

BOISE KUNA,
JUNE - where they want to amend - ^{surface} H₂O only

63 - 3330 B - SW NE - 40 acres

63 - 7075 B - SW NE -

By June 2001 - need to show

5 years prior to ²⁰⁰¹ 1996 - they
irrigated 40 acres within the 48
acre minus the 5 acres.

Proof that the 5 acres was
excluded & they added in
the 14 acres under the well
prior to 1987.

? Orig. claim filed for 2075 &
3330.

~~I am have~~

3760
337-7360- B57 Ron Jo. Bud.
of Control.

Shurte, Jan

From: David and Angie Daniel [dadaniel1525@heritagewifi.com]
Sent: Thursday, October 23, 2008 9:10 AM
To: Shurte, Jan
Subject: History on right 63-31189

Jan

Here is some history and timeline on the 5 acre right 63-31189. I don't know if it will make any difference, especially since the documentation consists of just my handwritten notes but it may explain why I went ahead with the transfer. I found my notes in another notebook that I had been using in 2001 to document our water rights saga.

April 12, 2001 Terry Scanlon submitted our transfer application 69110 to IDWR

Early May 2001 Someone from WR called to tell me that as they were reviewing the transfer application they found some existing water rights (63-3330 and 63-7075) for our property. I think it was Lori Graves, but I don't have that written down. She asked what I wanted to do. I believe I asked her which way would be the quickest and she said the transfer route would allow me to start irrigating sooner. I called Terry and he concurred that we should continue with the transfer.

June 21, 2001 I met with Lori Graves and Kris Williams at Lori's office. Kris is Larry and Marianne Williams' son. Kris was starting to develop a subdivision on the property west of us. I had approached him in January 2001 to see if he wanted to sell some of the water rights from the 190 acres he was developing. He did not want to sell any rights. Kris arranged the meeting because he had just discovered that rights 63-3330 and 63-7075 were still listed with his parents' names and he thought he could sell me the rights for the portion that covered my ground. Lori told Kris that he couldn't sell me my rights because they ran with the ground. He was really ticked off. After Kris left I stayed to ask Lori how having these rights would affect the 5 acre right if I completed the transfer and to find out more about the old rights. My notes say "Could just move the 5 acre right to other part of place." So I am assuming that she told me I would be able to transfer the rights later. My notes from that meeting also indicate that Lori told me we could only use the rights from 63-3330 and 63-7075 if we could get Williams to allow us to use the old points of diversion because we wouldn't be able to transfer the P of D to our property until the rights were decreed. I offered to rent water from the old P of D but Kris was so mad he wouldn't even consider it. I continued to talk to Lori about the situation for another month and figured I had to complete the transfer if I wanted to get the rights in the next year or 2.

October 14, 2001 Transfer 69110 was approved by the IDWR.

I wished I had asked those questions by email so I would have some written proof.

I never intended to stack any rights. I only use 16 to 18 acre inches per year on the 4 acre vineyard so there is absolutely no reason to stack any rights. And I have never used any water under rights 63-3330 and 63-7075. I hope we can figure out a way to move right 63-31189 to the 16 acres in the SENE of my property or to transfer 5 acres of rights 63-3330B and 63-7075B over to the SENE. I have over \$8000 invested in right 63-31189 so I really hate to lose that 5 acre right especially since I was trying to follow the law and obtain a water right to irrigate my vineyard.

Let me know if I can provide any more clarification.

Thanks for all of your help.

11/3/2008

David Daniel

11/3/2008

To: 63-3330B, 7075B & 31189 – David Daniels

From: Jan Shurte

Date: 10-7-08

Subject: Amended Claims Review

Per a phone call from David Daniels on 10-7-08, I began reviewing the amended claims submitted to the SRBA Court on 9-15-2008. In so doing I discovered other factors involved as follows:

Amended claim was filed to create a PPU for both 63-3330B (1963 priority) & 63-7075B (1968 priority). This PPU removes 5 acres from both rights and spreads out the acres onto the neighboring 1/41/4, NENW, Sec. 24, 2N, 3W. Basically the amended claims are filed for a ppu in the SWNE (34 ac) and NENW (14 ac) with the restriction that no more than 40 acres could be irrigated in any given irrigation season. **NOTE:** The legal description is wrong on the amended claims for the 14 acres listed in Sec. 24. Rather than the NENW, S24, the 14 acres are in the SENE, S24 per the map and a check of taxlot ownership info.

