

Shurte, Jan

From: Shurte, Jan
Sent: Friday, December 13, 2013 9:24 AM
To: 'Andy Waldera'; Carter, Meghan
Subject: RE: Andrews Ditch SF55

Hi Andy,

I looked up my comments on 63-33571 to check on the change from the 107 acre limitation to the 241 acre limitation. I know it has no bearing on your client and just thought it would be best to explain it in case it comes up in the future. This email will go in the file for that purpose.

The recommendation for 63-33570 reflected 134 acres from a 1939 aerial photo of the area. Right No. 63-33570 was recommended with the limiter of those 134 acres. Then in 1971 a field exam was conducted on the license for 63-3201 which did show an additional 107 acres being irrigated at that time. Because of this information I limited 63-33571 to a combination of the 134 acres from 1939 and the 107 acres from 1971 totaling the 241 acres within the permissible place of use. The 254 acre permissible place of use came from a field exam conducted in 1987 for Right No. 63-9744 which did show 254 acres being irrigated. I could not recommend the 13 additional acres under the 1971 priority date so I recommended the permissible place of use with the 241 acre limitation between the two rights. Right Nos. 63-3201 and 63-9744 were then disallowed.

The claims for Right Nos. 63-33570 and 63-33571 turned out to be a mix of lands and earlier priority dates for 63-3201 and 63-9744 rather than one claim replacing one right and the other claim replacing the other right.

Thanks for looking at these again and we are getting close. I won't be celebrating until they are filed with the Court. I tried that once before. Have a Merry Christmas too.

Thanks,
Jan

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Thursday, December 12, 2013 3:51 PM
To: Carter, Meghan
Cc: Shurte, Jan
Subject: Andrews Ditch SF55

Meghan,

Thank you for shooting 63-33511, -33570, and -33571 over to me this afternoon. I took a look and all is good from my end. I will sign accordingly.

As we discussed, I leave it up to IDWR to double check the POU remark discrepancy I found on 33571 between the June 2013 version and the current version. But, that has no bearing on my client, so I am not concerned with it.

Thanks again. We are inching ever closer to having this totally wrapped up. Merry Christmas to all!

--Andy

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client or other confidential communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (202) 345-2500, so that our address record can be corrected. Thank you

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33571

NAME AND ADDRESS: GREG OBENDORF

26496 DEB LN
PARMA ID 83660

ANN OBENDORF

26496 DEB LN
PARMA ID 83660

SOURCE:

SAND HOLLOW CREEK

UNNAMED DITCH

UNNAMED STREAM

TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK

QUANTITY:

5.030 CFS

PRIORITY DATE:

03/01/1971

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S25 NENW within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

5.030 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SMSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSW	10.00

254 ACRES TOTAL

This right is limited to the irrigation of 241 acres within the place of use described above in a single irrigation season.

Right Nos. 63-33570 and 63-33571 are limited to the irrigation of 241 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of water under this right will be regulated by a water master within a water district. At the time of this recommendation, this water right is within State Water District No. 63, Boise River. Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

From:
Sent:
To:
Cc:
Subject:
Attachments:

VF: Final SF-5s to be mailed
 SF5 Right No. 63-127A.docx; SF5 Right No. 63-127B.docx; SF5 Right No. 63-127C.docx; SF5
 Right No. 63-127D.docx; SF5 Right No. 63-128A.docx; SF5 Right No. 63-128B.docx; SF5
 Right No. 63-128C.docx; SF5 Right No. 63-128D.docx; SF5 Right No. 63-129A.docx; SF5
 Right No. 63-129B.docx; SF5 Right No. 63-129C.docx; SF5 Right No. 63-129D.docx; SF5
 Right No. 63-130A.docx; SF5 Right No. 63-130B.docx; SF5 Right No. 63-130C.docx; SF5
 Right No. 63-130D.docx; SF5 Right No. 63-131A.docx; SF5 Right No. 63-131B.docx; SF5
 Right No. 63-131C.docx; SF5 Right No. 63-131D.docx; SF5 Right No. 63-178B.docx; SF5
 Right No. 63-178D.docx; SF5 Right No. 63-178E.docx; SF5 Right No. 63-3201.docx; SF5
 Right No. 63-9744.docx; SF5 Right No. 63-33497.docx; SF5 Right No. 63-33498.docx; SF5
 Right No. 63-33499.docx; SF5 Right No. 63-33511.docx; SF5 Right No. 63-33570.docx; SF5
 Right No. 63-33571.docx; SF5 Right No. 63-33590.docx; SF5 Right No. 63-21530.docx; SF5
 Right No. 63-178C.docx

