

Cefalo, James

From: Scott H Clark <shclark@ChurchofJesusChrist.org>
Sent: Thursday, December 16, 2021 11:53 AM
To: Cefalo, James
Cc: Jonathan Clegg
Subject: RE: Question about Water Right

James,

I am actually very familiar with this water right and some of the issues. I can confirm there have been active discussions with G & H Dairy representatives and the Welfare Department. The property water right 13-2164 is located on is part of a welfare farm managed by the Farmland Reserve and the Welfare Department. I believe there have probably been delays on both sides in getting this right conveyed. We, Natural Resource Services Water Group, were asked to review the water rights for Welfare and make a recommendation from the water rights perspective. We recommended the right be conveyed, however, I understand there are some internal business issues between Welfare and G & H Dairy that are being worked out before the transaction is finalized. I don't know any details of the status of the discussions, but I know there have been discussions.

I hope this helps a little.

On another note, could you tell me who to contact or where to look to find out more about the Upper Snake River rental pool you told me about in relation to Pasa La Coma and Cumorah Camp irrigation needs?

Thanks.

Scott H Clark, P.G. | Water Group - Natural Resource Services
REAL ESTATE - MEETINGHOUSE FACILITIES DEPARTMENT
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
Email: shclark@churchofjesuschrist.org
Phone: 801-240-3690 | Cell: 435-760-4915

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Wednesday, December 15, 2021 3:41 PM
To: Scott H Clark <shclark@ChurchofJesusChrist.org>
Subject: Question about Water Right

Scott,

Would you be willing to track down the status of an ongoing water right issue involving the church?

For more than five years, I have trying to complete a license review for ground water right 13-7649, which is held by G&H Dairy LLC. The water right is used for irrigation near Dayton, Idaho. Water right 13-7649 is mitigated by holding senior water right 13-2164 (which is a spring right located on a separate property) unused. At one point, the places of use for water rights 13-7649 and 13-2164 were owned by the same entity (J7 LLC). The place of use for water right 13-7649 was conveyed a few times and is now owned by G&H Dairy. The place of use for water right 13-2164 was

Cefalo, James

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The problem is that the owner of water right 13-7649 (G&H Dairy) must own mitigation right 13-2164 to satisfy the mitigation requirements of right 13-7649. The attorney for G&H Dairy, Adam McKenzie, asserts that he has been working with the church to get an agreement conveying water right 13-2164 to G&H Dairy. I notified Mr. McKenzie of the problem five years ago. According to Mr. McKenzie, the church has been the source of the delay. I have threatened many times to void water right 13-7649 for failure to mitigate. Each time, Mr. McKenzie claims that he is doing everything in his power to get the church to convey water right 13-2164 to G&H Dairy. In September 2021, I sent an email to Mr. McKenzie again threatening to void the water right. He called and said that the conveyance document had been drafted and would be signed by a representative from the church within one week. I have not heard anything since then.

I am concerned the Mr. McKenzie is not providing the full story or is giving me the run-around and thought I would check to see if I get the same story from the church property office. I don't know who at the church offices would handle a request to convey a water right to a private company. Could you investigate the matter or direct me to someone who might know about the proposal? Let me know if you need any more details to assist you in your search.

I appreciate the help.

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

Cefalo, James

From: Cefalo, James
Sent: Wednesday, September 15, 2021 11:41 AM
To: Adam McKenzie
Cc: mckenzieandmckenzie@gmail.com
Subject: RE: Permit 13-7649 (G&H Dairy)

Adam,

When you get a chance, please provide an update on this case. One year ago, the stipulation and conveyance documents were sent to the water rights section of the LDS Church. I still haven't received a copy of the signed and recorded documents. If the church is unwilling or unable to convey the mitigation right to G & H Dairy, then we will move forward with licensing water right 13-7649 based on the other mitigation right held by G & H Dairy (20 shares in West Cache Irrigation Company). The licensed diversion rate would be 0.24 cfs and the licensed diversion volume would be 100 acre-feet.

James

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From: Adam McKenzie <mandmlaw1981@gmail.com>
Sent: Friday, November 6, 2020 5:10 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Re: Permit 13-7649 (G&H Dairy)

James

I have been in contact with everyone. I am trying to circulate the stipulation and documents to record and file with the State.

