

Cefalo, James

From: Cefalo, James
Sent: Thursday, January 18, 2018 10:29 AM
To: 'Morris, Buffi'
Subject: Additional Information for Nuffer Ditch Transfers
Attachments: 1949 Deed.pdf; Ola Transtrum Rights Map 1.pdf

Buffi,

Here is some additional information about water rights 11-924 and 11-929. I hope this helps explain the basis for the reallocation agreement and transfer applications.

Water rights 11-924 and 11-929 were described in the 1924 Terrell Decree (a.k.a. Dingle Decree), *Preston-Montpelier Irrigation Co. v. Dingle Irrigation Co. et al.*

11-924

1877-April 15th, what is designated in this decree as a "Meadow Right"

April 15th – July 1st, 15 cubic feet per second

July 1st – September 30th, 10 cubic feet per second

All of said waters to be diverted from Bear River by means of the Nuffer Ditch at or near a point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian intersects Bear River, to be used upon 500 acres of land described as follows:

NWSE, NESW, SWSW, SWSW, NWSW Section 12; SESE, NWSE, NWSE, SENW, SW of NW, NW of NW, NE of SE, SE of NE of Section 11, SW of SE, SE of SW Section 2, Township 15 South, Range 45 E.B.M. [Decree includes "1/4" after every quarter, I have excluded the 1/4s]

11-929

1885-April 15th, what is designated in this decree as an "Agricultural Right"

1.4 cubic feet per second

All of said waters to be diverted from Bear River by means of the Nuffer Ditch at or near a point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian intersects Bear River, to be used upon 70 acres of land, described as follows:

Parts of the northwest quarter of southeast quarter, southeast quarter southeast quarter Section 11, and parts of the northwest quarter northwest quarter and southeast quarter northwest quarter Section 12, Township 15 South, Range 46 East.

The decreed place of use for these water rights is outlined on the attached map. As you can see, there is clearly an error in the place of use for water right 11-929. One of the quarter-quarters described (the SENW of Section 12) lies entirely on the opposite side of the Bear River. It is not clear where the correct quarter-quarter is located. Further, all of the acres are located in Range 45 East, not Range 46 East. There are also apparent errors in the place of use for water right 11-924. Certain quarter-quarters are listed twice. Over time, people have hand-written quarter-quarter corrections in my copy of the decree. Some of the shapes in our water right records reflect those hand-written changes, even though no previous applications were ever filed to correct the place of use. The attached map is meant to reflect the place of use as decreed for water right 11-924. Because of the errors, it is unclear whether water rights 11-924 and 11-929 overlap over any of the same irrigated acres. Even in their existing, erroneous state, it is possible that there is no overlap of irrigated acres between the two rights.

At the time of the 1924 decree, the property at the end of the Nuffer Ditch was all owned by Ola Transtrum. The Ola Transtrum Ranch continued as an unbroken property until 1949. In June 1949, Earl and Florence Sorensen (who owned the ranch at that time) split the ranch in half and sold the north half to Harry Taylor. The deed, which is attached, assigned 11.5 cfs of the 1877 right (11-924) to Harry Taylor. However, the property purchased by Harry Taylor only

included a portion of acres described in the Terrell Decree. In 2008, the Retreat at Bear Lake (Black Bear) purchased a portion of water rights 11-924 and 11-929 and filed an ownership change seeking to split the rights. Black Bear purchased the portion once belonging to Harry Taylor.

The Department attempted to split the water rights consistent with the deeds and the property ownership, in spite of the obvious errors in the decreed places of use for the water rights. In hindsight, the Department should have required Black Bear and the owners of the other portions of the Ola Transtrum rights to first file a transfer to correct and define the place of use and then complete ownership changes for the rights.

Because of the 1949 deed and the Department's unfortunate willingness to complete ownership changes on erroneous rights, we ended up with very strange water rights. Private Capital (the successor in interest to Black Bear) ended up with water right 11-7597 for 11.5 cfs on 154.3 acres. This equates to 0.075 cfs per acre, over 3.5 times the irrigation rate recognized by state statute (0.02 cfs/acre). Bill Robinson, on the other hand, ended up with water right 11-7628 for 2.63 cfs on 256.5 acres (0.01 cfs/acre), which equates to one-half of a full supply. In addition, portions of the original water right were appurtenant to dry hillsides owned by the BLM.

After the rejection of the Black Bear proposal, I contacted the property owners under the original Ola Transtrum rights, proposing that they come to an agreement, reallocating the rights to bring the split portions closer to 0.02 cfs/acre. I also proposed transfer applications be filed to correct the places of use for the water rights.

