

Hemenway, Sandy

From: Fredric_Price@blm.gov
Sent: Wednesday, January 27, 2010 11:36 AM
To: Hemenway, Sandy
Subject: Fw: House on BLM: T03S, R10E, S31, NESE
Attachments: PWR-107.pdf

Sandy,

There are some obstacles to selling BLM land: (1) the property has to be identified for disposal in the Land Use Plan which is only opened for modification every 5 years; and (2) the NESE is within a reservation that precludes disposal (i.e. PWR-107 withdraws land from settlement, location, sale, or entry).

Whether BLM can or can't sell the land, or is willing to, or eventually does (after many years) or doesn't, a water right still cannot be established by aid of trespass.

Fred
(See attached file: PWR-107.pdf)

----- Forwarded by Fredric Price/IDSO/ID/BLM/DOI on 01/27/2010 11:26 AM

Fredric
Price/ISO/ID/BLM/
DOI
Sent by: Fredric
Price

"Hemenway, Sandy"
<Sandy.Hemenway@idwr.idaho.gov>

To

cc

01/27/2010 10:16
AM

Subject
RE: House on BLM: T03S, R10E, S31,
NESE(Document link: Fredric Price)

Sandy,

Fences are not property lines and are notoriously placed where convenient. You'll notice his fence lines form a trapezoid rather than a square, so obviously are not consistent with any survey. The homestead entry was found to be consistent with the township survey prior to patenting, so the issue was created by successors.

Is Mr. Brimson's statement of where his house is located based on a private survey or just a hopeful gut feeling? I understand you can't accept Mr. Brimson's assertion (without proof) that his house (POU) is located in Lot 7 (SESE), as aerial photos show otherwise, but BLM cannot accept title to a water right for an unauthorized use of public land, and a water right cannot be established by aid of trespass.

I see in the aerial photo that there are ponds within Lot (SESE), so you could readily license stockwater in Lot 7 (SESE) and drop the domestic purpose. Or, you could hold processing of the license, and grant him additional time to submit proof of beneficial use so that he can submit evidence to rebut IDWR's standard for defining places of use (i.e. aerial photos and GCDB).

Fred

"Hemenway, Sandy"
<Sandy.Hemenway@idwr.idaho.gov>

01/26/2010 05:09
PM

<Fredric_Price@blm.gov>

"Hemenway, Sandy"
<Sandy.Hemenway@idwr.idaho.gov>
Subject
RE: House on BLM: T03S, R10E, S31,
NESE

To

cc

Fred,

Thank you so much for your note, and attachments.

I am working on a license for William Brimson, and what you indicated below was the same information I had come up with, but I needed confirmation from your department. I'm wondering if this property ever had survey pins staked out on the property, since Mr. Brimson keeps stated that his house is not on BLM property. The other possibility might be that the quarter quarter lines were drawn across on the topo map to locate the property years ago, prior to being physically surveyed (prior to ArcMap), and once surveyed the quarter quarter doesn't match, but is further south and to the east (going by how Mr. Brimson's fence lines are located). This shift would make the POD incorrect, and the house on BLM property.

I just spoke with Jeff Peppersack, Water Rights Section Manager. I told him the situation with the spring/POD being located on the NESE, and the domestic/house and part of the irrigation being located on NESE property owned by BLM. Jeff suggested asking if BLM would be interested in the domestic/house portion and the irrigation portion that falls on BLM property (priority date 12/3/1982), and William Brimson would retain the irrigation and stockwater portion in the SESE Lot 7. Jeff indicated that then we could go ahead and issue the licenses, and maybe later BLM and Mr. Brimson could work out something i.e. property trade, etc. I could draw up a draft of what the amendment for licenses and licenses would look like and you a copy.

Please give me a call so we can talk some things over, since it's hard to explain everything in an email.

Thank you for your time.

Sincerely,
Sandy

Sandy Hemenway
Sr. Water Resource Agent
IDWR/State Office, Boise
(208) 287-4920 Monday thru Thursday
Sandy.hemenway@idwr.idaho.gov

-----Original Message-----

From: Fredric_Price@blm.gov [mailto:Fredric_Price@blm.gov]
Sent: Tuesday, January 26, 2010 1:21 PM
To: Hemenway, Sandy
Subject: House on BLM: T03S, R10E, S31, NESE

Sandy,

RE: House on BLM
T03S, R10E, S31, NESE

I just reviewed water permit (61-07487) by William Brimson that describes a Point of Diversion (POD) on BLM land (NESE, S31, T03S, R10E) and a Place of Use (POU) for Domestic & Stock on private land (Lot 7 (SESE), S31, T03S, R10E).

BLM issued a Right-of-Way (ROW IDI-028459) in 1991 to William Brimson for a water facility (925' long, 10' wide) originating from SESWSENE, S31, T03S, R10E (POD on BLM) for a pipeline to private land. Brimson's claimed POD (61-07487) doesn't match the ROW, and ROWs do not authorize POUs on BLM land.

According to aerial photos, it does appear that Brimson's house is on BLM land by 110' within NESE, S31, T03S, R10E. Currently the POU is described in 61-07487 as Lot 7 (SESE) which is private land. Any description of the POU as the NESE would represent an unauthorized use of BLM land, as BLM owns the entirety of the NESE. BLM would oppose any description of the POU as the NESE.

I reviewed the register of actions leading up to the issuance of a Patent (#551422) for Lot 7 (SESE) and the homestead entry was found to be consistent with the survey, which indicates the Patentee realized this was a government surveyed lot that was less than a standard 40.0 acre tract.

