

MEMORANDUM

TO: GARY SPACKMAN

FROM: DANIEL A. NELSON *DAN*

DATE: 6/28/01

SUBJECT: US FOREST SERVICE LETTER CONCERNING THE JAMES BONATO
APPLICATION FOR PERMIT AND ADJUDICATION CLAIM

I have reviewed the letter sent to you regarding the water rights held by James Bonato. These rights are application for permit 79-7263 and adjudication claim 79-13962. I have reviewed the documentation and can verify that the Chronology of Factual Information in this letter is a fairly accurate representation of the history of these water rights.

Under "BACKGROUND" on the first page of the USFS letter, they say that uses for these rights already exist. However, they do not describe the uses that are currently being used. 79-13962 does give Mr. Bonato the right to divert water for irrigation that has been historically used. I do not feel that we can prevent Mr. Bonato from exercising his adjudication irrigation right due to the resumption of use standards allowed in the Snake River Basin Adjudication (SRBA). However, I do believe we could require him to stop using the water for domestic purposes and only divert water for irrigation. The stock water portion could be allowed during the irrigation season as incidental stock water. The only recourse that we could actually take against this right is to stop the domestic use.

The information that USFS supplied opposing water right 79-7263 should be put into that file and should also be included in the adjudication claim file. This information could be used to determine whether or not to allow the processing of 79-7263 in the future. However, it is still an application for permit and the Bonato's are not allowed to develop this right.

The overall tone that I received from the letter is that they would like us to make an administrative determination of forfeiture before the recommendation for adjudication claim 79-13962. The letter from Mr. Gill and the USFS letter confirm that Mr. Bonato has used the water within the last five years and the diversion exists. These two documents provide proof that possible resumption of use has occurred. I believe it would be difficult for the adjudication staff to not recommend this right to be decreed from the information contained in these letters. Since the USFS letter states this water has been used since 1997, I would have a difficult time finding forfeiture in this situation.

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USFS memo

The USFS letter contends that the Mr. Bonato's claim is based on the Gill's adjudication claim 79-4030. However, Mr. Bonato's adjudication claim is a beneficial use claim and is not a split of 79-4030. Therefore, I do not think that Mr. Bonato's use can be limited to only what was claimed by the Gill's in their statutory claim or adjudication claim.

CONCLUSION:

This is a very complex situation and there are a number of issues involved on either side. I am convinced that the only way that these rights are going to be resolved is through the judicial system. We cannot prevent the Bonato's from using the water that has been historically used for irrigation. Our only recourse against the Bonato's would be to stop them from using this water for domestic purposes. I get the impression that the USFS is asking us to settle an easement issue, which is beyond our jurisdiction. It would be in the best interest of the department to allow the SRBA process to determine the validity of the irrigation right instead of getting involved in a separate legal proceeding. The only action that we can take at this time is to write a letter to the Bonato's telling them that they cannot use the water being diverted from Cabin Creek for domestic purposes.

TO: DAN N'kon

~~CONVERSATION~~ MEMORANDUM

DATE 12/28/98

FILE 79-07263

NAME OF PARTY N/A

EMPLOYEE FL

RE: Reply to your memo of 11/25/98

From your Research, it appears that Bonito needs ^a ~~a~~ SRBA claim for irrigation use dating to before 1971. No late fee since B. is new owner. It's not clear if stockwater should be part of irrigation claim in SRBA (typically is but not always).

If claim is in SRBA, then appl. is reduced to multi-domestic & maybe some stockwater. The original appl. states future domestic. SRBA R. moratorium does not allow community system for multi-domestic served by surface water (so is not equivalent to how we treat community well in B. 63). The only approval we can issue in this case is a use falling within 42.111.

Conclusion:

- ① file appropriate SRBA claim where fee is:
\$50 plus \$1 per acre (no late fee charged).
- ② Reduce appl. to remaining elements where
 - a) process if total use meets 42.111 (≥ 1 home ok if single ownership with $\leq 1/2$ acre ground ~~irrigation~~ irrigation total
 - b) hold it not as in (a).

Cadin Cued even though it was never claimed by the Gills in 1974. As a matter of fact there is no bond in Dec. 5 with a previously existing right. If he intended to file, maybe he should file it as a B/U claim without trying to say it has anything to do with 19-04030. He can't do a change of ownership on 199-04030 & split it since it covers Dec 4.

Jan
Bottomline - I wouldn't advise him that the claim will be paid - it is extremely questionable. He can file if he wants to - it's no late x/c chd. Thanks, Jan

Jan,

The only problem I can see with this scenario is that 19-04030 covers bonds in Dec 5 rather than Dec 4. This app. doesn't state which 4/4. He can still file a claim if he feels he has a right to - we can't prevent him, however it will be very questionable since the original claim was for Dec. 4. If he begins to divert from Cadin Cued & someone complains, it seems to me he should be cautioned that he will have to prove Dec. 5. Janet was originally ungrated from

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MEMORANDUM

TO: STEVE LESTER - SUPERVISOR, WATER ALLOCATIONS, WESTERN
REGION, IDAHO DEPT. OF WATER RESOURCES

FROM: DANIEL A. NELSON - WATER RIGHT AGENT

DATE: 11/25/1998

SUBJECT: WATER RIGHT PERMIT PROOF OF PRIORITY, WATER RIGHT
79-07263 (JAMES E. BONATO)

I have been in contact with Mr. Bonato for last few weeks concerning application for permit # 79-07263. He has sent me 2 deeds and a letter from Melvin Gill stating that the property he now owns was apart of an old family homestead. I have also looked into adjudication claim A79-04030 which has a legal document splitting the original property.

