

Cefalo, James

From: Cefalo, James
Sent: Monday, October 04, 2010 3:04 PM
To: 'Stephanie Gunn'
Subject: Water rights 11-140, 11-147, and 11-157

Stephanie,

Thanks for sending the chain of deeds. My initial analysis is that a lot more documentation is needed before the IDWR ownership record can be updated. The three water rights in question were listed in the 1902 Thomas Fork decree and were described as follows:

11-140	Rudolph Tueller	1.2 cfs	12S 46E	Sec 16 SESE	Sec 21 NENE, NESE, SENE	(160 acres total)
11-147	John Blechert	1.6 cfs	12S 46E	Sec 26 SENW, NESW, NWSW, SESW	Sec 27 NESE	(160 acres total)
11-157	Arno Boehme	3.0 cfs	12S 46E	Sec 27 NENE, NWNE, SENE, SENE		(160 acres total)

Starting with the most recent deed you provided (2009 Warranty Deed WYWJ to Lui), the property described in Attachment A covers the entire decreed place of use for 11-157, and one QQ of the decreed place of use for 11-147. The chain for this limited piece of property is properly linked back until the 1996 warranty deed from Jesse Hirschi to L Brad Fisher. The 1996 deed does not include the NE corner of Section 27 and, therefore, leaves out the entire decreed place of use for 11-157. The chain for 11-157 stops at this point. In fact, the only parcel that is traced back to the early 1900s is the single QQ (Section 27 NESE) that is part of 11-147. The oldest deed provided still does not include John Blechert, the listed water right owner.

To update the ownership records for 11-140, 11-147, and 11-157, we would need a chain of deeds from the present owner tracing back to the individuals listed on the water rights (Tueller, Blechert, Boehme). You would also need to provide documents reflecting the sale and transfer of the water rights from the places of use described in the decree (as shown above) to the current place of use. If, for example, one of the water rights was moved from the decreed place of use to the current place of use in 1950, we would need a document reflecting that transfer and then the chain of deeds from the 1950 seller to the owner listed on the right.

Your client may want to initiate a quiet title action and have a court declare that they own the entirety of the three water rights. If you were able to obtain a court declaration of ownership, we could update the ownership immediately, without requiring a chain of deeds or proof of transfer. The problem is that the court would likely require the same type of documentation to establish ownership. The reality is that it may be a difficult road to collect the documents, if they even exist. Many of the people in the Bear River drainage have chosen to forgo ownership changes for the time being and allow an adjudication court to sort it all out at some point in the future. As you may be aware, the Snake River is nearing the end of a twenty-five year adjudication process where ownership questions like these were hammered out. If the buyer and seller are confident that they have the water rights, they may want to execute the sale with the water rights and not pursue a change of the ownership record.

To reiterate, the seller either owns those water rights (or a fraction of them) or he doesn't. The department cannot grant or remove an ownership interest in a water right. Only a court or legal instrument can change ownership of a water right. The department merely updates the water right database record to reflect the new ownership. If your client would like a permanent clarification of ownership, he may want to initiate a quiet title action in court.

Hope this helps.