

## MEMORANDUM

TO: Transfer No. 82068  
FROM: Patrick Kelly  
DATE: 2/1/2018 - Revised 8/2/18 -  
RE: Evaluation of Application

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**This is a Revised evaluation memorandum and replaces the 2/1/2018 memorandum**

### **Summary**

Transfer 82068 proposes to split and move 1.98 cfs, 675 af, and 150 acres from 2-10017 to a new farm location owned by DeRuyter Properties LP. Dale and Jackie Van Es own 2-10017. Van Es has entered into an agreement with Idaho Water Company LLC (IWC) to convey the split portion of 2-10017 to IWC, assuming the Department approves the transfer. Idaho Water Company, in turn, has an agreement to convey the water to DeRuyter Properties LP, provided the Department approves the transfer.

2-10017 authorizes 29.00 cfs and 9,860 acre-feet to irrigate 2,191 acres. This is a diversion rate of 0.13 cfs/ac and 4.5 acre-feet per acre. The proposal is to convey and transfer a proportional quantity of water for 150 acres (1.98 cfs and 675 af). The transfer fee of \$580 matches the fee schedule for 1.01 – 2.00 cfs.

A security interest was filed by Rabo AgriFinance Inc in 2012 with a maturity date in 2027. Comment letters from the company will be required to complete transfer processing. Notice will be sent to the company at the time of advertising as well.

### **Authority to File**

Idaho Water Company LLC is the transfer applicant. Idaho Water Company LLC is the designated buyer in the sale contract attached to the application. The sale contract authorizes IWC to prepare and submit the transfer application. IWC has the authority to file the application. Kevin Kohtz signed the transfer application. ID SOS records does not identify Kevin as a member with the company, however he did sign the sale contract for the rights on behalf of IWC. Because of this, it is assumed he has proper authority to file on behalf of the company.

### **Water Right Validity**

The right was decreed in 2010. Aerial Imagery from 2013 – 2015 shows irrigation use within the POU in excess of 2,191 acres. Concerns over validity are not present at this time.

### **Overlap Analysis**

2-10017 is the only water right that was split and sold. The permissible place of use for 2-10017 is shared by 2-2251 (also owned by Van Es). The two rights divert from the same point of diversion and both have a combined diversion rate and acreage limit. However, the acreage limit is merely additive and the diversion rate limitation is based on system capacity, so the rights are not stacked and the transferred portion can be subtracted from the combined limits. No water rights exist at the proposed place of use.

### **Injury to Other Water Rights**

The transfer proposes to move the split portion of water 50+ miles upstream on the Snake River. The new point of diversion is now above CJ Strike Reservoir. Although no irrigation rights exist at the proposed place of use, DeRuyter has irrigated the proposed place of use since at least 2013 under a water supply bank rental agreement.

One water right (2-2379) exists at the proposed point of diversion pump station. It is owned by De Ruyter Properties. Taxlot data suggests the new pump station is on property owned by either BLM or

Robert Howard. The transfer application suggests BLM owns the ground and a federal right of way grant no IDI 016775 allows access to the water. Comment letters will be sent to both parties.

### **Enlargement of Use**

Moving a point of diversion upstream could lead to enlargement if it improves the supply compared to the pre-transfer supply. The Snake River in both locations is not physically water-limited, so the availability of water at both locations is similar. The move will not improve the supply to the water right.

2-10017 shares combined use limits with 2-2251 for 29.00 cfs on 2,495 acres. 2-2251 is currently owned by Van Es, so consent to reducing the limit and including the associated right to the transfer is not required. The amount of water sold to Idaho Water Company will be deducted from 2-10017 as well as the combined use limits shared with 2-2251.

Enlargement is a concern when a right with a smaller authorized rate or volume per acre is moved into a system that also delivers a water right that authorizes a relatively higher delivery rate and volume. In this case, the right proposed to be moved authorizes a diversion rate of 0.013 cfs/acre and 4.5 af/ac. The proposal is to move it into a system that is an integrated closed-conduit, pump, and sprinkler system utilizing number of pivots and sprinkler lines. That system also delivers right 2-2379, which authorizes a diversion rate of 0.019 cfs/acre and 4.9 af/ac. The transfer could result in an enlargement since it is not possible to, for example, deliver 0.019 cfs/ac to half of a pivot and 0.013 cfs/ac to the other half. In effect, the user would be delivering 0.016 to the whole pivot – enlarging the consumptive use under 2-2379.

One way to prevent enlargement in this situation is to consolidate the transferred right onto a smaller number of acres, so delivery rates for the two rights from the system match. If the 1.98 cfs and 675 af were consolidated onto 104.2 instead of 150 acres, the delivery rates would be 0.019 cfs/ac. However, the delivery volume would also have to be reduced to approximately 510 af to prevent excessive diversion volume per acre. This approach would be appropriate when either we have information the system is currently delivering 0.019 cfs/acre or when we have no information about the delivery system and must assume the user is delivering the right at its full rate per acre.

