

10/26/2006

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

RIGHT NUMBER: 67-10535

NAME AND ADDRESS: WHEELER FAMILY TRUST
PO BOX 871
WEISER ID 83672

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.060 CFS

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 04/01/1910

POINT OF DIVERSION:

T11N R06W S26 SESWSW Within WASHINGTON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
DOMESTIC	01/01 12/31	0.040 CFS

Domestic use is for 1 home.

PLACE OF USE: STOCKWATER Within WASHINGTON County

T11N R06W S26 SWSW

DOMESTIC Within WASHINGTON County

T11N R06W S26 SWSW

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 quantity of water decreed for this water right is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 3 horses and 30 chickens.



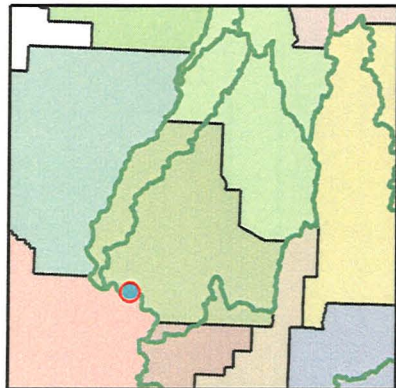
Idaho Department of Water Resources

SRBA Recommendation:

67-10535

Legend

-  Point of Diversion
-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



Washington County
IDWR Basin 67



0 0.1 0.2 Miles



Prepared by J. Dean
On Thursday, October 26, 2006
1987/88 Aerial Photography

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-10535 V1

WATER RIGHT NUMBER: 67-10535 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WHEELER FAMILY TRUST PO BOX 871 WEISER, ID 83672 (208)549-0104

Priority Date: 04/01/1910

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	01/01 to 12/31	0.020 CFS	
DOMESTIC	01/01 to 12/31	0.040 CFS	
	<u>Total Diversion:</u>	0.060 CFS	

Location of Point(s) of Diversion

GROUND WATER	SE1/4SW1/4SW1/4	Sec. 26, Twp 11N, Rge 06W, B.M.
WASHINGTON County		

Place of Use

STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	06W	26												X					

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	06W	26												X					

Conditions of Approval:

1. N13 The quantity of water under this right shall not exceed 13,000 gallons per day.
2. X02 Stockwater use is for 3 horses and 30 chickens.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-10535 V1

3. C18 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.
4. X01 Domestic use is for 1 home.
5. N11 The quantity of water decreed for this water right is not a determination of historical beneficial use.

Remarks:Comments:

1. jdean 10/26/2006 No EOP

Comment: There was no evidence of priority submitted for this claim, therefore the small domestic and stock portions of this right were recommended and the irrigation was not.

2. jdean 10/26/2006 Small D&S

Comment: The small D&S portions of this claim were recommended as claimed.

Dates and Other Information:

Decreed Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Defendant:
 Plaintiff:
 Civil Case Number:
 Judicial District:
 Notice of Error Flag:
 State or Federal: S
 Owner Name Connector:
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Summary			10/26/2006	jdean	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
POU	10/26/2006 2:22:59 PM	jdean	Updated shape for Active POU
POU	10/26/2006 2:23:09 PM	jdean	Updated PLS for Active POU
POU	10/26/2006 2:23:32 PM	jdean	Updated shape for Active POU
POU	10/26/2006 2:23:41 PM	jdean	Updated PLS for Active POU
POD	10/26/2006 2:22:09 PM	jdean	Updated PLS
POD	10/26/2006 2:21:53 PM	jdean	Updated shape

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-10535 V1

POU	10/26/2006 2:23:57 PM	jdean	Updated PLS for Active POU
Summary	10/26/2006 2:32:46 PM	jdean	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (Yes) 4. Is any portion of the claim be recommended? (No) 5. Does this right have any combined use limits with other rights? (No) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?

Water Supply Bank:



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 21, 2005

ATTN: TONY EDMONSON
WHEELER FAMILY TRUST
PO BOX 871
WEISER ID 83672

Re: Snake River Basin Adjudication (SRBA) claim 67-10535

Dear Mr. Edmonson,

Thank you for your correspondence regarding the letter IDWR sent requesting Evidence of Priority. Hopefully I can address some of your questions and concerns.

