

MEMORANDUM

TO: 15944-000 - TJ Ranch
FROM: LHM
DATE: 9 December 2010
RE: Timeline Documentation of POD Legal Description Discrepancies.

1983: Exhibit 1: Application for Permit for Hydropower Right No. 74-7231.

TJ Ranch files Application for Permit for proposed new hydropower plant. The application states that the point of diversion is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 4, T20N., R24E.

1984: Exhibit 2: Order Adopting Proposed Memorandum Decision and Order and Proposed Memorandum Decision and Order.

The proposed Memorandum Decision and Order states that after approval of Application for Permit No. 74-7231, all of the applicant's water rights would be diverted in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 4, T20N., R24E. Furthermore, it states that traditionally, the applicant diverted water at two points, in SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ until low flow occurred, at which point all of the flow of the West Fork Sandy Creek was diverted at the upper point of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$. Finally, the Findings of Fact in the Order state that the applicant's new system will allow him to irrigate entirely from his upper point of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$.

1987: Exhibit 3: Beneficial Use Field Report for Permit NO. 74-7231.

The field exam conducted by Eric Verner and Ernest Carlsen for the hydropower permit states that the point of diversion is located in Government Lot #2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 4, T20N., R24E. A map is also attached to the field exam with hand drawn quarter-quarter lines that show that the point of diversion is located in Lot 2.

1988: Exhibit 4: Letter from IDWR to Henry E. Schaffner.

On March 16, 1988, Jim Johnson, the water rights supervisor from the Idaho Department of Water Resources sent a letter to Henry E. Schaffner, permit holder for Permit No. 74-7231 stating

that Permit No. 74-7231 is in the process of being licensed, but that the permit must be amended before a license can be issued to correspond with the findings of the field exam. Among the amendments that the Department requests is a correction to the point of diversion to change it from the SE $\frac{1}{4}$ NW $\frac{1}{4}$ to Lot 2.

Exhibit 5: Application for Amendment for Licensing Purposes.

On March 22, 1988, Henry Schaffner filed an Application for Amendment for Licensing Purposes for Water Right No. 74-7231 to change the location of the point of diversion to Lot 2 of Section 4, T20N., R24E., per IDWR's recommendation.

Exhibit 6: Water Right License for Water Right No. 74-7231.

On December 21, 1988, IDWR issued a license for Water Right No. 74-7231. The license lists the point of diversion in Lot 2, Section 4, T20N., R24E.

1990: Exhibits 7, 8, 9 and 10: Notices of Claim to Water Right Nos. 74-200, 74-203, 74-204, and 74-7231.

In 1990, Schaffner Ranch filed Notices of Claim to all of their water rights. These Notices of Claim list three different points of diversion for the water rights diverted at the upper point of diversion. 74-200 lists the point of diversion as the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Government Lot 2. 74-203 and 74-204 have the point of diversion located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Government Lot 2. The Notice of Claim to Water Right No. 74-7231 lists the point of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and has a list of other water rights that are used in conjunction with this water right, including the three previously mentioned water rights. Furthermore, the Notice of Claim has a remark that the point of diversion was changed from the licensed point of diversion.

1994: Exhibits 11, 12, and 13: Amended Claims.

In 1994, Schaffner Ranch filed Amended Notices of Claim for Water Right Nos. 74-200, 74-203, and 74-204. These amendments changed the location of the point of diversion that was claimed on the original Notices of Claim to the SE $\frac{1}{4}$ NW $\frac{1}{4}$. The amendment also states that the intake structure for the hydropower pipeline serves as the diversion works for all three water rights.

2004: Exhibits 14 and 15: IDWR Correspondence Regarding POD Discrepancies.

On November 8, 2004, IDWR received a spreadsheet from the BLM regarding changes to recommended point of diversion shapes based on GPS data. It appears that the BLM had taken GPS readings for several POD locations and subsequently made recommendations to IDWR to correct some locations. Among the recommendations, BLM recommended that the points of diversion for Water Right Nos. 74-200 and 74-203 be changed to Section 4, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 3. On November 8, 2004, Roxanne Brown from IDWR responded to Al Bitner regarding the spreadsheet with the POD recommendations. Regarding Water Right No. 74-200 and 74-203, she questioned whether or not the BLM's recommendation was correct or if the GPS point was located on a ditch and not the actual stream course. She then asked if they were certain that the water user had abandoned other points of diversion and stated that an amendment of the claim would clarify.

2007: Exhibits 16, 17, 18, and 19: Partial Decrees.

In 2007, the SRBA issued Partial Decrees for Water Right Nos. 74-200, 74-203, 74-204 and 74-408B. The Partial Decree for 74-200 followed the recommendation of the BLM and changed the point of diversion location to Lot 3, of Section 4, T20N., R24E. The remaining three Partial Decrees, despite the fact that those water rights have the same point of diversion as 74-200, state that the point of diversion is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 4, T20N., R24E.

2010: Exhibit 20: Partial Decree for Hydropower Right.

In 2010, the SRBA issued a Partial Decree for the hydropower right, No. 74-7231. This decree states that the point of diversion is located in Lot 3, Section 4, T20N., R24E.

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