

Skinner, Corey

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Monday, May 04, 2020 4:12 PM
To: Skinner, Corey
Subject: RE: 37-863E (Eagle Creek Irrigation Co.)

Thanks, Corey, I'll review this with my client.

Chris

From: Skinner, Corey [mailto:Corey.Skinner@idwr.idaho.gov]
Sent: Monday, May 4, 2020 3:31 PM
To: Chris Bromley <cbromley@mchughbromley.com>
Subject: 37-863E (Eagle Creek Irrigation Co.)

Chris,

I just received a letter from you mentioning a 2019 approved transfer involving water right 37-863E for Eagle Creek Irrigation Company. In the third paragraph of the letter you mentioned that the transfer reduced the right from the amounts listed in the partial decree. I did not recall the transfer reducing any elements of the right (just point of diversion description updates). I believe that the "reduction" you might be referring to relates to utilizing a portion of the right as mitigation for application for permit 37-22779 back in 2014. A 0.34 cfs and 12.9 acre portion of the right was utilized as mitigation for application for permit 37-22779 (note condition on 37-863E before and after transfer). This portion is described on right 37-863E as "mitigation" use.

Hopefully this helps,

Corey

McHUGH BROMLEY

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RECEIVED

MAY 04 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

May 1, 2020

Corey Skinner
IDWR Southern Region
650 Addison Ave. W., Ste. 500
Twin Falls, ID 83301-5858

Re: Water Right No. 37-863E (Eagle Creek Irr. Co.)

Dear Mr. Skinner:

It has recently come to the attention of my client, A.C. & C.E. Investments, Inc. (AC&CE), that an *Application for Transfer* (Application) was filed by Eagle Creek Irrigation Company (ECIC) on May 2, 2019 as to water right no. 37-863E (Water Right). AC&CE is an owner of the Water Right and ECIC shareholder. In line 6.a. to the Application, it was described that the "main diversion will be replaced in the fall of 2019 under a forthcoming special use permit from the U.S. Forest Service." AC&CE is the most upstream private property owner within ECIC and owns property adjacent to Forest Service land.

According to the online water right file, the Application was not published for noticed. This discretionary assessment was made in a memorandum to the file dated June 10, 2019. According to the memorandum, the decision not to publish was due to the Application being filed "simply to correct PLSS descriptions of the Points of Diversion"

On September 6, 2019, a *Transfer of Water Right* (Transfer) was signed that not only changed the legal descriptions that were decreed by the Snake River Basin Adjudication (SRBA) district court, but in addition substantively reduced the diversion rate from 4.56 cfs to 4.22 cfs, as well as reducing the place of use from 143.9 acres to 131.0 acres. The Transfer therefore resulted in reductions to key elements of the Water Right, which was decreed by the SRBA district court, and were made without notice to anyone, including AC&CE.

As you may or may not be aware, the Water Right is the subject of litigation, with ECIC's decision to file the Application made thirteen days before oral argument to the Idaho Supreme Court and the Transfer approved ten days after the Court's decision in *Eagle Creek Irr. Co. v. A.C. & C.E. Investments, Inc.* 165 Idaho 467 (2019). Because AC&CE has only recently learned of these reductions to pertinent elements of the Water Right, it is reviewing its legal options.

Sincerely,



CHRIS M. BROMLEY

c.c. Ed Lawson, ECIC attorney