

MEMORANDUM

TO: Water Right File 2-10300A, 2-10300B, 2-10471, and 2-10472
FROM: Daniel A. Nelson
DATE: October 28, 2013
SUBJECT: Cottonwood Canal Company Water Use Review

I have been asked to review the water rights 2-10300A, 2-10300B, 2-10471, and 2-10472 to show the amount of water use that has occurred since 1985. These water rights have a long and convoluted history. Apparently, the Cottonwood Canal Company (CCC) was formed in the early 1960's to supply water to some desert entry lands in the Glenns Ferry area. Water right application 2-2209 was filed on February 25, 1963, and the permit was approved for 89.6 cfs for the irrigation of 4,480 acres. The field exam was completed and the field examiner found that 4,480 acres had been irrigated with a rate of diversion of 40,500 gpm or 90.2 cfs. The water right was licensed February 11, 1963 for 79.7 cfs and 3,985 acres.

The desert land entries that this water supplied were canceled in 1972 by the Administrative Law Judge for fraudulent entry. This decision was upheld by the Interior Board of Land Appeals and the District Court. The District Court decision was affirmed on appeal to the U.S. District Court for the District of Idaho in August of 1981. In an Extension of Time to Avoid Forfeiture the Bureau of Land Management (BLM) claimed that the last year water was used on the project was 1981.

In 1986, three entities filed Extensions of Time to Avoid Forfeiture, since there was a dispute over ownership of the water right. In 1988, a Stipulation of Agreement was filed allowing the Department to process the Extension of Time to Avoid Forfeiture as a joint application. In 1988, three entities filed Water Supply Bank applications for the same water right. The water supply bank applications were returned and Extension of Time to Avoid Forfeiture was approved under the Joint application based on the 1988 Stipulation of Agreement.

In 1991, one of the entities, Black Mesa Farms, filed a Resumption of Beneficial use form claiming that 12.8 cfs was used to irrigate between 200 and 600 acres in 1988 through 1991. After the Resumption of Beneficial Use form was filed, Black Mesa applied with the other two entities to place this water in the Water Supply Bank. On September 14, 1990, the Idaho Water Resource Board adopted two resolutions allowing 8.8 cfs in the name of the BLM and 58.1 cfs in the name of the CCC to be placed into the Water Supply Bank. These resolutions had a disclaimer stating that stated "That rental of water from the bank under license No. 02-2209 be contingent upon the future review of the license and finding of the validity of the right and that this resolution shall not be considered an approval of any type of nature of the validity of the said water right."

On January 5, 2006, the CCC filed adjudication claim 2-10300 for 8.00 cfs on 400 acres of irrigation. Water right 2-10300 was claimed on the amount of land the field examiner found to be irrigated that was not included in the original water right license. These are also the same lands that Black Mesa Farms claimed to have irrigated from 1988 through 1991. Water right 2-10300 had an acre foot limit based on the water right license. During the Snake River Basin Adjudication Review, water right 2-10300 was altered into two separate water rights for the same 400 acres. Water right 2-10300A was for the amount licensed with the same priority date as the license. Water right 2-10300A

I couldn't find any documentation of activity for water right 2-2209 in the back files. However, there has been some recent Water Supply Bank activity for these four water rights. The recent Water Supply Bank Activity is as follows:

- Water rights 2-10300A and 2-10300B were recently transferred and the full 8.00 cfs and 400 acres were moved to another location. This transfer was approved on October 16, 2012. I am not sure if these water rights were used in 2013 or not. We don't have current data to tell us if the transfer has been accomplished.
- A Water Supply Bank Rental was approved on March 15, 2011 to use 2.90 cfs, 580 af, and 145 acres of water right 2-10449 from April 1, 2011 to October 31, 2015. Water right 2-10449 was the water right that water rights 2-10471 and 2-10472 were split from, so a portion of each right could be rented from the water supply bank.
- A Water Supply Bank Rental was filed on water right 2-10471 for 0.02 cfs, 15 af, and 10 acres from 7/1/2013 to 11/15/2013.
- A Water Supply Bank Rental was filed on water right 2-10472 for 0.02 cfs, 15 af, and 10 acres from 7/1/2013 to 11/15/2013.
- A Water Supply Bank Rental was filed on water right 2-10471 for 2.24 cfs, 168 af, and 112 acres from 7/1/2013 to 11/15/2013.
- A Water Supply Bank Rental was filed on water right 2-10472 for 2.24 cfs, 168 af, and 112 acres from 7/1/2013 to 11/15/2013.

CONCLUSION:

From the information I could attain, the 400 acres under water rights 2-10300A and 2-10300B could have been irrigated from 1988 through 1991, but the full water right was not been irrigated since 1981. Water right 2-10300A and 2-10300B were not placed into the Water Supply Bank, but they were decreed on July 31, 2012.

From my research water rights 2-10471 and 2-10472 have not been used since 1981. However, an Extension to Avoid Forfeiture was filed on these water rights from 1986 to 1991, and they were placed into the Water Supply Bank on March 22, 1991. The Water Supply Bank resolutions were contingent on the validity of the water right, but all of these water rights including the splits due to water right transfers and changes of ownership have been decreed in the SRBA.

All of the water rights that have been split from water right 2-2209 including 2-10471 and 10472 appear to have been decreed in 2012, so forfeiture shouldn't be considered an issue due to the issuance of the decrees. In reality, these water rights haven't been used since 1981, and have been vaguely protected in the Water Supply Bank.



The history of Water Supply Bank Rental activity for water right 2-2209 is fairly limited. However, there has been some recent rentals from the Water Supply Bank in the past 3 years. These rentals would only affect water rights 2-10471 and 2-10472, since water rights 2-10300A and 2-10300B have never been accepted into the Water Supply Bank.

To help make sense of the different splits of this water right, I created a split tree. I have attached this split tree to this memo.

