

Nelson, Dan

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Monday, November 06, 2017 9:41 AM
To: Saxton, Craig; kosterdock@welchcomer.com
Cc: Courtney, Andrea; Fritschle, Carter; Peppersack, Jeff; Keen, Shelley; mikeg@nkwsd.com; nmaiani@welchcomer.com; Nelson, Dan; Mike Galante (mikeg@nkwsd.com)
Subject: RE: 41097 - NKWD Mountain View Water Rights [IWOV-GPDMS.FID525891]
Attachments: (2017, 11-06) Supplemental Evidence Review 95-4027.pdf

Thank you, Craig, for your speedy review of the materials.
We will follow up.

-Chris

CHRISTOPHER H. MEYER



chrismeyer@givenspursley.com / www.givenspursley.com

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]
Sent: Monday, November 6, 2017 8:18 AM
To: kosterdock@welchcomer.com
Cc: Courtney, Andrea <Andrea.Courtney@idwr.idaho.gov>; Fritschle, Carter <Carter.Fritschle@idwr.idaho.gov>; Peppersack, Jeff <Jeff.Peppersack@idwr.idaho.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; mikeg@nkwsd.com; Christopher H Meyer <ChrisMeyer@givenspursley.com>; nmaiani@welchcomer.com; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: RE: 41097 - NKWD Mountain View Water Rights

Dear Ms. Osterdock,

Your October 27, 2017, e-mail with an attached memo containing supplemental evidence to support CSRBA claim 95-4027, was forwarded to me for review. I have reviewed the information and attached a memo summarizing my review. Your e-mail contained a couple of questions which I tried to address in the summary portion of the attached memo.

Please feel free to contact me if you have further questions.

Respectfully,

Craig L. Saxton
Adjudication Technical Analyst
Craig.saxton@idwr.idaho.gov
(208) 287-4916

From: Karen Osterdock [mailto:kosterdock@welchcomer.com]
Sent: Friday, October 27, 2017 10:08 AM
To:
Cc: 'Mike Galante' <mikeg@nkwsd.com>; Christopher H Meyer <ChrisMeyer@givenspursley.com>; Necia Maiani <nmaiani@welchcomer.com>
Subject: 41097 - NKWD Mountain View Water Rights

Shelley, Jeff and Dan,

I am working with NKWD and Chris Meyer on the District's water rights and adjudication claims. I believe Chris has talked to Shelley previously regarding filing a claim on 95-4027 (for Mountain View Terrace). The issue here was that the statutory claim was filed with a priority date of 9/1/1963 (after the mandatory permit date).

We have done some research and have found additional documentation that we believe shows that beneficial use was prior to the mandatory permit date. Attached is a memo presenting what we've found. Based on this, we have two questions for you:

1. Do you think this is enough documentation to substantiate a claim?
2. Should we submit a claim on 95-4027, 95-4299, or both?

Let me know if you have any questions or concerns.

Thanks,

Karen Osterdock, PE | Project Manager

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Memorandum

Date: November 6, 2017

To: File 95-4027

From: Craig L. Saxton *CLS*

Re: Review of Memorandum of Karen Osterdock, P.E. date October 26, 2017

On October 27, 2017, IDWR received by e-mail, a Memorandum by Karen Osterdock, P.E., dated October 26, 2017. The memorandum presented additional information to support historical water use claimed under CSRBA claim 95-4027.

The intent of this memo is to summarize my review of that information.

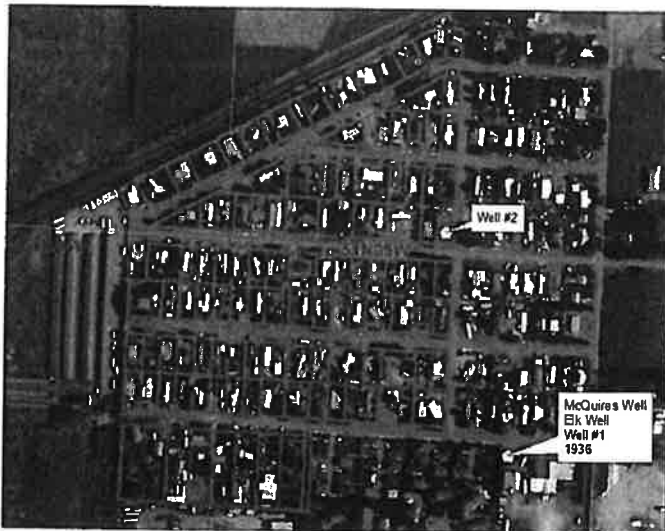
Claim 95-4027

Claim 95-4027 claims a priority date of September 1, 1963 (after the mandatory permit statute), for the use of ground water for municipal use. The CSRBA claim identifies 25 points of diversion which, to my understanding, are all the wells in the North Kootenai Water and Sewer District (NKWD) portfolio. The claimed place of use includes the entire NKWD service area.

