

Saxton, Craig

From: Saxton, Craig
Sent: Wednesday, July 24, 2002 2:36 PM
To: Carlsen, Ernie; McHugh, Candice
Subject: 29-02034 Jackson/Rapid

Hello,

I have been doing some additional work on the Jackson Creek issue of whether it was historically trib to Jackson Creek. I will summarize what we have discussed.

The original issue is Corwin (Pat) Whitworth (29-02034) claims that Jackson Creek (historically called Indian Creek) was not historically tributary to Rapid creek until sometime in the 1920's. The 1920's date may be new information, but I found it in a letter from Mr. Whitworth's lawyer Randy Budge.

I think it has been decided to recommend the right as Jackson Creek trib to Rapid Creek. However, there was discussion of whether we would put some sort of condition/remark that the right was to be administered separately. I have not got a confirmation on this at this time.

The monkey wrench I am going to add now, is that another water user has claimed a portion of 29-02034. This is 29-02034A and appears to be valid. After discovering this, I did searches for any other rights claimed from Jackson Creek with a priority date claimed earlier than historical license 29-02034. There are none.

Historical License:

29-02034: 2.8 cfs, POU listed as only 4 - 40 acre tracts, Dan McGinnis

Claims:

29-02034: 2.8 cfs, 140 acres, Corwin P. Whitworth
 29-02034A: 0.04 cfs, 2 acres, Gordon and Linda Brown

Potential Recommendations:

29-02034 (to be renumbered to 29-02034B): 0.61 cfs, 30.7 acres, Pat Whitworth
 29-02034A: 0.03 cfs, 1 acre, Claimant unknown - NCO requested

Thus the right would be under recommended for 2.15 cfs. Now this number could change a little if Mr. Whitworth argues Ditch loss since water is conveyed through roughly 1200 feet of ditch.

Conclusion:

If late claims come in there is plenty of the historical license to distribute among users.

If we are basing our recommendation of whether Jackson Ck was historically trib to Rapid Creek on the evidence at hand, based on affidavits provided in Whitworth's claim file, I would think we would have to support that it historically wasn't trib to Rapid CK.

Regarding Ernie's observation that Jackson Ck is a different water district, my first question is are we sure that isn't Joe Jackson Creek just south of there in Ruberry's area. It is my understanding that Joe Jackson Creek was historically called Jackson Creek, but was changed when Indian Ck started being referred to Jackson Creek. Did that make sense?

Since Jackson CK is trib to Rapid Ck now, I think we should recommend it as trib to Rapid, and put a remark that it is to be administered separately.

7/24/2002

In addition, I don't see any other users on Jackson Creek that will have a recommended priority date prior to 1930 except a US right for Stockwater that has already been PD'd - 29-12352. So, since they were established after the theoretical change in the natural stream pattern, they wouldn't get the remark like 29-02034 would.

What do you think?

Craig