



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 22, 2003

NORRIS KENT MURDOCK
LINDA CHARMAIN MURDOCK
2483 N INKOM RD
INKOM ID 83245

RE: Notice of Error Reply for Snake River Basin Adjudication (SRBA) recommendation 29-00294D and 29-13385.

Dear Mr. and Ms. Murdock,

The Idaho Dept. of Water Resources received the Notice of Error (NOE) reply you sent on 4/10/03. I reviewed the Notice of Error (NOE) reply's and the files and will try to address your concerns.

29-00294D:

1) You stated you disagreed with the recommended period of use.

You claimed a portion of decreed right 29-00294 as defined in the Rapid Creek decree *Steward et al vs. Damron et al*. Because the decree did not define specifically what the irrigation season of use was it was recommended as the IDWR standard of 4/1 to 10/31. Despite that the decree states, "...is entitled to the use at all times..." it is not clear that the intention of the decree is for year round irrigation.

I contact our legal staff on this issue and the result was that the statutes in Idaho are clear that the extent of a water right is the water that can be beneficially used. Thus, for IDWR to support a year round season of use for irrigation, you need to provide evidence that Rapid Creek water is put to beneficial use year round. I will reference you to Idaho code 42-101, 42-104, 42-201, or 42-220. These statutes can be accessed through the IDWR internet site at www.idwr.state.id.us.

At this time IDWR cannot change the recommended season of use without additional evidence of beneficial use.

2) You stated that you disagreed with the recommended diversion rate and place of use.

I have changed the recommended acreage for 29-00294D to reflect 5 acres and 0.10 cfs (enclosed)

29-13385:

1) You stated that you disagree with the priority date.

Jackson Creek was not mentioned in the Rapid Creek decree *Steward et al vs. Damron et al*. Decreed right 29-00294 states "...of the waters of said stream..." The following paragraph states, "...said water to be diverted from the main channel of Rapid creek." Thus IDWR feels the intention of right 29-00294 was for use of Rapid Creek water only.

Use of Jackson Creek water for irrigation was treated as a beneficial use water right, or another way to put it is a right that has been established through historical use but had not been previously recorded through a decree or license.

Evidence supporting the recommended priority date was in the form of an affidavit from Norris M. Murdock stating the purchased the ground now known as Murdock Subdivision in 1947 (enclosed). The affidavit states that the practice of use of Jackson Creek water commenced before Norris M. Murdock purchased the property, but no date was given. At this time the evidence I have supports a 1947 priority date from Jackson Creek.

If you still feel the recommended priority date is inaccurate, please submit additional evidence supporting a different priority date.

2) You stated that you disagreed with period of use.

Same issue as described above. Since this is a beneficial use claim, IDWR will recommend the IDWR standard for the area of 4/1 to 10/31.

If you feel this is inaccurate, additional evidence needs to be provided that Jackson Creek water is put to beneficial use outside the standard irrigation season of use.

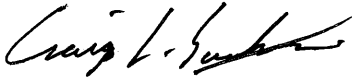
3) You stated that you disagreed with the recommended diversion rate and place of use.

I have changed the recommended acreage for 29-13385 to reflect 5 acres and 0.10 cfs (enclosed)

Conclusion:

I realize that this can get very complicated. Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig L. Saxton". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping underline.

Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau