

Field Exam Summary - Posey Creek claims, Basin 25. 20 November 2003
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General Comments

There are four claims for Posey Creek water, all beneficial use claims. As outlined below there are two different theories of origin/priority/proof of beneficial use. The documentation is sometimes contradictory. Most of the current sources of information are interested parties. There is active conflict between two of the parties.

Most of the documentation is attached to the copy of this general summary in paper file A25-04152A, the lowest numbered of these claims. Additional documentation provided by individual claimants is in the paper files for their own claims. Attachments and referenced documents are listed at the end. Other documents in the claim files, but not referenced in this summary, are not listed.

This general summary discusses all the claims in relationship to one another and is copied to all the claims files. An individual summary will be prepared for each claim as well.

Ownership

Claim A25-04152A is in the name of Gordon Morris, consistent with assessor's records (attached).

Claim A25-13326 is claimed by Matt Mann. A recent change of ownership documents his ownership of the claimed POU. Note I have proposed an amended claim for a different POU, but this also appears to belong to Mr. Mann.

Claim A25-10497 is in the name of Basil Poulsen but Bonnie Gardner has submitted a change of ownership. Gordon Morris asserts ownership of six acres in the SW of section 20, which appears consistent with the claims and the assessor's plat map (attached). However it is somewhat unclear from the photos how far south irrigation actually extended. The land lays in such a way to allow irrigation into the SW, so I propose splitting the right. I have invited Morris to submit a change of ownership for the six-acre portion.

Claim Bonnie P. Gardner claims A25-13763. The courthouse shows this POU is owned by Leon and Bonnie P. Gardner.

POD

There are two active points of diversion.

Upper Dam. The "upper dam" point of diversion is a dam in Posey Creek in section 16, north east of all the claimed places of use. It delivers water to a ditch that goes over a ridge and through the claimed POU for A25-04152A in the NE of section 20, then around into the claimed POU of A25-10497 and finally into the south end of the claimed POU of A25-13763. It then potentially spills into the natural channel of Posey Creek, which goes into the south end of the claimed POU of A25-13326 (however this part of the claim appears to be in error, see POU discussion below).

The 1936 affidavit of Arthur Bell in file A25-04152A states this dam delivered "all" the waters of Posey Creek to the east 1/2 of section 20 (corresponding to claim A25-04152A).

The 1973 letter from Kent Foster to IDWR asserts the dam was built in 1921 (but does not claim "personal knowledge") and that there may be "25 or 30" inches of useable water in Posey Creek not diverted by the dam.

Gary Mann indicated that until the dam was rebuilt recently, about 80% of the water went down Posey Creek's natural channel, where it would be available to the north end of A25-13763 and all of A25-13326. Before then the dam was just a hand-dug rock structure. It was rebuilt around ten or eleven years ago, but not more than fifteen years ago.

Matt Mann states that the upper dam washed out in the 1980's and until it was rebuilt the full flow of Posey Creek went down to Matt's lands (A25-13326). Matt states it was rebuilt ten years ago. Currently during high water there is some bypass around the dam, and some water springs up in the channel of Posey Creek below the dam.

Lower Dam. This is an earthen dam at Gardner's driveway, between the SWSW of section 17 and the NWNW of section 20. It diverts water west into Matt Mann's property. There is currently no provision for water to continue south into section 20.

Mrs. Gardner states that this dam is a new development. Mr. Gardner believes it has been there a long time but it used to have a headgate to allow water to go south. Gardners believe the current dam is more recent than 1994 (1984?), which was when the road was changed.

Matt Mann states that there was a headgate in the dam until the 1970s, but it kept washing out so Manns rebuilt the dam without a headgate.

The pond created by the dam shows on my version of the USGS topo map, based on 1965 aerial photography and field checked in 1966.

