

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