

MEMORANDUM

Date: December 19, 2014
To: Transfer 79646
From: Blake Jordan
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the point of diversion and place of use for a 1-acre portion of water right 25-14364. The applicant, Kent Merrill, has entered into a purchase/sale agreement with Nest Egg Investments, LLC for the 1-acre portion. Merrill seeks to transfer one acre of the water right to property owned by Nest Egg. The 1-acre portion of water right 25-14364 will be used for irrigation purposes at a green house nursery. A new well will be drilled.

As a companion to this transfer application, Nest Egg filed Application for Permit 25-14419, seeking a domestic and irrigation water right for the same nursery mentioned above. Application 25-14419 proposes a domestic use for the nursery office and an irrigation use to provide additional diversion rate for irrigation to satisfy peak demand at the nursery. The application states that irrigation will occur at high diversion rates for short amounts of time. The application also states that the irrigation use will be for rate only and no additional volume will be developed beyond that which is already authorized under the 1-acre portion of water right 25-14364 (4.0 acre-feet).

Authority to File:

Merrill is the current owner of the 1-acre portion of water right 25-14364 per gift deeds. Merrill provided a purchase/sale agreement which authorizes him to move the 1-acre portion of the water right onto property owned by Nest Egg. The 1-acre portion of water right 25-14364 will be conveyed from Merrill to Nest Egg upon approval of this transfer.

Water Right Validity:

This water right was licensed in 1997. An extension of time to avoid forfeiture was granted for this right. The extension of time to avoid forfeiture expires in June, 2016. Forfeiture is not an issue.

Injury to Other Water Rights:

This water right is within the ESPA and within WD 120. ESPA analysis indicated that there are no impacts greater than 2.0 acre-feet/trimester to the Snake River reaches. This transfer was advertised and there are no protests. Water District 120 was notified of the transfer and permit applications, but did not provide comment.

Enlargement of Use:

The proposed transfer, by itself, does not result in an enlargement of water use. However, Application for Permit 25-14419 filed by Nest Egg raises concerns about enlargement of use. The place of use described in Application 25-14419 (the proposed nursery) is located in the trust water area of the Eastern Snake Plain Aquifer. There is currently a moratorium on processing or approving any new consumptive uses in the trust water area. (1993 Moratorium) The only types of applications that may be processed in the moratorium area are for domestic purposes, for non-consumptive water rights, or for uses that are fully mitigated.

In this case, the irrigation element of Application 25-14419 does not qualify as a "domestic" use. Further, Nest Egg is not asserting that the irrigation element qualifies as a non-consumptive water right. Therefore, the only way Application 25-14419 may be processed or approved is if the proposed water use is fully mitigated. According to the application, mitigation will occur by relying on the 1-acre portion of water right

25-14364 to cover the annual volume of irrigation water diverted at the nursery.

To prevent enlargement under existing irrigation right 25-14364 and to prevent an unmitigated consumptive use element of Permit 25-14419, the two rights in combination must be limited to the total annual volume diverted under existing right 25-14364. According to the Department's Water Management Information System (WIMIS), the annual historic volume pumped from the point of diversion (WMIS # 200402) authorized under right 25-14364 is approximately 2.7 acre-feet per acre. To assure that no additional volume will be pumped, permit 25-14419 and the 1-acre portion of right 25-14364 when combined will be limited to 2.7 acre-feet.

It is important to note that the Department's WIMIS records for the point of diversion authorized under right 25-14364 (WMIS # 200402) shows that in some years the rate of diversion measured was in excess to what was authorized under the original water right 25-7603. As a result, the excess water pumped could not be recognized when determining the historic water pumped under the right.

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.