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Law Offices
John C. Grabow

MEMORANDUM

7755
208-622-

To: IDWR

From: John & Laura Grabow

Date: December 8, 2006

Re: Water Rights Claims 22-4032, 22-4095, 22-13264 & 22-13373 — *cb cb cb sy*

Because all four of these claims relate to the same 160-acre parcel of land, homesteaded by the Lewis family in 1916, I am providing you with a single narrative response.

22-13373 Darby Creek; .620 CFS; 1916 priority – no changes being sought.

22-4032 Lewis-Murdock Spring; 1.340 CFS; 1943 priority. I am not contesting the volume, period of use or source but strenuously disagree with the 1943 priority date, which as far as I can tell is based upon the birth date of one of the supporting affiants, adjoining landowner Randy Murdock.

This determination disregards the March 26, 1980 notarized Claim to a Water Right of prior owner William Lewis, which is sworn and notarized and specifically identifies continuous use of the Murdock-Lewis Spring since 1910. That document was also publicly filed in the Teton County Water Rights book, and not challenged. Mr. Lewis died in the 1980's, in his nineties, and was born in approximately 1895. Accordingly, he would have direct personal knowledge of such continuous use of the Murdock-Lewis Spring. Especially since individuals alive in 1910 are unlikely to still be alive, and the State chose to adjudicate these beneficial use claims now rather than an earlier date, such as in 1980 when Mr. Lewis complied with the statutory requirement to file such a claim, to disregard his sworn statement now as to when the Murdock-Lewis Spring was first applied to a beneficial use on the basis, as I understand it, that the statement is only contained in a prior claim, is arbitrary and capricious.

In addition, the 1910 priority date is directly supported by the 1916 land patent to Eli Lewis, which has also been submitted in support of this claim. Under the Homestead Act of 1862, the land patent would have been granted only after five years of improvements and agricultural use of the land – fully consistent with William Lewis's claimed 1910 priority date.

Finally, at the suggestion of Ernie Carlson, I submitted as well the application of adjoining landowner Randy Murdock, whose grandfather homesteaded in the same time period and also makes use of the same Murdock-Lewis Spring. Though, unlike William Lewis, not himself alive when beneficial use of the Murdock-Lewis Spring was first made in 1910, I do not believe this reflects a lack of personal knowledge by Randy. He is not merely indicating that he heard such use took place – he has lived on the property and has personal knowledge that the Lewis's and his family both farmed and irrigated their adjoining properties since the early 1900's, that there was no ground water well for that purpose but only surface water, including in particular the Murdock-Lewis Spring.

The IDWR preliminary recommendation for this claim indicates that it is to be used in combination with 22-13373, which has a 1916 priority date. I would not oppose a 1916 (rather than 1910 as claimed) priority date for this claim as well, but the 1943 priority date is inconsistent with the evidence offered in support – and also common sense, since these 160 acres plainly could not and were not irrigated between 1910 and 1943 from Darby Creek alone (as to which diversion, No. 22-13373 being recommended for only 31 acres).

22-13264 Dick Creek; .440 CFS; 1942 priority Again, my only challenge is to the priority date, which I am only guessing is based upon the approximate date that supporting affiant Rodney Lewis, son of William Lewis, was either born or lived on the property. Again, however, I believe that this is based upon an incorrect definition of personal knowledge – and a definition particularly inappropriate when the State has chosen to formally adjudicate these claims at a time when virtually anyone alive at the time beneficial use was first made would now be deceased. As with Mr. Murdock, Rodney Lewis did not simply hear that his father and uncle irrigated the northern portion of this property from this Dick Creek diversion since 1916 – he knows that this portion of this property was used for agricultural purposes by his father and uncle, that there was no ground water well for that purpose but only surface water, in particular this diversion from Dick Creek which was continued to be used by Rodney Lewis himself (and later, by affiant Gordon Allen). In addition, as above, the 1916 priority date is supported by the 1916 land patent to Eli Lewis, which has also been submitted in support of this claim.. Under the Homestead Act of 1862, the land patent would have been granted only on the basis of improvements and agricultural use of the land, which included the northern portion not irrigated by the other irrigation sources.

22-4095 Disallowed. This also involves the northern portion of the property. I will not contest this disallowance if 22-13264 is granted the requested priority date of 1916; otherwise, I reserve my right to challenge this disallowance which, notwithstanding the finding, was supported by evidence by the claimant and is based upon diversion and beneficial use, even though this recommendation apparently indicates not found during the field inspection.

Bo 792

4-1003

The United States of America

Blackfoot 03938

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

WHEREAS, A Certificate of the Register of the Land Office at Blackfoot, Idaho has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain" and the acts supplemental thereto, the claim of

Fless M. Sherman has been established and duly consummated, in conformity to law, for the

Lot four of section five and the lot one of section six in township three north of range forty five east of the Boise Meridian Idaho containing eighty and two hundredths acres.

according to the Official Plat of the Survey of the said land, returned to the General Land Office, by the Surveyor General.

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimant the tract of land above described; To Have and to Hold the said tract of land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Woodrow Wilson

President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the ninth day of

September in the year of our Lord one thousand nine hundred and thirteen

and of the Independence of the United States the one hun-

of the United States General Land Office) and thirty eighth

BY THE PRESIDENT: Woodrow Wilson

By M. P. LeRoy Secretary.

Recorded: Patent Number 353950 L. C. C. Lamar Recorder of the General Land Office.

Filed for record at the request of Mutual Abstract Company at 15 minutes past 9 A. M., March 16, 1914

By S. P. Oldham Deputy Jno. Hegsted Recorder.

Fees \$1.00 Transcribed from book 2 of deeds page 681 Madison County Records.