The Patent clearly was issued for only Lot 7 and only for 34.74 acres.

I checked the acreage of Lot 7 in ArcGIS and the acreage is consistent with the survey.

Fred Price
Water Rights Specialist
BLM, Idaho State Office
(208) 373-3831
(See attached file: 61-07487_House-on-BLM.pdf) (See attached file:
61-07487_Water-Permit.pdf)

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1174854
Public Water Reserve No. 107
1218080--f

ORDER OF WITHDRAWAL

PUBLIC WATER RESERVE NO. 107

(2)

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases", as amended by act of Congress approved August 24, 1912 (37 Stat., 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 10 of the act of December 29, 1916 (39 Stat., 862), and in aid of pending legislation.

7404-208

Timothy L. Smith
President.

April 17 1926.

Two carbons to General Land Office

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2

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DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY
WASHINGTON

OFFICE OF THE DIRECTOR

APR 16 1926

The Honorable,

The Secretary of the Interior.

Sir:

RECEIVED

APR 20 1926

G. L. O.

7
In accordance with your instructions, order of withdrawal
(Public Water Reserve No. 107) has been prepared for submission to
the President in order that the right to the use of stock-watering
places located on the public domain may remain in the public.

Respectfully,

Wm. H. Wood

Acting Director.

I concur in the foregoing
recommendation.

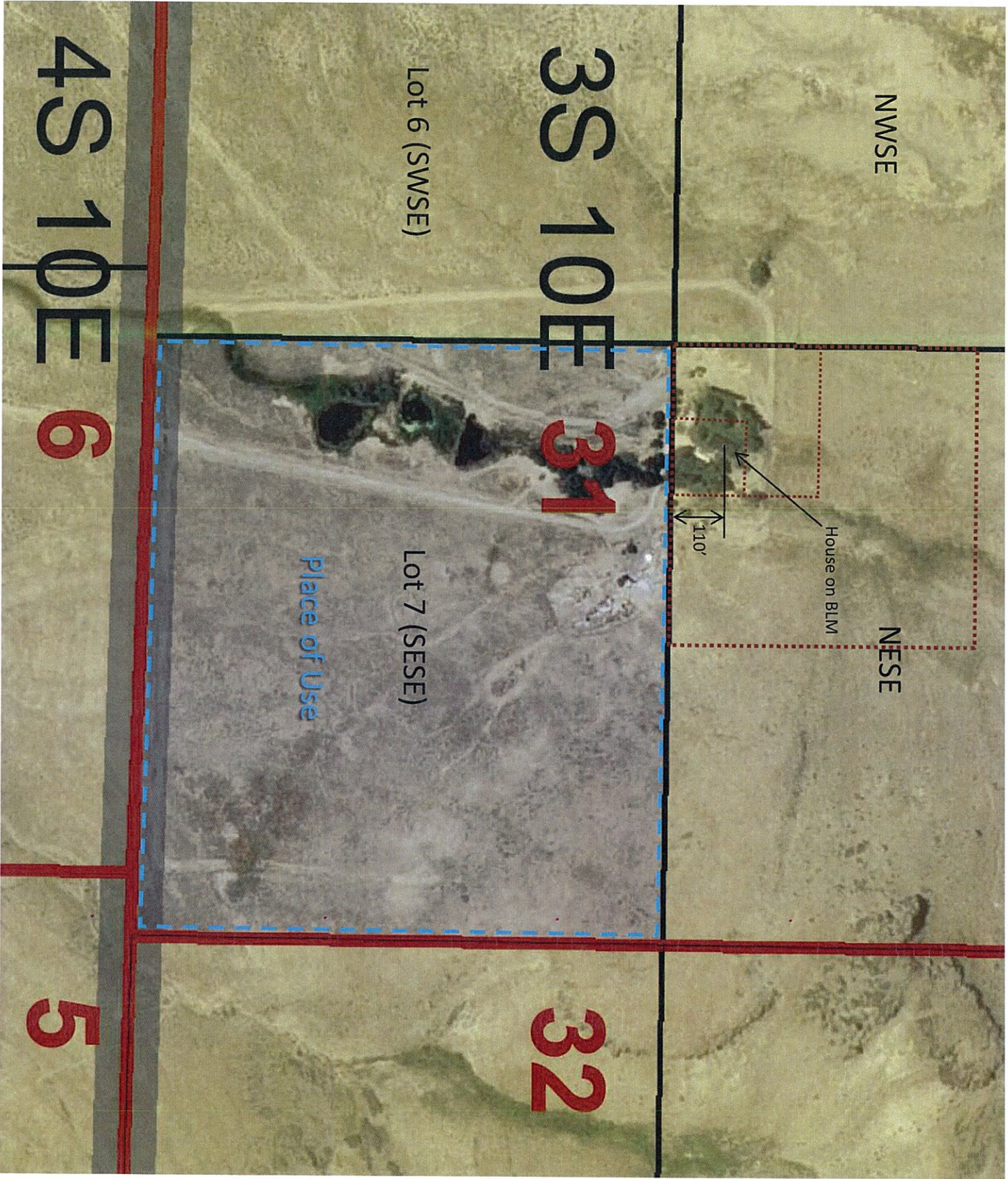
William H. Wood
Commissioner, General Land
Office.

APR 17 1926

Respectfully referred to the
President with favorable
recommendation.

Hubert Work
Secretary

61-07487
Brimson



TOSS RIDE