It was a long process to get to where we are today. Most of the delay was waiting for the resolution of the Black Bear dissolution. The water users finally signed a Water Right Allocation Agreement in July/Aug/Sept 2017. A copy of that agreement is found in the transfer applications. The agreement reallocated water rights 11-924 and 11-929 between Private Capital, Mike McMillan and Bill Robinson. The split portions were based on the amount of ground that was historically irrigated through the Nuffer Ditch. Private Capital's portion is based on the property now owned by Glen Transtrum.

The 2017 agreement preserves all of the original elements of the rights. Private Capital ended up with a combined total of 324 acres. The map included in their application shows the proposed place of use for their 324 acres. All of it is ground that has been historically irrigated through the Nuffer Ditch. Mike McMillan ended up with a combined total of 5 acres. This represents the portion of McMillan's property between the Nuffer Ditch and the Bear River, which is green in all aerial photos. Bill Robinson ended up with a combined total of 241 acres. According to Robinson, the acres on the south side of the ditch can be irrigated from the Nuffer Ditch, but have not been irrigated in recent years because of a limited water supply. Prior to the 2017 reallocation, Robinson was working with half of a full water supply for his acres. There are some ditches visible on the south side of the ditch in aerial photos. My original map shape (highlighted in orange on the map) did not capture any of the ground south of the main canal.

Sorry. This ended up being a really long email. Please contact me if you have additional questions.

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
(208) 525-7161

PERSONAL PROPERTY.

20 head of herford stock cows, various ages; 18 head of yearling steers and heifers; 5 head of holstein milk cows, various ages; 5 calves; 3 new-born calves and 1 registered herford bull. Money in First Security Bank of Idaho, at Montpelier, Idaho, \$110.32.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all of the separate property left by said decedent, the same consisting solely of real property, herein designated as tract Number 2, be, and the same is hereby decreed and distributed as follows:

TO ROSE KULICKE, the surviving widow of said deceased, One-Third thereof, and
To the above named children of said decedent the other two-Thirds thereof, each to share alike therein and thereto, that is to say:-

TO AGNES KULICKE DIERENFELDT, One-Sixth thereof.
TO EMMA KULICKE MILLS, One-Sixth thereof.
TO WARNER KULICKE, One sixth thereof.
TO MAX KULICKE, One-Sixth thereof.

Said separate property left by said decedent being particularly described as follows, to-wit:

Tract Number 2.

Commencing at a point 24 rods more or less South from the Northeast corner of the Northeast quarter of the Southeast quarter of Section 27, Township 13 South, Range 43 East of the Boise Meridian, to the Center of County road, running between Paris and Lanark, running thence Northwesterly along the center of said county road to quarter section line; Thence West along quarter section line to the Northwest corner of the Northeast quarter of the Southeast quarter of said Section 27; Thence South 80 rods; Thence East 80 rods; Thence North 56 rods, more or less to the place of beginning and containing 37 acres, more or less.

Also, Commencing at the Northeast corner of the Southeast quarter of the Northeast quarter of Section 27, Township 13 South, Range 43 East of the Boise Meridian, in Idaho, and running thence West 40 and 8/11 rods; Thence South 80 rods; Thence Southeasterly along County road 45 rods, more or less, to a point which is 24 rods South of the East quarter corner of said Section 27; Thence North along section line 104 rods to the place of beginning and containing 23 acres and 58 square rods of land, be there more or less.

Also, Commencing at a point 68 rods 12 feet South from the NW corner of the SE 1/4 of the NE 1/4 of Section 27, in Township 13 South, Range 43 East of Boise Meridian, to the center of road running to Lanark; Thence in a Southeasterly direction along the center of said road to a point 39-3/11 rods East from the SW corner of said SE 1/4 of NE 1/4 of said Section 27; Thence West 39 and 3/11 rods; Thence North 11 rods 4 1/2 feet to place of beginning and containing 2 acres, more or less.

Also, Starting on the West line at a point in the center of the road where the Lanark and Sharon road intersects the farm of Elizabeth Oebel, Thence running 32 rods South; Thence East and a little South, parallel with Liberty-Sharon road 5 rods; Thence North 32 rods to the center of road; Thence West and a little North 5 rods to the place of beginning, containing 160 square rods.

Together with all water and water rights appertaining to or belonging to all of the above described land.

Done in open court this 17th day of August, 1953.

