

Cefalo, James

From: Cefalo, James
Sent: Tuesday, February 18, 2025 3:44 PM
To: Malmen, Erika E. (Perkins Coie); Buffi Morris (buffi.morris@pacificorp.com)
Cc: swhranch8@gmail.com; glenntranstrum@gmail.com
Subject: RE: Application for Transfer 89381 (Hirschi Family Trust)
Attachments: 2-18-25 Draft Transfer 89381.pdf; Sorensen Ditch Diversions 2008-2024.pdf

Erika,

Thank you for reviewing the maps. Your summary of remaining concerns helped me realize that my email was ambiguous. Perhaps the attached draft transfer approval can clear up any ambiguity and may alleviate some of PacifiCorp's remaining concerns.

I propose carrying forward the same rate per acre that exists on the water right prior to the transfer. The original water right (11-925) allowed for 0.03 cfs/acre in the early summer and 0.02 cfs/acre in the late summer. When The Retreat at Bear Lake LLC (Black Bear) updated ownership for water right 11-925, one of the historical deeds provided with the ownership change split the water right disproportionate to the acres. Consequently, the Black Bear portion of the water right has less rate per acre. Currently, water right 11-7827 allows for 0.026 cfs/acre in the early summer and 0.017 cfs/acre in the late summer. These same rates per acre would apply to the 71.6 acres remaining after the transfer, if the transfer is approved. In the draft approval, the water right would be limited to 1.86 cfs in the early summer and 1.24 cfs in the late summer.

The draft approval includes a condition stating that the validity of the right can still be reviewed in the Bear River Basin Adjudication. The draft approval also confirms that the approved elements (1.86 cfs from 4/15 to 7/1, 1.24 cfs from 7/1 to 9/30, 71.6 acres) constitutes the full extent of the right. This will eliminate any ambiguity as to whether any portion of 11-7827 remains at the original place of use. In other words, the approval would eliminate the acres where historical beneficial use is in question and would eliminate the proportionate rate associated with those acres.

I have also attached the 2008-2024 diversion data for the Sorensen Ditch. Currently the following water rights are diverted at the Sorensen Ditch

<u>Water Right</u>	<u>Early Rate (4/15-7/1)</u>	<u>Late Rate (7/1-9/30)</u>
11-930	0.60 cfs	0.60 cfs
11-7598	6.16 cfs	4.11 cfs
11-7599	0.86 cfs	0.58 cfs
11-7827	4.98 cfs	3.31 cfs
Totals	12.60 cfs	8.60 cfs
Adjusted Totals	9.48 cfs	6.53 cfs

The Adjusted Totals row reflects the reduced diversion rates proposed in the draft transfer approval. According to the diversion data, the Sorensen Ditch diverted at least 10 cfs prior to July 1st in 2008, 2009, 2013, 2014 and 2015. Water right 11-7827 was leased to the Water Supply Bank from 2019 to 2023.

Please let me know whether the draft approval addresses your remaining concerns. At this point, it is not clear whether Private Capital Group would accept the reductions. Scott Hirschi has contacted representatives from Private Capital to discuss the beneficial use concerns.

James

From: Malmen, Erika E. (Perkins Coie) <emalmen@perkinscoie.com>
Sent: Friday, February 14, 2025 12:00 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Buffi Morris (buffi.morris@pacificorp.com)
<buffi.morris@pacificorp.com>
Cc: swhranch8@gmail.com; glennttranstrum@gmail.com
Subject: RE: Application for Transfer 89381 (Hirschi Family Trust)

Good afternoon, James

Our review indicates that even approved as re-mapped, the applicant would be entitled to use every drop of the paper right. Without more evidence of historic use and considering the topography and historical infrastructure (or lack thereof) we question whether the right was ever fully used. Approving the application would likely mean new depletions and potentially more release of Bear Lake storage water. Is there any evidence of historic use prior to placement in the water bank? As I know you hear all the time, the applicant carries the burden to show no injury. Given the ongoing BRBA, PacifiCorp feels like it needs to be hypervigilant about protecting its water rights. Do you know if there is an opportunity for mitigation by the applicant? I think PacifiCorp is open to another informal settlement conference and would ask that the applicant attempt to procure more evidence in support of the application and provide that a couple days prior to the conference. Best, Erika

Erika Malmen
PARTNER

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From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Thursday, February 6, 2025 5:20 PM
To: Buffi Morris (buffi.morris@pacificorp.com) <buffi.morris@pacificorp.com>; Malmen, Erika E. (BOI) <emalmen@perkinscoie.com>
Cc: swhranch8@gmail.com; glennttranstrum@gmail.com
Subject: Application for Transfer 89381 (Hirschi Family Trust)

Erika and Buffi,

We reviewed the map of the existing irrigated acres with Glenn Transtrum and removed the acres that, according to Glenn, have not been irrigated since he has owned the property, and that would be very difficult to flood irrigate. Based on Glenn's feedback, the total number of irrigated acres at the existing place of use was reduced from 254.6 acres to 134.8 acres. Glenn's water rights cover 63.2 acres, which leaves 71.6 acres available to transfer. Scott Hirschi and I then prepared a map of the proposed place of use to include only 71.6 acres. I would note that the three smaller shapes in the proposed place of use, which cover approximately 32 acres, have

historically been irrigated through the existing ditches on the Hirschi Family Trust property. Therefore, the only additional irrigation on the Hirschi property would be the ¾ circle pivot.

Please let me know if these changes address the issues of protest. If so, how would you like to proceed with wrapping up the contested case? Would you like me to prepare a draft transfer approval?

James



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