

Cefalo, James

From: Jerry Rigby <jrigby@rex-law.com>
Sent: Monday, December 11, 2017 11:30 AM
To: Cefalo, James
Cc: FMID General Clio Maildrop
Subject: RE: Draft Transfer Approval 81789 (SunRain)

James,

After my clients review and authority, we are now good with your analysis and will go with the solution you proposed.

Thanks

Jerry

Jerry R. Rigby

Rigby, Andrus & Rigby Law, PLLC

P.O. Box 250

Rexburg, ID 83440

208-356-3633

From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Thursday, December 7, 2017 10:05 AM
To: Jerry Rigby <jrigby@rex-law.com>; arjs9n@gmail.com; aaron.fmid@myidahomail.com; 'Luke Marchant' <lmarchant@holdenlegal.com>
Cc: FMID General Clio Maildrop <a24aa049c+matter1041276696@maildrop.goclio.com>
Subject: RE: Draft Transfer Approval 81789 (SunRain)

Jerry,

Prior to the transfer, water right 22-7479 was limited to 39 acres and included conditions making the diversion of ground water supplemental to the diversion of surface water rights. The proposed transfer continues to limit water right 22-7479 to 39 acres and includes a condition making the water right supplemental to the surface water rights. The other ground water rights involved in the transfer do not include supplemental conditions.

In total, there are 652.5 acres (24.5 + 470 + 158) of ground water rights included in the transfer application. The proposed place of use is 682.5 acres. Water right 22-387A (30 acres) is the only Mahogany Creek right included in the transfer application not currently covered by a ground water right. That is source of the 30-acre difference.

At one time, I contemplated including a condition requiring Sunrain to identify the specific 652.5 acres to be irrigated with ground water rights. However, because the difference between the ground water place of use and the total place of use was so small (less than 5% of the total place of use), I felt the risk of enlarging the ground water rights was minimal. If you would prefer, it is possible to include a condition on all of the ground water rights requiring Sunrain to identify the 652.5 acres to be irrigated with its ground water rights each year.

James

From: Jerry Rigby [mailto:jrigby@rex-law.com]
Sent: Tuesday, December 05, 2017 4:21 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; arjs9n@gmail.com; aaron.fmid@myidahomail.com; 'Luke Marchant'

<lmarchant@holdenlegal.com>

Cc: FMID General Clio Maildrop <a24aa049c+matter1041276696@maildrop.goclio.com>

Subject: RE: Draft Transfer Approval 81789 (SunRain)

James,

I am sorry that we didn't get back to you until now. Too many items on the desk!

I had checked with my clients and the one item we came up with and which causes us concern is that the condition number 7 does not limit the supplemental use to only 39 acres. In other words, reading 7 on its own could be interpreted to allow the right to supplement the primary right for the full acreage covered by the primary right. This would be an expansion of the right and therefore an expansion of the duty of water under the right. Am we missing something?

Thanks

Jerry

Jerry R. Rigby

Rigby, Andrus & Rigby Law, PLLC

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Rexburg, ID 83440

208-356-3633

From: Cefalo, James [<mailto:James.Cefalo@idwr.idaho.gov>]

Sent: Monday, December 4, 2017 10:11 AM

To: arjs9n@gmail.com; aaron.fmid@myidahomail.com; Jerry Rigby RAR <jrigby@rex-law.com>; Luke Marchant <lmarchant@holdenlegal.com>

Subject: FW: Draft Transfer Approval 81789 (SunRain)

Dear Parties,

It's been over a month since I circulated the attached draft transfer approval. I have not heard from either of the protestants as to whether the proposed conditions sufficiently address the issues of protest. Please review the draft transfer. If the conditions resolve your issues of protest, please send me a written withdrawal of protest, referencing the 11/3 Draft Transfer Approval. If not, please let me know and we will set up a telephone status conference to schedule a hearing date.

James Cefalo

From: Cefalo, James

Sent: Friday, November 03, 2017 10:14 AM

To: 'Luke Marchant' <lmarchant@holdenlegal.com>; 'Jerry Rigby RAR' <jrigby@rex-law.com>; 'Aaron Dalling' <aaron.fmid@myidahomail.com>; 'arjs9n@gmail.com' <arjs9n@gmail.com>

Subject: Draft Transfer Approval 81789 (SunRain)

Dear Parties,

During the pre-hearing conference held last week, the parties asked me to prepare a draft transfer approval. Fremont Madison Irrigation District felt that conditions could be added to the water rights to address its issues of protest. Attached is a draft transfer approval. The draft includes a condition limiting all of the water rights to 682.5 irrigated acres within the 750-acre place of use. Prior to diverting the water rights, SunRain must identify the location of the 682.5 acres. The transfer application proposes 721.5 irrigated acres. As we were preparing the draft transfer

approval, we discovered that water right 22-7479 (39 acres) covered the same acres as water rights 22-14146, 22-14147 and 22-14148. Therefore, the total available irrigation acreage was reduced by 39 acres to 682.5 acres.

The protests identify a concern that the Mahogany Creek rights will be used to irrigate more acres than the rights allow. Three of the Mahogany Creek rights (22-387A, 22-14146 and 22-14147) are some of the most senior rights on the creek. To address this concern, I have included a condition limiting water rights 22-387A, 22-14146 and 22-14147 to a specific 183.8 acres within the 750-acre place of use. Prior to diverting those water rights, SunRain must identify the location of the 183.8 acres to be irrigated with the senior Mahogany Creek rights. I did not include water right 22-14148 in the condition because of its 1966 priority date. Given the quantity of senior water rights on Mahogany Creek, water right 22-14148 would likely only be available during the snowmelt runoff period.

If the draft approval conditions sufficiently address the issues of protest, the protests can be withdrawn by referencing the 11/3 Draft. Attached is a withdrawal of protest form. Please let me know if you discover any errors in the draft approval or have additional concerns that are not addressed by the proposed conditions.

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