

DEC 07 2005

DEPARTMENT OF
WATER RESOURCES920 Jonathan Rd.
Weiser, ID 83672
Nov. 30, 2005

Re: Preliminary recommendations for Snake River Basin Adjudication (SRBA) claims 67-355A.

Dear Craig L. Saxton:

Thank you for keeping us informed and always encouraging with "feel free to contact me and I will be more than happy to work with you to try to find a solution". Realizing that every water right is unique and determining the relationship of the all of the facts is a daunting task. Here are some more papers for your consideration, as we discussed on the phone.

Please review the statements in the 1957 Application for Transfer and we would like you to recommend that 41.6 inches for 67-355A be like in the first re-adjudication filing started on 9/12/1989. (See a copy of that filing hereto attached.) The 1957 Application for Transfer written by Spahr's lawyer, Swannstrom, states: "A Right of 5 1/2" from Mill Creek in Adams County, Idaho, under priority date of May 1st. 1884, being in part, the water right decreed to Margaret Krigbaum (or 50") for use upon the SE 1/4, Sec. 34, Twp. 17 N. R. 1 W. B. M. in Muir Bros. vs. Allison." (See Exhibit A p.1 hereto attached that you sent to us.), thus, the 5 1/2 inches should be taken from the 50 inches. Please note that **no** place in Spahr's Application of Transfer is the Deseret Sheep Co. (67-355) mentioned.

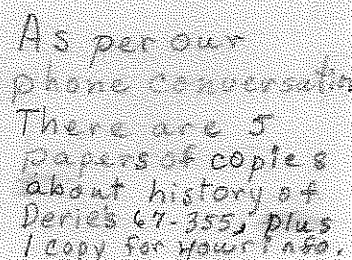
Also, from our phone conversation you mentioned that the water masters' records show the 41.6 inches being delivered to the Derie (Deseret Sheep Co.) property. In 1980, before we purchased the property from Chapman, we went to the Water Resources Dept. to check on the water rights. (hereto attached the 1979 Mill Creek water master papers) Please note there is **no** mention of the #884 by the Deseret Sheep Co. (Chapman) 67-355 water right on p. 2. On p.1 just under the Spahr water right the #884 is listed.

In 1989, when working on the re-adjudication with Robyn from the Water Resources Dept., she checked Sec. 34 for all of filings. The #884 Transfer number appeared. She was unable to find the transfer papers and after much searching, she found the Application for Transfer #884 in the Water Resources Legal Dept. She said that she would do more research and see why the #884 was in the Legal Dept. Later, she sent us the copy of the Muir vs. Allison Decree (hereto attached) that has **no** #884 listed by Deseret Sheep Co. (67-355). The 1987 Mill Creek water master paper (hereto attached) has **no** #884 by 67-355 (Derie). She concluded that the Transfer #884 was **not** related to the 41.6 inches of decreed water right of the Deseret Sheep Co. (Derie), thus, as shown by the "14. Remarks:" on the 9/12/1989 filing of the 67-355A (hereto attached).

As you stated and we also discussed on the phone: Galey and Stiles had no objection to the transfer of the 5 1/2" from Spahr's Sec. 34 property to Section 36 property, and the moving of point of diversion up Mill Creek in the paper signed by Galey, Stiles and Watermaster Tillotson. There is **no** mention of taking the 5 1/2 inches of water from the Galey's (Deseret Sheep. Co.) property and/or Galey's water rights.

Thank you for reviewing the information about the 67-355 water right. Hopefully, the delivery of the 41.6 inches to Derie (Chapman) property by water masters, the copies of the 1979 and 1987 water master papers, the Decree copy send to us by Robyn, and the fact that Application for Transfer stated: "A Right of 5 1/2"... of May 1st. 1884, being part, of the water right decreed to Margaret Krigbaum (or 50") are the facts that you need to recommend that the 41.6 inches water right belonged to the Derie (Deseret Sheep Co.) property like in the filing of 9/12/1989 for re-adjudication.

Respectfully submitted,
Larry and June Derie



As per our
phone conversation
There are 5
papers of copies
about history of
Derie's 67-355, plus
1 copy for your info.

