

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
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GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
FREDERICK J. HAHN, III*
KARL R. DECKER
SHAN B. PERRY
DEANNE CASPERSON **
AMELIA A. SHEETS
ROBERT L. HARRIS
* Also licensed in Wyoming
** Also licensed in Missouri and Kansas

1000 RIVERWALK DRIVE, SUITE 200
IDAHO FALLS, IDAHO 83402

Mailing Address
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL : RHARRIS@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn
Marie T. Tyler

September 4, 2007

Michele Edl
Associate Engineer
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

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SEP 03 2007

DEPARTMENT OF
WATER RESOURCES

RE: Licensing of Permit Nos. 21-7190 and 21-7133.

Dear Michele:

This letter is provided as a result of our conference held on Wednesday, August 31st. We appreciate your participation at that conference, and as we discussed, this letter outlines some of the questions and concerns we have regarding the Department's proposed licensing of the above water rights. The licensing of these rights is understandably difficult because the field exams for both rights were conducted nearly two decades ago.

Each of these rights will be discussed in turn below. We have highlighted and underlined our requests for information from you below.

21-7190

Edward Howell filed an application for water right permit on December 20, 1979. The permit requested a permit to appropriate 5.0 cfs for the irrigation of approximately 920 acres. In addition, the application requested a permit to store 20.0 acre-feet of water for irrigation purposes. For reasons that are not entirely clear, the Department removed the 20 acre-feet because, as noted at the bottom of page one of the application for permit form, "[t]he 20 A.F. should not be considered as storage but rather as part of the diversion works." It is not clear why this decision was made at the time.

Nevertheless, notice for 21-7190 was published on January 3rd and January 10th of 1980, and no objections were received by the Department. A copy of the approved application for permit was sent to Mr. Howell on February 5, 1980.

On December 31, 1980, the Department send Mr. Howell a notice that evidence of the extent of development of 21-7190 was due on March 1, 1981. On February 11, 1981, Mr. Howell send a proof of beneficial use card back to the Department. While the irrigation box was marked by Mr. Howell, he did not provide an acreage amount on the card.

On August 11, 1981, an assignment of permit form was executed by Mr. Howell and John Haggon, presumably because Mr. Haggon was the new owner of the property.

On January 25, 1987, Mr. Haggon received a letter from IDWR informing Mr. Haggon that while proof of beneficial use had been submitted, then-enacted House Bill 671 required Mr. Haggon to submit payment of a fee in order to have the field examination conducted.

On April 3, 1987, Mr. Haggon assigned the permit back to Mr. Howell, the original permit applicant. Ten days later, IDWR notified Mr. Howell that he needed to submit the examination fee. The examination fee was received by IDWR on May 6, 1987, but the late filing of this fee resulted in priority date loss of 39 days. The examination fee document submitted by Mr. Howell states that 500 acres and 5 cfs were developed under 21-7190.

On July 10, 1987, a field examination was performed for 21-7190. It is difficult to tell from the field exam report exactly what the field examiner calculated. There appear to be theoretical calculations for both the east and west pumps, as well as actual measurements. The proposed license attached to your letter of August 21, 2007 lists a diversion rate of 3.35 cfs, which is less than the 5 cfs for which the permit was issued. **We request that you summarize for us how the Department came up with the 3.35 cfs value.**

As to the reduced diversion rate, we would further note that the rule of thumb for diversion rate per acre is .02 cfs/acre. With this rule of thumb, the 5.0 cfs for which the permit was issued would be for approximately 250 acres. Thus, even with the 323.4 acres found by the Department, which we dispute and have additional questions about (as set forth below), this acreage is more than the 250 acres for which 5.0 cfs would be allowed for irrigation. As such, under no circumstances should the 5.0 cfs diversion rate have been reduced based on developed irrigated acreage.

