

MEMORANDUM

TO: Transfer No. 85359

FROM: Phill Hummer

DATE: 11/20/25

RE: Nature of Use Change Evaluation

The application proposes to change a portion of water rights 67-14643 and 67-14645 from irrigation to aesthetic and stockwater storage uses for an existing pond. The application was protested by Legg Ranches LLC, Marion Ogle, and Kathryn Noah. After attempts to settle the protests through informal discussion a hearing was scheduled for November 12, 2024. On the day of the hearing the parties met and agreed to a settlement based on the inclusion of conditions requiring diversion structures and measuring devices. The matter was remanded back to informal processing. The June 7, 2022 memo contains an evaluation of the application and the criteria established by Idaho Code § 42-222. The purpose of this memo is to describe the proposed nature of use change and the calculations for the portions of rights 61-14643 and 61-14645 that need to be changed to ensure enlargement of the historic irrigation use does not occur.

The applicant determined that the volume requirement of the pond is 22.7 af, the historic consumptive use of pasture grass at the place of use was 2.68 af, and the total acres needed to retire is 8.5 acres. However, this volume requirement calculation doesn't account for the volume required to replace the water that is drank by stock. On August 22, 2025, I sent an email to the applicant explaining the issue and they agreed to increase the number of acres retired from 8.5 to 8.6 to increase the total volume from 22.7 af to 23.0 af.

To calculate the appropriate rate for the diversion to storage element the nature of the overlap between rights 61-14643 and 61-14645 and the conveyance loss rate needs to be considered. The May 22, 2022 memo describes the history of the three rights, the conveyance loss calculations, and the stacked rate calculation. For easy reference, the table from page 2 of that memo is included here:

Acres in 167-acre place of use	Diversion Rate in cfs supplied by 67-14643 using (Acres X 0.02 cfs/ac) – Diversion Rate of 67-14645 or 67-14647	Diversion Rate in cfs supplied by 67-14645	Diversion Rate in cfs supplied by 67-14647	Combined Rate per acre
23.2	0.17	0.29		0.02
36	0.27		0.45	0.02
107.8	2.16			0.02
167	2.60	0.29	0.45	TOTALS

Water Right 67-14643 authorizes a diversion rate of 3.94 cfs to allow up to 0.02 cfs per acre and ditch losses. The ditch losses are 1.34 cfs (3.94 authorized cfs – 2.60 cfs for irrigation = 1.34 cfs for ditch losses).

The applicant proposes to retire 8.6 acres of the place of use from rights 67-14643 and 67-14645. As discussed in the memo right 67-14645 is fully stacked with right 67-14643 so that when used together both rights supply a total duty of water of 0.02 cfs per acre. The portion of the diversion rate for right 67-14645 that should be changed to Diversion to Storage use through this transfer is the amount equivalent to the 8.6 acres that will be retired. The portion of right 67-14643 that should be changed is the equivalent rate for the 8.6 acres that will be retired and an equal portion of the conveyance loss rate as follows:

Portion of 67-14643 that is stacked - $0.17 \text{ cfs} / 23.2 \text{ ac} * 8.6 \text{ ac} = 0.06 \text{ cfs}$

Portion of 67-14643 used for conveyance loss - $1.34 \text{ cfs} / 167 \text{ ac} * 8.6 \text{ ac} = 0.07 \text{ cfs}$

Total rate for diversion to storage - $0.06 \text{ cfs} + 0.07 \text{ cfs} = 0.13 \text{ cfs}$

The following table shows the water right amounts before the transfer and the portions for each use after the transfer is approved:

Pre-Transfer Amounts

Water Right No.	Priority Date	Diversion Rate	Total Acres	Acre Limit	Rate/Ac
67-14643	10/29/1908	3.94	167.0	139.0	0.028
67-14645	5/1/1891	0.29	167.0	23.2	0.013
67-14647	5/1/1904	0.45	167.0	36.0	0.013
		Total	4.68	198.2	0.024
		Limit		167.0	0.020

Post Transfer Amounts

Water Right No.	Beneficial Use	Diversion Rate	Total Acres	Acre Limit	Rate/Ac
67-14643	Irrigation	3.81	158.4	130.4	N/A
	Diversion to Storage	0.13			N/A
	Aesthetic Storage				22.7
	Stockwater Storage				0.3
	Total	3.94			
67-14645	Irrigation	0.18	158.4	14.6	0.012
	Diversion to Storage	0.11			N/A
	Aesthetic Storage				22.7
	Stockwater Storage				0.3
	Total	0.29			
67-14647	Irrigation	0.45	158.4	36.0	0.013
	Total	4.68		181.0	
	Limit			158.4	

If the proposed change is approved with the portions shown in the table, the historic irrigation use should not be enlarged by storage use in the pond.

As part of the settlement agreement, the parties requested certain conditions be included on the approval. Instead of including all email exchanges regarding my discussion with the parties regarding those conditions in the file, that process is summarized here. On November 20, 2025 I sent draft versions of an approval document, place of use maps, and this memo to the parties for their review to ensure the approval, specifically the conditions,

satisfied their agreement. This version contained several errors and condition language that wasn't acceptable, mainly because the pretransfer values were incorrect and the parties wanted a specific location for the control structure identified (referred to as the splitter). On January 21, 2026 I sent a second version of the approval and approval maps to the parties. Michael Lawrence (on behalf of Salubria) expressed concern that the inclusion of the agreed to measurement device conditions and IDWR standard conditions requiring measuring device was duplicative and burdensome. Dylan Lawrence (on behalf of the protestants) suggested combining them into a single condition (by email received 2/5/26). I agree a device and control structure at the splitter and downstream of the pond would likely provide the necessary ability to control and measure storage and combined the conditions. Since the parties agreed with the language by email (final language and agreement are in the file). I did not send a third round of drafts but instead issued the approval.