

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-160	ANN OBENDORF 26496 DEB LN PARMA ID 83660	Disallowed	Recommended as Right Nos. 63-33406 and 63-33511.
	GREG OBENDORF 26496 DEB LN PARMA ID 83660		

Shurte, Jan

From: John Marshall [john@jmarshalllaw.com]
Sent: Tuesday, May 03, 2011 3:31 PM
To: Shurte, Jan; Courtney, Andrea
Subject: EG Johnson Farms - Subcases 63-33406, 180 and 181

Jan and Andrea,

Following up on today's initial hearing in the EG Johnson Farms subcases, following is a proposal to initiate discussions that hopefully will lead to a quick resolution of our objections. There are two issues we need to work through. One is the language on the mitigation condition that is included in all three rights. The second issue is the irrigation purpose of use on right 63-33406.

Regarding the mitigation condition, our concern is that the language is potentially overly restrictive. A water master in the future could interpret the condition as written to require that EG Johnson's Sand Creek and waste water rights be reduced along with Boise River rights (i.e., 100% to 75% to 60% to 0%) based on Boise River flows rather than Sand Creek or drain flows. We do not want to see the Sand Creek and waste rights reduced solely due to the mitigation remarks if the other rights in those sources were not being administered. The following changes to the remark would prevent that while still preserving the mitigation nature of the rights in the Boise River:

“If the mitigation portion of this right is not deliverable due to a shortage of water or a priority call, then the amount of water ~~authorized for diversion under the uses~~ *available for mitigation* of Right Nos. 63-4036A, 63-4036B, 63-28751, and 63-32394 ~~that are being mitigated~~ shall be reduced by the same proportion as the reduction to this right.”

Thoughts?

Regarding the irrigation purpose of use on 63-33406, we claimed this as an accomplished transfer of right 63-160. We recognize that this overlaps with decreed right 63-3385, which has a junior priority, but we believe that right 63-3385 was essentially a license filed to cover what actually was an accomplished transfer. In other words, we believe EG Johnson's predecessors moved a portion of right 63-160 appurtenant to their property from the Andrews ditch point of diversion to a direct diversion out of the Boise River onto a new piece of ground adjacent to the original place of use. There is plenty of diversion and irrigated acreage available under right 63-160 to recognize the accomplished transfer. A combined use remark would ensure there is not a stacking of these rights.

Please review and get back to me with questions and comments.

Thank you, John

not been regulated by a watermaster. If
we ~~put~~ ^{leave} the current mitigation condition
on this it will be imposing a possible
reduction in the rights for E. Johnson
from Sand Hollow Creek ~~based which~~
for which neither a reduction nor cutback
have ever been historically done. The new
remark allows for reduction in the
Boise River Rts per the BR cutback
remark while thus allowing less
H₂O for mitigation & allowing Sand
Hollow Creek to be regulated via
priority date with all of the other Rts
in the Creek in the future. Boise
River Rts would be cut & only what's
left could be used for any kind of
mitigation for Sand Hollow Creek. Would
not harm Boise River Rts because of the cut-
back & Sand Hollow Rts will be pro-
tected because of the mitigation of
the Boise River & Sand Hollow is low.

Shurte, Jan

From: John Marshall [john@jmarshalllaw.com]
Sent: Tuesday, May 03, 2011 3:31 PM
To: Shurte, Jan; Courtney, Andrea
Subject: EG Johnson Farms - Subcases 63-33406, 180 and 181

Jan and Andrea,

Following up on today's initial hearing in the EG Johnson Farms subcases, following is a proposal to initiate discussions that hopefully will lead to a quick resolution of our objections. There are two issues we need to work through. One is the language on the mitigation condition that is included in all three rights. The second issue is the irrigation purpose of use on right 63-33406.

Regarding the mitigation condition, our concern is that the language is potentially overly restrictive. A water master in the future could interpret the condition as written to require that EG Johnson's Sand Creek and waste water rights be reduced along with Boise River rights (i.e., 100% to 75% to 60% to 0%) based on Boise River flows rather than Sand Creek or drain flows. We do not want to see the Sand Creek and waste rights reduced solely due to the mitigation remarks if the other rights in those sources were not being administered. The following changes to the remark would prevent that while still preserving the mitigation nature of the rights in the Boise River:

OK w/ 5 acres in
"If the mitigation portion of this right is not deliverable due to a shortage of water or a priority call, then the amount of ~~water authorized for diversion under the uses~~ available for mitigation of Right Nos. 63-4036A, 63-4036B, 63-28751, and 63-32394 ~~that are being mitigated~~ shall be reduced by the same proportion as the reduction to this right."

