

To: Fred Price, BLM-ISO

CC: Candice McHugh, IDWR ADJUD.

From: A. Ruberry, IDWR Eastern Region

Re: B33 Irr POD's objected to by BLM

POD LOCATION

T11N R26E S10 NWNENE

This legal description defines the beginning of a channelized portion of Sawmill Creek. Apparently back in the 1920'-1930's there were several attempts tried to preserve water from Sawmill Creek because the stream would "break". Among them were things like a canal dug from Sawmill Creek to Summit Creek and a channelization project aimed at cleaning and to some extent straightening the Sawmill Creek channel as it flowed across Mud Flats (ref: OQ U-82).

*See ATTACHED
list of SWS
rights.*

In review of the adjudication claims from Sawmill Creek and the Little Lost River, it was initially considered that the source(s) could all be Little Lost River since it was difficult to determine where Little Lost River started and Sawmill Creek ended. Seeing no difference in source recommendations of Sawmill Creek claims were changed to Little Lost River. The Preliminary Director's Report was filed only to find that Sawmill Creek now occasionally breaks at the shearing corrals, which is about half-mile upstream from the confluence of Sawmill Creek and Summit Creek; The beginning of the Little Lost River. This new information seriously impacted recommendations since the Sawmill Creek claims, now changed to Little Lost River, became senior to the junior Little Lost River rights, causing injury to the junior Little Lost River appropriators.

Ultimately, the source issue was changed back to Sawmill Creek. Now a problem arose where a Point of Diversion had to be defined for the Sawmill Creek claims since actual deliveries are made from Little Lost River (except 33-00107 which is a true Sawmill Creek right, but, Decreed as a Little Lost River right). The 1927 Decree states "at the mouth of Sawmill Creek". However, there were no rights diverted at the mouth of Sawmill Creek. And, the dilemma of where was the mouth of Sawmill Creek. In consideration of the channelization project aimed at preserving waters of Sawmill Creek it was determined that the channelization had in-fact changed the streambed to a canal, saving water. Therefore, the beginning of the channelization would now become the Point of Diversion and the ending of the channelization would be a Point of injection back into the Sawmill Creek stream channel. The Point of Injection is near the shearing corrals, about half-mile upstream from the confluence of the streams. The Sawmill Creek claims Point(s) of Diversion are recommended as Points of Re-diversion from Little Lost River at or near their respective Place(s) of Use. This recommendation preserves both the source and the Sawmill Creek priority dates and, forgoes the injury issue of junior Little Lost River rights.

T9N R27E S4 SWNWNE

This objection is a true error. Apparently a typographical error was made during the recommendation process. The TRUE Point of Diversion should read T9N R26E S4 SWSWNE. The claimant, Mr. Waymire has been notified and is now aware of the issue.

33-00038
00039
00040

T11NR27E S31 NESESE

BLM believes this POD should read S31 SENESE based on GPS data. However, during the field exam of these claims several Points of Diversion were identified to include the one in question. The recommended POD in-question is an actual Point of Diversion where an unnamed stream intersects with the collector ditch and can be verified using OQ V-32. The site proposed by the BLM is a drainage that was dry during the field exam, thus no recommended POD.

33-00055
33-70871

T6N R28E S2 SESWSW

Specifically named is SRBA claim 33-10995. This claim identifies private lands historically irrigated by the Hawley's, later sold without water. The Point of Diversion used during the irrigation era is on BLM but is now longer used. The claimant filed this SRBA claim and Transfer No. 4551 in an effort to preserve the acreage irrigated by surface water. The transfer is in-place awaiting the BLM objection to prompt IDWR to review and act. However, the transfer is currently protested.

33-00051
33-00060
Thru

T6N R 28E S11 SESENW

This is an historic Point of Diversion dating back to the late 1800's (according to the water right priority dates, 1885-1891) and is one of three serving the ranch. One of which previously mentioned above, T6N R28E S2 SESWSW. The other is within the private holding of the ranch.

33-10996 is an enlargement claim for acres on BLM lands that were historically irrigated by the Hawley's and is part of the Transfer No. 4551 aforementioned. BLM is aware of this claim and supports the transfer of acreage to private lands. As mentioned previously, the transfer is protested.

T7N R28E S21 NWNWSW

According to the Proof of Beneficial Use filed for this right (33-07010) this well dates to the 1940's. However, the Licensed date of priority was March 19, 1971, but then Transfer No. 3809 was filed to "unstack" surface and groundwater rights. As a result, the priority date of the well was advanced to July 2, 1990. Surface water decreed to this ranch date to 1885 to 1891.

This particular well dating to the 1940's (unsupported evidence of prior claimant) was located according to the initial survey dating to July 9, 1890, which no doubt established fence lines. A resurvey of the East line of Section 21 was done in August 1941. Then, in 1978, another resurvey was done as, evidenced by the monument caps. This 1978 resurvey puts the TRUE Point of Diversion of the 33-07010 well in the NENWSW (a BLM QQ). However, this matter was discussed with Ms Deena Teal, BLM, Idaho Falls District Office, in October of 1996, shortly after the discrepancy was found. Ms Teal indicated, at

Rocky Ross

that time, that since the well predated some 1976 ruling, by which BLM operated, they (BLM) would not protest the actual POD.

This basically explains the history of the well and the recommendation; however, the listing of the POD as NWNWSW is clearly an error. The CVR shows the POD to be located as NENWSW Sec. 21, which is accurate.

T8N R28E S31 SWNWSE

This POD defines a well used solely for mitigation and is defined as an amendment to the 1927 decree as a Judgement against Orville Nicholson, 1954. The recommendation does define a Place of Use; however, this POU is by exchange with surface waters as defined in the Judgement. The period of use is 4/1 to 7/15 annually, when all this well does is deliver water to the river. The Objection is not to the Point of Diversion, but rather to the Point of Injection. And, in-fact, as recommended this Point of Injection is accurate.

T6NR29E S31 NWSWNW

This is another typographical error. The recommended POD should read T6N R29E Section 30 NWSWNW. There is a pending Transfer to correct the actual POD location to T6N R28E Section 25 NESENE.

33-02128
33-318
488
498
508
836

Contor, Bryce
From: Contor, Bryce
Sent: Wednesday, January 19, 2000 4:27 PM
To: Ruberry, Allen; Carlsen, Ernie
Subject: Sawmill Creek Rights

This morning we met via teleconference with Dave Tuthill and Peter Anderson. One of the things we discussed was the Sawmill recommendations. During our call, Bill Stauffer called and reported that he had discussed the Sawmill recommendations with others, including Don Isham, James Andreason, and David Andreason. They all concur with the proposals in the January 6 letter. James Mays has sent us written concurrence.

Per Dave Tuthill's instructions to Al and me, I have gone ahead and changed the source of Sawmill Creek rights back to "Sawmill Creek, tributary to Little Lost River." The point of diversion is 11N 26E section 10, NWNENE, and the point of injection is 10N 27E section 18, NWSESW. The former points of diversion have been identified as points of rediversion. I removed any comments relating to change of source and I removed condition C02.

The rights I changed were:

R33-00023B
R33-00030
R33-00043
R33-00077
R33-10070
R33-10073
R33-10084
R33-10086

I'll put a new profile report and a copy of this memo in each file.

There were other Sawmill rights which I did not change. These are:

R33-00038 1927 decree & claim list source as
Little Lost River
R33-00096B Recommended w/ source "Summit Creek"
R33-00107 Recommended originally w/ source
"Sawmill Creek"

33-10464 Stockwater claim already PD w/ source
"Sawmill Creek"