

MEMORANDUM

RECEIVED
JUN 01 2004
Department of Water Resources

TO: WATER RIGHT FILE

FROM: DANIEL A. NELSON

DATE: 5/25/04

SUBJECT: CANCELTION OF PERMITS 61-7498 AND 61-7499

In early January of 2000, I began working on two Bureau of Land Management (BLM) permits, 61-7498 and 61-7499, to complete the field exam process. My review of the files found that there are currently two licensed water rights, 61-7128 and 61-7129, that have the same BLM project numbers, which suggests that there was a double filing on the water right.

Jan Shurte performed the original field exam on these water rights on 6/20/1986. Ms. Shurte discovered that the two permits were direct overlaps of the two existing licenses. Ms. Shurte sent the BLM a letter requesting that they relinquish the two permits on 3/2/1987.

Sometime after Ms. Shurte's letter, a note to the file was written to the file by Carter Fritschle discussing Ms. Shurte's findings, which discussed the possibility of the reservoirs associated with the two existing licenses, may no longer exist. However, Mr. Fritschle's thoughts were discounted by my conversations with Bob Mallis of BLM. Mr. Mallis confirmed that to me in discussions about the water rights that he believed that they were for the same reservoirs, based on the project numbers. Mr. Mallis told me that project numbers are not reassigned to other projects.

On May 27, 1997, Mel Schulte of our adjudication staff recommended the permits in the Snake River Basin Adjudication (SRBA). He included a memo to the file stating that the permits were already covered by the two existing water rights and that once the BLM filed their adjudication claims on the existing licenses, his recommendation for the permits should be rescinded.

I first spoke to Bob Mallis in January of 2000. I made an appointment with Mr. Mallis and we discussed the applications. Mr. Mallis made copies of the photos of the reservoirs and confirmed that both the permits and the licenses were for the same two reservoirs. Mr. Mallis at that time asked that I hold the permits to allow the BLM to file adjudication claims on the existing licenses. I told Mr. Mallis that I would hold the applications for 6 months to give the BLM staff the opportunity to file the needed claims on the existing licenses.

BLM Memo

Page 2

I have contacted Mr. Mallis periodically to determine the status of the adjudication claims since that initial meeting. Each contact with Mr. Mallis, he has requested additional time to file the needed paperwork on the existing licenses with the SRBA court.

In February of 2004, I once again contacted Mr. Mallis about this situation. Mr. Mallis stated that his legal department had not pursued the SRBA claims on the existing licenses. Mr. Mallis told me that he would get back to me in a few days to discuss the situation

On May 3, 2004, I telephoned Mr. Mallis and told him that I would need a decision and could no longer hold the permits. I told Mr. Mallis in that telephone call that I was left with no option, but to send him a letter giving him a time limit to supply the information. On May 6, 2004 the letter was mailed requesting a decision on these water rights be made. I received no response from the letter. Please see attached letter.

Ms. Shurte started action on these permits in 1987. These permits have been reviewed several times by department staff since that initial letter. I have been actively pursuing a conclusion to these permits since January of 2000. A letter was sent to BLM warning them that the permits would be cancelled if a response were not received. The department has given BLM every opportunity to decide what needs to be done with these permits, and to carry out any action they deemed necessary. **Therefore, I must recommend that these permits be canceled since the uses associated with these permits have already been licensed under water rights 61-7128 and 61-7129 and have not increased in size or use.**

PLEASE CANCEL WATER PERMITS 61-7498 AND 61-7499



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

May 6, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

UNITED STATES DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
ATTN BOB MALLIS
3948 DEVELOPMENT AVE
BOISE ID 83705-5389

RE: LICENSING OF PERMITS 61-7499 AND 61-7498

Dear Mr. Mallis:

This letter is regarding a situation that you and I have been trying to work through concerning water right permits 61-7499 and 61-7498. Water right permit 61-7498 was filed on the Dixie Reservoir, project no. 6047, and water right permit 61-7499 was filed on the interstate reservoir project no. 6048. It has been determined that water right licenses 61-7128 and 61-7129 also cover these reservoirs.

We cannot license these permits unless there is evidence the reservoirs have increased in size or the licenses are relinquished. However, from the information we have in the file, the reservoirs are actually smaller in size than the original licensed water rights.

A letter requesting the relinquishment of these rights was written to your organization on March 2, 1987. I have included a copy of that letter for your records. I have spoken to you by telephone several times since January of 2000 trying to resolve the dual water rights issue. I have spoken to you last week and earlier this week informing you that we can no longer hold these permits. Our office has been holding these permits and working with your office for over 27 years, and we just can't hold these permits any longer.

The main problem in resolving this issue is that no Snake River Basin Adjudication (SRBA) claims have been filed on the two licensed rights, and the two permits have been decreed in the SRBA as permits subject to licensing approval by the department. Therefore, if the permits are relinquished, adjudication claims would need to be filed on the two licenses or they would not be considered valid after the SRBA is finished. If the two licenses are relinquished, we could then license the two permits and they would still be considered valid after the SRBA process was completed. By not resolving this issue back in 1987 when the discrepancy was first discovered, it has created a much larger problem.

In order to prevent continuation of this problem, our office must ask that this issue be resolved as soon as possible. **Therefore, if we do not receive written direction from your office by 5/21/2004, I will forward these permit to our State Office with a recommendation that they be cancelled.** The reason for the cancellation is that the two licensed rights mentioned above already cover the water uses covered by these permits. **The written direction must include a relinquishment of either the licensed rights or the permits.**

If you have any questions or concerns please contact me at the above address.

Respectfully,

A handwritten signature in black ink that reads "Daniel A. Nelson". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish at the end.

