



June 19, 2007

RMEA 07-0058

Mr. Jerry Rigby
Rigby Thatcher Andrus Rigby & Moeller
25 N 2nd E
Rexburg, ID 83440

Re: RVG Trust SRBA Analysis

INTRODUCTION

This document reports on fieldwork conducted 16 June 2007 in support of SRBA claim 24-2026. The issues considered are:

- A. The extent of original irrigation.
- B. Discrepancy between original licensed place of use and lands currently owned by claimant.
- C. Change in place of use.
- D. Change in point of diversion.
- E. Change in nature of use.
- F. Stockwater use.
- G. Was the domestic component of the license ever developed?
- H. Have the changes (C, D and E) been used continually since the time of the change?
- I. Have the changes injured any other water users?
- J. Number of ponds.

Issues A through G are identified by Cindy Bird of IDWR in an undated communication to Nick Spencer of the Attorney General's office, found on pages 9 and 10 of file "9lk501_.pdf" downloaded from the IDWR website in early June 2007. Issues H and I are identified in a letter from Bird to the claimant dated 15 August 2006, found on page 17 of the same file. Issue J is from a note on page 7 of IDWR electronic file "9lk401_.pdf."

In addition to my field inspection on 16 June 2007, this report considers the following:

1. Water right and adjudication documents for water right and claim 24-2026, retrieved electronically from IDWR website in June 2007.

2. Water right, adjudication claim, and adjudication claim place of use shapefiles downloaded from IDWR website in early May 2007.
3. My own electronic data from the 2005 field exam. These data were provided to IDWR in 2005 but not all are currently available from the IDWR public website.

FINDINGS

A. Extent of irrigation

1. Original permit included the claimed POU as well as the part of the licensed POU not claimed (see page 9, IDWR file 22yc01_.pdf).
2. Preliminary search of the water-right file includes a clear history of documents showing that the full permitted POU was developed and original applicant Welchman attempted to perfect the license. See pages 17, 26, 33, 51, 71 and 84 in IDWR file "22yc01_.pdf."
3. The water-right examiner and some of the affidavits show that the ditch was a "community ditch," indicating that more land was irrigated than just the POU of 24-2026 (see pages 46, 48 and 53 of "22yc01_.pdf").
4. Original licensing exam sketch (Figure 1 in file "Figures_Field_Writeup_Contor_07_0058_Draft.pdf," from p3 of file "22yc01_.pdf" from IDWR website) shows a ditch system that would have allowed the full permitted POU to be developed.
5. Figures 2 through 6 show various sketches of the ditch system from the water-rights and claim files, and shapefiles derived from georeferencing these sketches to the GIS coordinate system.
6. Figure 7 shows GPS "breadcrumbs" and waypoints from the 16 June 2007 fieldwork. Blue-highlighted points are along a path derived from using a hand level to reconstruct a possible ditch from the last undisturbed remnants of the ditch, located at the southwest end of the blue points. Yellow points are along existing ditches.
7. Figures 8 and 9 illustrate the USGS topographic map and a circa-1960s/1970s map obtained from the NRCS office in Afton, Wyoming.
8. Figure 10 illustrates a reconstruction of the lands irrigated under the original ditch system, based on all the information presented above. The precision of the hand level is such that the trace of the ditch location from aerial photography is preferred to the hand-level indication. Location "X" on the figure is a small knoll not apparent in the images or topo maps, which would not have been irrigated. Location "Y" is a low spot that would have likely been picked up by the "stub" ditches illustrated in some of the sketches. The narrow diagonal strip represented as not irrigated is the toe of the hill, which is too steep to irrigate.
9. Figures 11, 12 and 13 show the parts of the reconstructed lands within the permit, license, and claimed lands, respectively. The reconstruction

suggests that 103 acres were developed on the original permit lands, with 52 acres included in the licensed lands and 72 acres included within the claimed lands. The overlap between the claim and the license is approximately 19 acres.

10. Figures 14 through 17 are photos of the original irrigated lands documenting that, while somewhat hilly, these lands are no steeper than lands currently gravity irrigated in the Magic Valley and Treasure Valley of Idaho.
11. License examiner notes the following regarding irrigated lands: "Rolling side hill land, ground subs for long distance."
12. For my 2005 report to IDWR I prepared a shapefile of the lowlands still irrigable under remaining ditches, which is consistent with my 2007 fieldwork. This is illustrated in Figure 18. IDWR has not made these data available on the website; these are from my personal archive. The shapefiles total approximately 27 acres.
13. Additional lands are irrigated by sprinkler or drip irrigation from surface-water pumps. Figure 19 illustrates these lands, based on my 2005 and 2007 inspections and the 2006 aerial photo. They total approximately 7.2 acres. Figure 20 shows one of the drip-irrigated trees along the driveway. Figure 21 shows the drip line, and Figure 22 shows sprinkler irrigated landscaping and lawns.

