

Miller, Nick

From: Michael P. Lawrence <mpl@givenspursley.com>
Sent: Friday, August 10, 2018 9:02 AM
To: Miller, Nick
Cc: 'scott.hulbert@sol.doi.gov'; 'KEVIN KOHTZ'; fredric_price@blm.gov; Grimm, Angie; Hummer, Phill; Fredric W. Price - U.S. Bureau of Land Management (fwprice@blm.com)
Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GP.007046.0006]
Attachments: 14301216_1_Et Idaho - Glenns Ferry NWS PDef - 2018-08-09.XLSX; 14291047_1_Draft Transfer Approval 82068 - 2018-08-06.PDF

Nick,

Attached is a spreadsheet the DeRuyters' consultant Dave Shaw provided me with the ET Idaho Glenns Ferry NWS station's Precipitation Deficit data for alfalfa – frequent cuttings.

This data shows that frequently cut alfalfa (which I understand to be the DeRuyter's crop at the proposed place of use) has a mean precipitation deficit of 1,224 mm during the growing season. Dave included a calculation (which I have highlighted in yellow) that converts this figure to 4.02 feet per growing season or, in other words, 4.02 acre-feet per acre. It is well understood that one must apply more than this amount of water to overcome the precipitation deficit and maintain the crop.

In light of this, we request that condition no. 1 in the draft approval for right no. 2-10567 be revised to allow 4.5 acre-feet per acre, which would be consistent with the parent right and the 675 acre-foot diversion volume.

Thanks,
Mike

MICHAEL P. LAWRENCE

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From: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Sent: Monday, August 6, 2018 3:53 PM
To: Michael P. Lawrence <mpl@givenspursley.com>
Cc: 'scott.hulbert@sol.doi.gov' <scott.hulbert@sol.doi.gov>; 'KEVIN KOHTZ' <kevin@idahowatercompany.com>; fredric_price@blm.gov; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>
Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

Dear Parties,

I have completed my review of the transfer application and I have attached a draft approval document to assist in your settlement discussions. Please note that page 4 includes the two conditions discussed in Mike's email below, and the note in red is to acknowledge the Department's willingness to issue the approval with right 61-10567 in DeRuyter's name, provided the right is conveyed to DeRuyter as we discussed.

Please let me know if you need anything else from me as you prepare your settlement documents.

Nick.

From: Miller, Nick

Sent: Tuesday, July 24, 2018 12:49 PM

To: 'Michael P. Lawrence'

Cc: 'scott.hulbert@sol.doi.gov' ; 'KEVIN KOHTZ' ; fredric_price@blm.gov; Grimm, Angie ; Hummer, Phill

Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

Dear parties,

Mike's email below is consistent with my understanding of the approach to issuing a transfer approval. I understand the ball is in my court to prepare a draft approval. I intended to get it ready before I leave this morning, and I began drafting an approval document, but am not able to complete the evaluation and prepare a draft that I am confident will be substantially final. I have assigned the task to one of our agents and I expect to have a draft available early next week when I am back in the office.

I had hoped to have it ready for you all today, but nevertheless, I think we are on the right track.

Nick.

From: Michael P. Lawrence [<mailto:mpl@givenspursley.com>]

Sent: Monday, July 23, 2018 5:01 PM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: 'scott.hulbert@sol.doi.gov' <scott.hulbert@sol.doi.gov>; 'KEVIN KOHTZ' <kevin@idahowatercompany.com>; fredric_price@blm.gov

Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

Nick,

Thanks for your email below. Sorry for my slow reply—as you know, I just returned from vacation.

I understand from Kevin Kohtz that the proposed process will be similar to your idea no. 1 below. As I understand it, it will follow these steps:

1. You will provide the parties with a draft transfer approval for their review. This draft approval will be in the name of DeRuyter Properties, L.P., and will contain the following conditions to resolve the BLM's protest:
 - a. "This right does not grant any right-of-way or easement across the land of another."
 - b. "This right does not create a new property right in Federally managed lands."
2. If the parties agree to the draft approval, they will attach it to a settlement agreement submitted to IDWR to resolve the BLM's protest.

3. You will review the settlement agreement under Rule of Procedure 612 and, if it is acceptable to IDWR, you will issue an interlocutory order under Rule 710 committing to issue a preliminary order approving the transfer in the form of the draft approval if within 30 days IDWR receives a Notice of Change in Water Right Ownership to put the transferred portion of the right in the name of DeRuyter Properties, L.P.
4. If a Notice of Change in Water Right Ownership to put the transferred portion of the right in the name of DeRuyter Properties, L.P. is filed within 30 days of the interlocutory order, you will issue a preliminary order approving the transfer in the form of the draft approval.