The original property was owned by Joe Caha and Joseph Leroy Helm. They in turn sold the property to Henry J. and Capitola Elfers in 1948. The deed between these two parties does mention that this property was going to be used for irrigation. However, it does not mention which acres were under irrigation at the time.

The letter that I received from Mr. Bonato that was sent to him from Melvin Gill states that his parents purchased the property in 1948. I am assuming that Mr. Gill is the decedent of the Elfers. In this letter Mr. Gill states that the ditch that Mr. Bonato uses for irrigation was in place in 1948 and that the property that Mr. Bonato owns was apart of the original homestead.

Mr. Gill also referred to adjudication claim A79-04030. In this adjudication claim I found court records of a split of this property from George Gill to Melvin Gill and Deward Gill. In these records I found that the property claimed by Mr. Bonato was awarded to Deward Gill and that Hollenbeak Mortgage held a lean against this property and were awarded a judgement against the Deward Gill portion of the property.

There is also the property deed for the purchase of the property by Mr. Bonato. All of these paper seem to be in order. My only concerns are that the letter signed by Mr. Gill was not notarized and that Mr. Bonato's deed states he purchased the property from Searchlight trust and not Hollenbeak Mortgage. Other than these two discrepancies I feel Mr. Bonato has shown that this ditch was in use in 1948 and that it has been used since that time.

Steve could you look over these papers and let me know if they are adequate to process the permit application. I am also going to route this information and permit through Jan Shurte to see if there is enough documentation to process an adjudication claim for this property. If the owner can file a late claim on this property then he can maintain his 1948 priority date.



**Steven M
Spencer/R4/USDAFS**

08/06/2004 09:08 AM

To Greg Taylor,

cc Pete Deane/R1/USDAFS, Jack M Carlson/R1/USDAFS,
cmchugh@idwr.state.id.us

bcc

Subject Bonato

I spoke with you earlier this year about FS concerns with Bonato water right claims in the SRBA. As I recall you planned to be conducting field examinations for Basin 79 sometime in August and you indicated that you would be amiable to the FS showing to you the concerns and problems we see with Bonato's water right claims. We are still interested in getting on the ground with you. If you have some time available we would like to coordinate a date with you to accomplish this. I also have from the IDWR Western Region file some background information that may give you a sense of the issues we have with their water diversion that is on the National Forest. I am sending this information to you in the US Mail today. Let me know when we might be able to go out with you to see this situation in the field after you've had a chance to look at the material being mailed. If you have any questions about this matter please contact me. Thank you.

Steve Spencer
Boise Adjudication Team
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Boise, ID 83706

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1/27/1908 Homestead Entry Patent Certificate No. 5347 for 160 acres to actual settler, Hayden Jenkins. This is under the authority of the Homestead Act of 1862, and included the SESE of Section 5 (at that time within the Weiser National Forest) with the balance of the land in Section 4.

6/23/1910 Patent No. 140233 to Henry J. Elfers by a "sale of the Public Lands" under the Act of Congress of the 24th of April, 1820. This is for 160 acres adjacent to Jenkins in Section 4.

3/28/1912 Patent to John Kokta, actual settler for 160 acres adjacent to Elfers including Lot 1 (NENE) of Section 5 (within the Nez Perce National Forest) and Lots 3 and 4 of Section 4 under the Homestead Act of 1862.

8/4/1915 Patent to Frank Kolar, actual settler for 107 acres adjacent to Elfers and Kokta, all in Section 4 under the Homestead Act of 1862.

2/17/1948 Deed in IDWR files seems to indicate that on this date property, totaling 853.36 acres, professed to be owned by Gills (George and Opal), and later Deward and Melvin, a fraction of which is now owned by Bonato (SESE Sec. 5) was sold to Joe Caha and Joseph Helm by Henry and Capitola Elfers.

11/25/1974 IDWR receives Claim To A Water Right under Section 42-225a, Idaho Code (statutory claim) from George and Opal Gill, signed 11/5/1974, for 79-04030.

1/5/1979 Date of death for George Gill.

8/31/1982 IRS places federal estate tax lien order on the estate of George Gill.

7/22/1988 Melvin Gill files claim to water right 79-04030 in the SRBA with IDWR based on a statutory claim.

9/22/1988 Deward Gill files claim to water right 79-04030 in the SRBA with IDWR based on a statutory claim.

11/4/1991 Deward Gill awarded certain property in the Judgement and Decree of Partition in the Second Judicial District between Deward Gill et al and Melvin Gill et al. (Division of their father's real property).

2/6/1992 Notice of change of ownership for A79-04030 from Melvin Gill to Deward Gill based on court order received by IDWR. (Melvin Gill no longer has any interest in 79-04030.)

7/15/1992 Letter from IDWR to Deward Gill indicating another change of ownership to remove Deward's daughters from two claims in the SRBA, thereby making him the only claimant to 79-04030.

8/18/1997 Warranty Deed to Bonato's.

4/30/1998 Application for permit 79-07263 received by IDWR. Receipt for payment of fees is to "Wooden Bucket Retreat".

6/10/1998 Letter from IDWR to Bonato about the Salmon River Moratorium and the application they filed 4/30/1998. The moratorium prohibits approval of new surface water uses. A waiver can be obtained if the use began prior to November 1987 or is for domestic purposes as per Section 42-111, Idaho Code. Without a waiver the application will be held pending changes in the moratorium.