During my research on these amended claims and overlaps, I found Transfer No. 73818 pending since 2005 (in the hold drawer) proposing to transfer 1 acre from 63-31189 (1967 priority right previously split from 63-3599D) from the 5 acres listed on this right also located in the SWNE, S24. It appears that 1 acre of water rights may already have been sold from these 5 acres.

Originally, Right Nos. 63-3330B, 7075B and 31189 were recommended in the Director's Report with a limitation of .80 cfs and 180 (4.5 acre) when all three were combined. They were all recommended for land in the SWNE, S.24.

Objection filed stating that 63-31189 needs to be taken out of this combined limits for various reasons cited in the objection. I believe it does need to be taken out of the equation in order for the transfer now pending to be approved. The only way the transfer will be approved is if the 5 acres covered by 63-31189 is removed from 63-3330B & 7075B in an ADR which would show no stacking of these rights and allow the transfer to be approved.

However, if we take out the 5 acres for 63-31189 we will need to reduce the original rights by 5 acres to avoid an expansion. In other words, we cannot unstack these in the SRBA by doing a ppu and leave the 5 acres just on 63-31189. My recommendation will be to allow the ppu with a condition that states a 35 acre limitation within the 48 acre ppu.

Amended Director's Report
Right No. 63-3330B

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

RIGHT NUMBER: 63-3330B

NAME AND ADDRESS: DAVID DANIEL
12197 DEER FLAT RD
NAMPA ID 83686

ANGELA DANIEL
12197 DEER FLAT RD
NAMPA ID 83686

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.450 CFS
175.500 AFY

Right Nos. 63-3330B and 63-7075B are limited to a total combined diversion rate of .8 cfs and to a total combined annual diversion volume of 180 AF.

PRIORITY DATE: 02/25/1963

POINT OF DIVERSION:

T02N R03W S24 SENW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	0.450 CFS 175.50 AFY

PLACE OF USE: IRRIGATION in CANYON County

T02N R03W S24	SWNE	34.00	T02N R03W S24	SENE	14.00
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48 ACRES TOTAL

This right is limited to the irrigation of 39 acres within the place of use described above in a single irrigation season.

Right Nos. 63-3330B and 63-7075B are limited to the irrigation of a combined total of 40 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 - License

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

Amended Director's Report
Right No. 63-3330B

Sent to D.D. on 12/19/08

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IRRIGATION	03/01 11/15	0.450 CFS 175.50 AFY

PLACE OF USE: IRRIGATION in CANYON County

T02N R03W S24	SWNE	<u>34.00</u>	~~39.00~~	T02N R03W S24	SENE	<u>14.00</u>
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MEMORANDUM

DATE: 5/18/2001

FROM: Lori Graves *LG*

TO: Transfer File 69110

RE: Review

Attachments

- A. Purchase Agreement
- B. SRBA Claim
- C. 1996 and 1997 Aerial Photos

Brief

Applicants have purchased a 5 acre portion of ground water right 63-3599D and wish to transfer that portion to their property and divert the water from an existing domestic well. The original P/U is being retired from irrigation for gravel processing. A change of ownership has been processed in the SRBA, which split the right. Applicant's portion is 63-31189, which is the number this transfer is based on.

Review

The attached purchase agreement granted the applicant 1"/acre, which accounts for the .10 cfs listed on claim 63-31189 and the transfer. However, the claim also lists 90 afa for the 5 acres, which needs corrected to 22.5 afa as listed on the transfer.

Applicant filed application 63-12404, on hold since 1997, which will be amended upon approval of this transfer to exclude transfer amounts.

There were no overlapping rights found at the existing P/U, however licenses 63-3330 and 63-7075 overlap the proposed 5 acres in the SWNE S24. 63-3330A and 63-7075A were filed in the SRBA on a portion of the original licenses, but excluded applicant's 5 acres. Terry Scanlan verified that the rights have not been used within the last five years for irrigation on the Daniels property, therefore, were not pursued due to forfeiture (the SRBA claims have been noted).