Thanks for all your help on this. We look forward to seeing your draft approval.

-Mike

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From: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Sent: Sunday, July 15, 2018 1:51 PM

To: Michael P. Lawrence <mpl@givenspursley.com>; 'scott.hulbert@sol.doi.gov' <scott.hulbert@sol.doi.gov>; 'KEVIN KOHTZ' <kevin@idahowatercompany.com>; fredric_price@blm.gov

Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

Dear Parties,

At the prehearing conference last Thursday, I committed to reviewing the transfer application to identify any additional hurdles that may need to be overcome beyond the ownership/access issues raised by BLM. I have finished my review of the proposal and I did not find any obvious additional hurdles.

In short, it looks like we would likely issue an approval. However, Idaho Water Company is the transfer applicant, but they are not the owners of the rights being transferred. They have an option to purchase, but will not exercise that option until after the transfer is approved. So, a transfer approval would include both the original and changed portions of the in the name of Van Es. This is similar to several other transfers Idaho Water Company has filed. In most other cases, we issue the transfer approval with the rights in the name of the previous owner, then we process a change of ownership after the approval using documentation showing the options were exercised and the rights conveyed. In most of the cases I looked at, the rights were never in the

name of Idaho Water Company; the only ownership change was from the previous owner directly to the entity owning the land.

Mike Lawrence called me on Friday suggesting there may be a way to do some kind of simultaneous closing using a title company to close the sales, sign the transfer and complete the ownership change. That is a novel idea, but it seems to be a bit far outside of our normal processes for me to be comfortable with. Some other ideas are:

1. The department prepares a draft approval with the changed portions in DeRuyter's name that includes the conditions stating that the right doesn't grant trespass and place of use does not include public lands. Then the Department issues an order either approving the transfer as drafted (with a provision to rescind the approval if no ownership change is filed), or committing to issuing the approval as drafted, provided that within 30 days of the order, it receives a change of ownership notice that can be processed. This would still require some kind of agreement between the parties to withdraw the protest conditionally. It also may require the various option agreements to be modified... but I hope that this approach could provide folks with enough confidence to move forward.
2. Because both Idaho Water Company and DeRuyter have options to purchase the rights, maybe there is a way Van Es can agree to let us issue the transfer with the rights listing all three names and then when the sale(s) close, another change of ownership can be used to remove Van Es and Idaho Water Company. The document allowing us to list the rights in the other folks' names could be drafted so it can be used to support removing those names if the sales do not happen. Not sure if Fred's concerns would remain if other names are on the right beyond just DeRuyter's, but it is an idea.

Please let me know if you want to schedule a conference. Otherwise, I believe we left it that the parties would continue to work on drafting a solution and I would check in in about a month if I don't hear otherwise from the parties.

Nick.

From: Miller, Nick

Sent: Wednesday, June 27, 2018 3:54 PM

To: 'Michael P. Lawrence' <mpl@givenspursley.com>; 'scott.hulbert@sol.doi.gov' <scott.hulbert@sol.doi.gov>; 'KEVIN KOHTZ' <kevin@idahowatercompany.com>; fredric_price@blm.gov; lgraves@spfwater.com

Cc: Neely, Rachel <Rachel.Neely@idwr.idaho.gov>

Subject: RE: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

Yes. This email is notice to folks that the prehearing conference scheduled for Friday will not be held and instead we plan to meet at the IDWR Western Regional Office on Thursday, July 12 at 2 pm. I'll ask Rachel to send an email and place phone calls a few days before July 12 to remind the parties.

Thanks,

Nick Miller

Manager, IDWR Western Region

From: Michael P. Lawrence [<mailto:mpl@givenspursley.com>]

Sent: Tuesday, June 26, 2018 4:55 PM

To: 'scott.hulbert@sol.doi.gov' <scott.hulbert@sol.doi.gov>; 'KEVIN KOHTZ' <kevin@idahowatercompany.com>; fredric_price@blm.gov; Miller, Nick <Nick.Miller@idwr.idaho.gov>; lgraves@spfwater.com

Subject: Transfer 82068 - pre-hearing conference [IWOV-GPDMS.FID389060]

All,

Yesterday, Scott Hulbert asked me if we would be willing to briefly postpone this Friday's pre-hearing conference.

After some phone calls and emails with Scott, Kevin Kohtz, and Nick Miller, it appears that **Thursday, July 12 at 2pm** is the next best date that works.

Nick, will you please confirm this is the new date/time for the pre-hearing conference?

Thanks,
Mike

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