Daniel A. Nelson
Sr. Water Right Agent

P/D NW SW 25 45 7E
P/A Same

Staff Analysis Sheet
for
Beneficial Use Field Report

61-7499
Permit No.

Prior to Conducting the Exam, the File Contains:

- ☒ Blank Field Report Form
- ☒ Copy of Permit
- ☒ Copies of any Amendments
- ☒ Computer Data Proof Report
- ☒ Copy of U.S.G.S. Quad
- ☒ Govt. Lot
- Check of P/D index CAT 6-12-86 (Initials, date)

Recommended
FOR

Overlap? ☐ yes ☒ no ☐ If yes, copy attached?

Check of P/U index CAT 6-12-86 (Initials, date)

Overlap? ☒ yes ☐ no ☒ If yes, copy attached?

Aerial Photo

Required? ☐ yes ☒ no ☐ If yes, copy attached?

Scheduling Letter sent? _____ (Initials, date)

☐ Appointment made and telephone conversation memo attached?

After Conducting the Exam, the File Contains:

- ☐ Fully completed and signed Field Report Form
- ☐ Photographs of Point of Diversion and Place of Use
- ☐ Corrected Computer Data Proof Report with recommended license information, and date and signature of examiner.

Relinquishment
Requested

Review and Processing

Exam Completed 6/20/86 (Signature of examiner and date)

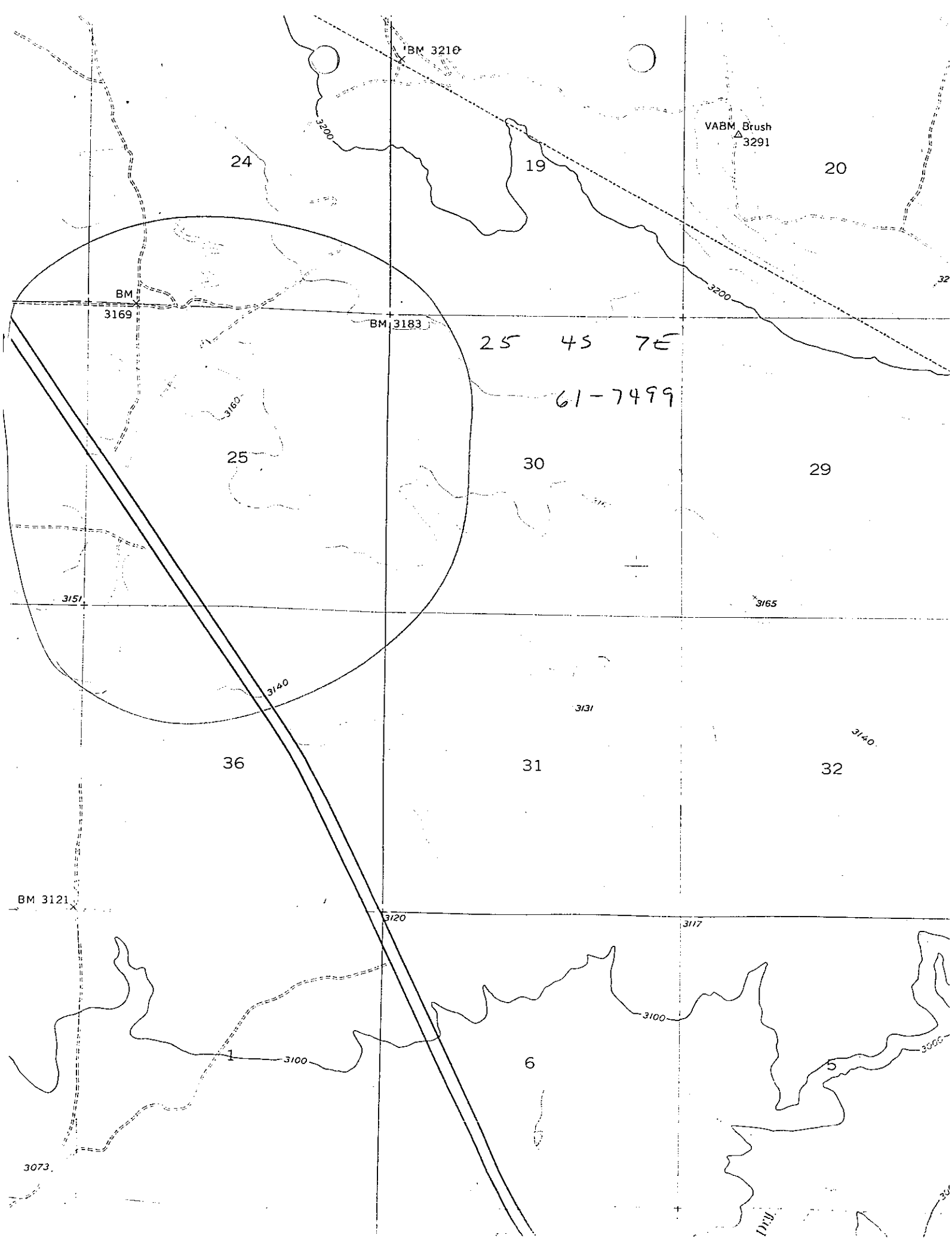
Exam Reviewed by Senior Water Resource Agent 2/3/87 (Initial and date)

Exam Reviewed by Manager of Regional Office _____ (Initial and date)

Exam Date Entered in Computer 52 2/3/87 (Initial and date)

Exam sent to State Office _____ (Initial and date)

Copy of Staff Analysis Sheet sent to Manager of Regional Office and Original Refiled in White File _____ (Initial and date)



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