POU

A25-04152A. The 1936 affidavit of Arthur Bell asserts the east half of section 20 is the only POU from Posey Creek. This is the only claim in the east half of 20. This 1936 affidavit is the first "personal knowledge" evidence of use on the east half. 1936 is the date of recording; it is unclear when the affidavit was taken.

This POU appears to be somewhat smaller than the claimant's sketch. I propose recommending based on my Terra Server sketch. The NAPP is too hard to interpret. IDWR's GIS shop should be able to scan and rectify the Terra Server images to allow digitizing of the POU.

A25-10497. The 1904 deed from Posey Oglesby to Alexander Brown describes lands in section 20, but not these quarter-quarters. This irrigation would have to be a later development, an accomplished transfer, or an enlargement. The Bill Shultz 1939 affidavit and the Bonnie Gardner 1935 affidavit are quite generic but appear to refer to this irrigation.

See my sketch on the Terra Server image and the claimant's sketch in the original filing. The claimant's sketch is reasonable and probably as good or better than my sketch. I propose recommending as sketched by the claimant, splitting appropriately per the legal description in the change of ownership.

A25-13326. The claim appears to be in error. I have mailed an amended claim to Mr. Mann. The place of use shown me by Mr. Mann is in the NE 1/4 of Section 19. My inspection indicated recent (though probably not in 2003) irrigation.

The 1904 Oglesby/Brown deed specifically includes the NE 1/4 of 19 and references irrigation. Note that this is a conflict with the 1936 Arthur Bell affidavit. A possible explanation is forfeiture and then resumption.

Gary Mann says until the dam was rebuilt "80%" of the water went to this POU. Matt Mann states that now he only receives floodwater that bypasses the dam or spring water that rises in the creek, but that until the dam was rebuilt he enjoyed virtually the full flow of the creek. The existence of the pond on the 1965/1966 USGS quad suggests a history of water in the main channel of the creek.

I propose recommending according to my sketch on the layout, up to the claimed acreage, if Mann amends his claim. The claimed POU has access to the lower reaches of Posey Creek but it is too rough to irrigate. It is likely what Mr. Mann showed me is the correct historical POU.

A25-13763. This parcel is mentioned in the 1904 Oglesby/Alexander Deed and appears to be reflected in the Shutlz and Gardner affidavits. The north half (lands in section 17) could only be irrigated from the natural channel of Posey Creek. Photos A25-13763_1.jpg and A25-13763_2.jpg show no evidence of irrigation of this parcel. Gardners were not comfortable asserting irrigation of this, though they did not specifically acknowledge that it hasn't been irrigated. Matt Mann says Gardners have only irrigated south of their driveway, that is, only in Section 20.

The lands in Section 20 are currently irrigated by the ditch coming around from the south, from the section 16 (upper) dam. This is the water seen in photo A25-13763_3.jpg and is the only evidence I saw of 2003 irrigation on any of these claims.

I believe my sketch on the Terra Server image is quite accurate for the NWNW of section 20. I propose using it to base the A25-13763 recommendation upon.

Overlap

The actual POU of A25-13326 overlaps the south end of A25-00002, though the claimed POU does not. If the claimant files the amended claim the overlap will have to be considered in recommendations.

A25-13326 and (potentially) A25-13763 share the POD at the pond in the SWSW of 17. A25-04252A, A25-10497 and A25-13763 share the dam in section 16 (upper POD).

Conflict

There is a conflict between Gardner and Morris regarding relative quantities of water and ditch maintenance rights, and perhaps even on whether Gardners have a water right.

The deeds produced by Gardner (see *.jpg documents 4,5, and 6) and Morris (see paper file A25-04152A) each convey "1/4" of the underlying existing rights as well as ditch easements. There are a few problems with this split: 1) What happened to the other 2/4? 2) The irrigated acreage is not equal. 3) The deed produced by Gardner does not describe all the lands claimed in A25-10497.

I propose interpreting the intent of the split to allow an equal diversion rate *per acre*. I think water law and the easements already address access for ditch maintenance; there shouldn't be a need to include that in recommendations.