Boise River H2O

Thoughts?

Regarding the irrigation purpose of use on 63-33406, we claimed this as an accomplished transfer of right 63-160. We recognize that this overlaps with decreed right 63-3385, which has a junior priority, but we believe that right 63-3385 was essentially a license filed to cover what actually was an accomplished transfer. In other words, we believe EG Johnson's predecessors moved a portion of right 63-160 appurtenant to their property from the Andrews ditch point of diversion to a direct diversion out of the Boise River onto a new piece of ground adjacent to the original place of use. There is plenty of diversion and irrigated acreage available under right 63-160 to recognize the accomplished transfer. A combined use remark would ensure there is not a stacking of these rights.

Please review and get back to me with questions and comments.

Thank you, John

? Basically he is saying that: ~~the~~
If the mitigation portion of the Boise River Rt. is not deliverable due to a shortage of water or a priority call, then the amount of water (available for mitigation) i.e. Boise River H2O of Right #'s ^{SAND HOLLOW} ~~CK RTS.~~ shall be reduced by the same proportion as the reduction to this Boise River Rt.

New Mitigation Remarks -

Per conv. w/ Andrea Courtney:

~~Old cond.~~

Idea is that Sand Hollow Creek is being mitigated for use with the Boise River decreed rts. In reality, ~~when~~ the Boise River right was used when the Boise River was located in a different area prior to Gully Park being built for flood protection. Once Gully Park went in & diversion via the NY Canal was proliferated, irrig. districts became prevalent & more farms cropped up. Sand Hollow Creek began to be a more accessible & larger flow due to the drainage from other irrigation above, then the Boise R. diversion was abandoned for the Sand Hollow Ch. due to ease of irrigation. ~~more~~ This mitigation is different than mitigation for new rts. This is where the Boise R. water has been kept in abeyance in case the Sand Hollow H₂O ~~is~~ lessens due to less irrig ^{up above} in the future. Sand Hollow Creek has next sq. →

Shurte, Jan

From: Shurte, Jan
Sent: Monday, July 18, 2011 4:04 PM
To: Courtney, Andrea
Cc: Williams, Ray
Subject: RE: EG Johnson update

Good news on this front. I spoke with Carter and have determined I can recommend the 27.9 acres in the SWSW, S25. I even looked back at the 1939 photography and it was there. After speaking with Carter about injury issues I feel good about recommending it back to an 1865 priority. That's always a little scary. Then, I decided to make the remark very simple on this one and told him we could talk about it. You know I never liked the one he proposed (I know we spoke about it and it is the way it would happen), but to try and cover a few more bases I proposed to say "This right remains in the Boise River to be used for mitigation of Sand Hollow Creek Right Nos. blah blah. We have been playing phone tag last week and so I left him a message this morning with the above proposals, so now he has to call me back.

The only problem I did not talk with him about, but will, is the pt of diversion listed on my recommendation is the one for the irrigation pod and not the mitigation pod. I believe the mitigation pod is where the Andrews ditch comes out and so I would need both pods on the recommendation with both irrigation and mitigation. So, I will talk to him about that when he calls. SF5 should be in circulation prior to any status conference. It's almost outta there.

Jan

From: Courtney, Andrea
Sent: Monday, July 18, 2011 3:54 PM
To: Shurte, Jan
Cc: Williams, Ray
Subject: EG Johnson update

Jan~

What's the good work on EG Johnson? Were you able to get a hold of John?
Andrea

WATER LICENSE

Water License No. 33487 Priority February 21, 1967 Amount 0.56 c.f.s.

