

Cefalo, James

From: Cefalo, James
Sent: Tuesday, June 28, 2011 1:31 PM
To: 'carlybarbara@comcast.net'; 'Conder, Claudia'
Cc: 'tjb@racinelaw.net'; Jordan, Blake
Subject: Protested Transfer Application No. 74659
Attachments: Letter from TJ Budge - Smith Transfers.pdf

Claudia and Carly,

This transfer application was recently amended and re-advertised. I thought I would provide you some of the background on the transfer and the reason for an amendment, to see if it resolves your issues of protest. The attached letter from TJ Budge also gives a similar history of the transfer.

Transfer 74658 and 74659 were filed in Feb 2008. The transfers were "companion" transfers, because they proposed a swap of water rights. Brad Smith owned two separate properties. In 2007, Mr. Smith sold one of the properties to Mr. Barlow. As part of that sale, Mr. Smith agreed to transfer a decreed right from Cold Spring Creek to the Barlow property. In exchange, a statutory claim would be filed on the Barlow property and Mr. Smith would be allowed to move the statutory claim (13-7710 - filed in 2007) to his property near the river.

Transfer 74658 (as originally filed) proposed moving statutory claim 13-7710 from the Barlow property to the Smith property. Transfer 74659 proposed moving decreed right 13-679 for Cold Spring Creek from the Smith property to the Barlow property. Because one of the transfers involved a statutory claim, IDWR was hesitant to process the transfers. In August 2010, I sent a letter to Mr. Budge asking him to move forward with the transfers or withdraw them. Holding transfers indefinitely does not benefit anyone. I notified Mr. Budge that transferring the statutory claim could be a difficult road, and that we would conduct an adjudication-type review of the claim before it could be moved. In December 2010, I decided to advertise the transfer on the decreed right (74659), hoping that by resolving the "simple" transfer, it may lead to a final decision by Mr. Budge on the more difficult transfer, involving the statutory claim.

Transfer 74659 was advertised and protested by PacifiCorp and Bear River Water Users Association. Both of the protests stated that statutory claim 13-7710 is invalid and cannot be part of a transfer application.

After conducting some water rights research in the area, Mr. Budge discovered that statutory claim 13-7710 should not have been filed. Mr. Budge requested that statutory claim 13-7710 be officially withdrawn (see the attached letter). The status of the claim was changed to "withdrawn" this morning. Mr. Budge has also amended both transfers. The transfers still propose a water rights swap. Mr. Smith still intends to move decreed right 13-679 for Cold Spring Creek to the Barlow property. Now, Mr. Smith proposes moving decreed right 13-681A from Pats Hollow Creek to cover the irrigation occurring on his property by the river. Mr. Budge provided warranty deeds with the amended application that confirm ownership of the water rights. Mr. Smith asserts that the water rights have been fully used. Aerial photography indicates that portions of the properties in question have been irrigated in the recent past. Transfer 74659 was re-advertised this month and Transfer 74658 was advertised for the first time at the same time. The protest period has recently ended and no other protests were received.

The amended application files have been scanned and are available on the department's website. Please review the amended application and Mr. Budge's letter and let me know how you would like to proceed. If you believe the amendment (and official withdrawal of statutory claim 13-7710) addresses your concerns, please send us a written withdrawal of protest. If you are not satisfied with the amendment and still want to conduct a pre-hearing conference, that's okay too, let me know and I will have Sharla schedule a conference in the coming months.

Thanks,