

MEMORANDUM

Date: May 21, 2014
To: Transfer 79327
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This application proposes to correct an error from the 1920 Bear River Decree, which placed 40 acres of right 13-684 in the SWSE instead of the NESE of T11S, R40E, Section 15. As evidence of the error, the applicant provided a chain of deeds linking himself to the owner listed in the 1920 Decree, Joseph Swensen. The deeds demonstrate that Mr. Swensen owned land in the NESE, as opposed to the SWSE, of the above Section.

Right 13-7877 is the portion of decreed right 13-684 owned by the transfer applicant, Joseph Swensen. Right 13-7877 was created as a split from right 13-684 as part of a 2012 ownership change filed on the original right.

This transfer will move the 40 erroneously decreed acres of right 13-684 from the SWSE and add them to right 13-7877's POU in the NESE of the above Section. Upon transfer approval, rights 13-7877 and the remainder of right 13-684 will together reflect the correct place of use for decreed right 13-684.

The 1920 Decree also contained an error in the POD description of right 13-684, placing it in the SW 1/4 of Section 21, T10S, R40E. A review of that quarter section demonstrates that it is upstream of Saltpetre Hollow Creek. This transfer corrects that error, defining right 13-684's current and historical POD in the SWSW of Section 10, T11S, R40E.

Authority to File:

The applicant, Joseph Swensen, has the authority to file as the owner of the water right 13-7877. A death certificate was supplied demonstrating that the water right's other owner, Lyle Swensen, is deceased. The applicant is also the owner of the lands onto which the right is being transferred according to Caribou County taxlot data, updated 5/20/2014.

Water Right Validity:

The water right is valid in accordance with section 42-223(6), Idaho Code.

In a phone conversation, the applicant stated that Saltpetre Hollow Creek does not provide enough water to satisfy the two users on the creek. The applicant stated that the other water user is upstream and often takes a majority of the creek's water, not allowing the applicant enough water to irrigate his entire property. Diversion data is not available because the creek is not regulated by the Watermaster.

The 40 erroneously decreed acres in the SWSE are irrigated by right 13-682A and are covered by shares from Last Chance Canal Company.

Injury to Other Water Rights:

The Transfer proposes only to reflect the actual and historical use of the water for decreed right 13-684. It does not propose any physical changes. Therefore, no other water rights will be injured.

The transfer was advertised and was protested by Jorgensen Farms, the owner of the 40 acres onto which right 13-684 was erroneously decreed. The protest was withdrawn after a review of the deeds demonstrating that the original owner of the right only owned land in the N1/2 of the SE1/4 of the above Section.

The watermaster of water district 11 was notified of the transfer and did not comment.

Enlargement of Use:

No enlargement of use will occur as a result of this transfer. Rate, volume, nor irrigated acres will increase as a result of this transfer's approval.

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.