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Carter Fritschle
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720-7374
Boise, ID 83720-7374

RECEIVED

DEC 21 2017

DEPARTMENT OF
WATER RESOURCES

Re: Riverstone Master Association's CSRBA Claims

Dear Carter:

As you and I have been discussing, Riverstone Master Association ("Riverstone") has claims filed in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA") for use on its property. The Riverstone property was originally two parcels, one of which was owned by Central Pre-Mix Concrete, the other of which was owned by W-I Forest Products, Inc.¹ Riverstone's CSRBA claims are best reviewed by categorizing them by the prior owners, then understanding the combination of those properties into Riverstone.

Central Pre-Mix Concrete

According to the backfile for water right no. 95-7090, Central Pre-Mix Concrete ("Central Pre-Mix") was a successor to Secaur Cement ("Secaur").² The Idaho Secretary of State shows that Secaur was incorporated from April 1, 1946 until July 22, 1958, when its name was changed to Central Pre-Mix Concrete Co. of Coeur d'Alene. Because Secaur and Central Pre-Mix are one in the same, it is not surprising that in Line 10 to the January 1, 1970 application for permit no. 95-7090, Central Pre-Mix stated it was seeking a water right for a use already developed by Secaur:

We propose to pump water at a point previously used by Secaur Cement Products to wash concrete aggregate. The water will flow through an 8" pipe following nearly the same route as before.

The waste water will contain only silt which will be settled out in a pond. There will be no water flowing away at any time but [sic] seep away.

¹ Riverstone also has a claim, 95-4409, for a well that was statutorily claimed by George Perry. This letter does not address that claim.

² Secaur Cement was operating at least as early as 1958. In an online historical article, it is stated that Secaur was providing concrete for restructuring some areas along the Coeur d'Alene waterfront for the 1958 Diamond Cup boat races on Lake Coeur d'Alene. See <https://www.lakecoeurdalene.com/blog/2013/5/> (last visited 11/9/2017) ("Secaur Cement supplied most of the concrete and fill used."). Citing the *Coeur d'Alene Press*, the same author states that the 1958 Diamond Cup took place on June 28. See <https://www.lakecoeurdalene.com/blog/2013/06/hydromania-the-1958-diamond-cup-race-and-i/> (last visited 11/9/2017).

Emphasis added.

IDWR's staff analysis, dated February 13, 1970, confirmed, "Water will be pumped at a point previously used by Secaur Cement Products to wash concrete aggregate." Emphasis added. There are numerous references to the pre-existing pond in the backfile for water right no. 95-7090.

On July 31, 1975, water right no. 95-7090 was issued by IDWR, authorizing a diversion rate of 1.68 cfs from the Spokane River, with an annual volume of 162 acre-feet. The purpose of use was described as Industrial.

USGS aerial images from 1971 and 1975 show a pond in the northern portion of the Central Pre-Mix property (circled in yellow):



1971 USGS



1975 USGS

As late as 2005, aerial imagery from Google Earth shows the Central Pre-Mix pond (circled in yellow) still in existence, yet had moved south.



2005 Google Earth

With knowledge that Secaur was incorporated on April 1, 1946, and was providing concrete to Coeur d'Alene in 1958 for the Diamond Cup boat races on Lake Coeur d'Alene, together with the statements in the backfile for 95-7090 that Central Pre-Mix was obtaining a water right for a use that was already in existence by Secaur, it is reasonable to conclude that the site was in use prior to the January 1, 1970 application for permit no. 95-7090. The aerial images from the USGS support the fact that a pond was present by at least 1971, but was not present by as early as 1954 (*see* page 6 for a 1954 USGS aerial photo). With knowledge that Secaur was providing concrete to the Coeur d'Alene waterfront for the 1958 Diamond Cup, together with the disturbance seen in the 1971 USGS aerial image, it is likely the property was developed sometime after 1954, but no later than 1958. The best evidence as to quantity comes from the license – 1.68 cfs and 162 acre-feet. While

the license describes Industrial as the purpose of use, it does not describe Industrial Storage as a purpose of use, despite there being a description of the pond in the narratives. Included with this letter is a beneficial use claim, 95-17381, reflecting the historic use, including storage, that predates the 1971 mandatory permit statute.

W-I Forest Products

The second property that makes up Riverstone, and which is immediately to the east of the Central Pre-Mix property, was previously owned by W-I Forest Products, Inc. ("W-I"). In 1982, the following statutory claims were filed by W-I with IDWR:

	Priority Date	Source	Quantity	Purpose of Use
95-4507	1/1/1909	Spokane River	2.23 cfs	Fire Protection
95-4508	1/1/1959	Spokane River	2.23 cfs	Fire Protection
95-4509	1/1/1909	Spokane River	2.23 cfs (1.79 cfs Commercial; 0.44 cfs Irrigation)	Commercial, Irrigation (22 acres)

The statutory claims were supported by an August 30, 1982 letter from Lawrence Watson, written on W-I letterhead (the "Watson Letter").³ Mr. Watson explains:

I was employed by Northwest Timber Company beginning in 1948 and retiring from that plant in 1981. To the best of my recollection, water was drawn from the Spokane River and utilized by Northwest Timber (formerly Stack & Gibbs and later Winton Lumber Company) by the following means and from the accompanying dates of pump installation:

1000 GPM Steam Pump – operating 1909

1000 GPM Dayton-Doud Service Pump – operating 1909

1000 GPM Gasoline driven vertical turbine fire pump – installed 1959

The water was/is used for controlling dust in the yard, providing water to the steam boilers, and for use in the sawmill, for irrigating the grass and hay, and for fire protection.

