

Memo

To: All TPA Shareholders
From: Roger
Re: City of Rexburg Water Lease

Issue: It has recently come to our attention that IDWR will not recognize our use of the Rexburg Water for this crop year. Upon further investigation it appears they have not recognized our use of the water for at least the past 20 years, and perhaps have not recognized it after the first year of the original lease. Not only is this serious because we have been paying the City of Rexburg for this water and paying the Department for water which we would not have had to pay for if they had recognized our lease, but 6.5 cfs (2,917.39 gpm) of 1883 water is an integral part of TPA's water.

History:

The original lease Agreement with the City of Rexburg was entered into in March of 1976. By that lease Agreement the City leased the water to TPA "for a period of 3 crop years commencing April 1, 1976, and ending December 31, 1978, . . .". The lease Agreement further provided: "The lessee is hereby given the option to extend the term of this lease for an additional two years, . . .".

The APPLICATION FOR TRANSFER OF WATER RIGHT (Transfer No. 2080) was approved by the Director on the 10th day of August, 1977. The approval contained the following provision:

"The transfer shall be in affect only until December 31, 1978, at which time the point of diversion and place of use shall again be as decreed for the City of Rexburg."

By letter dated March 27, 1978 Clint Hoopes, on behalf of TPA informed the City of Rexburg of TPA's intention to exercise the option to renew for two additional years.

In a MEMO dated December 19, 1978 from Ron Carlson to Bob Fleenor (Bob Fleenor was a hearing officer — apparently there was a protest and a hearing) Ron states:

"I feel it is a waste of time to go through the processing and readvertising of the same transfer and recommend that the transfer be extended until December 31, 1980."

In a letter dated January 30, 1979, L. Glen Saxton informed TPA as follows:

TPA Memo1
8/2/2002
2:22 PM

Source: Claimant
Date: 10/1/2004

"Enclosed is an order which essentially extends the period of time in which the water represented by transfer #2080 may be used under the transfer before again reverting back to the City of Rexburg."

The ORDER which Mr. Saxton referred to in his letter is dated the 26th day of January, 1979 and, in its pertinent part, reads as follows:

NOW, THEREFORE, IT IS ORDER THAT condition of approval #4 on Transfer No. 22-0204(B) is hereby CHANGED to read: "This transfer shall be in affect until the lease held by the Teton Pipeline Association with the City of Rexburg becomes of no further force or effect, at which time the point of diversion and place of use shall again be as decreed for the City of Rexburg."

Discussion:

The ORDER of January 26, 1979 just referred to above was signed by Norman C. Young. Norm Young is still with the Department. In talking with Ron Carlson, he suggested we contact Mr. Young and see if he will still recognize the transfer.

Our argument in favor of recognizing the transfer would be along the following lines:

I. The Order of January 26, 1979 indicates the transfer is valid until the lease becomes of no further force or effect.

II. We have continuously leased the water since the original lease dated 1976.

III. Since Lessor (the City of Rexburg) has accepted payment each year it was clearly their intent to lease the water to TPA and not put it to beneficial use themselves.

IV. Since Lessee (TPA) has paid Lessor for the water each year it clearly was its intent to put the water to beneficial use.

V. The most recent renewal of that lease dated August 4, 1999, shows the intent of the parties even more clearly. It provides, among other things, for:

- A. A term of 25 years (until 2025);
- B. An option with Lessee to renew for an additional 25 years;
- C. An option with Lessee to purchase the water should Lessor decide to sell; and
- D. An option with Lessee to purchase any other water Lessor may desire to sell;

VI. TPA can, and thought they had, put the water to beneficial use. The City of Rexburg, has not, and does not intend to put the water to beneficial use.

There is one additional factor which needs to be looked into. We need to determine how, or if, this water right was adjudicated. If it was adjudicated with place of use on TPA property that in and of itself would be strong indication of the intention of the parties.

TPA Memo2
8/2/2002
2:22 PM

Source: Claimant

Date: 10/1/2004

As regards this water right, our position with the City of Rexburg is sound. They have been entirely cooperative with us. Without doing anything but making the annual payment and requesting a renewal in 2025, we have the water tied up until the year 2050. At sometime in the near future when we sense the political climate to be right we will want to talk to the City about TPA's option to purchase this water. Furthermore, before it is lost in the adjudication (Ron Carlson thinks it already is) we will want to explore TPA's option of purchasing additional water. However, our immediate problem and top priority should be to get the Department to recognize the transfer and acknowledge, in writing, it is still in effect.

Action to be Taken: We need to meet together to discuss these issues and firm up any arguments we may have to support our position. Once this is done we need to send a delegation to Boise to meet with Norm Young. While it may be possible to do this over the telephone or in writing, I think it is too important to let any opportunity pass by. If Norm will meet with us we ought to meet with him to reach an agreement and then memorialize that agreement with a written document. The alternative is to loose the water or petition again to have it transferred in which case there would be numerous protests and tremendous expense.

TPA Memo3
8/2/2002
2:22 PM

Source: Claimant

Date: 10/1/2004

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

☐ Search for both active and inactive water right records.

Search Results

Type of Query

USAGE INSTRUCTION

☒ All SRBA & Water Rights

Water Rights

☐ Applications

☐ Permits

☐ Decrees, Licenses and Statutory Claims

☐ Transfers

☐ All of the above

☐ Claims

☐ Recommendations

☐ Both

Basin Who What When Where Clear Search Help

Query parameters:

basinFrom = 22

sequenceNumberFrom = 203

Search for: active Records

Information for type: Claim

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details	1	22	203		Decreed	Active	1898-04-01	33	SOUTH TETON RIVER, TETON RIVER	IRRIGATION	CITY OF REXBURG (Current)
Related Documents											

Information for type: Statutory Claim, Decree and License

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details									TETON	IRRIGATION,	

Related Documents	2	22	203			Decreed	Active	1898-04-01	33	RIVER	POWER	CITY OF REXBURG (Current)
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Number of records = 2