

MEMORANDUM

Date: April 2, 2019
To: Transfer 82856
From: Michael Holliday
Re: Review & Evaluation of Sufficiency of Information

Right 11-994 currently provides water from Formation Spring to the City of Soda Springs for municipal use. IDEQ is requiring changes to the delivery system at the point of diversion due to contamination concerns. This transfer proposes to change the point of diversion to a well with direct hydraulic connection to the spring in order to resolve the water quality concerns. The transfer will also clarify ambiguous water right elements from an earlier transfer approval.

Authority to File:

The applicant, City of Soda Springs, is the current owner of record for water right 11-994. The applicant provided a copy of an easement agreement granting legal access to the proposed well location. The application was signed by the mayor of the city.

Water Right Validity:

Right 11-994 was decreed in 1919 for the irrigation of 158.5 acres. Transfer 1076, approved in 1966, changed the point of diversion and nature of use of water right 11-994. The transferred nature of use was for domestic and culinary use within the City of Soda Springs. The nature of use described on the transfer is similar to modern day municipal use, which is the use currently displayed in the Department's water rights database. Transfer 82856 will clarify the purpose of use as municipal. Right 11-994 has been used regularly by the City and there is no evidence of forfeiture.

Injury to Other Water Rights:

Other water rights should not be impacted by the proposed change because the total amount of water authorized to be diverted under the right will not increase. The proposed well location is only 300 feet from the current point of diversion. The applicant hired an engineering firm to determine the best well location in order to ensure good production and water quality. The final report, which accompanied the transfer application, included evidence of a direct and substantial hydraulic connection to Formation Spring at the proposed point of diversion. There is no evidence that the proposed change will reduce the quantity of water available to other water rights. The transfer application was advertised and no protests were filed.

Enlargement of Use:

The transfer will not change the nature of use occurring under the water right. Water will still be used for municipal purposes by city residents. The change in point of diversion provides a water quality safeguard for the city.

The pending transfer proposes to clarify the season of use for water right 11-994. The 1919 decree for Formation Spring (Lau v. Panting), did not assign a season of use for any of the water rights listed in the decree. In 1966, the City of Soda Springs filed Transfer 1076, to change the nature of use of water right 11-994 from irrigation to domestic/culinary. Transfer 1076 was protested by other water users on Formation Spring. During the hearing, the protestants testified that they diverted Formation Spring water for year-round irrigation use. The protestants also acknowledged that Finch, who owned water right 11-994 prior to the City purchasing the right, had also diverted water from Formation Spring for year-round use. In 1986, the City of Soda Springs filed Application 11-7356 proposing a new municipal right from Formation Springs. The application was protested by all other water users on Formation Spring. In March 1989, the protests filed against Application 11-7356 were settled through a Stipulation which stated: "The

Protestants also will not seek abandonment or forfeiture of the year-round use of 5.5 cfs under an 1889 priority date for domestic and culinary purposes (Decree, Water right No. 11-0994, Transfer Order No. 1076, owned by the City) and waive all objections and protests to the same and agree to the specification of this water right as a year-round water right for municipal purposes, not including hydropower, with an 1889 priority date."

The decree did not specify a season of use for water right 11-994. Formation Spring is tributary to sinks and does not connect to the Bear River above ground. In 1966, the other water users on Formation Spring recognized year-round use under water right 11-994. In 1989, the other water users on Formation Spring again recognized a year-round diversion. The evidence available to the Department supports a year-round diversion.

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.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE OF DECREED WATER RIGHT

TRANSFERRED RIGHT NO. 1076

THIS IS TO CERTIFY, That the City of Soda Springs, through Chris Phelps, Mayor, Soda Springs, Idaho, is the owner of and using a certain water right of 5.5 cubic feet per second of the waters of Formation Spring and Creek, with priority of May 1, 1889, decreed to Henry L. Finch, by decree of Judge B. S. Varian of the Fifth Judicial District of the State of Idaho, in and for the County of Caribou, in the case of

DANIEL J. LAU, et al

Plaintiffs

vs.

