



State of Idaho
DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

November 1, 2006

Vic Conrad
JR Simplot
PO Box 27
Boise, ID 83707

REF: Snake River Basin Adjudication (SRBA)
Claim 24-4015 and 24-4016

Subject: Evidence of Priority
NOE Reply

Dear Mr. Conrad,

After further review of your documents submitted as proof of priority for 24-4015 I have concluded that there is insufficient evidence to document the Bagley's "intent" to divert 250 miner's inches from Crow Creek. If you look at paragraph 2 where they describe the point of diversion as: "the North East corner of the North West Quarter of the North West quarter of section 21 in Township nine south of range 46 east of the Boise Meridian". This is not Crow Creek. It would be an unnamed source coming out of the mountain. So is the legal description correct? Is the source wrong? Without some additional documents to determine whether they carried through with their "intent" we can't recommend the priority date under this posted notice.

The posted notice submitted for 24-4016 is more consistent with Rock Creek. The point of diversion described under this posting does come out approximately on Rock Creek. However, they intended to construct a ditch about 40 rods long with a general course of the ditch is North-Westerly direction. So from the point of diversion to the intended place of use is 40 rods. This would put the ditch ending at the southern most property boundary of William Bagley if constructed in the North-Westerly direction as stated. Therefore, the land that was probably was irrigated under the Posted Notice would be the land in the SESW of section 21.

The land claimed in the N1/2 of the SW of section 22 and the Se of the SE of section 15 all within township nine south and 46 east of the Boise Meridian has no documents to support a priority date at all.

The testimony of Witnesses for the Cazier family only establishes that a portion of the land was irrigated but it doesn't describe by what source it's irrigated. More than likely Crow Creek which runs right through the homesteaded property probably irrigated it.

Therefore without further evidence to support the above referenced claims the preliminary recommendation will either stand for the director's report or the priority date will be advance to a 1964 date as per the photos submitted. You will have an opportunity to object to the recommendation and provide your documents to the SRBA court at that time. If you have any questions please don't hesitate to give me a call at 547-3993.

Respectfully,

Cindy E. Bird
Adjudication Bureau

CC: Nicholas Spencer, Attorney for IDWR (via email)
Ray Williams, Paralegal for IDWR. (via email)

Enclosure(s):