

MEMORANDUM

FROM: Mel Schulte

RE: A summary of information concerning the Jacobs Canal Company water right 63-123.

DATE: February 14, 2005

HISTORICAL INFORMATION

Water right 63-123 was awarded in the Stewart Decree as Right No. 2 to the Jacobs Canal Company with a priority date of June 1, 1864. The decree specified an amount of 1000 inches to be diverted from the north side of the Boise River about one mile east of the original Boise City town site to be used in Secs. 4, 9, 10, 11, 13, 14; T03N, R02E. This is one of the rights that cannot be cut in times of scarcity.

An approved water right transfer dated June 8, 1914 changed the point of diversion to the Farmer's Union Canal. The transfer describes a detailed place of use in T05N, R01W, T05N, R02W and T04N, R02W.

An agreement dated July 17, 1916 between Farmer's Union Ditch Company and W. A. Keyt, who is described in the agreement as the owner of the Jacobs Canal Company right, splits the ownership of right 63-123. This contract gives Farmer's Union Ditch Company one-third of the right as compensation for delivering the remaining two-thirds of the right to land of interest to Keyt in T05N, R01E. This parcel in T05N, R01E is apparently the same land that was organized as Capital View Irrigation District in 1922.

An approved transfer dated December 31, 1934 split .6875 cfs of the Jacobs Canal Company right into the ownership of the Federal Land Bank to be used on land in Sec. 4, T04N, R01E. This right is designated as 63-123A in the water right records but no specific claim was filed in the SRBA for this split and there is no proof the transfer was ever perfected.

OWNERSHIP ISSUE

It is an accepted fact Farmer's Union Ditch Co. was conveyed one-third or 333 inches of right 63-123 by virtue of the July 17, 1916 agreement and W. A. Keyt retained ownership of the remaining two-thirds or 667 inches.

Capital View Irrigation District, the apparent successor of interest to W. A. Keyt, has indicated they have historically been delivered and assessed for only 350 inches of the 667 inches retained by W. A. Keyt.

If Farmer's Union owns one-third of 63-123 and Capital View Irrigation claims to own approximately one-third of the right an issue to be resolved is who owns the remaining one-third. There are no water right records that address this ownership issue and there are not any water right records that accurately describe the places of use for all of right 63-123.

The Boise River water master's records and the Farmer's Union Ditch Company records indicate the entire right has been historically diverted into the Farmer's Union Canal.

The common areas within Lexington Hills development were conveyed in a series of 16 deeds from Lexington Hills, Inc to Lexington Hills HOA dating from 1992 to 2001. Six of the deeds include the conveyance of water totaling 119.40 inches of Jacobs water. The remaining 10 deeds are silent as to water. Twelve of the deeds reserve a perpetual 10' right-of-way for the irrigation system to the grantor, Lexington Hills, Inc.

FARMER'S UNION DITCH COMPANY RECORDS

Farmer's Union Ditch Co. records provide some information that can assist in determining who might own the portion of 63-123 not allocated to Farmer's Union and Capital View Irrigation. As of June 15, 2004 (See attached letter) Farmer's has been delivering and assessing 308 inches of the Jacobs right as described below:

Green Acres/Richard Hormaechea	34.0 inches	*
Echo Creek HOA	33.77 inches	*
Lexington Hills, Inc - DEVELOPER	96.4 inches	
Lexington Hills, HOA	107.6 inches	
Ilene Stinar	10.0 inches	*
East Hills Development - DEVELOPER	26.23 inches	

* Not claimed in the SRBA

A very important bit of information in Farmer's records is the fact that 264 inches of the above listed 308 inches can be traced back as early as 1972 to land previously owned by Myron Holgate & Sons. The Holgate land is the same parcel that was subdivided into the current Echo Creek, Lexington Hills and Lexington Hills East subdivisions.

CURRENT SRBA CLAIMS

63-123C	Farmer's Union Ditch Co.	20 cfs	1000 inches	*
-123D	East Hills Development	.525 cfs	28.23 inches	
-123E	Capital View Irrigation	20 cfs	1000 inches	*
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches	
-123G	Lexington Hills, HOA	4.605	230.23 inches	**

* Farmer's Union and Capital View both claimed the entire right with the understanding that the real ownership and allocation of the right would be determined in the SRBA review and recommendations.

**Lexington Hills HOA claimed all of the water delivered to the Lexington Hills subdivision.

PRELIMINARY RECOMMENDATIONS

Listed below are the diversion amounts and entities proposed for the preliminary recommendations:

63-123C	Farmer's Union Ditch Company	8.4 cfs	419.77 inches	***
-123D	East Hills Development	.52 cfs	26.23 inches	
-123E	Capital View Irrigation	7.0 cfs	350.0 inches	
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches	
-123G	Lexington Hills HOA	<u>2.15 cfs</u>	<u>107.6 inches</u>	
	TOTALS	20.00 cfs	1000 inches	

***The Farmer's Union allocation includes the following:

1916 contract portion conveyed as compensation	333.0 inches
Green Acres/Hormaechea part delivered but unclaimed	34.0 inches
Echo Creek HOA part delivered but unclaimed	33.77 inches
Ilene Stinar part delivered but unclaimed	10.0 inches
A remaining portion delivered but not claimed	<u>9.0 inches</u>
	419.77 inches

ADDITIONAL INFORMATION TO SUPPORT THE RECOMMENDATIONS

The records of the Boise River water master and the Farmer's Union Ditch Co. verify that the Jacobs right, 63-123, has been historically diverted into the Farmer's Union Canal.