As to the place of use description, we are somewhat confused as to the proposed place of use designation for this water right. We received GIS shapefiles for both 21-7190 and 21-7133. A USGS map was included with the 21-7190 field exam that actually has "21-7133" written on it. It appears that this map was relied upon by the Department with the 21-7190 proposed license, in addition to the licensing of 21-7133. In addition, there is a map which appears to be an FSA photo over which the Department drew the approximate place of use for 21-7133. From these maps, it

appears that the Department did its best to convert these maps into shapefiles for the water rights.

We note, however, that there are some discrepancies from the maps and the proposed shapefiles, which is to be expected with improved technology. **We request that you describe your analysis as the acres calculated, as it appears that there is some discrepancy in some of the quarter-quarter sections.** For example, in the NE1/4NW1/4 of Section 16, the USGS map does not include any acres, but the Department has recommended thirty-eight (38) acres in that quarter-quarter section. As to this particular quarter-quarter section, we agree with its inclusion in 21-7190's place of use, but bring this to your attention because it appears from the Department's perspective there is some room for shifting and/or including additional acres within the authorized place of use. Given the nearly two-decades old field exam, we think it is appropriate to do so. In that spirit, we have included a map which identifies additional acres which should be included within the place of use for 21-7190.

The additional acres are based upon our discussions with our client and upon the maps contained in the water rights backfile. As you can see, there appear to be designations drawn on the FSA photo designating field locations, and we have included these acres within our "21-7190-Add'l_POU" shape. These additional areas are primarily southeast of the 21-7190 place of use and between the two 21-7190 POU arms. This area is clearly marked on the FSA photo, and upon examination of the 1986 Adjudication Photos, the cultivation lines are clearly visible. We are working to verify that these acres were irrigated prior to the licensing exam, and will provide that information to you once we receive it.

The additional acres we propose total 86.29 acres. With these acres added to the 323.4 proposed by the Department, the total acres is approximately 410 acres. This amount is closer to the 483 acres claimed by Valley Bank and Frank VanderSloot in the Snake River Basin Adjudication. Further, we note that the USGS map contained in the Department's files has a notation of "483 acres" on the map. It is not entirely clear why this number appears on a number of documents associated with this water right, but it is possible that this amount was determined to be irrigated by IDWR at some point in the past.

Lastly, as to the Department's proposed POU, we note approximately 2.1 acres are contained in Section 8. This appears to be an error, as our client does not own any property in that section. With these acres subtracted out, the place of use totals approximately 408 acres.

We are currently attempting to visit with individuals most familiar with the property to determine what acres were actually irrigated. Our proposed additional acreage may change with additional information. We will provide it to you once we receive it.

21-7133

Edward Howell filed an application for water right permit July 18, 1977 for 50 acre-feet of storage. Mr. Howell proposed to construct a 19-foot earth dam, which would have an active reservoir capacity of 40 acre-feet, and a total capacity of 50 acre-feet. Mr. Howell proposed to irrigate 321 acres with the storage water. Notice of 21-7133 was published on August 4th and August 11th in 1977.

On October 2, 1978, Ernie Carlson and Steve McCormick conducted a pre-permit field exam and dam inspection related to 21-7133. They examined the existing dam and noted that the dam did not interfere with any other water rights on Strong Creek because no other diversions were located below the dam.

On November 23, 1979, Mr. Howell submitted a proof of beneficial use card to the Department, which listed that 321 acres had been developed for irrigation. Approximately two years later, on August 11, 1981, Mr. Howell assigned 21-7133 to John Haggon. Then, on April 3, 1987, 21-7133 was assigned back to Mr. Howell.

A month after the above assignment, Mr. Howell submitted a completed "Examination Fee Information" form to IDWR, wherein Mr. Howell claimed that 21-7133 had been developed to the extent of 50 acre-feet for irrigation of 321 acres.