CHRIS PANTING, et al

Defendants

said decree bearing date of November 6, 1919, and being appurtenant to the following described lands, to-wit:

W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 4, Section 5,
Township 9 South, Range 42 E.B.M.,

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Volume No. 4, at Page 206 thereof;

That said City of Soda Springs has become the owner of said water right by purchase;

And that now, upon the application of the City of Soda Springs for a Certificate of Transfer of Water Right, made before the State Reclamation Engineer of the State of Idaho, and the said application having been granted, the right to the use of 5.5 cubic feet per second of the waters of Formation Spring and Creek upon the above described lands is hereby abandoned, and the lands to be irrigated under such right and to which the water right **HEREBY CONFIRMED** shall become appurtenant by this Certificate for irrigation and domestic purposes, is described as follows, to-wit:

City of Soda Springs and
adjacent territory;
(domestic and culinary use)

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes and shall not exceed the following amount, to-wit:

5.5 cubic feet per second of

RECORDED

the waters of Formation Spring
and Creek, with priority of
May 1, 1889;

That the water right hereby transferred has heretofore been
conducted to the first described lands through Finch Ditch with
point of diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, Township 8 South,
Range 42 E. B. M.,

That the water right hereby transferred will hereafter be
conducted through the pipeline with point of diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Section 27, Township 8 South, Range 42 E. B. M.,

That the right to the use of the water aforesaid, hereby con-
firmed, is restricted to the lands or place of use last above de-
scribed, as provided by the laws of the State of Idaho;

IN WITNESS WHEREOF, I have hereunto set my hand and caused
the official seal of the Department of Reclamation of the State of
Idaho to be hereunto affixed at Boise, Idaho, this 23rd day of
November, 1966.

(SEAL)

s/

R. KEITH HIGGINSON

R. KEITH HIGGINSON
State Reclamation Engineer

RECEIVED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

City of Soda Springs)
Soda Springs, Idaho)

ORDER GRANTING TRANSFER
NO. 1076

For a Transfer of Water Right in the)
County of Caribou County, State of)
Idaho)

WHEREAS, On the 5th day of May, 1966, at the Department of Reclamation of the State of Idaho at Boise, Idaho, this matter of the application of the City of Soda Springs, Soda Springs, Idaho, for a transfer of water right came on regularly for hearing, pursuant to the published notice in due and statutory form, and,

WHEREAS, a protest was made in person by Don Panting and Farrell Panting against the approval of said application, and,

WHEREAS, a decision was rendered on November 22, 1966, authorizing the issuance of a certificate authorizing the transfer of water right and change in point of diversion;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the said application be, and the same is, HEREBY GRANTED, and that a Certificate of Transfer of Water Right be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 23rd day of November, 1966.

(SEAL)

s/

R. KEITH HIGGINSON

R. KEITH HIGGINSON
State Reclamation Engineer

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IDAHO DEPARTMENT OF RECLAMATION

ADELBERT PANTING, 3 second feet (150 miner's inches), from May 1, 1887, for the irrigation of the;

$\frac{1}{2}$ -NE $\frac{1}{4}$ of Section 28, and the SE $\frac{1}{4}$ of Section 21, Township 8 South, Range 42 East, B. M., in Idaho;

LINA PANTING, $\frac{1}{2}$ second foot (25 miner's inches), from May 1, 1887, for the irrigation of the;

SE $\frac{1}{4}$ -NE $\frac{1}{4}$ of Section 29, in Township 8 South, Range 42 East, B. M. in Idaho;

The water hereinbefore decreed to Chris Panting, Adelbert Panting, and Lina Panting to be diverted from the said Formation Spring and Creek within the NE $\frac{1}{4}$ -SE $\frac{1}{4}$ of Section 28 and at a point at or near the boundary line between the NE $\frac{1}{4}$ -SE $\frac{1}{4}$ of Section 28, and the NW $\frac{1}{4}$ -SW $\frac{1}{4}$ of Section 27, Township 8 South, Range 42 East, B. M.

10-0994 HENRY L. FINCH, $\frac{5}{8}$ second feet (275 miner's inches), from May 1, 1889, for the irrigation of the;

W $\frac{1}{2}$ -SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ -NW $\frac{1}{4}$, and Lot 4 of Section 5, Township 9 South, Range 42 East, B. M., in Idaho;

The said water to be diverted from the channel of Formation Springs Creek at a point in the NE $\frac{1}{4}$ -SW $\frac{1}{4}$ of Section 28, Township 8 South, Range 42 East, B. M. in Idaho. 160

DANIEL J. LAU, 6.9 second feet (345 miner's inches), as of May 1, 1895, for the irrigation of the;

E $\frac{1}{2}$ -SW $\frac{1}{4}$ and Lots 3 and 4, and the W $\frac{1}{2}$ -SW $\frac{1}{4}$ -SE $\frac{1}{4}$ of Section 18, and the NW $\frac{1}{4}$ -NE $\frac{1}{4}$, and Lot 1 of Section 19, all in Township 8 South, Range 42 East, B. M., in Idaho.

