

MEMORANDUM

Date: October 26, 2010
To: Transfer 76804
From: bjordan
Re: Transfer Evaluation

This transfer proposes to change the point of diversion, add points of diversion and change the place of use for water rights 35-12915(irrigation), 35-13316(irrigation), 29-2459A (domestic/irrigation), 29-2459B (irrigation), 29-7386(irrigation), 29-11209(domestic/stockwater), 29-12181(domestic/stockwater), 29-13759(domestic) and 29-13760(domestic). Applicants have entered into a contract to purchase 20 acres of combined water rights 35-12915 and 35-13316 from Idaho Water Company and are seeking to change the point of diversion, add points of diversion and change the place of use to a PPU of 46.7 acres located on their property. The applicants also seek to add points of diversion and change the place of use for their existing water rights, which consist of irrigation, domestic and stockwater rights. The total number of acres authorized under the irrigation water rights is 41.1. The applicants will be using existing points of diversions.

Combining the domestic water rights into a PPU can result in an enlargement. This concern was discussed with the applicants attorney and it was decided that all domestic/stockwater rights would be removed from the transfer approval. Water right 29-2459A (domestic/irrigation) was pre-split into 29-13973(domestic) and 29-13974(irrigation) for the purpose of removing the domestic use from the transfer.

The applicants will not be required to identify the 41.1 acres to be irrigated within the 46.7 PPU.

The proposed PPU overlaps water right 29-2106A. Right 29-2106A authorizes 0.12 cfs to be diverted from Johnny creek for the irrigation of 6.0 acres. Right 29-2106A was added to this transfer as an associated water right. A combined use limit condition of 47.1 acres will be placed on these overlapping rights.

The period of use for these water rights will not change; though a change is requested on the application for water right 35-12915.

Four additional transfers (76778, 76805, 76806 and 76808) were also filed to provide irrigation water for individuals while offsetting the impacts to the ESPA reaches. The water rights used to offset the impacts are 35-12915 and 35-13316. Water right 35-12915 is an enlargement of right 35-13316. For simplicity of processing five transfers at one time, water rights 35-12915 and 35-13316 were pre-split into six pieces and assigned to a transfer:

Transfer 76778(near Idaho Falls); 35-14044(enlargement) and 35-14050(base)
Transfer 76804(near Pocatello); 35-14045(enlargement) and 35-14051(base)
Transfer 76805(near Aberdeen); 35-14046(enlargement) and 35-14052(base)
Transfer 76806(near Eden); 35-14047(enlargement) and 35-14053(Base)
Transfer 76808(near Ashton Reservoir); 35-14048(enlargement) and 35-14054(base)

Water Rights 35-14043(enlargement) and 35-14049(base) are the remaining portions of the pre-split water rights and will be assigned to transfer 76778 as associated water rights.

M E M O R A N D U M

This transfer will result in water rights 35-14045 and 35-14051 changing basins (29). The transfer will be first approved in the water right database and then water rights will be renumbered. The renumbered water rights will be reflected on the transfer approval document.

Authority to File:

The applicants are the current owner of water rights 29-2459B, 29-7386, and 29-13974 per IDWR record and warranty deeds. The applicants are also known as Oregon Trail Broadcasting. Applicants has entered into a purchase agreement with Idaho Water Company. Water rights 35-14045 and 35-14051 are currently in Idaho Water Company's name. After the transfer is approved, the applicant will file an ownership change. TJ Budge who is the applicants attorney signed the application. Ridgeway Holdings, LLC has a mortgage on portions of water rights 35-12915 and 35-13316. Ridgeway Holdings, LLC provided a notarized statement consenting to transfer.

Validity:

Water rights were decreed in 2002 and 2004. Water rights 35-14045 and 35-14051 are appurtenant to land that have been enrolled in a set aside program since September, 1996. 2009 aerial photography shows land under rights 29-13974 and 24-2459B to be irrigated. As for water right 29-7386, 2009 aerial photography show the majority of land under this water right irrigated. However, the applicant provided an affidavit from a third party indicating all land under water right 29-7386 has been irrigated within the past five years.

Forfeiture not an issue.

Injury to Other Water Rights:

Water rights 35-14045 and 35-14051 are moving outside of the ESPA. Rights 29-2459B, 29-7386 and 29-13974 are outside the ESPA. No WD. An ESPA analysis was conducted on each transfer calculating the ESPA reach impacts. In total, these transfers offset the impacts to the ESPA reach areas and no additional mitigation is required.

The applicants ESPA analysis was able to be duplicated with similar results.

It needs to be noted that the point of diversion change in transfer 76804 is located within an inactive model cell (row 104, column 121). The applicant used the closest model cell that was active (row 102, column 121). Also, the point of diversion change in transfer 76808 is located within an inactive model cell (row 50, column 203). The applicant used the closest model cell that was active (row 50, column 202).

Transfer was advertised and there were no protests.

No injury issues identified.

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.