Beneficial Use

Applicant provided 1996 and 1997 photos confirming irrigation within the last five years at the P/U to be retired for this transfer.

Recommendations

Approve the transfer as filed.

Change the SRBA claim to reflect the approved transfer (90 afa to 22.5 afa).

MICROFILMED

MAY 25 2001

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

RECEIVED

APR 13 2001

WATER RESOURCES
WESTERN REGION

April 12, 2001

Mr. Steve Lester 
Water Rights Supervisor
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application to Transfer Water Right 63-03599D and Applications to Lease Water Rights 63-03599D and 63-07825C to the Water Supply Bank

Dear Steve:

On behalf of Hukill Finegrading and Excavation, I have enclosed an Application For Transfer of Water Right 63-03599D. I have also enclosed applications to lease all of water right 63-07825C and a portion of water right 63-03599D to the Water Supply Bank.

The transfer application proposes changing the nature of use of a 10-acre portion of water right 63-03599D from irrigation to industrial use. The industrial use will consist of dust suppression, gravel washing, and other potential uses at a gravel pit operation. Nature of use for the remaining 105 acres of the water right will continue to be irrigation. A check for the \$330.00 application fee is enclosed.

The water supply bank applications propose leasing all of 63-07825C and a 95-acre portion of 63-3599D for an indefinite period. A portion of the land authorized for irrigation under these water rights is currently being used for a gravel pit operation. Hukill proposes leasing these water rights through the water supply bank until irrigation is resumed upon reclamation of the pit.

In reviewing these applications, please note the following.

1. Hukill sold two portions of water right 63-03599D recently, reducing it from 2.665 cfs to 2.165 cfs. The two portions of the water right split from 63-03599D are 63-31188 for 20 acres and 63-31189 for 5 acres. In splitting the water right, Department staff divided the diversion rate proportionally with the acres (0.38 cfs for 63-31188 and 0.10 cfs for 63-31189). As a result, the total amount of water right 63-03599D currently listed in the Department records is 2.185 cfs. However, the purchase agreements that created 63-31188 and 63-31189 were for a full miners inch (0.02 cfs) per acre (i.e., 0.40 cfs over 20 acres and 0.10 cfs over 5 acres). Therefore, diversion rate for 63-31188 should be 0.40 cfs and balance of 63-03599D should be 2.165 cfs. The enclosed applications assume that 63-03599D has a diversion rate of 2.165 cfs.

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NOV 25 2001

600 East River Park Lane, Suite 105
Boise, Idaho 83706

Telephone (208) 383-4140
Facsimile (208) 383-4156

2. Aerial photos from 1995 and 1996 of the place of use for 63-07825C and 63-03599D are enclosed. The property was last irrigated in 1996. Hukill bought the property in 1998. The property was apparently involved in litigation in 1997 that prevented it from being irrigated during the 1997 irrigation season. The photos suggest that portions of the authorized places of use for both rights were not irrigated in 1995 and 1996. However, other lands to the north that did not have water rights were apparently irrigated from the two wells that supply 63-03599D. Therefore, the total area irrigated from the 63-03599D points of diversion in 1996 was approximately equal to the total acres authorized under the water rights.
3. The remarks on the water right report for 63-03599D suggest an overlap with water rights 63-02879 and 63-03589. We believe that this is incorrect. The overlapping acres with 63-03589 are associated with lands irrigated under 63-03599C rather 63-03599D. There is no overlap by 63-03599 with acres irrigated by 63-02879.

Please contact me with any questions.

Sincerely,



Terry M. Scanlan

Cc: Dan Hukill

MICROFILMED

NOV 26 2001

Shurte, Jan

Cell - 340-5555
David Daniels

From: Courtney, Andrea
Sent: Tuesday, August 05, 2008 10:52 AM
To: Egbert, Sandy; Williams, Ray; Shurte, Jan
Subject: RE: 63-3330B, 63-7075B & 63-31189 (Daniel)

Sandy~

David has retained Roxanne Brown and SPF to help him with these rights. Evidently, he hired SPF back when he was purchasing the water for his 5 acres. So they are back on the scene. Roxanne said in '87 56 acres were irrigated and really all he wants is to be able to irrigate 45 acres, he'll dry up the other 11 and not seek an enlargement.

