burden on him. If it is critical it be notarized, we can pursue this.

This is more evidence that confirms our request for correction of the currently recorded IDWR information. If you have questions please feel free to email or call.

Jane Dougherty Sandstrom

Mike Dougherty

208-865-1118 (landline)

To Whom it may concern:

I bought 80 acres in 1960 at 488 Fourth of July Creek Rd, North Fork, ID. This property is irrigated by the highest active ditch on Fourth of July Creek (called Ditch #1 in the 1982 decree).

Ditch #1 and it's points of diversion (PODs) are in the same exact physical location today as they were when I bought the property. The ditch and PODs have never been moved.

The 2 places of diversion supplying ditch #1 have always been there and also have never been moved.

I have since sold this property to Mike and Jane Dougherty although I continue to live on the property.

Glen M May

Glen May

488 Fourth of July Creek Rd

North Fork, ID 83466

Sep 27 2019

Date

MEMORANDUM

Date: August 30, 2019
To: Transfer 83534
From: Alex Dalglish
Re: Legal Notice Not Required

Legal Notice Not Required
9/4/2019

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The water right changes proposed through this transfer application do not appear to change the effect on the original or hydraulically connected water source or affect other water rights. Therefore, staff review of the transfer application found no cause to require public notice. This application will continue processing without advertisement and be forwarded for approval consideration.

Memorandum

September 23, 2019

TO: Transfer files 83536, 83537 and 83538 in the name of Bellamy, and Transfer file 83534 in the name of Dougherty

FROM: Cindy Yenter, Salmon Field Office

RE: Analysis of Historic Point of Diversion and Place of Use

Don Bellamy visited the Salmon Field Office early this year seeking some analysis and explanation of his water rights on Fourth of July Creek (B75). During that initial visit we identified discrepancies in his water rights. The irrigation right that has always been used around the Bellamy residence and the old homestead appeared to be missing, or not decreed in the correct location. Neighboring rights that shared a diversion with the Bellamy right 75-119 were decreed at completely different points of diversion. Mr. Bellamy and his neighbors, Michael and Jane Sandstrom Dougherty, asked me to visit their properties and make recommendations on any needed modifications to the water rights.

I conducted a site visit on April 23, 2019. As a result of my visit and some thorough file research, I concluded that for whatever reason, certain elements of the associated water rights had been decreed incorrectly in the SRBA. I found no evidence that point of diversion or place of use under the affected rights had ever changed from the historic locations.

The above transfers seek to correct, at the reduced fee of \$50 per water right pursuant to I.C. 42-221(O)(8), the points of diversion for Bellamy rights 75-119 and 75-14642, the points of diversion for Dougherty rights 75-14313 and 75-14641 and the place of use for Bellamy rights 75-119 and 75-120. This memo will discuss my findings, conclusions, and recommendations.

Bellamy and Dougherty Points of Diversion at Main Ditch (Ditch #1)

Right nos. 75-14313, 14641 and 14642 were originally licensed to Glen May as 75-2156 with a priority date of 1964. The POD on application 75-2156 is shown as NWNE Sec 16, T24N R22E (TR reference will not be repeated). Proof of Beneficial Use filed in 1969 lists the POD in SWSE Sec 16. The right was licensed with a single POD in NWNE Sec 16. It is unclear how or if the field examiner verified this location. The map accompanying the field exam appears to be a duplicate of the map in the application, drawn on a grid rather than on a topo map or other image.

75-2156 was included as 75-118 with a 1906 priority in the 1982 Fourth of July Creek decree (see old decree file 75-L). The POD in the 75-L decree is shown as NESE Sec 9, T24N R22E, and identified as Ditch #1. In 1990 May filed a claim on 75-2156 in the SRBA with POD in NWNE Sec 16, but did not file a claim pursuant to 75-118. Doughertys acquired a portion of the May property in 1998 and filed an ownership change on 75-2156 which resulted in splits 75-2156 A & B. In 2006, May filed SRBA claim 75-14312, and Dougherty filed SRBA claim 75-14313. Both claimed a priority of 1906, referenced license 75-2156 and decreed right 75-118, and showed two points of diversion, one in NESE Sec 9 (from decree 75-L) and the second in NWNE Sec 16 (from claim 75-2156). Ditch #1 is also named but it is unclear which diversion is referenced. Dougherty ultimately acquired 75-14312 and sold a portion to Bellamy, resulting in splits

75-14641 and 14642. All three rights were decreed in the SRBA with PODs in NESE Sec 9 and NWNE Sec 16. Claims 75-2156A and 2156B were disallowed.