X JOSEPH E. LAU, 4.7 second feet (235 miner's inches), as of May 1, 1895, for the irrigation of the;

SE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$, and the E $\frac{1}{2}$ SW $\frac{1}{4}$ -SE $\frac{1}{4}$ all in Section 18, Township 8 South, Range 42 East, B. M., in Idaho.

LOUISE HORSLEY, 1.4 second feet (70 miner's inches), as of May 1, 1895, for the irrigation of the;

W $\frac{1}{2}$ SE $\frac{1}{4}$, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, the N $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Township 8 South, Range 41 East, B. M., in Idaho.

DANIEL CROSS, .5 of a second foot (25 miner's inches), as of May 1st, 1913, for the irrigation of the;

W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, Township 8 South, Range 42 East, B. M. in Idaho. 80

The water hereinbefore decreed to the said Daniel J. Lau, Joseph E. Lau, Louise Horsley and Daniel Cross to be diverted from Formation Springs Creek at or near the boundary between the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 8 South, Range 42 East, B. M. in Idaho.

It is further ordered, adjudged and decreed that the rights of each of said parties, as above specified, be and it is hereby quieted and established as against any claims of any of the other parties and each of said parties is hereby permanently restrained

HEARING - TRANSFER OF WATER RIGHT - City of Soda Springs
(point of diversion) 2 o'clock P. M., May 5, 1966

R. Keith Higginson, Deputy State Reclamation Engineer opened the hearing by reading the Notice of Publication from the Caribou Sun, advertising the application for tranfer of point of diversion by the City of Soda Springs.

Protestants present were Farrell and Don Panting. Don Panting representing Grace Rutledge .

Don Panting shows a map pointing out the point of diversion directly from the spring. Mr. Panting stated they were protesting this point of diversion because they had been unable to find out from the City of Soda Springs the size of pipe to be used or any specifications or information regarding this transfer, so that they could come to any agreement with them.

Mr. Farrell Panting stated their decreed right dated 1887 was a prior right, as the City of Soda Springs right is dated 1889 for 5½ c.f.s.

Mr. Higginson ask if the City had given them any plans for by-passing their land and water right.

They stated a meeting was held on about the 11th, but they had not been given any information.

Mr. Higginson ask if they would object to this transfer if there was adequate provision to by-pass your water.

Mr. Don Panting stated the water run through their pasture and was also used for stock water and to shut off this water by diverting directly from the spring would interfere with their water for stock and dry up their pasture.

Mr. Higginson pointed out to them that the City could acquire the property by condemnation to build the box at the spring, but they would have to compensate for any damage to any of their property.

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Farrell Panting felt that the water loss to the land, as they keep it on the year around, would not be compensable as it helped to keep up the water table. He said they could be wrong on this and he also stated that the Finch water had also run the year around. He stated that the Finch property had been purchased by the City and the point of diversion was on that property below their point of diversion and they objected to having the City of Soda Springs go above them, as they had the prior water right.

Mr. Higginson pointed out to them that a meeting could be held to negotiate on this water, and would be better for them perhaps, and the City would have to compensate for any damage to their property. He stated the City of Soda Springs reason for this transfer was to obtain water that would not be contaminated.

Mr. Panting stated that they had purchased the ranch and obtained the right but it was for irrigation and not for domestic use.

Mr. Higginson stated that he believed another hearing should be held at a future date at Soda Springs with the Pantings and the City Council and perhaps an agreement could be reached, which would be much better than fighting it through the Courts.

Mr. Don Panting - Then this transfer will not be granted until after another hearing?

Mr. Higginson agreed that it would not be granted and that this office will schedule another hearing in the near future and notify all concerned.

MICROFILMED

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STATE OF IDAHO

County of Caribou

Date March 23 1989Time 10:00 A.