THIS IS TO CERTIFY, that JOHN R. MC CURRY
 of Parma, Idaho, made application for a permit to appropriate the public waters of
 the State of Idaho, dated February 21, 1967; that Permit 33487 was issued pursuant
 to said application; that the proposed works were completed on or about 1967
 with a storage/or carrying capacity of 4.9 c.f.s., said works consisting of
pump and motor; and that on January 20, 1968
 proof was made to the satisfaction of the State Reclamation Engineer, of the beneficial use of ~~xxx~~ 126
 acre feet per season, with a maximum rate of diversion of 0.56 cubic feet per second of the waters
 of Boise River, tributary of Snake River
 for the purpose of irrigation from April 1 to October 31;
 and for _____ from _____ to _____; and for
 _____ from _____ to _____; and that the use
 of said waters has been made in accordance with the laws of Idaho, and is hereby confirmed by the State Recla-
 mation Engineer and entered in the records of the Idaho Department of Reclamation: the point of diversion is
 located in Lot 9 (SW 1/4 SW 1/4) Sec. 25, T. 5 N., R. 5 W., B.M., and
 other additional points _____, in the County of
Canyon; and that the amount of water to which such right is
 entitled and which is hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially
 used for said purposes and shall not exceed ~~xxx~~ 126 acre feet per year.

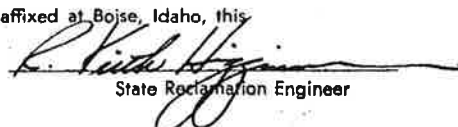
Description and location of place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>5 N</u>	<u>5 W</u>	<u>25</u>											<u>Lot 9</u>						<u>27.9</u>

Total number of acres irrigated 27.9

The right to the use of the water hereby confirmed is restricted to the lands or place of use herein described,
 as provided by the laws of Idaho.

Witness the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this

13th day of November, 1968.

 State Reclamation Engineer

63 3585

33487

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF EXAMINER

Permit No. 33487

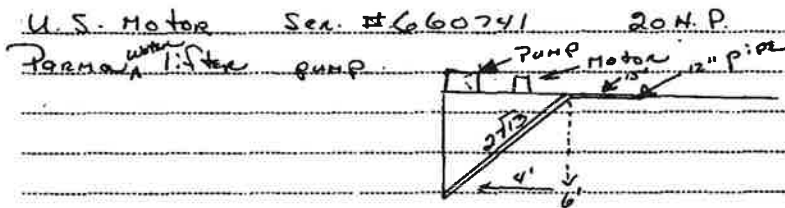
This proof is for Completion of Works and Beneficial Use in Water District No.

1. Name of applicant John R. McCurry

2. Source of water supply: Boise River

3. Location of point of diversion: Is in the Lot 9 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 25
T. 5 N R. 5 W County of Canyon

4. Describe works as they exist, giving dimensions and capacities of same:



5. Water is used for: irrigation

6. State whether or not water has been turned into works of diversion: yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

Lot 9 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), sec. 25, T. 5 N, R. 5 W, B.M.

38 acres

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Boise River

Remarks: We used a sounding meter and measured 125 cu. ft. in 25.5 sec. for 4.9 CFS

Allow .56 C.F.S.

This examination was made on the 13 day of June, 1968

(Signed) D. Stuckey

Examiner

Plat
x.t.
33487

T 5 N

25



AREA = 27.9

Subd = 1

Q = .56 c.f.s.

1.5 AF / ACRE / YEAR = 126 AF / YEAR

@ .56 c.f.s. FOR 210 DAYS = 235 AF

THIS IS NOT SUPPLEMENTAL

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise, Idaho
Permit No. _____

RECEIVED
Department of Reclamation

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE
and Completion of Works

DEPOSITION OF WITNESS

The deposition of two witnesses on this form, taken separately, required in each case.

Ques. 1 State your name, age, residence, occupation and postoffice address:

FLOYD A. CORNWELL - age 43 - PARMA, IDAHO - 83660 -
Ditch SUPERVISOR -

Ques. 2 Are you acquainted with John R. McCurry, the holder of
Permit No. 33487? How long have you known him and where does he reside?

