

Cefalo, James

From: Cefalo, James
Sent: Thursday, March 4, 2021 1:24 PM
To: 'Price, Fredric W'
Cc: 'merrill@plmw.com'
Subject: RE: [EXTERNAL] Application for Transfer 84613 (Merrill Ranch Partnership LLC)

Fred,

Glen was unable to find any documents about the NRCS diversion dam replacement project. During his investigation, however, he learned that the NRCS employee who designed the current diversion dam retired in 1989, so the current diversion dam was likely built sometime in the mid-1980s. The Merrill family has used this ditch since the 1940s. Glen confirmed that the location where the ditch crosses under the county road in a culvert has never been changed. Although the culvert is on private property, in order for water to flow through the culvert, the old ditch heading must have been located on BLM ground. If you follow the ditch line back to the creek, it appears the original dam was located 30-50 feet downstream of the current diversion dam.

Your earlier email suggested that a right of way is required because the diversion dam was altered after 1976. However, water users are allowed to maintain or replace their current structures without triggering the post-FLPMA right of way. [Does the BLM have standards for how much a diversion structure can be changed or moved before it loses its pre-FLPMA status?](#)

Glen says the banks of the stream channel are still covered in snow. It may be 2-3 weeks before the snow is melted off. I am willing to send someone from our office out to see if there is evidence of the location of the original dam. I won't send someone down, however, if you decide that the new dam needs a right of way, regardless of its proximity to the original dam. Let me know what you think about the value of conducting a site visit.

James

From: Cefalo, James
Sent: Tuesday, February 23, 2021 2:13 PM
To: 'Price, Fredric W' <fwprice@blm.gov>
Cc: 'merrill@plmw.com' <merrill@plmw.com>
Subject: RE: [EXTERNAL] Application for Transfer 84613 (Merrill Ranch Partnership LLC)

Fred,

Thanks for working with Glen Merrill to try to find a resolution of the protest. I just spoke with Glen again to collect more information about the NRCS project from the 1990s. Glen said that the diversion structure was moved less than 50 feet upstream. He said the original diversion was also located on BLM ground and that you can see the old ditch line just below the existing diversion structure. The NRCS wanted to construct the diversion dam in the summer, when Glen was diverting water for irrigation. That is why they constructed the new dam upstream. They constructed ½ of the dam at a time, to allow water to still flow past the new dam to be diverted at the old dam. Glen thinks he still has records from the NRCS project that would help clarify the location of the original dam. If Glen is able to find records of the NRCS project, I will send those on to you.

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Sent: Tuesday, February 23, 2021 2:13 PM
To: 'Price, Fredric W'
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James

From: Price, Fredric W [mailto:fwprice@blm.gov]
Sent: Tuesday, February 23, 2021 1:42 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Re: [EXTERNAL] Application for Transfer 84613 (Merrill Ranch Partnership LLC)

James,

Thanks for reaching out to me. I spoke with Mr. Merrill earlier today and he mentioned that the NRCS moved the diversion about 100' upstream to its current location on BLM in the 1990s. Such a move, after the passage of FLPMA in 1976, would require a right-of-way (ROW) issued pursuant to FLPMA.

Fredric W. Price
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1387 S. Vinnell Way
Boise, Idaho 83709-1657
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fwprice@blm.gov
13-00057 et. al.

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Tuesday, February 23, 2021 11:48 AM
To: Price, Fredric W <fwprice@blm.gov>
Cc: merrill@plmw.com <merrill@plmw.com>
Subject: [EXTERNAL] Application for Transfer 84613 (Merrill Ranch Partnership LLC)