



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

March 28, 2003

ROBERT F ZAUSCH  
KATHLEEN A ZAUSCH  
8083 W POCATELLO CK RD  
POCATELLO ID 83201

RE: Recommendation for Snake River Basin Adjudication (SRBA) claim 29-04220

Dear Mr. and Ms. Zausch,

I spoke with my supervisor and a member of our legal staff regarding your question about the recommended priority date for claim 29-04220.

Your claim filed based on a statutory claim or beneficial use. It was recommended this way because your property is not part of the originally decreed place of use. In addition, the letter you provided by Dwain and Elwin Anderson does not indicate that the 1 ½ inches of water is from a decreed right.

Additional evidence that initially supports that the 1 ½ inches of water spoke about in the letter of agreement you provided is not part of the decreed water is an affidavit submitted by Dwain Anderson in 1982 objecting to your filing of the original statutory claim 29-04420. Mr. Anderson states in the affidavit that, "...I am the original owner of this ground and the water was never used on it. We sold this piece of ground in 1965." (enclosed). Also note that you did not claim the decreed priority date of June 1, 1887 that would fit with the historical Taney right.

Thus, the evidence I have now is that use of water could have started being used on this ground in 1965, but not before. Thus we recommended the right as a beneficial use claim with a 1965 priority date.

That being said, you said you had the letter speaking of the 1 ½ inches recorded into your deed. IDWR would need the chain of title from Dwain and Elwin Anderson, to Elden and Donna Martindale, then to yourself to see if there is any mention of decreed water with priority dates or water right numbers.

In order to recommend your water right as an accomplished change in place of use, you not only need to prove that you were deeded 1 ½ inches of decreed water, but show where it was moved from. So the question would be, "What land in the decreed place of use was dried up in 1965 so your land could be irrigated with the decreed water?" This

evidence would have to be provided for the recommendation to be changes to reflect a decreed priority date.

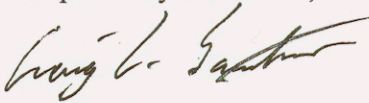
However, since at this time IDWR's legal staff feels that the written agreement from Dwain Anderson is not enough to support that a portion of the decreed right is on your property, it also is probably not enough to hold your right to 1 ½ inches.

Thus, I feel it would be in your best interest to amend your claim for a greater diversion rate. With the evidence I have currently, I feel I could probably recommend a total diversion rate of 0.07 cfs with the 1965 priority date for irrigation and stockwater.

I am enclosing an amended claim for your convenience. Please look over the claim and initial any changes you wish to make. When satisfied, sign the claim in front of a notary and return it to this office.

Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig L. Saxton", written in a cursive style.

Craig L. Saxton  
Sr. Water Resource Agent  
Adjudication Bureau

Enclosure(s)