

Cox, Sharla

From: Holliday, Michael
Sent: Tuesday, November 04, 2014 4:17 PM
To: Cox, Sharla
Subject: FW: Transfer 79319 and Application for Permit 74-7364
Attachments: RESPONSE TO ROB HARRIS.docx; Decreed Water Rights.xlsx

Hi Sharla.

James said to stick this in the transfer file, although he said it was too late to submit evidence. Thanks. michael

From: Bob Loucks [<mailto:baloucks@centurytel.net>]
Sent: Tuesday, November 04, 2014 12:48 PM
To: Rob Harris; Karl Tyler
Cc: Carl Lufkin; gsense@cableone.net; Holliday, Michael
Subject: Transfer 79319 and Application for Permit 74-7364

Rob,

Attached is a Word document with my thoughts on your protest. It appears to me that Fred, Nick, and Karl have never discussed this. I don't think the transfer hearing is the place to discuss it, since the transfer has no bearing on Fred Coleman's Application for Hydropower 74-7364. In fact, I think that application (74-7364) needs to be amended to reflect the current project proposal. Fred needs to make an agreement with Karl about how his changes to his current proposal will mitigate the irrigation concerns. I also think that Karl will renew Kermit Purcell's objection (as successor in interest) to 74-7364 until the changes that need to be made are addressed.

S/Bob Loucks

RESPONSE TO ROB HARRIS

11/4/14

Bob Loucks

Just to be clear, I do not speak for Karl Tyler – he speaks for himself. I have reviewed all the paperwork that you mailed as well as all paperwork filed with IDWR. It appears that this hydropower project was initiated with an application for permit filed with IDWR 8/28/95 (*your Exhibit 103*). That application proposed the diversion of **12 cfs** for hydropower year-around. It did not specify the POD; however, it appears that POD is LT-3 (IDWR numbering in Lemhi Adjudication). Although it does not so state in the application, apparently Harry Coleman planned to use 74-36 (owned at that time by Floyd Nilsson); 74-40 (owned by Kermit Purcell and with 3.0 cfs decreed from Little Timber Creek in the original Lemhi Adjudication); and 74-41 (also owned by Kermit Purcell). These water rights totaled **12.02 cfs**. Kermit Purcell protested this application on 9/27/95. IDFG protested the application 9/22/95. These protests were never resolved (*apparently when IDWR received notification 3/16/2005 from USFS that Kermit Purcell was deceased, they made no further attempt to contact his heirs or successors in interest*). A pre-hearing conference was held 4/12/2010 (this is the first mention that Coleman would like to increase the application to **17.0 cfs** – apparently by including 74-38). The last action on the protests was 8/24/2010 when IDFG and Fred Coleman agreed to postpone a 2nd Prehearing Conference until FERC either approved or disapproved a license. Although he is the successor in interest to the bulk of the water involved in the application I find no indication in the record that Karl Tyler was notified of either the 1st pre-hearing conference or the postponement of the 2nd Prehearing Conference.

So, in the over 19 years since this hydropower project was first proposed, it has undergone several iterations. All the parties involved when it was proposed (Harry Coleman, Kermit Purcell, and Floyd Nilsson) are deceased. In the paperwork, I read that Sorenson Engineering submitted a 6-Month Hydro Report 8/21/97. Apparently to resolve IDFG concerns, there is a Winter Outfall Ditch back to Big Timber Creek (although the quality of the paperwork in the IDFG file is so poor that I am unable to determine where it is on the map). In a report on progress on the hydropower project 1/2/2010 is the first mention that the project is no longer year-around but is now limited to the irrigation season and that 74-40 is now 4.2 cfs making the proposed hydropower diversion now **13.2 cfs**. Since the original proposal, Kermit Purcell purchased the Clinger Ranch. After he purchased the Clinger Ranch and started operating the two ranches together, he started diverting 74-38 from LT-3 when Little Timber Creek was in regulation. After Kermit died, Karl Tyler purchased both the Purcell Ranch and the Clinger Ranch from his heirs. Since he purchased the properties, Karl Tyler installed the large pivot (originally pressurized with a diesel system), the wiper pivot, and the gravity pipeline to feed both of them. In 2007 (prior to the pipeline) we originally proposed a transfer with IDWR to legalize the POD and POU. That transfer was returned due to Protests on 74-40 in the SRBA. Following resolution of the protests in December 2012 we started work on the current transfer.

In all this voluminous paperwork, the only attempt that I see to contact Karl Tyler is the form letter mailed with a CD to Carl Lufkin, Ranch Manager, dated 1/4/2011. Frankly, knowing Carl and Karl, I would be surprised if either has ever down loaded the CD. If this CD contains your *Exhibit 100*, Karl will have some definite concerns with it. I believe that Karl would not have problems with it if Fred agrees to deliver about **4.8 cfs** (roughly the amount to operate the pivots) to Karl's gravity pipeline at the same

pressure as is currently attained. There also needs to be a headgate system so that Karl's "excess" ditch water can either be sent down the L-3 ditch or sent to a new ditch (permitted and constructed by Coleman Hydropower) from the proposed hydropower plant to the L-5 ditch. I think you can appreciate that the approximately 7+ cfs of "excess water" is overkill for irrigating the flood ground identified in the POU serviced by the L-3 ditch. If he can deliver 74-38 water to both the wiper pivot and the flood ground identified on the POU, Karl would probably agree to abandon the L-5 ditch. This would also deliver the seepage from the system and any waste water to Lemhi Big Springs Creek in the same area as currently.

This is obviously a failure to communicate between Fred Coleman, Nick Josten, and Karl Tyler. I'm not telling Fred his business, but if I were he I would get on the telephone and track Karl Tyler down or get an appointment to resolve their problems at Karl's office in Missoula.

S/Bob Loucks

LITTLE TIMBER CREEK									
Priority	Right No.	Priority Date	Rate (CFS)	IDWR (POD)	Owner				
1	74-40	6/1/1879	4.20	LT-3	Leadore Land Partners			13.22	LLP total
2	74-33	7/1/1879	1.20	LT-6	Tom Carlson			12.02	Original Proposal
3	74-38	6/1/1892	3.84	LT-5	Leadore Land Partners			13.22	LLP + Bird
4	74-36	7/1/1898	3.84	LT-4	Kent Bird			17.06	Current Proposal
5	74-41	10/1/1903	5.18	LT-3	Leadore Land Partners				
6	74-50A	11/6/1908	2.75	LT-2	Tom Carlson				
6	74-50B	11/6/1908	2.75	LT-2	James Whittaker				
7	74-49	8/21/1909	2.90	LT-2	James Whittaker	Still decreed to Cal Whittaker			
8	74-47	9/27/1909	5.70	LT-6	Tom Carlson				
9	74-48	10/9/1909	2.40	LT-6	Tom Carlson				
10	74-55	8/19/1910	6.20	LT-1A	James Whittaker				
11	74-2210	8/21/1925	5.70	LT-2	James Whittaker				
			46.66					342.2	acres in pivots
								239.54	demand in inches
PODs were numbered by IDWR from the top of the drainage downstream								4.7908	demand in cfs