

MEMORANDUM

Date: August 23, 2016
To: Transfer 81026
From: Blake Jordan
Re: Review & Evaluation of Sufficiency of Information

James & Kathy Allen
208-646-2218

This transfer proposes to change the point of diversion for water right 13-7940. The proposed point of diversion is a spring located on property owned by James and Kathy Allen. Applicants (Roberts) contends the spring has always been the correct point of diversion for water right 13-7940. There is no spring located on the Roberts property.

Application for Permit 13-7940 was filed in 2015. The applicant, Margaret Gessel, claimed the spring was on her property. Because there were no apparent easement issues, the Department issued the permit. In May 2016 the Department completed an in-office field exam for water right 13-7940. The examiner assumed the spring was at the location described in the original application (SENESEW of Section 12, T16S, R40E). Department staff have since discovered that the spring source is actually located on the neighboring property, owned by Allen (NESESEW, Section 12, T16S, R40E). Based on a concern that Application 13-7940 was filed with an intent to deceive, the Department required Roberts to demonstrate legal access to the spring before approving this transfer.

Roberts provided a copy of a Joint Use and Easement Agreement, allowing Roberts to access the spring and divert 1/2 of the spring flow.

Authority to File:

The applicants are the current owners of the water right per IDWR record. The point of diversion (spring box) is located on property owned by the James T & Kathy E Allen Revocable Trust. According to Mary Roberts (applicant) the spring box location under right 13-7940 was located within their fence line and put to beneficial use by her great grandfather in the late 1800's. However, a recent survey of the property found that the original fence line used to mark the property boundary is incorrect resulting in the spring box being located outside the property boundary line. In fear of losing the use of the spring box established by Mary Roberts great grandfather in the late 1800's, Mary Roberts mother, Margaret Gessel, filed application for permit 13-7940. It appears that Gessel knew the spring was on the Allen property when Application 13-7940 was filed.

Water Right Validity:

This water right was licensed in May, 2016. Forfeiture is not an issue.

Injury to Other Water Rights:

This water right is within WD 13A. The watermaster for WD 13A was notified but did not provide comment. This transfer was advertised and there are not protests.

Enlargement of Use:

No issues identified.

Local Public interest:

No issues identified.

Beneficial Use/Conservation of Water Resources:

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.