The point of diversion listed on the original statutory claim 95-4027 is identified as being located in:
T51N, R5W, S32, NESW

This POD is referenced as Well #2 in the Osterdock memo and is located on a lot located in the NW corner of the intersection of N. Huckleberry Rd. and W. Echo Dr.

The POU description on the statutory claim 95-4027 is identified as the "1st Addition to Mountain View Terrace".



Claim 95-4299

Statutory claim 95-4299 claims a 1936 priority date and describes the point of diversion in:

T51N, R5W, S32, SESW

This is consistent with what is identified as Well #1, aka. "The Old McGuire Well", aka. Elk Well.

Item 5 on the original statutory claim record for 95-4299 describes the means of diversion of water with a statement, "*Standby system for the main system*". Further research indicates that the main system was described under statutory claim 95-4300 which was also not claimed in the CSRBA. The POU for 95-4300 is the same as 95-4299 and does not include the **Mountain View Terrace** Subdivision or the **1st Addition to Mountain View Terrace** subdivision.

So, according to the original statutory claim filed in 1974, Well 1 was used as a backup well for a different place of use than what is currently claimed under CSRBA claim 95-4027.

Supplemental Documentation Review

Attachment 1:

- Letter dated September 16, 1982, stating that the old McGuire well was not available during and inspection of the Mt. View Terrace Subdivision on August 23, 1982. This supports the existence of the old McGuire well and that it is part of the water delivery system for Mt. View Terrace subdivision in 1982. Includes water supply survey worksheets and a plat map with location of Well #1 and Well #2.
- Letter dated November 11, 1982, which reference the Avondale water system. It indicates that a well associated with Mountain View Terrace was drilled in 1936.
- 1989 Idaho Department of Health and Welfare Drinking water Supply report. Identifies primary well as 220' deep and drilled in 1936.
- 2015 Idaho Department of Health and Welfare Drinking water Supply report. This report points out that statutory claim on record with IDWR (95-4299) describes a diversion rate of 1.1 cfs for a well with a 1936 claimed priority date.

Attachment 2:

- Copy of original statutory claim 95-4299

Attachment 3:

- Plat maps for Mountain View Terrace and 1st Addition Mountain View Terrace subdivisions both dated July 13, 1962.

Attachment 4:

- Deeds for lots within the **Mountain View Terrace** subdivision that show a purchase date prior to the Mandatory permit statute for ground water (March 25, 1963).

Despite having deeds that show the lots were purchased prior to the mandatory permit statute, we don't have anything that shows the homes were built at that time supporting the development of the water delivery system.

For example, the deed supplied for Lot #2, Block #2, Mountain View Terrace dated October 13, 1962, includes some language about a water line. "*Payment on domestic water line not required until requested by owner*". However, the Kootenai County parcel data shows a "build date" on Lot #2, Block #2, Mountain View Terrace, of 1973. There is not enough evidence to confirm that there was a delivery system in place, or in development prior to March 25, 1963.

Summary:

The Osterdock memo was sent by e-mail on 10/27/2017. In the email, Karen Osterdock asked two questions:

1. *Do you think this is enough documentation to substantiate a claim?*
2. *Should we submit a claim on 95-4027, 95-4299, or both?*

Response to Question 1: Available evidence does not verify that a water delivery system that delivered water to **Mountain View Terrace** or **1st Addition to Mountain View Terrace** subdivision(s) was under construction or in place prior to March 25, 1963.

Additional supporting evidence might include a water delivery system plat or plans, receipts showing purchase of water delivery system parts or equipment, receipts from contractors installing system. There is some evidence of intent, but not that the intent was acted on prior to the mandatory permit statute. Additional evidence showing that NKWD's predecessors they actually took the steps necessary to build a delivery system is needed. Did they hire someone to install water lines? Did they have an engineering firm prepare a water delivery system design?

Response to Question 2: Since a claim is already filed for 95-4027, then there is no need to file again. I don't feel there is enough evidence that points to the need to amend the claim.

In regards to filing a claim for 95-4299. The original statutory claim 95-4299 claims supplemental use of Well # 1, for a place of use that doesn't include **Mountain View Terrace** or **1st Addition to Mountain View Terrace** subdivision(s). If NKWD's intent is to claim the water use described under 95-4299, they would need to verify that the water right did exist in 1936, to what extent it existed, and then show how it was moved from the original POU to **Mountain View Terrace** and/or **1st Addition to Mountain View Terrace** subdivision(s). Right now, we do not have answers to these questions. But there is nothing stopping NKWD from filing a new claim. I am just saying that the new claim will need supporting documentation which we currently don't have.