## Cefalo, James

**From:** Cefalo, James
**Sent:** Wednesday, March 02, 2016 10:48 AM
**To:** Luke Marchant
**Subject:** Water Right 15-2010 (Riches Ownership Change)
**Attachments:** Water Right 15-2010 Maps.pdf

Luke,

Last week you dropped off a sizeable stack of ownership changes for Vic Riches. I am starting through the stack and came across one that will be a problem. The largest set of documents is associated with water right 15-2010 from the Malad River. You are proposing to split this right into 12 pieces. Clearly you put a lot of effort into preparing the ownership change documents. However, I think water right 15-2010 has a serious defect. An ownership change cannot be completed without first pursuing an application for transfer to correct the place of use for the right.

I've attached some documents to try to explain the problem. Water right 15-2010 was intended to supply water to lands on the east side of the Malad River. The field exam map (completed in 1920) shows ditches diverting water on the east side of the river. The problem I see is that the field exam map was mislabeled (or labeled in an ambiguous way). You can see that the field exam map shows the river taking a 90 degree turn in the middle part of Section 11. Well, the river actually makes the 90 degree turn at the top of Section 11. The label "SEC 11" and the dark line should actually designate the top of Section 11. However, when the license was prepared, it was assumed that the "SEC 11" label identified the middle of the section square. Therefore, the licensed QQ are all off by ½ mile. The water right place of use is shifted to the south by ½ mile. Because of the error in the license, a large part of the licensed acreage falls on the west side of the river. There is nothing in the water right file supporting any irrigation on the west side of the river (no reference to flumes across the river). The place of use error appears to begin at the application.

I don't believe water right 15-2010 was ever used on Tract F or Tract H (located on the west side of the river). The deeds show that the Jones Brothers (John and Dan) owned Tract F at one time, but sold that parcel to George Williams in 1911. Dan Jones did not file Application 15-2010 until 1917. Deeds show that Dan Jones never owned Tract H. Tract F and Tract H are covered by ground water right 15-2059 (filed in 1967). The application for permit for 15-2059 refers to shares in Samaria Water & Irrigation Co. (a company diverting springs on the west side of the river), but does not identify any overlapping water rights from the Malad River. The application map does not show any flumes crossing the Malad River in Section 11.

To be able to update ownership for water right 15-2010 and file an appropriate transfer application, the critical question will be what property did Dan Jones own in 1917 (in sole ownership or joint ownership with John Jones). My guess is that Dan Jones actually owned less than 640 acres in 1917. A transfer application could be a rocky road. It appears that the north ditch (aka Jones Ditch) has been abandoned. The south ditch (aka Mill Ditch) is still visible in aerial photos, and now appears to go to a regulation pond. We may find that part of the water right has been forfeited through non-use. Further, to move forward with a transfer application, we would need consent from all affected parties. Knowing the extent of Dan Jones ownership in 1917 will help us know who needs to be included in (or notified of) a transfer application. This is the type of water right problem that would be better resolved in an adjudication. IDWR and the court would have more tools at their disposal to get the water right where it should be.

When you get a chance, give me a call and we can discuss the path forward for cleaning up this water right.

James Cefalo
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