

MEMORANDUM

To: Files: William & Barbara Slavin (75-10061E, 75-10062E, 75-14421, 75-14637)
Derrold & Madge Slavin (75-74A, 75-4340A, 75-10061G, 75-10178 and
75-14704)

From: Monica Van Bussum

Date: May 26, 2011

Re: Rewriting recommendations pursuant to SRBA Mandatory Settlement
Conference on May 18, 2011

On May 18, 2011, at the request of the Snake River Basin Adjudication (SRBA) District Court, the parties met for a mandatory settlement conference. I attended as a representative of the Department. There are two primary issues for the parties: 1) the distribution of exchange water to the Slavins) and 2) the allocation and transfer of a decreed water right 75-63. This memo will discuss issue 1 and its potential resolution.

According to the McFarlands, the Slavins should have 35 inches of so-called "exchange water" from the McNutt v. Palmer decree (commonly called the McNutt decree, or the Carmen Creek decree). The Slavins had been recommended 68 inches of exchange water, along with more typical decreed water. The table on the next page shows the original breakdown of the recommended rights.

Claimant	Right No.	Priority Date	Diversion Rate	Notes
Bill & Barbara Slavin	75-10061E	5/1/1875	0.882 cfs	44 inches of exchange water only
	75-10062E	5/1/1882	0.248 cfs	12.5 inches of exchange water only
	75-14421	4/1/1915	1.63 cfs	High water
Derrold & Madge Slavin	75-74A	5/1/1896	0.25 cfs	Decreed water
	75-10061G	5/1/1875	0.15 cfs	7.5 inches of exchange water only
	75-10178	5/1/1882	0.38 cfs	Combination of 4 inches of exchange water and decreed right 75-75 (15 inches, or 0.30 cfs)
	75-4340A	4/1/1915	0.17 cfs	High water

After the director's report, Bill & Barbara Slavin filed claim 75-14637 for a portion of water right 75-74. Derrold & Madge Slavin claimed a portion of this decreed right as 75-74A (see table above). Bill & Barbara Slavin claimed the remainder, or 0.75 cfs, under 75-14637. The original decreed right 75-74 was for 50 inches, or 1.0 cfs.

Adding up the amounts of exchange water in the table above (44 inches plus 12.5 plus 7.5 plus 4), the two Slavin groups together were recommended 68 inches of exchange water.

A full share of exchange water is 45 inches, as understood from the details of the McNutt v. Palmer decree. The Slavins had contended through their arguments before the court that they were entitled to 2 shares, or 90 inches, of exchange water. The McFarlands, who count several former watermasters in their numbers, argued the Slavins had never been delivered 2 shares of exchange water. The deeds the Slavins produced as part of their evidence were thoroughly discussed in the 706 report for this matter. Essentially, this became a discussion of deeds versus delivery.

At the settlement conference of May 18, 2011, the parties indicated an amicable solution would be for the Slavins to have one full share, or 45 inches of exchange water, along with their share of decreed water. The parties indicated I should draw up SF5 recommendations indicating this agreement. The table below shows the new amounts.

There is one important change to note from the earlier director's report to these recommendations. Previously, claim 75-10178 was for the full allotment of decreed right 75-75 and a share of the 1882 exchange water. I have now split those shares out for easier administration and understanding. 75-10178 is now for the full allotment of decreed right 75-75. 75-14704 is now Derrold and Madge Slavin's 1882 exchange water.

I have highlighted the new claim numbers (75-14637 and 75-14704) in yellow below.

Claimant	Right No.	Priority Date	Diversion Rate	Notes
Bill & Barbara Slavin	75-10061E	5/1/1875	0.39 cfs	19.5 inches of exchange water only
	75-10062E	5/1/1882	0.22 cfs	11 inches of exchange water only
	75-14637	5/1/1896	0.75 cfs	LATE CLAIM – Based on decree 75-74
	75-14421	4/1/1915	1.63 cfs	High water – NO CHANGE
Derrold & Madge Slavin	75-74A	5/1/1896	0.25 cfs	Decreed water – NO CHANGE
	75-10061G	5/1/1875	0.19 cfs	9.5 inches of exchange water only
	75-10178	5/1/1882	0.30 cfs	Based on decree 75-75
	75-14704	5/1/1882	0.10 cfs	5 inches of exchange water only
	75-4340A	4/1/1915	0.17 cfs	High water – NO CHANGE

Adding up the exchange water (19.5 plus 11 plus 9.5 plus 5) equals 45 inches of exchange water, or one full share, as agreed upon by the parties.

The 45 inches had to be divided between the two Slavin parties. To determine how much of each exchange right, I consulted with the watermaster, who indicated a 45-inch share of exchange water is generally divided as 29 inches of 1875 exchange water and 16 inches of 1882 exchange water. Barbara & Bill Slavin own 68% (69.1 acres) of the Slavin irrigated ground, so I recommended 68% of the available exchange water under each priority date (19.5 and 11 inches, respectively). Derrold & Madge Slavin own 32% (32.5 acres) of the Slavin irrigated ground, so I recommended 32% of the available exchange water under each priority date (9.5 and 5 inches, respectively).

There is one more important note regarding the allocation of the exchange water. In the original director's report, Barbara & Bill Slavin received 56.5 inches of exchange water and Derrold & Madge Slavin received 11.5 inches of exchange water. It does not appear the exchange water was split proportionally between the two Slavin groups in the director's reports. If it had been split proportionally (as indicated in the previous paragraph, with 68% going to Bill & Barbara Slavin and 32% going to Derrold & Madge Slavin), Barbara & Bill Slavin would have received less exchange water and Derrold & Madge Slavin would have received more. I believe the earlier director's reports are in error regarding the allocation of exchange water. I have tried to correct that in this set of recommendations.

Derrold & Madge Slavin are now recommended more exchange water than they were previously, which could be confusing to someone unfamiliar with the situation. At first glance, it would appear Barbara & Bill Slavin were severely cut and Derrold & Madge benefitted. However, upon further review, it should be clear there is a disproportionate split in the first director's reports and this latest round corrects that mistake.

For ease for future agents, I have included some additional remarks in the recommendations about water right lineage. The exchange water rights got remarks indicating they were for exchange water and the decreed right recommendations got remarks indicating their decreed parents.