

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

September 29, 2005

Mr. Roger Warner
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

Separate
land owners
Chandlers

Typo WRF
35-40 in
NE, S22,
45, 32E



Re: North Fork Energy Co. (Water Rights 35-40
Crystal Springs Fish Hatchery - Permit Number ID-G-0038

RECEIVED

OCT 03 2005

Department of Water Resources
Eastern Region

Dear Roger:

This will be a record of the proceedings of North Fork Energy's water rights that were to be split during transfer 5030 (1998). The split of the rights should have been accomplished pursuant a Special Warranty Deed between North Fork Energy and John L. Miller dated 12/23/1998. During this change of ownership North Fork Energy sold all its land south of Edwards Rd, in Township 4S, Range 32E, Sections 23, 24, 25, & 26 to John L. Miller but retained the land north of the road and the portion of the water rights appurtenant to this property. However, it seems as if some of the water right splits were never accomplished.

All of these rights are either used for fish propagation (35-4271, 35-8635, 35-9068, and 35-8782) or for commercial use (35-8679). The fish propagation rights are all non-consumptive and are discharged into Boom Creek and then delivered to the southern portion of the property that was sold to Mr. Miller. In addition, all flows from 35-8679 that are not consumed by North Fork Energy are also discharged into Boom Creek and delivered to the southern portion of property.

Prior to the change of ownership these rights were involved in two separate water right transfers (5030 and 5345) that were approved by IDWR. Transfer 5030 was filed to correct the actual place of use (POU) for water rights 35-4271, 35-8635, and 35-8679, and to add new points of diversion (POD). The new POD's were being added by developing some new artesian wells in order to restore the original discharge rates recorded for these rights. Transfer 5345 was filed in order to change the point of diversion for right 35-8782 so that it would reflect the same place of use as the water rights changed pursuant transfer 5030.

SUPPORT DATA

IN FILE # 35-4271A

A record of each of the rights will be described below:

35-4271

- OK
- According to the above described warranty deed and transfer 5030, 35-4271 was to be split according to the place of use that was being sold.
 - The documentation was received by IDWR on 01/13/1999 and this right was split according to the above mentioned deed into 35-4271A and 35-4271B.
 - Both of these rights were partially decreed on 02/25/1999.
 - North Fork Energy retained 35-4271A and John L. Miller retained 35-4271B.
 - Both of these rights are for 50 cfs and have a beneficial use of fish propagation and are non-consumptive.
 - Since this original transaction 35-4271B has undergone many different ownership changes; however 35-4271A has continuously been retained and utilized by North Fork Energy.

35-8635

- According to the above described warranty deed and transfer 5030, 35-8635 was to be split according to the place of use that was being sold.
- The documentation was received by IDWR on 01/13/1999 and this right was split according to the above mentioned deed into 35-8635A and 35-8635B.
- North Fork Energy retained 35-8635A and John L. Miller retained 35-8635B.
- Both of these rights were partially decreed on 02/25/1999.
- Both of these rights are for 0.72 cfs and have a beneficial use of fish propagation and are non-consumptive.
- Since this original transaction 35-8635B has undergone many different ownership changes; however 35-8635A has continuously been retained and utilized by North Fork Energy.

35-8782

- According to the above described warranty deed and transfer 5345, 35-8782 was to be split according to the place of use that was being sold.
- According to the original water right license made on 10/22/1998, this right is for fish propagation and is for a diversion rate of 4.64 cfs.

- Transfer 5345 changed the POD and POU of this right in order to reflect relatively the same POD's and POU's as water rights 35-4271, 35-8635, and 35-8679.
- The documentation was received by IDWR on 01/13/1999. However, it seems as if 35-8782 was never split according to the above mentioned deed. Since the right is non-consumptive, the right should have been split so that each user has the full use of the water, much like water right 35-4071.
-
- North Fork Energy has continued the use of this right; however, John L. Miller has since sold the property and all his water rights appurtenant to his land.