Here are all of these again. Please look at the the Obendorf's rights which have had the mitigation language changed, the name on 63-178C now shows The Iest Family LLP and the change in the acre limitation on 63-33571.

Email Suzy or myself the names for signature on the cover sheets and we will get these out the door.

L

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33571

NAME AND ADDRESS: GREG OBENDORF

26496 DEB LN
PARMA ID 83660ANN OBENDORF
26496 DEB LN
PARMA ID 83660

SOURCE:

SAND HOLLOW CREEK

UNNAMED DITCH

UNNAMED STREAM

TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK

QUANTITY:

5.030 CFS

PRIORITY DATE:

03/01/1971

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S25 NENW within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

5.030 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NHSE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SMSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

all OK

This right is limited to the irrigation of 107 acres within the place of use described above in a single irrigation season.

Right Nos. 63-33570 and 63-33571 are limited to the irrigation of 241 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

Shurte, Jan

From: Shurte, Jan
Sent: Thursday, April 04, 2013 8:50 AM
To: Dana Hofstetter; Courtney, Andrea
Subject: RE: 63-33571 - 4027.5

Dana,

Right No. 63-33571 was recommended for the 1971 priority date based on the date that the field exam was eventually completed for 63-3201. A field exam was attempted in 1970, however, no water was flowing and no crops were being grown. An additional exam was conducted in 1971 per an inscription on the bottom of the original exam and the memo dated August 30, 1971 for the quantity.

Your email of May 23, 2012, was considered in the recommendation for these rights. Based on that memo I was able to recommend the 134 acres irrigated in 1939 and based on the field exam in 1971 I was able to recommend an additional 107 acres for a total of 241 acres. Based on the exam for 63-9744 in 1987 I was able to recommend 13 additional acres for 63-9744 all with a permissible place of use of 254 acres.

If we were to eliminate the recommendation for 63-9744 by disallowing it and recommending 63-33570 and 63-33571 only, those right would total 7.0 cfs with a permissible place of use for 254 acres and an acre limitation of a total of 241 acres in any given irrigation season.

Your question concerning the quantity recommendation under 63-33571 for 4.38 cfs rather than the claimed 5.03 cfs is based on the field examiner's memo to the file for 63-3201 in 1971 which reflects a maximum of 7.0 cfs at that time. Right No. 63-33570 was recommended for 2.62 cfs per the claim and with the 4.38 cfs from 63-33571 both rights total 7.0 cfs.

Jan

-----Original Message-----
From: Dana Hofstetter [mailto:Dana@idahowaterlaw.com]
Sent: Tuesday, April 02, 2013 2:49 PM
To: Shurte, Jan
Cc: Courtney, Andrea
Subject: 63-33571 - 4027.5

Jan,

With regard to the quantity for 63-33571, it appears that the latest recommendation has 4.38 cfs, instead of the 5.03 cfs claimed. The 5.03 cfs was claimed so that 63-33570 and 63-33571 add up to the total mitigation quantity (7.65 cfs) under the historic Andrews Ditch rights for this property. I believe the 5.03 cfs also can be justified based on the field irrigation requirement analysis done in the area.

Dana

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Tuesday, April 02, 2013 2:49 PM
To: Shurte, Jan
Cc: Courtney, Andrea
Subject: 63-33571 - 4027.5

Jan,

With regard to the quantity for 63-33571, it appears that the latest recommendation has 4.38 cfs, instead of the 5.03 cfs claimed. The 5.03 cfs was claimed so that 63-33570 and 63-33571 add up to the total mitigation quantity (7.65 cfs) under the historic Andrews Ditch rights for this property. I believe the 5.03 cfs also can be justified based on the field irrigation requirement analysis done in the area.

Dana

Shurte, Jan

From:

Sent:

To:

Subject:

Attachments:

Shurte, Jan
Thursday, March 07, 2013 12:19 PM
Dana Hofstetter; Courtney, Andrea; Norm Young
Obendorf Right Nos. 63-3201, 9744, 33570 and 33571 Update
63-33570 and 63-33571 acreage totals.docx; Right No. 63-9744 - Draft Rec.docx; Right No.
63-33570 - Draft Rec.docx; Right No. 63-33571 - Draft Rec.docx

Hi Dana,

Per your request I have reviewed the acres on the above sub cases to try and show where the 241 acres for 63-33570 and 63-33571 lie and where the 13 acres for 63-9744 lie. As we know 63-3201 is being replaced by 63-33570 and 63-33571 with the 1939 priority date for 134 acres and 63-33571 for 107 acres with the 1971 priority date. The remaining 13 acres are being recommended for 63-9744.

In reviewing these rights I found it difficult to pin point the exact 13 acre place of use due to the adding and subtracting of acres since 1971 and earlier. I compared the 1934 acres against the 1971 exam for 63-3201 and against the 1987 exam for 63-9744. The progression of changes in the acreage from 1939 to 1987 make it impossible to tell you exactly where the 13 acres are at this time. The facts show the 134 acres in 1939 plus the 107 acres in 1971 after computing the acreage overlap between 1934 and 1971 which leaves 13 acres to account for in the permissible place of use for 254 acres.

The 254 acre place of use came from Steve Lester's field exam where he actually found 235 total acres during his 1987 exam. You submitted a map outlining an additional 10 acres in the SWNE, S23, 4 acres in the SWSW, S24 and 5 acres in the SESW, S24 for a total of 254 acres. Thus, the license was issued for 254 acres. Attached is a table showing the progression of acreage changes over the years. If Norm needs copies of the maps they can be located in the back files of 63-3201 and 63-9744. He already has the 1939 outline of acres that you sent in and we adopted for the 1939 priority date.

Attached are our recommendations for these three rights. The only changes I have made is to show the 254 acre permissible place of use on 63-33570. For some reason I had put the 134 acre place of use rather than the permissible place of use. Please email with your questions.

Jan Shurte

Adjudication Technical Analyst

Idaho Dept of Water Resources

322 E Front St

Boise, Idaho 83720

(208) 287-4992

Don 63-33570 & 33571 what
would they look like up 63-9744 is

Don 63-33570 - S. 24 SWSW

Using in the 1971 priority date on 33571

Acreage comparisons for 63-33570, 63-33571 and 63-9744 using 1934 map submitted by Obendorfs, 1971 field exam map and diagram from Right No. 63-3201 and 1987 field exam map plus Dana Hofstetter's additional acreage map from Right No. 63-9744 to total the 254 acres.

Sec. 23, Twp. 5N, Rge. 5W

1939	1971	1987	Acreage changes
NENW	29 AC	29 AC	
SENW	25 AC	17 AC – minus 8 acres	
NWNE	5 AC	5 AC	
SWNE	15 AC	25 AC – plus 10 acres	
SENE	12 AC	12 AC – minus 3 acres	
NESE	5 AC	35 AC – plus 4 acres	
SESE	30 AC	32 AC – plus 2 acres	
Sec. 24, Twp. 5N, Rge. 5W			
NWSW	10 AC	23 AC	
NESW	3 AC	2 AC – minus 2 acres (note only 2 acres ever existed on the land south of the road rather than 3)	
SESW	20 AC	34 AC	
SWSW	30 AC	30 AC	
SWSE	10 AC	10 AC	
Total	134 AC	167 AC	254 AC Additional 13 acres due to progression and correction of acres for 1987 licensing
Total by 1971 – 241 AC			

Note on licensing of 63-9744.

