

Merritt, Allen

From: gundy@safelink.net
Sent: Tuesday, March 18, 2014 4:32 PM
To: Cooper, Jeff; Merritt, Allen
Cc: Yenter, Cindy
Subject: Re: Deed

Jeff,

Thank you. As for the Deeded allocated shares, I'll leave that alone until the hearing has been set up and finalized before I turn or take away any additional water on their calls. I'll be turning only that water that's been allocated originally in the past.

..... Don

From: Cooper, Jeff
Sent: Tuesday, March 18, 2014 3:41 PM
To: gundy@safelink.net ; Merritt, Allen
Cc: Yenter, Cindy
Subject: RE: Deed

Don-

Hopefully this e-mail will finally answer your question. I had a chance to visit with John Holman, part of our legal team, with regards to this matter.

As we have previously indicated, the Watermaster is to deliver water in priority at the headgate of the ditch on the creek. If the users are subject to a private agreement that involves rotation, they would be subject to that. However, keep in mind, the water district and the Department does not keep record of these private agreements because they are not a party to the agreement and cannot enforce nor compel users to comply by it.

The Department has had issues in the past that have dealt with this and, from what I understand, the courts have found that if no agreement exists, the Department cannot compel users to enter into one. Hopefully this is the information you were looking for.

-Jeff C.

From: Cooper, Jeff
Sent: Tuesday, March 18, 2014 1:47 PM
To: 'gundy@safelink.net'; Merritt, Allen
Cc: Yenter, Cindy
Subject: RE: Deed

Don-

Thanks for the clarification. After the water has been delivered at the headgate, the Water District no longer has authority to make deliveries down the ditch unless a lateral ditch association officially appoints the Watermaster as the ditch rider. So, I am assuming the question still remains can Albion 12 choose not to do rotation? I don't see anything in the decreed water right that would require them to participate in rotation. Keep in mind, the Department doesn't generally keep record of individual and private party agreements, so we may not have privy to such information. Now that I think I have a better understanding of the situation, I'll shoot an email up to legal, just to make sure I am not missing anything. Thanks for your patience.

-Jeff C.

From: gundy@safelink.net [mailto:gundy@safelink.net]
Sent: Sunday, March 16, 2014 11:10 PM
To: Cooper, Jeff; Merritt, Allen
Cc: Yenter, Cindy
Subject: Re: Deed

Jeff,
I do the typical rotation scenario delivering everything in priority into the ditch at the authorized headgate(s) and the users take turns utilizing the water.

..... Don

From: [Cooper, Jeff](#)
Sent: Thursday, March 13, 2014 3:56 PM
To: gundy@safelink.net ; [Merritt, Allen](#)
Cc: [Yenter, Cindy](#)
Subject: RE: Deed

Don,

Thank you for the response. Could you clarify what you mean by "*I have delivered the total cfs on a 4, 5 & 11 day cycle from their 2 POD's*"?

A typical rotation scenario would be where the Watermaster delivers everything in priority into the ditch at the authorized headgate(s) and the users take turns utilizing the water. As a Watermaster, are you going down the ditch and making deliveries?

I am still putting the ownership change puzzle together and I will need to get back to you on that.

Appreciate the additional information,

Thanks,

-Jeff C.

From: gundy@safelink.net [mailto:gundy@safelink.net]
Sent: Thursday, March 13, 2014 3:21 PM
To: Cooper, Jeff; Merritt, Allen
Cc: Yenter, Cindy
Subject: Re: Deed

Jeff,

Good morning,,

*1) To answer your last question first. I guess I need to say as the Watermaster, the rotation exercise is between the three individuals that are on Howell Creek dealing with 4/01/1875 Right. Fred Hawker with 45-284A 0.65 cfs; 45-284B Albion 12 with 1.50 cfs; 45-284C Grant Clark with 0.51 cfs, total cfs of 2.68cfs for a more beneficial use dealing with the acres they have. I have delivered the total cfs on a 4, 5 & 11 day cycle from their 2 POD's. **Albion 12 now is saying they are dropping from the rotation completely.***

The ground that Albion 12 bought back in 2006 (which pertains to the Deed I sent) with the percentage of water issued was never filed by Albion 12 as I understand. But through the rotation method the ground did get

irrigated. The water shares pertaining to the deed is what's in question as to when they call for the water, this would also involve Grant Clarks 45-286 right off of Howell Creek dated 9/01/1880! Would they get the additional water before the protest is resolved is my basic question.

