



State of Idaho

DEPARTMENT OF WATER RESOURCES

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RECEIVED

December 23, 1994

Myrthus Austin
1029 Hwy 93 N.
Salmon, ID 83467

DEC 28 1994

CECIL D. ANDRUS
GOVERNOR

Department of Water Resources
Eastern District Office

R. KEITH HIGGINSON
DIRECTOR

Re: Jesse Creek Water Right No.s 75-0009 & 75-4471

Dear Mr. Austin:

I have reviewed your letter of November 25 sent to me and your November 12 letter sent to Norman Young. Mr. Young has reviewed both of your letters with me and has asked that I provide a response to you. I apologize for sending this late response.

You have asked if the State recognizes rights 75-0009 and 75-4471 as 'legal and lawful water rights'. IDWR recognizes that right 75-0009 was decreed to the Gilmore and Pittsburg Railroad Company (GPR) in the Long v. Miller decree dated June 19, 1925. This right is listed in said decree as being a right from Jesse Creek with a rate of diversion of 1.5 cfs and an April 1, 1894 priority date. IDWR also recognizes that right 75-0003 was decreed to William Boomer in the Long v. Miller decree for diversion of 1.44 cfs from Jesse Creek with a priority date of April 1, 1894. IDWR further recognizes that you have filed a claim in the Snake River Basin Adjudication which combines rights 75-0009 and 75-0003. The SRBA claim which combines these rights is designated as claim number A75-10475. The total rate of diversion claimed under A75-10475 is 1.94 cfs. IDWR has also searched its SRBA claim records and finds that no adjudication claim has been filed for right 75-4471.

IDWR records indicate that you have used right 75-0003 and that you do have a possessory interest in this same right. Past water district records show that up to 1.44 cfs of water has been delivered to you under right 75-0003.

IDWR can not make a determination as to whether rights 75-0009 and 75-4471 are 'legal and lawful rights'. That determination must be made by the SRBA court. However, IDWR does have a responsibility to advise the watermaster as to how to administer or regulate water rights within the water district.

As of this date, IDWR plans to advise the watermaster of water district 75-A to deliver you up to only 1.44 cfs under right 75-0003. IDWR will not recommend delivery of right 75-0009 since there is still insufficient evidence showing your possessory interest and use of this right. Your ownership of the land to which this right was decreed to in 1925 does not necessarily mean that you own the water right or that you are entitled to delivery of the right.

IDWR has two problems in recognizing your possessory interest and use of right 75-0009. First, the department has no water delivery

records which show that right 75-0009 was delivered to you prior to your claiming the right in the SRBA. Water district records also do not show that you had been assessed for this right prior to your claiming the right in the SRBA. Secondly, there is evidence of a recorded reservation of the right from the 1925 decreed place of use. This reservation has the effect of breaking the chain of title to right 75-0009.

IDWR has a copy of a deed dated August 15, 1944 which conveys certain lands from the GPR to Matthias Austin. The decreed place of use description recorded under right 75-0009 is identified in the 1944 deed. This deed however did not convey the decreed waters of Jesse Creek owned by the GPR. In other words, the GPR specifically reserved its decreed rights from Jesse Creek. IDWR does not have any other records which show what GPR did with its decreed rights from Jesse Creek. IDWR also has a copy of a deed dated December 9, 1947 which conveys the former GPR lands from Matthias Austin to Myrthus Austin. This latter deed appears to have conveyed all water rights which may have been appurtenant to the land. It is not clear from any records on file with IDWR if or how right 75-0009 may have been re-conveyed back to the original 1925 decreed place of use owned by GPR.

Since you have not filed an SRBA claim on 75-4471, there is some question as to whether you have any possessory interest in that right as well. You are advised to file an adjudication claim for this right if you wish to continue to use water under this right and maintain a possessory interest. Upon filing an adjudication claim, the additional water under 75-4471 can be diverted during periods of non-regulation as long as senior rights are satisfied.

IDWR has not recorded the changed ownership of rights 75-0009 and 75-4471 to Silver Peak Ranch as you requested in your letter of November 12. Idaho law does not provide a means for changing ownership of the original decreed rights or beneficial use claims. However, there is a method which provides for changing the name of owner for all claims filed in the Snake River Basin Adjudication (SRBA). Since you have filed a claim in the SRBA for at least a portion of right 75-0009, you can change the ownership name of claim number A75-10475 by completing the attached form and returning it to IDWR. In addition, IDWR will place copies of your November 12 letter in appropriate water right and water district files.

Please contact me if you have questions regarding this matter.

Sincerely,



Tim Luke
Water Allocations

cc: Eastern Region
Mickey Berbeck, Watermaster