Steve Lester originally found 15 acres in the SWNE, S23 on his 1987 field exam, however, 10 more acres were indicated by Dana as being irrigated for a total of 25 acres licensed. Found 26 acres in the SWSW, S24 on original exam and added 4 more per same indicator by Dana for a total of 30 acres licensed. Found 30 acres in the SESW, S24 on original 1987 exam and added 5 acres per Dana for a total of 35 acres licensed. Thus, the total 254 acre place of use.

03/07/2013

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33571
NAME AND ADDRESS: GREG OBENDORF
26496 DEB LN
PARMA ID 83660
ANN OBENDORF
26496 DEB LN
PARMA ID 83660
SOURCE: SAND HOLLOW CREEK
UNNAMED DITCH
UNNAMED STREAM
TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK
QUANTITY: 4.380 CFS
The rights listed below are limited to a total combined diversion rate of 5.08
CFS. Combined Right Nos.: 63-9744, 63-10867, 63-33570 AND 63-33571.
PRIORITY DATE: 03/01/1971
POINT OF DIVERSION:
T05N R04W S30 SWNW Lot 6 within CANYON County
T05N R05W S24 SWSE within CANYON County
T05N R05W S24 SWSE within CANYON County
T05N R05W S25 NENW within CANYON County
PURPOSE AND
PERIOD OF USE:
PURPOSE OF USE
PERIOD OF USE
QUANTITY
4.380 CFS

PLACE OF USE: IRRIGATION in CANYON County
IRRIGATION
03/01 11/15
4.380 CFS
PURPOSE OF USE
PERIOD OF USE
QUANTITY

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NWSW	23.00	T05N R05W S24	SWSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

This right is limited to the irrigation of 107 acres within the place of use described above in a single irrigation season.
Right Nos. 63-9744, 63-33570 and 63-33571 are limited to the irrigation of a combined total of 254 acres in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Wednesday, May 23, 2012 10:34 AM
To: Shurte, Jan
Cc: Norm Young
Subject: 63-33570 and 63-33571

Jan:

This email responds to the questions in your April 3, 2012 email regarding the above-referenced water rights. As you will note, numerous attachments are referenced. I will send these by separate email(s) a little later today as I wanted to provide you this email without any further delay.

Irrigated Acreage:

In response to your request regarding the irrigated acreage, I attach an aerial photo from 1939, depicting the minimum area on the Obendorf property that appears to have been irrigated from Sand Hollow Creek as of that date. It is possible that more ground on that property could have been irrigated from Sand Hollow Creek at that time as there is additional irrigated acreage on the Obendorf property in this aerial photo; but the area outlined covers the area that appears to have been irrigated from the primary ditch from Sand Hollow Creek. The total irrigated acreage in the outlined area appears to be well in excess of 87, amounting to about 135 irrigated acres.

With regard to the irrigated acreage as of 1960, the license file for 63-3201 provides significant information. A remark on the second page of the Permit Application notes that the water right had already been developed at the time of the Permit Application in 1960: "This Permit is being made to replace Permit No. 19985 which was cancelled in May 1952. The works had been completed, however the notice of time for making the proofs were not received and the proofs were never made." I attach a copy of IDWR Permit file 19985 which was on microfilm so the quality is not too good. It appears that Permit Application No. 19985 was submitted to IDWR in 1946 for 4.5 cfs for irrigation of 220 acres in Section 23. From a review of the files for 19985 and Permit Application 63-3201, it appears that the applicant's (Locklear) address changed sometime after 1946 and before 1960 and that is why he did not receive the correspondence concerning proof of beneficial use. In any event, based on the comments in the file for 63-3201, the use already was in place by 1960. For some reason that is not clear, Permit Application 63-3201 did not include the portion of the Obendorf property in the W1/2 and the W1/2E1/2 of Section 23. However, the file for license 63-3201 confirms that 167 acres were irrigated in just the SENE, NESE and SESE of Section 23 and in the SW1/4 and SWS1/4 at that time. Thus, the license for 63-3201 (and the associated examiner's report) would describe the 167 acres that are covered under the 1960 (1952) beneficial use right.

