

Hansen, Angela

From: Miller, Nick
Sent: Friday, January 13, 2023 10:53 AM
To: Keen, Shelley; Hansen, Angela; Hummer, Phill; Cefalo, James; Skinner, Corey; Richman, Michelle
Subject: FW: Desert Land Entry Applications

FYI – here is the DLE exchange I had with Fred Price.

From: Miller, Nick
Sent: Tuesday, February 04, 2020 9:01 AM
To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: FW: Desert Land Entry Applications

Hi Angie and Dan,

I seem to recall Dan was planning on licensing 61-7712 at some point, so I thought I'd forward Fred's comments to put in the licensing file since he discusses the permitted PODs that are on BLM land.

I also intend to reach out to the applicant for application 61-7748 since it seems like we will not be able to approve the application.

Let me know if you have thoughts or concerns about this. Also, if you know of any other DLE applications/permits that are out there, Fred seems willing to provide comments that could help us move those forward.

Nick.

From: Price, Fredric W [<mailto:fwprice@blm.gov>]
Sent: Monday, February 03, 2020 3:37 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Re: Desert Land Entry Applications

Nick,

RE: 61-07712, 61-07748, Corey K. Arellano
07-25-1997 priority
Private land (61-07712): T05S, R08E, S15, NWNW, SWNW.
BLM land (61-07748): T05S, R08E, S15, NESW, NWSW, SWSW, SESW.

Arellano Water Application:

61-07712 was split into 61-07712A (pvt land) and 61-07712B (BLM land);
61-07712B renumbered to 61-07748;
61-07712A renumbered back to 61-07712.

Thank you for the opportunity to review this situation. I believe that I can shed some light on this (see below).
Do you have anymore of these?

ARELLANO HAS NO DLE APPLICATION:

I have researched BLM's land records. **There is no evidence in BLM's records that Arellano has filed an Application for Desert Land Entry (Act of 03-03-1877, 19 Stat. 377) with BLM, nor could he now.** The BLM land described in 61-07748 (formerly part of 61-07712) lies within the Snake River Birds of Prey National Conservation Area (BoP NCA). The BoP NCA was "withdrawn from all forms of entry, appropriation, or disposal under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act")." See PL 103-64 Sec. 3.(a)(3)(d), 08-04-1993.

Arellano's original application 61-07712 in 1997 (initiated in 95 but not paid for until 97 and not advertised until 98) was subject to the 1993 withdrawal, therefore no DLE application with BLM could be considered. There is no evidence in our records of Arellano attempting to file a DLE application. Proof of Beneficial Use was due 02-01-2004. A Request for Extension of Time was requested and granted, thus moving the proof due date to 02-01-2009. **A DLE application cannot be considered within the BoP NCA.**

61-07712 (formerly 61-07712A) for private land: The original Application for Water Permit included both private land and federal land as a place of use for irrigation purposes. IDWR split 61-07712 into 61-07712A for private land Places of Use (POU) and 61-07712B for BLM land POUs. Arellano was going to file a DLE Application with BLM for the federal lands described in 61-07712B (renumbered to 61-07748). An Approved Permit was issued for 61-07712 (formerly 61-07712A) on 01-19-1999. The Permit describes two Points of Diversion (POD) on BLM land (Bennett Creek) within NESW and SESW of Sec. 15; however, Arellano does not have legal access to BLM land pursuant to a right-of-way (ROW). **No license (61-07712) should be issued that includes PODs on BLM land as Arellano does not have legal access to construct PODs on BLM.**

61-07748 (formerly 61-07712B) for BLM land under an alleged DLE: Arellano never applied for an entry under the DLE authority nor could one have been considered if he had (nor in future). Arellano does not have legal access to federal land in order to develop the components of the water permit: (1) 160 acres of irrigated agricultural use of BLM land; and (2) no right-of-way (ROW) to develop 2 points of diversion (POD) on BLM from Bennett Creek (NESW, SESW, S15), nor to construct an on-stream reservoir on BLM (NESW, S15). **The permit for 61-07748 should be voided due to lack of legal access to federal land.**

PRIOR DLE ATTEMPT: -same area -different person

61-07471 (formerly 51-07067), Vern D. Pincock (IDI-005496)

Vern D. Pincock filed a DLE application on 06-30-1972 with BLM (IDI-005496) which included the BLM land described above (plus land in S22); however, it was rejected on 11-13-1985 because of a conflict and because it resided within the withdrawal for the BoP NCA (there are several other withdrawals going back to 1970). Pincock offered Application for Permit 51-07067 in support of his DLE Application. IDWR renumbered this water application to 61-07471. IDWR's data system shows that 61-07471 as "application denied."

Fredric W. Price
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From: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Sent: Thursday, January 30, 2020 6:44 PM
To: Price, Fredric W <fwprice@blm.gov>
Subject: [EXTERNAL] RE: Desert Land Entry Applications

Fred,

I ran across another application we have lingering here that involves DLE. Can you tell me if Corey Arellano or anyone else ever filed an application for DLE on land in the SW1/4 of T05S R08E, S15?

This is regarding application for permit 61-7748 that was filed with us in the late 1990s. In my review of the file, I see that the applicant said he was planning to file a DLE application, but hadn't as of the time of filing July 1997. There is no indication in the file he has contacted us since about 1998, so I don't have any reason to believe he ever filed with you guys.

I thought I'd reach out to you to see if anything had been filed before I contact the applicant...maybe save some back and forth with him about whether he filed anything.

Thanks for any help you can give me regarding this.

Nick.

From: Price, Fredric [<mailto:fwprice@blm.gov>]
Sent: Friday, March 17, 2017 5:46 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Re: Desert Land Entry Applications

Nick,

RE: Status of Desert Land Entries (DLE):
IDI-015563 (Edgar C. Muller), 02-07392
IDI-021512 (Daniel T. Symms), 02-07411

IDI-015563, 02-07392:

On 01/27/1986, BLM issued a final decision rejecting part of the application because the land was determined to be non-suitable for entry, and denying the remainder because it was determined to be not economically feasible.

On 03/13/1986, the DLE application was rejected/denied. No appeal was filed; and the case was closed.

IDI-021512, 02-07411:

On 02/27/1985, the DLE application was rejected because a conflict was identified with a prior land action. No appeal was filed; and the case was closed.

Sorry, it appears the water applications could have been dealt with a long time ago. Does IDWR have any more of these that I should check on?!

Fredric W. Price
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On Wed, Mar 1, 2017 at 4:58 PM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Fred,

I looked into the applications for permit we have that reference a DLE application and I only see two. Could you give me some insight as to whether these DLE applications are still alive?

2-7392 references DLE I-15563

2-7411 references DLE I-21512

Thanks for any info you can provide.

Nick.