

11/20/2006

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 12/13/2006

Water right number: 75-14085

JOHN RIEFFENBERGER
PO BOX 232
CARMEN ID 83462
Telephone Number: (208)756-4340

ELIZABETH RIEFFENBERGER
PO BOX 232
CARMEN ID 83462
Telephone Number: (208)756-4340

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1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

I disagree with the water quantity in the preliminary recommendation.

2. Describe the changes you wish to make in the proposed recommendation:

This water right in combination with #75-14079 should be a minimum of 0.02 cfs/acre, or 0.09 cfs total.

3. Give a brief explanation as to why you disagree with these portions:

This water right was based on a right decreed in a prior adjudication and should not be reduced below the normal water duty. These decreed rights have been used and delivered

I agree with this proposed recommendation: no changes need to be made. BY THE WATER MASTER IN THESE QUANTITIES FOR OVER 100 YEARS.

DATE: *12/8/2006*

SIGNATURE: *John Rieffenberger*

Please print your name: JOHN RIEFFENBERGER

Elizabeth Rieffenberger

IDWR Regional Office, 7600 Mineral Drive, Suite 100, Coeur D' Alene, ID 83815, 2087622800

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Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

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DEPARTMENT OF
WATER RESOURCES

Dear Mr. Tuthill,

Ken Knoblock

December 8, 2006

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We are submitting this letter in addition to the Notice of Error Reply to provide additional justification as to why we disagree with the preliminary recommendation for water rights #75-14079 and #75-14085.

These two water rights are splits from parent rights #75-10750 and #75-10751. These rights are decreed rights and date back to the original adjudication on Carmen Creek that occurred in the early 1900's.

At our meeting with Idaho Department of Water Resources (IDWR) in Salmon last week we were told that our decreed rights were reduced from 0.04 cfs per acre to 0.007 cfs per acre in the recommendation because the area of the original decree had "spread". So IDWR recommended the same small amount of cfs to each acre, though not consistently, despite the different quantity of water a right might have had in the decree. It is well known in our water district that some properties had better decreed rights than others. Those with less decreed water had later filed Beneficial Use Claims for Carmen Creek water or have additional water rights from the Salmon River to supplement their irrigation later in the season.

Our particular rights, that were a split from 75-10750 and 75-10751, were some of the best rights in the decree because our property is part of one of the oldest ranch in the area. Because of our good water rights (0.04 cfs/acre in the decree) no additional water rights, such as Beneficial Use Claims, were ever submitted for our property. Why apply for more water with a later date when you have plenty of water with a Priority Date of 1875 and 1882? Now we are being penalized and are getting less water in the recommendation than most adjacent properties because of not filing subsequent Beneficial Use Claims.

The adjacent subdivision, Antelope Hills North, that irrigates out of the same ditch does have Beneficial Use Claims because their decreed rights (total 0.09 cfs and 0.008 cfs/acre) were insufficient to meet their irrigation needs (see attached spreadsheet for details on their rights). Yet despite having less decreed rights they are getting the same recommendation for their decreed rights plus their Beneficial Use Claim.

A review of other users from the same ditch and with the same priority dates in the decree shows that some users got a larger portion of the decree in the recommendation (see water rights for Derrold Slavin in the spreadsheet). Even if you only look at his 1875 and 1882 decreed rights, that have the same priority date as our decreed rights, he is getting a recommendation for 0.532 cfs or 0.017 cfs/acre, a quantity twice our recommendation. In addition he is getting water from a 1896 decree and a 1915 Beneficial Use Claim for a total of 0.03 per acre, a quantity that is four times our recommended quantity.

When talking to IDWR at the meeting they seemed unaware that these decreed water rights have been used, administered and delivered in these quantities for probably close to 100

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years. The Carmen Creek water master has been setting the ditch diversion rates based on these decreed rights. There have been no water wars since the original adjudication and everyone is irrigating based on these rights. Local adjustments are made as needed to make sure everyone gets their decreed rights. Now IDWR is trying to start a water war by recommending reductions in the decreed rights.

If as IDWR says there has been an expansion of these decreed rights why has IDWR not informed any of the owners in the past. As these water rights have changed hands when the properties have sold, new owners have applied for a change in ownership and have received new water right numbers from IDWR showing that they have decreed water rights. If the decreed rights had spread IDWR should be able to tell based on the legal description of the place of use that the property was not part of the original decree. Properties have been purchased based on the knowledge that this particular parcel has good decreed water rights. Please see the attached letter from IDWR, dated July 9, 2002, that we received from them after we requested that our portion of the original water right be transferred to our name from Lazy TY Livestock, Inc. In this letter they clearly indicate that we have two water rights for 0.09 cfs each. Why would we think we have anything but a good solid water right? If the decreed rights have "spread" this water has been used, administered and delivered in these quantities since the original decree so in fact if these water rights are not "decreed" then they are least "beneficial use" claims dating back to the Priority Dates of 1875 and 1882.