(SEAL)

E. Woodruff Stucki
PROBATE JUDGE of Bear Lake County
Idaho.

In the Probate Court of Bear Lake County State of Idaho

COUNTY OF BEAR LAKE :
State of Idaho : ss.

I, E. Woodruff Stucki, Probate Judge and Ex-Officio Clerk of the Probate Court, of Bear Lake County, State of Idaho, hereby Certify that the within and foregoing is a full, true and correct copy of the original Order Settling First and Final Account and Decree of Distribution of estate, filed in the matter of the Estate of William O. Kulicke, deceased, on the 17th day of August, 1953.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said Court this 17th day of August, 1953.

(SEAL)

E. Woodruff Stucki
Probate Judge and Ex-Officio
Clerk of the Probate Court of
Bear Lake County, Idaho.

Recorded at the request of D. E. Haddock; 2:30 P.M.; Aug. 17, 1953; Book 45 of Deeds at page 200.

By Sam V. Tanks Deputy

Sam V. Tanks, Recorder.

Fee \$5.15
No. 68096

WARRANTY DEED

THIS INDENTURE, Made this 29th day of June in the year of our Lord one thousand nine hundred and Forty-Nine between EARL R. SORENSON, and his wife, FLORENCE T. SORENSON, of Pogram, County of Bear Lake, State of Idaho, the parties of the first part, and HARRY TAYLOR, of Tremonton, County of Box Elder, State of Utah, the part of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Forty Five Thousand and no/100 - - DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all of the following described real estate, situated in Pogram, County of Bear Lake, State of Idaho, to-wit:

The Southeast one-quarter of the Northwest one-quarter, the East one-half of the Southwest one-quarter, and all that portion of the Southeast one-quarter and the Southwest one-quarter of the Northwest one-quarter, lying West of the Union Pacific Railroad Right-of-Way, all in Section 35, Township 14 South, Range 45 East of the Boise Meridian.

Also, the East half and the East half of the Southwest quarter of Section 2; the Southwest Quarter of the Southwest quarter of Section 1; the Northeast quarter; the East half of the Northwest Quarter and the Northwest Quarter of the Northwest Quarter of Section 11; the Northwest Quarter of the Northwest Quarter of Section 12; the North half of the North half and the Southeast Quarter of the Northwest Quarter of Section 14, and the East-half of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter of Section 15, all in Township 15 South, Range 45 East of the Boise Meridian.

Excepting therefrom the railroad right of way through said land.

Together with the following described water rights:

11.5 c.f.s., 1877, in Mawfer Ditch; 6.0 c.f.s., 1877, in Transtrum Ditch; 9.0 c.f.s., 1880 to 1883. All of said water rights being on Bear River and decreed to the said land.

\$49.50 Cancelled Documentary Stamps affixed.

TOGETHER, With all and singular the Tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF

W. E. Kerr

Karl R. Sorenson (SEAL)

Florence T. Sorenson (SEAL)

STATE OF UTAH

County of Box Elder

On this 19 day of March in the year 1952, before me W. E. Kerr, a Notary Public in and for said State, personally appeared Karl R. Sorenson and his wife, Florence T. Sorenson known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

W. E. Kerr
Notary Public for the State of
Idaho, Residing at , Idaho.

Recorded at the Request of Harry Taylor; 9:15 A.M.; Aug. 18, 1953; Book 45 of Deeds at page 202.

By Lady Britton Deputy
Fee: \$1.00

Sam V. Tunks, Recorder.

No. 68104.

WARRANTY DEED

George A. Hoge and Inez F. Hoge, husband and wife grantors of Layton, County of Davis, State of Utah, hereby CONVEY and WARRANT to Duaine Hoge and Evelyn H. Hoge, husband and wife, as joint tenants and not as tenants in common with full rights of survivorship grantees of Paris County Bear Lake, State of Idaho for the sum of Ten Dollars and other valuable considerations the following described tract of land in Bear Lake County, State of Idaho, to-wit:

The east half of the southwest quarter of Section Thirty-three in Township Thirteen South and the Lots two and three of Section four in Township fourteen south all in Range Forty-three east of the Boise Meridian, Idaho, containing one hundred fifty-eight and seventy-five hundredths acres.

WITNESS the hands of said grantors, this 5th day of January A.D. 1952.

Signed in the presence of

George A. Hoge

Vird Cook

Inez F. Hoge

STATE OF UTAH,

County of Davis

On this 5th day of January A.D., 1952, personally appeared before me George A. Hoge and Inez F. Hoge, husband and wife the signers of the within instrument who duly acknowledged to me that they executed the same.

