

MEMORANDUM

Date: February 22, 2024
To: Transfer 88696
From: Cooper Fritz
Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change the place of use and point of diversion for a 4.5-acre (10.6 AF) portion of rights 22-13958 and 22-13797 and to change the season of use from the irrigation season to year-round use and to change the nature of use from irrigation to domestic use for 62 housing units.

Authority to File:

The applicant, Fair Dinkum Developments, LLC, has the authority to file. At the time of transfer submittal the water rights were owned by B&B Farms, according to the Department database. The pre-transfer place of use was owned by Rexburg Hill Properties, LLC, according to Madison County taxlot data. A 2006 warranty deed, added to the transfer application, demonstrates that B&B Farms retained ownership of the water rights on the property when the property was sold to Rexburg Hill Properties, LLC. The water rights were decreed to B&B Farms in 2010.

The post-transfer place of use and point of diversion were owned by the applicant, according to Fremont County taxlot data.

Application included an Agreement for Purchase and Sale of Water Right ("Agreement"), confirming that B&B Farms has authorized this transfer. B&B Farms entered an Exclusive Right to Sell contract with Rocky Mountain Water Exchange, LLC, via a Net Water Right Listing Contract with Exclusive Right to Sell which was signed by Bradley Jensen, Partner in B&B Farms. Rocky Mountain Water Exchange subsequently entered into the Agreement with Fair Dinkum Developments, LLC. The Agreement was signed by Wade Rumsey, Agent for Fair Dinkum Developments, LLC, according to the Idaho Secretary of State. Wade Rumsey signed the application along with Terry Vance, Jr. The latter is also a registered agent for Fair Dinkum Developments, LLC, according to the Idaho Secretary of State.

Water Right Validity:

The water rights are valid for transfer. They were decreed in 2010. The existing place of use for water rights 22-13958 and 22-13797 has been consistently irrigated.

Injury to Other Water Rights:

The existing point of diversion is within the ESPA model boundary. The proposed place of use is outside of the boundary. Application included a detailed hydrologic analysis from Rocky Mountain Environmental Associates (RMEA). RMEA demonstrated that pumping at the existing point of diversion depleted flow in the Henrys Fork by 1.82 af/trimester. Pumping at the proposed point of diversion would primarily affect flow in the Henrys Fork because the proposed point of diversion is above Island Park Reservoir. Applicant asserts that they do not have to provide mitigation under the ESPA transfer tool because the additional impacts to the Henrys Fork are less than 2.0 acre-feet per acre. The Applicant has entered into a mitigation agreement with Fremont Madison Irrigation District, the entity who represents the water rights most likely to be affected by the change. The transfer approval should reference the agreement between Fair Dinkum and FMID. The Department published notice of the application and no protests were filed. There is no water district for ground water in the upper Henrys Fork basin.

Enlargement of Use:

No enlargement will result from the approval of this transfer. The water rights were utilized to irrigate alfalfa prior to the transfer. ET values for alfalfa (less frequent cuttings) at Rexburg Ricks College (NWS – USC00107644) indicate that the crop has a growing season deficit of 2.37 AF/year. The applicant states in their cover letter that they expect their development to consume 10.6 AF/year of water and are therefore proposing to transfer 4.5 acres of the water rights. Although not reflected in the conditions of the transferred water rights, a flow meter will be installed per a Memorandum of Understanding with Fremont Madison Irrigation District that was submitted with the application. Water right 22-13746 is an enlargement of right 22-13958 and bears a combined rate and volume limit with that right. Right 22-13746 was brought into the transfer as an associated right to update the combined limit conditions to prevent enlargement.

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.