

MEMORANDUM

TO: File

FROM: Monica Van Bussum

DATE: October 23, 2009

RE: Motion to set aside partial decree for portion of 75-4505 (now 75-14168, 75-14169, 75-14514, 75-14515, 75-14596, 75-14597, 75-14598 and 75-14599)

In May 2009, Marvin and Irene Hutchings submitted a motion to file late claim 75-14601, citing they did not file a claim because, "Acres were claimed by 75-4505 but was not recommended. Acres have been irrigated since 1889." On August 20, 2009, Judge Melanson signed an order denying the motion to file a late notice of claim and suggested the Hutchings file a motion to set aside partial decree 75-14514 and consult an attorney.

It would help at this point to discuss the split history of statutory claim 75-4505, and I have attached an Excel spreadsheet of the split history to this memo. The Hutchings filed statutory claim 75-4505, apparently based on a posted notice filed by John C. Manfull. When SRBA claims were being filed, the Hutchings filed an SRBA claim on 75-4505 with the following elements:

- Priority date: 12/24/1894 (date of posted notice)
- Quantity: 4.69 cfs 3/15-11/15 and 4.00 cfs 5/15-7/15 for a total of 8.69 cfs
- POU: 94.8 acres

During claim investigation, 75-4505 was split by change of ownership into three portions: 75-14168 (Cranney), 75-14169 (Osgood) and 75-14170 (Hutchings). Those three portions subsequently appeared in the Director's Report. It is important to note the Hutchings claim 75-14170 was recommended with the following elements:

- Priority date: 3/14/1889
- Quantity: 75.3 ac 4/1-10/31
- POU: 75.3 ac

I have been unable to find an amended claim changing the priority date to 3/14/1889 from 12/24/1894, but there is a note from Roxanne Brown saying we have evidence of priority dating to earlier than 12/24/1894 and an amended claim needed to be solicited. It appears the 3/14/1889 date refers to a posted notice by R.A. Goodell that contains the exact same elements of the Manfull posted notice, but obviously dates a bit earlier. I found a copy of this posted notice in the backfile of SRBA claim 75-4107A (attached here).

The BLM objected to the Director's Report recommendation for 75-14170. Pursuant to settlement of the objection, 75-14170 was split into two portions: 75-14514 (Hutchings) and 75-14515 (BLM). The Hutchings claim was recommended with the following elements:

- Quantity: 3.01 cfs
- POU: 60.1 ac

The BLM claim was recommended with the following elements:

- Quantity: 0.57 cfs
- POU: 11.3 ac

It is important to note the sum of 75-14514 and 75-14515 (71.4 acres and 3.58 cfs) is less than that of their parent, 75-14170 (82.8 acres and 4.69 cfs). It appears that the POU on the BLM ground changed during objection resolution, primarily in reducing acres in T20N R21E Sec 35 SESE. However, some of the Hutchings acres were also removed when the claim was split, whether inadvertently I don't know, but the acres removed were on the east side of the highway in T19N R21E Sec 1 NENW. It does not appear other elements of the Hutchings claim changed during objection resolution, just those acres being removed that had previously been recommended under 75-14170.

After this objection was resolved, 75-14514 and 75-14515 were partially decreed in October 2008. After the partial decree, a change of ownership was submitted for 75-14514, which split it into 75-14596 (Hutchings) and 75-14597 (Osgood). And after this, it appears the Hutchings again sold a small portion of their land, which culminated in another change of ownership and a split, splitting right 75-14596 into 75-14598 (Hutchings) and 75-14599 (another split for Osgood).

I have now covered the entire split history of 75-4505 up to the Hutchings' latest motion. On August 19, 2009, the Hutchings filed a motion to set aside partial decree 75-14514. However, their portion of 75-14514 is now listed as 75-14598, so we need to review 75-14598.

Now that I have discussed the split history and which right we need to look at, I am free to review the Hutchings desire to have additional acreage included under their place of use.

Based on their late claim 75-14601, the Hutchings desire to have the following acreage added to their POU for 75-14598:

- T20N R21E Sec 36 SESW 3.1 acres
- T19N R21E Sec 1 NENW 1.4 acres
- Total acres: 4.5

There is a map in the claim file for 75-14601 that will help the reader visualize exactly which acres they are now looking for. The acres in Sec 1 were discussed previously in this memo and are those acres removed when the BLM objection resolution took place that resulted in 75-14514 and 75-14515. Looking at 1987, 1992 and 2004 imagery, it is questionable whether that 1.4 acres was irrigated. I have examined the 2006 imagery and that acres was clearly not being irrigated; there appears to be quite a bit of debris on the field in question.

