



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

January 29, 2015

Scott Nelson
PO Box 53
Paris, ID 83261

RE: Application for Transfer 79125 (Water Right 11-73)

Dear Mr. Nelson:

On February 24, 2014, you filed Application for Transfer 79125, proposing to change the point of diversion and place of use for water right 11-73. You also proposed to update the ownership of the water right. The transfer would move the water right to property you own in Section 27, T13S, R43E. The application lists the Paris Relief Canal as the proposed point of diversion.

Water right 11-73 is currently in the name of RW Caldwell (the owner listed in the 1932 Paris Creek Decree). The water right authorizes 80 acres of irrigation in the SENE of Section 9 and SWNW of Section 10, T14S, R43E (hereinafter "Caldwell Tract").

Bear Lake County taxlot data indicates that you do not own any property within the Caldwell Tract. Therefore, as part of your application, you were required to provide evidence that you are, in fact, the owner of water right 11-73 and that you have the authority to move the water right to your property. You have provided copies of the following documents to support your claim of ownership:

(1) A 1972 Warranty Deed from Grant & Lois Caldwell / Warren & Arrawanna Caldwell / Glen & Ellen Caldwell to William Froerer, which includes the Caldwell Tract and other nearby parcels.

(2) A 1975 deed from the Caldwells to William Froerer. The deed appears to be an amendment to the 1972 deed and again lists the Caldwell Tract.

(3) A 2014 document signed by William Froerer stating that water right 11-73 was "Given to Frank Egginton."

(4) A 2009 contract stating that Frank Egginton sold water right 11-73 to Sterling Wallentine for a certain sum of money.

(5) A 2010 letter from Frank Egginton to the Paris Creek Water District 11E requesting that the RW Caldwell right be transferred to Sterling Wallentine.

(6) Annual Meeting Minutes from the Paris Creek Water District 11E stating that Sterling Wallentine was proposing to move the Egginton water right into the Paris Relief Canal for delivery.

(7) A 2014 document where Sterling Wallentine transferred water right 11-73 to Scott Nelson.

Because you do not own the any of the property within the Caldwell Tract, IDWR notified the current property owners within the Caldwell Tract of the proposed transfer and asked them to provide any information they may have relating to the ownership of water right 11-73. We recently received two documents that are relevant to your application:

(1) A 1977 Warranty Deed from William Froerer to Jan & Lorraine Allred and ED and Patricia Allgier for a portion of the Caldwell Tract.

(2) A 1977 Warranty Deed from William Froerer to Earl & Anne Heninger for a portion of the Caldwell Tract.

Neither of these deeds specifically mention water right 11-73 or any other water rights. In Idaho, a water right is considered to be an appurtenance to the land and is conveyed with the sale of the land unless it is expressly reserved from the sale. In other words, if a deed is silent about water rights, then any water right existing on the subject property is conveyed to the new owner along with the land.

In this case, the 1977 deeds from Froerer did not expressly reserve water right 11-73 from the conveyance. Therefore, the water right would have passed to the new owners in conjunction with the sale of land. Although we do not have warranty deeds from Froerer for all of the parcels within the Caldwell Tract, I suspect the other deeds mirror the Allgier and Heninger deeds and do not expressly reserve water right 11-73 from the conveyance.

The only way water right 11-73 would not have been part of the conveyances to Allgier and Heninger (and others) would be if William Froerer had sold the water right off of the property prior to subdividing and selling the land. In Idaho, water rights are considered real property. As such, they are governed by Idaho Code § 9-505 which states that an agreement for the sale of real property must be in writing.

Given the documents described above, your claim of ownership relies entirely on the assertion that William Froerer conveyed water right 11-73 to Frank Egginton prior to subdividing and selling the Caldwell Tract. In order to proceed with your proposed transfer application, you need to provide a copy of the written document conveying the water from Froerer to Egginton.

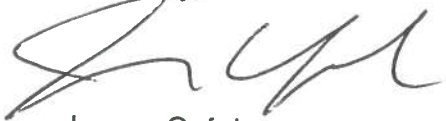
The 2014 document signed by William Froerer is of no value. Mr. Froerer apparently did not reserve the water right when he sold the Caldwell Tract. Therefore, Forerer did not own any portion of water right 11-73 in 2014. In other words, he had nothing to convey in 2014. What we need is a copy of the document executed prior to 1977, showing that Froerer officially conveyed water right 11-73 to Egginton. Without that document, IDWR is unable to approve your proposed transfer or update the ownership of water right 11-73.

I will provide you 30 days to search for and provide a document from the 1970s showing that Froerer sold water right 11-73 to Egginton. If the document is not provided by March 2, 2015, I will issue an order denying the transfer application.

If you cannot obtain the document (it may not even exist) and you believe that my analysis of ownership is incorrect, you are free to pursue a quiet title action in Idaho district court. A judge has the authority to review the evidence and declare you to be the sole owner of the water right. It should be noted that an adjudication court would also have the authority to declare ownership of the right. In fact, one of the primary benefits of an adjudication of water rights in the Bear River basin is to address these types of ownership issues. In spite of strong public support for the Bear River adjudication, it may be many years before an adjudication is authorized.

I know water right ownership issues can be complicated. Please feel free to call me if you need clarification about this letter or have any other questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

James Cefalo
(208) 525-7161