I would like to apologize personally for the short deadline stated on the first letter. Without a deadline, then it is not uncommon that I do not get a response. I would like to assure you that it is not too late to supply the evidence of priority requested and I do greatly appreciate your response.

Initial review of claim 67-10535 shows that the Wheeler Family Trust claims domestic use, stockwater use, and 9 acres of irrigation from a well commencing on 4-1-1910. The letter I sent was requesting evidence to support that date.

In your letter, you stated that you had to **“prove your water rights on more than one occasion”**. That proof could be exactly what I need to support the priority date. What I have is a claim filed in 1989, which in fact claims an existing water right, but there is nothing in the file supporting that claim. My job is to reviews and verify and validate the elements of a SRBA claim. One of the first things I have to validate is the priority date.

I researched well logs in the area and did find one well log in the name of James Wheeler (enclosed). However this well log shows construction of a new well in 1976 and lists the place of use in a different 40 acre tract than where you claimed irrigated ground. In addition, a well drilled in 1976 for use of anything other than domestic required application for a water right permit, which I do not seem to have on record (this is different than a drilling permit).

On March 25, 1963 the mandatory permit statute for ground water was passed. What this statue did was state that any new appropriation of ground water after March 25, 1963 required a permit.

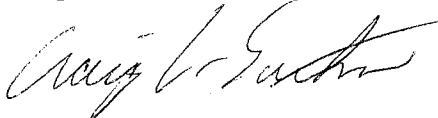
I do understand that evidence of priority supporting 9 acres of irrigation from a well in 1910 is difficult to come by. In a lot of cases with a well this old, the well was hand dug at the time of homesteading and used for domestic and stock purposes. It was later, when the technology was available to pump a lot of water from the well, that the irrigation practice commenced. If this is the case, then we would be looking to support a priority date of when the irrigation of the 9 acres started rather than when the house well was dug.

In order for me to recommend any irrigation over ½ acre, I need evidence supporting beneficial use at least prior to March 25, 1963 (date of the mandatory permit statute). As stated in the previous letter, even an affidavit from someone that can speak with first hand knowledge of the first date of use, the extent of use, and how they know.

At this time, if I do not receive any additional information from you or other representatives of this claim, I can only recommend Domestic and Stock water use which provides up to ½ acre of irrigation as defined by Idaho code 42-111. The preliminary directors report for basin 67 is tentatively scheduled to be completed in Spring of 2006. I hope to receive evidence as soon as possible but I will not set a deadline at this time.

Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig L. Saxton", written in a cursive style.

Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

Enclosure(s)