Right no. 75-119 was included in the 1982 75-L decree in the name of Frank Nelson, with a POD at NESE Sec 9, Ditch #1. SRBA claim 75-10253 was filed in 1990 combining rights 75-119, 75-120 and 75-125, and including PODs in NESWNE Sec 16 and SENWNW Sec 21 (Ditches #1 and #2). Bellamy acquired the ranch in 1994. In 2008, 75-10253 was disallowed and the claim was split back to the component rights. Bellamy filed an amended claim for 75-119 which was recommended and decreed with a single POD in NESWNE Sec 16 (Ditch #1).

Water right records presently recognize Ditch #1 in three different locations: NESE Sec 9, NWNE Sec 16, and SWNE Sec 16. IDWR spatial data for these three locations are digitized and not established with GPS coordinates. It is evident from these records that the exact diversion location of Ditch #1 on Fourth of July Creek was never confirmed, nor was there any obvious effort made to correlate the various claimed POD descriptions for rights sharing a common diversion. Poor maps, no field verification, and lack of GPS technology during early licensing likely all contributed to the PLS errors. Additionally, the POD map from the 1982 75-L decree is not in IDWR's files. None of the currently decreed POD locations accurately defines the historic location of Ditch #1.

The Ditch #1 diversion is located west / northwest of the USFS campground on Fourth of July Creek, approximately 0.7 mile above the forest boundary. This campground is visible on imagery. GPS coordinates taken by me during the 4/23/19 site visit and by Mr. Dougherty a few days later confirm two diversions for Ditch #1 in **NWNWSE Sec 16**. Dougherty also sent a photo of site tag A0015077, which he found nailed to a tree near the lower diversion. This tag number is presently associated with SDID 376272 in SWNE Sec 16 (75-119 decreed POD). IDWR staff or a contractor obviously visited the Ditch #1 diversion to place the tag, but did not collect GPS coordinates or otherwise verify the location.

Ditch #1 has two headings on the west side of Fourth of July Creek, both within NWNWSE Sec 16, which are separated by less than 150 feet. Each is comprised of a rock dam which checks up water to an open ditch. The two diversions merge at the lower heading and form a single ditch. Approximately 200 yards down the ditch, a control structure regulates flows into the ditch and allows excess flow to spill back to the creek. The ditches were still closed on the day of my visit and the control structure was being re-built.

The water users allege that the physical location of Ditch #1 has never changed. I concur that it is very unlikely that this ditch ever diverted further upstream, as the terrain west of the creek becomes quite steep above the diversion. Construction and maintenance of a side-hill ditch would have been difficult or impossible. There are also a number of tributary drainages (dry washes) which the ditch would have had to cross. Spring runoff down these drainages would have repeatedly washed out the ditch.

The inclusion of both Sec 9 and Sec 16 PODs on the Dougherty SRBA claims is baffling but may have been an attempt to recognize the dual diversions for Ditch #1, or could simply reflect the general uncertainty about the actual POD location. Due to insufficient maps and lack of familiarity with the PLS system, the water users did not recognize at the time that the PODs were too far apart and simply too high in the system to be correct.

Bellamy Place of Use 75-119 and 75-120

The 1982 final decree on Fourth of July Creek (75-L) included general place of use descriptions only, with total acres, but did not include QQ acres for most rights. Many of the rights included in the 75-L decree were established by beneficial use around the turn of the century. Only a handful of statutory claims were filed in this drainage, so IDWR had no prior records of water use. SRBA claims taking in 1990 was likely the first time that detailed place of use information was collected for these rights.

