

Merritt, Allen

From: Spencer, Nick
Sent: Tuesday, January 04, 2011 8:52 AM
To: Baxter, Garrick
Cc: Merritt, Allen
Subject: RE: 36-4 (Western Legends); 36-18 (Buckeye Farms)

*Transfer 78283
(formerly 66354)*

Sure. I can do that. I suggested to Allen that he do it simply because I know he has been involved in an ongoing conversation with John about a pending transfer of the Buckeye Farms rights. NBS

From: Baxter, Garrick
Sent: Tuesday, January 04, 2011 8:47 AM
To: Spencer, Nick
Cc: Merritt, Allen
Subject: RE: 36-4 (Western Legends); 36-18 (Buckeye Farms)

Good information, Nick. That explains why we have the overlap. Once you have had a chance to complete what you feel is an adequate review of the file, can you please contact John Simpson and explain that Allen asked you to look into the issue and explain what you found? I think it would be better coming from you directly rather than indirectly through Allen. Sound like a plan?

Thanks,
Garrick

From: Spencer, Nick
Sent: Monday, January 03, 2011 5:51 PM
To: Merritt, Allen
Cc: Baxter, Garrick
Subject: 36-4 (Western Legends); 36-18 (Buckeye Farms)

Hi Allen.

It took Danni Smith some doing to track down these files at the storage center. But it now looks like we have all the files (three bankers boxes) and I am going through them as time permits. The question you are concerned about appears to be one more example of the problems we had in the SRBA with Buckeye Farms, mostly caused by the fact that Buckeye Farms did not file objections to the recommendations of its rights and those recommendations quickly moved forward to partial decree. It was only after they were partially decreed that we discovered our recommendations of the Buckeye Farms rights negatively impacted other neighboring rights, but that since they were already decreed we could not reopen them to adjust quantities for the benefit of the neighbors. (This was especially a problem with the splits of the 37-3 right, which resulted in several claimants not getting their fair share of the right because so much of it had already been decreed to Buckeye Farms.)

While I am not done with my review, here is a skeletal overview of what apparently happened between Buckeye Farms and Western Legends:

The acres which I believe you are concerned about originally were recommended to Buckeye Farms as part of the place of use for the 36-18 right. I believe this recommendation was not objected to and right 36-18 went forward to partial decree.

The acres were also claimed by Western Legends under its claim for the 36-4 right, but were not recommended to Western Legends for the reason that they were recommended to Buckeye Farms instead. Western Legends objected to IDWR's recommendation of the 36-4 right, and Buckeye Farms came into the subcase as a respondent (or possibly as another objector). While I am not yet clear about the history of the irrigation on the acres in question the dispute between Western Legends and Buckeye Farms boiled down to a question of which right Buckeye Farms had used when it had irrigated the ground in question. Buckeye Farms contended it had irrigated the parcel with its 36-18 right; Western Legends contended that Buckeye Farms had actually used the 36-04 right to irrigate those acres.

John Simpson ultimately accepted Western Legends' position, and signed an SF-5 including the acres in question within the POU of the 36-4 right. This, however, created the overlap you are concerned about because the POU for the 36-18 right included those same acres, and 36-18 had already gone forward to partial decree. Notes in the file indicate that as part of the agreement between Western Legends and Buckeye Farms that resulted in the SF-5 including those acres within the POU of the 36-4 right, John Simpson agreed to file a motion to set aside the partial decree of 36-18 in order to reconfigure the POU to delete the overlap acres from the 36-18 POU and move them to another part of the property owned by Buckeye Farms. (My recollection is that Dr. Brockway the Elder had done a POU analysis that showed there were irrigated acres elsewhere on the Buckeye Farms property that could be reached by the 36-18 right, and that if the overlap acres had not historically been irrigated by the 36-18 right, then these other acres must have historically been irrigated by the 36-18 right.) However, I have checked the IWATRS summary report for 36-18 on the SRBA Court's website and can find no indication that John Simpson ever filed a motion to reopen the partial decree of 36-18. Therefore the overlap still remains. I don't know why Simpson never filed a motion to set aside the partial decree in order to reconfigure the POU for 36-18. That would be a good question to ask him next time you talk to him about this.

It appears to me at this point that by signing off on the SF-5 for the Western Legends right, Buckeye Farms has conceded that 36-4 is the right that is appurtenant to the acres in question, and that the POU decreed under the 36-18 right is in error.

However, this is based on only a cursory review. Before I dig any deeper into these voluminous files, please get back to me with any follow-up questions you have after reading this summary, so that I can try to find the answers to all your questions as I go along. NBS