

MEMORANDUM

Date: September 18, 2011
To: Transfer 77356
From: kmathews
Re: Transfer Evaluation

This transfer proposes to change the water right owner, update the place of use and point of diversion and change the nature of use on a portion of water right 13-57. In 1923, the property, along with the water right on Stockton Creek, was sold to the Merrill Family. In 1995, the applicant began diverting a portion of the water into a storage reservoir to facilitate better irrigation. Due to the design of this reservoir, the applicant is unable to completely drain the pond at the end of the irrigation season. The applicant wishes to store water in the pond year-round for aesthetic purposes. To mitigate for the pond, the applicant will dry up 6.6 acres of irrigated land.

Authority to file:

The water right is currently in the name of Richard Hadley. Based on a warranty deed recorded with Bonneville County on December 7, 1923 the property and the water right from Stockton Creek were sold to Edgar Lionel Merrill. The property and the water right have passed down through the Merrill generations, supporting the ownership change. According to Bonneville County tax-lot data (updated March 4, 2010), Merrill Ranch Partnership LLC, is the current owner of the proposed place of use. According to the Idaho Business Entity Search, Glen T Merrill is the manager of the business.

The POD change is an effort to define the historical point of diversion, which was not identified in the Stockton Creek decree. The POD is located on property owned by Abbott Ranches INC one half INT. The water right has historically been diverted from this headgate; the Merrill family is claiming a prescriptive easement for access.

Mr. Merrill uses water rights from Cottonwood Creek (13-885B, 13-886B, 13-887B, and 13-889D) to irrigate a large portion of the overall property. The Cottonwood Creek rights and 13-57 overlap over a portion of the property, but not entirely. The Cottonwood Creek rights have gone through four transfers since they were decreed in 1920 (transfers 475, 863, 864, and 3578). The original rights appear to be limited to the irrigation of 624 acres, or possibly 785 acres. The various transfers seem to have vastly enlarged the number of acres irrigated under the rights. It is very difficult to know, without an adjudication, how many acres may be irrigated under the Cottonwood Creek rights. For this reason, we have chosen to avoid using any of the acres under the Cottonwood Creek rights for mitigation. Therefore the 6.6 acres to dry up were only taken from 13-57, from the non-overlap portion.

Validity of the Water Right:

The water was decreed in 1899. 2009 aerial photography shows the total acres authorized under the right have been irrigated at the Merrill Ranch. Forfeiture is not an issue. The 1899 decree indicates that water right 13-57, as with most of the rights on Stockton Creek, includes winter irrigation. A memo was prepared in 2011 and added to the water right file explaining the decree and the justification for year-round irrigation use of the water right.

Injury to Other Water Rights:

This transfer is defining the historical POU and POD, and use of this right. No injury issues identified.

M E M O R A N D U M

Enlargement of Use:
No issues identified.

Local Public Interest:
No issues identified.

Beneficial Use / Conservation of Water Resources:
No issues identified.

Public Notice Requirement:

This transfer application was originally submitted as an Application for Permit No 13-7505. The permit application was advertised in the Idaho State Journal on June 1 & 8, 1995 and was protested by PacifiCorp, Bear River Canal Company, Last Chance Canal Company, Bear Lake Watch, US Fish and Wildlife, and Bear River Water Users Association. A pre-hearing conference was held on December 9, 2010. Through informal negotiation, all protests were withdrawn. However, on further investigation it was determined that the Merrills property would be better served by completing a transfer of existing rights to cover the historical use, rather than pursuing a new appropriation of water. Application for Permit 13-7505 will be withdrawn. Because of the past advertisement and protests filed, it was determined there was no reason to advertise this transfer application. The protestants against 13-7505 were notified of the transfer application and were given an opportunity to renew their protests, if they opposed the transfer. The protestants were given until Sept. 6, 2011 to respond. Bear River Canal Company, Last Chance Canal Company, and PacifiCorp re-confirmed their withdrawals and consented to the transfer. No responses were received from the other protestants.

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.

Place of Use 13-885B

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13S	38E	11	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	200.0
13S	38E	13			40.0				40.0	40.0	40.0	40.0							200.0
13S	38E	14	40.0	40.0	40.0	40.0	40.0	28.0	13.0	40.0				23.0	40.0				344.0

Total Acres: 744

Place of Use 13-886B

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13S	38E	11	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	200.0
13S	38E	13			40.0				40.0	40.0	40.0	40.0							200.0
13S	38E	14	40.0	40.0	40.0	40.0	40.0	28.0	13.0	40.0				23.0	40.0				344.0

Total Acres: 744

Place of Use 13-887B

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13S	38E	11	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	200.0
13S	38E	13			40.0				40.0	40.0	40.0	40.0							200.0
13S	38E	14	40.0	40.0	40.0	40.0	40.0	28.0	13.0	40.0				23.0	40.0				344.0

Total Acres: 744

Place of Use 13-889D

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13S	38E	11	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	200.0
13S	38E	13			40.0				40.0	40.0	40.0	40.0							200.0
13S	38E	14	40.0	40.0	40.0	40.0	40.0	28.0	13.0	40.0				23.0	40.0				344.0

Total Acres: 744

Place of Use 13-57

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
13S	38E	14	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	175 of 200
					X			X	X	X						X			
								L3	L2										

Decree total 175 acres

* Not 100% overlapping 800's = 161 acres same place of use
57 = 175 acres same place of use

14 acre diff