

SUMMARY STATEMENT

3G AG LLC v. IDWR

Docket No. 48769

This appeal concerned the denial of the application of Jeffrey and Chana Duffin (“Duffin”) to transfer a ground water right that currently benefits 53.9 acres which also has an entitlement to surface water rights. The transfer application brought before the Idaho Department of Water Resources (“IDWR”) sought to unstack these two overlapping rights by transferring the ground water right to irrigate a different property, which would double the total number of acres being irrigated. A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, American Falls Reservoir District #2, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively “the Coalition”), sought to and were allowed to intervene to object to the transfer. In the ensuing administrative proceeding, the IDWR denied the transfer because, among other reasons, approving it would cause an “enlargement” as proscribed by Idaho Code section 42-222(1). Duffin petitioned for judicial review, but the district court agreed with IDWR’s denial and affirmed.

Duffin timely appealed to the Idaho Supreme Court. During the pendency of this appeal, 3G AG LLC (the “LLC”) acquired the water rights at issue in the transfer application and was allowed to substitute for Duffin. Ultimately, the Idaho Supreme Court affirmed the district court’s judgment that IDWR appropriately denied the proposed transfer under Idaho Code section 42-222(1). The Court explained that approving the transfer would cause an “enlargement” in use of water as prohibited by section 42-222(1). “Enlargement” in use of a water right under section 42-222(1), as set out in *Barron v. Idaho Department of Water Resources*, 135 Idaho 414, 18 P.3d 219 (2001), includes an increase in the number of acres irrigated as a result of a transfer. In this case, approving the transfer would permit concurrent use of the ground water right with the surface water right, at two separate locations, to irrigate 53.9 acres. After the transfer, the rights would irrigate double the number of acres being irrigated.

*****This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public.*****