Priority

The Oglesby deed implies a 1904 priority for A25-13763 and A25-13326, which is earlier than documented for the other rights. The Arthur Bell affidavit conflicts with this and implies forfeiture. The Arthur Bell affidavit also appears to conflict with the Dorothy Poulsen affidavit asserting irrigation of A25-13326 and A25-10497. Poulsen's affidavit asserts personal knowledge since February 1935. Bell's affidavit was recorded in 1936 but I don't know when it was given.

I propose getting help from legal staff, but one possibility is to recommend an equal priority of 1935 (based on Dorothy Poulsen's affidavit and an assumption of accomplished transfers) for all the rights. This is based on the following reasoning:

The Oglesby/Alexander deed implies an equal priority between A25-13326 and A25-13763. The Poulsen and Shultz affidavits imply equal priority between A25-04152A, A25-10497, and A25-13763. If there was forfeiture as implied by the Arthur Bell affidavit, the Poulsen, Shultz and Bud Morris affidavits imply resumption. Whatever the basis or history, there is no evidence to suggest a practice of A25-13326 and A25-13763 enjoying senior status to A25-04152A and A25-10497. If indeed they were senior, perhaps there was a subordination or relinquishment of priority along with the resumption.

Quantity

No Manning's equation was done for A25-13326 because the ditch was wide and flat. The headgates and not the channel control likely flow. The ditches appear adequate to support 0.02 cfs/acre.

A Manning's equation on the ditch leading from the upper dam suggests a capacity of 9.5 cfs, which is adequate for 0.02 cfs/acre on all the rights served by the south ditch. Note that the small stream of water observed was reaching all the way to the end of the ditch, so ditch loss is very minor. A bigger issue is the availability of water. This was late in a very dry year, but the streambed itself is small enough to suggest it generally has only modest flows. I propose recommending 0.02 cfs/acre for all rights.

Water Use

Irrigation and stockwater confirmed for all the claims.

List of Photos

- A25-04152A_1.jpg Upper dam on Posey Creek. This was taken from the hillside on the west. The creek comes in from the left (north) and the natural channel continues to the right. The ditch goes away from the camera to the southeast on the far side of the pond.
- A25-04152A_2.jpg Ditch at location of Manning's calculations looking downstream.
- A25-04152A_3.jpg Ditch bottom at location of Manning's calculations.
- A25-04152A_4.jpg Ditch at location of Manning's calculations looking downstream.
- A25-04152A_5.jpg Ditch where it enters Morris property on the top of the ridge, marked on map by GPS location.
- A25-04152A_6.jpg POU looking south from north edge. Ditch is at foot of photographer.
- A25-04152A_7.jpg Upper end of POU looking east from same location.
- A25-10497_1.jpg Looking north from road at POU. Foreground is not part of claimed POU. There is a low round hill in the center; the ditch comes behind that hill. POU for A25-04152A is up the draw to the east (right) of that hill; POU for A25-10497 is to the west (left).
- A25-13326_1.jpg Looking west from where the ditch goes under the road, just west of the POD. This is from the NW corner of the POU.
- A25-13326_2.jpg Looking SW at POU from west edge (county road).
- A25-13326_3.jpg Looking west across dam at POD towards POU. POU is on the far side of the pickup.
- A25-13326_4.jpg Looking upstream from lower dam. Both sides of the creek are the claimed POU for A25-13763 in SWSW of section 17.
- A25-13763_1.jpg Looking NW towards section 17 POU from the top of the hill about on the section line.