I have not been able to locate good quality aerial photographs during the 1950's-1970's at this location. However, the 1987/1988 infrared aerial photograph for this area in the SRBA claim file for 63-9744 indicates that by 1987/1988 a total of at least 254 acres (87 + 167) were irrigated on the Obendorf property, with 87 of those acres in the areas not covered by license 63-3201 (NENW, SENW, MNNE and SMNE of Section 23). Thus by 1987 at least 87 of the 1939 acres had been relocated by accomplished transfer to cover the acreage that was not covered under what was determined to be irrigated under 63-3201.

Section 25 Point of Diversion:

Norm Young has not been able to locate the Section 25 point of diversion yet and thus a measurement has not yet been possible. Another old point of diversion from Sand Hollow identified at a different location on the Obendorf property but this point of diversion was silted in and no longer in use. Greg Obendorf recalls it being in use in the 1960's and the headgate appearing old at that time. I attach Greg's Affidavit to this effect. From reviewing the license file for 63-3201, it appears that the diversion point in the NENW of Section 25 was determined to have at least 6 cfs of capacity. I attach a September 19, 1973 IDWR letter to this effect, identifying only one point of diversion (in Section 25) and 6.0 cfs of water diverted. Correspondence in the license file for 63-3201 indicates that a representative of the Applicant requested to have two points of diversion added to the one found in Section 25 by the examiner but that in the license only one, the Section 30 point of diversion, was added to the one found by the examiner.

While Norm at his recent field exam was not able to locate the Section 25 point of diversion, he did measure the point of diversion in Section 24 (identified in the 63-9744 file) to be 4 cfs. Also, he also measured Obendorf's section 30 point of diversion to be more than adequate to handle 7+ cfs. Further, Greg confirmed that the Section 30 point of diversion has not been modified since he bought the property in 1987. Further Norm located numerous places where the Johnson ditch from Sand Hollow discharges into the Obendorf Sand Hollow Ditch even further increasing the flow to the Obendorf property. Please let me know if you would like any affidavits from Greg and/or Norm to this effect.

With regard to proving that 2.62 cfs were diverted in 1939, it is difficult to identify any witnesses. However, I note that Marci Pape's Jan 29, 2006 Memo to David Tuthill regarding Diversion Rate Analysis for Haas Ditch Co. Right Nos. 63-172B and 63-202B identified an irrigation requirement in the area of 0.06 cfs per acre. This would amount to much more than 2.62 cfs for 87 acres. It seems reasonable to assume that the diversion works would have been adequate to at least deliver 0.02 cfs per acre over the entire 135 acres that appear to have been irrigated from this source on the Obendorf property as of 1939.

Please let me know if you need any additional information or have any questions.

Thank you,
Dana

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33571

NAME AND ADDRESS: GREG OBENDORF

26496 DEB LN
PARMA ID 83660

ANN OBENDORF
26496 DEB LN
PARMA ID 83660

SOURCE: SAND HOLLOW CREEK
UNNAMED DITCH
UNNAMED STREAM
TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK

QUANTITY: 5.030 CFS

PRIORITY DATE: 03/01/1960

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 Within CANYON County
T05N R05W S24 SWSE Within CANYON County
T05N R05W S24 SWSE Within CANYON County
T05N R05W S25 NENW Within CANYON County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	5.030 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SWSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

No lawful appropriation shown.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

No lawful appropriation shown: There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is proposed to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is proposed to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Tuesday, August 30, 2011 7:30 PM
To: Shurte, Jan
Subject: Obendorf Late SRBA Claims 4027.5
Attachments: 9854 - SRBA Late Claim.doc; 9857 - SRBA Late Claim.doc

Jan:

After looking at the files for 63-3201 and 63-9744 and available aerial photos, I have decided to submit 2 late SRBA claims ultimately to supersede 63-3201 and 63-9744 if successful. I attach these draft claims for your reference.

As you will note, one draft claim is for 87 acres with a 1939 priority. This is based on a 1939 aerial photo provided to me by Mike Ciscell. 87 acres in certain quarter-quarters were not covered under license 63-3201 but these acres appear irrigated in the 1939 aerial.