Please consider this information and reevaluate the preliminary recommendation that we believe is unfair and illegal according to Idaho water law. We do not want to engage in a water war with IDWR or our neighbors.

Sincerely,

John and Elizabeth Rieffenberger
PO Box 232
Carmen Idaho 83462



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Water Right no.	Decree cfs	Decree acres	Recommend cfs	Recommend acres	Priority Date	Current Owner	Owner amt. per acre
75-10750	1.32	66			05/01/1875	Owner	
75-10750/splits					05/01/1875		
75-14076	0.72	36.25	0.158	33	05/01/1875	Myers	0.0048
75-14077	0.02	1	0.005	1	05/01/1875	Bingham	0.005
75-14078	0.09	4.25	0.02	4.2	05/01/1875	Bingham	0.0048
75-14079	0.09	4.5	0.022	4.5	05/01/1875	Rieffenberger	0.0048
75-14080	0.2	10	0.046	9.5	05/01/1875	Carr	0.0048
75-14081	0.2	10	0.044	9.1	05/01/1875	Ridinalgh	0.0048
Totals	1.32	66	0.295	61.3			
cfs/acre	0.02		0.0048				
75-10751	1.32				05/01/1882		
75-10751/splits					05/01/1882		
75-14082	0.72	36.25	0.085	33	05/01/1882	Myers	0.0026
75-14083	0.02	1	0.003	1	05/01/1882	Bingham	0.003
75-14084	0.09	4.25	0.011	4.2	05/01/1882	Bingham	0.0026
75-14085	0.09	4.5	0.012	4.5	05/01/1882	Rieffenberger	0.0026
75-14086	0.2	10	0.024	9.5	05/01/1882	Carr	0.0025
75-14087	0.2	10	0.023	9.1	05/01/1882	Ridinalgh	0.0025
Totals	1.32	66	0.158	61.3			
cfs/acre	0.02		0.0025				
Decree per acre both rights	0.04						
Sum of Recom per acre both rights			0.007				

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Water Right No.	Decree cfs	Decree Acre	Recommend cfs	Recommend acres	Priority Date	Current Owner	
Decreed							
75-10061	0.58	106	0.499	104.2	05/01/1875	Antelope Hills	
75-10062	0.32	106	0.268	104.2	05/01/1882	North	
Beneficial Use Claim							
75-10474	2.04	106	2.04	104.2	4/1/1915		
total cfs	3.84	106	2.807	104.2			
cfs/acre	0.036		0.0269				
Decreed							
75-10061	0.52	32.5	0.151	31.6	5/1/1875	Slavin, Derold	
75-10178	0.62	32.5	0.381	31.6	5/1/1882	Slavin, Derold	
75-74A	0.25	32.5	0.25	31.6	05/01/1896	Slavin, Derold	
Beneficial Use							
75-4340A	1	32.5	0.166	31.6	4/1/1915	Slavin, Derold	
Total cfs	2.39		0.948				
cfs/acre	0.074	32.5	0.03				



State of Idaho DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 9, 2002

LAZY TY LIVESTOCK INC
C/O CLAIR WILEY
PO BOX 185
SALMON ID 83467

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RE: CHANGE IN WATER RIGHT OWNERSHIP FOR 75-10750 & 75-10751

Dear Ms. Wiley:

The request for Change in Ownership for a portion of the above-referenced Notice(s) of Claim has been processed.

Since the Change in Ownership involved just a portion of the Notice(s) of Claim, the right was split as follows:

75-10750 split into:

75-10751 split into:

75-14076, Lazy Ty, 36.25 acres, 0.72 cfs
75-14077, Anderson, 1 acre, .02 cfs
75-14078, Bingham, 4.25 acres, .09 cfs
75-14079, Rieffenberger, 4.5 acres, .09 cfs
75-14080, Carr, 10 acres, 0.2 cfs
75-14081, Ridihalgh, 10 acres, 0.2 cfs

75-14082, Lazy Ty, 36.25 acres, 0.72 cfs
75-14083, Anderson, 1 acre, .02 cfs
75-14084, Bingham, 4.25 acres, .09 cfs
75-14085, Rieffenberger, 4.5 acres, .09 cfs
75-14086, Carr, 10 acres, 0.2 cfs
75-14087, Ridihalgh, 10 acres, 0.2 cfs

/Now MYERS

Enclosed for your records is a typed Notice(s) reflecting your portion of the right. Review the Notice(s) and if you have other corrections or questions, please contact this office.

Respectfully submitted,

Jennifer Crabtree

Jennifer Crabtree
Technical Records Specialist

cc: M. Gary & Geneal F. Anderson
James W. & Celeste M. Bingham
John & Elizabeth Rieffenberger
Mike Carr
Barbara J. Ridihalgh

Antelope Hills North

75-10061

75-10062

75-10474

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*Dec. 7th. 8am
@ Stagecoach*