On Mon, Oct 26, 2020 at 3:47 PM Cefalo, James <James.Cefalo@idwr.idaho.gov> wrote:

Yes. You can provide an update sometime next week.

From: Adam McKenzie [mailto:mandmlaw1981@gmail.com]
Sent: Monday, October 26, 2020 3:33 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Re: Permit 13-7649 (G&H Dairy)

James

I have sent the stipulation and paperwork to the LDS church. I have been waiting to hear back from them. I will try and get an answer. Can you give me till next week?

On Tue, Oct 6, 2020 at 1:58 PM Cefalo, James <James.Cefalo@idwr.idaho.gov> wrote:

Adam,

It has been almost a year since we last corresponded about Permit 13-7649. In October 2019, you indicated that you were finalizing an agreement with the LDS Church for G&H Dairy to acquire the water right used for mitigation (13-2164). When you get a moment, can you provide an update on your efforts to acquire water right 13-2164. This issue has been pending before IDWR for over three years. With the recent approval of the Bear River Basin Adjudication, it is imperative that IDWR complete the licensing process for all active permits in the Bear River drainage, including Permit 13-7649. If the negotiations with the LDS church have stalled out, perhaps we should schedule the matter for an administrative hearing.

James Cefalo

Regional Manager

IDWR Eastern Region

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Adam J. McKenzie

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Cefalo, James

From: Cefalo, James
Sent: Wednesday, November 06, 2019 9:51 AM
To: 'Adam McKenzie'
Subject: RE: License 13-7649

Adam,

Mitigation by holding canal company shares unused might not be effective. Mitigation only occurs if the canal company doesn't divert the water represented by the shares. If, on the other hand, the canal company still diverts the water and simply delivers it to other shareholders, then there is no mitigation on the river. Let me see if I can explain it another way. If ground water pumping causes a depletion to the Bear River, then there is less water in the river available to satisfy existing rights. Often, the last right being filled on the Bear River is a water right held by Last Chance Canal Company (north of Grace). Therefore, a depletion to the river would reduce the amount of water available to fill the Last Chance Canal water right. G&H proposes to mitigate (in part) by holding West Cache shares unused. If West Cache continues to divert the same amount of water from the Bear River (and simply delivers more water to the other shareholders), then no mitigation has taken place. The injured party (Last Chance Canal Company) has not been made whole.

West Cache Irrigation owns a water right on Deep Creek (13-946A, 15.05 cfs). Currently, West Cache does not divert any water from Deep Creek and allows the creek to flow into the Bear River. As long as West Cache does not divert its Deep Creek water right, and allows the water to flow into the Bear River, then the shares held by G&H are providing mitigation to the creek and the river. According to West Cache Irrigation, one share in the company entitles the shareholder to divert 1,100 gallons per minute for 36 minutes per week. In other words, one share in the company authorizes the diversion of 39,600 gallons per week (0.12 acre-feet per week). Therefore, the 20 shares owned by G&H represents 792,000 gallons per week (2.4 acre-feet per week).

The mitigation conditions could be combined and amended as follows:

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall maintain control of twenty (20) shares of stock in the West Cache Irrigation Company and shall hold the shares unused. Further, the right holder shall formally abandon water right 13-2164 (8/8/1952, 0.76 cfs, 280 af, 80 acres). If the flow of the unnamed stream described in abandoned water right 13-2164, at the original point of diversion for the abandoned right (SWNE, Sec. 1, T15S, R38E), is less than 0.76 cfs, then the amount of water authorized for diversion under this right shall be reduced by the amount of the shortfall. If the unnamed stream dries up entirely, then diversion under this right shall be limited to 0.24 cfs and a weekly diversion volume of 3.3 acre-feet.

I think this amendment addresses your concerns. If the unnamed stream dries up, then the authorized rate for water right 13-7649 would be reduced by 0.76 cfs. G&H would be able to continue to divert 0.24 cfs under water right 13-7649. Diverting 0.24 cfs continuously for one week is equivalent to 3.3 acre-feet. This is very close to the 2.4 acre-feet represented by the 20 West Cache shares. If the unnamed stream dries up, the resulting ground water right almost matches the value of the West Cache shares.

