

Cefalo, James

From: T. J. Budge [tjb@racinelaw.net]
Sent: Monday, March 28, 2011 10:04 AM
To: Jordan, Blake
Cc: Cefalo, James
Subject: RE: Amended tranfer 74658 (Smith) and 74659 (Barlow)

Blake,

Thanks for your email. Answers to your questions are in red text below. You will see that I have a question about identifying the specific acres to be irrigated within the PPU. Once we cross that hurdle, I can either email you a corrected application, or I can simply authorize you to process the transfer as amended per below. Let me know which you would prefer.

Thanks,

T.J. Budge
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 East Center Street
Post Office Box 1391
Pocatello, Idaho 83204
(208) 232-6101 - phone
(208) 232-6109 - fax
tjb@racinelaw.net

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From: Jordan, Blake [<mailto:Blake.Jordan@idwr.idaho.gov>]
Sent: Tuesday, February 01, 2011 3:56 PM
To: T. J. Budge
Cc: Cefalo, James
Subject: Amended tranfer 74658 (Smith) and 74659 (Barlow)

Hi TJ:

I have found a couple of items with both amended transfers that need to be addressed before we continue processing them.

74658:

According to Part 1A (purpose of transfer), you indicate that you are changing the point of diversion and place of use. The points of diversion listed in part 1B seem to be the same as what is currently recorded for water right 13-681A. The map did not show the location for the points of diversion. I just need you to clarify whether you are proposing to change the point of diversion for this water right. If you are planning to change the point of diversion, then I need a map showing where the new diversion will be located.

You are correct. The point of diversion will not change as a result of this transfer. I apologize for this mistake.

You need to check your PPU legal description. There is a discrepancy between the PPU map and what you show as the PPU under part 1B of the application.

It looks like I inadvertently transposed the PPUs for sections 9 and 10. Section 9 should be the SESE (instead of SWSW) and section 10 should be the SWSW (instead of SESE). Again, I apologize for this mistake.

Also, according to Caribou County taxlot data (updated in 2010), Smith Warm Springs Ranch LLC owns a portion of land located in the SESE of 11 S 40E section 9. If Smith Warm Springs Ranch LLC owns the land described above, then Your PPU(160 acres) would overlap onto their property.

I did some digging on this and found that while Smith was deeded all of the SESE Sec. 9 as recently as 1999, the portion of that quarter that is west of the Bear River was previously deeded to a relative of Smith and is now in the name of Smith Warm Springs Ranch, LLC. This can be corrected by removing from the PPU the portion of Section 9 that is west of the Bear River.

The Department does allow water right holders to have a PPU that exceeds the total number of acres authorized under their water rights, but requires them to identify which authorized acres will be irrigated. If you are planning to have a PPU of 160 acres, then you need to identify which 95 acres authorized under right 13-681A will be irrigated.

I was not aware that the Department required identification of the land actually irrigated within the PPU. It does seem contrary to the purpose of a PPU which is to allow a water user to rotate the use of water within the PPU. The transfer instructions do not appear to require this. Is there an administrative rule or memo explaining this requirement? If not, would you mind explaining the rationale? I can identify the 95 acres if needed, but I don't want to deprive Smith of the ability to rotate water use as needed.

74659:

Again, If you are proposing to have a PPU greater than what is authorized under the water right, then you need to identify which acres will be irrigated.

The amended transfer shows Brad Smith to be the applicant. Shouldn't Charles and Laurel Barlow be the applicants since Brad Smith deeded the water right to them?

While the application could have been filed by Barlow as the present landowner, Smith has a contractual obligation under the Purchase Agreement (attached to the transfer application) to file the transfer.

Let me know if you have any questions.

Thanks,

Blake Jordan

Sr. Water Resource Agent

Idaho Department of Water Resources

900 N Skyline Drive Suite A

525-7161 Phone

525-7177 Fax

Cefalo, James

From: T. J. Budge [tjb@racinelaw.net]
Sent: Thursday, December 09, 2010 5:13 PM
To: Cefalo, James
Cc: Cox, Sharla
Subject: Smith / Barlow

James,

The title abstract we received two weeks ago not trace the place of use of the decreed water right back to any property owned by John Harrington (the record owner of the decreed water right). Bucky explained the problem to the title company and asked them to do some additional review to see if we can find out what property Harrington owned. We have not heard back from them but will follow up on that.

