

MEMORANDUM

Date: February 5, 2018
To: Transfer 81789
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer was filed in response to enforcement case number E2015-728. It proposes to add and change points of diversion and places of use for nine water rights.

Authority to File:

The applicant, SunRain Varieties, LLC ("SunRain"), has the authority to file. According to department records, SunRain is the owner of record for the water rights. Teton County taxlot data indicates that SunRain owns the property at the existing and proposed places of use. SunRain also owns the property at the proposed ground water points of diversion. Points of diversion for surface water rights will not change. The application was signed by Luke Marchant, attorney representing SunRain.

Water Right Validity:

The water rights are valid. They were variously decreed in 2008 and 2009, with the exception of right 22-7479, which was licensed in 2002. Post-decree/licensing aerial photography indicates consistent irrigation.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and was protested by Aaron Jenkins and Fremont Madison Irrigation District. Both protestants withdrew their protest without condition. The Watermaster for Water District 1 was notified of the transfer and did not oppose its approval.

During the pre-hearing conference for the contested case, the protestants expressed a concern about SunRain enlarging its senior water rights by combining them with junior rights from Mahogany Creek. The Department proposed requiring SunRain to identify the specific acres irrigated by its senior water rights (22-14146, 22-14147 and 22-387A). After consultation with the watermaster for WD01, we determined that water right 22-387A was not a senior water rights and is curtailed for much of the summer. Therefore, a condition was added to the transfer approval requiring SunRain to identify the specific 153.8 acres irrigated by water rights 22-14146 and 22-14147.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. No additional rate, volume, or irrigated acres were authorized as a result of this transfer. Several combined limit conditions were made explicit as a result of the "Place of Use Memorandum" and "Combined Rate Limit Memorandum." These combined use limits are found on rights 22-7479, 22-14144, 22-14145, 22-14146, 22-14147, and 22-14148.

Due to their senior priority dates and comparatively small size in relation to the total place of use, a modified permissible place of use condition replaced the standard combined use limit condition on rights 22-14146 and 22-14147, as described above.

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.

PLACE OF USE MEMORANDUM

An Overview of Rights in SESW Section 7, Township 4 North, Range 45 East

At the time of transfer submittal, 39 acres of land in the SESW of Section 7, Township 4 North, Range 45 East, were covered by Mahogany Creek rights 22-14146, 22-14147, and 22-14148 ("Mahogany Creek rights.") Those same 39 acres were covered by groundwater right 22-7479, but no combined limit was noted.

The Mahogany Creek rights combined to cover 470 acres. 431 of those acres were also covered by groundwater rights 22-14144 and 22-14145. The 39 acre discrepancy was located in the SESW of Section 7, Township 4 North, Range 45 East, which were the acres covered by groundwater right 22-7479.

Effects Resulting from Transfer 81789

At the time of transfer submittal, the water rights' combined limit conditions did not note that the 470 acre combined place of use for rights 22-14144, 22-14145, 22-14146, 22-14147, and 22-14148 also included 22-7479's place of use. Therefore, the applicant proposed a place of use assuming that 22-7479 was a standalone right. That proposal thus yielded a place of use 39 acres above what the water rights actually covered.

Transfer 81789 created a combined place of use limit that integrated the three groundwater rights, 22-7479, 22-14144, and 22-14145, with the Mahogany Creek rights on the 470 acres covered by the Mahogany Creek rights at the transfer's submittal.

COMBINED RATE LIMIT MEMORANDUM

Combined Rate Limits from the Well in SESENE of Section 12 T04N R44E Prior to Transfer 81789

At the time of Transfer 81789's submittal, the well contained one licensed right, as well as a base right and an enlargement right that were both split as part of a 2015 ownership change*. Prior to the ownership split, when taken together the three rights should have combined for 3.6 cfs.

The licensed right is numbered 22-7479, the decreed base right is numbered 22-2278, and the enlargement right is numbered 22-11645.

Before the 2015 ownership split, the rights contained the following combined rate limit conditions:

- 22-2278: decreed for 3.6 cfs with no combined rate limit.
- 22-7479: 3.6 cfs when combined with 22-2278.
- 22-11645: 3.6 cfs when combined with 22-2278.

Given their independent and explicit limits when combined with 22-2278, rights 22-7479 and 22-11645 should each have contained a combined limit of 3.6 cfs that included all three rights. The additional condition should have read:

- Rights 22-2278, 22-7479, and 22-11645 when combined shall not exceed a total diversion rate of 3.6 cfs.

*Licensed right 22-7479; base right 22-2278 and split portion 22-14144; enlargement right 22-11645 and split portion 22-14145.

