

MEMORANDUM

Date: October 1, 2024
To: Transfer 88832
From: Jake Nebeker
Re: Review & Evaluation of Sufficiency of Information

The purpose of this transfer is to change the place of use, point of diversion and ownership for water right 34-2323C.

Authority to File:

The applicant for this transfer is Chelsea Pearson (applicant). The current water right owner of record is the Bank of Idaho Trustee, Leslie A Ball IRA (Bank of Idaho). The property containing 2.05-acres of the current place of use for water right 34-2323C (Lot 7) was sold to Leslie and Janet Ball (10/7/2019), then sold to Rodney and Natalie Michaelson (10/7/2019), and since then the land was sold to Rodney and Angelina Farnes.

In 2022, the Michaelson's deeded water right 34-2323C to Robin R. Pearson, Robin A. Pearson (Deceased) and Kim Pearson, but the deed was not recorded before the Michaelson's sold the property to the Farnes, making the deed an invalid document to show as evidence of the conveyance of the water right. In 2025, the Farnes submitted a Statement of Release of Interest in Water Rights for water right 34-2323C, in favor of this transfer. This statement from the Farnes gives the above deed from the Michaelson's, validity. A Death Certificate was provided for Robin A. Pearson. Robin R. Pearson and Kim Pearson both signed this transfer, showing that they approve of this transfer.

The applicant has recently purchased both parcels that the proposed place of use overlaps, the deeds were submitted as evidence. The applicant has authority to make the change.

Water Right Validity:

The right included in this transfer was decreed in the SRBA in 2002. This right has since been approved in transfer no. 84122 in 2010. A narrative submitted in the 2010 transfer gives a brief history of the right and their defense to forfeiture at that time. This defense was used when transferring water rights from the south side of the Burnett Ditch and will support this transfer as a defense to forfeiture for the 2.0-acres on Lot 7.

0.2 acres of the current place of use overlaps the Burnett Ditch system. The department does not have clear and convincing evidence that the 0.2 acres have been irrigated since the creation of the Burnett ditch system, therefore this transfer will reduce water right 34-2323C by 0.2 acres due to partial forfeiture.

Injury to Other Water Rights:

Other rights do not appear to be injured by the proposed change. The quantity authorized to be diverted will not increase as a result of this transfer. The ESPA Model was performed, and the results show that mitigation is not needed. The water master was notified and did not provide a comment. The transfer was advertised without protest.

Enlargement of Use:

The proposed change does not appear to result in enlargement because neither rate nor volume nor irrigated acreage will increase as a result of the transfer.

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.

Narrative of Application for Transfer

Moore Water & Sewer Association

TRANSFER NO. 84122

It is proposed to transfer 31.2 acres of water right 34-2323C to the Moore Water & Sewer Association to satisfy immediate irrigation demands within the City of Moore. Applicant is contracted to purchase a portion of the water right from the Bank of Idaho, c/o Trustee Leslie A Ball IRA.

Water Right 34-2323C authorizes diversion of water from a well for irrigation of 51.2 acres. The place of use is divided by the Burnett Ditch, nearly half of the place of use on the north or south side of the ditch. In order to irrigate the portion south of the ditch, water from the well must be injected into the Swauger Ditch (which runs east-west near the well) and rediverted from the Big Lost River simultaneously.

Water Right 34-2323C was decreed for "Irrigation" purposes. This transfer proposes to change the nature of use of the transferred portions to "Municipal," since they will be distributed within a municipal water delivery system. However, the ultimate use of this water right is still for irrigation, therefore, there is no fundamental change in the nature of use. Diversion will occur only within the irrigation season of use, as the rights were decreed. A condition could be placed on the water right designating these irrigation limitations.

Historical Use and Defense to Forfeiture

The point of diversion is located on a neighboring property and is not owned by the water right holder, nor does the water right holder have any written permissions or easements to use the well. Nevertheless, it is the position of the Applicant that there is at least a prescriptive right of way (if not an implied easement) from the point of diversion to the water rights' places of use. Through 2017, the water right holder did not challenge the well owner to irrigate the lands north of the Burnett Ditch, which was a mutually beneficial arrangement. However, notwithstanding the rights held by the water right owner, it was not granted access to the well for injection and rediversion to irrigate the southern portion of the place of use. Therefore, the lands south of the Burnett Ditch have not been irrigated within the last 5 years only because of this prohibition of access. A new owner has since purchased the property with the well in 2018 and has denied all access to the well.

The water right is held by the Trust Department of the Bank of Idaho for the Leslie A Ball IRA. In order to install a new well or delivery system on the IRA-owned property requires that only funds from the Leslie A Ball IRA be used to pay the expenses. Sufficient cash reserves were not made available in the IRA with which to put in a new system as it was anticipated that existing irrigation assets would have continued to be available. All assets were real estate. The IRA prohibits the use of any external funds (non-IRA) for improving the property. Therefore, a new

system could not be established to continue irrigation. Likewise, the lack of funds in the IRA also prohibited pursuing other options such as a water rights transfer or Water Banking.

Ownership of Water Right

The place of use has been subdivided into two subdivisions: The Hintze/Ball Subdivision north of the Burnette Ditch and the Cedar Creek Subdivision south of the Burnette Ditch. The water right holder (IRA) still maintains ownership of the majority of the lots. Three lots total have been sold to new owners within the transferred POU. The water rights were reserved from the sold lots in the deeds.

Lot 3 in Cedar Creek Sites is now owned by Dustin D Rosenkrance. However, the water rights had already been reserved prior to his purchasing the property. In addition, the water right overlaps onto neighboring lands to the west and south that were once part of the same farm. The portions of water rights appurtenant to these lands have been deeded to Bank of Idaho, c/o Trustee Leslie A Ball IRA by Robert Danko and Susan Schluter and Stephanie H Green, trustee of LD Irrevocable Trust

Copies of the deeds for the three sold lots and the neighboring properties are included as Attachment #10.