When Don Bellamy acquired the Frank Nelson ranch in 1994, the Nelson irrigation rights had been claimed in the SRBA under two combined rights: 75-10252 and 75-10253. 75-10252 (75-122 and 75-123) was split by ownership change in 2000. Bellamy retained 22 acres; his split was re-numbered 75-13963. Some acres under 75-13963 also appear to have been claimed on 75-10253.

75-10253 was disallowed in 2008 and was split back to the component rights. Bellamy was required to submit amended claims for 75-119, 75-120, and 75-125. The SRBA claim files contain no information regarding the amendments to 75-119, 120 and 125, or who prepared them. Objections filed to the recommendations resulted in acreage reductions to remove duplicate acres – this appears to be when the POU errors first occur. Rather than removing the duplicate acres under 75-119 on the south end of the ranch where 75-13963 was already recommended, acres were randomly reduced in SENE Sec 20, creating a false overlap with 75-13963. A combined acreage limit was applied to rights 75-119, 75-120 and 75-13963. The rights were partially decreed in 2009.

Bellamy now asserts that the decreed POUs do not reflect the historic places of use on the ranch, nor do they correlate with the physical delivery systems. The 128-acre place of use decreed for 75-119 appears to be a carryover from the combined acres claimed in 75-10253. The tabular place of use does not match the existing water right shape in several QQs. POUs for 75-119, 75-120 and 75-13963 are stacked on the south end of the ranch, where 75-13963 should be the only appurtenant right. Further, the POUs for 75-120 and 75-125 are on the wrong side of the creek. Bellamy did not recognize these discrepancies during the notice of error period due to his general unfamiliarity with water rights and the PLS system.

During the April 23, 2019 site visit I confirmed the water rights and acres associated with each Bellamy diversion. I found four distinct diversion and delivery systems from Fourth of July Creek:

1. Ditch #1, NWNWSE Sec 16 (*see above*)– the uppermost ditch, diverts to the west of the creek to deliver the Dougherty rights 75-14313 and 75-14641, and then the Bellamy rights 75-14642 (7.5 acres) and 75-119 (102 acres) on the north end of the ranch. The ditch crosses Cottonwood Creek in SWNE Sec 20 to irrigate pasture on the west side of that drainage.
2. Ditch #2, aka Home Ditch, SENWNW Sec 21 – diverts to the east of the creek, to deliver irrigation and stock water at the Bellamy residence and the old cabin under rights 75-120 and 75-125.
3. Ditch #3, SENE Sec 20 – diverts to the west of the creek, to deliver right 75-13963 on 22 acres at the south end of the ranch, then goes on to deliver water to subdivided properties.
4. Ditch #12, NWNESE Sec 20 – diverts to the east of the creek, delivers right 75-121 to the old orchard area south of the homestead.

Rights 75-119, 75-120 and 75-13963 were decreed with a combined acre limit of 128 acres. Since 128 is the sum of the individual authorized acres (102 + 4 + 22), this limit is moot: each right may be treated as a standalone right. As each right diverts at a different ditch to a different area of the ranch, there is no physical overlap between the rights. 75-119 is diverted at Ditch #1, but does not irrigate south of Ditch

#3. Acres south of Ditch #3 are irrigated by 75-13963 – this water cannot be used north of the ditch. 75-120 is diverted at Ditch #2, on the east side of the creek and cannot irrigate acres west of the creek. For additional evidence of this place of use, see the claim 75-10253 comment that “the ditch in Section 16 irrigates 105 (*sic*) acres and the ditch in Section 21 irrigates 4 acres”. 75-125 is also diverted at Ditch #2 and was identified in the 75-L decree as being associated with the domestic spring right 75-124, used at the homestead in SENE Sec 20, east of the creek.

