

Cefalo, James

From: Cefalo, James
Sent: Monday, November 26, 2018 3:30 PM
To: 'James Speck'; Luke Marchant; andersenangus@gmail.com
Subject: RE: Application for Transfer 81268 (Sorensen)
Attachments: Except from Hearing.docx

Jim,

I apologize for the slow response. I might have misunderstood the intent of the parties with regards to the private settlement agreement. I just went back and listened to the audio recording of the hearing again. Attached is my rough transcription of the relevant portion of the audio recording. Based on this language, I expected the private agreement to include the 2.27 cfs cap and the transfer approval to only refer to the private agreement. Water right 34-2424B is limited to a diversion rate of 2.27 cfs, so it inherently includes a 2.27 cfs limit. I thought the 2.27 cfs cap on all water rights diverted from the well would be the subject of the private agreement.

James

From: James Speck [mailto:jim@speckandaanestad.com]
Sent: Thursday, November 15, 2018 9:30 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Luke Marchant <lmarchant@holdenlegal.com>; andersenangus@gmail.com
Subject: RE: Application for Transfer 81268 (Sorensen)

James,

The 2.27 cfs limit on the well must be a listed condition of approval of this Transfer so that it can be enforced by the Watermaster and the Department. Thank you.

Jim

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Wednesday, November 07, 2018 11:36 AM
To: Luke Marchant <lmarchant@holdenlegal.com>; James Speck <jim@speckandaanestad.com>; andersenangus@gmail.com
Subject: Application for Transfer 81268 (Sorensen)

Dear Parties:

On August 29, 2018, we started an administrative hearing for contested Application for Transfer 81268. Part of the way through the hearing, you were able to reach a settlement of the issues of protest. The agreement, to cap the diversion rate of the proposed well to 2.27 cfs, was to be memorialized in a private agreement. The transfer approval would then refer to the private agreement.

Attached is a draft transfer approval. Condition #6 is the standard condition used when the parties to a contested case have a separate settlement agreement. If the private agreement is recorded with Butte County, I can add the county and instrument number to Condition #6 in a parenthetical. However, a reference to the specific instrument number is not necessary.

Except from August 29, 2018 Hearing
Application for Transfer 81268 (Sorensen)

Speck: The agreement will be in the form of a stipulation to withdraw Mr. Andersen's protest and one of the terms of that agreement will be that this well will never divert or produce more than 2.27 cfs. The agreement will be signed by the four parties, Mr. and Mrs. Sorensen and Mr. and Mrs. Andersen. We will record a memorandum of the agreement, so that there is public notice, but it will not have the terms, so that the terms are not a matter of public record. We both, of course, want the opportunity to review the transfer approval.

Cefalo: You bet. We could put together a draft approval. Would you envision - a question for both of you - a condition on the water right that would attempt to reflect that [settlement]? I think that's challenging because that [condition], of course, is only on this water right.

Marchant: I don't think that's necessary.

Speck: No, you could just say that it's subject to the private agreement.

Cefalo: I am more than happy to put that [condition referring to the private agreement] on. Okay, we can do that.

Marchant: That would be fine.

Speck: Which means that it's of record in the Department as well as in the county.

Cefalo: Okay. I am happy to do that. And, in fact, as you guys are working on drafting that agreement, I will work on drafting the approval document and circulate that by email, too.

Speck: Yeah. I think we should both have an opportunity to look at that before [executing] the settlement agreement.

Marchant: Absolutely.

Cefalo: I think it will be pretty straight-forward. Some measuring device conditions that would be expected in this basin.