35-8679

- According to the above described warranty deed and transfer 5030, 35-8679 was to be split according to the place of use that was being sold.
- According to the original water right license made on 02/22/1994, this right is for commercial purposes at the processing plant and is for a diversion rate of 1 cfs.
- In addition, according to the above mentioned deed North Fork Energy can fully consume this water right; however the portion that is not utilized by North Fork Energy then is discharged into Boom Creek and delivered to the southern portion of the property and used for the same purpose.
- The change of ownership documentation was received by IDWR on 01/13/1999. However, it seems as if 35-8679 was never split according to the above mentioned deed. Since the right is non-consumptive the right should be split so that each user has the full use of the water, much like water right 35-4071.
- North Fork Energy has continued the use of this right; however, John L. Miller has since sold the property and all his water rights appurtenant to his land.

35-9068

- According to the above described warranty deed and transfer 5030, 35-9068 was to be split according to the place of use that was being sold.
- The change of ownership documentation was received by IDWR on 01/13/1999. However, it seems as if it was never split according to the above mentioned deed. Since the right is non-consumptive the right

should be split so that each user has the full use of the water, much like water right 35-4071.

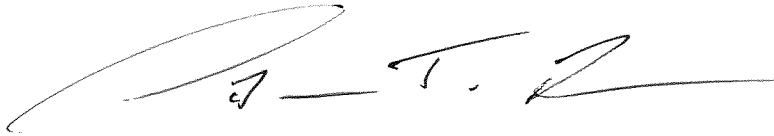
- 35-9068 is still a permit, but our office has submitted a proof of beneficial use on 04/01/2002, in behalf of North Fork Energy. The field exam for this right still needs to be completed by IDWR.
- North Fork Energy has continued the use of this right; however, John L. Miller has since sold the property and all his water rights appurtenant to his land.
- However, all of the Change of Ownership forms that have been submitted by John L. Miller, for the southern portion of the property, do not include 35-9068. A portion of the right should probably be the property of Sally Hartman and not Miller; whereas the remaining portion should still be the property North Fork Energy.

History of Change of Ownership Changes for 35-8782, 35-8635, 35-4271, and 35-8679 by John L. Miller

- John L. Miller sold/donated a portion of the southern property to the Church of Jesus Christ of Latter-day Saints on 11/26/1999 with a portion of its appurtenant water rights. However, it seems as if these rights were not included in this transaction.
- John L. Miller then sold another portion of this southern property to Capital Lending Inc on 08/15/2001 with all of its appurtenant water rights that included portions of 35-8782 and 35-8697 and incorrectly described 35-4271 and 35-8635. Water rights 35-4271 and 35-8635 should have been described as the B portions of these rights.
- The church of Jesus Christ of Latter-day Saints also sold its portion of the said property to Capital Lending, Inc. on 06/28/2001
- John L. Miller then sold the remaining portion of the property to Walter and Sally Hartman on 10/09/2001 with all of its appurtenant water rights that includes the remaining portion of 35-8782.
- Then Capital Lending, Inc also sold the rest of the said property to Walter and Sally Hartman at two separate instances. The first was on 10/05/2001 and then the remaining portion was sold on 12/18/2003.
- During these transactions two separate change of ownership forms have been submitted by John L. Miller. One on 12/12/2001 and one on 03/15/2005. Both of these changes of ownership forms include all of these rights. However, since 35-8679 and 35-8782 were never split they incorrectly were listed on these forms.

Please review the enclosed material and your files in order verify this information as soon as possible. Our client would like to get these water rights straightened out as soon as possible. If you have any questions or concerns regarding these rights or the above information please contact Chuck Brockway Sr. or I.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. T. Nelson', with a long horizontal stroke extending to the right.

Daren T. Nelson, Hydrologist

Attachments: Warranty Deed between North Fork Energy and John L. Miller
Transfer 5030 & 5345 Documentation
Notice of 2001 Change of Ownership Form (John L. Miller)
Notice of 2005 Change of Ownership Form (John L. Miller)

Enc.

cc: Bish Beymer (w/o attachments)