

Varela Review Notes

Date: October 3, 2019 (*updated September 18, 2020 & January 6, 2021*)

From: Craig L. Saxton

RE: Chris Varela and Valera Family Trust Subcases: 95-4076, 95-17513, 95-17793, 95-17765

Before the initial hearing, we had a conference call with Candice McHugh (Varela Family Trust) and TJ Budge (Chris Varela).

Candice and TJ are working on a settlement agreement with their clients. Chris Varela is going to drill his own well so he doesn't have to share with Varela Family Trust. Candice and TJ want to postpone settlement until a well is drilled and they get the details of the settlement document worked out. Then they want IDWR to recommend the POD for the 3 Chris Varela claims as being at the new well location...presumably in the SWSW of Section 9.

95-17765 (Varela Family Trust) - Domestic

This was filed as a late claim for **domestic use**. It was recommended in the 2019 late DR. No objections have been filed, but we added a combined use limit condition on it limiting this recommendation and 95-17513. If settlement is reached, we will need to submit an ADR removing the combined use limit. No NAP is needed as the court has the file as an uncontested overlap.

The claim indicates that the well is a 6" x 250' well with a 3 hp pump with approximately 25 gpm or 0.056 ~ 0.06 cfs.

Claim says well that was completed in October 1978 (100' well) collapse and was replaced with current well completed in May of 1979.

Well driller's report shows 30 gpm or 0.066 cfs.

The original thought was that because at least 3 of the 4 rights are diverted out of the same POD that has a capacity of 0.06 cfs, we need to add a combined use limit to the rights (95-17765, 95-17513, 95-17793 and probably 95-4706)

The rights listed below are limited to a total combined diversion rate of 0.06 cfs.
Combined Right Nos.: 95-17513, 95-17765, 95-17793

However, the claimant stated that while the 1978 well was providing water for 95-17513 and 95-17765, the "hand dug" well on Chris Varela's property was also providing water for commercial and irrigation use. The argument being that the 1978 well was not the only source of water for the rights and therefore there should not be a combined use limit of 0.06 shared between the rights.

Steps to Resolution (4-14-19):

Uncontested Overlap:

- o Send ADR removing combined use limits.

95-17513 (Chris Varela) - Domestic

Claims **domestic use**. Recommended 0.06 cfs for two homes. Will need to reduce the recommended diversion rate to 0.03 cfs and one home.

Claimant filed an amended claim to move priority date from 1981 to 1907. I found the patent. If motion to amend is granted, can recommend 8/26/1907 priority date for domestic use.

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However, the claimant stated that while the 1978 well was providing water for 95-17513 and 95-17765, the “hand dug” well on Chris Varela’s property was also providing water for commercial and irrigation use. The argument being that the 1978 well was not the only source of water for the rights and therefore there should not be a combined use limit of 0.06 shared between the rights.

February 14, 2019: Objection filed by Varela Family Trust:

- 1981 Agreement for water that both Chris and the Varela Family Trust get water.
- Should be limited to 0.03 cfs
- There is a well agreement
- Used for commercial and isn’t authorized to do so
- Doesn’t own the property.
- 2008 – events center started

April 1, 2019: Motion to amend:

- Linda recommended priority is 5/2/1981.
- Changes priority date to 1/1/1907, and remove the domestic use on the Varela Family Trust property.
- Claim describes a hand dug-well in 1907 and then changing to a drilled well in 1979. I have well logs for a 1979 well that all put it in the SWSW of Section 9. I think the 1979 should be described as being in the SESW of Section 9.
- States that the property was homesteaded in 1907.
- Affidavit of Connie (Dahlberg) Montanye supports 1957 existence of a hand-dug well. Maybe even earlier.
- Description of the *Mooney-Dahlberg Farmstead* references a well house constructed circa 1925. This would be on Chris’s parcel.

May 14, 2019: Objection to the Motion to Amend.

- Argues that 1907 priority only applies to surface water. Argues that surface water (spring) is what is used on the property owned by Mr. Varela.

****Need to submit an SF5 Amended Directors Report**

Steps to Resolution (4-14-19) Updated 9-18-2020:

There is a pending Motion to Amend;

- o Trust need to withdraw objections to the 4/2/2019 Motion to Amend.
- o Approval of TR 84012 changed the POD to the SWSW of Section 9...on Chris Varela's property. Can only support 8/26/1907 priority date which is patent date.
- o Remove combined use limit on diversion rate

95-4706 (Chris Varela) - Irrigation

I think this is ok as ground water for irrigation of 3 acres. If the objection is withdrawn due to the settlement, then there is nothing we need to do with this one.

If it isn't withdrawn, then we need to change the POD to the SESW where it has been diverted and add a combined use limit...probably limiting all rights to 0.06 cfs, which would reduce the recommended diversion rate for 95-4706.

- Statutory claim listed source as "Spring" & "Runoff"
- Irrigation started in 1935
- Ponds built in 1961
- Original CSRBA claim listed source as "Spring". "Description on claim says "Spring water to be used for irrigation of grass pastures"

April 20, 2018: NOE submitted because recommendation was disallowed.

June 4, 2018: Amended claim changes the source from spring to well.

March 29, 2019: C. Varela objects to the POD indicating it should be the shared well.

Linda recommended GW for irrigation of 3 acres with 3/15/1961 priority
Objection filed by Varela Family Trust – Source is not GW...it is surface water.
Objection filed by Chris Varela – POD should be in SESW.

I am not sure what he means here. Is he saying that the POD is from the 1978 well?
Was there an accomplished change in POD?

I think the source on this one could be a well or a spring. It is probably a spring that was dug out with a well house built around it so now they call it a hand dug well. Either way, its existence seems to have been in place for some time.

Affidavit in NOE from C. Varela indicates that the original hand dug well continues to be used for "pasture irrigation and other incidental uses".

Steps to Resolution (4-14-19):

There are two outstanding objections:

- o C. Varela needs to withdraw 4/1/2019 objection
- o Varela Family Trust needs to withdraw 4/15/2019 objection

- o Update explanatory condition to clearly state that the POD and POU are only on Chris Varela's property.
 - Changes submitted as an SF5

95-17793 (Chris Varela) - Commercial

This is a late claim that needs to be recommended and reported in the 2020 Spring Late DR. Evidence supporting historical commercial use for a dairy seems sufficient.

However, the claimed POD is the existing well in SESW which Varela Family Trust wants them to quit using. They are claiming an accomplished change in POD from the hand dug well in SWSW to the 1970's well in the SESW. If Chris Varela is going to drill a new well as part of the settlement, I think they will need a transfer to change the POD back to the SWSW.

Diversion volume recommended at 35 GPD per head for 60 head per affidavit of Connie (Wahlberg) Montanye.

Steps to Resolution:

- Approval of TR 84012 changed the POD to the SWSW of Section 9...on Chris Varela's property.
- Approval of TR 84012 amends the claim.
- No combined use limit with other rights.
- Only one POD approved for this right even though they had used the old hand dug well up to the point when the new well was drilled in 2020.