

MEMORANDUM

Date: September 18, 2015
To: Transfer 80347
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the POD and POU for a 3-acre portion of water rights 29-14135 and 29-14136. The 3-acre portion will be moved approximately one mile to the north. Water right 29-14135 lists Robbers Roost Creek (tributary to the Portneuf River) as the source. Water right 29-14136 lists the Portneuf River as the source. The new point of diversion will be from the Portneuf River, downstream of the existing Portneuf River POD and downstream of the inflow from Robbers Roost Creek.

Water right 29-14135 (RR Creek) includes the following condition: "Rights 29-260, 29-14135 and 29-261 rotate the use of all of the waters of Robbers Roost Creek as 29-260, 29-14135 (2.5 days); 29-261 (5 days). As decreed 1911, Dist. Judge A. Budge, and 1982 Agreement."

Through this transfer, water rights 29-14135 and 29-14136 were split. The portions of the rights associated with this transfer are as follows:

29-14162 (RR Cr.)	0.06 cfs	3.0 acres
29-14163 (Port Riv)	0.045 cfs	2.3 acres
Combined limits	0.06 cfs	3.0 acres

Authority to File:

The applicant, Greg Smedley, has the authority to file. Greg Smedley and Jamie Smedley are the owner of the water rights. They both signed the application.

Ralph Onstine, the owner of some of the land from which the right will be removed, has reviewed the transfer and has no objections according to a letter submitted with the application. He also was in the office with Mr. Smedley when the transfer application was completed.

The applicant owns the new place of use. Virginia Taylor owns the land at the new POD. The applicant provided documentation signed by Virginia Taylor allowing him to access the land.

Water Right Validity:

The water rights are valid. They were decreed in 2004. Review of post-decree aerial photography indicates consistent irrigation of the POU.

Injury to Other Water Rights:

The transfer was advertised and no protests were received. The watermaster of water district 29 D was notified of the transfer and did not oppose its approval.

There are two other irrigation water users on Robbers Roost Creek, Mr. Frank Hough, owner of right 29-260, and Dr. Doug Norman, owner of right 29-261. Because water is being transferred out of Robbers Roost Creek and because of the rotation condition (described above), we decided to contact the other users on the creek to understand how the changes might impact their water use.

I spoke with Dr. Norman on the afternoon of 10/27/2015. Dr. Norman had no objections to Greg Smedley's transfer as long as it did not affect his 2/3 share of Robber's Roost Creek. Dr. Norman said that the users

on Robbers Roost are not currently applying any sort of rotation. Rather, the creek is split 2/3 to Normand and 1/3 to Hough/Smedley. However, Norman wanted the rotation language kept on the water rights to avoid future disputes. The rotation agreement is the product of a court ruling that resulted from a "drawn-out" dispute by previous Robbers Roost users.

I spoke with Frank Hough on the afternoon of 10/28/2015. Frank Hough and Greg Smedley share the remaining 1/3 share of Robbers Roost.

Mr. Hough's right, 29-260, is for 0.55 cfs. Greg Smedley's right, 29-14135, is for 0.12 cfs. Mr. Hough then controls ~82% of the 1/3 share of the creek. Transfer 80347 proposes to move 0.06 cfs of Smedley's rights downstream for use at the proposed POD. This equates to only 3% of the total flow in the creek.

Mr. Hough argued that such a small amount of water wouldn't make it from the existing diversion structure to the Portneuf River in mid summer, even if the full 0.06 cfs were available at the existing headgate. Mr. Hough claimed that about 3% of the total flow of the creek already leaks past the diversion structure and sinks in the creek channel within 100 yards."

Mr. Hough called back on 10/28/2015 and informed me that at least 0.06 cfs springs up in the lower portion of Robbers Roost Creek, just before the confluence with the Portneuf during the entirety of the irrigation season. He hopes that Mr. Smedley can get credit for the water springing up, eliminating the need to bypass any water at the existing headgate on Robbers Roost Creek. Mr. Hough also opposed the installation of a weir in the area of the headgate because it would be "too messy to regulate" due to daily water fluctuations.

In a conversation with Smedley on 10/28/2015, he stated that it is unlikely that he will ever need more than the 0.045 cfs authorized under the Portneuf River right. In other words, the question of connectivity and bypass on Robbers Roost Creek is moot. We will add a condition to the Robbers Roost right indicating that in the event the right is needed, Smedley may be required to install measuring devices to demonstrate that sufficient water is reaching the Portneuf River.

Enlargement of Use:

No enlargement of use will occur from this transfer's approval. Neither rate nor irrigated acres are authorized to increase.

The rights involved in this transfer were split during a 2014 ownership change. At the time of transfer submittal, I discovered that water right 29-14135 had combined limits that were not updated correctly during the ownership change. I have made the needed corrections as part of this transfer.

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.