

Clelland, Steve

From: Spencer, Nick
Sent: Sunday, October 20, 2013 3:41 PM
To: Price, Fredric
Cc: Clelland, Steve; Shurte, Jan; Cooley-Denney, Suzy; david.negri@usdoj.gov
Subject: RE: 10-15-13, 1:30 pm, Hearing on Motion for Late Claim: 63-33783, Casa del Norte, L.P.

Hi Fred. Steve Clelland will be investigating and recommending the Casa del Norte late claims. I have already forwarded your July 2nd email to him and alerted him to the priority date issues with 63-33783. I don't disagree with anything you say in your October 18th email, below. However, one thing I am pondering is--since this was state endowment land--how was the State of Idaho undertaking the requirement in the Idaho Constitution to generate revenue from the land for the benefit of the public school fund etc. prior to selling it in 1982? Could it have been leasing the land for stock grazing prior to 1982? If so, could the Idaho Department of Lands or the lessee have developed a beneficial use stockwater right on the property prior to 1971? If so, what happened to it when the land was sold in 1982? The bottom line for me is that there are theoretically possible ways for a beneficial use right have been developed on the property. But it will be up to the owners of Casa del Norte to provide evidence that brings the theory into the realm of reality. A patent on a neighboring parcel certainly isn't going to cut the mustard. I have suggested to Steve that he get hold of Teresa McCallum to alert her to our concerns, so that she can begin the process of addressing them. Thanks for keeping on top of this. Best wishes, NBS

From: Price, Fredric [<mailto:fwprice@blm.gov>]
Sent: Friday, October 18, 2013 4:24 PM
To: Spencer, Nick
Cc: Gary Madenford
Subject: Fwd: 10-15-13, 1:30 pm, Hearing on Motion for Late Claim: 63-33783, Casa del Norte, L.P.

Nick,

RE: 63-33783, Casa del Norte, L.P.

I see that the court granted the Motion for Late Claim for 63-33783 on 10-16-2013. The claimant based their priority date on a U.S. Patent (03-26-1924) for lands not described under the Place of Use element, instead of basing the priority off of a State of Idaho deed (see attached) issued on 07-13-1982 for the lands claimed. A beneficial use priority date is not possible after the 05-20-1971 mandatory permitting statute for surface water diversions (i.e. spring impoundment), therefore this claim should be disallowed, and the claimant should file an application for permit.

I will be recommending to DOJ that BLM file an objection to any priority date improperly derived from federal interests.

Fred

----- Forwarded message -----

From: Price, Fredric <fwprice@blm.gov>
Date: Tue, Jul 2, 2013 at 6:25 PM
Subject: 10-15-13, 1:30 pm, Hearing on Motion for Late Claim: 63-33783, Casa del Norte, L.P.
To: nick.spencer@idwr.idaho.gov
Cc: jan.shurte@idwr.idaho.gov, "Cooley-Denney, Suzy" <suzy.cooley-denney@idwr.idaho.gov>

Nick,

RE: 10-15-13, 1:30 pm, Hearing on Motion for Late Claim: 63-33783, Casa del Norte, L.P.

POD & POU: T01S, R08E, S36, NWNE

03-26-1924 -claimed priority for a spring impoundment

05-20-1971 -mandatory permitting statute for surface water

07-13-1982 -State of Idaho Deed issued to Joe R. Cornell

This motion came across my desk today and it caught my attention because the motion asserts a 03-26-1924 priority date based on the issuance of a BLM patent that isn't for the place of use claimed but for land in an adjacent township. Since not all lands in Idaho were disposed of by the U.S. or the State of Idaho on the same date, this doesn't appear to be a valid basis for priority.

The motion claims that "BLM land patent information was not available for this school section." This is correct as one would have to review deeds issued by the State of Idaho which are available on-line (<http://gis1.idl.idaho.gov/DLR/>).

The State of Idaho executed State of Idaho Deed #11868 to Joe R. Cornell on 07-13-1982, which is 58 years after the claimed priority date. The claimed priority appears a little overly optimistic.

Fred Price
Water Rights Specialist
BLM, Idaho State Office