

MEMORANDUM

TO: Water District File No. 78-D

FROM: Steve Lester 

DATE: February 6, 2003

RE: Summary of Water Right and SRBA Records

This memo summarizes Idaho Department of Water Resources (IDWR) records for this newly established water district. The district resulted from the 1932 decree in *Carey vs. Dryden and Campbell* plus the 2002 IDWR Order establishing the district.

IDWR was not aware of the 1932 decree until recently. Three water right records were created by IDWR based on the decree. The rights include numbers **78-12128 for Carey, 78-12129 for Wilson and 78-12131 for Dryden**. The decree did not quantify the amount of water in each right and other expected details such as the $\frac{1}{4}$ $\frac{1}{4}$ descriptor for points of diversion. The decree identified *Campbell Swamp* as the source of water, although the IDWR Order inadvertently listed *Campbell Drain*. Efforts are underway to correct the Order in this regard.

The following summary reflects the current records of IDWR.

78-12128, apparently to serve Hearn

Decreed for land in T19N-R2E-Section 25-SE $\frac{1}{4}$. Apparently this means about 160 acres from that description. The range identifier appears to be in error – R2E is several miles east of the area served by Campbell Swamp, and R1E must be assumed to be correct. This right appears to be used by Hearn based on information leading to the Order creating the district. However, *Eberle* owns the SE $\frac{1}{4}$ of T19N-R1E-Section 25 according to IDWR and Adams County Assessor records.

Hearn appears to own land in T19N-R1E-Section 25-NE $\frac{1}{4}$ (emphasis added). That property is addressed by Snake River Basin Adjudication (SRBA) claims filed by Hearn for Goose Creek water (SRBA claims 78-182 and 78-12165). Also, the same land is described by water right license 78-2038. The license was issued to *Steckman* for 1.60 cfs diverted from Campbell Swamp under a 1929 priority. The diversion point was listed as T19N-R2E-¹Section 29- SW $\frac{1}{4}$ NW $\frac{1}{4}$, and the place of use included 160 acres in T19N-

¹ The R2E identifier appears correct in the rest of this memo. The correction to R1E only applies to T19N-R2E-Section 25, not to other sections discussed in this memo.

R1E-Section 25-NE ¼. The license has not been claimed in the SRBA. The license probably serves no purpose since the water defined by the license is presumed to be fully covered by decreed right 78-12128 with a senior (1890) priority. Even if the licensed right is claimed in the SRBA and eventually decreed by the SRBA Court, rights 78-2038 and 78-12128 would probably be limited by conditions if both describe the same source for the same acres ("1 + 1 = 1" instead of 2, for example).

If right 78-12128 serves Hearn's land, Hearn should file a SRBA claim to protect the decreed right. The claim can correct any errors and/or omissions in the decree. The license might help fill in the blanks in claiming the decreed right, e.g., quantity of water. If the decree is presumed to identify land in Section 25 SE ¼ currently owned by Eberle instead of Hearn, Hearn should document the use of this water on his property in the NE ¼ or wherever he uses it, assuming such a change from the decree occurred prior to the 1987 commencement of the SRBA. Changes to decreed rights initiated after 1987 would require an *Application for Transfer* since post-1987 changes cannot be recognized in the SRBA unless first approved by IDWR in the transfer application process.²

78-12129, apparently to serve Wilson-Kerby (abbreviated as Kerby)

Decreed for land in T19N-R2E-Section 30-W½ NE ¼ and SE ¼. Apparently this means about 240 acres from that description. The property is also described by Kerby's SRBA claims for Goose Creek water (claims 78-228 and 78-2036). In addition, water right and SRBA records 78-4085 (for a *statutory claim* or "grandfather" use) appear to cover the same water and acres as the decreed right. The 78-4085 records identify the source as Campbell Slough or an Unnamed Slough for about 4.00 cfs with either an 1890 (SRBA claim record) or a 1924 (water right record) priority. SRBA claim 78-4085 shows a 6-17-1890 priority, slightly junior to the 6-1-1890 decreed priority in 78-12129.

It appears SRBA claim 78-4085 is fully covered by the slightly older decreed right, suggesting 78-4085 serves no purpose. Kerby might wish to withdraw SRBA claim 78-4085 and instead file a SRBA claim to protect 78-12129. As in Hearn's case, the 78-4085 record might suggest details to include in claiming 78-12129 in the SRBA. If Kerby wants to protect and retain both rights from the same source serving the same acres, the likely SRBA outcome would be conditioned (1 + 1 = 1 instead of 2).

78-12131, apparently to serve Johnson

Decreed for approximately 20 acres in T19N-R2E-Section 29-NW ¼ SW ¼. The same land is described by Johnson's SRBA claims for Goose Creek water (claims 78-12136, 78-12141, 78-12144 and 78-12147). Johnson should file a SRBA claim to protect this

² The transfer process does not apply to simply changing ownership of a water right and/or SRBA claim without changing other elements of the right/claim such as the place of use.

decreed right, filling in the blanks left by the decree as in the case of the other two owners.

Johnson expressed an interest in enrolling right 78-12131 in the state water bank administered by the Idaho Water Resource Board. Johnson should submit a completed water bank application, SRBA claim and proof of ownership of the decreed right (typically a deed describing the place of use in the decree and the claim being filed) to IDWR to initiate the water bank process.

Summary

Owners should file SRBA claims to protect decreed Campbell Swamp water rights. SRBA fees include \$50 per claim plus \$1 per irrigated acre. The \$1 per acre charge does not apply if it has been paid in a SRBA claim already recorded with IDWR. In that case, the owner should identify the SRBA claim for which the acreage fee was already paid, reducing the fee for a new claim to \$50. The owner should include a request for IDWR to waive the late charge (\$50 or 15% of total fee per claim, whichever is greater). Owners can use existing records such as license 78-2038 etc. to help fill in missing details in filing the SRBA claims. Owners can correct errors found in the 1932 decree, and/or they can document changes to the decreed rights accomplished prior to November 1987.

IDWR should revise its Order to properly identify the source of water as Campbell *Swamp* instead of Campbell *Drain*. IDWR should waive late fees for SRBA claims filed to protect the decreed rights. IDWR should process Johnson's request to enroll water right no. 78-12131 in the state water bank if it is filed.

These steps should clarify and update IDWR water right and SRBA records. Steps such as these will help administer the water district and determine the final outcome of the SRBA process with respect to the decreed rights.

Copies attached:

IDWR record nos. 78-12128, 78-12129, 78-12131, 78-2038 and 78-4085