

Stanton, Jim

From: Stanton, Jim
Sent: Friday, February 05, 2010 2:48 PM
To: 'Brian Higgs'
Cc: Stanton, Jim; Merritt, Allen
Subject: RE: sudik

Hey Brian – I have drafted an order rejecting this application on the grounds I e-mailed you about. Allen has the Sudik file and the proposed order, so please communicate with him on this from now on.; he is gone until Monday. I would not feel confident about a transfer of water from Funk to Sudik succeeding unless the water right involved was a primary right that is not mixed in with canal shares. Even if the wells involved were used more than 50% of the time, Sudik still has the burden of proving that the proposed transfer will not enlarge the historic use of the right. I feel for your client, but the days of easy water in southern Idaho are just gone. The proposed preliminary order rejects the current application without prejudice, so he could certainly file a new application with a different water right later. But that would leave him operating a dairy without a valid water right, which could lead to other problems. Maybe you can talk Allen into waiting a bit while you try to work something else out with Darrell.

From: Brian Higgs [mailto:higgs@ida.net]
Sent: Friday, February 05, 2010 8:49 AM
To: Stanton, Jim
Subject: sudik

Hi Jim,

I talked with Darrell Funk a few weeks ago and called him again yesterday. He is going to go to the corn show in Iowa and then to the AG show somewhere else. He said he would get with me after next week. He simply needs to decide which of his other wells he wants to take the water from. I will get back with you as soon as possible.

Thank you.

Brian