



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 20, 2009

Dwight E. Baker
Law Offices of Baker & Harris
266 W. Bridge St.
Blackfoot, ID 83221

Re: Your 8/13/09 letter about subcase no. 27-2069

Dear Dwight,

Your letter referenced above suggests there exists an issue about the priority of SRBA subcase no. 27-2069. Specifically, you claim Mr. Lake wants 1918 and the Department's records reflect 1954. The Department recommended 8/30/1918 for subcase no. 27-2069.

As Garrick Baxter's letter of 3/19/09 explains and as you and I have discussed by phone, your client objected to the priority date for subcase no. 27-12142. There the Department recommended 1954 because the affidavits attached to the late claim support 1954. I hope this clears up the confusion. If your client finds any additional information that supports an earlier priority for subcase no. 27-12142, the Department would be happy to review it.

If you have questions about this matter, please contact me at (208) 287-4810.

Sincerely,

A handwritten signature in cursive script that reads "Andrea L. Courtney".

Andrea L. Courtney

Cc: Peter C. Monson

RECEIVED

AUG 20 2009

Law Offices of

BAKER & HARRIS

DEPARTMENT OF
WATER RESOURCES

Dwight E. Baker
Jared M. Harris *
Jonathan W. Harris
* Also Admitted in Utah

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August 13, 2009

Andrea Courtney
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

Re: Snake River Basin Adjudication
Dennis Lake/Subcase 27-2069
B & H Matter No. 5354

Dear Ms. Courtney:

There is an issue regarding the priority date on water right 27-2069. Mr. Lake contends the priority date of 1918 should remain in place; we understand the IDWR's records reflect a 1954 date.

You will find enclosed a copy of an Report of Engineer which we understand pertains to water right 27-2069, and which is apparently on file with the IDWR. You will note an independent engineer had verified the application of beneficial use in September 1920. Why is this engineer's report not adequate to satisfy the parties involved, particularly the IDWR, that this water right in fact was diverted, at least in 1920, and obviously before, presumably in 1918?

I would greatly appreciate your position with respect to the enclosed document.

Very truly yours,

BAKER & HARRIS



Dwight E. Baker

DEB/lis

Enclosure

cc: Dennis Lake
Peter C. Monson

REPORT OF ENGINEER

This proof is for Beneficial UseIn Water District No. 341. State name of applicant and number of permit: William W. Winchell - Permit 187022. State source of water supply: Warm Spring3. Location of point of diversion: N¹SW¹ Sec. 9, T. 6 S., R. 42 E., B.M.

4. Describe works as they exist, giving dimensions and capacities of same:

Earth dam, 4' H. 15' Long. No H.G.Ditch, 3' B. 1' D. Cap. 1 S.F.5. State whether or not water has been turned into works of diversion: Yes6. Give exact location of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): S¹SW¹ & S¹SE¹ Sec. 9, T. 6 S., R. 42 E.S²SW¹, all irrigated pasture.SW¹SE¹ 40 A. pasture.SE¹ SE¹ None irrigated from this spring.

7. Submit map on enclosed plat, showing location and details of above description.

8. How many parties conduct water in this system? One

9. Give names and amount of each right:

10. What large stream would the water here appropriated finally reach? Snake River11. Describe the various tributaries en route, from point of diversion to the principal drainage stream: From land to Blackfoot River, to Snake River.

Remarks:

This examination was made on the 20 th day of Sept. 19 20.(Signed) L. R. Annett

Examiner.

13762

OVER

(This report must be sworn to when not made by an attache of the office.)

STATE OF IDAHO,

SS.

County of.....

....., being first duly sworn, deposes and says that the statements contained in the within report are correct to the best of his knowledge and belief.

Subscribed and sworn to before me this.....day of.....19.....

My commission expires.....

Notary Public.

Dist. 34

Wm. W. Winchell,
Henry, Idaho
Permit 13702

96542E

Instructions to Examiners

1. Examiners will not be permitted to examine any of the prospects in the office pertaining to this permit. They are to furnish a report of the facts and conditions as they exist, from their own observations and inquiries.
2. Always carefully note the location of the point of diversion, and accurately plat same.
3. Find out how many parties own right, in the ditch or canal and give their names and amount of right.
4. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
5. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
6. If any unusual conditions are discovered, make a plain statement of them in the report.
7. Always see the holder, if possible, and go over the whole ground with him, and make your report only upon actual existing facts and conditions.