

06/17/2005

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 78-2072
NAME AND ADDRESS: ALBERT GIVENS
ELK LAKE RD
HC 75 BOX 3553
NEW MEADOWS ID 83654

M R GIVENS
ELK LAKE RD
HC 75 BOX 3553
NEW MEADOWS ID 83654

RECEIVED
DEC 03 2007
IDWR/North

SOURCE: UNNAMED STREAMS TRIBUTARY: LITTLE ELK CREEK
QUANTITY: 1.290 CFS
393.200 AFY
PRIORITY DATE: 11/27/1963
POINT OF DIVERSION:

T22N R01E S25 NENE Within IDAHO County
T22N R01E S25 NWNE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.080 CFS 2.40 AFY
IRRIGATION	05/01 10/01	1.290 CFS 390.80 AFY

PLACE OF USE: IRRIGATION Within IDAHO County

T22N R01E S23	SWSE	8.5	T22N R01E S25	NWNW	8.5
T22N R01E S25	SWNW	14.0	T22N R01E S26	NENE	14.0
T22N R01E S26	NWNE	13.5	T22N R01E S26	SWNE	11.0
T22N R01E S26	SENE	28.5	T22N R01E S26	SENE	8.5
T22N R01E S26	NESW	34.0			

DOMESTIC Within IDAHO County

T22N R01E S26 NWNE

140.5 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: License

Knoblock, Ken

From: Lester, Steve
Sent: Monday, December 04, 2006 1:21 PM
To: Knoblock, Ken
Cc: Fritschle, Carter
Subject: Database Comment for SRBA Claim 78-2072, Al Givens

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Ken:

The other day you called me about Marv Mortenson calling you. He has property in Basin 78 by Elk Creek between Riggins and New Meadows. Mortenson has several adjudication claims plus some newer stuff beyond the adjudication.

I've been working with Marv on the newer stuff. Also, he filed a complaint against an older right owned by Al Givens. Givens has 78-2072. That SRBA claim is bar-coded to you. Mortenson owns P/U in permit 78-7324 (permit assignment not completed yet so still listed under Pitts). Givens and Mortenson are linked by unnamed stream listed in both records. The disputes are really about wastewater generated from Givens use based on two investigations Western did in last 10 years.

Because we are concerned about yet another complaint against Givens for the same thing someday, I added a database comment to permit 78-7324 for a heads up.

Can you add the same comment to 78-2072? That way we can rely on database flags to avoid wasting time etc. A copy of the database remark follows if you want to copy it into 78-2072:

Two formal complaints against 78-2072 and involving 78-7324 have been handled by regional office staff over the past 8 years. Nothing improper about the use of water under 78-2072 was found in either case. The nature of the controversy involves the wastewater nature of the source of water for the unnamed stream in 78-7324. This stream, locally known as the Givens/Warren Ditch aka the natural ditch, appears to carry limited natural flow during the runoff period but not after that. Water in the stream after runoff ends appears to be wastewater generated upstream via 78-2072. Any additional complaints against 78-2072 should be carefully evaluated (seek more credible information from the complainant?) prior to spending more time on this matter. Field information through 2006 is filed in the regional office complaint file labeled Elk Creek and Little Elk Creek.