25 YEARS - RESIDES PARMA, IDAHO

Ques. 3. Have you read or heard said Permit No. 33487 read, and are you familiar
with its provisions and conditions: Yes X No. _____

Ques. 4. State source of water supply: BOISE RIVER

Give location of place of diversion, showing subdivision, section, township and range

Lot 9 - (SW 1/4 SW 1/4) SECTION 25 - T5N - RANGE 5W3M - Canyon Co. IDAHO

Describe works for conveying water to place of use: @ EMENT ditch

Ques. 5. How many second feet of water do you estimate said works will safely conduct
to place of use: 3 1/2 SECOND FEET How much water have you seen being so
conveyed? 3 1/2 SECOND FEET

Ques. 6 If for irrigation, show number of acres irrigated in each subdivision, giving
full legal description:

And lots - 7 & 8 - Sec. 18 - T5N - Range 5W3M - Canyon Co.
140 Acres E 1/2 SE 1/4 SECTION 26 - T5N - Range 5W3M Canyon Co. IDAHO
40 Acres Lot 9 - Sec. 28 - T5N - Range 5W3M - Canyon Co. IDAHO

Ques. 7. If for other than irrigation purposes, show full legal description of place of use, and state purpose for which water is used.

None

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Seelye Co. 180 Acres

Ques. 9. Have you any ownership interest in the works, water or lands above mentioned? If so, in what way and to what extent? NO -

Ques. 10. When did you first see this water used? 1944

Other times you have seen such use: CONTINUOUS SINCE

(Signed):

X Floyd Cornwell

* * * * *

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in

Perma, County of Canyon, State of Idaho, on this 20th day of January, A. D. 1968

James L. Lockwood

Notary Public for the State of Idaho

Residing Perma Idaho

My commission expires Nov. 1, 1968

23 24
26 25

24 19
25 30

E 30.4

K 0.8

A 361

D 11.6

C 10.2

B 11.5

26.7

G 15.7

I 12.7

H 28.0

J 35.1

A 27.9

Irrigated
AREA

PD PD

25

36

25

31

B 4

C 1.6

D 1.6

E 1.6

F 1.6

G 1.6

H 1.6

I 1.6

J 1.6

RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33406

NAME AND ADDRESS: E G JOHNSON FARMS INC
24007 HWY 20-26
PARMA ID 83660

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.800 CFS

This right remains in the Boise River to be used for mitigation of Sand Hollow Creek Right Nos. 63-4036A, 63-4036B, 63-28751 and 63-32394.

~~This right mitigates for the depletion of water resulting from the diversion and use of water under Right Nos. 63-4036A, 63-4036B, 63-28751 and 63-32394. To prevent injury to other water right holders, the right holder shall cease diverting 3.8 cfs of this right from the Boise River. If this right is used for any other purpose, then water shall not be diverted under Right Nos. 63-4036A, 63-4036B, 63-28751 and 63-32394. If the mitigation portion of this right is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under the uses of Right 63-4036A, 63-4036B, 63-28751 and 63-32394 that are being mitigated shall be reduced by the same proportion as the reduction to this right.~~

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1865

POINT OF DIVERSION:

T05N R05W S25 SWSW Lot 9 Within Canyon County

T05N R05W S25 SWSE Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
<u>IRRIGATION</u>	<u>03/01 11/15</u>	<u>0.560 CFS</u>
<u>MITIGATION</u>	<u>03/01 11/15</u>	<u>3.800 3.24 CFS</u>

Diversion for any water use under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE: IRRIGATION in CANYON County
T05N R05W S25 SWSW 27.90

MITIGATION in CANYON County

T05N R05W S25	NENE	T05N R05W S25	NWNE
T05N R05W S25	SWNE	T05N R05W S25	SENE
T05N R05W S25	NENW	T05N R05W S25 Lot 6	NWNW
T05N R05W S25 Lot 5	SWNW	T05N R05W S25 Lot 5	SENW
T05N R05W S25 Lot 4	NESW	T05N R05W S25 Lot 4	NWSW
T05N R05W S25 Lot 3	SWSW	T05N R05W S25 Lot 3	SESW
T05N R05W S25 Lot 3	SESW	T05N R05W S25 Lot 1	NESE
T05N R05W S25	NWSE	T05N R05W S25 Lot 2	SWSE
T05N R05W S25 Lot 1	SESE	T05N R05W S36 Lot 3	NWNE

This right and Right No. 63-3585 are limited to the irrigation of a combined Total of 27.9 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 - Decreed

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

This right is a split of Right No. 63-160 which is also designated as Right No. 28 in the Boise River Stewart Decree and Boise River Water Distribution Report.