B. Discrepancy between license POU & lands owned by claimant

1. One possibility to address this issue would be to discover in the chain of title a person who had owned both the claimed and licensed POU; it would be possible that this person performed an accomplished transfer to the claimed lands, perhaps because being nearer the top of the ditch these lands would be easier to irrigate. The timeline (pages 12-15 of IDWR file 9lk501_.pdf) in the file could perhaps support this, if the "metes and bounds" parcel in the 7/6/1944 document included the SWSW of Section 33. I did not pursue this; many of the deeds in the electronic file are unreadable.
2. Another possibility to address this issue is to consider that the chain of correspondence regarding Welchman's attempt to perfect his permit, including his 1920 proof of completion, document that all the permit lands, including the claimed lands, were originally developed. Some of these documents are referenced in items A2 and A3 above.
3. Note that some of the claimed lands (approximately 19 acres) were included in the original license.
4. A search of the May 2007 download of water rights, claims and recommendations places of use indicates that there are no claims or water rights from Webster Creek inconsistent with or competing with the claimed use under 24-2026.

C. Change in Place of Use

1. The 1987 IDWR aerial photo illustrated in Figure 24, while of lower resolution than the 2006 photos, is consistent with the claimed place of use and the irrigable lands illustrated in Figure 18 and Figure 19. This suggests that the change took place prior to 1987.

D. Change in POD

1. The original POD appears never to have changed, though there has been some confusion over time as to its proper legal description. Note that early applicants and examiners were operating without the aid of topographic maps. My 16 June 2007 GPS readings and inspections confirm the US Forest Service assertion that the original POD is in NWNESW of Section 5, T 8N Range 46E. This POD serves the ditch to the south bottomland pasture, the pump to the south home and tree line, and the upper pond. The upper pond spills into the lower pond and from there the water is available to the lower (north) sprinkler pump and the north bottomland pasture.
2. There is a second POD on Webster Creek very near the ponds. The ditch flows through a hatchery facility to a dividing box where part of the flow serves the claimant's lower pond and part flows through a hatchery pond to the creek.
3. The second POD is shown at "A" in Figure 24, with the dividing box at "B." Though with poorer resolution, the 1987 aerial photo illustrated in Figure 25 also shows these features, confirming that the second POD was in place prior to 1987. This POD appears to be within the NENWNE of Section 5, T 8S R 46 E in the 2006 photo, but in the SESWSE of Section 32, T 7S R 46E in the 1987 photo. The GPS point is approximately 50 feet inside Section 8, but it was taken on the bank looking down into the POD, with estimated GPS accuracy of 15 to 30 feet. It is unclear which of the legal descriptions of the second POD is correct but the Section 8 description seems most likely.

E. Change in Nature of Use

1. The Aagard affidavit on page 5 of IDWR file 9lk401_.pdf indicates that ponds were present as early as 1983.
2. Fish and Game permit on page 8 of the same file indicates that in 1981, claimant was authorized to stock trout in a pond.
3. Figure 25 shows that ponds were present by 1987.

F. Stockwater Use

1. Figure 26 shows horses on the claimed POU in June 2007. These horses drink directly from the stream.
2. In my 2005 exam I observed that the south bottomlands pasture was originally fenced. Livestock would have drunk directly from ditches or the stream.

G. Domestic Use

1. Figure 27 shows the original homestead cabin, which has been enlarged and is now the caretaker's home.
2. Caretaker Josh Frazier indicates that his friend's grandmother grew up in the home in the 1920s. Frazier believes the grandmother is still living. Perhaps an affidavit could be obtained, if needed.

H. Have the changes been continually used?

1. Figure 28 illustrates aerial imagery from 1994, 1999 and 2001. These confirm the features illustrated in the 1987 imagery in the claim files, the 2004 imagery in the materials I submitted to IDWR in 2005, and the 2006 imagery illustrated in other locations in this report.
2. My field inspections in 2005 and 2007 also confirm continued use.

I. Have the changes caused injury?

1. The addition of the second POD moves some diversion which used to occur above the Fish and Game diversion to a shared diversion with Fish and Game. This leaves more "carriage water" in the creek, helping to assure Fish and Game supply.
2. There are no other intervening diversions between the original diversion and the original return-flow locations.
3. There is an overall reduction in consumptive use, benefiting all downstream users.

J. Number of ponds

1. The Aagard affidavit indicates ponds (plural).
2. While the Fish and Game permit authorizes placement of trout in a pond, it does necessarily indicate that *only* one pond was present.
3. The 1987 photo, all subsequent photos, and both field inspections show two ponds.

Please feel free to call if you have any questions.

Sincerely,

Bryce Contor
Staff Hydrologist