

Cefalo, James

From: Conder, Claudia [Claudia.Conder@PacifiCorp.com]
Sent: Friday, September 16, 2011 2:56 PM
To: Cefalo, James
Cc: Carly Burton; bearlakewatch@aol.com
Subject: RE: Glen Merrill Permit App 13-7505 > Transfer 77356

James- On the approval form that you have prepared - the summary BEFORE the proposed change does not show any **total acres**. On the memo analyzing the decree, I see that the **total acres under 13-57 is 175 acres**. It would be helpful to **put that number on the approval** so that you can see the difference of the 6.6 acres.

Please add another condition that more clearly explains that **Mr. Merrill must dry up 6.6 acres and that this equals the consumptive use of 3.6 af and 10.00 af for the pond refill/fill (or something to that affect)**.

I am OK with your approach here and agree. I just need to make sure the numbers are correct. With these changes, PacifiCorp can agree to this transfer being approved. Thanks again for your diligence in getting this figured out. If you have any questions, please feel free to contact me.

*Claudia Conder
Water Rights Administrator
1407 W. North Temple #110
Salt Lake City, UT 84116
801-220-2252 (office)
801-541-3594 (cell)*

From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Tuesday, August 09, 2011 1:48 PM
To: bearlakewatch@aol.com; Conder, Claudia; Randy Budge; carlybarbara@q.com; merrill@plmw.com
Cc: Mathews, Kerrie; Cox, Sharla
Subject: Glen Merrill Permit App 13-7505 > Transfer 77356

Dear Parties,

In January of this year, I sent a letter to the remaining protestants in this case, proposing a method to resolve the concerns with the Merrill's Application for Permit, 13-7505, which sought a water right associated with an irrigation pond. I proposed adding a number of limiting conditions to the permit, restricting the water right to fall within the diversion under existing water rights. Bear Lake Watch and PacifiCorp withdrew their protests based on the proposed limiting conditions. Bear River Water Users Assn, Bear River Canal Co., Last Chance Canal Co., and the United States Fish and Wildlife Service had previously withdrawn their protests without conditions.

As I was preparing the final approval document for the permit, I spoke with Mr. Merrill about the limits on the water right. He was concerned that the permit, as conditioned, would not really cover his existing water use. Mr. Merrill diverts some water throughout most of the winter. The permit would not authorize any wintertime diversion.

During our conversation, Mr. Merrill said that he thought his Stockton Creek water right, 13-57, should include year-round irrigation. I decided to investigate all of the water rights on Stockton Creek and found that Mr. Merrill was correct. The Brossard v. Morgan Decree (1899) very clearly describes wintertime irrigation use by all of the parties to the decree. When the decreed water rights were entered into the department's water rights database, the season of use was mistakenly listed as 4/1-10/31. I have recently updated the department's database to agree with the description of the water rights in the Brossard v. Morgan Decree. The irrigation season of use for water rights 13-55, 13-56, 13-57, and 13-58 were changed to be 1/1-12/31. See the attached memo for more details.

Given the update to Mr. Merrill's existing water rights, I suggested that he consider simply transferring a portion of his existing Stockton Creek water right from irrigation to storage. As we drafted the transfer, it became apparent that the

transfer was actually the simplest way to cover the pond. It eliminates issues regarding wintertime storage, because the full volume of the pond is mitigated by giving up irrigated acres under water right 13-57. (Sometimes the simplest solutions are the most difficult to identify.) Mr. Merrill has officially submitted **Transfer No. 77356** for consideration by the department. Permit No. 13-7505 will be withdrawn.

Because the permit application was advertised, and this transfer is proposing the same result, I don't feel that this transfer needs to be advertised. I do believe, however, that the protestants to the permit application, must be given a chance to agree to the transfer or continue to pursue their protests . . . now against the transfer. Please take time to review Transfer 77356. It is scanned and available on the department's website. I have also attached a draft transfer approval and our review memo, so you can see how the water right will look after the change.

If the transfer is an acceptable resolution, please let me know (an email will be sufficient). If you have questions or concerns about the transfer application, we can set up a conference in the near future to discuss the proposed changes in greater detail. If I don't hear from you by September 9th, I will assume you are okay with the transfer application.

Thanks for your patience through all of the changes.

James Cefalo

Cefalo, James

From: Randy Budge [rcb@racinelaw.net]
Sent: Thursday, August 11, 2011 5:26 PM
To: Cefalo, James
Cc: Randy Budge; Carly Burton; D. Brent. Rose
Subject: Glen Merrill Permit App 13-7505 > Transfer 77356
Attachments: Merrill Transfer Info.pdf

James,

The proposed Transfer is an acceptable resolution of this matter for Bear River Water Users Association.

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
201 E. Center Street
P. O. Box 1391
Pocatello, ID 83204
(208) 232-6101 Ext. 340
(208) 232-6109 Facsimile
rcb@racinelaw.net

From: Cefalo, James [<mailto:James.Cefalo@idwr.idaho.gov>]
Sent: Tuesday, August 09, 2011 1:48 PM
To: bearlakewatch@aol.com; Conder, Claudia; Randy Budge; carlybarbara@q.com; merrill@plmw.com
Cc: Mathews, Kerrie; Cox, Sharla
Subject: Glen Merrill Permit App 13-7505 > Transfer 77356

Dear Parties,

In January of this year, I sent a letter to the remaining protestants in this case, proposing a method to resolve the concerns with the Merrill's Application for Permit, 13-7505, which sought a water right associated with an irrigation pond. I proposed adding a number of limiting conditions to the permit, restricting the water right to fall within the diversion under existing water rights. Bear Lake Watch and PacifiCorp withdrew their protests based on the proposed limiting conditions. Bear River Water Users Assn, Bear River Canal Co., Last Chance Canal Co., and the United States Fish and Wildlife Service had previously withdrawn their protests without conditions.

As I was preparing the final approval document for the permit, I spoke with Mr. Merrill about the limits on the water right. He was concerned that the permit, as conditioned, would not really cover his existing water use. Mr. Merrill diverts some water throughout most of the winter. The permit would not authorize any wintertime diversion.

During our conversation, Mr. Merrill said that he thought his Stockton Creek water right, 13-57, should include year-round irrigation. I decided to investigate all of the water rights on Stockton Creek and found that Mr. Merrill was correct. The Brossard v. Morgan Decree (1899) very clearly describes wintertime irrigation use by all of the parties to the decree. When the decreed water rights were entered into the department's water rights database, the season of use was mistakenly listed as 4/1-10/31. I have recently updated the department's database to agree with the description of the water rights in the Brossard v. Morgan Decree. The irrigation season of use for water rights 13-55, 13-56, 13-57, and 13-58 were changed to be 1/1-12/31. See the attached memo for more details.

Given the update to Mr. Merrill's existing water rights, I suggested that he consider simply transferring a portion of his existing Stockton Creek water right from irrigation to storage. As we drafted the transfer, it became apparent that the