Exhibit A That
Craig sent to us

P. 1063

RE APPLICATION OF W. H. SPAHR FOR PERMIT TO
TRANSFER WATER RIGHTS FOR ROTATING USE UPON
TRACTS UPON WHICH RIGHTS ARE NOW APPURTENANT

EXHIBIT A

The Applicant, W. H. Spahr, of Council, Idaho, is now owner of two separate parcels of land, irrigated from Mill Creek, in Adams County, under two separate decreed water rights from Mill Creek and the purpose of this Application is to secure official permission to use both of such rights for the irrigation of one (the lower) of said tracts of land until July 1st of each year, and after July 1st of each year, to use both of such water rights for the irrigation of the other (upper) tract.

The Two tracts of land, and the two separate decreed water rights therefor, are severally described as follows:

(1) All that part of the SE $\frac{1}{4}$ of Section 34 in Township 17 North, Range 1 West Boise Meridian, particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 34, said Township and Range, and running thence South along the East line of said Section 34, a distance of 507 feet; thence West, at right angles, 1781 feet, more or less, to the East line of the right of way of the Pacific and Idaho Northern Railway Company (now Union Pacific Railroad Company) right of way; thence northerly on and along the easterly line of said railway right of way, 521.5 feet, more or less, to a point on the North line of the Southeast Quarter of said Section 34; thence East, on and along the North line of the Southeast Quarter of said Section 34, a distance of 1659 feet, more or less, to the point and place of beginning, and containing approximately 20.8 acres,

And the Decreed water right for the above described tract of land is described as follows:

A Right of 5 $\frac{1}{2}$ " from Mill Creek in Adams County, Idaho, under priority date of May 1st. 1884, being in part, the water right decreed to Margaret Krigbaum (or 502) for use upon the SE $\frac{1}{4}$, Sec. 34, Twp. 17 N. R. 1 W. B. M., in the water adjudication suit of George M. Winkler, plaintiff, vs. J. Marion Young--Margaret E. Krigbaum,--et al, and which Decree is approved and set forth in the Abstract of Judgment in the Weiser River Adjudication suit of Muir Bros. vs Allison.

The Applicant, W. H. Spahr, acquired by direct chain of deeds, the tract of land first above described, together with deed for 5 $\frac{1}{2}$ " of the above decreed water, and for more than 26 years, last past, such amount of decreed water has been officially recognized as a right for the above described lands and has been used each irrigation season, by applicant, for irrigation of such lands:

We already sent
Deeds (Harvey-1913
or Spahr and Deseret
Sheep Co. 1916) showing
the railroad. Except
20 acres off the north
end. That 20+ acres is
the Spahr (Rice)
property. over

Spahr's lawyer,
Swanstrom wrote
this to take
5 $\frac{1}{2}$ inches
from 50 inches

There is
no mention
of the Deseret
Sheep Co. water
(67-355) (416 in)
Spahr's (884)
application
for trans-
fer of
1957.

Harvey
(1913) and
Deseret Sheep
(1916) Deeds
show
Harvey (s)
were
owners
during
the 1913-1918
until 1929
when Spahr
bought this
property
of 20.8 acres in
Sec. 34 North
of and not
part of the
Deseret Sheep
Co. (Deseret)
property.

CARL H. SWANSTROM
ATTORNEY AT LAW
COUNCIL, IDAHO

Feb. 16 1910

Krigbaum to Cunningham & Olson, E-4

The Harvey
(1913) and
Martin to
Deseret (1916)
was already
showing
the division
of Spahr's from
this property
of Krigbaum.

Craig,
likewise
said on
the phone
this 2
inches
isn't part
of the
#884 trans-
fer either, but
does show
for your
info -
where
2 inches
of the
50 inches
went.
Our copy
was red
here, so
hopefully,
you can
see two
inches.

The
deed of
Oct 25, 1910
that we
sent earlier
shows
the
19.3 ~ 59.3 acw
22.2 ~ 34.7 acw
71.5 inches (approx)
for Deseret Shovel Co.

This Indenture, made this 16th day of February 1910, Between Margaret L. Krigbaum of Council, County of Washington, State of Idaho, the party of the first part and C. E. Cunningham and H. M. Olson, of Council, in the County of Washington, State of Idaho, the parties of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Twelve Thousand Dollars, lawful money of the United States to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged has granted, bargained and sold and by these presents does hereby grant, bargain, sell and convey and confirm unto the said parties of the second part, and to his heirs and assign forever, all the following described real estate situated in the County of Washington, State of Idaho and particularly described as follows to wit:

The South East Quarter of Section Thirty Four (34) in Township

Seventeen (17) North of Range One (1) West of the Boise Meridian and containing one hundred and sixty acres, less 6.21 acres decded to the Pacific and Idaho Northern Railway Co. for right of way over, through and across the said land which said deed is recorded in Book 16 at page 429 Deeds of Washington County, Idaho also excepting therefrom a tract of land containing five acres decded to William Dawson, which said land is described as follows.