I apologize for dragging me feet in getting this back to you. I will be out of the office tomorrow but make that a priority next week.

Best,

T.J. Budge
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 East Center Street
Post Office Box 1391
Pocatello, Idaho 83204
(208) 232-6101 - phone
(208) 232-6109 - fax
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Cefalo, James

From: T. J. Budge [tjb@racinelaw.net]
Sent: Monday, December 20, 2010 12:46 PM
To: Cefalo, James; Cox, Sharla
Subject: Smith / Barlow transfer

James & Sharla,

We received the title abstract for the Barlow property, and it looks like transfer no. 74659 may need to be amended, so please put it on hold momentarily. I have requested some additional title work from the title company relating to this transfer. As soon as I get that I will send you a letter confirming whether or not the transfer needs to be amended. Sorry for the inconvenience.

Thanks,

T.J. Budge
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 East Center Street
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Pocatello, Idaho 83204
(208) 232-6101 - phone
(208) 232-6109 - fax
tjb@racinelaw.net

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Cefalo, James

From: Cefalo, James
Sent: Friday, October 29, 2010 10:30 AM
To: 'tjb@racinelaw.net'
Cc: Jordan, Blake
Subject: Transfers 74658 and 74659 (Smith/Barlow)

T.J.,

Thank you for the follow-up on the Smith/Barlow transfers. This email is meant to document the items we discussed and the plan for moving forward with the transfers.

Transfer 74659

We determined that this transfer can go forward. You had a question as to why a chain of deeds is required to prove ownership. Jonie Barg, who handles the ownership changes in the Eastern Region, explained to me the scenario when a full chain of deeds is not required. If the new owner owns all of the property described in the original decree and has provided a warranty deed recorded by a title company, no chain of deeds is required. The warranty deed proving current ownership will suffice. This is because title companies perform thorough searches of title before recording warranty deeds. For all other cases, the department requires a chain of deeds tracing back to the owner listed on the water right.

In this case, you submitted a Warranty Deed (Gift) and a Personal Representative's Deed conveying the property described in 13-679 from Alice Smith to Brad Smith. Alice Smith and then Brad Smith owned the entire property described in the 13-679 place of use. However, both of the deeds were recorded by Randy Budge, rather than a title company. Therefore, we will still require a chain of deeds tracing back to the owner of record, John Harrington. It should include the SESE Sec 9, SWSW Sec 10, and the N1/2 of the NW1/4 of Sec 15, Township 11 South, Range 40 East.

We agreed that the department will move forward with advertising transfer 74659. The advertisement can take place even though the chain of deeds is still being collected. Once the ownership is established, and assuming there are no protests filed, the transfer should be able to be approved without many issues.

Transfer 74658

This transfer involves moving statutory claim 13-7710 from the Barlow property to the Smith property. We discussed the hurdles associated with transferring statutory claims. Before a claim can be transferred, the department must verify the elements of the claim. The claimed priority date is listed as "prior to 1960." The file contains an affidavit verifying use back to about 1960. You mentioned that the actual priority date is probably much earlier than that. We could move forward with the priority date as proven (1960). It is unclear whether the transfer, if approved, would be a binding administrative action as far as a future adjudication. There is a possibility that the approved transfer could limit Mr. Smith's ability to claim and establish an earlier priority date in the future. You mentioned that Mr. Smith may not be able to collect sufficient information relating to an earlier priority date at this time.

At this point, it may be best to withdraw the statutory claim transfer. If the transfer is withdrawn, the fee would be refunded because the transfer has not been advertised. You mentioned that Mr. Smith may choose to file a new statutory claim mirroring claim 13-7710, but listing the new property as the place of use. Although I do not support this approach because it circumvents the transfer statute, the department will still accept and record the new statutory claim. The refunded transfer fee could be dedicated towards the filing fee associated with the new statutory claim. If an adjudication ever takes place within the Bear River drainage, the legislature may choose to recognize "accomplished changes" of water rights similar to this situation.

We will look for a chain of deeds for the property described in 13-679 and possibly a withdrawal of transfer for 74658. Transfer 74659 will be advertised in the next couple of weeks.

Thanks,

James Cefalo
Water Resources Program Manager
IDWR - Eastern Region
(208) 525-7161