

MEMORANDUM

TO: Transfer No. 84020
FROM: Tyler Smith, Bob Howe -Water Resource Agent, Sr.
DATE: 6/17/2020 – 03/10/2025
RE: Evaluation of Application

Summary of Information Submitted

Lori Graves of SPF Water Engineering (representative) filed transfer no. 84020 on behalf of J.R. Simplot Company (applicant) for rights 63-2291, 63-2343, 63-3178A, 63-22210, 63-32570, & 63-32571 held by the applicant to add and modify points of diversion (POD), create a permissible place of use (PPU) allowing for 916 acres of irrigation within a 1,010-acre POU, and process an ownership change splitting right 63-2291 creating right 63-34911. The transfer rights are all adjacent to each other just south of the company's plant on Simplot Blvd. The transfer proposes all the rights involved in the transfer except 63-3178A combine their points of diversion at two diversion stations on the Dixie Drain, as described in the attachment for Transfer Part 1A. The change in place of use is to move irrigation acres to reflect the current acres being irrigated. The ownership change processed prior to transfer splits 100 acres of irrigation leaving 29 acres of irrigation under parent right 63-2291 and 71 acres under right 63-34911.

Authority to File

The application was filed in the name of J.R. Simplot Company. The application was signed by James B. Alderman, the Senior Vice President and Secretary for the company. An Idaho Secretary of State annual report confirms that Mr. Alderman has the authority to sign on behalf of the company. Documents were included confirming the ownership of property by J.R. Simplot Company on the land for the proposed change in ownership for water right 63-2291. 63-2291 was split into 63-2291 & 63-34911, which was then modified through this transfer.

Water Right Validity

Aerial imagery for water right 63-2343 showed irrigation of 86.5 acres for the previous five consecutive years out of the 104.0 acres allowed. In a defense to forfeiture in a letter dated June 9th, the applicants stated that although the irrigated acres allowed under this right have moved from within the PPU boundary to other acres, "the full beneficial use...has been continuous and uninterrupted." and the modifications were enacted in order to comply with "various regulatory requirements for the land application of industrial effluent." This is considered a valid defense to forfeiture and therefore the water right is confirmed as valid.

All other water rights involved in this transfer do not have validity concerns.

Injury to Other Water Rights

No injury is anticipated through a transfer of rights to better reflect the historic use without change to the quantity of water allocated or area irrigated under the transfer rights. Additionally, rights 63-2291 (parent of 63-34911) and 63-22210 divert from the Bardsley Gulch which was historically tributary to the Dixie Drain just upstream of the transfer POD, and there are no other rights diverting from the reach between the existing and proposed transfer PODs. An opportunity to claim injury will be presented to water users through public advertisement.

Enlargement of Use

The diversion rates and number of irrigated acres will not be changed for any of the water rights involved in this transfer. The Bardsley Gulch water rights will be conditioned to limit diversion at the new PODs to the amount injected to the West End Drain. Therefore, there is no concern for enlargement of use due to this transfer.

Local Public Interest

No information has been made available to suggest a conflict with public interest.

Beneficial Use/Conservation of Water Resources

The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

Summary

The original application for transfer submitted April 6, 2020 was protested by Pioneer Irrigation District ("Pioneer"). Pioneer protested the transfer out of concern that "proper administration of Simplot's water rights under Idaho Code Section 42-222 requires a variety of clarifications and conditions protecting the integrity and function of the sources for the water rights".

Several issues arose during the protest discussions regarding the correct nomenclature of ditches, drains, and sloughs where the points of diversion were proposed to be changed to, and whether a source change or clarification can be accomplished through the transfer process. The issue of nomenclature of sources was shown in detail in a word document made by Nick Miller titled "Simplot 84020" (included in the file) and distributed to all parties in an email on November 25, 2020. Ultimately, the conclusion is that the Department lacks the specific authority to change the source from what was decreed. While the Department can, in some cases, update the nomenclature if it is clear the source isn't changing and the nomenclature change will not impact how the right is administered. In this case, the proposed name change does impact the right relative to other rights by changing the tributary to a different stream than what was decreed. Therefore, no water rights had their source or tributary changed as a result of this transfer.

The original transfer proposed two new points of diversion on an unnamed ditch west of Farmway Rd. of which there is concern over the ownership and maintenance between Simplot and Pioneer. After protest discussions, it was agreed that the two points of diversion placed on the unnamed ditch would be moved to the "L" or "control structure", as it came to be known, and the intersection of S Kit Ave. and Laurel Rd. on what the Department considers the Dixie Drain. This resulted in two nomenclatures, the Dixie Drain and the Dixie Slough, as sources for the same points of diversion. The question of ownership and maintenance of the unnamed drain to the west of the "control structure" for the unnamed ditch will be settled between Simplot and Pioneer and will not involve the Department.

Water right 63-2343 was decreed with its source as Dixie Drain tributary to Indian Creek. According to maps from the 1922 field exam report for 63-2343, Dixie Drain historically flowed north at what is now S Kit Ave. and Laurel St. into Indian Creek and then to the Boise River. That route was then modified in the early 1920's and the Dixie Drain started flowing west past S Kit Ave. and then south into the West End Drain as it does today (the National Hydrography Dataset currently shows the north route to Indian Creek as a pipeline, but it is unknown if this path is still functioning). Therefore, although 63-2343 is listed with its source as Dixie Drain tributary to Indian Creek, it is not tributary to Indian Creek. In the event of administration (either a call that impacts Simplot by a senior user on Indian Creek, or a junior user on West End Drain

asserting Simplot shouldn't divert) the watermaster and Department can utilize discretion and apply the facts to administer the right and there will be an opportunity for the parties to demonstrate that, for example, the call by Indian Creek is futile. In short – the department does not have the authority to change the source on the face of the right, but it has the ability to interpret the face of the right as part of its duty to administer the right.

If approved the following changes should be made to the conditions of the transfer water rights:

- Add X27, 206, R65, R43, and descriptive text conditions.

- Update conditions G16 and G21 to 176.

- Update condition C18 to T19.

- Add standard transfer conditions T07 and T08

Assuming other information not yet discovered does not contradict the above analysis, the application can be approved as reflected by the draft approval.