

Cefalo, James

From: Cefalo, James
Sent: Wednesday, February 1, 2023 12:04 PM
To: fredric_price@blm.gov; Jerry Rigby
Cc: Mandy Davis; TJ Budge
Subject: Application for Transfer 84061 (P4 Production LLC)

Fred,

On December 13, 2022, we conducted an informal settlement conference for protested Application for Transfer 84061. Application 84061, as amended, proposes to change the point of diversion and place of use for five water rights held by P4 Production LLC. The application proposes to deliver those rights to the Farmer's Land & Irrigation Company (Farmer's Land) Canal for use on certain lands within the company's service area. BLM protested the application because of right-of-way concerns. In May 2021, the application was amended to eliminate any place of use overlap with BLM land. Based on that amendment, you agreed to withdraw the BLM protest. I have not received the withdrawal of protest.

As I reviewed the application file and the BLM protest, I remembered that there was one other area of concern identified in the BLM protest. The Farmer's Land canal crosses BLM land in the SENW and SWNW of Section 10, T09S, R41E and in Section 1, T09S, R40E. I spent some time this morning reviewing water rights held by Farmer's Land and diversion records from Water District 11B (Soda Creek). Farmers Land holds water right 11-531A (5/1/1892, 76.1 cfs, Soda Creek) and 11-432 (7/1/1905, 20.0 cfs, Big Spring Creek tributary to Soda Creek). According to the 1920 Dietrich Decree, these two rights are likely limited to a combined diversion rate of 76.1 cfs. Farmer's Land also diverts water released from Soda Creek Reservoir. Based on diversion records from Water District 11B, the Farmer's Land diversion rarely exceeds the 76.1 cfs authorized by water right 11-531A. It appears the additional water rights are not needed when water right 11-531A is fully available. The additional water rights are only needed later in the late summer when water rights 11-531A and 11-432 are not fully satisfied.

Farmer's Land canal is the last diversion on Soda Creek. Further, water rights 11-531A and 11-432 are some of the more junior rights on Soda Creek. The effect of the transfer, therefore, is not to divert additional water or additional water rights through the Farmer's Land Canal. Rather, the effect is that it makes the existing rights held by Farmer's Land more reliable. The water not diverted by P4 Production increases the amount of water available to fill Farmer's Land water rights. If it helps resolve any remaining concerns about additional irrigation rights in the canal, I could include a condition on the transfer approval stating that the transferred rights, in combination with rights 11-531A and 11-432, are limited to a diversion rate of 76.1 cfs. This would ensure that any diversion through the Farmer's Land Canal could be characterized as a diversion under existing water rights in the canal.

In the alternative, we could initiate legal briefing in this case to address the question of whether legal access to the proposed POD or POU falls within an element of review under Section 42-222(1), Idaho Code. This is an interesting legal question that seems to be coming up more frequently in contested transfer applications. Perhaps it would be worthwhile to address that issue in this case to guide settlement discussions in future contested cases.

Please let me know how you would like to proceed.

James