

Memorandum

Date: March 11, 2008 *CLS*

To: Splits of 63-287

From: Craig L. Saxton

Subject: Unclaimed diversion rate for 63-287

Background for 63-287:

IDWR records indicate that 63-287 was decreed on April 26, 1920 for 73 inches on 80 acres of Boise River Bottom.

Transfer 83 (4-29-1929) moved 36 inches into Settlers Canal. The unchanged portion was to continue to be diverted from the decreed POD which according to the legal description is currently called Warm Springs Ditch.

1987/1988 water master records show 36 inches of 63-287 delivered through Settlers canal and 52 inches delivered to Drainage District #4 through Marsters Ditch (location unknown). *This makes a total of 88 inches of water rather than the 73 inches we see on IDWR's copy of the decree (See diversion rate discussion below).*

Drainage District # 4 does not claim any portion of 63-287. A search on priority date does not show that anyone has claimed the remaining portion of decreed right 63-287.

The evidence indicates that the unchanged portion of 63-287 (52 inches) after transfer 83, is still accounted for in the water master records from the decreed POD and is applicable to the originally decreed POU.

After recommending 63-287B (36 inches) and 63-287D (2 inches) it does appear that there is still unclaimed water from the remaining portion 63-287.

POU Acre Issue:

63-287 was decreed for 80 acres. SRBA claim 63-287B was recommended for 36 inches on 80 acres. The duty of water recommended for 63-287B well below the decreed duty of water (1.1 inches). This right as described in the decree would have been limited to 32.7 acres.

Diversion Rate Issue:

1987/1988 water master records show 36 inches of 63-287 delivered through Settlers canal and 52 inches delivered to Drainage District #4 through Marsters Ditch. This makes a total of 88 inches of water rather than the 73 inches we see on IDWR's copy of the decree.

88 inches makes more sense because 63-287 was decreed for 80 acres of Boise river bottom. The Stewart decree defines the duty of water for Boise River bottom as 1.1 inches per acre: 80 acres multiplied by 1.1 inches = 88 inches.

It appears that the 73 inches was a mistake calculated by taking 80 acres and dividing by 1.1 inches = 72.7 (73) inches.

This discrepancy is not an issue yet as the total water recommended from 63-287 is less than 73 inches.

Recommending 63-287D:

Clearvue Estates was platted in 1972 and on the plat identifies water allocation of 76 inches to be divided between Block 1-17 and 26-28. The plat does not indicate if that water is Settlers share water or 63-287 decreed water.

Why does the plat say 76 inches but the water right apparently applicable to the property is only for 36 inches?

Claim 63-287B was filed by the lot owners of Clearvue Estates for 63 inches of 63-287 that is delivered by Settlers Irrigation District. However, when filing this claim, Block #28 was not included, assumingly because it wasn't annexed back into Settlers Irrigation District until 2007. 63-287B was recommended for 36 inches on 80 acres.

In July of 2007, the owner of Block 28 filed late claim 63-287D for a portion of the 36 inches delivered from Settlers canal and recommended as 63-287B.

I contacted Settlers irrigation to find out if the water being delivered to block 28 was considered "share water" or part of the 36 inches of 63-287. Settlers showed two inches of share water being delivered to block 28. The information provided also shows that block 28 was annexed back into the district on June 13, 2007.

Based on the claim evidence, water has been used on the property prior to June 13, 2007. This would indicate use of a private water right that is not considered share water.

There is no evidence that the 76 inches identified on the Clearvue Estates plat includes or has anything to do with the 36 inches recommended under 63-287B. It appears that the property holders just assumed that it was, so everyone identified on the plat put their name on the claim. *That said, we don't know that the 36 inches is not included in the 76 inches mentioned on the plat.*

What we do know is that the 76 inches does, at least in part, included share water.

Conclusion:

Ignoring the 76 inches of water identified on the plat, the following evidence supports the validity of SRBA claim 63-287D.

- 63-287D claims use within the decreed POU.
- Because 63-287 was decreed in 1920 and was decreed specifically for river bottom, the place of use is not restricted to the maps developed for the Steward Decree in 1906, thus it is not unreasonable to assume that the claimed POU was part of the decreed POU.
- Recommending the neighboring lot 27 as being a valid POU for 63-287B, supports that the decreed water was applicable to that bottom land.
- The fact that the plat done in 1972 does indicate that block 28 has water applicable to it, supports historical beneficial use of water on the property. Since block 28 wasn't annexed back into Settlers Irrigation District until 2007, the ground would have had to have been irrigated by something other than Settlers share water.
- Water master records show deliver of 52 inches of 63-287 water from the decreed POD