

## MEMORANDUM

**Date:** November 01, 2012  
**To:** Transfer 78170  
**From:** bjordan  
**Re:** Transfer Evaluation

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This transfer proposes to change the place of use for water right 35-2219C. This transfer also proposes to change the point of diversion and place of use for a portion of water right 35-13586. The applicants are seeking to rearrange the place of use under water right 35-2219C and bring in additional acres (15.2 acres) from water right 35-13586 to cover land currently being irrigated without a water right as well as additional land proposed to be irrigated. This transfer was initially filed in response to a notice of violation issued on March 16, 2011 (instead of 09/30/2009 as indicated on application). The applicants will move 15.2 acres from water right 35-13586 and combine it with water right 35-2219C to create a 159.2 acre place of use. The applicants will utilize an existing diversion recorded under water right 35-2219C.

**Authority to File:**

Snake River Livestock Co. is the current owner of water right 35-2219C per IDWR record. Snake River Livestock Co. is the new owner of water right 35-13586 per deeds. According to IDWR records, Keith Keller is the current owner of water right 35-13586. Keith E. Keller is now deceased and, the property under water right 35-13586 has changed ownership. The property from which the 15.2 acres are being transferred is owned by Keith L and Teresa L Keller, or Kendall E. and Stephanie A Keller. A chain of title was submitted with the transfer application showing Snake River Livestock Company is the new owner of 15.2 acres from water right 35-13586.

The proposed place of use overlaps land owned by The State of Idaho Department of Lands, Snake River Livestock Co. (applicant), and Roscoe and Janalyn Lake (applicant). Snake River Livestock Co. is authorized to irrigate land owned by the State of Idaho per lease agreement. Roscoe Lake who is a share holder in the Snake River Livestock Co. and Janalyn (Roscoe's spouse) owns land under the proposed place of use. Both Roscoe and Janalyn Lake signed the application consenting to the proposed transfer. Dennis Lake who is the president of Snake River Livestock also signed the application.

**Validity:**

Water rights were decreed in 2002. 2009 and 2011 aerial photography shows approximately 144.0 acres associated with water right 35-2219C to be irrigated. Forfeiture is not an issue.

In October, 2006 Keith E. Keller filed transfer 73293 proposing to move a portion (7.0 acres) of water right 35-13448 (split by transfer 73293 into 35-13586 and 35-13587) to a different piece of property. The reason for moving the 7.0 acres was a result of a gravel pit being established. During the processing of transfer 73293 an issue with the validity of water right 35-13448 was raised. This water right carried a condition indicating that the use of it is combined with water from Peoples Canal and Irrigation Co. In response to the this issued raised by the department, Keith E. Keller (applicant) provided a letter indicating that their property has shares through the People Canal Company that was used when the land was first broken out of sagebrush and homesteaded. The canal shares were used to flood irrigate the Keller property up until the 1950s when a well was drilled a put into production. At that time the well was used 100 percent of the time. Keith E. Keller's letter also says that they still owned shares in the Peoples Canal Company. The department felt that the letter from Keith E. Keller

was sufficient enough to show water right 35-13448 was used as a primary water right. The water right agent processing the transfer indicated in his transfer memorandum that the land was irrigated in 2006 and forfeiture was not an issue. Transfer 73293 was approved in July, 2007.

After Keith E. Keller passed away, Kendall Keller (Keith E. Keller's son) took over the farm operation. According to Kendall Keller, around 2008 the farm started being solely irrigated with canal shares. Water right 35-13586 has not been used since then. 2006 aerial photography and 2007 land sat imagery shows irrigation on the 15.2 acres. Forfeiture is not an issue.

**Injury to Other Water Rights:**

Inside the ESPA and within WD 120. An ESPA analysis was provided and no additional mitigation is required. This transfer was advertised and there were no protests. Water master does not oppose the transfer.

**Enlargement of Use:**

Water right 35-13586 was used as a primary water right from the 1950s up until around 2008. Canal shares are now the only source of water used to irrigate the farm. The Keller farm will continue to be irrigated with canal shares. Since water right 35-13586 was historically used as a primary source of water on the Keller property, it can be transferred. Enlargement is not an issue.

**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 the criteria set forth in Section 42-222, Idaho Code.