

Clark, Cynthia (Bridge)

From: Baxter, Garrick
Sent: Wednesday, January 15, 2003 5:18 PM
To: Howerton, Ron; Clark, Cynthia (Bridge)
Subject: RE: Enlargement Question

Ron and Cynthia,

I have had an opportunity to review the information you submitted to me. The issue presented is whether IDWR can recognize a particular enlargement claim by South Elmore Irrigation Company ("South Elmore") in the SRBA. After researching the issue further, I have concluded that this question is best dealt with in two parts: First, does the 1996 transfer preclude IDWR from recommending the enlargement claim? Second, if the transfer does not preclude IDWR from recommending an enlargement claim, is there currently sufficient evidence in the file for IDWR to recommend an enlargement claim in the SRBA. The answer to both of these questions is no.

I have taken the following timeline from Ron Howerton's memo dated January 15, 2003 and modified it slightly:

- 1975: Licensed rights 02-2269 & 02-2367 did not include field #8.
- 1987: NAPP photography from 1987 shows that field #8 has been developed.
- 1989: SRBA 02-2269 & 02-2367 claims did not include field #8.
- 1989: Land went into CRP.
- 1996: IDWR transfer 4881 (02-2269 & 02-2367) amended the SRBA claims and did not include field #8. However, condition of approval stated that approval of this transfer does not preclude the opportunity for review of the water right(s) in the ongoing Snake River Basin Adjudication. Also a memo in the transfer file per reviewer Lori Graves said that "Rather than to hold up this transfer per SRBA review, only the acres specific to this transfer were reviewed and verified so that the processing could proceed. Dated 7/22/96. (Acres were transferred from and to tracts that were separate from field #8).
- 1997: Application permit 61-7735 for groundwater states that the only water on these applied for lands were Mountain Home District water. (Not Snake River) *** Mountain Home Irrigation District indicates that to their knowledge they have never served the lands of field #8.

In 1996, South Elmore sought and was granted a transfer for water right nos. 02-2269 & 02-2367. However, field no. 8 was not included in the place of use for this transfer. The question arises whether or not South Elmore should now be precluded from claiming that these two water rights were enlarged prior to 1987 to include field no. 8. Generally, IDWR treats transfers as binding upon claimants. However, where a particular issue is not directly addressed in a transfer and a claimant is able to present additional evidence to IDWR that the transfer does not accurately represent the historical use of water, IDWR can consider the evidence when preparing recommendations in the SRBA. As it relates to water right nos. 02-2269 & 02-2367, the transfer did not investigate any acres other than those that were to be dried up and where the new irrigation was to take place. Furthermore, IDWR's NAPP from 1987 indicates that the field no. 8 was in fact irrigated in 1987. If the applicant can submit additional evidence to support that the land was irrigated prior to 1987 (for example, an affidavit from the previous land owner or a farm employee), then IDWR should evaluate this additional information and consider it in its recommendation.

This leads to the second part of my analysis. Presently, the claimant had not submitted sufficient evidence for which IDWR can recommend an enlargement claim. If South Elmore should desire to file an enlargement claim, South Elmore will also need to be prepared to present evidence showing from what source was this land watered because there is conflicting evidence in the file as to whether or not this land was irrigated under water right nos. 02-2269 & 02-2367 or with ground water. Thus, before IDWR can make a recommendation on any

enlargement claim, additional evidence will have to be presented to IDWR.

If you have any questions or would like to discuss, please contact me.

Garrick

-----Original Message-----

From: Howerton, Ron
Sent: Monday, January 13, 2003 3:47 PM
To: Baxter, Garrick
Cc: Clark, Cynthia (Bridge); Howerton, Ron
Subject: Enlargement Question
Importance: High

Ref: Telephone conversation this morning 1/13/03.

Garrick,

Here is a memo I made that sums up our brief discussion this morning and a second memo detailed by Cynthia.

Please let me know if an enlargement claim might be recognized by the SRBA?

Water Allocations needs to know this, in order to process a water bank project.

Thank you,

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<< File: Meeting Memo--Sid Wing from South Elmore.doc >> << File: south elmore water bank.doc >>