

Bird, Cindy

From: McHugh, Candice
Sent: Tuesday, April 16, 2002 11:59 AM
To: Carlsen, Ernie; Bird, Cindy
Subject: RE: Private Water

Because the Bancroft Lund was a general adjudication the key inquiry is whether or not the sources of water fall within the boundary that was adjudicated. There is a map titled Bancroft Lund Area in our Director's Report. If the point of diversion AND place of use of the water right both fall within the boundary then it was required to be filed on whether or not their predecessors were defendants.

-----Original Message-----

From: Carlsen, Ernie
Sent: Tuesday, April 16, 2002 11:48 AM
To: Bird, Cindy
Cc: McHugh, Candice
Subject: RE: Private Water

Cindy, Need more information to determine if a favorable recommendation can be made on the SRBA claims. Were the sources of water in question subject to the Bancroft Lund? Were the parties or their predecessors defendants in the Bancroft Lund? (Jon Jonnson is not listed) You will need to research the ownership to determine who owned the property at the time of the B-L. Candice will need to address the source question. It is my understanding that a "no" answer to either question means you can pursue a favorable recommendation. A "yes" answer to both questions means that without a supporting right in the B-L the recommendation will be to disallow the SRBA claims using code P02 for both a general remark and condition.

Ernie

-----Original Message-----

From: Bird, Cindy
Sent: Tuesday, April 16, 2002 9:47 AM
To: Carlsen, Ernie
Subject: RE: Private Water

But what happens if they didn't claim it in the Bancroft-lund decree? Can we recommend it in the SRBA?

-----Original Message-----

From: Carlsen, Ernie
Sent: Monday, April 15, 2002 5:07 PM
To: Bird, Cindy
Subject: Private Water

Cindy

Unless the use is de minimus and falls within the definition of a deferred use our position is to recommend filing a claim. The claimant needs a water right in order to legally irrigate even from a "private source." The term private water merely refers to who can appropriate that water, not whether a water right is needed in order to use it. The water user can not be denied the opportunity to file a claim in the SRBA even without a water right in the Bancroft Lund.

The issue of private water is discussed in Adjudication Memo #11. Note that because the spring you and I visited last fall actually flows into a natural channel, Memo #11 suggests it does not fit the definition of private water. Also, without a water right, in the context of conjunctive management the water user could face curtailment unless the court decrees the springs as a separate source and without a claim before the court the water user can not pursue such a ruling. And, even though a water right is from a private source does not mean that it will be decreed as separate; it is presumed that all rights are interconnected and the only basis for decreeing them as a separate source is because they are in fact not tributary or were decreed earlier as non-tributary and the rest is on a case-by-case basis.

<< File: ADJUDICATIONS MEMO #11.doc >>