The second draft claim is based on the file for 63-3201 which includes several affidavits confirming that the irrigation was in place in the 1960 irrigation season. The examiner found 167 acres of irrigation in the 1970 field exam but apparently this figure did not include acreage that was being irrigated in other quarter-quarter sections (under the 1939 right).

The duty of water for both claims is based on the Obendorfs' Andrews Ditch mitigation rights. The file for 63-3201 also confirms that the diversion works (however, apparently not including all points of diversion) had a capacity in the 7 cfs range. So I tried to stay close to this amount total.

I would be happy to sit down with you and discuss these, if you would like to do so before numbers are assigned and they are filed with the Court.

Thank you,
Dana

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Thursday, May 03, 2012 12:44 PM
To: Shurte, Jan
Cc: Courtney, Andrea; Williams, Ray
Subject: Re: 63-33570, 63-33571

Sounds good. I will get you the materials early next week.

I hope you're feeling better. Please do take care of yourself. I had pneumonia in the 1990's and I know it must be taken seriously.

(Andrea: Sorry about forgetting that you're on this case.)

BTW, I have a Notice of Change in Water Right Ownership (from Ray Obendorf to Basin and Range) to file for 63-21614. Should I file it at Western or at the State Office?

Thank you,
Dana

On 5/3/2012 10:46 AM, Shurte, Jan wrote:

> Dana,
> Andrea Courtney is the attorney working with me on these files. What
> would be the best approach is if you could submit the information you
> have available for 63-33570, 33571, 33497, 33498 and 33499, then we
> could review it and have a meeting to discuss.

> Would you be able to submit this information early next week? We
> could then schedule a meeting at the end of next week giving me time
> to make recommendations.

> Please let me know.

> Thanks,
> Jan

> -----Original Message-----
> From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
> Sent: Wednesday, May 02, 2012 5:34 PM
> To: Spencer, Nick; Shurte, Jan
> Subject: 63-33570, 63-33571

> Jan and Nick:

> Please let me know your upcoming availability for a meeting to discuss
> the above (and the Andrews Ditch priority info.).

> Thank you,

> Dana

Shurte, Jan

From: Hofstetter Law Office [Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 3:52 PM
To: Spencer, Nick
Cc: Shurte, Jan; Fritschle, Carter; Norm Young
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Nick:

Please keep me posted on whether the deadline will be extended. If it will not be, I will draft an extensive email tomorrow. Norm Young and I went to the site yesterday. Norm, after walking the ditch was unable to locate the POD in Section 25. However, we have other information that I think should address the relevant issues. It would be much easier to spread this all out on a table and explain it, but we will do it by email if necessary.

Thank you,
Dana

On 4/26/2012 3:24 PM, Spencer, Nick wrote:

Hi Dana. A meeting about the information you have collected regarding these late claims simply isn't going to happen at this very late date. I suggest that you e-mail the documents to Jan instead. The affidavits say whatever they say and the POD measurement that I presume you have had taken is whatever it is. I don't see what purpose a meeting will serve, particularly when Jan has a large number of claims to prepare recommendations for and now only two work days to prepare them in. Moreover, since Jan has been out sick and we do not know at this point whether she will even feel up to coming in to work tomorrow or Monday, the April 30th deadline for reporting these claims is looking less and less feasible. We will decide tomorrow whether under the circumstances IDWR ought to ask the court for an extension.

NBS

From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 2:31 PM
To: Shurte, Jan; Spencer, Nick
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Jan and Nick/Andrea:

We have gathered information in connection with these rights for the late claims Directors Report. I understand that Jan remains out of the office and I am wondering how to provide this information before the submission to the SRBA Court on Monday, April 30. I was hoping to schedule a meeting to discuss the available information and provide the Affidavits.

(I could not recall whether Andrea or Nick was on these cases so I am emailing you both.)

