

MEMORANDUM

Date: September 06, 2012
To: Transfer 76877
From: jcefalo
Re: Eval Memo

This transfer proposes to change the point of diversion and place of use for a water right on Cherry Creek, which is tributary to Marsh Creek. Water right 29-348B will be moved from the lower Cherry Creek diversion to the upper Cherry Creek diversion and will be combined with 29-348G to cover a 3/4 circle pivot (114 acre place of use).

Water right 29-348B was purchased by the Applicant from Carl Barnes in 2010. The right has historically been used on a 78-acre place of use in combination with rights 29-2268 and 29-11799 from Marsh Creek. Each of the rights carry a condition stating that the three rights in combination are limited to the irrigation of 78 acres. The sale agreement from Barnes to Vaughan only included right 29-348B. Mr. Barnes retained ownership of the underlying property and rights 29-2268 and 29-11799. According to the applicant, 29-348B has actually been used at the proposed place of use for a number of years through private agreement.

Barnes water right 29-2268 from Marsh Creek carries a priority date of 1947 and authorizes the irrigation of 50 acres. Right 29-11799 is an enlargement of 29-2268. It carries a priority date of 1976 and, in combination with 29-2268, authorizes the irrigation of 78 acres. Because Cherry Creek is not as reliable of a source as Marsh Creek, right 29-348B is considered supplemental to the Marsh Creek rights.

Water right 29-348G in combination with 29-14002 authorizes the irrigation of 145 acres. 29-348G from Cherry Creek is limited to 80 acres. 29-14002 is an enlargement of 29-348G and authorizes the irrigation of the full 145 acres. 29-14002 was a late claim filed in the SRBA after 29-348G was partially decreed. Right 29-14002 is currently a recommended right in the SRBA, but has gone through the objection phase without protest. If this transfer is approved, no additional acres will be irrigated. Consistent with the transfer application, right 29-348G will only describe the 114 acres under the pivot. Right 29-14002 will cover the pivot and the remaining acres not under the pivot.

The Barnes Marsh Creek water rights, 29-2268 and 29-11799, were added to this transfer as associated water rights. The conditions for these rights were updated to remove remove the combined acre limit with 29-348B.

Authority to File:

Applicant is the owner of the right 29-348G pursuant to IDWR records and the owner of the proposed place of use pursuant to Bannock County taxlot records. Applicant provided a copy of the purchase agreement for 29-348B, conveying the water right from Carl Barnes to Michael Vaughan. Ownership of 29-348B will be updated as part of this transfer.

Water Right Validity:

2009 photography shows acres were irrigated. Forfeiture is not an issue.

Injury to Other Water Rights:

No active water district for Cherry Creek. Transfer was advertised and was protested by Von Bloxham

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and Geraldine McNee, water users on the lower Cherry Creek ditch. There are two main diversions on Cherry Creek. The water users on the lower diversion are Bloxham, McNee, Barnes, and Vaughan (under water right 29-348A). Vaughan also diverts out of the upper ditch to the proposed place of use. Barnes sold his entire water right, 29-348B, to Vaughan. Through this transfer, Vaughan was seeking to move the entire water right to the upper diversion.

Protestants were concerned that moving the entire water right to the upper diversion would increase their share of the ditch loss in the lower diversion and increase their portion of the ditch maintenance costs. Protestants agreed to withdraw their protests as long as Mr. Vaughan left 0.20 cfs of water right 29-348B in the lower ditch. The 0.20 cfs would be in addition to the 1.00 cfs already in the ditch under Vaughans right 29-348A. This makes it so that all of the remaining users in the lower ditch - Vaughan, McNee, and Bloxham - all have the exact same amount of water in the ditch, 1.20 cfs.

The place of use for 29-348B will be listed as the proposed 114 acre combined place of use. Both ditches are listed as points of diversion under 29-348B. A condition will be added to the right stating 0.20 cfs shall be left in the lower Cherry Creek ditch to cover historic ditch losses and to prevent injury to other water rights. Mr. Vaughan will only be allowed to divert 0.48 cfs under 29-348B through the upper Cherry Creek diversion.

Enlargement of Use:

There is no evidence of enlargement. Total irrigation under right 29-348B will still be limited to 34 acres. No new acres will be irrigated. This transfer is moving an overlap water right to a similar overlap position. Barnes will not be required to dry up 34 acres.

Local Public Interest:

No issues identified.

Beneficial Use / Conservation of Water Resources:

No issue 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 application.