Emphasis added.

The statements made in the Watson Letter are verified by the historical record, particularly the Sandborn fire maps, photographs, and aerial images.

In the 1908 Sandborn fire map for Coeur d'Alene, the Stack & Gibbs facility is referenced on Sheet 1, then shown in detail on Sheet 25. Since I know you have copies of the Sandborn maps, I will not

³ Based on genealogical records, Mr. Watson was born on May 17, 1919 in Kootenai County. He died on May 7, 2005 in Coeur d'Alene. It appears Mr. Watson lived his entire life in Kootenai County, and would have had personal knowledge of the W-I property from his time as an employee, as well as possibly before.

include them with this letter. As stated by Mr. Watson, Stack & Gibbs was a predecessor to W-I. According to the 1908 Sandborn map, water was pumped from the Spokane River for use at the Stack & Gibbs mill. According to the Idaho Secretary of State, Stack & Gibbs filed articles of association on August 4, 1905; therefore, Stack & Gibbs was likely operating prior to the 1908 Sandborn fire map.⁴ In the 1921 Sandborn map for Coeur d'Alene, and according to Sheet 1, Stack & Gibbs had been replaced by Winton Lumber Company, which is shown in detail on Sheet 37. As stated by Mr. Watson, Winton Lumber was a predecessor to W-I. Again, water was pumped from the Spokane River for use at the Winton Lumber mill. In 1954, Sandborn corrected some of its records. Winton Lumber still appears on Sheet 1; however, on Sheet 37, Winton Lumber has been replaced by Northwest Timber Company, with the only other apparent correction showing that the piles of timber have been removed.

Photographs obtained from the Museum of North Idaho support the Sandborn maps and the Watson Letter, verifying water was diverted from the Spokane River for use at the mill through at least 1990:



Museum of North Idaho – 1920



Museum of North Idaho – 1950

⁴ According to page 2 of a 2015 newsletter from the Museum of North Idaho, Stack & Gibbs purchased the land in 1905 from the “Department of Interior . . . and built a sawmill” See http://www.museumni.org/Newslet_Sum_2015.pdf (last visited 11/9/2017).



Museum of North Idaho – 1960

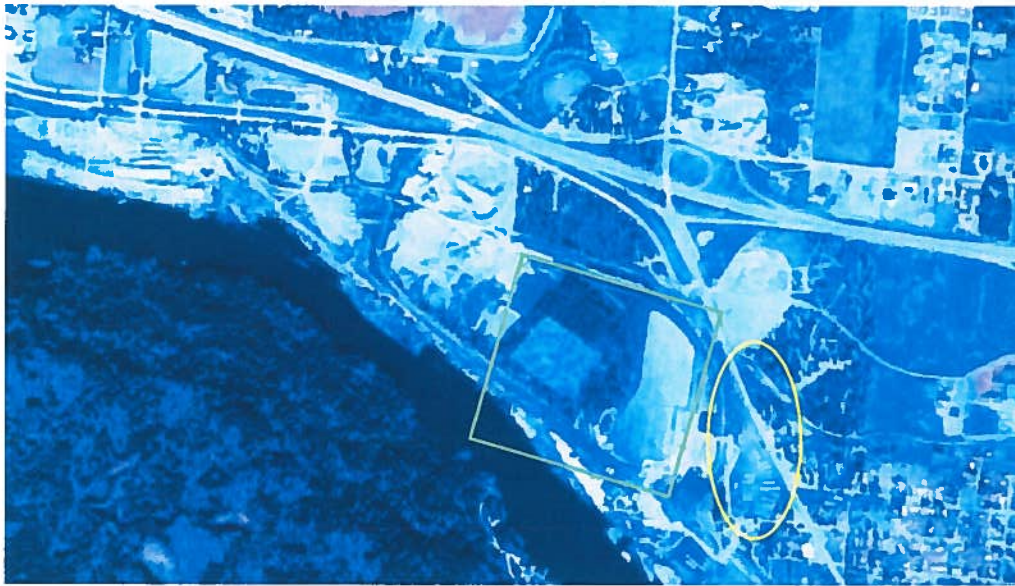


Museum of North Idaho – 1990

USGS aerial images from 1954, 1971, and 1975 further support the extent of beneficial use, including Mr. Watson's statement regarding irrigation of approximately 22 acres (outlined in green), as well as the presence of what appears to be a pond (circled in yellow) immediately to the east of the mill and abutting what is known today as Northwest Boulevard. The pond appears full at the time the 1954 USGS aerial photo was taken, then appears empty in the 1971 and 1975 USGS aerial photos. The pond may have been used for floating logs, fire protection, and irrigation storage for the fields west of the mill site.