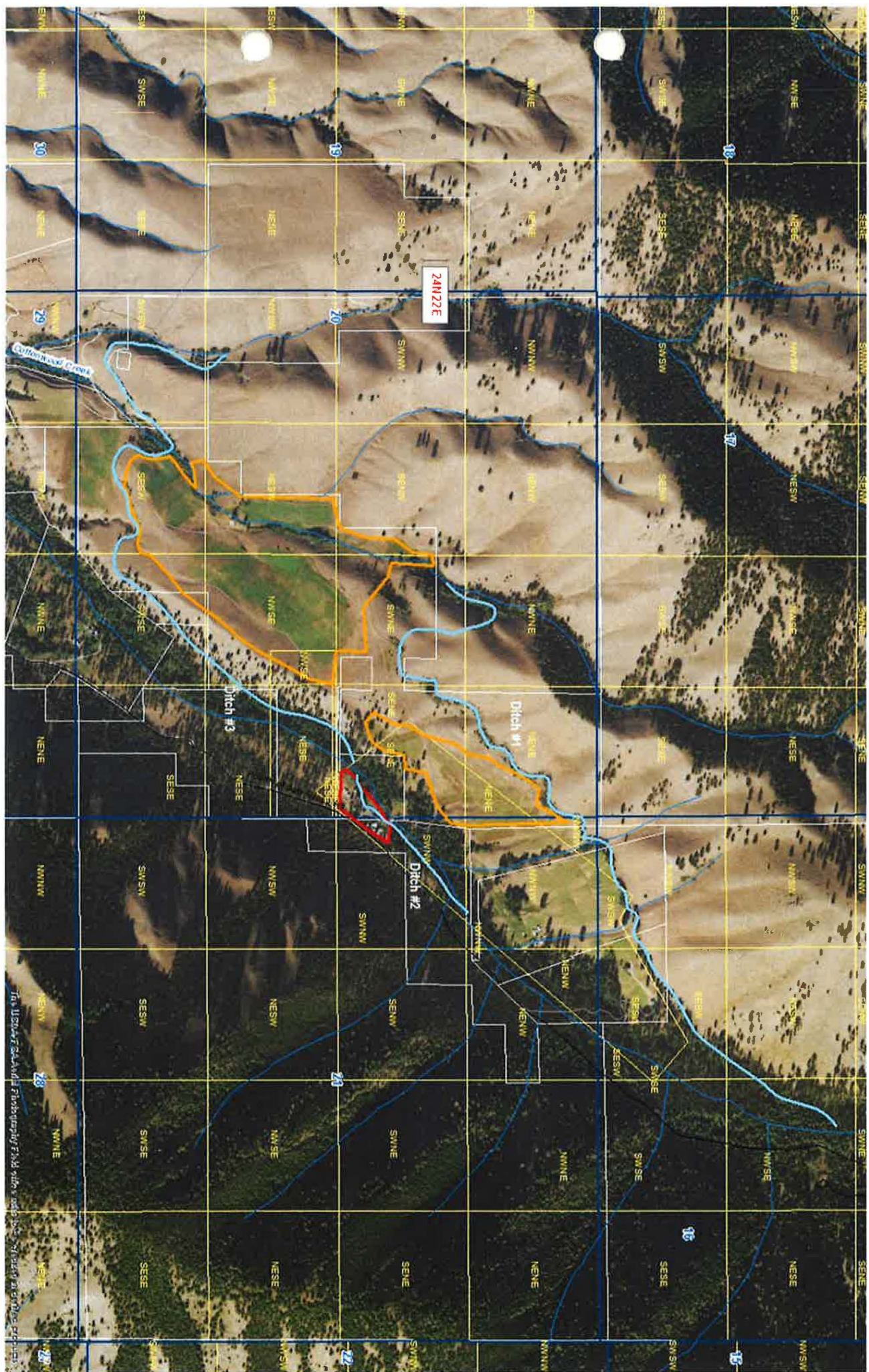
The attached spreadsheet compares the places of use for rights 75-119, 75-120, 75-125 and 75-13963 as they are described in the 75-L decree, the SRBA claims, the SRBA partial decrees, and as they are drawn on the original SRBA claim map. Don Bellamy shared from his personal files the original color map prepared for the Nelson SRBA claims. The claim file maps are copied in black and white and are virtually unintelligible. The original map clearly delineates the total irrigated acres and, while still in small scale, is clear enough that I was able to digitize Mr. Nelson’s original acres as claimed in the SRBA, and distribute them across the QQs for each right as described in the 75-L decree. Most importantly, the Nelson map confirms irrigation at the homestead in SENE Sec 20 on the east side of the creek (75-120). The transfers were initially prepared without benefit of this map.

