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RE: Water Right #21-0114
Robert and Donna Fuchs and William Fuchs

Dear Ray,

I've reviewed the documentation you sent concerning Water Right #21-114 including the claim by the Fuchs that the computations made by the department and others leaves out 0.4 CFS of water that belongs to them. There is no doubt the department (IDWR) did not make clear how the water right had been split over time as it processed Transfers #204, #911, #933, and #4014. Several analyses have been made concerning what might have happened. The IDWR, water district, and adjudication claims, all differ as to how the original 5.5 cfs originally decreed to Z. Sunberg has been split.

Here is what's known and is of record:

- 5.5 cfs of 6/1/1890 priority from Fall River was decreed to Z. Sundberg in the Rexburg Decree, dated 12/16/1910, for Lots 1, 2, 3, and 4 in Sec. 7, T. 8 N, R. 42 E.B.M, containing 149.85 acres.
- Change of Point of Diversion #204, dated April 14, 1950, certified Edgar Barney as the owner of 4.0 cfs of the original Sundberg right and changed the point-of-diversion of 4.0 cfs from the Silkey Canal to the Farmers Own Canal. The Change of Point of Diversion does not describe the land owned by Edgar Barney, however, states "said change in point of diversion shall not modify in effect said decreed water right, or place of use." The amount of the original decreed right conveyed to these lands remaining in the Silkey Canal was 1.5 cfs after the change was implemented.

- **Transfer #911**, dated August 10, 1958, certified George W. Nedrow as owner of 1.2 cfs of Fall River waters, bearing the 6/1/1890 priority date, originally decreed to Z. Sundberg for Lots 3 and 4 of Sec. 7, T. 8 N, R. 42 E.B.M. The 1.2 cfs on the lands hereby described have been abandoned and the water moved to parts of **SWSW**, **N2SW**, **SWSE**, Lot 4, **NWSE**, West 13 rods of Lot 2, and **S2SW** Section 21; **N2NE** Section 28, all in T. 9 N, R. 42 E.B.M. and **SESE** Section 6, T. 8 N, R 42 E.B.M, according to the transfer. The point of diversion for the 1.2 cfs was changed from the Silkey Ditch to pumping from the Henrys Fork.
- **Transfer #933**, dated September 22, 1959, certified George W. Nedrow as owner of 1.2 cfs of Fall River waters, bearing the 6/1/1890 priority date, originally decreed to Z. Sundberg for Lots 3 and 4 of Sec. 7, T. 8 N, R. 42 E.B.M. The 1.2 cfs on the lands hereby described have been abandoned and the water moved to parts of **SWNW**, **N2SW**, **SWSE**, Lot 4, **NWSE**, West 13 rods of Lot 2, and **S2SW** Section 21; **N2NE** Section 28, all in T. 9 N, R. 42 E.B.M. and **SESE** Section 6, T. 8 N, R 42 E.B.M., according to the transfer. The point of diversion for the 1.2 cfs was changed from the Silkey Ditch to pumping from the Henrys Fork.

At this point, theories as to what took place differ. Dave Tuthill in his memorandum to Lyle Swank, dated April 2, 1979, suggests the possibility that Transfer #204 was never effected and was unknown to Mr. Nedrow. Historical Water District #36 Decreed Water Rights books indicate that 1.5 cfs of the Sundberg right owned by E. Barney was delivered to the Silkey Canal up until 1958 when it was reduced to 0.3 cfs after moving 1.2 cfs to the George Nedrow pump as documented in Transfer #911. Sometime between the compilation of the January 1, 1956 and the April 1, 1961 Decreed Water Rights books, 4.0 cfs of the Sundberg right previously delivered to the Farmers Own Canal was reduced to 2.8 cfs, apparently as a result of Transfer #933. A total of 2.4 cfs of the original Sundberg right was then assigned to the George Nedrow pump.

The Decreed Water Rights book (corrected April 1, 1961) indicates 2.8 cfs of the Sundberg right was being delivered to E. Barney through the Farmers Own Canal, 0.3 cfs delivered to E. Barney through the Silkey Canal, and 2.4 cfs delivered to George Nedrow on the Henrys Fork. This was supported by the attached letter from H.C. Eagle, Watermaster, dated February 24, 1960. Subsequent correspondence from L.C. Anderson (Fremont-Madison Irrigation District), dated February 23, 1961, indicates Mary Blanchard was the current owner of the 0.3 cfs previously owned by E. Barney delivered to the Silkey Canal.

Water District #1 Decreed Water Rights book (August 1976) indicates the original 5.5 cfs of the Sundberg right was assigned as follows: 2.8 cfs to W. S. Tanner et al through the Farmers Own Canal; 0.3 cfs to W. S. Tanner through the Silkey Canal; and 2.4 cfs to the George W. Nedrow pump on the Henrys Fork.

In 1978, when Bob Sutter was compiling the first version of the computer water-right accounting program for Water District #1 he apparently changed the cfs amounts previously delivered for the Sundberg right. His uncertainty concerning the right probably triggered his discussion with Dave Tuthill and Dave's subsequent memorandum to Lyle Swank. The 5.5 cfs Sundberg right was portioned and assigned to only the Farmers Own Canal (3.9 cfs) and George Nedrow Pump (1.6 cfs) in the water-right accounting from 1978 through 1994. There wasn't any portion assigned to the Silkey Canal during this period.