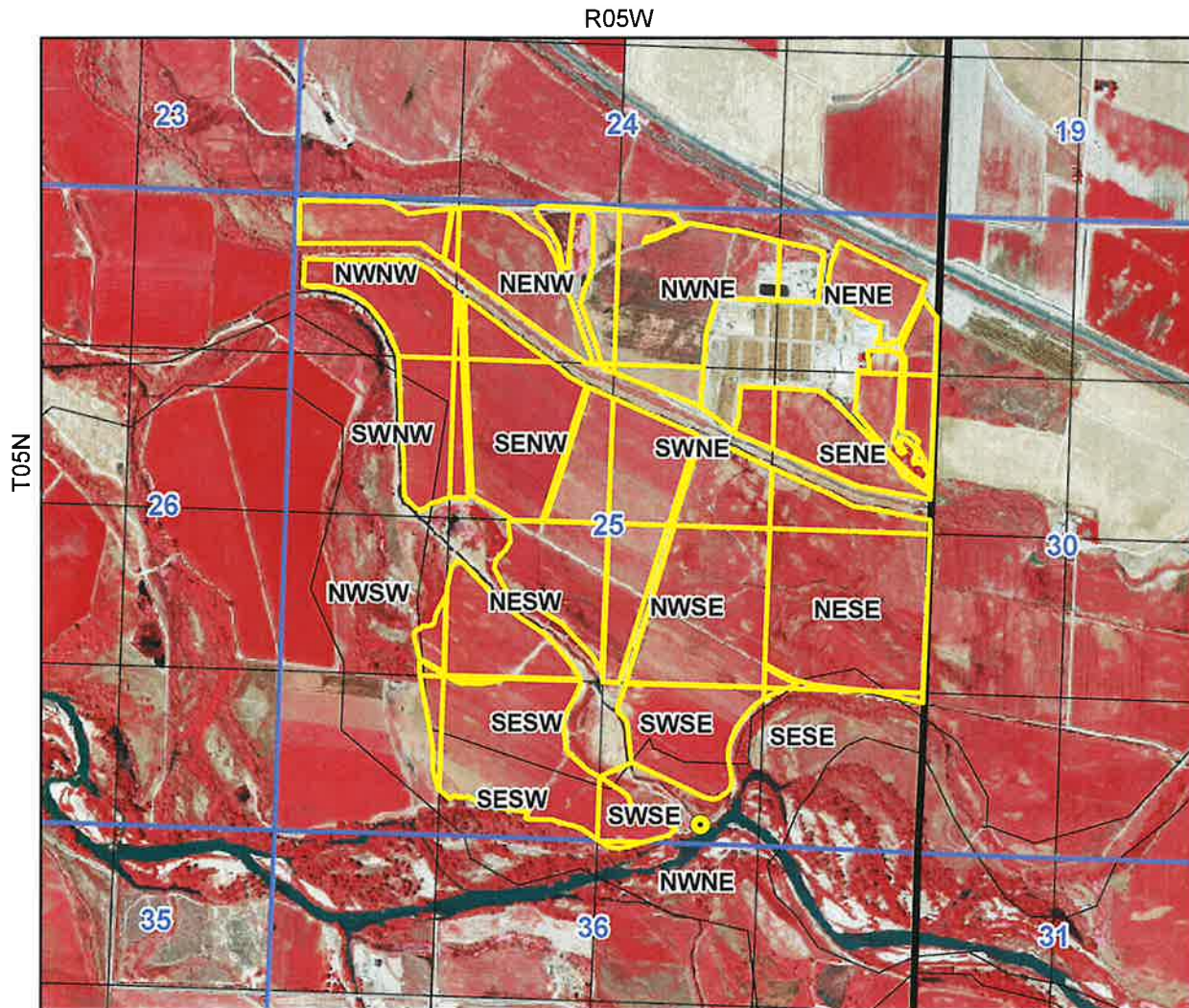
Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

State of Idaho
Department of Water Resources
Adjudication Recommendation

63-33406

Water Service Area Boundary for E G Johnson Farms Inc



Legend

- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.15 0.3 0.6 Miles



IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-32695	NAMPA & MERIDIAN IRRIGATION DISTRICT C/O RINGERT CLARK LAW ATTN DAN STEENSON PO BOX 2773 BOISE ID 83701-2773	Disallowed	No lawful appropriation shown.

