

Ted Booth

From: Fritz Haemerle <fxh@haemlaw.com>
Sent: Thursday, July 05, 2012 3:39 PM
To: Jones, Doug; Ted Booth
Cc: Bromley, Chris; Kelly, Vicki
Subject: RE: Haugh (37-21260) and Jessinger (37-21261)

All:

After having reviewed an e-mail from Nick Spencer, I agree with Doug's recommendation.

Thank you.

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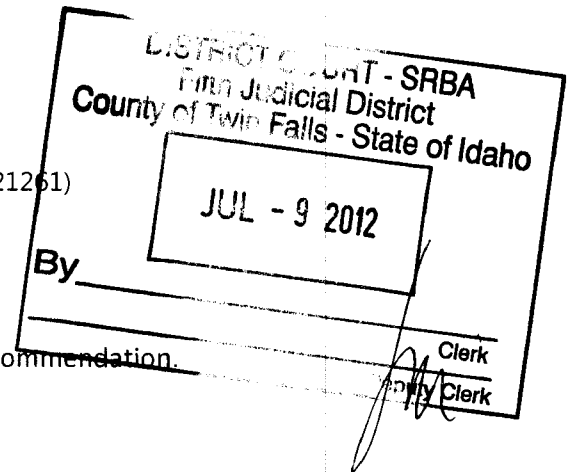
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From: Jones, Doug [<mailto:Doug.Jones@idwr.idaho.gov>]
Sent: Tuesday, July 03, 2012 4:34 PM
To: Ted Booth; Fritz Haemerle
Cc: Bromley, Chris; Kelly, Vicki
Subject: Haugh (37-21260) and Jessinger (37-21261)

Special Master Booth,

At long last I have looked these over and offer this analysis. It's no wonder I am going balder and greyer.

There are many parts of this water right (original decree 37-833 was silent w/r/t Season of Use) and numerous transfers have been filed and approved over the years. These two particular recommendations were affected by transfer # 1749, filed in 1972, that first moved the water upstream from the Rockwell Bypass area to the Comstock Ditch where they are presently located. This transfer asked for and was granted a season of use specifying 4/1 to 9/30. Another transfer, #2462 filed in 1980, identified a portion of this same part of original right transferred by T # 1749 and was also approved with a 4/1 to 9/30 season of use. IDWR standard season was never 9/30, but IDWR would authorize a reasonable season as requested by transfer applicants – who better would know when they irrigated? At the time of the second transfer IDWR had started to apply an administrative standard season and the was 4/1 to 11/1 (presently the season for that area is 4/15 to 10/31), but recognized the requested season. Other parts of the original 37-833 were transferred using the 4/1 to 11/1 season and were approved.



These two parts of the original right were claimed as 37-8330 by Bloomfield. The claim described a 4/1 to 11/1 season. An ownership change split the claim into 21260 and 21261. Somehow the correct season of use was properly applied to 37-21260 (4/1 to 9/30), along with the appropriate shoulder language. However, 37-21261's season of use was incorrectly described as 4/1 to 11/1 and compounding that error the shoulder language was added. The shoulder language makes no sense in relation to the described season of use, as you correctly pointed out and appropriately sought clarification from IDWR.

That being the full explanation it is my recommendation that the most straight forward resolution would be for the Special Master to develop a Report and Recommendation to the judge that strikes the shoulder condition from the description of 37-21261. IDWR could pursue restricting the season for 21261 to 4/1 to 9/30, but would accede to the simpler solution. A word document with my recommended correction is attached.

Thank you.

Douglas Jones

Tech. Engineer

ID Dept of Water Resources

<<Jessinger_ADR.docx>>

07/03/2012

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-21261

NAME AND ADDRESS: CYNTHIA CRAMER JESINGER
PO BOX 111
SUN VALLEY ID 83353

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.080 CFS

The rights listed below are limited to a total combined diversion rate of 0.08 cfs. Combined Right Nos.: 37-21259, 37-21261, and 37-21263.

This right when combined with all other rights listed herein shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used.

PRIORITY DATE: 11/12/1936

Pursuant to a call in times of scarcity, this right is senior to all other rights that did not result from saved water in the Rockwell By-Pass, as established by and subject to the provisions included within the Rockwell vs. Coffin decree issued on 29 July, 1949.

POINT OF
DIVERSION:

T04N R18E S29 SWSW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	0.080 CFS

~~The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after September 30 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.~~

PLACE OF USE: IRRIGATION in BLAINE County

T03N R18E S06 SWNE 1.70

1.7 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 1.7 acres in a single irrigation season. Combined Right Nos.: 37-21259, 37-21261, and 37-21263.

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.

The saved water shall be made available to the Rockwell By-Pass saved water right holders any time the Rockwell By-Pass is being used to deliver water to Broadford Slough right holders. The Rockwell saved water rights shall be curtailed when calls for senior water rights from

the Broadford Slough cannot be delivered.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Rockwell By-Pass owners must maintain the by-pass for the entire length of the by-pass capable of carrying 17.36 cfs of water during the irrigation season.

A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.

Property is also known as Lot 1, Gimlet Corner.