The other issue is, the ground that was sold gets water also from the Antone/Pine system which Grant Clark 45-256A, is also in the protest and is a separate creek which is only delivered to the two parties Hawker and Clark, where Clark has 15 days and , Hawker 45-256B has 5 days. Which neither party is in compliance with Head gates and staff gages, in effect which I have indicated over the years in my annual Watermasters Report. I take estimated readings of their delivery which has been accepted by both parties for billing.

Note: The rotation is set up in accordance to who makes the first call for water, that individual gets 1 additional day in starting out the seasonal call.

2) The additional PODs on Howell Creek are basically PODs that already exists accept for one and I have it flag with a Sticky note on the Ariel Photo that I am sending you. I hope this works for you and if I've answered your question. If not, please get back to me.

Thanks,
..... Don

From: Cooper, Jeff
Sent: Thursday, March 13, 2014 9:16 AM
To: gundy@safelink.net ; Merritt, Allen
Cc: Yenter, Cindy
Subject: RE: Deed

Don-

Allen suggests I bump this up to our legal staff for comment, but before I do I need some additional information. First, what rights are we talking about? Albion 12 has ownership of several Howell Creek Rights (45-284B, 45-285, 45-327D), which add up to 2.35 cfs. I don't see any condition on the rights that would limit the flow to 1.5 cfs, though the most senior right (45-284B) has a flow rate of 1.5 cfs. You should note that Albion 12's interest in the those rights were reviewed along with an ownership change filed in 2012, independent of the transfer. The new transfer proposes additional PODs on Howell Creek. Since the transfer has not been approved, delivery would not be allowed at those proposed PODs. Also, how have you delivered these rights in the past and as Watermaster, how have you been involved in the rotation?

I think we need to know this before we proceed with giving you a proper answer. Thanks you.

-Jeff

From: gundy@safelink.net [mailto:gundy@safelink.net]
Sent: Wednesday, March 12, 2014 4:55 PM
To: Merritt, Allen; Cooper, Jeff
Subject: Re: Deed

Hello Jeff,

I was wondering if you have come up with something of an answer for me. Since the party has asked me again, where we stood dealing with protest verses the deeded water rights to the ground that was purchased. Thanks,

Don

From: Merritt, Allen
Sent: Wednesday, March 05, 2014 4:30 PM
To: Cooper, Jeff
Cc: gundy@safelink.net
Subject: FW: Fwd: Deed

Jeff,
Please look into this and get Don an answer.
Thanks,
Allen

From: gundy@safelink.net [<mailto:gundy@safelink.net>]
Sent: Wednesday, March 05, 2014 4:23 PM
To: Merritt, Allen
Subject: Fw: Fwd: Deed

Allen,
I have a question...

With a Protest by Grant Clark and BLM in place pertaining to the Water Right transfer 78891 that the Albion Ranch 2006 ("Albion 12 Investments LLC") filed. The Albion Ranch 2006 has stated that they are not going to continue with the rotation that's been in the works for many years. They are going with their 1.50 cfs 24-7. Mike Merriman stated to me that Hawker and Clark could continue with their portion of the rotation. But the Albion Ranch is leasing Fred Hawkers ground.

The ground that (Mike Merriman- Albion Ranch 2006) purchased back in 2006 from Clark which the attached Deed shows by percentage on water that goes with the land purchased, has never been applied until they applied for this transfer 78891. With the transfer in protest by Grant Clark can I legally deliver those water percentages when they call for their water or wait until the hearing has been resolved!

*I hope I have not confused you Allen, but if you have any questions . throw them at me....Please.
..... Don*

From: Brian Merriman
Sent: Monday, March 03, 2014 3:57 PM
To: gundy@safelink.net
Subject: Fwd: Deed

Don, here is the deed that we talked about today. If you have any questions please let me know.

Thank you,

Brian Merriman
Albion Ranch
480-332-8488

Begin forwarded message:

From: "Patty Merriman" <patty@americorig.com>
Date: March 3, 2014 at 3:27:27 PM MST
To: <Brian@americorig.com>
Subject: Deed

Don, here is the deed that we talked about today. If you have any questions please let me know.

Thank you,

Brian Merriman
Albion Ranch
480-332-8488

Begin forwarded message:

> From: "Patty Merriman" <patty@americorig.com>
> Date: March 3, 2014 at 3:27:27 PM MST
> To: <Brian@americorig.com>
> Subject: Deed
>
>