John Marshall Law PLLC

575 W Bannock, Suite B
Boise, ID 83702

phone 208-991-2701
fax 208-906-8043
john@jmarshalllaw.com

May 13, 2010

Via US Mail:

Jan Shurte
Adjudication Supervisor
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: EG Johnson Farms water rights

Dear Jan,

Thank you for meeting with Terry Scanlan and me yesterday to discuss the water right situation for EG Johnson Farms. The following is the written summary of our proposal you asked us to provide so you could further analyze the situation. I include a map of the place of use at issue for reference. I'll refer to the area enclosed in the black line on the map as the EG Johnson Farm.

Background

The SRBA Court has decreed five irrigation water rights with places of use appurtenant to the EG Johnson Farm. One right, 63-3585, authorizes the irrigation of an isolated parcel in the southwest corner of the property using water from the Boise River and is not relevant to our proposal. The other four rights, 63-4036A, 63-4036B, 63-32394, and 63-28751, authorize the irrigation of the remainder of the EG Johnson Farm using water diverted from Sand Hollow Creek and drains. I'll refer to these rights collectively as the Sand Hollow Creek Rights. The Sand Hollow Creek Rights all share the same March 1, 1938 priority date. The attached map shows the locations of the particular places of use for all these rights. The map also shows the places of use for water rights 63-160, 63-180 and 63-181, all of which were decreed in the Stewart Decree, referred to as the Johnson Stewart Decree Rights. These rights have priority dates of 1865, 1869 and 1874 respectively. Rights 63-180 and 63-181 currently are not claimed in the SRBA. The Obendorfs have claimed right 63-160, but have stated they do not intend to pursue that portion of the right that is appurtenant to the EG Johnson Farm.

Our client purchased EG Johnson Farm in the 1970s. By that time the direct diversions from the Boise River had ceased and the farm was being irrigated with water diverted from Sand Hollow Creek and drains that cross the property. Although we will not

present a detailed historical analysis here, we understand our client's predecessor gradually shifted the irrigation of the EG Johnson Farm away from the Boise and over to Sand Hollow Creek and drains as these sources became reliable water sources as the surrounding area developed in the 1930s using water supplied through the Black Canyon Irrigation District and the Farmers Cooperative Project. At that time, this reach of the Boise River was prone to flooding and course alteration, making it difficult to obtain a reliable diversion. It also appears that it was difficult to irrigate the property with the relatively low head generated by the ditches bringing water to the property. As water began to flow reliably in the drains and Sand Hollow Creek, it would have made sense to make use of these sources.

Proposal

Our client seeks to preserve the Stewart Decree water rights appurtenant to the EG Johnson Farm. Our client has two primary motivations. One is simply to preserve senior priority rights from the Boise River. It would be unfortunate for Idaho to lose senior, prior decreed rights if there is a legitimate way to preserve them. The second motivation is to insure against the uncertainty and potential future unreliability of Sand Hollow Creek and the drains as sources of irrigation water. There is no certainty that irrigation and land use patterns in the area surrounding the EG Johnson Farm won't change in the future in a way that could adversely affect the availability of water in the drains and Sand Hollow Creek. If that were to happen, our client would like to have the flexibility of returning to Boise River diversions.

We believe that under the circumstances, where the EG Johnson Farm has been continuously irrigated since the 1800s, there has been no forfeiture of the Stewart Decree Rights. We also believe that the current source of the irrigation water for the EG Johnson Farm, authorized by the four Sand Hollow Creek Rights, actually originates from the Boise River, albeit through other rights, that eventually finds its way into Sand Hollow Creek and the drains that cross the EG Johnson Farm. In other words, we believe that our client's predecessors in effect accomplished a change of point of diversion from the Boise River to Sand Hollow Creek and the drains.

We recognize the Sand Hollow Creek Rights are decreed with sources different from the Boise River, and that as a technical matter recognizing an accomplished change in point of diversion to an alternate source carries significant issues, particularly concerning injury to existing rights on the alternate source. However, if appropriately conditioned to avoid inserting priority dates into the new sources that predate the beneficial use made from the source, we believe this could be a viable option.

