

Cefalo, James

From: T. J. Budge [tjb@racinelaw.net]
Sent: Monday, September 19, 2011 9:11 AM
To: Conder, Claudia
Cc: Cefalo, James; bradsmith60@gmail.com
Subject: RE: Protested Transfer Application No. 74659
Attachments: 20110115 Ltr IDWR.PDF; 7A and B (13-681A) lands actively irr.pdf; 7A and B (13-679) lands actively irr.pdf

Claudia,

Thanks for your email. We can meet and/or arrange a site visit if needed, but would prefer to resolve your concerns by phone and email correspondence if possible. This transfer has been in the works for quite some time and we would like to keep costs down to the extent possible. Some additional explanation may help.

If you have not read it already, please see my letter to James dated January 15, 2011, attached, which explains the purpose of the companion transfers. They simply swap two 80-acre water rights. The challenge we discovered is that the land actually being irrigated under water right 13-681A did not correspond to the place of use shown on the paper water right. We ended up having to get a title abstract that shows how 13-681A got to Smith. The deed history showing this is included with the transfer application. It is accessible online, so you can go through it if you would like. To make it easier to follow, I prepared maps that corresponded to each deed. Each map shows both the land conveyed by the deed (outlined by a dotted red line) and the place of use of 13-681A (outlined in yellow). The key deeds are the 1946 deed to Anderson and the 1960 deed from Anderson to Smith. The deed history makes clear that Smith owned all of 13-681A and 13-679.

Also attached to this email are maps showing the lands actually irrigated under water rights 13-679 and 13-681A. Brad Smith ran the farm until recently and can attest that these maps reflect actual irrigation since he was a young boy in the 1950s and 60s.

Hope this helps. Feel free to give me a call if you want to discuss any of this further.

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From: Conder, Claudia [mailto:Claudia.Conder@PacifiCorp.com]
Sent: Friday, September 16, 2011 3:35 PM
To: T. J. Budge
Cc: Cefalo, James
Subject: FW: Protested Transfer Application No. 74659

TJ- I spoke with James Cefalo briefly this morning about this transfer and some other matters. Below is an e-mail I sent to James back in July. In order to understand all of this more thoroughly, I would propose a meeting (pre-hearing

conference if it needs to be called that...) to sit down together and review the application and maps, etc., and to visit the site to understand where the diversions are located to understand what is actually being irrigated by what rights and by who.

*Claudia Conder
Water Rights Administrator
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801-541-3594 (cell)*

From: Conder, Claudia
Sent: Tuesday, July 05, 2011 10:08 AM
To: 'Cefalo, James'
Cc: 'Carly Burton'
Subject: RE: Protested Transfer Application No. 74659

James- I've spent quite a bit of time reviewing all of this info and trying to make sense of it. There are still some questions and troublesome issues that I can see.

First and foremost- 13-681 decreed water right. This was split into 13-681A and 13-681B as you know. The decreed right, award #309 in the Dietrich Decree, is for 3 cfs to irrigate 150 acres if I read it correctly. 13-681B has now 1 cfs associated to irrigate 121 acres according to the public info on your website. It is under the name of Wheeler Family Trust.

This transfer of 13-681A still under the original name of George Anderson proposes to irrigate 142 acres. (at least that's my understanding based on the amended application). This would be a significant enlargement of the original decreed right.

The maps that are attached to the application are not very clear about what is actually being irrigated by either source. Maybe it is just the quality of the maps, but I am questioning the total irrigated acres-both historic and proposed. Can the applicant show and prove the original acres under 13-681A were irrigated to their full extent and for how long? There are just too many questions on this one that I am uncomfortable about. This needs further review and maybe even a field visit. Also, I would propose that both of these amended transfers be advertised. I have talked with a few property owners in this part of the valley who have expressed interest and concern with these applications.

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From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
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

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,

James Cefalo
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IDWR - Eastern Region
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