The digitized shape for 75-119 is almost identical to the existing water right shape for 75-119, less the acres decreed to 75-13963. Some acres on public land needed to be excluded from the shape. In turn, the QQ acres from the digitized shape are quite close to the acres claimed on 75-10253, less the acres decreed to 75-13963 (shape cleanup affected some QQ acres). Had the acres on claim 75-10253 been split properly when the amended claims were filed for 75-119, 120 and 125, and had the acreage reductions been applied to the correct areas, the SRBA decrees would have more accurately represented both historic and present use under the rights.

Bellamy indicates that the irrigated acres have not changed since the 1982 decree. I find this entirely reasonable, as there is little other arable land on the ranch. All lands outside of the presently irrigated areas are hillside, creek bottom or timber.

Recommendations

1. 75-13963 does not require transfer. The right was included in the analysis and discussion because POU for 75-119 and 75-120 were decreed in error to overlap with 75-13963.
2. The PODs for 75-119 and 75-14642 in the name of Bellamy, and the PODs for 75-14313 and 75-14641 in the name of Dougherty should be changed to the two verified diversion locations of Ditch #1 in NWNWSE Sec 16, T24N R22E.
3. The POU on 75-119 should be reduced and modified so the right does not overlap with 75-13963 and reflects only the 102 authorized acres north of Ditch #3. I suggest amendment of transfer 83538 using the digitized acres from the original claim map (see spreadsheet column L).
4. The POU for 75-120 and 75-125 should be moved to the east side of the creek where the rights were historically used. I suggest amendment of transfer 83537 using the digitized acres from the claim map (see spreadsheet columns R and W). The transfer as filed may have inadvertently included some public land. There is an existing USFS inholding across the Bellamy property, situated to the south of the corrals.
5. All transfers should be processed at the reduced fee pursuant to 42-221(O)(8), and advertising should not be required as the proposed transfers do not describe or authorize physical changes in POD or POU.



MEMORANDUM

Date: August 30, 2019
To: Transfer 83534
From: Alex Dalglish
Re: Legal Notice Not Required

Legal Notice Not Required
9/4/2019

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The water right changes proposed through this transfer application do not appear to change the effect on the original or hydraulically connected water source or affect other water rights. Therefore, staff review of the transfer application found no cause to require public notice. This application will continue processing without advertisement and be forwarded for approval consideration.

Dalgleish, Alex

From: Yenter, Cindy
Sent: Monday, September 23, 2019 11:01 AM
To: Michael Dougherty; Dalgleish, Alex
Cc: jdsandstrom
Subject: RE: Transfer of rights 75-14313 and 75-14641

Alex - I am presently working on an in-depth analysis of the Dougherty and Bellamy water rights on Fourth of July Creek so that I can complete a memo requested by Scott Storms. As soon as I have that memo completed I will forward it to Boise so that it can be included with the various transfer files. The memo will incorporate file information and my field observations and should assist in review of the transfers.

Mike – I don't have a copy of the homestead filing which shows the placement of the ditch. Jane and I looked at a few documents when she was here but I don't recall seeing a map with a clear location of the point of diversion. Can you send or bring me a copy of what you are referencing?

*Cindy Yenter
Idaho Dept of Water Resources
Salmon Field Office
102 S Warpath, Salmon ID 83467
cindy.yenter@idwr.idaho.gov
208-742-0655
208-731-0901 cell*

From: Michael Dougherty [mailto:mdougherty15@outlook.com]
Sent: Monday, September 23, 2019 10:37 AM
To: Dalgleish, Alex <Alex.Dalgleish@idwr.idaho.gov>
Cc: jdsandstrom <jdsandstrom@centurytel.net>; Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>
Subject: RE: Transfer of rights 75-14313 and 75-14641

Alex,

We understand you have talked to Cindy Yenter and she has provided further information regarding our ditch and our request to correct the location of the POD in IDWR records. We want to emphasize that:

- The POD location has been mis-recorded from the beginning and that the actual POD has NOT been moved since first used in the early 1900's and in continuous use since.
- GPS and clear aerial photography were not available until most recently, leading to the POD mis-location in IDWR records which was carried forward into the SRBA.
- The physical topography of the land would not have allowed the POD to be located further upstream, where the current IDWR records show it. This has been observed by a site visit by Cindy Yenter.

