

MEMORANDUM

Date: January 10, 2018
To: Transfer 81493
From: kmathews
Re: Transfer Evaluation

Transfer No. 81493 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 Two of the original transfer applications were amended and one was withdrawn in January 2017.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 81493 proposes to rearrange the place of use for water rights 34-699C, 34-700C, 34-701C, 34-702C, 34-703C, 34-573B and 34-584D. The points of diversion for the water rights will not change. The amended application included a withdrawal of Application for Permit 34-13789, which was on moratorium hold. The other transfer application (81407) took a split portion of water rights 34-701C, 34-703C, 34-704C, 34-573B and 34-584D and combined the split portions with existing water rights to create a 156.2-acre place of use. Transfer 81407 will be approved first. Transfer 81493 is intended to rearrange the place of use for the remaining portions of the five split rights and 34-699C, 34-700C and 34-702C.

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 approvals 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 and 34-584D were decreed on February 13, 2002. Water rights 34-701C, 34-703C and 34-704C were decreed on November 30, 2001. 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.

Water rights 34-699C thru 34-704C include recreation storage and recreation elements. In total, these water rights authorize 20.9 acre-feet for recreation use or recreation storage. According to ET Idaho data for Arco, Idaho, a 5-acre shallow pond would lose 9.3 acre-feet per year to evaporation. The remainder of the volume for recreation storage will offset seepage losses. Initial fill of the ponds was covered by a one-year dry up of acres in the 2000 irrigation season. That one-year dry up does not mitigate for the fill of the proposed ponds or any refills of the ponds. To simplify the process, a condition was added to the rights

noting that the initial fill and any subsequent refill of the ponds must be accomplished through the water supply bank. Water user could use their own water rights for the WSB rental.

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.