On July 10, 1987, the field examination was performed for 21-7133. On the report, the field examiner found 226 acres that had been developed for irrigation. This amount is less than the place of use-irrigation storage amendment document you provided to us. This document only provides for 204 acres. **We request that you describe your analysis as to the acres calculated, as it appears that there is some discrepancy between the two documents.**

In addition, we are somewhat confused by the place of use-irrigation storage portion of the amendment you provided to us. This portion of the application lists a 321-acre place of use. Our understanding is that this portion of a water right should only include the area where the water is actually stored (i.e., the 2.41-acre surface area location, as discussed below). **We therefore request that you explain the 321-acre place of use for irrigation storage.**

In addition, we note the field examiner concluded that the maximum storage of the lower pond where 21-7133 was to be diverted was 20 acre-feet. This was based upon his conclusion that the surface area of the pond was two (2) acres, and his assumption that the pond was ten (10) feet in depth. Based upon our review of the shapefile you provided to us, the pond was outlined with the

shapefile, and based upon the shapefile, the surface area of the pond is 2.41 acres, which is more than the field examiner calculated.

We further note that the original application for permit notes that the dam was to be constructed at a height of nineteen (19) feet. It seems that the assumption employed by the field examiner that the reservoir had a depth of ten (10) feet underestimates the size of the reservoir. In our view, water could at least be stored to a depth of fifteen (15) feet. If we assume a surface area of 2.41 acres, and a depth of fifteen (15) feet, the volume totals just over thirty-six (36) acre-feet. This amount is much closer to the fifty (50) acre-feet volume applied for by Mr. Howell, and much closer to the forty (40) acre-feet active reservoir capacity listed by Mr. Howell on his water right permit application. We are not necessarily claiming that the volume should be thirty-six (36) acre-feet. This number could be adjusted up or down—we are simply pointing out that there appears to have been a calculation error, and we feel an updated measurement or calculation of the volume would be appropriate.

Lastly, we note that application for amendment states there is a maximum diversion volume of 20.0 acre-feet even though the period of use for irrigation storage is from 01/01 to 12/31. **We request that you explain the basis for this maximum diversion volume.**

Possibility of Combined Place of Use for 21-7190 and 21-7133

In addition to the above information, we believe it may be appropriate to simply combine the places of use of these water rights. **Please inform us if this is possible and something that the Department would consider. If not, please inform us why it would not be possible.**

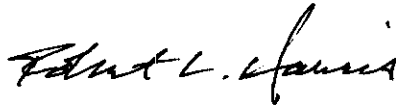
Assignment of Permit

As a final matter, we note that Valley Bank is still listed as the permit owner. We have provided IDWR with a vast amount of documents and information explaining that the permit was assigned to Frank VanderSloot when he purchased the property at a bankruptcy sale. Included in those documents is a deed where Mr. VanderSloot received all right, title, and interest in both 21-7190 and 21-7133. We feel this documentation is enough to have the permit assigned to our client. We have sent letters to this effect earlier this year. **Please inform us if this document is adequate for the Department's purposes.**

Michele Edl
September 4, 2007
Page 6 of 6

We appreciate your assistance in this matter and look forward to hearing back from you. If you have any questions, please let me know.

Yours very truly,

A handwritten signature in black ink, appearing to read "Robert L. Harris". The signature is fluid and cursive, with the first name "Robert" and last name "Harris" clearly distinguishable.

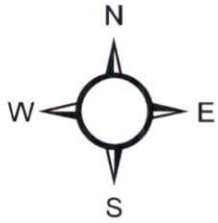
Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