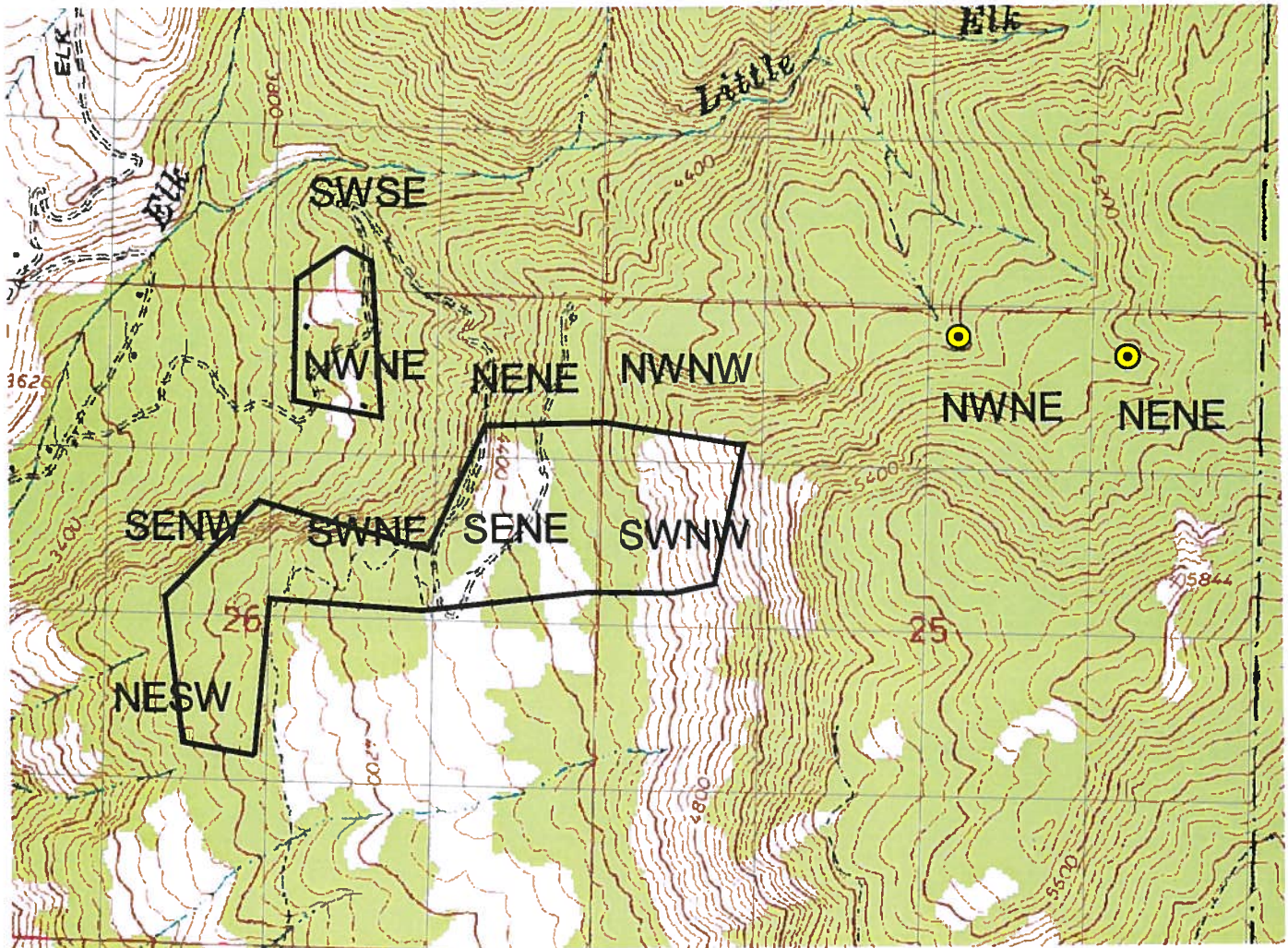
I copied this email to Carter in case he is involved with adjudication record 78-2072.

Thanks Ken.

Steve

78-2072

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0 1000 2000 Feet

Sections 23, 25 & 26
T22N R1E



- Point of Diversion
- Place of Use

Map prepared on June 17, 2005
By Kenneth Knoblock
Idaho Department of Water Resources

GREGORY FITZMAURICE, P.A.

ATTORNEYS AT LAW

200 SOUTH COLLEGE

GRANGEVILLE, IDAHO 83530

TELEPHONE (208) 983-2080

FAX (208) 983-2084

GREGORY FITZMAURICE
JANE E. SPENCER

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DEC 21 1998

WATER RESOURCES
WESTERN REGION

December 18, 1998

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✓Cindy Hodges, Sr. Water Resource Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Maria Minicucci, Sr. Water Resource Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Al Givens license # 78-02072

Dear Ms. Hodges and Ms. Minicucci:

My office represents Al Givens of the Elk Creek area of Idaho County, Idaho. Mr. Givens has requested that I review certain correspondence and documents related to his water permit # 78-02072. Mr. Givens has also requested that I provide you with a letter of my representation and an update on the status of his water right.

As you are aware certain land owners, Shannon Zuber and David Pitts have obtained a permit to appropriate water for fire protection from unknown streams which are a tributary of Elk Creek. The Zuber and Pitt's property lie adjacent to or near Mr. Givens property. As detailed in Ms. Hodges' letter of July 26, 1996, the appropriation is not a direct diversion from the same source as Mr. Givens' right, but is a by-product of his diversion and constitutes use of waste water. Mr. Givens and my office agree with the analysis of Ms. Hodges. Mr. Givens has not and will not guarantee that there will be waste water available to meet the permits requested by the above parties. Further, Mr.

cc: A78-02072

Page: 2

December 18, 1998

Givens is under no legal obligation to divert water so that the above parties can fulfill their rights.