There is insufficient information in our water right records to support the division of the Jacobs right to the above list of claimants and the places of use they claimed. The above recommendations can, however, be justified as accomplished transfers

based on the records of Farmer's Union Ditch Co. They can trace the assessment and delivery of 264 inches of the Jacobs right back to 1972 to the parcel of land that is now known as Lexington Hills, Lexington Hills East and Echo Creek subdivisions. We have deeds on file that convey the land from Holgate Enterprises to Lexington Hills, Inc.

The unclaimed portions of 63-123 listed above were recommended to the Farmer's Union Ditch Co. for two reasons. First, they claimed the entire right and second because they have historically delivered and used these unclaimed portions within their boundary. If any of the unclaimed parts can be recommended to other entities in the future, Farmer's Unions share will have to be reduced to avoid expanding the right.

Attachment 1

Chain of Title Summary

All in Section 3 4N 1E

SE1/4

Patent to heirs of Belle F. Chilson –		01/18/12
Robert W. Chilson ½ to Decatur W. Chilson		06/07/11
Decatur W. Chilson to Joseph Sullivan		
Order confirming sale	9:20	02/05/12
Indenture	10:05	02/05/12
Quit Claim Deed	10:07	02/05/12

SW1/4

Patent to Hiram G. Saxton	01/05/12
Hiram G. and Diantha Saxton to Joseph Sullivan	01/05/12
Reserves crops sown for 1912.	

S1/2 NE1/4 and SE1/4 NW1/4

Patent to Jane O'Hara	10/13/11
Jane O'Hara to Joseph Sullivan	12/18/11 also 10/07/11

All 440 Acres

Joseph Sullivan to Highland Development Co.	01/25/13
Reserving crops sown for 1912 on SW1/4 ?	
10 Shares of Boise Valley Irrigation Ditch Co.	
– Not clear if water is on all or part of 440 acres or Lots 9 & 16 of Borse' Second Subdivision. Boise Valley water probably not on SE1/4.	

All 440 Acres

Idaho Farms, Inc. to The Western Loan & Investment Co.	03/14/42
Includes 128" Jacobs water and 50" Davis water as principal water rights.	
Describes delivery system through Farmers Union Ditch with pumping plant.	

10 acres in the SE1/4NE1/4 and NE1/4SE1/4 east of HSB highway

The Western Loan & Investment Co. to Harvey L. & Bertha Bingham	12/31/47
Water rights, if any, were not excluded.	

430 Acres

The Western Loan & Investment Co. to Alfred M. & Dorothy Pompa	01/03/51
128" Jacobs water, 50" Davis water and delivery system	

430 Acres

Alfred M. & Dorothy W. Pompa a ¼ interest to Mary Louise Pompa	12/24/52
128" Jacobs, 50" Davis water and delivery system	

Chain of Title Summary, Continued

Page 2

All in Section 3 4N 1E

430 Acres

Mary Loise Pompa, a 1/4 interest to Ann Francis Pompa
128" Jacobs, 50" Davis water and delivery system

06/23/55

430 Acres

Alfred M. & Dorothy W. Pompa and Richard L. Parsell & Ann (Pompa) Parsell to
Myron G. and Verna C. Holgate.
Silent on water.

02/09/82 (signed in '64)

430 Acres

Myron G. & Verna C. Holgate to Holgate Land and Livestock, Inc.
Silent on Water.

03/08/85

(Recorded out of Sequence.)

S1/2NE1/4, SE1/4NW1/4, SE1/4 Sec 3

Holgate Land & Livestock, Inc. to Holgate Enterprises, Inc.
Silent on water.

11/30/81

S1/2NE1/4, SE1/4NW1/4, SE1/4

Holgate Enterprises, Inc. to Myron G. & Verna C. Holgate
Silent on water.

02/09/82

S1/2NE1/4, SE1/4NW1/4, SE1/4

Assignment of Contract

Myron G. & Verna C. Holgate and Holgate Land & Livestock, Inc. to C.A. Connors D.B.A.
C.A. Connors Construction Company
Silent on water.

10/26/66

Correction Deed – All 430 Acres

Verna C. Holgate and Estate of Myron G. Holgate to Holgate Enterprises, Inc.
Silent on water.

03/08/85

Other 1800 water
to or this land
for Farmers Union
from the
Bible R. however
they are not as
good because
they are cuttable.

Other water Co. has
a water it for
municipal & v.
part. from E. v.
Farmers Union
own records show
the water has been

Twp. 4N, Rge. 1E

LEXINGTON HILLS HOA 63-123G

*Rent to
Oak Brook
on 12/10/08*