(SEAL)

Vird Cook

My Commission expires March 4, 1954.

Notary Public.

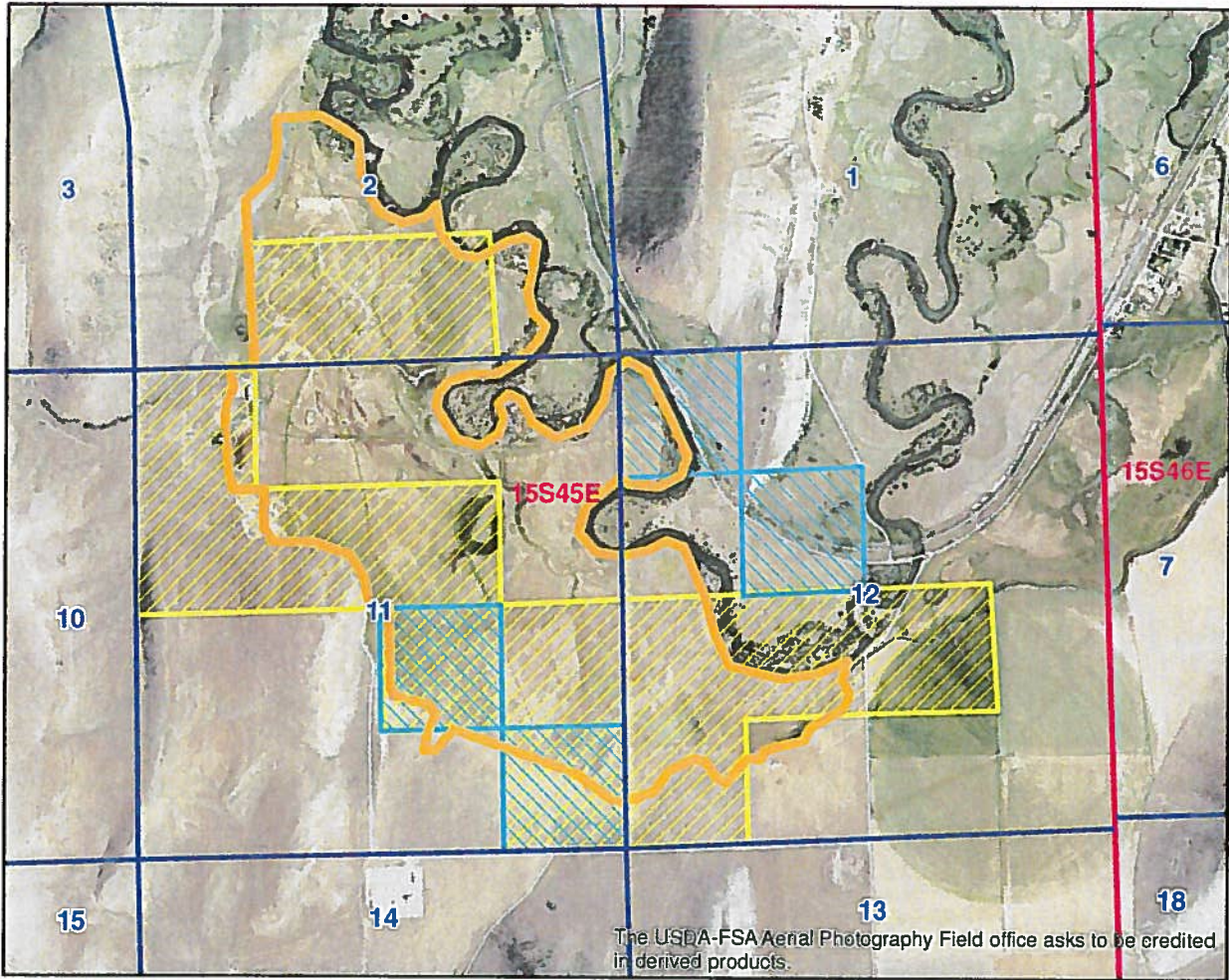
My residence is Layton, Utah.

Recorded at the request of Duaine Hoge; 1:10 P.M.; Aug. 19, 1953; Book 45 of Deeds at page 203.

By Lady Britton Deputy
Fee: \$1.00

Sam V. Tunks, Recorder.

Nuffer Ditch: Ola Transtrum Water Rights



2013 Aerial Photo

Legend

- Township/Range
- Sections
- Nuffer_Irrigated_Acres
- Nuffer Ditch 929
- Nuffer Ditch 924

