

MEMORANDUM

Date: January 31, 2018
To: Transfer 82005
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This is one of three transfers approved simultaneously. Together, the three correct the place of use and point of diversion for and reallocate the authorized diversion rate among the child rights of originally decreed rights 11-924 and 11-929 ("Transtrum rights"). The two other transfers are numbered 81987 and 82010.

Authority to File:

The applicant, Michael McMillan, has the authority to file. According to deeds provided by McMillan and a 2017 Water Right Allocation Agreement, McMillan owns a portion of water rights 11-924 and 11-929. McMillan owns the property at the proposed place of use according to Bear Lake County taxlot data. The ownership of the two water rights considered in this transfer were updated as part of the transfer.

Water Right Validity:

The water rights are valid for transfer. They were decreed in 1920. Post-decree evidence available to the Department indicates consistent use of the rights. McMillan's proposed place of use is between the Nuffer Ditch and the Bear River.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised and protested by Pacificorp. Pacificorp withdrew its protest without conditions. The Watermaster for Water District 11 was notified of the transfer and did not oppose its approval.

Enlargement of Use:

No enlargement of use will result from this transfer's approval. The place of use for water rights 11-924 and 11-929 described in the 1920 decree contained obvious errors. Some quarter-quarters were listed twice, some quarter-quarters were on dry hillsides and some were identified in the wrong range. In addition, there were quarter-quarters missing in the middle of irrigated pastures that were clearly irrigated from the Nuffer Ditch. This transfer, in combination with Transfers 81987 and 82010 are meant to correct the place of use to match the historically irrigated acres.

In 1949, the Transtrum ranch was split in half, but the Nuffer Ditch water rights were split disproportionate to the acres. One parcel, which had half of the irrigated acres was deeded 80 percent of the total rate. This led to very odd water rights. When the department completed initial splits of the rights, it followed the terms of the 1949 deed.

The 2017 Water Right Allocation Agreement was intended to reallocate the authorized rate, to bring the split portions of the water right closer to the decreed rate per acre. Private Capital Group, Bill Robison, Mike McMillan and Demar Romrell, the current owners of the pieces of the original water rights signed the agreement. The elements of the water rights will be updated through the transfer approvals. All of the rights are still within the limits set in the original decree. As part of the 2017 Agreement, water rights 11-7627 and 11-7629 were eliminated. These rights were made inactive at the time of this transfer's approval.

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.