

MEMORANDUM

Date: December 6, 2017
To: Transfer 81934
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

Application proposes to change the place of use for rights 34-14420 and 34-14421. Both rights are ground water rights. Point of diversion, which a ground water well located on a neighboring property, will not change.

Authority to File:

Application was signed by James Landon and Vera Pinky Landon. The Jim & Pinky Landon Trust was the owner of record for water right 34-14420 at the time the transfer was filed. Applicants provided a quitclaim deed conveying water right 34-14420 from the trust to James Landon and Vera Pinky Landon. Water right 34-14421 is already in the name of James Landon and Vera Pinky Landon.

The post-transfer place of use is on two separate parcels, one owned by the James Landon Revocable Living Trust, and the other by James Landon and Vera Pinky Landon. A "Contract of Agreement" submitted with the transfer allows the two water rights to be used on the two parcels of land.

Water Right Validity:

The water right is valid for transfer. Applicants admit that the water right was not used for a period of more than five years since the partial decree was issued in the SRBA. Applicants assert that they did not have access to the point of diversion prior to the 2017 irrigation season due to ownership issues. Evidence available to the department substantiates their claim.

The rights were decreed in 2001 to Cleon and Theresa Landon. In May of 2006, Theresa Landon sold the point of diversion and a portion of the place of use. The property was then sold to Blue Spruce Ranch, on July 18, 2006.

According to Custer County taxlot data, Blue Spruce Ranch owns the point of diversion. The applicants contend that they made a verbal agreement with Blue Spruce Ranch allowing them to access to the point of diversion at the start of the 2017 irrigation season.

Lack of legal access to the original point of diversion because of a property split is a circumstance beyond the control of the water user and a valid defense to forfeiture, in accordance with Idaho Code 42-223 (6).

It is unclear whether resumption of a use is a valid argument in a fully appropriated basin which, in this case, has been subject to a moratorium since August 7, 1990.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The watermaster for Water District 34 was notified of the application and did not comment.

Enlargement of Use:

No enlargement of use will occur as a result of this transfer. Rate, volume, nor irrigated acres are authorized to increase.

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.