Commencing at the S. E. corner of the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 34 Twp 17 N. R. 1 West B. M. and running thence west 80 rods, thence north at right angles 10 rods, thence east at right angles 80 rods, thence south at right angles 10 rods to the place of beginning the said tract of land conveyed hereby being 148.79 acres, more or less, together with all water and water rights and ditches thereunto belonging or in anywise appertaining including an adjudicated water right into and to the waters of Mill Creek, which adjudication was at the suit of Geo. M. Winkler vs Marion Young et al, wherein the party of the first part was adjudicated to be the owner of 50 inches, miners measurement, in and to the waters of Mill Creek from May 1st 1884 excepting from the said grant of water herein the amount of ~~50 inches~~ (miners measurement) heretofore granted to William Dawson the amount of adjudicated water herein conveyed by this deed being 48 inches (miners measurement).

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all estate, right, title and interest in and to the said property as well as in law as equity of the party of the first part.

To Have and to Hold the above mentioned and described premises together with the appurtenances unto the said parties of the second part and to their heirs and assigns forever.

And the said party of the first part, her heirs the said premises in the quiet and peaceable possession of the said party of the second part, their heirs and assigns and against the party of the first part her heirs or assigns and against all and every person or persons whomsoever lawfully claiming or to claim the same shall warrant and by the presents forever defend.

In Witness Whereof I have hereunto set my hand and seal the day and year first above written.

Witness
L. L. Burtenshaw
State of Idaho
County of Washington
ss

Margaret L. Krigbaum (Seal)

This certifies that on this 16th day of February 1910, before me L. L. Burtenshaw a Notary Public in and for said County and State personally appeared Margaret L. Krigbaum personally known to me to be the identical person whose name is subscribed to the foregoing instrument and she acknowledged to me that she executed the same
In Witness Whereof I have hereunto set my hand and affixed my notarial seal this 16th day of February 1910.

notarial seal this 10th day of February 1910

Seal
(L. L. Burtenshaw Notary Public)
(Washington County Idaho)

L. L. Burtenshaw

Notary Public

Filed for record at request of H. M. Olson at 9, o'clock A. M. July 25, 1910.

Frank E. Smith

Recorder

By B. B. Hunt

Deputy

Fees \$1.80

(Deeds 28 - 59)

*transfer of 2nd from
original 50"*

Exhibit - 1989 Filing

Copy of Derie's
filing in 1989

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 67-355A
Date Received: 9/12/1989
Receipt No: W005909
Received By:

with
Robyn's
Cos Water
Res. Dept
help.

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

JUNE I DERIE Phone: (208)253-6068

2205 JACKSON CREEK RD
COUNCIL ID USA 83612

920 Jonathan Rd.
Weiser, ID 83672

LARRY D DERIE Phone: (208)253-6068 208-549-0133

2205 JACKSON CREEK RD
COUNCIL ID USA 83612

920 Jonathan Rd.
Weiser, ID 83672

2. Date of Priority: 05/01/1884

3. Source: MILL CREEK , MILL CREEK Trib. to: WEISER RIVER , WEISER RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
17N	01W	34	NE SE	ADAMS	
17N	01W	35	NW SW	ADAMS	

5. Description of diverting works:

HEADGATE, DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	11/15	0.83	

7. Total Quantity Appropriated is:
0.83 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
17N	01W	34	NE	SE	IRRIGATION	18
			NW	SE	IRRIGATION	9
			SW	SE	IRRIGATION	22
			SE	SE	IRRIGATION	18
Section Acres						67
Total Acres						67

11. Place of use in counties: ADAMS

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

STOCKWATER USAGE SAME POU AS IRRIGATION.

THIS CLAIM IS FILED WITH AN ADDITIONAL 5.6" OF WATER. THE MUIR ALLISON DECREE STATES THAT 41.6" OF WATER SHOULD GO TO THIS PROPERTY AND THE WATERMASTER RECORDS SHOW THAT 41.6" HAVE BEEN DELIVERED TO THIS PROPERTY TO DATE. THE RECORDS DO NOT SUBSTANTIATE THE LOSS OF 5.6"; THEREFORE, WE ARE FILING THIS CLAIM FOR 41.6" OF WATER.

