

MEMORANDUM

Date: March 5, 2024
To: Transfer 84061
From: James Cefalo
Re: Review & Evaluation of Sufficiency of Information

This transfer application was filed in May 2020. The original application proposed to make changes to five stacked water rights held by P4 Production. The original application was protested by Farmer's Land & Irrigation Company. After a settlement conference, the application was amended to include two additional rights held by P4. The amended application was protested by the BLM. After the BLM and Farmer's land protests were resolved, P4 decided to remove the five stacked rights from the application. Farmer's Land is aware of the change and supports the removal of the five stacked rights (11-448, 11-457, 11-471, 11-499 and 11-2106)..

Application 84061, in its current form, proposes to change the point of diversion and place of use for water rights 11-449 and 11-531C. These rights, in combination authorize the diversion of 2.02 cfs from Soda Creek and the irrigation of 101 acres. In Transfer 5621 (approved October 2000), rights 11-449 and 11-531C were moved from their original point of diversion and place of use on Soda Creek to the Last Chance Canal Company headgates on the Bear River. This application proposes to move the rights back to Soda Creek, now to be diverted into the Farmer's Land Canal.

Farmer's Land Canal is the last diversion on Soda Creek. During the irrigation season, the canal captures and diverts all water left in Soda Creek. The water rights held by the company (11-432 and 11-531A) are rarely fully satisfied. As part of the settlement with BLM, the transferred rights will bear a combined rate and acre limit with the Farmer's Land water rights (11-432 and 11-531A). The rights to be transferred will be used to augment the supply of water to the Farmer's Land Canal. Water right 11-531C is one of the senior rights on Soda Creek and will provide a 2.02 cfs of additional flow to the Farmer's Land Canal.

Authority to File:

P4 Production LLC is the owner of record for rights 11-449 and 11-531C. The rights have been used through the Last Chance Canal Company since October 2000. P4 Production has the authority to file. Application and amended application were signed by Randy Budge, attorney for P4 Production. TJ Budge, the current attorney for P4 Production instructed the Department to remove water rights 11-448, 11-457, 11-471, 11-499 and 11-2106 from the application.

The application included a "Lease of Water Rights" between the applicant and Last Chance Canal Company, and a sublease between last Chance Canal Company and Farmer's Land & Irrigation Company authorizing the movement of the water rights.

Water Right Validity:

The water rights are valid for transfer. They were decreed in 1920. The water right accounting model for the Bear River was not updated to reflect delivery of the rights to Last Chance Canal. Water was released from Soda Creek, however, to accomplish the delivery. At times, when Last Chance Canal Company's rights were the last rights filled on the Bear River, the addition of 2.02 cfs from Soda Creek would have directly benefited Last Chance. The Department does not have clear and convincing evidence of forfeiture at this time.

Injury to Other Water Rights:

No other water rights will be injured as a result of this transfer's approval. The Watermasters of Water District 11 (Bear River) and 11B (Soda Creek) were notified of the amended application and did not oppose the changes. As noted above, the original application was protested by Farmer's Land & Irrigation Company. the amended application was protested by BLM. Both protests have been resolved through the adoption of specific approval conditions.

Enlargement of Use:

Combined limits for water rights 11-449 and 11-531C were carried forward in the approval. The approval included rate and acre limits, noting that the transfer will not increase the use of water through the Farmer's Land Canal. In other words, the additional water simply helps the company to satisfy the diversion and acre limits of its existing rights.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.