A25-13763_2.jpg	Looking NE towards section 17 POU from about the same location. The clump of red willows towards the right of the photo is about where a POD would have to be to irrigate the section 17 POU.
A25-13763_3.jpg	Looking SW across section 20 ^{POU} ~~POD~~ from the top of the hill about 300 feet south of the previous two photos. This is the end of the ditch from the upper dam. The water shown running in the field also shows on the Terra Server image in paper file A25-04152A.
A25-13763_4.jpg	Looking SE from the same location. This actually shows the POU for A25-10497.
A25-13763_5.jpg	Same as photo 4, looking more ESE.
A25-13763_6.jpg	End of water flow seen in photo 3. This is taken on the Section 20 POU of A25-13763.
A25-13763_A25-10497_Doc1.jpg	Record of old deed, but it does not reference water rights. Provided by Mrs. Gardner.
A25-13763_A25-10497_Doc2.jpg	Bud Morris affidavit. Provided by Mrs. Gardner.
A25-13763_A25-10497_Doc3.jpg	Bill Schulz affidavit. Provided by Mrs. Gardner.
A25-13763_A25-10497_Doc4.jpg- A25-13763_A25-10497_Doc6.jpg	Deed for most of POU of A25-10497 to Bonnie Poulsen.

Documents

A. Documents attached to this summary in paper file A25-04152A

Approximate sketch of claims. Hand sketched on copy of USGS quad. Shows claimed POU, not what I found.

GPS locations. Hand sketched on USGS quad using lat/lon from GPS locations.

Terra Server Image. Unmarked, to let reviewers see the indications I used to identify ditch locations and POU.

Terra Server Image, marked with ditch locations and observed POU. Note that I am uncertain about the southern extent of POU for A25-10497.

Plat map from Bonneville County Assessor, marked in color according to "Parcel Master Inquiry" pages.

Parcel Master Inquiry pages from assessor.

Summary of phone conversation with Matt Mann 10/29/03. Matt is the claimant of A25-113326.

Summary of phone conversation with Gary Mann 10/23/03. Gary owns adjoining property in Section 17. Posey Creek flows through this property but Gary does not claim Posey Creek water. Gary is Matt's brother.

B. Related documents in individual claims files

A25-4152A: Continuation of Abstract of Title, Waiver and/or Relinquishment recorded 1936. Arthur Bell affidavit.

Quitclaim deed to Gordon Morris. References 1/4 interest in water right & easement for ditch maintenance.

Copy of 1973 letter from Kent Foster to Keith Higginson regarding history of dam in Posey Creek.

A25-10497: Contact log of phone calls and meeting w/ Gardners.

A25-13763: Title abstract, Alex Brown to Emma M. Ashton, 1916. Identifies NWNW of 20 (part of A25-13763) and part of NE of 19 (part of A25-13326) along with 160 inches of Posey Creek water.

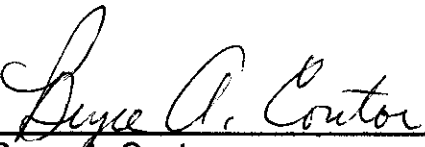
Title abstract, Posey Oglesby to Alex Brown, 1904. Same lands as 1912 abstract along with SWSW 17 (the remaining part of A25-13763) along with a private water right in Posey Creek.

Dorothy Poulsen affidavit asserting irrigation in sections 17 and 20 (A25-4152A, A25-10497, A25-13763) in 1935. Dorothy is former claimant of A25-10497.

Print of photo of Bud Morris affidavit (scanned as A25-13763_A25-10497_Doc2.jpg) asserting water has "gone over the dam on Posey Creek" since 1947.

Photo of Bill Shulz affidavit (scanned as A25-13763_A25-10497_Doc3.jpg) asserting Posey Creek was "running down into section 17 & 20... since the spring of 1939."

Three photos (one of each page) of quitclaim deed conveying part of lands of A25-10497 to Dorothy Poulsen. The deed specifies a 1/4 share of the water right & an easement for ditch maintenance. It looks to have been executed at the same time as the Gordon Morris deed in A25-04152A. Scanned images are A25-13763_A25-10497_Doc4.jpg through A25-13763_A25-10497_Doc6.jpg


Bryce A. Contor


Date