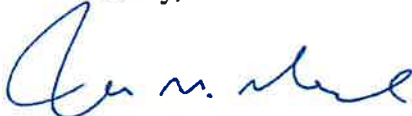
The other option we have explored, and one we think is worth pursuing, is to recognize an accomplished transfer of the purpose of use of the three Stewart Decree Rights to mitigation for the Sand Hollow Creek Rights. Under this proposal, the Johnson Stewart Decree rights remain in the river as downstream mitigation for the beneficial use associated with the Sand Hollow Creek Rights. We of course recognize that this proposal would also require appropriate conditioning to avoid injury to existing rights. We have

identified two general areas of mitigation. The first is on Sand Hollow Creek and the drains. It would be inappropriate to use the priorities of the Johnson Stewart Decree Rights against the rights in Sand Hollow Creek, and we would expect a condition that would clarify that relative to the rights in Sand Hollow Creek and the drains, the priorities of the Sand Hollow Creek Rights control. The second area of potential injury is to existing rights in the Boise River upstream of the confluence of Sand Hollow Creek and the Snake River and downstream of the historic points of diversion for the Johnson Stewart Decree Rights. We believe it would likely cause injury, at least in the legal sense, to allow enforcement of the Stewart Decree priorities in this reach where junior rights have been used for a long period of time without call from senior upstream rights. However, for any future call from a right downstream of the confluence of Sand Hollow Creek and the Snake, the priorities of the Johnson Stewart Decree Rights would control.

In summary, we propose viewing the water situation on the EG Johnson Farm from a regional perspective, recognizing that the current sources of water used to irrigate the property are the result of Boise River diversions that are not consumptively used on surrounding land. Viewing the situation from this regional perspective, it is no matter to the hydraulic system whether the diversions for the EG Johnson Farm come from Sand Hollow Creek, the drains, or the Boise River. The net effect to the system is the same either way. Potential injuries to the existing rights diverting from Sand Hollow Creek and the Boise River need to be identified and eliminated, but we believe this is achievable without much difficulty. We propose preserving the Johnson Stewart Decree Rights in one of two ways: 1) recognizing an accomplished transfer of the point of diversion from the Boise River to Sand Hollow Creek and drains, appropriately conditioned to avoid injury to existing rights in these sources; or 2) recognizing an accomplished transfer of the nature of use from irrigation to mitigation. Under this first proposal, the Johnson Stewart Decree rights would be subordinated to water rights diverting from Sand Hollow Creek with priority dates senior to March 1, 1938. Under this second proposal, the Johnson Stewart Decree Rights would be conditioned to avoid injury and specify they are being left in the Boise River to mitigate the downstream impacts of the Sand Hollow Creek Rights. Under both proposals, the Johnson Stewart Decrees would have a combined use limit with the Sand Hollow Creek water rights that would limit the rights to irrigation of (or mitigation for irrigation of) the same 365.1 acres.

Please review this proposal and then get back to me with thoughts and comments.