As requested during the 1995 irrigation season by Dee Blanchard and the Silky Irrigation District Water Users Association, I researched the history and transfer progression of the 5.5 cfs Sundberg water right #21-114. According to the current water right, adjudication, and water district records, I recommended to Sheryl Howe to change the portions of the Sundberg right currently listed in the water right accounting from 3.9 cfs (Farmers Own) and 1.6 cfs (George Nedrow) to the following portions: 4.0 cfs to Farmers Own Canal; 1.2 cfs to the George Nedrow pump; and 0.3 cfs to the Silkey Canal.

I based my recommended changes to the 1995 accounting on the following assumptions:

- The 1.2 cfs described in Transfers #911 and #933 were the same 1.2 cfs, as theorized in Dave Tuthill's memorandum. Also, George Nedrow had filed an adjudication claim (A21-10557) for only 1.2 cfs of right #21-114. However, it should be noted that Water District #1 assigned George Nedrow 2.4 cfs of the right from 1960 through 1977 as shown in its Decreed Water Rights books, and then assigned him 1.6 cfs of the right from 1978 through 1994 in the computer accounting.
- Prior to 1978 there had always been at least a portion of the Sundberg right delivered to the Silkey Canal. I was unable to determine why Water District #1 ceased delivering the 0.3 cfs portion to the Silkey Canal beginning in 1978, so the 0.3 cfs was reassigned to the Silkey Canal in the 1995 water right accounting. It should also be noted that Arlo Dee Blanchard has filed an adjudication claim (A21-00114) for 0.4 cfs of the original Sundberg right to be delivered through the Silkey Canal.
- Finally, after assigning 1.2 cfs to George Nedrow and 0.3 cfs to the Silkey Canal, 4.0 cfs of the right was left remaining to be delivered to the Farmers Own Canal, the maximum amount ever delivered to that diversion. There are two adjudication claims filed for the Sundberg right diverted through the Farmers Own Canal. North Fremont Canal Systems has an adjudication claim (A21-00114D) for 2.8 cfs and Robert & Donna Fuchs have a claim (A21-00114C) for 3.9 cfs of the original Sundberg right to be delivered through the Farmers Own diversion.

To further complicate matters, the IDWR approved Transfer #4014, dated October 2, 1995, which combined the Yellowstone, Marysville, and Farmers Own Canals into one entity, the North Fremont Canal Systems, Inc. The portion of the Sundberg water right #21-114 described in the approved transfer as being owned by North Fremont Canal Systems is 2.8 cfs. The IDWR computer database has been updated since the transfer and shows the original 5.5 cfs Sundberg right portioned as follows: 1.2 cfs to George Nedrow (21-114B); 1.5 cfs to Z. Sundberg (21-114C); and 2.8 cfs to North Fremont Canal Systems (21-114D).

To be honest, I don't know for sure how the original 5.5 cfs Sundberg right should be portioned, and I don't think anyone in IDWR knows for sure at this point in time, either. I can't assure the Fuchs with any certainty that the water rights they have claimed in the adjudication will be decreed to them. The IDWR examiner and the adjudication courts will determine that. However, I will make sure copies of this correspondence and the correspondence you sent to me will appear in the Fuchs' adjudication claim file to insure these problems get addressed during the IDWR adjudication review.

It's expected IDWR will be examining these claims over this next year. Obviously, the adjudication examiner will have to determine the appropriate owners and the portions they own with the understanding that the combined amounts cannot add up to more than the original 5.5 cfs. The Fuchs will be given an opportunity to protest any IDWR recommendations made to their claims and any other entity's claims to be listed in the Basin-21 Director's Report before they are decreed by the courts. Until that time, I think it's appropriate for Water District #1 to continue portioning the original 5.5 cfs Sundberg right to the Silkey Canal (0.3 cfs), Farmers Own Canal (4.0 cfs), and George Nedrow Pump (1.2 cfs), as it has for the last ten years.

Over the next year or two, the IDWR adjudication review will have to determine:

- Is George Nedrow entitled to more (or less) than the 1.2 cfs of the Sundberg right (#21-114) he claimed?
- How much of the original right (if any) still remains in the Silkey Canal?
- How much of the original right should be assigned to the Farmers Own diversion, and should all, or a portion of it, be owned by either North Fremont Canal Systems or the Fuchs?

It doesn't appear to me there is anything more the Fuchs, IDWR, or the water district can do at this point in time to further insure the Fuchs' claim. The IDWR and water courts will sort out the conflicting claims and information concerning the delivery of right #21-114 over the next couple years. The Fuchs will be able to participate in the process and will be contacted if the IDWR adjudication staff has questions concerning their claim or when the IDWR has finished preparing the preliminary Director's Report for Basin 21.

Sincerely,



Tony Olenichak
Deputy Watermaster

Cc: Ron Carlson, Watermaster
Lyle Swank, Assistant Watermaster
Adjudication Claim File A21-00114C
Bill Fuchs; 3857 E. 500 N., Rigby, ID 83442