However, if we have information that the system delivers not more than 0.013 cfs to all land under the pivot, then there is no need to consolidate the transferred acres because the user would remain within the limits of both rights and the transfer would not enlarge the transferred right or the existing right.

In this case, water measurement information demonstrates the system at the new place of diverts approximately 0.013 cfs/acre and 2.6 af/ac with the existing system. Delivery records maintained by Water District 2 report a maximum flow rate of 23.0 cfs and a volume of approximately 4,390 af to irrigate an area of approximately 1,700 acres.

Moving the water right into a system that delivers water at the same rate as that right should not result in enlargement. Of course, the user could alter their system such that they divert the full amount and deliver the full rate per acre at some point in the future, but it is the user's responsibility to use his rights within the limits of the rights. The system, as currently configured appears to operate within the limits of the proposed transfer without enlargement.

### **Local Public Interest**

No information has been made available to suggest a conflict with public interest.

### **Beneficial Use/Conservation of Water Resources**

The application proposes to move a water right from an area with a field headgate requirement of 4.5 acre-feet per acre to an area with a standard field headgate requirement of 4.0 acre-feet per acre. IDWR Administrative Memo Transfer Processing No. 24 establishes a Department policy to apply the standard

volume per acre for the new place of use area (in this case 4.0 af/ac) when the place of use is changed UNLESS the applicant can justify the need for a greater quantity based on soils, crop types, irrigation system, climate, etc. The applicant should be made aware of this and offered the opportunity to provide evidence if they believe a greater volume is needed.

Additionally, the standard season of use at the new location coincides with the season on the face of the right, so the subordinated "shoulder season" condition should also be removed for the transferred portion.

**The application is consistent with criteria of I. C. § 42-222 and should be processed.**

**Summary**

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

Idaho Department of Water Resources

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 $2.57 \frac{AF}{AC}$   
 $@ 1705 AC = 0.013 CFS / AC$ 

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|-------------------------------------------------------|-----------------------------------|-----------------------------------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Report Year</b><br>2017                            | <b>Totalizer Start</b><br>5048.24 | <b>Acre Feet Volume</b><br>4387.39                  | <b>Max Flow Rate (CFS)</b><br>22.97    | <b>Comments</b><br>GE AT868 ultrasonic flow meter read for year-end total volume. Meter reading is a full year measurement. Datalogger downloaded. Flow meter totalizer NOT reset for 2018 season. jwe                      |
| <b>Validated</b><br>Validated by Water Master 9435.63 | <b>Totalizer End</b><br>9435.63   | <b>Adjusted Acre Feet</b><br>4387.39                | <b>Adjusted Max Flow Rate</b><br>22.97 |                                                                                                                                                                                                                             |
| <b>Calibration Data</b>                               |                                   | <b>Acre Feet Qualifier</b><br>Monthly Recordings    | <b>Preferred Method</b><br>FM          |                                                                                                                                                                                                                             |
| Date: 1/1/2015 12:00:00 AM                            |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
| Factor 1.00                                           |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
| Vol. Multiplier: 1.0000                               |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
| Vol. Unit AF                                          |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
| <b>Report Year</b><br>2016                            | <b>Totalizer Start</b><br>0.00    | <b>Acre Feet Volume</b><br>5048.24                  | <b>Max Flow Rate (CFS)</b>             | <b>Comments</b><br>GE AT868 ultrasonic flow meter read for year-end total volume. Meter reading is a full year measurement. Datalogger downloaded. Flow meter totalizer NOT reset for 2017 season. jwe                      |
| <b>Validated</b><br>Validated by Water Master 5048.24 | <b>Totalizer End</b><br>5048.24   | <b>Adjusted Acre Feet</b><br>5048.24                | <b>Adjusted Max Flow Rate</b>          |                                                                                                                                                                                                                             |
| <b>Calibration Data</b>                               |                                   | <b>Acre Feet Qualifier</b><br>Monthly Recordings    | <b>Preferred Method</b><br>FM          |                                                                                                                                                                                                                             |
| Date: 1/1/2015 12:00:00 AM                            |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
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| Vol. Unit AF                                          |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
| <b>Report Year</b><br>2015                            | <b>Totalizer Start</b><br>0.00    | <b>Acre Feet Volume</b><br>3216.11                  | <b>Max Flow Rate (CFS)</b>             | <b>Comments</b><br>GE AT868 ultrasonic flow meter read for year-end total volume. Meter reading is a full year measurement. Datalogger not installed as of 12.1.15. Flow meter totalizer reset to 0.00 for 2016 season. jwe |
| <b>Validated</b><br>Validated by Water Master 3216.11 | <b>Totalizer End</b><br>3216.11   | <b>Adjusted Acre Feet</b><br>3216.11                | <b>Adjusted Max Flow Rate</b>          |                                                                                                                                                                                                                             |
| <b>Calibration Data</b>                               |                                   | <b>Acre Feet Qualifier</b><br>No Monthly Recordings | <b>Preferred Method</b><br>FM          |                                                                                                                                                                                                                             |
| Date: 1/1/2015 12:00:00 AM                            |                                   |                                                     |                                        |                                                                                                                                                                                                                             |
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