

Cefalo, James

From: Cefalo, James
Sent: Monday, November 25, 2013 4:42 PM
To: 'scott@directcom.com'; 'steve.allred@zionsbank.com'; 'wendyr@northerntitle.net'; 'simpson.sbars@gmail.com'
Cc: Barg, Jonie
Subject: Ownership Change for Permit 15-7347

Mr. Hendrickson,

Jonie Barg has asked me to help address questions about the proposed ownership change. She forwarded me the emails that have been sent so far. I hope I can provide some more explanation about the water right process.

Permit 15-7347 was issued by the Department on October 24, 2012. The permit authorized the diversion of 3.34 cfs (1500 gpm) from ground water for the irrigation of 202.7 acres. The listed permit holder, Vic Riches, was given until May 1, 2017 to develop the proposed project.

Once a proposed project is completed, the permit holder files "Proof of Beneficial Use" with the Department, notifying the Department that no further development will occur under the permit. Proof of beneficial use should not be filed until the project is totally complete and water has been applied to beneficial use. In this case, proof must be submitted no later than May 1, 2017. If the project is not completed by May 1, 2017, the permit lapses and is no longer valid.

According to aerial photography, development is not yet complete. There was no irrigation occurring during the summer of 2013. Once proof of beneficial use is submitted, the Department will conduct a beneficial use field exam to confirm the extent of the water right. A field exam cannot be conducted until proof of beneficial use is filed. The final water right license issued by the Department will reflect the actual extent of development. However, the license can never exceed the elements listed on the Permit. So, if a permit is issued for 100 acres, the final license, at most, will authorize the irrigation of 100 acres.

In this case, Permit 15-7347 was split by deed exactly in half. 2M's portion of the permit is 1.67 cfs (750 gpm) and 101.4 acres. Peoa River's portion of the right is the same, 1.67 cfs (750 gpm) and 101.4 acres. The final license for the 2M portion of the right cannot exceed 101.4 acres or 1.67 cfs. The same is true for the Peoa River portion.

It appears that there has been a lot of friction about identifying the acres to be irrigated under the 2M Brand portion of the permit. Generally when permits are split, the ownership of the underlying property is also split. Identifying the irrigated acres in such cases is fairly simple. This is an interesting case because the entire physical property was sold, but half of the permit was retained. To resolve the question of irrigated acres, we have decided to split the right exactly in half, meaning the acres identified in each QQ (40-acre tract) will be divided in two. The map shape for the irrigated acres will continue to be the larger shape (202.7 acres) for both split portions of the permit. This gives the parties, particularly 2M Brand, the maximum amount of flexibility in the development of acres. The completed ownership changes will be mailed out by Jonie in the next couple of weeks. Please feel free to call me directly if you have any follow-up questions.

James Cefalo
525-7161