After reviewing the documentation we have regarding our water rights and the point of diversion we are attaching a letter issuing License 75-2156, which was applied for in 1964. This license 75-2156 is for the same ditch and POD as is currently in use and shows the POD in NWNE Section 16. It was as close as technology at the time allowed and while not

correct to the ¼ ¼ based on current day GPS coordinates, it provides proof of the correct historical POD location being in Section 16, not in Section 9. See attached letter granting the license with the POD in Section 16. Note: Water Rights 75-119, 14641, 14642 and 14313 are all on the same ditch and all have the same PODs as this license.

In addition, we have copies of the homestead filing for the 1902 settlement with diagram showing the ditch where it currently is. While the POD is not specifically shown in the filing, please note an early pioneer would not have dug a ditch to a higher POD and thus increased length any more than necessary.

In summary, throughout all the different court decrees, adjudications and permit processes the POD has been recorded in various locations, however **the actual POD, ditch and place of use has not changed and remains as historically used**. We are only requesting an administrative change to correct IDWR's recorded location of the PODs based on actual today's technology GPS coordinates.

If you have further questions please feel free to contact us or talk to Cindy Yenter as she is familiar with the location and our filing. We welcome IDWR to reconfirm our request and comments made above with additional site visits if/as needed. Walking the ditch and seeing the POD & topography first hand will provide quick and conclusive confirmation.

Regards,

Mike Dougherty
Jane Dougherty Sandstrom
208-865-1118 (landline)

From: Dalglish, Alex <Alex.Dalglish@idwr.idaho.gov>
Sent: Thursday, September 5, 2019 8:11 AM
To: Michael Dougherty <mdougherty15@outlook.com>
Subject: RE: Transfer of rights 75-14313 and 75-14641

Mike,

With your request to move the point of diversion for rights 75-14313 and 75-14641, I'd like to have any supporting documents within 1 month.

Also, it sounds like you met with Cindy Yenter recently. I'd like to discuss your transfer a bit more with her but she is out of the office until next Thursday the 12th. For the moment, I'm at a holding point with your transfer until I can talk with Cindy.

Best,

Alex Dalglish
Water Resource Agent
Phone (208) 287-4913
alex.dalglish@idwr.idaho.gov

From: Michael Dougherty [<mailto:mdougherty15@outlook.com>]
Sent: Thursday, September 5, 2019 7:10 AM
To: Dalglish, Alex <Alex.Dalglish@idwr.idaho.gov>
Cc: jdsandstrom@centurytel.net
Subject: RE: Transfer of rights 75-14313 and 75-14641

Alex,

My wife (Jane Dougherty Sandstrom) and I just returned from being out of town and will work on a response.

Are there any specific deadlines regarding receiving the response or the transfer application process in general?

Thanks,

Mike Dougherty
208-865-1118

From: Dalglish, Alex <Alex.Dalglish@idwr.idaho.gov>

Sent: Friday, August 30, 2019 5:42 PM

To: mdougherty15@outlook.com

Subject: Transfer of rights 75-14313 and 75-14641

Good Afternoon,

I am processing the transfer application for your water rights 75-14313 and 75-14641. You state the SRBA decreed the points of diversion wrong. However you submitted a claim to the SRBA for right 75-14313 and described the POD's for this right. Then the court decreed the points of diversion for the right as you claimed it.

It would be helpful in processing the transfer if you could provide any evidence or proof for where the rights have historically diverted water. For example any homestead documents?

