

MEMORANDUM

Date: November 2, 2016
To: Transfer 81090
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer changes the place of use and point of diversion for 33.0 acres of groundwater right 29-7159 and Garden Creek rights 29-393 and 29-394. At the new place of use, the rights will be stacked on 159.0 acres with rearranged groundwater rights 29-7221 and 29-13498. Garden Creek rights 29-367A, 29-421, and 29-11415 also cover the 159.0 place of use, as well as an additional 15 acres.

Authority to File:

The applicant, Idaho Water Company, LLC, has the authority to file.

According to department records, water rights 29-393, 29-394, and 29-7159 are owned by Scott Christensen.

An "Agreement for Purchase and Sale of Water Right," dated May 6, 2015, was submitted with the application in which Idaho Water Company bought 85 acres of right 29-7159 and "water appurtenant thereto" from Scott Christensen.

A second "Agreement for Purchase and Sale of Water Right," dated September 14, 2016, was submitted in which Ralph Wheatley purchased 33.0 acres of right 29-7159 and appurtenant water rights from Idaho Water Company.

Ralph Wheatley owns the property at the proposed place of use and groundwater point of diversion in Section 9, T10S R36E, according to Bannock County taxlot data.

Water rights 29-367A, 29-421, 29-11415, 29-7221, and 29-13498 are owned by Cecil and Norma Armstrong, according to the department's database. Cecil and Norma Armstrong signed the application. An ownership change will be submitted post-transfer which will place all of the rights, with the exception of the 15 acres of Garden Creek water in Section 10, in the name of Ralph Wheatley.

Water Right Validity:

The water rights are valid. They were all decreed in 2004. Review of post-decree aerial photography for rights 29-393, 29-394, and 29-7159, indicates consistent irrigation. Rights 29-367A, 29-421, 29-11415, 29-7221, and 29-13498 were in a FSA CRP program from 2009 through 2014.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer. The transfer was advertised in accordance with Statutes 42-203A(2) and (3), Idaho Code. No protests were received. The Watermaster for Water District 29B was notified of the transfer and opposed it for three reasons which are addressed below.

The first reason is that the split portion of Garden Creek rights 29-393 and 29-394 are "not deliverable at the proposed point of diversion." A telephone conversation with the Watermaster following his objection indicated that he meant that these rights are rarely in priority. However, for this written assessment it is assumed that the Watermaster was referring the capacity of the ditch to carry the water.

The point of diversion located in NENW of Section 7, T10S, R36E, is currently the point of diversion for a total of 16.9 cfs. Adding the 0.39 cfs from the split portion of rights 29-393 and 29-394 therefore adds only a negligible amount of water for the ditch's size.

The point of diversion in the NWNENE of Section 9, T10S, R36E, is a pump owned by Cecil Armstrong, signatory on the application.

The Watermaster also objected on the grounds that a 1906 Court Order prohibited the movement of freshet rights from the ground upon which they were decreed. The partial decree of rights 29-393 and 29-394 made no mention of this Order. Further research failed to turn up such an Order. The Order was requested from the Watermaster, who could not provide it.

The Watermaster's third objection was concern over water being removed from Cecil Armstrong's land. Cecil Armstrong signed an amended transfer application, expressly stating that groundwater would be moved off his 15 acres in the NWNW of Section 10, T10S, R36E. Garden Creek water rights will remain on his land.

No water will need to be left in the original Garden Creek point of diversion to mitigate for conveyance losses. The amount of water being removed, 0.39 cfs, is a negligible amount of the ditch's decreed 14.025 cfs. Further, per the annual Watermaster reports on file, "Water was divided equal to laterals until stream flow reduced to 200 miners inches. Then Old Ditch Co rotated turns with shareholders." This statement indicates that Garden Creek's ditches received the same amount of water regardless of the amount of water decreed to the diversion point.

Enlargement of Use:

No enlargement of use will result from this transfer.

The acres covered by the groundwater rights and the split portions of rights 29-393 and 29-394 will be reduced to 159 acres from a pre-transfer combined limit of 173 acres.

This transfer does not authorize any additional rate, irrigated acres, or volume.

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.