Basin	Sequence	Suffix	Priority Date	Diversion Rate	Current Owner	Total Acres
22	162	A	5/3/1889	0.100	COLEMAN, CHAD; COLEMAN, TIFFANY	10.3
22	162	B	5/3/1889	0.700	BATES, STEVEN L	75.0
22	14138		5/3/1889	2.000	SUNRAIN VARIETIES LLC	216.7
22	139		6/1/1889	0.010	BUXTON, JAY DELL	19.0
22	14146		6/1/1889	0.190	SUNRAIN VARIETIES LLC	470.0
22	256	A	6/1/1890	1.000	SUNRAIN VARIETIES LLC	49.0
22	256	B	6/1/1890	0.090	COLEMAN, CHAD; COLEMAN, TIFFANY	10.3
22	14139		6/1/1890	1.810	SUNRAIN VARIETIES LLC	216.7
22	140		7/1/1890	0.120	BUXTON, JAY DELL; BUXTON, JUDY	19.0
22	14147		7/1/1890	2.880	SUNRAIN VARIETIES LLC	470.0
22	13233		6/1/1893	0.720	HILL, EDWIN C; HILL, TONI JEAN	126.0
22	13234		6/1/1895	0.080	HILL, LEXIE G; HILL, THOMAS E	14.4
22	13653		6/1/1895	0.080	WOOD, LEORA	5.0
22	14065		6/1/1895	0.220	WOOD, JASON R	13.1
22	14066		6/1/1895	0.020	YOUNG, JULIE; YOUNG, RICK	0.9
22	14069		6/1/1895	2.070	ELMA WOOD FAMILY TRUST	119.8
22	14070		6/1/1895	0.010	YOUNG, JULIE; YOUNG, RICK	0.6
22	13226		6/1/1896	1.600	HILL, EDWIN C; HILL, TONI JEAN	77.0
22	13227		6/1/1896	0.800	HILL, LEXIE G; HILL, THOMAS E	38.0
22	13228		6/1/1896	0.800	THOMAS E HILL FAMILY LTD PARTNERSHIP	39.0
22	387	A	6/1/1899	0.800	SUNRAIN VARIETIES LLC	30.0
22	387	B	6/1/1899	2.400	DUSTIN, MONROE	120.0
22	151	B	5/26/1900	1.450	HAROLD T GAILEY FAMILY LTD PARTNERSHIP	149.0
22	197	A	5/26/1900	1.070	HAROLD T GAILEY FAMILY LTD PARTNERSHIP	149.0
22	197	B	5/26/1900	1.060	CUSHMAN FAMILY TRUST	74.1
22	197	C	5/26/1900	0.130	JENKINS, AARON; JENKINS, TIFFANY	20.0
22	13603		5/26/1900	0.650	WILLIAM S GRAHAM REVOCABLE TRUST	71.0
22	13604		5/26/1900	0.470	WILLIAM S GRAHAM REVOCABLE TRUST	71.0
22	13616		5/26/1900	1.830	DUSTIN, BLAKE	114.1
22	14101		5/26/1900	0.140	ERREBO, JOHN; ERREBO, SUZANNA	20.0
22	2035		7/25/1908	0.800	BATES, GEORGE; BATES, SUSAN	37.0
22	13556		8/6/1909	0.360	J T INC	18.0
22	2048	B	3/18/1910	0.370	EDWARDS, MARJORIE; EDWARDS, STANLEY	18.5
22	2048	D	3/18/1910	0.370	FERGUSON, AMANDA; FERGUSON, TOM	18.5
22	2048	E	3/18/1910	0.620	BEVAN, DEL RAY; BEVAN, RETA	31.0
22	2048	F	3/18/1910	0.400	MERRILL, JOHN DOUGLAS; MERRILL, PATRICIA A	20.0
22	2053	B	5/31/1910	0.800	SUNRAIN VARIETIES LLC	49.0
22	34	A	1/22/1916	1.600	SUNRAIN VARIETIES LLC	20.1
22	34	B	1/22/1916	1.600	SUNRAIN VARIETIES LLC	20.0
22	34	C	1/22/1916	1.900	SUNRAIN VARIETIES LLC	23.3
22	34	D	1/22/1916	1.200	FURNISS, BUD M	14.7
22	34	E	1/22/1916	1.200	FURNISS, VERL	15.0
22	35		1/22/1916	5.800	FURNISS, OREN C	145.0
22	38		1/22/1916	0.270	BATES, STEVEN L	12.0
22	39		1/22/1916	1.500	EGBERT, JAMES	75.0
22	13222		1/22/1916	0.030	MAHOGANY CREEK ENTERPRISES LLC	1.0
22	13223		1/22/1916	0.910	CUSHMAN FAMILY TRUST	30.2
22	13229		1/22/1916	1.420	HILL, EDWIN C; HILL, TONI JEAN	126.0
22	13230		1/22/1916	0.180	HILL, LEXIE G; HILL, THOMAS E	14.4
22	13241		1/22/1916	1.600	HILL, EDWIN C; HILL, TONI JEAN	77.0
22	13242		1/22/1916	0.800	HILL, LEXIE G; HILL, THOMAS E	38.0
22	13243		1/22/1916	0.800	THOMAS E HILL FAMILY LTD PARTNERSHIP	39.0
22	13650		1/22/1916	0.110	WOOD, LEORA	5.0
22	14063		1/22/1916	0.300	WOOD, JASON R	13.1
22	14064		1/22/1916	0.020	YOUNG, JULIE; YOUNG, RICK	0.9
22	14067		1/22/1916	2.760	ELMA WOOD FAMILY TRUST	119.8
22	14068		1/22/1916	0.010	YOUNG, JULIE; YOUNG, RICK	0.6
22	14299		1/22/1916	0.660	CHERRY, KINDRA; CHERRY, RAYMOND	24.0
22	13513		6/1/1966	0.130	BUXTON, JAY DELL; BUXTON, JUDY	19.0
22	14148		6/1/1966	3.070	SUNRAIN VARIETIES LLC	470.0
22	13459		4/1/1970	1.200	HILL, THOMAS E	60.0
22	13662		4/1/1970	0.420	TARGEE CAPITAL PARTNERS LLC	21.0