

MEMO

TO: File

FROM: James Cefalo *JRC*

DATE: May 24, 2011

RE: Ownership of Water Right 11-46

In September 2008, Shane Roberts filed a transfer seeking to update the ownership for water right 11-46 and also to change the place of use for the right. The water right was decreed in 1902 in Brown v. Wixom, a decree covering all water rights on North Creek. Right 11-46 was decreed to D.M. King and authorized the diversion of 26 inches (0.52 cfs). The findings of fact section of the decree described the places of use for the water rights included in the decree. The D.M. King place of use was described as being the "NW1/4 Section 4 Tp. 13 S. R. 43 E. B.M. containing 160 acres, excepting 58 acres sold to E.S. Morgan."

Mr. Roberts contended that the decreed place of use for the D.M. King right (11-46) was in error. The place of use should have been the NW1/4 of Section 9. Mr. Roberts provided warranty deeds showing that D.M. King owned at least 26 acres in the NW1/4 of Section 9 and provided a chain of deeds covering a 26-acre parcel, tracking ownership from D.M. King to Udell Roberts, Shane Roberts' father. Mr. Roberts also provided signed statements from all of the property owners in the NW1/4 of Section 4 agreeing that Shane Roberts owned the water right in question.

I reviewed the Brown v. Wixom decree to see if there is any evidence to support Mr. Roberts' contention that the D.M. King place of use description was in error. After my short review, I believe that the POU description was in error, but the error is not as Mr. Roberts first proposed. The main piece of evidence suggesting an error is found in the water right decreed to E.S. Morgan. As stated above, D.M. King was authorized to irrigate the NW1/4 of Section 4, except for 58 acres sold to E.S. Morgan. Mr. Morgan's North Creek water right was also described in the Brown v. Wixom Decree. His water right place of use (for 58 acres) was described very specifically, in terms of chains and links. The E.S. Morgan place of use was actually located in the SW1/4 of Section 4. It appears that the D.M. King right should have been in the SW1/4 of Section 4 rather than the NW1/4.

The chain of deeds provided by Mr. Roberts shows that D.M. King owned a large parcel in the SW1/4 of Section 4. This piece of property was passed from D.M. King down to Shane Roberts. Mr. Roberts is listed as the current owner of the parcel, which appears to be irrigated and is not covered by any other water rights. I believe there is sufficient evidence to allow the transfer/ownership change to go forward. There is only one other parcel (12 acres) within the SW1/4 of Section 4 not covered by a water right. Bear Lake County taxlot data lists Roger Hymas et al as the current owner. Mr. Hymas will be sent notice of the transfer/ownership change to verify that he does not have a claim to water right 11-46.