USE TYPEWRITER OR
BALL POINT PEN

State of Idaho
Department of Water Resources

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER Name <u>James Wheeler</u> Address <u>Weiser, Idaho</u> Owner's Permit No. _____		7. WATER LEVEL Static water level <u>23</u> feet below land surface Flowing? ☐ Yes ☒ No G.P.M. flow _____ Temperature <u>58°</u> F. Quality <u>Good</u> Artesian closed-in pressure _____ p.s.i. Controlled by ☐ Valve ☐ Cap ☐ Plug																																	
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____		8. WELL TEST DATA ☒ Pump ☐ Bailer ☐ Other Discharge G.P.M. <u>30</u> Draw Down <u>11</u> Hours Pumped <u>2</u>																																	
3. PROPOSED USE ☒ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type) _____ ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste disposal or injection		9. LITHOLOGIC LOG <table border="1"><thead><tr><th rowspan="2">Hole Diam.</th><th colspan="2">Depth</th><th rowspan="2">Material</th><th rowspan="2">Water Yes, No</th></tr><tr><th>From</th><th>To</th></tr></thead><tbody><tr><td>8</td><td>0</td><td>3</td><td>SOIL HEAVY</td><td>✓</td></tr><tr><td>8</td><td>3</td><td>30</td><td>CLAY SANDY</td><td>✓</td></tr><tr><td>6</td><td>30</td><td>35</td><td>SAND FINE</td><td>✓</td></tr><tr><td>6</td><td>35</td><td>35</td><td>SANDY GRAVEL</td><td>✓</td></tr><tr><td>6</td><td>35</td><td>41</td><td>GRAVEL MEDIUM</td><td>✓</td></tr></tbody></table>		Hole Diam.	Depth		Material	Water Yes, No	From	To	8	0	3	SOIL HEAVY	✓	8	3	30	CLAY SANDY	✓	6	30	35	SAND FINE	✓	6	35	35	SANDY GRAVEL	✓	6	35	41	GRAVEL MEDIUM	✓
Hole Diam.	Depth		Material		Water Yes, No																														
	From	To																																	
8	0	3	SOIL HEAVY	✓																															
8	3	30	CLAY SANDY	✓																															
6	30	35	SAND FINE	✓																															
6	35	35	SANDY GRAVEL	✓																															
6	35	41	GRAVEL MEDIUM	✓																															
4. METHOD DRILLED ☒ Cable ☐ Rotary ☐ Dug ☐ Other																																			
5. WELL CONSTRUCTION Diameter of hole <u>6</u> inches Total depth <u>41</u> feet Casing schedule: ☒ Steel ☐ Concrete Thickness <u>1/4</u> inches Diameter <u>6</u> inches From <u>1</u> feet To <u>41</u> feet Was casing drive shoe used? ☒ Yes ☐ No Was a packer or seal used? ☐ Yes ☒ No Perforated? ☒ Yes ☐ No How perforated? ☐ Factory ☐ Knife ☒ Torch Size of perforation <u>3/16</u> inches by <u>6</u> inches <u>40</u> perforations <u>35</u> feet <u>41</u> feet perforations feet feet perforations feet feet Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☒ No Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>20</u> Material used in seal ☐ Cement grout ☒ Packing clay ☐ Well cuttings Sealing procedure used ☐ Sherry pit ☐ Temporary surface casing ☒ Overbars to seal depth																																			
6. LOCATION OF WELL Sketch map location must agree with written location. <u>(67)</u> Subdivision Name _____ Lot No. _____ Block No. _____ County <u>PAIETTE</u> <u>SE 34</u> Sec. <u>24</u> T. <u>11</u> N. R. <u>6</u> W.		10. Work started <u>5-10-76</u> finished <u>5-12-76</u>																																	
		11. DRILLER'S CERTIFICATION Firm Name <u>Wheeler Drilling Co.</u> Firm No. <u>53</u> Address <u>214 E. 1st St. Weiser, Idaho 83454</u> Signed by (Firm Officer) <u>James Wheeler</u> and (Operator) <u>Jim Sullivan</u>																																	

USE ADDITIONAL SHEETS IF NECESSARY

FORWARD THE WHITE COPY TO THE DEPARTMENT

and in

WELL DRILLER'S REPORT

DECEMBER

FORWARD THE WHITE, BLUE, AND PINK COPIES TO THE DEPARTMENT

08 December 2005

RECEIVED
DEC 13 2005
DEPARTMENT OF
WATER RESOURCES

Attn: Craig L. Saxton
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: 67-10535 Water adjudication request

Dear Mr. Saxton,

I am the Trustee for the Wheeler Family Trust to whom you mailed a letter dated 30 August 2005, seeking proof of a water right priority date. It was received on September 6th and required a response only 10 days later, by September 16th, 2005! This letter came during my absence and was not reviewed until after the response deadline. At this point, I don't know whether we can appeal our apparent failure to respond, but I am compelled to express my dismay and outrage nonetheless.

Having lived in Idaho for 25 years, I am reasonably familiar with the legal wrangling surrounding the SRWA controversy. For my own property, I've had to prove my water right on more than one occasion but suspect it was pointless. This is for a home built in 1907, which has used ground water for domestic and agricultural purposes since that time. I'm lucky in that I've maintained a relationship with the descendants of this original land/water owner. That said, I'd be hard pressed to provide the kind of evidence now being requested of Edward & Madeline Wheeler to establish a priority date for their beneficial water use, much less do it in 10 days!

The Wheelers acquired the property in question in 1969 and have used their water right for both agricultural and domestic use ever since. They purchased this farm from Sam Emrich, who I understand had owned this property for 30 or more years himself, and used his water right for domestic and agricultural purposes. However, Sam has long since passed away and the Wheelers themselves are now in their 80's. It would take a fair amount of time to search their basement and other locations where they've stored pieces of their life for the past 36 years, to find the kind of tangible evidence required to prove their beneficial use, much less that of a pre-existing use which as we all know is equally important. While we are prepared to do this, it's unrealistic to think this could be done in 10 days under the best of circumstances, which is really the jist of my letter.