My office further agrees that the IDWR has no jurisdiction to require delivery or regulation of existing water rights in this situation. Mr. Givens, of course, will cooperate with all requests by IDWR concerning field inspection of his permit and/or permits issued allowing use of waste water from his appropriation. He has no ill will concerning the actions by IDWR in accessing his property in October 1997, for the purpose of inspection. He is aware that Ms. Minicucci was acting under false representations at the time she entered on the property without consent. Mr. Givens, in order to avoid any misunderstanding, would only request advance notice of any request to inspect his diversion. He looks forward to a continuing cordial relationship with IDWR and its representatives.

If you have any questions please feel free to contact me.

Sincerely yours,



A handwritten signature in dark ink, appearing to read 'GREGORY FITZMAURICE', with a long horizontal line extending to the right.

GREGORY FITZMAURICE

GF:dk

cc: Mr. Al Givens

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DEC 03 2007

IDWR/North

ADJUDICATION MEMORANDUM

78-02072

CLAIM NO.: 78-02072

SUBJECT: Pitts/Zuber/Givens

EMPLOYEE: T. Tomicucci

DATE: 11/05/1997

Mr. Al Givens returned ~~by~~ my call. We had been discussing a field visit so that he could show me his diversion/delivery system under right no. 78-02072. After a discussion w/s. Lester it was decided to ask Mr. Givens to draw us a diagram/map of his system. He has agreed to do that.

We discussed whether the water source of Zuber's permit is wastewater or natural flow, and whether the channel is natural or human-made. He indicated he thought the channel was dug to channel flows through Zuber's subdivision, and carried his wastewater.

We also discussed that C. Hodges had already investigated this dispute. I will send a copy of her letter of 07/26/1996 to Mr. Givens.

We concluded by an explanation of the SRBA and the possibility that IDWR will not become involved before then. Mr. Givens indicated that his system was originally all ditches, now partially replaced by pipelines. It is possible that the diversions I witnessed on 10/07/1997 are re-diversion points from the channel/ditch. Once Mr. Givens submits his map IDWR will be able to better determine if there are diversion points which are not included on license 78-02072.

11/07/1997: Mr. Givens requested a copy of original complaint letter. I sent copy of Pitts' letter of 7-5-96 + rest of Pitts' Fax (permits + profile report of Givens' license). TTT



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 26, 1996

DAVID AND CAROLYN PITTS
HC 75 BOX 3552
NEW MEADOWS ID 83654

SHANNON AND SILVIA ZUBER
HC 75 BOX 3566
NEW MEADOWS ID 83654

RE: Water Uses by Al Givens

Dear David, Carolyn, Shannon and Silvia:

I'm sorry for the delay in formally responding to your concerns. David's letter to me dated July 5, 1996 describes your difficulty in filling your fire ponds, and also expresses concern over a possible mis-use of water right no. 78-02072 by Mr. Al Givens. I have carefully researched the Givens file and both your rights before drawing any conclusions.

License no. 78-02072 was issued in June, 1979, after two field inspections conducted by Department staff. According to the field examination map from the last visit in August 1978 (copy attached), the points of diversion for this right are within the north half of the northeast quarter of Section 25, approximately 1½ miles to the east of your homes. The source of water for the right are two unnamed streams which flow to the north, tributary to Little Elk Creek. Diversions made under this right are conveyed to the Givens place of use via a westerly ditch and pipeline. Although the map was not specific in this detail, return flows or excess water from uses within NE Section 26, immediately to the east of your homes, would in all probability flow down any available natural drainage toward Elk Creek. If this drainage is the one which crosses your property, the water you have appropriated is not a direct diversion from the same source as Mr. Givens' right, but is a by-product of his diversion.

Flows generated in the above manner are considered waste water. In the drainage which crosses your properties, any waste water is likely combined with general surface runoff in certain times of the year and so the term unnamed stream is applied. Waste water is a valid source of water for appropriation, but its availability is not guaranteed to the user. Mr. Givens cannot be asked to divert and/or waste unneeded water so that your rights may be fulfilled.

July 26, 1996

Page 2

With regard to the extent of Mr. Givens' actual beneficial use under license 78-02072, IDWR does not have the authority to deliver or regulate existing rights in this area. If Mr. Givens were diverting without a water right, this agency might take action against an illegal diversion. Right no. 78-02072 will be re-verified when SRBA claims are investigated for the Little Salmon drainage. In the meantime, any challenges as to the extent of Mr. Givens' beneficial use under the right, or injuries arising between users of rights, are civil matters between the parties.