Looks to me that all three of these are based on licenses so I don't know that adjudication can help him, but Roxanne seemed to think there was merit in meeting with us and talking informally. I agreed so we could get a clear picture of what he wants. I mentioned we thought he was pursuing a transfer to resolve this, and Roxanne said she thought there was a less messy way of doing it. I don't know what she has in mind, but we'll see. Sounds like the transfer avenue is on hold for the time being.

Anyway, she'll call/email with potential meeting dates. We have a status conference set for 10/28 at 3pm so we need to have met with them before that day. I'll be in touch with dates.

Andrea

From: Egbert, Sandy
Sent: Monday, August 04, 2008 7:16 AM
To: Williams, Ray; Shurte, Jan
Cc: Courtney, Andrea
Subject: RE: 63-3330B, 63-7075B & 63-31189 (Daniel)

Ray,

I have been in contact with David Daniel and also Pam Skaggs about these water rights. David Daniel has decided to file a transfer and at the same time try to prove that these water rights should not be stacked since he says he has not use 63-3330B and 63-7075B. Pam thought there might be a chance that he could accomplish what he wants. It depends on the information he submits with his transfer. Now we are waiting for him to submit a transfer and see if it will be approved. My last contact with him was 7-29-08 so he may have already submitted the transfer.

Sandy

From: Williams, Ray
Sent: Friday, August 01, 2008 9:43 AM
To: Egbert, Sandy; Shurte, Jan
Cc: Courtney, Andrea
Subject: FW: 63-3330B, 63-7075B & 63-31189 (Daniel)

Sandy & Jan,

There is a status conference for these subcased on Aug. 5. After the initial hearings, you were going to talk with Shelley/Allocations about voiding the transfer or transferring another portion. This is the one where the claimant actually purchased an additional water right as a safety net. Have you been able to find anything out from Allocations?

Thanks!

Ray

From: Williams, Ray
Sent: Thursday, May 15, 2008 2:06 PM
To: Egbert, Sandy
Subject: RE: 63-3330B, 63-7075B & 63-31189 (Daniel)

Thanks!

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Sent: Thursday, May 15, 2008 2:03 PM

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From: Jan Shurte

Date: 10-7-08

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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

July 16, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

DAVID & ANGELA DANIEL
12197 DEER FLAT RD
NAMPA, ID 83686

RE: WATER RIGHT 63-3330B, 63-7075B, 63-31189

David & Angela:

On May 29, 2008 you attended an Initial Hearing on the above water rights. In that meeting you requested that Transfer 69110 be voided and water right 63-31189 be removed from the quantity and place of use limiters of the other 2 water rights listed above.

I have discussed these water rights with Pam Skaggs, a supervisor in our Water Rights Section. The only way IDWR could rescind a transfer would be if you could show that the transfer of the water right never took place. You will need to submit an affidavit verifying that you have never used the well described in Transfer 69110 to water the 5 acres as described in the transfer. The affidavit should also explain how those 5 acres have been watered in recent years. At the end of the affidavit you will need to request that Transfer 69110 be rescinded.

If you have any questions, please feel free to call me at 287-4967.

Sincerely,

Sandy Egbert
GIS Specialist

Dave Daniel called 7-24-08 & said the transfer has been used and he wants to move the 5 acres of the transfer to 16 acres of his property that has no water rights. He said the transfer was started before he knew about the other water rights. What he has said in previous conversations is that he knew about the water rights but they were still in the adjudication & he thought they might be disallowed.

Shurte, Jan

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Sandy

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To: Egbert, Sandy
Cc: Spencer, Nick; Courtney, Andrea; Ridgeway, Renea
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Sandy,

I'm looking at David Daniel's objections to these water rights. His objections seem to relate to the combined use limits. If I'm following his objections correctly, he is saying that he can't sell or transfer 63-31189 because of the combined use limits. I don't see anything that restrictive in the recommendation or the transfer. Can you let me know if I am missing something?

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*Dave Daniel - 467-1525
467-1525*

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