Thank you,

Alex Dalglish
Water Resource Agent
Phone (208) 287-4913
alex.dalglish@idwr.idaho.gov

Hersley, Jean

From: Yenter, Cindy
Sent: Friday, August 16, 2019 12:21 PM
To: Hersley, Jean; Grimm, Angie
Subject: Correction transfers, reduced fees

I've recently helped draft several transfers in Basin 75 which request corrections to incorrect SRBA decrees, and describe historical locations for POD and/or POU. I have recommended that these be submitted with the reduced \$50 fee per water right. There are no physical changes proposed on any of these. Please be on the lookout for them and let me know if you have any questions or issues processing as corrections.

Fourth of July Ck – will be filed in the name of Bellamy (75-14641, 119) and Dougherty (75-14313, 14641). They should all come in together. PODs for four right are way off. Dougherty and I both collected GIS coordinates for the correct pod locations, and his were better so he's supposed to send that info. If he does not, I have it. Bellamy also has POU corrections on 75-119 and 120. I have the shape files for both corrected irrigation pous, and am happy to send that to the reviewing agent.

Tower Creek – POU transfer and ownership change filed in the name of Tambe. Hint – look in the claim file and at the submitted warranty deed. Lemhi Co parcel layer is way off in this area. The metes and bounds puts the entire property in the correct location in SWSE S33. During claim review it appears someone mistook a parcel line for a section line, and part of this recommendation landed in Sec 4 where it doesn't belong it. The claim was filed correctly in SWSE, albeit for too many acres (5 as opposed to 0.5). Total 0.5 acres is correct.

*Cindy Yenter
Idaho Dept of Water Resources
Salmon Field Office
102 S Warpath, Salmon ID 83467
cindy.yenter@idwr.idaho.gov
208-742-0655
208-731-0901 cell*

August 12, 2019
Fourth of July Creek Road
North Fork, Idaho

Idaho Department of Water Resources
322 E Front Street Suite 648
PO Box 83720
Boise, ID 83720-0098

RECEIVED

AUG 15 2019

**DEPARTMENT OF
WATER RESOURCES**

Re: Applications for Transfer of Water Rights - POD

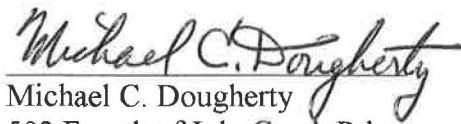
Enclosed please find four (4) applications for transfer of water rights to correct the location of points of diversion as administrative changes only. There are no proposed changes to the existing systems. These applications are being submitted together for clarity as they involve the common points of diversion for one shared ditch.

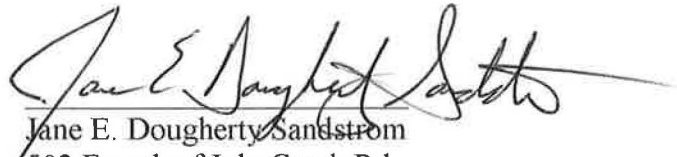
Please process as an administrative change, the required fee of \$50 per water right for such administrative changes is included.

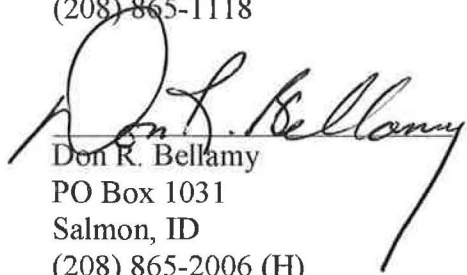
We understand no advertisement is necessary on any of these applications due to the administrative nature.

If you need further information or have questions please call either of the parties involved or Cindy Yenter, IDWR Salmon Office as she assisted us in researching and developing these applications.

Sincerely yours,


Michael C. Dougherty
502 Fourth of July Creek Rd
North Fork, ID 83466
(208) 865-1118


Jane E. Dougherty Sandstrom
502 Fourth of July Creek Rd
North Fork, ID 83466
(208) 865-1118


Don R. Bellamy
PO Box 1031
Salmon, ID
(208) 865-2006 (H)
(406) 660-4381 (C)

Encl: (4) Applications for Transfer of Water Rights – POD with maps
Fee