

MEMORANDUM

Date: January 5, 2018
To: Transfer 82028
From: Michael Holliday
Re: Review & Evaluation of Sufficiency of Information

The purpose of this transfer is to change the point of diversion to a location on the applicants' property in order to have legal access to the diversion.

Authority to File:

IDWR records show the applicants as the current owners of right 29-4470, and Bannock County taxlot data shows the applicants as the owners of the proposed point of diversion and place of use.

Water Right Validity:

Right 29-4470 was decreed in the SRBA in 2004. The right was later included in transfer 77659, which was approved in 2012. Aerial photography from 2009 and 2011 shows evidence of growing vegetation, but aerial photos from 2013 and 2015 show little or no evidence of irrigation. The applicants acquired the water right in 2016. They said they had no knowledge of water use on the property since 2012, except for their limited watering in 2017. The application included photos taken in 2017 showing irrigation taking place on a small portion of the place of use. However, the applicants indicated that they were not able to irrigate from their currently authorized point of diversion because they did not have legal access. Though there is little evidence of irrigation since the approval of transfer 77659, the applicants have been working diligently towards the use of the water right, and it appears that the applicants' nonuse of water was due to circumstances over which they had no control. This is a valid defense to forfeiture according to Idaho Code 42-223. It should be noted that this is a junior priority right that may not have been deliverable in some years and will likely be cut early in the season most years due to the presence of downstream senior water rights.

Injury to Other Water Rights:

The proposed point of diversion is only about 100 feet downstream from the current point of diversion. There are no points of diversion on Ellis Creek between the current and proposed points of diversion. The Water District 29H Watermaster reviewed the application and did not oppose its approval. There is no evidence that the proposed change will reduce the quantity of water available to other water rights. The transfer application was advertised and no protests were filed.

Enlargement of Use:

The proposed change will not result in enlargement because neither rate nor irrigated acreage will increase as a result of the transfer.

Local Public Interest:

No issues identified.

Beneficial Use / Conservation of Water Resources:

No issues identified.

Effect on Economy the Local Area:

No issues identified.

Effect on Agricultural Base of the Local Area:

No issues identified.

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.