

Water Resources Field Services

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To: File A24-200B
Fr: Bryce Contor
Date: 13 September 2005

Bac

Re: General narrative regarding Tincup Creek Adjudication claims.

To date I have done field inspections for all the Tincup Creek Adjudication claims which I received in July 2005. I have not been able to contact the owners of A24-02018, A24-04074A, A24-04074B or A24-10015, though I was able to inspect the places of use and points of diversion. At the location I did visit with a Mrs. V. Haderlie who may be a former claimant for A24-04074A and/or A24-04074B. A24-10668 is in the Tincup area but its source is Salt River, with a Wyoming water right and point of diversion. Places of use are illustrated in Figure 1 at the end of the memo.

This memo discusses several considerations that apply to all Tincup Creek water rights in general. It is filed in paper file A24-2000B but applies to all irrigation claims with Tincup Creek as a source, with notes in each of the other claims referencing the memo.

1. Public Land Survey System.

The overlay of county roads, fences, and claimed places of use on the Public Land Survey System shows a misalignment, as illustrated in Figure 1. Older 2000-series licenses and land patents I have examined describe the parcels in terms of whole quarter-quarter sections, as expected. Newer deeds and legal descriptions show the partial quarter-quarters that appear from the map.

My hypothesis is that the original licenses and patents were described according to some kind of preliminary PLS layout that corresponded to the roads, fences and apparent property lines. It seems that later a new PLS survey was performed which resulted in all the partial quarter-quarters in individual parcels.

Based on this hypothesis I have extrapolated the place of use of original license 24-2007 to the claimed places of use based the license. This does not appear to be an accomplished transfer, even though the GIS polygons of my proposed place of use have slightly different legal descriptions than the nominal legal description of the original license. This is illustrated in Figure 2.

Because there are no competing or overlapping claims from this source, I believe an exhaustive chain of title documenting the exact change in legal description is not necessary to correctly recommendation the historical water use that is authorized by the license.

The Wyoming places of use were mapped from scanned images of paper maps from the Wyoming State Engineers Office (provided by claimants) and appear to be consistent with the actual fence lines and apparent property lines.

2. Ownership Issues

Apparently due to this problem with the PLS system, there are some potential ownership issues, as follows:

- a. A24-2000B and A24-4006. These were both claimed by entities with the name "Robinson" in the organization name, and Perry Robinson (208 356-5325) was listed in both files as a contact. In fact Perry Robinson is only associated with A24-4006. The land has changed ownership but he has agreed to continue to provide information as needed for the Adjudication review.
- b. Notes in the files suggest that A24-04074B now belongs to Melvin Hoopes, owner of adjacent claim A24-10015. Visiting with Mrs. V. Haderlie at a home on the place of use, and inspection of the fences, roads, and claims maps, suggest that this is incorrect and the land belongs to Haderlies. The claim adjoining on the other side, A24-04074A, also is in the name of a Haderlie. I have requested a current plat map and ownership list from the Caribou County Assessor.
- c. There apparently is or has been an ownership dispute regarding some of the Wolfley lands. This does not appear to affect the irrigated portion of the lands proposed to be recommended under A24-10029.

3. Nature of Beneficial Use

Claims ~~A24-10676~~, ~~A24-10677~~ and ~~A24-10678~~ contain wording to the effect that these semi-arid lands need irrigation to be productive and therefore the existence of a patent indicates that irrigation must have been present. Some of the lands in Tincup were granted under the Homestead

Act and some under the Desert Entry Act. I think irrigation may have been required under the Desert Entry Act but I don't think it was under the Homestead Act. The attached average precipitation map suggests that at Freedom, annual precipitation is in the 14 inch to 22 inch range. The upper end of that range begins to approach the range where dry farming can be successful. It appears that precipitation increases quite rapidly with elevation as the valley floor rises towards the west. Dry farming is being practiced just up-slope of A24-10015, for instance, but I saw no dry farming along the state line near A24-02018 and other claims. This argument (that the patent establishes priority, because irrigation is necessary for agricultural production) may only apply to the eastern-most claims, if at all.

Claims A24-10031, A24-10668, A24-10676, A24-10677 and A24-10678 appear to be under typical "full irrigation" with sprinklers. This may also be true of A24-02018. A24-02007A and A24-02007B appear to be under active irrigation by gravity. These are the eastern-most claims at the lowest elevation, near the state line. I did not make a detailed investigation, but it appears that the adjacent lands in Wyoming are irrigated if they are in production.

For the other claims, higher in elevation and west of those listed above, the irrigation that takes place presently appears to be confined to dry years or to the first year of establishing an alfalfa stand. For these claims I believe the evidence supports intermittent irrigation, with all of the lands being irrigated in at least some years, but seldom would the whole farm have been irrigated in a given season. In some cases a permissible place of use with a smaller limit of irrigated acres in any one year would be most likely to correctly describe the actual irrigation practice.

4. Overlap of Wyoming Water Rights.

Claim A24-10668 appears to be based on Wyoming "Certificates of Diversion of Water" from the Salt River, with part of the place of use in Idaho. Figure 1 illustrates other lands with Wyoming water rights, most of which appear to be under active irrigation.

5. Unclaimed historical water use.

Some lands in the North of section 9 and the south of Section 4 were historically irrigated by an owner named Carl Robinson, according to some claimants. They appear not to be irrigated now and I have no claim for

these lands.

6. Priority Administration.

While the claims and licenses have different priority dates, it appears that there has been no application of priorities as between Tincup water users. One user said he had heard that "Haderlie had the first right on the creek" but none described operation of priority cuts in allocation of water. It appears that either there is always enough Tincup Creek water for local demand or that an informal rotation system operates in times of scarcity.

In Basin 31 an agreement signed by all the users out of Mud Lake and filed at the county courthouse was incorporated in the partial decrees by reference. This was done by using a special condition attached to certain water rights (see 31-6 for an example). With the viewpoint that one purpose of the Adjudication is to correctly describe actual administrative practices that have been in place for long periods of time, I would propose doing something similar for the Tincup Creek (and tributaries) recommendations, if the users were to come forward with a unanimously-adopted agreement stating that in times of shortage, Tincup water is allocated among local users by rotation, regardless of nominal priority date.