As to the acres in Sec 36 SESW, those acres do not appear to be irrigated until the 2006 imagery and, even then, not all of them are irrigated. It is questionable irrigation was happening in 1987, 1992 and

2004. According to the 2006 imagery, a small north-south strip was being irrigated, but 2006 is well after the adjudication. Looking at an FSA map submitted by Marvin Hutchings on 12/26/2006 in support of 75-14170, these acres are not included as irrigated. The FSA map is dated December 11, 2006. Looking at the claim map for 75-4505, it does not appear these acres were included in the outlined claim POU.

Also, looking at the claim POU legal description from 75-4505, only 1 acre was claimed in this QQ. According to the current GIS shape for 75-14598 (again, the current Hutchings water right), there is about 1 acre recommended in this QQ, on the southwestern corner of the QQ. However, this 1 acre is for some reason not included in the legal description of 75-14598. It looks like it was included in the legal description for water right 75-14514, but appears to have been carried into 75-14597 when the split of 75-14514 created 75-14596 and 75-14597. True, a small portion of 75-14597 is in Sec 36 SESW, but not enough to warrant the 0.5-acre designation, I think. It looks like this may have been an error in transcribing the legal description. Regardless, the POU in question is just to the south of where the Hutchings want their additional acreage and there is no evidence in the claim or the FSA map to warrant its inclusion. It does not appear to have been claimed and does not appear to have been irrigated.

I called Bob Foster from IDWR's Salmon office on October 23, 2009, and asked him if he is familiar with the property. He said he was familiar and neither the acreage in Sec 1 or Sec 36 has been irrigated from the time he moved there until a couple of years ago when the Hutchings cleared off some of the ground in Sec 36 and began irrigating that. Bob moved there in approximately 1994. I asked Bob to stop out there and take some pictures if he has time before the snow falls. If this information is inconclusive, we will need to ask for pre-SRBA claim filing information from the Hutchings, such as pictures, aerial photos showing irrigation, statements from neighbors at the time, etc. The claim was filed January 31, 1990, so I believe we will be looking for information to support irrigation between 1985 and 1990.

Split history for statutory claim:

75-4505

Posted Notice	WR	AJ claim	Recommendation	Post-PD WR splits
Manfull 10 cfs ag & domestic POD 600 yds above mouth of 12 Mile POU 12 miles from Salmon	75-4505 Hutchings 8.69 cfs 93.8 ac 4.69 cfs 3/15-11/15 4.00 cfs 5/15-7/15 4/1/1922	75-4505 Hutchings 8.69 cfs 94.8 ac 234.5 AFA 4.69 cfs 3/15-11/15 4.00 cfs 5/15-7/15 12/24/1894	75-14168 Cranney 0.27 cfs 5.5 ac 4/1-10/31 3/14/1889	
			75-14169 Osgood 0.1 cfs 2 ac 4/1-10/31 3/14/1889	75-14596 Hutchings 2.83 cfs 56.6 ac
				75-14598 Hutchings 2.68 cfs 53.6 ac
				75-14599 Jones 0.15 cfs 3 ac
			75-14514 Hutchings 3.01 cfs 60.1 ac 4/1-10/31	75-14597 Osgood 0.18 cfs 3.5 ac
	75-14170 Hutchings 4.32 cfs 87.3 ac 3/15-11/15 3/14/1889		75-14170 Hutchings 4.32 cfs 75.3 ac 4/1-10/31 3/14/1889	75-14515 BLM 0.57 cfs 11.3 ac 4/1-10/31
	Sum of splits 4.69 cfs 94.8 ac		Sum of recs 4.69 cfs 82.8 ac	Sum of splits 3.01 cfs 60.1 ac
			Sum of splits 3.58 cfs 71.4 ac	Sum of splits 2.83 cfs 56.6 ac

RECEIVED

JUL 19 2004

DEPARTMENT OF
WATER RESOURCESMarch 14th 1889

Notice is hereby given that I the undersigned Citizen of the United States do claim and locate 500 inches of Water for irrigation other purposes. Said water to be measured under a fall in pressure and taken out of 12 mile creek in Lemhi County Idaho Territory, at a point about half a mile above the mouth of Creek where it empties into Salmon River on the west side 10 South of Salmon City. Said water to be conveyed in two ditches of sufficient capacity to convey same, and on each side of the creek.

L. A. Goodell

Filed for record March 20th 1889 at 11²⁰ A.M. and duly recorded in
Bk. of Water Rights page 305.

Timothy Dorr
Recorder