I'm sorry I cannot offer a more positive solution. If you have more information I would be happy to review it. I have not yet sent a letter to Mr. Givens but I will do so, if you feel it would help out. The content of my letter to Mr. Givens would be limited to advising him that any flows diverted from the unnamed streams must be put to actual beneficial use, or they must remain in the source channel.

Please feel free to phone me if you would like to discuss this further.

Sincerely,

A handwritten signature in cursive script that reads "Cindy Hodges".

Cindy Hodges
Sr. Water Resource Agent

Enclosure

PAGES #4

334-2348

7-5-96

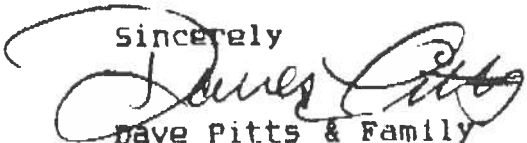
Cindy Hodges
Department of Water Resources
Boise, Idaho

Dear Cindy:

Its been a long time! I hope everything is fine with you. Im sorry everytime it seems I write you or talk with you I need your help, but your good at it!!!! Cindy my father in law Shannon R. Zuber and my family have water rights to one said unnamed stream tributary of Elk Creek (Our permit number #78-07324) (I believe dads is #78-07360) that feeds our domestic fire ponds which might I add have saved our property and near by homes from several wild fires in the past. For the past (#6) six years it has been an ongoing battle with a man who lives above us named Albert Givens. He diverts and has total control of this water flow from his property and denies he does until confronted will let it run for a few days then continues to shut off of rights to said water again. I am sending copies of everyones water right
NOTE: The water rights that Al Givens for the irrigation part of his right is for the irrigation of a large area of acreage. My father in law and I tracked the unnamed stream just up past the Givens home where we found he does not use it for irrigation but lets the water run on the ground in vast amounts rather than to comply with the states regulation. He does not have anything to irrigate but a small lawn next to his house.

Please investigate the above mentioned problem and correct as soon as possible due to our fire use of said water. As fire season approaches rapidly lives, homes and property depend on us for fire suppression purposes. Your help to rectify this situation would be greatly appreciated.

Sincerely


Dave Pitts & Family
H.O. 75 Box 3552
New Meadows, Idaho 83654
Phone & Fax
208 628-3054

RECEIVED
DEC 03 2007
IDWR/North

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A78-02072
Date Received: 5/26/1988
Receipt No: C000962

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: M. R. GIVENS 208-628-3707
Address: BOX 3553 ELK LAKE ROAD
HC 75 BOX 3553
NEW MEADOWS, ID 83654

AND/OR

Name: ALBERT GIVENS 208-628-3707
Address: BOX 3553 ELK LAKE ROAD
HC 75 BOX 3553
NEW MEADOWS, ID 83654

2. Date of Priority: NOV 27, 1963

3. Source: UNNAMED STREAMS Trib. to: LITTLE ELK CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	25	NE	NE			IDAHO
			NW	NE			IDAHO

5. Description of diverting works:
GRAVITY DITCHES AND PIPELINE FOR DOMESTIC

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	05/01	10/01	1.290		
DOMESTIC	01/01	12/31	0.080		

7. Total Quantity Appropriated is:
1.290 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 421.5 Acre Feet Per Annum.

9. Non-irrigation uses:
D/2 HOMES, SINGLE OWNERSHIP

A78-02072

Page 1

Date: 05/26/88

MICROFILMED
OCT 05 1992

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
22N	01E	23	SW		SE		IRR	8.5
							Section Acres	8.5
		25	NW		NW		IRR	8.5
			SW		NW		IRR	14.0
							Section Acres	22.5
		26	NE		NE		IRR	14.0
			NW		NE		IRR	13.5
			SW		NE		IRR	11.0
			SE		NE		IRR	28.5
			SE		NW		IRR	8.5
			NE		SW		IRR	34.0
							Section Acres	109.5
							Total Acres	140.5

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

NONE IRR., B/U RIGHT FROM WELLS FOR DOM.

14. Remarks:

15. Basis of Claim: LICENSE

Water Right Number: 31555

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Albert Yvens Date: 5-26-88

Date: _____

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 26 day
of May 19 88

[Signature]
Notary Public

Seal

Residing at Boise ID

My Commission Expires June 10, 1994