C: Clients

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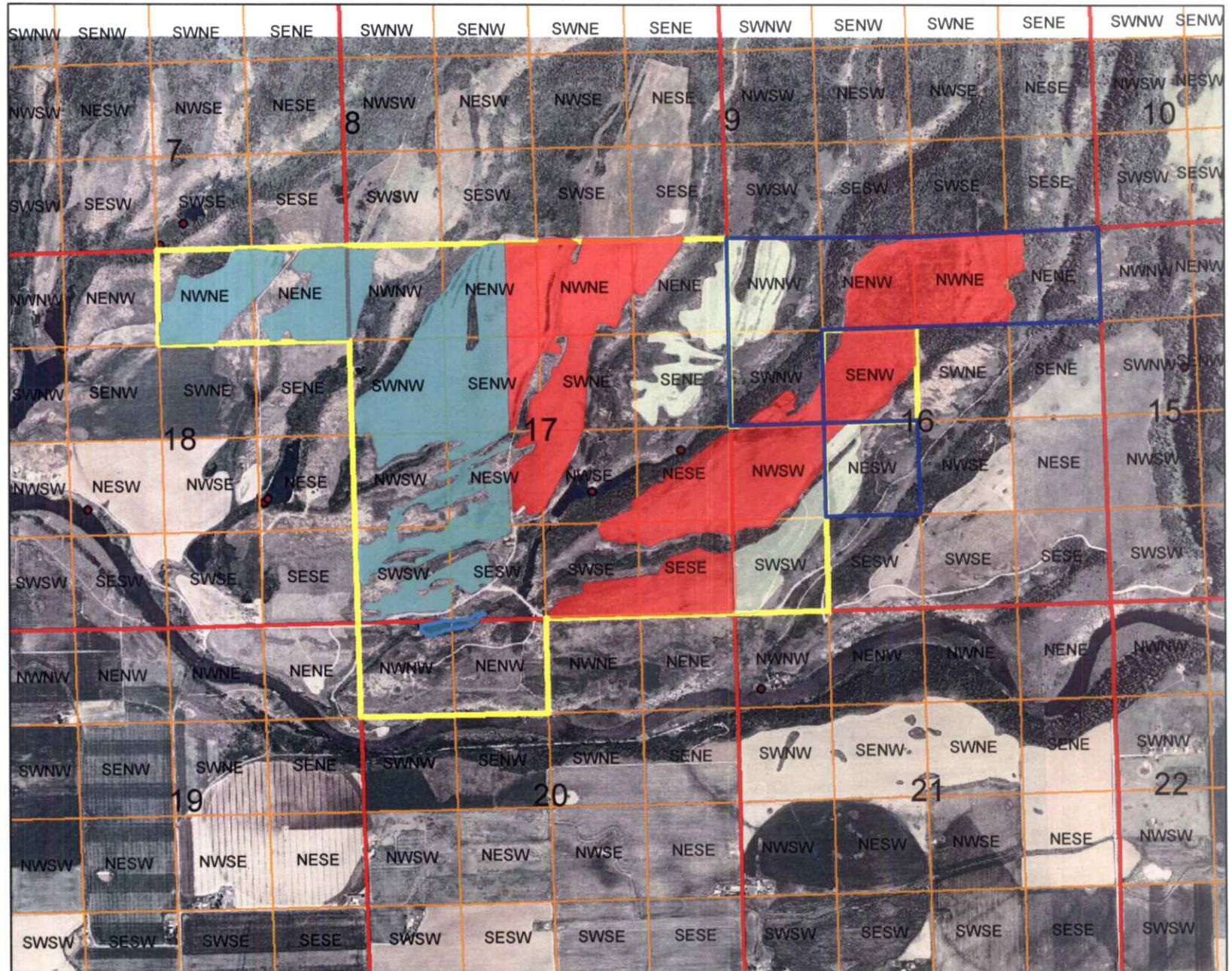
WATER RIGHTS 21-7190 & 21-7133



Legend

- State_Land
- 21-7190
- 21-7190-Add'l_POU
- 21-7133
- Natural_Guardian_Property
- Section_Lines
- Quarter_quarters
- POD_Rec

Prepared by:
Robert L. Harris
September 4, 2007
2006 NAIP Aerial Photo



0 0.3 0.6 1.2 Miles