

Memorandum

To: NOV File 2009-05-377, Flying Joseph Ranch; Water Right Transfer App No. 75708

From: Tim Luke

Date: March 22, 2010

Re: Communications with WD73 Watermaster and Jim Speck, Attorney for Flying Joseph

On or about March 18, 2009, I spoke with Ted O'Neal, WD73 watermaster regarding some questions about the new pond constructed by Flying Joseph Ranch (FJR) under a ground water permit. My questions involved how surface water from the river is diverted to the pond, and to discuss Jim Speck's contention that the ditch to the pond is essentially just part of the overall FJR irrigation conveyance system. During our brief discussion, Ted advised me that FJR had also constructed a pipeline to the pond from a certain spring or springs source located south of the Pines Grazing Ditch. Ted said the pipe goes directly to the pond and crosses underneath the Pines Grazing Ditch.

Jim Speck called me later in the day on March 18 to discuss the FJR NOV issue. During this call I advised Jim about the pipeline described by Ted O'Neal and asked Jim talk to his clients to confirm the existence of the pipeline. Jim was not aware of the existence of the pipe. On March 22, Jim called me back and advised that his client did indeed confirm the existence of the pipeline. Jim said his client explained that the pipe was installed at the time the pond was constructed. Jim advised FJR that any pipe diversion to the pond from the spring was probably not legal even if FJR has irrigation rights from the spring source. He said there is a valve on the pipe located at the pond inlet that can be locked by the watermaster if needed. I indicated that I would likely direct the watermaster to inspect the valve this spring and lock the valve.

Jim and I also continued discussion of his proposed draft language for Term 1 of the Consent Agreement that he presented in his e-mail to me on January 12, 2009. The language altered the wording from my original proposal so that FJR could continue to divert water through the pond, but restrict ability to divert water to storage. Jim maintained that the pond level would stay constant, and no additional water would be stored, and diversion of surface water from the main ditch would be limited to flow through purposes only. Jim argues that FJR can divert its Pahsimeroi water wherever they wish. In response, I told Jim that I would not alter Term 1, and that FJR should cease diversion of any surface water to the pond until the water right transfer is approved. I did not feel it appropriate or fair to authorize something ahead of the transfer process.

The issue of this pipeline should be considered when processing the transfer application. Staff may wish to consider conditions about keeping the pipe locked or barring diversion of any other water source to the pond other than what is already approved under valid water rights.