I am absolutely appauled that the State of Idaho could treat its citizens so callously in such an important matter. To give citizens 10 days to prove a water right priority date, which could easily date back 100 years, is worse than cold hearted. It's downright disgraceful and outright dishonest! I would appreciate your explanation and justification for such a timeline and whether our claim can be appealed. Looking forward to your response, I remain

Respectfully,


Tony Edmondson, Trustee

SCANNED

DEC 13 2005



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 30, 2005

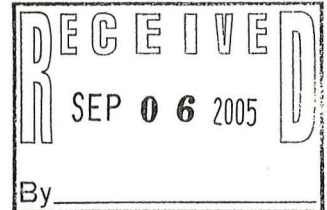
67-10535

Wheeler Family Trust

PO BOX 871

WEISER, ID 83672

RESPONSE DEADLINE
SEPTEMBER 16, 2005



Re: Evidence of Priority Date

Dear Claimant:

The Notice of Claim to a Water Right (claim) identified with the number(s) shown above your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed. **Proof must be provided by the claimant supporting the priority date claimed and the historic use of the water.**

Enclosed you will find a computer printout of your claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. A map of the general area stated in your claim is also enclosed. If you irrigate, please outline the location of lands irrigated based on your claim, as well as the location of any points of diversion, if possible. If you have a claim other than irrigation, please outline the location of your place of use (i.e. house) and note the location of wells or other points of diversion. Please submit the completed map along with your evidence of priority. This will assist me in making a more accurate recommendation of your claim(s).

PLEASE NOTE: If no evidence is submitted, IDWR will recommend the SRBA Court decree the claim be disallowed. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

Please submit the required evidence supporting the priority date and the historic use by the date shown above, referencing all documents with the corresponding claim number. Send the documents in the enclosed envelope to assure it arrives at the correct location. If you have questions not covered by this letter or the enclosed pamphlet, please contact this office. You can contact the Basin 67 team via e-mail at B67questions@IDWR.idaho.gov. If you wish to call, our toll free number is 1-800-451-4129.

If you no longer own the property to which the claim is appurtenant, please forward this correspondence to the present owner, or return it to Idaho Department of Water Resources (IDWR). If you have received this correspondence from the previous owner of the property, it is recommended that you file a Change of Ownership form with IDWR in order to receive future mailings and to participate in the Adjudication.

Sincerely,

Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

Enclosures

SCANNED

DEC 13 2005

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: A67-10535
Date Received: 10/04/1989
Receipt No: MO047P7
Received By: JPC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: WHEELER FAMILY TRUST 208-549-0104
Address: P.O. BOX 871
WEISER, ID 83672

2. Date of Priority: APR 01, 1910

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
11N	06W	26	SE	SW	SW		WASHINGTON

5. Description of diverting works:
WELL WITH PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.180		
DOMESTIC	01/01	12/31	0.040		
STOCKWATER	01/01	12/31	0.020		

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

8. Total consumptive use is 25.5 Acre Feet Per Annum.

9. Non-irrigation uses:
D/ 1 HOUSE, S/ 3 HD.HORSE, 30 CHICKENS.

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
11N	06W	26	SW	SW		IRR	9.0

A67-10535

Page 1

Date: 10/04/89

SCANNED
APR 09 2004

MICROFILMED
OCT 05 1992

Section Acres 9.0

11. Place of use in counties: WASHINGTON

13. Other Water Rights Used:
SHARES IN WEISER IRR. DIST.

15. Basis of Claim: BENEFICIAL USE

MICROFILMED
OCT 05 1992

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: _____

For Organizations:

I do solemnly swear or affirm that I am TRUSTEE of
Title
WHEELER FAMILY TRUST, that I have signed the foregoing
Organization
document in the space below as TRUSTEE of
Title
WHEELER FAMILY TRUST and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

TRUSTEE
Title and Organization

10-04-89
Date

State of Idaho)
County of Franklin) SS.

Subscribed and sworn (or affirmed) before me this 4 day
of Oct 19 89

Joe Dal Corso
Notary Public

Seal

Residing at Bonita

My Commission Expires 6/2/94



11w
6w
26
SE SW SW

MICROFILMED
OCT 05 1992