1954 USGS



1971 USGS



1975 USGS

The contents of the Watson Letter, and hence much of the statutory claims, are verified by the Sandborn maps, the photographs from the Museum of North Idaho, and the USGS aerial photographs. While the Watson Letter says water was being put to use at the Stack & Gibbs mill as of 1909, the Sandborn maps demonstrate water was being put to use at Stack & Gibbs at least as early as 1908. The Idaho Secretary of State further shows that Stack & Gibbs was incorporated on August 4, 1905; therefore, a priority date of August 4, 1905 is supported. The place of use described by Mr. Watson in the statutory claims should also include land in the SENE and Lot 4 (NESE) of Section 10. To account for the presence of the pond in the aerial images, the purposes of use should include storage. Included with this letter are amended claims for 95-4507 and 95-4509 to reflect the historic understanding of use at the W-I property.

Riverstone

The current Riverstone project encompasses both the Central Pre-Mix and W-I properties. Riverstone began work on the properties in the spring of 2004, with entitlements in place with the City of Coeur d'Alene. Based on dates of photographs, by October 10, 2005, the current pond at Riverstone had been excavated, with the liner installed by May 22, 2006, and the first fill occurring by the spring of 2007.



October 10, 2005



May 22, 2006

As understood from Riverstone, the current pond has an approximate surface area of 6 acres, with an approximate volume of 66 acre-feet. The current pond fills by diversion from the Spokane River, then is used for aesthetic, recreation, and irrigation. Water from the pond irrigates approximately 5 acres.

Based on aerial photography from 1954, 1971, and 1975, there have historically been ponds on both the Central Pre-Mix and W-I properties, which were filled by water from the Spokane River. The current pond at Riverstone is consistent with the historic use of the property and diversion of water from the Spokane River at the same location.

As an extension of past practice, and with the consolidation of the Central Pre-Mix and W-I properties, Riverstone has resumed the use of water under water right nos. 95-4507, 95-4508, 95-4509, and 95-17381. Based on the Watson Letter, and as supported by photographs, irrigation of the property has historically occurred, and water may very well have been pumped from the pre-existing ponds for that purpose. The ponds that were part of the Central Pre-Mix and W-I properties likely also stored water for non-consumptive aesthetic and recreation purposes of use, in addition to fire protection. The photographs clearly show that ponds have been an historical feature and use associated with both Central Pre-Mix and W-I properties. With current use substantially the same as historic use, no accomplished transfer analysis is necessary when reviewing claim nos. 95-4507, 95-4508, 95-4509, and 95-17381. Because present beneficial use is within the historic diversion rates, volumes, and irrigated area, there is no enlargement of the claimed water rights. To the best of Riverstone's knowledge, no claims of injury have been asserted as to Riverstone's use. If Riverstone's claims are recommended by IDWR in the CSRBA, third parties will have an additional opportunity to raise a claim of injury.

If an accomplished transfer is necessary to recognize current use, Idaho Code § 42-1425, the requirements of the statute are met:

Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state . . . prior to January 1, 2006, for the northern Idaho adjudications authorized by section 42-1406B, Idaho Code, may be claimed in the applicable general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures

Idaho Code § 42-1425.

Idaho Code § 42-1425 does not state that changes had to be “completed” by January 1, 2006. The statute simply states, “[a]ny change . . . made . . . prior to January 1, 2006 . . . may be claimed in the applicable general adjudication” Reading the Idaho Code § 42-1425 to require commencement of the change prior to January 1, 2006, but not completion of the change until sometime later, is consistent with other IDWR statutes. Applications for permit are given a priority date based on when they are filed with IDWR, not when they are completed. Idaho Code § 42-219. Applications for transfer are filed with IDWR, then approved by the Director sometime later, with the applicant given up to five years to complete the transfer and the ability to obtain an extension for an additional five years to effect the transfer. Idaho Code § 42-222. Moratorium orders issued by the Director likewise allow the continued development of previously issued permits, despite the lack of proof of beneficial use. See e.g. *Order Extending Temporary Moratorium In the Matter of the Malad Valley Ground Water Management Area* (November 3, 2017). The commonality herein is if a use or change is initiated, water users are given a reasonable period of time in which to complete the appropriation or transfer.

Here, prior to January 1, 2006, Riverstone dug the pond, with entitlements in place from the City of Coeur d’Alene, and the point of diversion for the pond located at T. 50N, R. 4W, Section 10 NESE. While Riverstone did not complete the work until sometime in late 2006 or early 2007, with the first fill of the pond by spring of 2007, the accomplished transfer statute is satisfied as Riverstone made the change prior to January 1, 2006, completing the change shortly thereafter.

Sincerely,



Chris M. Bromley