

MEMORANDUM

Date: January 14, 2019
To: Transfer 82777
From: Michael Holliday
Re: Review & Evaluation of Sufficiency of Information

This transfer changes the point of diversion of rights 34-644C and 34-12360 from the Burnett Ditch to the Swauger Ditch and corrects the POD legal description of the four other Big Lost rights currently delivered through the Swauger. The six surface water rights in the transfer are fully overlapped by ground water right 34-2323C. The 129-acre portion appurtenant to the applicants' property will be split and rearranged slightly, while the six surface water rights will be concentrated on the same 129 acres. The point of rediversion will be removed from the applicants' portion of 34-2323C.

The unchanged portion of 34-2323C contains a clerical error in the place of use description. The right currently shows 14 acres in the SESE of section 34, but should show 14 acres in the SENE of section 34. Rights 34-644C and 34-12360 correctly show 14 acres in the SENE. Those 2 rights are for the 28.2 acres south of the Burnett, and the other 4 surface water rights are for the 152 acres north of the Burnett. The combined limit for the 6 Big Lost rights and ground water right 34-2323C is 180.2 acres. Therefore, it is abundantly clear that there was a clerical error in the decree. The error will be corrected in the transfer.

Authority to File:

The applicants provided a warranty deed showing ownership of the proposed POU, which was further confirmed by Custer County taxlot data. For the surface water rights the applicants provided quitclaim deeds from the current water right owner of record and from the current owner of the 51.2 acres from which the surface water rights are being removed. The quitclaim deed for the ground water right contained an ambiguity, conveying a proportionate share equaling a diversion rate of 2.70 cfs. However, the proportionate share appurtenant to the applicants' 129 acres is only 2.04 cfs. This is the amount that will be included in the transfer approval for right 34-2323C.

Water Right Validity:

The rights included in this transfer were decreed in the SRBA in 1998. Post-decree aerial imagery shows regular irrigation of the place of use. Forfeiture is not an issue.

Injury to Other Water Rights:

Other water rights should not be impacted by the proposed changes because the total authorized to be diverted under the rights will not increase. The current point of diversion for 34-2323C will not change. Rights 34-644C and 34-12360 will move from the Burnett to the Swauger. The transfer application was advertised and no protests were filed. The Water District 34 Watermaster was notified of the proposed change, but did not provide comment.

Enlargement of Use:

All the surface water rights included in this transfer are currently stacked with ground water right 34-2323C. The transfer will concentrate the surface water rights onto 129 acres, leaving 51.2 acres covered only by right 34-2323C. However, total authorized rate, volume, and acreage will not increase as a result of the transfer. Individual water right acre limits and combined limits will be included on these rights as appropriate in order to prevent enlargement.

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.