James Cefalo
Regional Manager
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From: Adam McKenzie [mailto:mandmlaw1981@gmail.com]
Sent: Friday, November 01, 2019 5:40 PM

To: Cefalo, James <James.Cefalo@idwr.idaho.gov>

Subject: License 13-7649

Jim

Perhaps a few final thoughts. The 20 shares of West Cache also serve as mitigation (at least partially) if the unnamed stream dried up? If Deep Creek and Bear River are one system, not withdrawing water from Deep Creek would also benefit the river. Perhaps we could add another sentence acknowledging partial mitigation from the West Cassia shares even if the unnamed stream experienced reduced flows or dried up.

--

Adam J. McKenzie

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Cefalo, James

From: Cefalo, James
Sent: Friday, October 25, 2019 11:14 AM
To: 'Adam McKenzie'
Subject: RE: Water right number 13-7649

Adam,

The proposed condition is meant to guarantee that mitigation is actually taking place (with water) rather than just in theory. Ground water and surface water are hydraulically connected in the Bear River basin. Pumping ground water under water right 13-7649 diminishes stream flows in Deep Creek and the Bear River. In order to offset depletions in the creek/river, the former owner proposed to hold water right 13-2164 un-diverted. Water from the unnamed stream would flow down to Deep Creek and eventually to the Bear River to offset the depletion caused by pumping ground water. The mitigation, therefore, is permanently tied to the reliability of the unnamed stream.

There are two ways that the unnamed stream would become unreliable as a mitigation source. First, the stream could dry up. If the unnamed stream is dry, then there is no water available to offset depletions, there is no mitigation taking place, and the ground water right should not be diverted. The flow in the unnamed stream is a real concern. I have visited the site in the middle of the summer. Even though I did not take a measurement, the stream flow was visibly less than 0.76 cfs. If the unnamed stream flow is less than 0.76 cfs, then the pumping under the ground water right should be reduced.

The second way the unnamed stream would become unreliable is if water right 13-2164 were curtailed by a watermaster. Water right 13-2164 bears a 1952 priority date. It is very junior on Deep Creek and in the Bear River basin in general. If the right were curtailed because of a delivery call by senior water rights, then there would be no mitigation taking place (there would be no more water reaching Deep Creek than would otherwise be reaching the creek).

I believe the 20 shares in West Cache Irrigation Company were included in the mitigation plan because the 1952 water right is so junior. West Cache Irrigation holds one of the downstream senior water rights on Deep Creek. Therefore, during times when water right 13-2164 (1952 priority) is available, Deep Creek is mitigated directly by the water right. During times when water right 13-2164 would be curtailed, Deep Creek is mitigated by the West Cache shares (at that point, West Cache would be entitled to all of the water flowing in the unnamed stream, and the non-use would be non-use of the West Cache shares). Therefore, the second concern (curtailment) seems to already be addressed by holding the West Cache shares unused.

I agree that the language used in the draft license is confusing. It is geared toward mitigation by holding a water right unused. It doesn't work as well with an abandoned water right. How can an abandoned right ever be "deliverable"? The Department does not have standard mitigation language for the case where a water right is abandoned. What if we changed the Second sentence of Condition 3 to read as follows:

If the flow of the unnamed stream described in abandoned water right 13-2164, at the original point of diversion for the abandoned right (SWNE, Sec. 1, T15S, R38E), is less than 0.76 cfs, then the amount of water authorized for diversion under this right shall be reduced in proportion to the shortage at the unnamed stream.

If this revised language is acceptable, I can prepare a new draft license.

James Cefalo
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From: Adam McKenzie [mailto:mandmlaw1981@gmail.com]
Sent: Wednesday, October 23, 2019 6:28 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Water right number 13-7649

Jim

I am trying to finalize everything with this water right. My client has asked me to follow-up on one matter, to clarify. On condition No. 3 it states that even though the mitigation right is abandoned, if it is not "deliverable" due to shortage or a priority call, then the water from right 13-7649 would have to be reduced proportionately. How will that play out? If the water right is abandoned, how can it be delivered or measured for purposes of determining whether it is deliverable?

--

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