

DRAFT MEMO

DATE: 9/22/2003
FROM: Lori Graves
TO: Transfer File No. 70343

Advertising

For farming flexibility, applicant proposes a 3971 acre permissible place of use (ppu) for rights 2-2209B and 2-103. When combined, the rights will be limited to 21.34 cfs and irrigation of 1066 acres within sections 1,2,11,12,13,14,24 T6S R10E and sections 6,7,17,18,19 T6S R11E. Proposed place of use is also known as the Black Mesa Project located SE of Glenns Ferry and the Snake River.

Brief

The Cottonwood Mutual Canal Co. (CMCC) project was started in 1962. The field exam for license 2-2209 described lands irrigated in S14 T6S R10E, but the resulting license issued by the department did not list lands in S14. No appeal was filed regarding the exclusion of S14 acres. CMCC filed a petition on 10/31/2000 to correct license 2-2209 to include the S14 acres. A recommended decision and order by Peter Anderson dated 1/24/2002 denied the petition. The director has yet to rule on Peter's decision.

The department started an adjudication of Snake River rights in the early 1980s, which was not completed but was later incorporated into the Snake River Basin Adjudication (SRBA). At the time, CMCC filed an amended claim on 2-2209 to account for the acres in S14, which resulted in creation of beneficial use claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture were filed by CMCC and BLM, which protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan. The Wootans then became partners with Don and Brenda Bryant and formed Black Mesa Farms LLC.

In the SRBA, Black Mesa Farms filed claim 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 ppu. The 3985 ppu incorrectly included 440 acres of BLM land. The ppu for 2-2209B should have listed 3545 acres. On 1/10/2003, Black Mesa Farms amended SRBA claim 2-2209B from 3985 acres to 3545 acres.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14, plus Black Mesa Farm's 3545 acre ppu.

Validity of 2-103

As described in the petition to correct license 2-2209 (Attachment B, Findings of Fact, Part 3, nos. 10, 12, 13 and 15), irrigation of acres in section 14 was supported by signed

statements dated June 11, 1965, July 29, 1965 and January 26, 1970. The IDWR field examiner also found and referenced acres in S14, but was limited to licensing only those acres that the permit holder, CMCC, listed in its deposition, which did not include S14 acres. The permit holder did not appeal the license recommendation.

After 2-2209 was licensed in 1970 without S14, CMCC filed an amended claim in the first Snake River Adjudication on right 2-2209, maintaining that S14 acres should have been included in the license. Dave Tuthill and Don Shaff agreed that license 2-2209 should be amended to include the S14 acres. However, Glen Saxton felt the additional lands should be listed under a beneficial use right, resulting in claim 2-103 created for 426 acres in S14. The adjudication was never completed and a final decision never made, resulting in the filing of the above referenced petition to correct the license (Attachment B).

Note: The 1984 IDWR review of claim 2-103 found no irrigation of S14 on a 1964 aerial photo. Proof of beneficial use for right 2-2209 indicated lands were first irrigated in 1965. Irrigation in S14 was verified on a 1969 aerial photo and a 1974 orthophotoquad.

The recommended order for the petition concluded that modifying the license would constitute an enlargement. Assuming this decision is finalized, claim 2-103 should be recommended for decree based on the evidence on file with the IDWR. The claim lists a priority date of May 10, 1965. The evidence on file supports June 11, 1965, as the earliest priority date. Wes Wootan stated that June 11, 1965 was early enough and that he did not have anything to support May 10, 1965. The original claim lists 8.54 cfs for irrigation of 426 acres. During the first adjudication, 40 acres claimed in the SWNW were eliminated by IDWR review because they appeared to be covered on permit 2-2389. That permit lapsed. Since 426 acres have been documented and historically irrigated in S14, the applicant amended SRBA claim 2-103 back to the original 426 acres.

The capacity of the system was measured at 90.24 cfs, of which 79.7 was licensed for right 2-2209 for 3985 acres. The 426 acres in S14 were not included in the licensed acres or flow rate calculations. The irrigation system has the capacity for the additional 8.54 cfs and 426 acres under right 2-103.

Validity of 2-2209B

Right 2-2209 was licensed for 3985 acres and 79.7 cfs in the name of CMCC. A long-standing dispute between BLM and CMCC has been ongoing over the ownership of the water right. Partial resolution was reached in 1990 when BLM conveyed all but 440 acres of the 3985 acre p/u to the Wootans without any reservations to the water right. The Wootans then assigned all but 12.8 cfs appurtenant to those acres to CMCC. Based on IDWR review of right 2-2209 for a water bank application filed by CMCC in 1991, it was determined that CMCC had undisputed ownership of 58.1 cfs of the original right and Black Mesa Farms had undisputed ownership of 12.8 cfs of the original right. However a dispute continues between CMCC and BLM over the remaining 8.8 cfs licensed to the 440 acres BLM retained. Basically, CMCC thought that BLM only

retained 280 acres (5.6 cfs) of the original p/u and had conveyed the rest to the Wootans. This being the case, CMCC would have 61.3 cfs assigned to them rather than 58.1 cfs. This dispute will likely be resolved in the SRBA. Regardless, BLM and CMCC agreed in 1990 that the Wootans have entitlement to 12.8 cfs of the original license for irrigation of 640 acres within the lands conveyed to them by BLM.

Ownership

As discussed above, all but 440 acres of the 3985 acres licensed on right 2-2209 have been conveyed to the applicants in the attached patent document issued by the BLM (Attachment D). The lands listed on page 3 of the document have been included in the proposed ppu but appear to be subject to no irrigation per the BLM patent. Wes Wootan told me that the deal was made before he revised the sprinkler irrigation system. The lands in question border the ppu. BLM wanted to make sure that irrigation water did not run off onto BLM lands outside of the ppu. Wes stated that with the revised system, run off is not an issue. BLM will be sent a comment letter addressing this matter.

Issues

In 1985, CMCC filed an Extensions of Time to Avoid Forfeiture on right 2-2209, which was approved in 1988 until July 1991. Farming began again in 1990, when the Wootans purchased the property. An SRBA claim was filed in 1990 on right 2-2209 and in 1991 on claim 2-103. Aerial photos were supplied by Elmore County Farm Service Agency verifying irrigation occurred on 600 acres of cropland in S7 T6S R11E during the 1991 irrigation season.

Based on the 1991 FSA photo, it does not appear that irrigation occurred in S14, however an additional 160 acres of pasture in S7 and S12 could probably be counted as irrigated, along with 244 acres of Rye grass in S12.

The water right records and the SRBA records do not coincide due to the nature of IDWR's data base system. The tables located on pages 4 and 5 of this memo display the current water right and SRBA records. For purposes of this transfer and/or future proceedings, please refer to the SRBA records. Note that transfer no. 5125 is abbreviated as T5125 and so forth.

Right 2-2209 has obviously been over-claimed in the SRBA due to the complex history relating to ownership and validity of the right.

The system capacity is 90.24 cfs.

Note: the pump station developed for 2-2209 also serves water right 2-4021, which was claimed by Walter and Terrie Trail in the SRBA for 10.54 cfs and 600 acres irrigation. The priority date listed on the claim is May 10, 1965. The Trails will be notified about the current transfer application and any related proceedings.

TABLE 1
WATER RIGHT RECORDS

Number	Name	CFS	Notes
2-2209B	City of Glenns Ferry	2.40	T5125
2-2209C	Cottonwood	65.14	T5714
2-2209D	JR Simplot	12.16	T5714

TABLE 2
SRBA RECORDS

Number	Name	CFS	Notes
2-2209	Cottonwood	79.70	Claimed excess volume
2-2209A	Cottonwood	66.90	2-2209 split
2-2209B	Black Mesa	12.80	“
2-2209C	BLM	8.80	Duplication of 2-2209A
2-2209D	Cottonwood	64.50	SRBA record “A” Split by T5125
2-2209E	Glenns Ferry	2.40	“
2-10186	Cottonwood	52.34	SRBA record “D” split by T5714
2-10187	Simplot	12.16	“
2-10188	Cottonwood	49.51	2-10186 split (not a transfer)
2-10189	Smith	2.83	“
2-10190	Cottonwood	49.41	2-10188 split by T66124
2-10191	Crowley	.10	“
2-10195	Cottonwood	49.38	2-10190 split by T68552
2-10196	Glenn	.03	“
2-10208	Cottonwood	49.16	2-10195 split by T69980
2-10209	McDonough	.22	“ Ownership change pending