Before the Department of Water Resources

Recorder of Deeds, Boise, Idaho

Decree 36.00Fee 36.00

PABLS - 1 - INC HP

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATION FOR PERMIT)
NO. 11-7356 IN THE NAME) STIPULATION
OF THE CITY OF SODA SPRINGS.)
-----)

1. This stipulation is between the Applicant, City of Soda Springs, and Protestants, Claude Jeppsen, Farrell B. (Blaine) Panting, Dale G. Panting, Elmus Panting, Marjorie Beins and Jack Christensen and The Nature Conservancy, a District of Columbia corporation, with headquarters in the State of Virginia.

2. If approved, this stipulation is intended to avoid further hearing on the application as to the Protestants, and is not intended to determine the water rights of the Protestants.

3. The references in this stipulation as to the Water Right, Order, Permit, License or Claim No. of a water right are to the Water Right, Order, Permit, License or Claim No. assigned by the Idaho Department of Water Resources or its predecessors. All references in the stipulation to water measurements and rights are to water taken from Formation Spring, located in Caribou County, Idaho. Any reference to "Decree" is that Decree entered in the case of Daniel J. Lau, et al, Plaintiff, vs. Chris Panting, et al, Defendants, in the Fifth Judicial District of the State of Idaho, in and for the County of Caribou, by Decree entered by District Judge B. S. Varian, on November 6, 1919, and recorded in book 1, page 157, Judgment Records of Caribou County, Idaho.

4. The Protestants waive all objections and protests, and agree to the issuance to the City of a permit (No. 11-7356) as the same may be amended or substituted, or to the issuance of a license pursuant to that permit as amended or substituted for the year-round use of 5.0 cfs under a 1986 priority rate for municipal purposes, not including hydropower, for use within the City and adjoining territories, and will not seek abandonment or forfeiture of that license or permit. The Protestants agree that said water being applied for by the City constitutes excess water from Formation Spring, in excess of 17.7 cfs of decreed rights, which excess water is not being consumed or applied

to a beneficial use at this time. It is understood that the flow of Formation Spring may not always equal 22.7 cfs (17.7 cfs plus 5.0 cfs), and in that event the City shall only be entitled to that water in Formation Spring in excess of 17.7 cfs under its 1986 priority date. The Protestants also will not seek abandonment or forfeiture of the year-round use of 5.5 cfs under an 1889 priority date for domestic and culinary purposes (Decree, Water Right No. 11-0994, Transfer Order No. 1076, owned by the City) and waive all objections and protests to the same and agree to the specification of this water right as a year-round water right for municipal purposes, not including hydropower, with an 1889 priority date. The water rights described in this paragraph will be considered cumulatively, and the Protestants waive their objections to a total of 10.5 cfs under these water rights. The Protestants further waive all objections and agree to the alternative use of this 10.5 cfs for municipal purposes, not including hydropower, by means of ground water storage and recharge at points and places downstream from the W₄SE₄ of Section 28, Township 8 South, Range 42 East, B.M., for recharge of Ledge Springs and Ledge Creek, another source of water for municipal purposes for the City. The Protestants agree to any alternative point of diversion downstream from the W₄SE₄, Section 28, Township 8 South, Range 42E., B.M., required by the City for such use, that ground water storage and recharge is a reasonable and efficient means of diversion, storage and conveyance, and that such use constitutes a beneficial use of such water. Protestants further waive all objections and agree that the City, or its successors in interest shall have the right to file such additional applications as may be necessary with the Idaho Department of Water Resources to achieve the results intended by this paragraph and waive any objections or exceptions thereto and shall not protest the same if such application is in conformance with the terms and conditions of this paragraph and stipulation.

5. The City will withdraw its exception to the notice of claim by Claude Jeppsen for the year-round use of 1.2 cfs for private fish propagation purposes with a 1964 priority date (Claims No. 11-4323) and waives all objections and agrees to the adjudication of this claim as a year-round water right for private fish propagation purposes, or to the year-round use of this 1.2 cfs to maintain the level of the ponds, without further expansion of said ponds, in the NE₄NW₄ of Section 33, Township 8 South, Range 42 East, with a 1964 priority date, for non-commercial, non-industrial, non-domestic, non-culinary, non-irrigation, non-agricultural, non-hydropower, non-stock watering, non-recreational, ecological purposes. The City also waives all objections and agrees to the alternative year-round use of 1.2 cfs under an 1895 priority date (Decree, Water Right No.