

MEMO

TO: Files for Water Rights 11-115, 11-133, 11-147, 11-151, 11-155 and 11-159 thru 11-172

FROM: James Cefalo

DATE: March 20, 2018

RE: Taylor Canal Company Ownership Change

On July 28, 2017, Taylor Canal Company Inc. ("TCC") filed a Notice of Change in Water Right Ownership, seeking to update the ownership records for nineteen water rights from the Thomas Fork. All of the nineteen water rights were included in the 1902 decree for the Thomas Fork (*Fawsett v. Thomas Fork Irrigation and Canal Co.*) and listed the Taylor Canal as the authorized point of diversion. None of the water rights were decreed in the name of Taylor Canal Company, but instead were decreed in the names of individual property owners. In total, the water rights described 27.58 cfs (1,379 miner's inches).

TCC provided articles of incorporation for Taylor Canal Company, Limited, dated May 2, 1910. The following statements are taken directly from the articles of incorporation:

The object and purposes of said Corporation are to take charge of the waters supplied by [the Taylor] Canal and equitably distribute the waters thereof among the shareholders in proportion to the number of shares held by each owner of land lying under said canal as above stated, each acre to represent one miner's inch of water; to construct and maintain such ditches as may be necessary to successfully distribute the waters of said canal, and provide among other things for the selection of a watermaster to equitably distribute the said waters; to provide for repairing and keeping in repair all ditches and the main canal and equitably distributing the costs thereof among the shareholders; it being hereby understood and agreed that the shareholders herein were the owners of nearly all of said water, and that all such rights are surrendered to the Company hereby formed and the title thereto shall pass on the acceptance of shares of this Company.

The number of shares shall not exceed thirteen hundred and ninety-five, that being the number of inches of water ascertained and distributed among the owners of lands under said canal; that any person who owns land under said canal to which lands waters were apportioned by the decree of Court, may apply for a certificate of shares in said Company equal to the number of inches apportioned by said Court, and the acceptance of such certificate shall vest the title to the water in this company, provided further that the number of shares shall not be increased beyond the extreme number of inches of water apportioned by the Court.

TCC also provided a copy of the list of original stock certificates issued by the company on November 5, 1910. The list indicates that there were 1,380 shares of stock issued. This is nearly identical to the 1,379 inches of water associated with the Taylor Canal headgate in the 1902 decree. However, the list of original stock owner names did not match the water right owners listed in the 1902 decree.

The original company, Taylor Canal Company, Limited, remained in existence for 50 years. There was a time period, from 1960 to 2006, where the Taylor Canal Company was not registered with the Idaho Secretary of State. In September 2006, TCC filed articles of incorporation with the state. The

SUPPORT DATA

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articles stated that TCC intended to "assume all rights and privileges that that certain 'Taylor Canal Company LTD,' a defunct Idaho corporation, formed on or about May 2, 1910, had during its existence."

Given the ambiguities in the history of TCC, the Department felt it was appropriate to notify all of the property owners located between the Taylor Canal and the Thomas Fork (the land that could be flood irrigated from the Taylor Canal) of the proposed ownership change before updating the ownership on any of the water rights. The letter was sent to over fifty property owners. Five of the property owners responded.

Waihong and Yukshan Lui, who currently live in New Jersey, own an undeveloped property within the Raymond townsite. The Luis have not paid assessments to Water District 11F or assessments to Taylor Canal Company. Lui was not aware of any water rights on the property or any shares in TCC.

Angie Mason, Charles Hardesty, and Kelly Brook (Half Circle Ranch) all own shares in TCC. They asked to be included in any discussions related to the proposed ownership change.

On September 19, 2017, Rob Harris, an attorney representing Kirk & Janet Widmer, filed a letter opposing the proposed ownership changes. Mr. Harris noted some of the ambiguities in the historical records for TCC and argued that the Department should reject the proposed ownership change.

On December 5, 2017, the parties met to discuss the proposed ownership change. Multiple ideas were presented that would resolve the concerns of the Widmers. Angie Mason, Charles Hardesty and Kelly Brook were in support of the canal company being listed as the water right owner, as long as doing so did not diminish the value of their shares.

On January 29, 2018, TCC and the Widmers met and reached a resolution of the ownership concerns. The parties agreed that TCC could move forward with updating the ownership of eighteen of the nineteen water rights. Water right 11-147 (and any splits thereof) would continue to be owned by the Widmers. On March 13, 2018, Rob Harris sent a letter to the Department, confirming that the concerns about the proposed ownership changes had been resolved.