

Jordan, Blake

From: Ernie Carlsen [ernie@idahowaterengineering.com]
Sent: Wednesday, April 10, 2013 5:54 PM
To: Jordan, Blake
Subject: Re: Bear River Meadows, LLC transfer (POD change) 11_377-11_380

Blake,

Were the two shapes I emailed to you on April 2 sufficient for showing the POU for 11-377 through 11-380?

Ernie

On Tue, Apr 2, 2013 at 7:45 AM, Ernie Carlsen <ernie@idahowaterengineering.com> wrote:

Blake,

Based on the location of the ditches and what I have learned from talking with the Watermaster and other individuals raised in the area, here are two shapes which contain the acres that have been irrigated under rights 11-377 and 11-380. The one field where resumption of irrigation is on going is in SENE, NESE, S32 & S1/2NW, S33.

I don't have a count on the number of acres contained in these two shapes. I am hoping there are at least 240 acres.

Ernie

On Thu, Mar 28, 2013 at 8:08 PM, Ernie Carlsen <ernie@idahowaterengineering.com> wrote:

Hello Blake,

Thank for the additional explanation of the information needed to process the application for transfer of 11-377 thru 11-380. I am currently on vacation but will attempt to get you the requested information within the next seven days.

Ernie

On Thu, Mar 28, 2013 at 1:09 PM, Jordan, Blake <Blake.Jordan@idwr.idaho.gov> wrote:

Ernie,

Thank you for your explanation as it pertains to my initial request. As I review the transfer memo, in particular paragraph 5a. (8), I agree with you and no notarized statement or a statement on official letter head from Western AG Credit will be required. However, in order to finish my review for this transfer application I will need additional information about the irrigation place of use under water rights 11-377, 11-378, 11-379 and 11-380. Generally, a water will set forth the elements of the right in detail. The place of use for many of the 1920 Bear River Decree water rights are ambiguous and make it difficult to review and process proposed transfers. It has been the departments practice to require transfer applicants to identify acres irrigated under a water right when the current place of use contains ambiguity. This requirement allows the water right holder to better define the water right and helps the department process the application in accordance with Idaho Code 42-222.

The place of use for water rights 11-377, 11-378, 11-379 and 11-380 contains the ambiguity mentioned above. In total these water rights authorize the irrigation of 240.0 acres somewhere within a 440.0 acre tract. I understand that transfer 78477 simply proposes to change the point of diversion and identifying the place of use is only required because of the ambiguity. In keeping with our current practice, we ask you to provide a map of the diversion, distribution system, and an outline of the 240.0 acres currently being irrigated under these water rights.

In my first email, I inquired about the validity of the water rights and asked when the last time the whole 240.0 acres was irrigated? Your explanation about your personal walk over the Bear River Meadows property identifying ditches and witnessing irrigation over the decreed place of use between 2010-2012 along with the requested map will help us verify the validity of these water rights. I am hesitant to use the WD 11A water master records as a factor in determining the validity for these rights. From what I understand, and please correct me if I am wrong, but the water masters annual assessments are based on the water users water rights and not based on what was actually delivered at the headgate. Water district records based on the diversion rate listed on the water right does not verify actual water usage.

Please provide a copy of the requested map as soon as possible. Because transfers in the Bear River can be so challenging we sometimes send the transfers to the state office for parallel processing. As you are aware, this can extend the processing time significantly. We would like to expedite processing as much as possible. To keep the transfer process moving, we have already advertised the transfer. The legal add will appear in the News Examiner on the 27th of March and 3rd of April.

Let me know if you have any questions.

Thanks,

Blake

From: Ernie Carlsen [<mailto:ernie@idahowaterengineering.com>]

Sent: Wednesday, March 20, 2013 4:18 PM

To: Jordan, Blake

Subject: Re: Bear River Meadows, LLC transfer (POD change) 11_377-11_380

Blake,

Normally I would move forward with responding to your request for additional information or items but in this case I am inclined to push back with some justification.

I hope it is fairly clear from the transfer application and certainly from GIS that the legal description for the decreed POD is in error. As it turns out the error is limited to the township. Why would Western AG Credit FLCA oppose the correction, having the correct description for the POD will not impact the value of the land rather it serves to enhance its security interest. As I understand paragraph 5a.(8) of the transfer memorandum dated December 21, 2009, there is a requirement for the department to notify Western AG of the change. But because the transfer is not impacting the value of the land by changing the POU or the nature of use, a notarized statement or a statement on official letterhead from Western AG is not required.

Concerning the irrigated acres, since the transfer application does not propose changing the place of use and item 7 of the application makes no reference to place of use, I did not develop a shape file to identify the location of the 240 acres historically irrigated under these water rights and I was not aware that identifying the irrigated acres was a requirement for a change in POD. Suffice to say that in doing work for Chuck Schvaneveldt, I personally walked over much of it in 2010 to identify the location of ditches and witnessed irrigation over a large part of the decreed POU in 2010, 2011 and 2012. Plus, in doing research for a previous transfer application on water right 11-7741, (formerly 11-376C) I reviewed all the annual reports and daily records for Water District 11A available on the Department's website and found the assessment for water rights 11-377 through 11-380 were based on diverting all of each water right and that the assessments were paid in full. A memo stating those findings should be in the file for 11-7741. With this information Chuck's answer to the first statement in item 6.c. of the application, which is the only reference to place of use, is No.

Though I did not directly answer your questions I hope you find my explanations to be satisfactory. Please let me know if my response is not sufficient.

Respectfully

Ernie

On Wed, Mar 20, 2013 at 1:24 PM, Jordan, Blake <Blake.Jordan@idwr.idaho.gov> wrote:

Hi Ernie. I just noticed that Western AG Credit FLCA has a security interest on the water rights involved in this transfer. we will need a letter either on their letter head or a notarized letter from them consenting to the transfer.

These water rights authorize the irrigation of 240.0 acres. Which 240.0 acres is the right talking about? When was the last time the whole 240.0 acres irrigated?

Blake

From: Ernie Carlsen [mailto:ernie@idahowaterengineering.com]
Sent: Monday, March 18, 2013 12:51 PM
To: Jordan, Blake
Subject: Re: Bear River Meadows, LLC transfer (POD change) 11_377-11_380

Blake,

Here are the proof reports you requested. Sorry for the oversight on this end.

Since this application simply seeks a correction to the legal description for the historic point of diversion will it have to be advertised?

Ernie

On Mon, Mar 18, 2013 at 9:54 AM, Jordan, Blake <Blake.Jordan@idwr.idaho.gov> wrote:

Hi Ernie,

Last week we received the Bear River Meadows transfer. There are no water right proof reports attached to the application. Could you send me those proof reports.

Thanks, Blake