Sincerely,



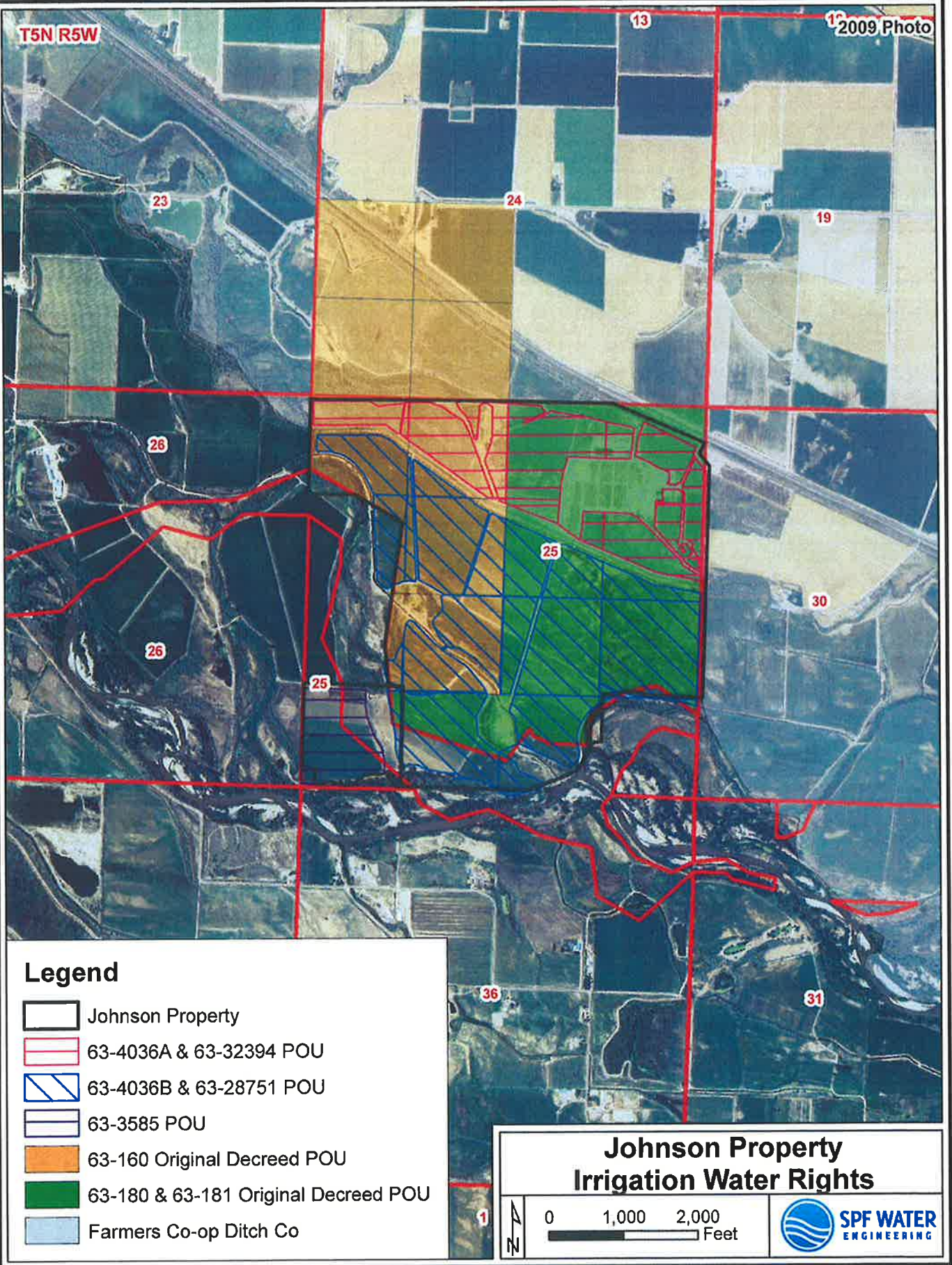
John M. Marshall

cc: Jeff Johnson
Terry Scanlan

Enclosure

T5N R5W

2009 Photo



And be adjudged to pay \$5.00 costs in addition to
him.

XXVI.

That the defendant NOAH W. PALMER be, and he is hereby awarded
the use of the waters of Boise River, diverted at a point on the south
bank of said river near the center of the S. 1/2 of SW 1/4 of sec. 7,
T. 4 N. R. 3 W. B.M., through what is known as the Center point Ditch,
for use upon lands situated in T. 4 N. R. 4 W. B.M., in the following
amount and from the following date;

63 0159 T P.D. 172
79 inches, from June 1, 1865; and hereby designated as Right No. 27.

And be adjudged to pay \$5.53 costs in addition to the costs incurred by
him.

XXVII.

That the defendant J. N. TUCKER be, and he is hereby awarded
the use of the waters of Boise River, diverted from said river at a
point in the SE 1/4 of Sec. 25, and SW 1/4 of Sec. 30, T. 5 N. R.
5 W. B.M., for use upon the SW 1/4 of Sec. 24, NE 1/4 of NW 1/4 and
lots 4, 5 and 6 of sec. 25, T. 5 N. R. 5 W. B.M., in the following
amount and from the following date;

63 0160
350 inches, from June 1, 1865; and hereby designated as Right No. 23.

And be adjudged to pay \$24.50 costs in addition to the costs incurred
by him.