

## Cefalo, James

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**From:** Cefalo, James  
**Sent:** Thursday, August 3, 2023 11:35 AM  
**To:** 'Jerry Rigby'; tj@racineolson.com; 'fredric\_price@blm.gov'  
**Cc:** 'Mandy Davis'  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Dear Parties:

It has been more than two months since we held a pre-hearing conference for this matter and more than two months since I circulated a draft transfer approval. Fred Price did not respond to the June 2<sup>nd</sup> email or the June 30<sup>th</sup> follow-up email.

During the pre-hearing conference, I mentioned that there was another contested case pending before the Department where one of the primary issues was whether a transfer applicant must demonstrate legal access to the proposed point of diversion and conveyance system under Section 42-222(1), Idaho Code. In that case, the applicant proposed to move a water right from Ditch 1 to Ditch 5 on Wimpey Creek. The protestants argued that the applicant did not have an easement to convey water through Ditch 5. I conducted a hearing in May, and the parties filed post-hearing briefs addressing the legal question of whether access to the proposed point of diversion and conveyance system falls within any of the review criteria set forth in Section 42-222(1), Idaho Code. I issued a Preliminary Order on July 31<sup>st</sup>, approving the transfer and concluding that legal access (good faith / no speculation) is not an element of review under Section 42-222(1). The post-hearing briefs and preliminary order for that case can be found in the [backfile for water right 74-210A](#).

I would like to move forward with this contested case. As I review the application and the protest filed by BLM, I believe this may be a case that could be decided without an administrative hearing. The facts of the case do not appear to be in dispute. The primary question appears to be the same question of law raised in the Wimpey Creek case. I would like to establish a briefing schedule but want the parties to first declare whether they agree to move forward without a hearing. If we agree to decide the case without a hearing, the administrative record would simply be made up of the application file (application, amended application, protest, correspondence).

Please respond to this email by **Friday, August 11, 2023**, stating whether you support deciding this case without conducting a hearing.

James

 IDAHO DEPARTMENT OF  
**WATER RESOURCES**  
James Cefalo | Regional Manager  
900 N Skyline Drive, Idaho Falls, ID 83402  
(208) 525-7161 | [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

**From:** Cefalo, James  
**Sent:** Friday, June 30, 2023 9:44 AM  
**To:** Jerry Rigby <jrigby@rex-law.com>; tj@racineolson.com; fredric\_price@blm.gov  
**Cc:** Mandy Davis <mdavis@rex-law.com>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Fred,

## Cefalo, James

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**From:** Cefalo, James  
**Sent:** Friday, June 30, 2023 9:44 AM  
**To:** 'Jerry Rigby'; tj@racineolson.com; 'fredric\_price@blm.gov'  
**Cc:** 'Mandy Davis'  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Fred,

I'm just circling back around on the email I sent earlier this month. If the proposed condition and draft approval do not resolve BLM's protest, please let me know as soon as possible so we can get this contested case back on a path to an administrative hearing.

James

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James Cefalo | Regional Manager  
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**From:** Cefalo, James  
**Sent:** Friday, June 2, 2023 11:25 AM  
**To:** Jerry Rigby <jrigby@rex-law.com>; tj@racineolson.com; fredric\_price@blm.gov  
**Cc:** Mandy Davis <mdavis@rex-law.com>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Dear Parties:

Attached is a draft transfer approval incorporating the condition described below. The condition confirms that the delivery of the P4 rights to the Farmer's Land & Canal Company headgate is intended to improve the reliability of water right 11-531A. It is not intended to be a new water right or a new water delivery through the canal. Please let me know if you notice any errors or omissions in the draft. If the draft approval resolves the issues of protest raised by the BLM, the protest can be withdrawn by referencing the 6/2/2023 Draft Approval.

James

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**From:** Jerry Rigby <jrigby@rex-law.com>  
**Sent:** Tuesday, May 30, 2023 11:29 AM  
**To:** tj@racineolson.com; Cefalo, James <James.Cefalo@idwr.idaho.gov>  
**Cc:** fredric\_price@blm.gov; Mandy Davis <mdavis@rex-law.com>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

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**To:** 'Jerry Rigby'; tj@racineolson.com; fredric\_price@blm.gov  
**Cc:** Mandy Davis  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition  
**Attachments:** Draft Transfer 84061.pdf

Dear Parties:

Attached is a draft transfer approval incorporating the condition described below. The condition confirms that the delivery of the P4 rights to the Farmer's Land & Canal Company headgate is intended to improve the reliability of water right 11-531A. It is not intended to be a new water right or a new water delivery through the canal. Please let me know if you notice any errors or omissions in the draft. If the draft approval resolves the issues of protest raised by the BLM, the protest can be withdrawn by referencing the 6/2/2023 Draft Approval.

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**Sent:** Tuesday, May 30, 2023 11:29 AM  
**To:** tj@racineolson.com; Cefalo, James <James.Cefalo@idwr.idaho.gov>  
**Cc:** fredric\_price@blm.gov; Mandy Davis <mdavis@rex-law.com>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

James,  
Yes, this works for me as well. Thanks

*Jerry*  
Jerry R. Rigby  
Rigby, Andrus & Rigby Law, PLLC  
25 N. 2<sup>nd</sup> E.  
Rexburg, Idaho 83440  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com) 208-356-3633



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**From:** TJ Budge <[tj@racineolson.com](mailto:tj@racineolson.com)>  
**Sent:** Tuesday, May 30, 2023 9:04 AM  
**To:** Cefalo, James <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)>; Jerry Rigby <[jrigby@rex-law.com](mailto:jrigby@rex-law.com)>  
**Cc:** [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov); Mandy Davis <[mdavis@rex-law.com](mailto:mdavis@rex-law.com)>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Works for me. Thanks James!

