



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

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Director

June 4, 2003

ATTN: RANDALL BUDGE
RACINE OLSON NYE BUDGE & BAILEY CHTD
PO BOX 1391
POCATELLO ID 83204-1391

RE: Notice of Error Reply for Snake River Basin Adjudication (SRBA) preliminary recommendations 29-00298B, 29-00311B, and 29-02034B for Mr. Corwin Pat Whitworth.

Dear Mr. Budge,

This office received the Notice of Error (NOE) reply you submitted on behalf of Corwin Pat Whitworth on March 24, 2003. I will address your clients concerns below:

29-00298B and 29-00311B:

I feel I can support recommending the claims for stockwater use within the season of use you described in the NOE reply you submitted but I am in the process of discussing this with our legal staff. None-the-less, as you stated in your letter, stockwater was not claimed as a purpose of use. To even pursue claiming stockwater use to be recommended as part of these historical decreed rights, the two claims will need to be amended to reflect stockwater as a claimed purpose of use.

Enclosed are amended claims for the two above revered water rights. Based on your letter that agreed that the irrigation water right has been forfeited, I removed irrigation from the amended claims. However, if your client wishes to still claim irrigation as well as stockwater, feel free to add that in or create a new amended claim. Note that the diversion rate shown on the amended claims is the standard rate for 300 beef cattle.

In addition, during a field exam on 11/1/01 where I met with Mr. Whitworth, I understood that Mr. Whitworth fills a water truck from Rapid Creek and then pumps it into his watering troughs. If this is correct, then I need to know the location(s) the water is taken from Rapid Creek as that will be defined as the point of diversion. Enclosed is a map of the area for your convenience. Please indicate the location of the point of diversion and return it with the signed amended claims.

Please look over the claims and have Mr. Whitworth initial any changes he wishes to make. When satisfied, have Mr. Whitworth sign the claims in front of a notary and return them to this office by **June 20, 2003**.

29-02034B:

Issue 1 and 2: You stated that additional irrigate acreage should be added to the recommendation and the quantity of water should be increased proportionately to match.

Based on the map you provided and your request, I have added in additional acreage totaling 46 acres per GIS. I have adjusted the diversion rate to reflect this additional acreage.

Please look over the revised preliminary recommendation and feel free to contact me with further questions.

Issue 3: You stated that the preliminary recommendation should state that Jackson Creek as tributary to sinks rather than tributary to Rapid Creek.

In preparing the preliminary recommendation, evidence was reviewed by myself, my supervisor Ernie Carlsen, and our legal representative for basin 29 Candice McHugh. Since Jackson Creek is now tributary to Rapid Creek, we had to recommend the source as tributary to Rapid Creek. But, in order to address Mr. Whitworth's concerns about his right being called out by earlier priority rights on Rapid Creek, a condition was added stating:

PURSUANT TO A CALL IN TIMES OF SCARCITY, THIS RIGHT IS SENIOR TO WATER RIGHTS DIVERTED FROM RAPID CREEK AND TRIBUTARIES.

This condition was added to protect Mr. Whitworth from a priority call when water levels in the drainage start to diminish.

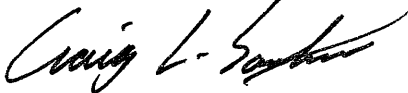
I would encourage you to direct further questions regarding this issue to Deputy Attorney General Candice McHugh at (208) 327-7900.

Conclusion:

I hope this helps to address Mr. Whitworth's concerns regarding the preliminary recommendations made on his SRBA claims.

Please feel free to contact me with further questions.

Respectfully submitted,



Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau