

Cefalo, James

From: Cefalo, James
Sent: Tuesday, December 06, 2011 4:00 PM
To: 'T. J. Budge'
Cc: 'Conder, Claudia'
Subject: Smith/Barlow Transfers
Attachments: 13-681A Proposed Irrig Acres.pdf

T. J.,

Claudia Conder recently contacted me about the remaining issues with the Smith/Barlow transfers. There are three main issues:

1) There is a question about how many irrigated acres are available under right 13-681A. This is mainly an issue with the department's records. Water right 11-618 was described in the 1920 Bear River Decree (entry #309). The decree was in the name of George D. Anderson and authorized the diversion of 3.0 cfs for the irrigation of 150 acres. In February 1991, the department approved Transfer 3688 which split water right 11-618 into two parts: 11-618A (Anderson, 2.00 cfs, 95 acres) and 11-618B (Hogan, 1.00 cfs, 55 acres). When the splits were created, the department did not list the acre limit on the face of water right 11-618A. At some point after 1999, the two rights were renumbered to be 13-681A and 13-681B, to match the newly designated Basin 13. The amended transfer included a copy of the water right report for 13-681A (which did not list an acre limit) and described a 142 acre permissible place of use. Therefore, the transfer is somewhat ambiguous about how many acres will be irrigated under 13-681A.

This is a fairly simple issue to resolve. Water right 13-681A is limited to 95 acres. The applicant understands he is limited to 95 acres. In fact, you have provided a map depicting which 95 acres will be irrigated within the permissible place of use. (See attached map) The department allows water right holders to designate permissible places of use for irrigation water rights. This gives the water user some flexibility as far as rotating plantings without filing transfers. However, the department requires water users to maintain an updated shapefile/map, depicting the acres actually irrigated. This gives the department the power to identify excess uses and protects the water user if the non-irrigated part of a permissible place of use is split-off and sold. As part of the transfer approval, water right 13-681A will be specifically limited to the irrigation of 95 acres.

2) The second issue is closely related to the one above. Claudia asked whether the irrigated acres for water right 13-769 could be more narrowly defined. Amended transfer application 74659 proposes 80 acres of irrigation within a 200-acre permissible place of use. You have also provided a map showing where the 80 acres of irrigation will take place. Initially, the 80 acres will be the SESE of Section 10 and the NENE of Section 15. If the irrigated acres are ever changed, the water user is required to notify the department of the change and provide a map showing the new configuration of irrigated acres.

3) It is reported that a large portion of the Smith Property has recently been cleared and may not be irrigated in the future. It would be helpful to have a brief explanation of the recent development activities on the Smith property and the long range plan for use of water right 13-681A.

It appears that the remaining issues identified by Claudia have mostly been addressed. A little more clarification of the proposed use of water on the Smith property may be all that is needed. We will move forward with the final transfer review/approval once the protests are withdrawn.

Please keep in mind that a protest was also filed against Transfer 74659 by Bear River Water Users Association (Carly Burton) in January 2011. The protest mainly refers to statutory claim 13-7710, which has been removed from the application. I suspect that Mr. Burton would withdraw his protest if he were given an update on the amended transfer

applications. I will let you contact Mr. Burton to seek a withdrawal of protest. Thank you for addressing these final items.

James Cefalo
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