5.5" WERE SPLIT IN 67-00355C TO W.H. SPAHR; HOWEVER, SPAHR NEVER OWNED ANY OF THE DESERT SHEEP CO. LAND.

15. Basis of Claim: Decreed

Copy of decree

Robyn of the
Water Res. Dept.
Sent a copy to
the Series.
Please Note the
#884 was only print-
ed by Auston Spahr
Water right.

Mill Creek.

William Winkler, Lewis Winkler, Mrs F H Hayner,		June 5, 1902
John Kessler, Jim Kessler, Lewis Kessler, Bettie		June 5, 1902
Dickerson, Janie Hart, Ida Blanchard, William		June 5, 1902
Kessler, Elva Young and Rebecca Kessler, suc-		June 5, 1902
cessors of Alexander Kessler, deceased	25	May 1, 1878
Frederick N Watriss, Grantee of Geo M Winkler	16 2/3	May 1, 1881
	12 1/2	May 1, 1884
	33 1/3	May 1, 1893
	20 3/4	May 1, 1894
P H Schaff and F S Galey, Grantees of Samuel Harp	37 1/2	May 1, 1882
	29	May 1, 1891
<u>Deseret Sheep Company</u> sub for C A Martin, Grantee		
of Margaret Krigbaum	41 2/3	May 1, 1884
Mill Creek (Con)		
Council Valley Orchards, Grantee of J Marion		
Young	10 3/4	May 1, 1885
	29	May 1, 1894
	37 1/2	May 1, 1889
J D Poyner and John Poyner	21 1/2	May 1, 1886
George T Ellis	27 1/2	May 1, 1893
P H Schaff and Thomas L Watt, Grantees of B F		
Middleton	37 1/2	May 1, 1894
Charles Lappin and A E Felmley, Grantees of C S		
Gibbs	54	May 1, 1896
James A Huston Jr. and William Spahr, Grantees		
of John and J D Poyner	16	May 1, 1899
B W Turnipseed	18	May 1, 1903
J V Morrison	16	July 1, 1909
C W Holmes	8 1/2	May 1, 1909

File No. and Original Owner	File Date	Present Owner	Land Description	Amount of Water	Actual Charge 1987	Proposed Charge 1988
67- 348 Trans 446 W. Winkler	5-1-78	L.O. Vaile	00360001004A	46"	7.50	11.50
67- 348 Trans 446 J. Hoover	5-1-78	S. Schwalling	00360003007A	6"	.60	1.60
67- 348 Trans 447 W. Winkler	5-1-78	"	00360003007A	6.5"	.60	1.60
67- 348 Trans 448	5-1-78	Ed. Engel	17N01W36S400	6.5"	.60	1.60
67- 449 W.H. Spahr	5-1-84	"	17N01W36S400	5.5"	.60	1.60
67- 349 F. Watress	5-1-81	Ronald Dean	17N01W35S100	6.5"	7.50	11.50
67- 349 F. Watress	5-1-81	F. Stevner	17N01W35S1200	10"	1.00	1.60
67- 350 F. Watress	5-1-84	"	"	12.5"	1.20	1.60
67- 354 Schaff/Caley	5-1-91	"	"	19"	1.90	2.90
67- 353 Schaff/Caley	5-1-82	"	"	20.5"	2.10	3.40
67- 351 F. Watress	5-1-93	"	"	33.33"	3.30	5.00
67- 352 F. Watress	5-1-94	"	"	20.75"	2.10	3.40
67- 354 F. Watress	5-1-94	"	"	10"	1.00	1.50
67- 355 Desert Shoof Co	5-1-84	L. Dertle	17N01W34S500	41.6"	7.50	7.50

Seit by Robyn WRI
 State Right we on Oct. 28, 1991

This is a copy of water rights (1979)
that we found before we bought
the Desert Sheep Co. (Chapman) property
in 1980. The 41.6 inches is on the
other side. (Please note the #884
is on this side by Spahr 67-449, but not by 67-355)

