



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 19, 2007

KEVIN MADSEN
CHET MADSEN
EUNICE MADSEN
2073 N GALENA RD
COUNCIL ID 83612

RE: Late claim 67-14877

Dear Mr. Madsen,

Per Judge Melanson's decision to postpone the hearing regarding the motion to file late claim 67-14877, I have reviewed the information packet you submitted with your motion and wanted to get in contact with you about it.

Enclosed is a partially completed claim that included the elements of the water right I believe you were meaning to describe in your claim. In addition, the claim also includes elements of the water right that I interpret to describe your water use.

For example, under Item 3 in your late claim information packet you wrote,

*"... or the allowable amount from **Mill creek/East fork of Weiser River** both in the same ditch..."*

However, after reading through the information packet, it sounds like what you are describing is what IDWR would call **waste water** that comes from upstream fields and ditches which are originally irrigated with Mill Creek and East fork Weiser River water. So on the claim I listed the claimed sources as:

- Mill Creek
- East Fork of Weiser River
- Waste Water

So as you look through the claim, you might see things that you did necessarily state were part of your claim.

This is your claim and you can claim anything you want. If you disagree with what I listed on the claim you can change it however you would like. If you don't like something I added then please cross it off and initial next to it. If I missed something, just write it in and initial next to it. Or you can start over on a new form.

Take a look at the claim, and contact me with any questions. Please fill in the highlighted sections with the appropriate information. If everything looks good, or you made some changes and don't have any questions, just sign the claim in front of a notary and return it to me. Attached is a memo that describes why the claim was filled out the way it was. It contains a lot of information so please feel free to contact me with questions or to schedule an appointment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig L. Saxton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Craig L. Saxton
Water Right Supervisor
Adjudication Bureau

Enclosure(s): Partially completed Notice of Claim 67-14877
September 20, 2007 Reviewers Notes

Reviewers Notes:

Date: September 20, 2007

Reviewer: Craig L. Saxton

Subject: Analysis of information submitted with the motion to file a late notice of claim for 67-14877.

When reviewing this information, please note that anything that is proposed to be done in the future, cannot be recommended as a historical water right. The intent of the SRBA is to make a recommendation on historical water rights. In the information packet submitted with the motion to file a late claim, Item 2 described use of this water right as commencing in the summer of 1961 and therefore claimed a priority date of 1961. IDWR's direction is to describe that 1961 water right as it looked at the commencement of the SRBA which was **1987**.

That said, I will not address anything regarding to future development or changes.

Item 1- Claimant Name: On the actual claim form submitted with the late claim packet, three names were listed under item 1 and were connected with an "or". This would mean only one of the three claimants would need to sign if any changes were made or requested. I have filled out the claim with and "or" name connector.

Item 2 – Priority Date: Priority date claimed was 1961. I have data entered the priority date as 3/15/1961 as 3/15 is the beginning of the irrigation season in your area.

Item 3 - Source: The sources listed Mill Creek and the East Fork of the Weiser River. However there was no description of where the water is diverted from the actual sources in order to get it to the claimed property. In addition, within the dialog of the information packet I found numerous descriptions that lead me to believe the water being used is waste water. Below are some examples:

"Therefore, non use or a shift in use, impounding, diversion (by pumping, converting from unimproved ditch to, but not limited to pipe and or improved cement or plastic coated ditch, tilling, etc) of the surface and subsurface water "upstream" of said tracts results in a take of water, surface and/or subsurface..."

"The whole point is that if the field above (to the east) of this tract are not flood irrigated with unimproved ditches as historically it will result in a take.

"A property currently flood irrigated as a hay field is zoned Light Commercial if it is taken out of agricultural production and no longer flood irrigated water use and runoff will practically cease..."

It really sounds like the source is waste water that comes from upstream fields and ditches which is originally irrigated with Mill Creek and East fork Weiser River water. I have listed Mill Creek and the East Fork of Weiser River as sources, but in addition added **waste water** to the claim.

Below are some notes regarding the claimed sources:

- East Fork Weiser River – a POD from the natural source is not defined, thus it appears the intent was to claim waste water from someone else that is using the East Fork Weiser River water. If this is not the case, where is the diversion from the natural stream and how does it get to the claimed place of use? In addition, the East Fork of the Weiser River is a really long way away (7 miles as the crow flies as a minimum).
- Cottonwood Creek – Cottonwood Creek water is not diverted into the conveyance system until Sorenson Rhinehart ditch company turns it in. According to the water master records, Mr. Madsen does have 18 inches of water in the Sorenson Rhinehart ditch company.
- Grossen Creek – This water is recommended under 67-11491
- Mill Creek – A point of diversion from the natural source is not defined thus it appears the intent is to claim waste water from someone else that is using Mill Creek Water. If this is not the case, where is the diversion from the natural stream and how does it get to the claimed place of use?

Item 4 - Point of Diversion (POD): In addition to the point of diversion from Grossen Creek which is recommended under right 67-11491, the information packet listed 5 current points of diversion. A point of diversion for a waste water claim is that point where the waste water crosses onto the claimed place of use. I have identified 5 points, based on the description of CD1 thru CD5 where it appears that waste water enters the claimed place of use and listed them on the claim as the claimed POD's.

Note: In reference to the proposed POD's and the re-established POD's listed in the information packet, unlike a point of diversion from the main stream channel, you are allowed to change, add, or move the points you capture the waste water from ditches or culverts on your property.

Item 6 – Purpose of Use: You appear to have claimed the following purposes of use either directly or indirectly:

- Domestic – Domestic use for external use only
- Stockwater – 30 head max
- Stockwater Storage
- Stockwater from Storage
- Agricultural crop production (Irrigation) – 23 acres
- Irrigation Storage: Without a depth of the ponds, IDWR cannot calculate a volume and determine what the storage capacity of the existing ponds are and if a storage component is even needed. **I left the storage capacity blank on the claim form. You will need to fill in the volume (AF) that the existing ponds hold.**
- Irrigation from Storage: - 23 acres
- Fish production – IDWR defines this use as fish propagation. This purpose of use can only be recommended if the fish sold for profit.
- Aesthetics – for existing ponds
- Wildlife – In order to have a water right for wildlife you have to show you're your sole intention is to use the water for wildlife purposes. Incidental wildlife isn't applicable. Based on what I read in the information packet, it sounds like this isn't applicable.
- Groundwater recharge – Is water specifically being injected into the subsurface to recharge the aquifer? If so where and who does it benefit? I am guessing the claim is referring to groundwater recharge as that sub water that saturates the soil through capillary actions.

- Recreation – if the fish aren't sold, then the fish ponds would be considered recreation.
- Wetland values – I am not sure how to classify this. I need more information on how water is used for this. Is this incidental use or is water directly diverted for this purpose.
- Sub irrigation – Acreage that is "sub irrigated" as the direct result of diverting water can be included as part of the POU. However, Sub-irrigation alone is not a valid purpose of use and is considered to be covered under Irrigation use.

Item 7 – Diversion Rate: 0.15 cfs. I do not have an accurate volume for what the ponds hold. The volume component of the claim needs to be completed on the claim form.

Item 10 – Place of Use: T16N, R1W, S10, SWNE, 23 acres. Claimant stated that 2 of the 25 acres claimed are for future development.