



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 4, 2009

Adm. Robert Chewning (Ret.)
Virginia Chewning
139 Pahsimeroi Road
Ellis, Idaho 83235

Re: Snake River Basin Adjudication
Right 73-4080

Dear Admiral and Mrs. Chewning,

I received your objection the other day that was lodged with the Court. You will likely receive a notice from the Court setting a hearing date on what is considered your motion to file late objection. I am sure, sir, you are aware from filing your other objections the deadline passed some time ago.

One of the constraints in recommending the quantity of water, in this case 2.02 cfs, is the amount claimed. The amount recommended matches your claim filed in 1990 by your attorney in fact. Changing the quantity on your claim is not difficult but requires signing and submitting an amended claim.

I have enclosed an amended claim form for you to consider, sign, and return to this office, if you find the elements described on it acceptable to you, sir. The place of use is derived from your objection rather than repeating the description on your 1990 claim.

Perhaps some investigative information is helpful. I find the difference in the place of use between the recommendation (50.2 acres) and the place of use in your objection (58.2 acres) is the land above the ditch near your home. I have enclosed a map where the yellow line denotes the recommended place of use. The idea the area above the ditch was first irrigated in 1875 by Ellis seems implausible. The 1987 aerial photography does not show the area above the ditch as irrigated as shown on the enclosed map. However, 1987 was a dry year, and the limited water supply compromised irrigated areas during the year. Aerial photography after 1987 has shown part of the area on your property irrigated in some cases. The question becomes when the area above the ditch was first irrigated. The underlying principle of water rights in the West and Idaho is water is diverted and put to beneficial use. Water rights like yours date from the date of first beneficial use. You may have more than the one water right for irrigating your property.

Except in instances limited by the claimed amount of water, IDWR has recommended with uniformity .04 cfs (2 miner's inches) per acre for each 1875 water right on the Ellis

(P-6) ditch. Normally, water rights have a rate of .02 cfs (1 miner's inch) per acre. Using 50.2 acres for your water right, you can see, sir, the rate through calculation would be 2.01 cfs. The IDWR recommended 2.02 cfs. For purposes of discussion, using your acreage figure of 58.2, the rate would be 2.33 cfs short of the 3.0 cfs you have presented. I would suggest talking with your neighbors on the ditch who agreed .04 cfs per acre properly describes their water right. The average of the rights in P-6 is 0.0386 cfs per acre for 106 acres in water rights under the ditch not including the very late Madsen right, the Fish and Game screen, and River Valley Ranch, which diverts its right from both P-6 and P-7 in arriving at the quantity in water rights as those are recommended now. One of the smaller rights could change to 0.04 cfs per acre that would boost the average slightly. One right has settled in Court and has a decree at 0.03 cfs per acre.

Were you to show (prove) the 8 or so acres above the ditch was irrigated before 1971 (a critical date for appropriating water in Idaho) perhaps a second water right could be recognized after amending your claim to 3.0 cfs. Presuming another water right of 8 acres, at 0.04 cfs per acre the rate for the second right would be 0.32 cfs. The second amount added to the present 2.02 cfs, of course, would be a total of 2.34 cfs. The tall burden is documenting when the area above the ditch was first irrigated. Anything after May 19, 1971, will require an application for permit to acquire a new water right. The avenue, sir, of gaining what is called a beneficial use water right through the adjudication is closed for land first irrigated after May 19, 1971.

Sir, I have tried to supply you with information related to your property and water rights to allow you to make an informed decision in order to proceed forward. Of course, call me to expand or clarify what I have written here. I want to get the water rights correct.

Sincerely,



Donald V. Shaff, MPA
Adjudication Bureau Chief

Enclosures