Thank you,
Dana

On 4/23/2012 10:03 AM, Shurte, Jan wrote:
Hi Dana,

I am not at work today, but the reason I need the measurement for the NENW, S25 is because there has never been a measurement of that point of diversion. There was an estimate by the field examiner, however, no actual measurement. So, before I recommend an additional amount of water I have to make sure it can carry an additional amount.

Shurte, Jan

From: Hofstetter Law Office [Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 2:31 PM
To: Shurte, Jan; Spencer, Nick
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

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Hope this helps and thanks for working on these.

Jan

From: Dana Hofstetter [mailto:Dana@IdahoWaterLaw.com]
Sent: Fri 4/20/2012 7:40 PM
To: Shurte, Jan
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Jan:

I am working on this (and the Andrews Ditch matter) and am planning to provide you information next week. I tried calling you earlier today but ended up talking to Steve Clelland. It was after 4 and apparently you were gone for the day. I have a question as to why the only diversion point on Sand Hollow that you consider relevant in terms of capacity is the one in the NENW of Section 25. As you know, Greg also has at least 3 other diversion points on Sand Hollow Creek.

Thank you,
Dana

On 4/3/2012 4:07 PM, Shurte, Jan wrote:
Dana,

I am in the process of reviewing the above late claims for submittal to the SRBA Court on April 30, 2012. During the course of my review I have come across information I will need before I can make my recommendations. Following are the items needed:

63-33570 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1939 priority. From an email you sent to me on 8-30-2011 it appears the claim is for 87 acres irrigated in 1939 within the 254 acre permissible place of use. A map needs to be submitted outlining which 87 acres were being irrigated in the 1939 photo. A measurement of the diversion point in the NENW, S25, T5N, R5W is also needed. The license for 63-3201 does have a Memo to the file concerning the estimated flow rate. However, the flow was never measured from this point of diversion and the license was issued for an inch to the acre for 167 acres or 3.34 cfs without a measurement. This point of diversion was again not measured in the 1987 field exam conducted by Steve Lester for 63-9744 and 63-10867. In order to consider additional flow, a measurement of the point of diversion in S25 is needed along with a description of the diverting works. Some type of proof, such as an affidavit from past owners or neighbors, stating that the diversion works have been capable of a diversion rate of 2.62 cfs since 1939 is also needed. The proof of application of water to beneficial use for 63-3201, upon which the priority of Right No. 63-33571 is based, shows proof of 5.1 cfs being diverted in the 1960s.

63-33571 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1960 priority date. Based upon the same email mentioned for 63-33570 it appears this claim is for the remaining 167 acres originally licensed under Water Right No. 63-3201. I also need a map outlining the 167 acres being claimed in the 254 acre permissible place of use for this right. The same measurement is needed for the point of diversion in the NENW, S25 as explained under 63-33570 above. The quantity that proof of beneficial use was submitted for under 63-3201 states a diversion rate of 5.1 cfs. Again some type of proof as mentioned above will be needed documenting that a total of 7.65 cfs (33570 + 33571) was capable of being diverted in 1960. It could be that the diversion works have not changed, I just need to know that.

Note: Per the Motion for Reconsideration filed in March, 2009, the capacity of the works is likely at least 5.08 cfs. Some proof of a greater amount needs to be in the file and the missing piece is the amount of water being diverted from the point of diversion in the NENW, S25.

Thanks,
Jan

Hope this helps and thanks for working on these.

Jan

From: Dana Horstetter [mailto:Dana@IdahoWaterLaw.com]

Sent: Fri 4/20/2012 7:40 PM

To: Shurte, Jan

Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Jan:

I am working on this (and the Andrews Ditch matter) and am planning to provide you information next week. I tried calling you earlier today but ended up talking to Steve Clelland. It was after 4 and apparently you were gone for the day. I have a question as to why the only diversion point on Sand Hollow that you consider relevant in terms of capacity is the one in the NE NW of Section 25. As you know, Greg also has at least 3 other diversion points on Sand Hollow Creek.

Thank you,
Dana

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Thanks,
Jan

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, April 03, 2012 4:07 PM
To: Dana Hofstetter
Subject: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

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Thanks,
Jan