My printer won't copy
8 1/2" x 14" paper. (Sorry)
Craig. Rafter:
1d W.R. 2d, 900

MILL CREEK

Adams

COUNTY

FILE NO.	FILE DATE	DECEASED OWNER	PRESENT OWNER	DESCRIPTION	CFS	DE- CREED	FLOOD	ST
67-348 Trans. # 67-445	5-1-78	Wm. Winkler	Odell Vail Trans. 504	Council Orchards Lot 6, Blk 1, Pt. SESE 35-17-1 See above Lots 5-9 Blk 1, Pt. Lots 3-4-5, Blk 7	0.125	6.75" ✓ 14.5" 16.75" 8" (46)	A	
67-4107			Odell Vail	NESW 33-17-1; SESW 28-17-1 (Unnamed Stream)	4AF		1.5	
67-348 Trans. # 67-446	5-1-78	John Hoover	Wm. Criss Jerry Doyle	Council Orchards, Lot 8, Blk 3; E 1/2 Lot 10, Blk 4	0.12	6" ✓ B		
67-348 Trans. # 67-447	5-1-78	Wm. Winkler	Wm. Criss Jerry Doyle Trans. #539 Steve Schwilling	Lots 7-9-10, Blk 3	0.13	6.5" ✓	0	
67-4035			Wm. Criss Jerry Doyle Steve Schwilling	NW 1/4 2-16-1	70AP		35"	
67-4082			Odell Vail	Lots 1 & 2 2-16-1 Council Orchards	1.50		75"	
67-348 Trans. # 67-448	5-1-78	Wm. Winkler	G.W. Squires Trans. #783	Pt. NWSW 36-17-1	0.13	6.5" ✓	0	
67-449	5-1-84	W. H. Spahr	G.W. Squires Trans. #884 after 7-1 of each year	Pt. NWSW 36-17-1	0.11	5.5"		
67-349	5-1-81	Fredrick Watress	Carl Chapman	S 1/2 NW 1/4 N 1/2 SW 1/4 35-17-1	0.3333	17"	25.5"	

This copy is from
before we bought
property in 1980.

MILL CREEK (P.2)

Adams

COUNTY

PAGE

24

Water master report
1979

FILE NO.	FILE DATE	DECREED OWNER	PRESENT OWNER	DESCRIPTION	CFS	BE- CREED	FLOOD	STORAGE
67-350	5-1-84	Fredrick Watress	Carl Chapman	S $\frac{1}{2}$ NW 35-17-1	0.25	12.5"	18.75"	
67-350	5-1-84	P.H. Schoff F.S. Galey	Carl Chapman	Pt. S $\frac{1}{2}$ NE, 5t. N $\frac{1}{2}$ SE 35-17-1	0.41	20.5"	30.75"	
67-355	5-1-84	Desert Sheep Co	Carl Chapman	SE $\frac{1}{4}$ 34-17-1	0.8333	41.6"	62"	
67-354	5-1-91	Schaff/Galey	Carl Chapman	SE $\frac{1}{4}$ 34-17-1	0.58	29"	43.5"	
67-352	5-1-94	F. Watress	Carl Chapman	See above	0.415	20.5"	30.75"	
67-351	5-1-95	F. Watress	Carl Chapman	See above	0.666	33"	49.5"	
67-361	5-1-91	P.H. Schaff & Thomas Watt	LESTER GOULD	SE $\frac{1}{4}$ SE $\frac{1}{4}$ 27; NE $\frac{1}{4}$ NE $\frac{1}{4}$ 34-17-1	.50	25"	37.0"	
67-353	5-1-82	Schaff/Galey	Bud Stiles	Pt. SENE, Pt. NESE 35-17-1	0.14	7"	10.5"	
67-353	5-1-82	Schaff/Galey	Bud Stiles %Richard Schaefer	Pt. NESE 35-17-1	0.04	2"	-	
67-353	5-1-82	Schaff/Galey	Bud Stiles %James Camp	Pt. NESE 35-17-1	0.16	8"	-	
67-4132			James Camp	NESE 35-17-1	0.48		24"	
67-356	5-1-85		COUNCIL VALLEY ORCHARDS -- 1" per 10A Lot					
		J. Marion Young	Lot 3, Blk 1			1"	-	
		Hubert Woods	Lot 3, Blk 1			4.14"	-	
		Mark Edwards	Lot 1, Blk 6			5.14"	-	
		Fred Stovner	Lot 2, Blk 1, Lot 5-6-7, Blk 7			20.2"	-	

1979 Actual	1980 Prop
3.62	3.87
5.44	6.34
12.00	12.81
8.38	8.97
5.92	6.34
9.54	10.20
10.82	7.66
2.02	2.16
24	25
.92	.97
2.78	2.97
.12	.12
.48	.51
.60	.64
2.34	2.50