

MEMORANDUM

Date: September 25, 2013

To: Transfer
78365

From: Blake Jordan

Re: Transfer Approval 78365 (Formerly 77757)

On December 23, 2011, Tommy C. Waddoups LLC filed transfer 77757 proposing to change a point of diversion and adjust the place of use for water rights 34-784, 34-785 and 34-786. The transfer application also proposed to correct the source of water for one of the points of diversion listed on all three of the water rights. According to the applicant the source of water for the point of diversion located in the NWSW of Section 36, 05N, 24E should be Cherry Creek. The source was identified as Antelope Creek in the SRBA partial decree.

Transfer 77757 was approved on August 23, 2012 changing a point of diversion and place of use for the three water rights as requested by the applicant. The transfer approval did not change the source for the point of diversion located in the NWSW of Section 36, 05N, 24E. Idaho Code 42-222 does not give the Department the power to change the source of a water right in the transfer process.

On September 6, 2012, the applicant's attorney, Rob Harris filed a Petition for Reconsideration requesting the department withdraw the transfer approval. He stated that Mr. Waddoups would go back to the SRBA and attempt to set aside the partial decrees to correct the source name. On September 7, 2012, the department withdrew Transfer Approval 77757.

On May 23, 2013, Mr. Waddoups came into the Eastern Regional Office and met with James Cefalo to discuss various water rights; including those involved in Transfer 77757. During the meeting, the Department gained a better understanding of the underlying problem. Antelope Creek and Cherry Creek are names for the same water source. Cherry Creek is simply a split channel of Antelope Creek. When the Department reviewed the SRBA claims, it listed Antelope Creek as the source, consistent with the USGS Topo map. The split channel is known locally as Cherry Creek. The Department proposed approving the transfers and adding a condition noting the local name for the split channel.

As a result, the applicant now proposes that transfer 77757 be re-approved and a condition of approval be added to the water rights that says the source of water for the point of diversion located in the NWSW of Section 36, 05N, 24E is also known as Cherry Creek. Rob Harris who is the applicant's attorney provided a letter requesting the department to approve transfer 77757. The motion to set aside the partial decree for water rights 34-784, 34-785 and 34-786 was never filed with the SRBA court.

Since the original approval, a new transfer database system has been implemented. As a result, transfer 77757 was renumbered into 78365.