

MEMORANDUM

Date: September 4, 2014
To: Transfer 79427
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer is the first of two transfers which together propose to update water right 13-961 to reflect the current and historical use of the right. The ownership change in this transfer creates split right 13-7919. This transfer then defines the POU for right 13-7919, which is 5/12ths of the original water right. The second transfer is numbered 79441 and defines the POU for the remainder of right 13-961. The POD for both rights will remain unchanged at the historical POD (the head of Gentile Valley Canal).

Authority to File:

The applicant, David Barthlome, has the authority to file based on a probate document and deeds provided with the application, as well as Caribou County tax lot data.

The right as decreed was vague in its description of the POU for right 11-267 (renumbered to 13-961). However, a supplied probate document (Instrument No. 198029) clarifies the POU, finding specifically that J.T. Pond, one of the right's original decreed owners, owned all of the land in the NE 1/4 of Section 26, T11S, R40E, all but 1.4 acres of the NW 1/4 of the same section and all but 14.12 acres of the N 1/2 of the S 1/2 of the same Section, as well as Tax Lot #4 of Section 25, T11S, R40E (31 acres in the SWNW and 2.5 acres in the SENW) and the N 1/2 of the SW 1/4 of Section 25, T11S, R40E. The same probate document grants the above property in five equal parts to J. LeRoy Pond, L. Austin Pond, Alma L. Pond, Millie Pond Robert, and Lucile Pond Bartlome.

A quit claim deed supplied by the applicant (Instrument No. 197649) then deeds the above described property from the five named heirs to David Barthlome, the applicant. The applicant has also been assessed for the delivery of 5.0 cfs of the water right by Gentile Valley Irrigation Company since 1938, when the applicant bought the property.

On July 21, 2014, direct notice of the transfer was provided to all of the current property owners under the original decreed POU including Kimball Evans, Blair and Sherri Mathews, Keith O. Brown Trust, ZBES 1004130 LLC, Danny Forsgren, Jack LeRoy Forsgren, and Ken Torgesen. No objections were received from these property owners.

Justin Pond, of 35 Lois Lane in Horseshoe Bend, ID, was also listed as an owner of the water right at the time of transfer. It was unclear why Mr. Pond was included as a water right owner. However, direct notice of the proposed changes were sent to the address listed for Mr. Pond on the water right, and was returned undeliverable as addressed.

The name of the owner of right 13-7919 was therefore changed to the applicant, David Barthlome, based on deeds clarifying the original POU, irrigation company assessments, and the lack of responses to direct notices sent to other property owners. David Barthlome owns the land on which right 13-7919 will reside, according to Caribou County tax lot data, updated 5/20/2014.

Water Right Validity:

The water right is valid. According to the Applicant, 5.00 cfs of water right 13-961 has been used at the proposed POU for nearly 75 years. Aerial photography indicates consistent irrigation at the proposed POU.

Injury to Other Water Rights:

No issues identified. The POD will remain unchanged, and the transfer authorizes no additional rate of diversion. The transfer was advertised and no protests were received. The watermaster of Water District 11 was notified of the proposed changes and did not respond.

Enlargement of Use:

No issues identified. This transfer and transfer 79441 together seek to reduce the right's irrigated acres from 560 to 461. This change results in a total supply of 0.026 cfs/acre, which is consistent with other late-priority, meadow rights identified in the Bear River decree. Evidence also suggests that water has been delivered this way for tens of years.

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.