

United States
Department of
Agriculture

Forest
Service

Salmon
National
Forest

North Fork RD
P.O. Box 780
North Fork, ID 83466

SALMON N. F.

SEP 9 - '86

Reply to: 2720

Hughes Cr. Ditch

Date: September 4, 1986

Info ☒	Action ☐
~~LMP~~	1 2 3 4 5 6
TAF	1 2 3 4 5 6
~~ELM~~	1 2 3 4 5 6
RRWW	1 2 3 4 5 6
AO	1 2 3 4 5 6

CC's TO: _____

Law Offices
SPECIALE & FELTON
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

Dear Mr. Felton,

I received your letter sometime ago and have held off responding until I could gather some of the information you were requesting. I do appreciate you and Sue visiting our office in an effort to consummate the ditch permit.

I have enclosed several documents for your information and use that may shed light on the situation:

1. Copy of Forest Service Manual Direction. (A copy was furnished to you also when you were in my office.)
2. Copy of Forest Service Regulations concerning occupancy of Federal Land.
3. Copy of Mrs. Eldridge's October, 1908, Application for Homestead and subsequent report. Patent issued May 10, 1913.
4. Copy of Idaho State water rights listing.
5. Copy of Hughes Creek Administrative Site survey plat.
6. Copy of 1962 Special Use Permit Plat issued to Lew Gohmes.

As you can see from the information provided, there is no evidence of a ditch from the spring being in existence on 05-01-1880 as indicated on the Kozacek water rights filing which stated that date as when it was put to beneficial use. In fact, the information provides a cloud of doubt. As an example, the very first settlers that eventually patented the property (the Eldridges) did not even allegedly settle the land until 1887 and by their statements in the patent application, the water developments constructed between 1887 and 1908, when patent application occurred, were ditches from Hughes Creek and the North Fork of the Salmon. The associated report states "There are no possibilities for developing water but there is an abundance of water in both the North Fork and Hughes Creek easily obtainable for irrigation."

The Idaho State water rights record also casts doubt on the 1880 date. The previous owner of the ditch and associated water right from the spring, as

you know, was a Mr. Westman. His statement of when the spring was put to beneficial use was December 26, 1912. If this date is not the correct date, then we may never know the true date, but the Westman date may be more supportive since a 1908 Forest Service survey shows a ditch in that vicinity coming from the North Fork and not from the spring area. On the ground evidence may also support this when the old holding pond located at the administrative site is considered in the analysis.

Based on the evidence, we do not believe the ditch as it exists today either in whole or in part was in place prior to March 3, 1891 and in continuous use. We also believe that previous land owners that held special use permits for the ditch also would have processed an easement if they had evidence that the ditch qualified.

The record also shows that no rights-of-way easement has been granted, under the Act of March 3, 1891, to any previous owner of the ditch. Therefore, this facility would require authorization by special use permit.

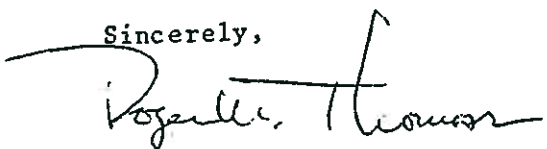
Even though we feel there is adequate evidence to show the ditch in whole does not qualify under either the Act of July 26, 1866 or the Act of March 3, 1891. We also are aware that the ditch was not in continuous use nor was all segments of the ditch always in their present location. }? Sentence structure

As you can see by our direction that if a facility does qualify for an easement, then it must be used for its original purpose and can only be maintained. Any alteration of alignment or addition or improvement of any kind would require a special use permit.

As can be seen by the application for a special use permit of a prior owner and the subsequent permit being issued to reconstruct and maintain an old ditch, portions of an old ditch was reconstructed and altered. This was a 1962 application and the point in time when, as an example, a ditch was dug directly from the spring across the back of the small horse pasture by the Hughes Creek barn. If other parts of the ditch would qualify for easement, these constructed and reconstructed segments would require a special use permit.

I hope the information provided is helpful to you. I have enclosed a special use application for your convenience. If you can show good evidence of portions of the ditch qualifying for easement status, please furnish it and we will consider those portions of the ditch for easement. However, the reconstructed sections need to be placed under special use permit. If you find it convenient to place the entire ditch under special use permit, that would be satisfactory with us also.

Sincerely,


ROGERS M. THOMAS
District Ranger

Enclosures

cc: Kozacek
S.O.