

MEMORANDUM

Date: January 8, 2018
To: Transfer 81407
From: Kmathews / Jcefalo
Re: Transfer Evaluation

Transfer No. 81407 was originally filed as one of three transfer applications meant to rearrange water rights on the property and to change the mitigation plan for Permit 34-7595. Two of the original transfer applications were amended and one was withdrawn in January 2017. Permit 34-7595 is currently mitigated with surface water rights 34-703B, 34-704B, 34-573B, 34-583B, 34-584D, 34-699B, 34-702B and portions of 34-703C, 34-704C, 34-699C, 34-700C, 34-701C, and 34-702C.

Amended Transfer Application 81407 proposes to combine split portions of water rights 34-573B, 34-584D, 34-701C, 34-703C and 34-704C with water rights 34-583B, 34-699B, 34-702B, 34-703B and 34-704B to create a 156.2-acre irrigation place of use. The split portions were assigned water right numbers 34-14582 thru 34-14586. These rights will share an identical place of use with Permit 34-7595 (156.2 acres). The points of diversion on all water rights, including the split portions will remain the same. The amended application included a withdrawal of Application for Permit 34-13789, which was on moratorium hold. The second transfer application (81493) will rearrange the unchanged portions of 34-573B, 34-584D, 34-701C, 34-703C and 34-704C.

Water rights 34-701C, 34-703C and 34-704C are currently part of a Stipulation, Settlement, and Joint Motion for Order filed with the Department on October 12, 1999, in the matter of Application for Permit no. 35-7591 and mitigation for the approval of transfer no's. 5001, 5004, and 5544.

Authority to file:

All of the water rights and the existing and proposed place of use are currently in the name of No Access Ranch LLC. The application was signed by Michael John a representative of No Access Ranch LLC, who has signature authority for the company. The name of the business has changed to Borah Borah Ranch LLC, with the State of Idaho. Transfer approval will be issued in the name of Borah Borah Ranch LLC. All of the water rights list The Peoples State Bank as a security interest. The application contained a copy of a Release of LIS Pendens showing the bank has released its security interest in the water rights.

Validity of the Water Right:

Water rights 34-573B, 34-584D, 34-699B, 34-702B, 34-703B and 34-704B were decreed on February 13, 2002. Water rights 34-701C, 34-703C and 34-704C were decreed on November 30, 2001 and water right 34-583B was decreed on December 29, 1997. Transfer 5004 contained a condition for completion of the change in use by February 28, 2001. An email dated, January 31, 2017, submitted by the applicant's consultant indicating that the changes authorized by Transfer 5004 were not completed. A pond with a surface area of 1.1 acres and a volume of 3.5 ac-ft and a pond with a surface area of 3.8 acres and 19 ac-ft, were created. However, neither of the ponds were within the place of use described on the water rights. Transfer 5004 authorized a surface area of 5 acres and a storage volume of 45 af. Aerial photography does not show consistent irrigation of all acres. The acres covered by Permit 34-7595 have been consistently irrigated. The last time all of the acres were irrigated was during the 2006 irrigation season. All of the water rights, except 34-699B, are very junior and are only available for a short window during the summer. In drought years, many of the water rights are not available at all. There is not clear and convincing evidence of forfeiture.

Injury to Other Water Rights:

No injury to other water rights was identified. An ESPA analysis was not conducted because no points of diversion will change with the application. The application was advertised, no protests were received. The water master for WD34 was notified of the transfer and did not oppose the transfer.

The proposal to amend the mitigation plan for Permit 34-7595 will be evaluated independent of this transfer approval.

Enlargement: These water rights carry a number of combined limits and unique conditions. All of these combined limits will be carried forward on split portions and remaining portions of the water rights. No enlargement issues identified.

Local Public Interest:

No issues identified.

Beneficial Use / Conservation of Water Resources:

No issues identified.

Review of the application finds there is not clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this transfer application.