

MEMORANDUM

TO: Files 75-2041, 75-4029, 75-4395, 75-14179, 75-14180, 75-14448

FROM: Monica Van Bussum

RE: History of water use from Sevenmile Creek

DATE: October 27, 2008

There is a long and convoluted history of water use and water exchange agreements for water from Sevenmile Creek. This memo reflects my current understanding of the history of water use from Sevenmile Creek based on the evidence at my disposal. It should be noted that this review may change pursuant to additional evidence.

On March 21, 1914, Elizabeth Ganser made an application for permit for spring water and reservoir water to be used for irrigation. Proof of completion of works was filed but proof of beneficial use was not. In 1966, James Tappan began inquiring about the permit. In 1967, based on a letter in the file from Patricia Tappan, the Tappans sold the property. IDWR (then the Idaho Department of Reclamation) canceled the permit on June 15, 1970.

On July 11, 1973, the department received a statutory claim in the name of Ralston and Rachel Adams. I am unsure of the spelling of the nickname, but Ralston Adams was known as Raleigh. The elements of the claim were:

Priority date: March 21, 1914

Point of diversion (POD): T20N R22E Sec 20 NENW

Source: Sevenmile Creek South Fork tributary to Salmon River

Quantity: 2.5 cfs

Purposes of use: Irrigation (April 1 to November 1)
 Stockwater (January 1 to December 31)

Place of use (POU): T20N	R22E	Sec 8	NWNE	40 acres
			SWNE	40 acres
			NESE	40 acres
			NWSE	40 acres
			SWSE	40 acres
			Total:	200 acres

Description of diversion works: Dirt diversion 1 foot high, 3 feet wide

Conveying works: 7920 feet, width of ditch at top is 4 feet, width of bottom of ditch is 3 feet, depth of water is 1 feet, grade varies, material varies

Notes in claim:

- Beneficial use was never filed but this water has been used on this land since original application. (Illegible) made by state engineer, J.H. Smith

- In September 1966 a James H. Tappan put a “Y” in ditch, ran a new ditch 791 feet and used a pipe sprinkler system from there, as well as the old ditch for flood irrigating.
- There was a reservoir built years ago. It went out about 1967 or 1968.
- I intend to rebuild the reservoir at some future date. At present I just use live water.
- 150 hd cattle
- As previously noted this water was filed for under permit no 10060 – a new no. #75-2041 – proof of completion of works was made by J.H. Smith State Engineer 7/21/1916. Beneficial use was never filed but this has been used on this land since that original application and possibly before.

Per explicit mention in 75-4029, it was filed to replace canceled permit 75-2041.

Ralston and Rachel Adams and George and Althea Hyde signed an agreement with respect to 75-4029 in December 1972. My interpretation of the agreement, based on consultation with Kathy Corkin of Sunset Heights Water Dist, Mike Tyacke and Stan Jensen of Hyde Creek Ranch and Ralston Adams’s successor-in-interest Cecil Jackson, follows. The Adams filed application for permit 75-7032 and the Hydes protested the application. As a resolution, Adams agreed to deliver Sevenmile Creek South Fork (part of 75-4029) water to George Hyde (Hyde Creek Ranch); in exchange, the Hydes would withdraw their protest to application 75-7032.

Thus, 75-4029 was split into two pieces, 75-14179 (Adams, now Jackson) and 75-14180 (Sunset Heights Water Dist., but appurtenant to the Hyde Creek Ranch property). This was, in effect, a transfer of water. Part of 75-4029 was transferred to the Hyde Creek Ranch and later became 75-14180. However, the water right ownership was not changed. Because 75-4029 had been appurtenant to the Adams land and the agreement transferred the water but did not convey ownership, the ownership of the water right stayed in the name of Ralston and Rachel Adams even after the 1972 agreement made a portion of it appurtenant to the Hyde Creek Ranch. When Sunset Heights Water District was formed, ownership of Hyde Creek’s portion of the water right (75-14180) was conveyed to Sunset Heights but the water remained appurtenant to Hyde Creek Ranch. This is slightly irregular, but it appears all parties were amenable to the agreement and this is how the water has been administered since.

75-7032 went through the licensing process and now delivers domestic and irrigation water through Sunset Heights Water District’s water system.

To provide some clarity, it seems I should summarize my assessment of the current state of 75-4029. My assessment is the elements of 75-14179 are fairly unchanged since claimed as statutory claim 75-4029. However, 75-14180 is now in the name of Sunset Heights Water Dist but is still appurtenant to the Hyde Creek Ranch. The priority dates of 75-14179 and 75-14180 should be identical and should reflect when water was first put to use on the land now owned by Jackson and Sunset Heights Water Dist.

There are additional water right claims on Hyde Creek Ranch, which is owned by Mike Tyacke and managed by Stan Jensen: 75-4393, 75-4394 and 75-4395. 75-4393 and 75-4394 have different sources and are outside the scope of this review. However, 75-4395 is from the Sevenmile Creek and it would be helpful to explain it in the context of other Sevenmile Creek rights. 75-4395 is for water from Sevenmile Creek North Fork. It is currently recommended as disallowed in the SRBA; Mr. Tyacke filed an objection and I conducted a field exam on October 2, 2008. Mr. Tyacke and Mr. Jensen were able to show me the diversion works and ditches from Sevenmile Creek North Fork. All elements of the claim will be determined during further review, but there is a clear diversion from Sevenmile Creek North Fork towards the Hyde Creek Ranch.

There is one additional claim that needs to be discussed here. 75-14448 was filed in December 2006 by Sunset Heights Water District for water from Sevenmile Creek South Fork with an 1895 priority date. 75-14448 was recommended as active in the Basin 75 Director's Report, but Cecil Jackson filed an objection stating, "The water for this right does not come from the South Fork of Seven Mile Creek."

During a field exam on October 2, 2008, I was accompanied by Kathy Corkin of Sunset Heights Water District. During the field exam, Ms. Corkin was unsure of the location of the Sevenmile Creek South Fork point of diversion and Stan Jensen of Hyde Creek Ranch was able to locate it. However, only the Jacksons (75-14179) and Hyde Creek Ranch (75-14180) currently divert water from there. I asked Ms. Corkin to show me the conveyance system where Sunset Heights Water District uses water from Sevenmile Creek South Fork and she was unable to locate ditches but said there were still some faint ones and she could ask some other folks for their locations. I asked when Sunset Heights Water District last used water from Sevenmile Creek South Fork and was told it was years ago. 75-14448 was filed for domestic and irrigation, and appears to be based on 75-7032, the Sunset Heights Water District's municipal use. Sevenmile Creek South Fork ditches do not, and can not, feed into Sunset Heights Water District's water system.

Based on the available evidence, I believe 75-14448 was filed because Sunset Heights Water District knew water from Sevenmile Creek South Fork had been used on the property in the past. However, they may not have realized the Sevenmile Creek South Fork (75-4029) water was transferred from the Sunset Heights (at that time, Adams) property in the 1972 agreement between the Adams and the Hydes.

Ms. Corkin said she wished to pursue 75-14448 and I told additional evidence would be needed of continued use of Sevenmile Creek South Fork water on the Sunset Heights Water District property.