**T.J. Budge**  
RACINE OLSON  
201 E. Center St. | P.O. Box 1391 | Pocatello, Idaho 83204  
Office: (208) 232-6101 | Direct: (208) 478-3467 | Cell: (208) 705-0826 | [racineolson.com](http://racineolson.com)

Assistant: Tessa Sparrow | Direct: (208) 478-3444 | [tessa@racineolson.com](mailto:tessa@racineolson.com)

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**From:** Cefalo, James <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)>  
**Sent:** Tuesday, May 30, 2023 8:39 AM  
**To:** [jrigby@rex-law.com](mailto:jrigby@rex-law.com); TJ Budge <[tj@racineolson.com](mailto:tj@racineolson.com)>  
**Cc:** [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov); Mandy Davis <[mdavis@rex-law.com](mailto:mdavis@rex-law.com)>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

Thank you for the feedback. Would this revised condition help alleviate some of the forfeiture concerns?

Rights 11-448, 11-449, 11-457, 11-471, 11-499, 11-531C and 11-2106 ("P4 Rights") and rights 11-432 and 11-531A when combined shall not exceed a total diversion rate of 76.1 cfs and the irrigation of 4,000 acres. The diversion of the P4 Rights at the Farmer's Land & Irrigation Company Canal is pursuant to a lease of water rights and is intended to partially restore water delivery under right 11-531A when the flow in Soda Creek is insufficient to satisfy the full diversion rate of the right and shall be considered a delivery of water right 11-531A. To the extent the P4 Rights are diverted at the Farmer's Land & Irrigation Company Canal to improve the reliability of water right 11-531A, the P4 Rights shall not be subject to forfeiture.

James

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**From:** Jerry Rigby <[jrigby@rex-law.com](mailto:jrigby@rex-law.com)>  
**Sent:** Saturday, May 27, 2023 7:11 PM  
**To:** [tj@racineolson.com](mailto:tj@racineolson.com); Cefalo, James <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)>  
**Cc:** [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov); Mandy Davis <[mdavis@rex-law.com](mailto:mdavis@rex-law.com)>  
**Subject:** RE: Application for Transfer 84061 - Proposed Condition

James,

I concur with TJ. As I indicated on the conf. call, we need to make certain that the continued use as proposed will not give rise to any forfeiture of the right.

Thanks

*Jerry*

Jerry R. Rigby

Rigby, Andrus & Rigby Law, PLLC

25 N. 2<sup>nd</sup> E.

Rexburg, Idaho 83440

[jrigby@rex-law.com](mailto:jrigby@rex-law.com) 208-356-3633



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**From:** TJ Budge <[tj@racineolson.com](mailto:tj@racineolson.com)>

**Sent:** Tuesday, May 23, 2023 7:44 PM

**To:** Cefalo, James <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)>

**Cc:** [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov); Jerry Rigby <[jrigby@rex-law.com](mailto:jrigby@rex-law.com)>

**Subject:** Re: Application for Transfer 84061 - Proposed Condition

James,

Thanks for your good work helping us find a solution on this. I like your proposal. Could we include a statement that non-diversion of the Bayer right will not result forfeiture?

TJ

On May 17, 2023 3:54 PM, "Cefalo, James" <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)> wrote:

Dear Parties:

Here is my initial attempt at the proposed condition:

Rights 11-448, 11-449, 11-457, 11-471, 11-499, 11-531C and 11-2106 and rights 11-432 and 11-531A when combined shall not exceed a total diversion rate of 76.1 cfs and the irrigation of 4,000 acres. The diversion of water rights 11-448, 11-449, 11-457, 11-471, 11-499, 11-531C and 11-2106 at the Farmer's Land & Irrigation Company Canal is pursuant to a lease of water rights and is intended to partially restore water diversion under right 11-531A, when the flow in Soda Creek is insufficient to satisfy the full right, and shall be considered a delivery of water right 11-531A.

Please review and suggest any revisions by the end of next week (May 26<sup>th</sup>). Once we settle on an acceptable condition, I will incorporate the condition into a draft transfer approval and circulate the draft approval for one more review. The protest withdrawal could refer to the condition or the draft approval.

James



**James Cefalo | Regional Manager**

900 N Skyline Drive, Idaho Falls, ID 83402

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**From:** Cefalo, James  
**Sent:** Wednesday, May 17, 2023 3:55 PM  
**To:** fredric\_price@blm.gov; TJ Budge; Jerry Rigby  
**Subject:** Application for Transfer 84061 - Proposed Condition

Dear Parties:

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Rights 11-448, 11-449, 11-457, 11-471, 11-499, 11-531C and 11-2106 and rights 11-432 and 11-531A when combined shall not exceed a total diversion rate of 76.1 cfs and the irrigation of 4,000 acres. The diversion of water rights 11-448, 11-449, 11-457, 11-471, 11-499, 11-531C and 11-2106 at the Farmer's Land & Irrigation Company Canal is pursuant to a lease of water rights and is intended to partially restore water diversion under right 11-531A, when the flow in Soda Creek is insufficient to satisfy the full right, and shall be considered a delivery of water right 11-531A.

Please review and suggest any revisions by the end of next week (May 26<sup>th</sup>). Once we settle on an acceptable condition, I will incorporate the condition into a draft transfer approval and circulate the draft approval for one more review. The protest withdrawal could refer to the condition or the draft approval.

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