



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

January 26, 2007

Honorable John M. Melanson
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Subcase No. 45-13970

Dear Judge Melanson:

On September 8, 2006, McCain Foods USA, Inc. ("McCain"), by and through its counsel of record, Josephine P. Beeman, filed a *Motion to File Late Notice of Claim* for water right no. 45-13970. A hearing was held on the matter on December 19, 2006. During the hearing, McCain and the Department requested the opportunity to submit certain information to the Court prior to the Court rendering its decision. The original deadline for submission of the stated information was January 15, 2007. Upon the Department's request, the Court extended the deadline to January 26, 2007.

As of today, it is not fully known how many times the Department has recommended irrigation water rights that reflect its practice of sometimes recommending beneficial use rights that predate subsequently issued licenses—reason being that the Department's database is not searchable for these types of rights. In performing a spatial analysis of unclaimed licensed water rights that overlap with claimed beneficial use water rights, the number of claims that the search returned was 3,990.¹

Attached with this letter are two lists of water right numbers for irrigation rights gathered by the Department that reflect its practice of sometimes recommending beneficial use rights that predate subsequently issued licenses. The first attachment is a listing of irrigation licenses that were claimed and recommended as beneficial use rights. The second attachment is a listing of irrigation licenses that were superseded by decreed rights. These lists were generated by recollection and by searching for the term "license" in the comments of the 3,990 returns.

¹ It should also be noted that the Department cannot search for instances when a portion of a licensed water right is recommended as a beneficial use water right and the remainder as licensed. If the Department was able to search for these hybrid examples, it would increase the total.

Given the Court's need to timely review this matter, and the fact that the Department would have to manually review each of the 3,990 returns, the attached lists of water right numbers is most likely under-reflective of the practice. Based on conversations that I have had with other water right agents, as well as my own experience, I would say that the practice occurs more often than the lists indicate. The practice has been memorialized in the Department's Claims Investigation Handbook since 1993.

Certainly, the practice has not been widespread, having been limited to situations when the holder of a licensed water right has filed a claim in the SRBA and is able to establish that beneficial use of the water right began before filing an application for permit with the Department.² In the Department's experience, it is not uncommon to find out during the claim investigation process that the holder of a licensed water right began beneficially using water prior to seeking a license.

When sufficient information is presented to the Department that beneficial use of water was made before the application for permit was filed, the Department has had the claimant amend the basis of his or her claim from "license" to "beneficial use." Once that change is made, the licensed water right is usually recommended disallowed in favor of a beneficial use water right with a different water right number and an earlier priority date.

If you have any questions regarding the attached lists, or the Department's practice, please do not hesitate to contact me.

Sincerely,



Carter Fritschle
Manager, Adjudication Technical Section

Attachments

cc: Josephine P. Beeman

² The earliest priority date that the Department can assign to a licensed water right is the day the water user filed the application for permit. Idaho Code § 42-219(4). In the case where a water user put water to beneficial use before filing his or her application for permit, the priority date assigned during the licensing process, therefore, would be later in time.

Examples of Irrigation Licenses Recommended as Beneficial Use Rights

<u>Basin</u>	<u>Sequence</u>	<u>Suffix</u>	<u>Licensed Priority</u> <u>Date</u>	<u>Disposition</u>	<u>Recommended</u> <u>Priority Date</u>	<u>Basis</u>
34	2452		3/21/1963	Recommended as 34-2452	8/1/1961	Beneficial Use
37	2589		8/31/1956	Recommended as 37-4336	4/1/1940	Beneficial Use
37	7178	A	12/4/1972	Recommended as 37-21128	12/31/1962	Beneficial Use
37	7738		9/28/1978	Recommended as 37-21960	3/15/1958	Beneficial Use
37	7910		4/21/1981	Recommended as 37-10023	5/1/1934	Beneficial Use
37	7912		5/26/1981	Recommended as 37-21478	11/24/1948	Beneficial Use
37	7938		9/3/1981	Recommended as 37-4191	4/15/1934	Beneficial Use
63	2406		7/5/1965	Recommended as 63-31937	7/13/1923	Beneficial Use
63	2555		9/2/1969	Recommended as 63-31935	12/2/1940	Beneficial Use
63	2852		3/15/1964	Recommended as 63-4138	8/16/1912	Beneficial Use
63	3422		7/10/1964	Recommended as 63-3422A	7/10/1964	License
63	3422		7/10/1964	Recommended as 63-3422B	3/15/1926	Beneficial Use

Examples of Irrigation Licenses Superseded by Decree in Prior Adjudications

<u>Basin</u>	<u>Sequence</u>	<u>Suffix</u>	<u>Licensed</u>		<u>Recommended</u>	
			<u>Priority</u>	<u>Date</u>	<u>Priority</u>	<u>Date</u>
				<u>Disposition</u>		<u>Basis</u>
29	2112		2/28/1911	Recommended as 29-206	1/19/1911	Decreed
29	2561		5/20/1946	Recommended as 29-520	4/1/1911	Decreed
31	2243		7/14/1930	Recommended as 31-10325	4/12/1920	Decreed
37	2169		3/17/1910	Recommended as 37-821B	4/1/1907	Decreed
45	2079		5/23/1910	Recommended as 45-505	4/23/1910	Decreed
67	2018 A		10/25/1906	Recommended as 67-10422A	8/11/1906	Decreed
67	2033		4/28/1962	Recommended as 67-408	5/28/1909	Decreed
67	2055 A		9/25/1912	Recommended as 67-36	8/27/1910	Decreed
67	2055 B		9/25/1912	Recommended as 67-37	8/27/1910	Decreed
73	2005		2/2/1904	Recommended as 73-166	1/4/1904	Decreed
73	2005		2/2/1904	Recommended as 73-167	1/4/1904	Decreed
73	2032		9/4/1906	Recommended as 73-10063	5/1/1906	Decreed
73	2061		6/15/1910	Recommended as 73-107	5/1/1906	Decreed
78	2000		5/7/1903	Recommended as 78-133	5/1/1903	Decreed
78	2000		5/7/1903	Recommended as 78-135	5/1/1903	Decreed
78	2016		3/29/1911	Recommended as 78-131	6/1/1907	Decreed
78	2017		2/17/1913	Recommended as 78-125	9/24/1888	Decreed
78	2017		2/17/1913	Recommended as 78-126	5/1/1902	Decreed
78	2017		2/17/1913	Recommended as 78-127	5/1/1903	Decreed
78	2018 A		10/27/1919	Recommended as 78-142B	5/15/1906	Decreed
78	2018 A		10/27/1919	Recommended as 78-143B	5/15/1906	Decreed
78	2018 B		10/27/1919	Recommended as 78-142D	5/15/1906	Decreed
78	2018 B		10/27/1919	Recommended as 78-142E	5/15/1906	Decreed
78	2018 B		10/27/1919	Recommended as 78-143C	5/15/1906	Decreed
78	2018 B		10/27/1919	Recommended as 78-143D	5/15/1906	Decreed