

MEMORANDUM

Date: March 4, 2014
To: Transfer 79080
From: Kerrie Mathews
Re: Transfer Evaluation

Transfer No. 79080 for water rights 34-13738, 34-14373, 34-14374, 34-14375 and 34-14394 proposes to change the place of use of all of the water rights and change the points of diversions for water rights 34-13738, 34-14373, 34-14374 and 34-14375.

Water right 34-14394 is currently located at the proposed place of use and authorizes the irrigation of 90 acres. The applicant has purchase and sale agreements for the four other water rights listed in the transfer application. The transfer proposes to move these four water rights to overlap with water right 34-14394 and create a 109-acre combined place of use. The rights will all describe the same point of diversion. Once the transfer is approved, the applicant will finalize the conveyance of the water rights and complete an ownership change.

Authority to file:

Water right 34-14394 is currently in the name of the applicant, Gary Rogers. Water right 34-13738 is currently in the name of William and Kimberly Forbush. Water right 34-14373 is currently in the name of Henry Adema, James Ippolito and Evelyn Ippolito. Water right 34-14374 is currently in the name of James and Evelyn Ippolito. Water right 34-14375 is currently in the name of Henry Adema.

The current place of use for each of these rights is owned by the individual water right owners. The transfer application included agreements from each of the water rights owners to sell the water right to Gary Rogers. Once the transfer application has been approved, the conveyance will be finalized.

There is a one-acre parcel at the proposed place of use which is not owned by Mr. Rogers (located in Lot 4 of the SWSW of Sec 16, Twn 06N, R26E). Mr. Rogers provided a sales agreement showing that the land will be purchased once the transfer is approved. The applicant owns the balance of the proposed place of use. There is no security interest on any of the water rights.

Validity of the Water Right:

Water rights 34-13738, 34-14373, 34-14374 and 34-14375 were decreed on July 10, 2002. Water right 34-14394 was decreed on February 6, 2002. Aerial photography of the current place of use for water rights 34-13738, 34-14373, 34-14374 and 34-14375 is vague. There is little evidence of irrigation occurring since 2002. In 2012, the Department approved Transfer 78145 (right 34-14373), Transfer 78146 (right 34-14374), and Transfer 78147 (right 34-14375). The applicants for those transfers provided affidavits stating that the place of use had been irrigated periodically since the decree date. Based on the affidavits of use and the vague aerial photos, the reviewing agent did not feel that there was clear and convincing evidence of forfeiture. Therefore, the transfers were approved.

Because the Department allowed water rights 34-14373, 34-14374 and 34-14375 to be transferred in 2012, these rights will be considered valid for purposes of the proposed transfer. Water right 34-13738 is part of the same contiguous place of use and is identified in the same affidavits of irrigation. Although there is doubt as to whether any irrigation has taken place under these rights, the affidavits and aerial photos make it unlikely that the clear and convincing evidence standard could be met. Water rights 34-14373, 34-14374, 34-14375, and 34-13738 may be transferred. Water right 34-14394 was recently transferred to this new place of use. Aerial photography shows consistent use of this water right.

Injury to Other Water Rights:

No injury to other water rights was identified. An ESPA analysis was conducted and submitted with the application. The analysis was set up correctly and showed that no mitigation is required. The application was advertised, no protests were received. The water master for WD34 was notified of the transfer and did not oppose the transfer.

Local Public Interest:

No issues identified.

Beneficial Use / Conservation of Water Resources:

No issues identified.

Review of the application finds there is not clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this transfer application.