

MEMO

TO: IDWR File for Water Right 75-13989

FROM: James Cefalo

DATE: October 4, 2023

RE: Summary of Water Right History

William and Janice Shively filed Application for Permit 75-13989 on May 8, 2001. The application proposed developing a spring on the Shively property for domestic use at one home and stockwater use. The proposed point of diversion and place of use were described in the NWSE of Section 13, T24N, R19E. The Department published notice of the application and received no protests. The Department issued Permit 75-13989 on July 5, 2001. The permitted point of diversion and place of use were described in the NWSE of Section 13. Proof of beneficial use was due by July 1, 2006.

On June 15, 2006, William and Janice Shively filed proof of beneficial use for Permit 75-13989. The proof stated that the spring had been diverted for domestic use at one home and stockwater for ten horses. The Department completed a field exam in August 2008. The examiner found a home (cabin) on the Shively property receiving water from a pipeline running from a spring north of the home. The spring and the home were in the SWSE of Section 13. The examiner recommended amending the permit to correct the point of diversion and place of use locations.

Upon further investigation, the Department discovered that the home on the Shively property was completed in 2008, two years after the proof of beneficial use had been filed. The Shivelys provided an affidavit demonstrating that they had diverted water from a spring for domestic use prior to June 15, 2006, while the house was being constructed. Shively diverted water from an undeveloped spring on their property during construction.

In September 2011, the Department published notice of the Application to Amend Permit 75-13989 to correct the POD and POU descriptions. The application was protested by the US Forest Service. The Forest Service alleged that Shively had connected their house onto a pipeline running from a nearby spring to the Indianola Ranger Station. A field investigation confirmed that Shively had connected the house to the Forest Service pipeline. The Forest Service refused to withdraw its protest until Shively (1) disconnected from the Forest Service pipeline, (2) repaired any damage to the pipeline, and (3) constructed their own spring box on the spring on the Shively property which they had originally used during construction of the house.

It took Shively ten years to complete the three requirements from the Forest Service. In 2022, the Department confirmed, through a field exam, that Shively had finally constructed their own spring box, had disconnected from the Forest Service pipeline and had repaired the pipeline. The Forest Service withdrew its protest against the amendment application on September 12, 2023. The application to amend Permit 75-13989 was approved on September 13, 2023, making it possible for water right 75-13989 to be licensed.