



Sent by Electronic Mail

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Jaime R. Short, Section Manager
Washington Department of Ecology
Water Resources Program
4601 N. Monroe Street
Spokane, WA 99205-1295

SUBJECT: Ecology Communications about Greiff Decisions, SPOK-22-01,02,03

I'm consulting for applicants Robert H. Greiff and Robert W. Greiff (pronounced "grife") on a project to correct a longstanding place of use discrepancy. The water right places of use do not include about half the historic farmed area—they exclude the property south of Ridgeway Rd.

I worked with the board and together we established a record for the board's decisions, currently under Ecology review. This included providing the factual basis, technical evaluations of statutory conditions for approval, and even a legal opinion. A brief word about the board. As you know, they are volunteers. I've been working in the water rights field for over 30 years and am still learning. I have nothing but respect for those who volunteer on these boards and keep water rights functioning. This was my first time working with the Spokane board. Kevin Freeman was assigned. The board and Mr. Freeman insisted on a high standard and appropriately challenged the concept of sharing the same acres. The decisions reflect their insistence on careful attention to detail and thorough evaluation of the applications.

Herman Spangle from your office called me yesterday morning. He said that both he and you disagreed with the board's decision to increase the acres for all three water rights to the same 100 acres. He said that if the Greiffs were to sell a water right to Deer Park in the future, that the acres would be increased. He then also acknowledged the provision addressing that very concern. That makes no sense. Provision quoted here for your convenience:

Combined use limit. The quantities authorized are not to exceed 113 ac-ft/yr for irrigation of 100 acres in combination among the following: Surface Water Certificate (SWC) 4057, Ground Water Certificate (GWC) 4589-A and certificate G3-01333C. The annual quantity is considered all consumptive use.

In response to Mr. Spangle, first, the Greiffs have never mentioned anything to me about selling water rights. They want to farm this ground, as their family has for about 70 years.

Second, I know with absolute certainty (a rare statement when talking water rights) the remedy with overlapping acres in the decisions is completely within the bounds of law. In spite of that, in a spirit of cooperating with Ecology, I offered a compromise to Mr. Spangle. This was to



limit each of the three rights to non-overlapping acres that would add to 100 acres. But the only way that works for my client is on condition that all three rights share the same place of use boundary encompassing the farm. This would allow the high duty crop (typically alfalfa) to be rotated with low duty crops according to agronomic practices--without having to change all three water rights every time the location changes. It accommodated Mr. Spangle's wish for Ecology to have a specific acreage they could regulate in case of shortage. After our first conversation yesterday, I offered to write the compromise up as a proposal. Mr. Spangle emailed in response to my explanation "I don't know about that. I'll wait to see what you come up with and the maps." He called again a few hours later and that conversation is what has prompted this letter.

The Greiffs have never been regulated due to a shortage in the water supply. According to the public water right files, they were regulated once in 1968 by verbal notice, with voluntary compliance, for irrigating south of Ridgeway Road. After which, Mr. Greiff filed application for those lands, which Ecology approved. When it came time for the certificate to issue, in 1983 Ecology removed those lands from the certificate place of use. This was done despite the fact the lands south of the road were being irrigated. This is based on the word of Mr. Greiff, is clearly visible on aerial photos, and was witnessed by Ecology staff Chester E. Dorough on June 10, 1977 who wrote: "In Sec. 9. it appeared that the 40 acres...were being cultivated in preparation for irrigation."

Since 2019, when Mr. Greiff received Ecology's letter asking about his water rights, I verified the problem for him (which he wasn't aware of) and worked with him to fix the issue. This is no easy matter to navigate under today's regulations. But he followed an agronomic use program and has followed the law all the way through to board approval. During this time, I will tell you, it has been an honor for me to learn a few things about farming in traditional ways, hard work, and integrity, from Mr. Greiff. This is a legacy moment for Mr. Greiff, to protect their family livelihood and I'm proud to be a part of supporting what they're doing.

Mr. Spangle told me that it's not true when Mr. Greiff says he didn't know he wasn't authorized to irrigate south of the road. Before I address that disappointing comment, I will share something else Mr. Spangle told me, and this is what prompted this rare letter of concern coming from me.

In the second phone call to me yesterday, Mr. Spangle was not agreeing with my compromise, but was explaining why three separate places of use, without overlap, would be a workable outcome. He said that Ecology knows this is a commingled system and that Ecology does not micromanage the use of water within the system. I asked if he would put that in writing, to which he said no he wouldn't. I told him that each water right is limited by its face attributes and in that approach if the alfalfa stand were moved to a low duty water right area, that would not comply. I knew perfectly well that if he or even the Director put that statement in writing, it would be worthless as an "outside of the law" statement. He knew that, and I knew he knew that, which is exactly why I tested him. After that, I no longer wish to compromise.



Please do not allow staff to seek to influence my actions and advice to a client in ways that are out of bounds of law. Please do not contact me to discuss any different approach to the Greiff changes unless you cite the statute, administrative code or case law that demonstrates the illegality of three rights on the same 100 acres. You won't find them because they don't exist.

The practical application to Greiff: acres are non-additive, annual volume and flow rate are additive. I send this messaging to you only because Mr. Spangle told me that you are in agreement with him.

I have an ethical obligation to my client. I'm not going to agree to any proposal that sets my client up to be out-of-compliance with their water rights while following their historic rotation practice. Mr. Spangle mentioned the possibility of seasonal changes. True, but pointlessly unnecessary and that would only take up time and energy from all involved and waste paper.

Finally, I could spend a lot of time and space providing the evidence and arguments for why the board's decisions are fully within bounds of law, but I believe Ecology knows that already. I am left at a loss to explain Mr. Spangle's representations to me. One easy example. Vineyard with 1.5 ft water duty on 100 acres. Owner wants to tear out vineyard and plant orchard at a total 3.5 ft duty. What do they do? They acquire another water right at 100 acres (through spreading, direct transfer or new permit) with a 2 ft average duty and apply it to the same 100 acres. Annual volume, additive; acres non-additive. Simple. I just now went back and reviewed Ecology Guidance Document 20-11-065 "Use of Terms that Clarify Relationships between Water Rights". The example I just gave off the top of my head is a near exact match to Scenario 4, page 13, "Farmer Sam". This is Ecology's own Program guidance!

To answer Mr. Spangle's comment about not believing Mr. Greiff. You can read some things in the file from back in the day where things got testy. In my experience over the past three years Mr. Greiff has been an inspiration, trustworthy, honest, hard-working and dedicated to the task of correcting the situation. I feel fortunate to have had the opportunity to help protect a small but important family farming legacy. I trust and believe Bob Greiff.

Sincerely,

Tim Reiersen

copy to: Spokane County Water Conservancy Board
Robert H. Greiff