

MEMORANDUM

Date: April 20, 2011
To: Transfer 72646
From: jcefalo
Re: Eval Memo

This transfer proposes to change the place of use for two water rights, 13-4062 and 13-4063. These water rights are statutory claims filed in 1977 by Lewiston City in the state of Utah for the use of two springs for municipal purposes. In 2005, Franklin City purchased the water rights from Lewiston City. Through this transfer, the city is seeking to change the place of use to the Franklin City municipal service area. Applicant provided a copy of the 2005 agreement conveying the water rights from Lewiston to Franklin.

Because the transfer involves statutory claims, the elements of the claims must be verified before the transfer can be approved. Water right 13-4062 claims a priority date of May 1915. Water right 13-4063 claims a priority date of March 31, 1915. The applicant provided various evidence supporting these priority dates, including a newspaper article, minutes from Lewiston and Franklin city meetings, and legal notices for water development bonds. The evidence has been scanned and added to the backfile for each water right. Collectively, the documents sufficiently support the priority dates claimed.

A field exam was conducted to verify the spring flows of Low Spring and Flat Canyon Spring. The two springs are collected into a common reservoir. The outflow of the collection reservoir was measured at 6.4 cfs. Spring flows decline throughout the summer. The system set-up matched the description provided in the transfer application. The city engineer stated that the line heading towards Lewiston will be severed and capped and water from the underground reservoir tank will be directed to the Franklin City filter plant.

Authority to File:

Franklin City is the current owner of water rights according to a November 2005 Agreement of Sale. In a discussion with other Bear River water users, we were notified that Utah law prevents municipalities from selling their water rights. We contacted the regional manager for the northern office of the Utah Division of Water, Will Atkin, and were told that the Utah Division was aware of the sale of water by Lewiston to Franklin and that the sale did not violate Utah law.

Water Right Validity:

Water rights 13-4062 and 13-4063 appear to be valid in all respects, including priority date, point of diversion, and flow rate. Franklin City has chosen to wait for this transfer to be approved before making the infrastructure changes required to transport water from the collection reservoir to the city's treatment facility. Forfeiture is not an issue.

Injury to Other Water Rights:

Water rights are tributary to Spring Creek. Spring Creek does not connect to the Bear River within the state of Idaho. POD is within the Cub River water district, 13A, but is not actively regulated by a watermaster. The 13A watermaster recently resigned and a new watermaster has not yet been hired. Therefore, no watermaster comments were requested. Because full amount of spring flows have been historically diverted by the City of Lewiston and carried across the state line, the change proposed by Franklin City will have no hydrologic impact to Spring Creek. Now that the water will be used in Idaho, unused flows may actually augment the water supplies in Idaho creeks and streams. Application will not be advertised.

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 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.