

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, October 12, 2010 9:02 AM
To: Bromley, Chris
Subject: RE: 65-4192 (Florence)

Hi Chris,

Shirley Florence and I met, per SM Booth's suggestion, and she filed a late claim for 65-2794. It is the one that was not claimed in the Payette nor in the SRBA. The late claim hearing is for Nov. 16th on this one.

65-4192 was the one recommended as disallowed because they claimed it for the same pou as 65-2794 which was different than 65-4192 had been decreed for in the Payette. Two competing claims were filed on 65-4192 for the same pou as the Payette and were granted as 65-4192A & B with Florence's claim being disallowed.

So, the question is what now? SM Booth denied their Motion to Rescind, so I'm not sure what we're having the status conference for. When he was here for the Terteling/Edwards trial I spoke to him about the late claim being filed and that's all.

I guess we just wait and see what happens in the conference. I hope they call in.

Jan

From: Bromley, Chris
Sent: Tuesday, October 12, 2010 8:46 AM
To: Shurte, Jan
Subject: 65-4192 (Florence)

Jan,

Any update on Florence? We have a status conference at 10:00.

Thanks,

Chris

Update - 10-12-10 status conf. for 65-4192
↓
Shirley Florence - Motion to Rescind
PD dismissed w/o prejudice so they
could bring it up again. In the
meantime we will work on the late claim
(disallow) (they object) & the Court decides
if the PRBA was all ~~con~~ subsumed into
the SRBA. If so 65-2794 could be recommended.

Shirley Florence
205-634-7209

John Marshall
201-276

Davidson

Will mail
in with
signature of
Shirley Florence
to SRBA Court

Opinion will
be filed on
my dissolved
in November.
Recommend
as named.

Dissolved -

Should have
been filed in
prior
PRBA
adjudica-
tion.

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, July 13, 2010 1:26 PM
To: Williams, Ray; Bromley, Chris
Subject: Motion to Rescind 65-4192

Hi,

I'll just start with the letter and follow through:

Original license submitted numbered 32268 is actually 65-2794. This does not appear in the Payette decree, either disallowed or allowed, so I am guessing it was not claimed. Database states forfeited with no backfile. This is what it was called when someone did not file a claim after the Payette. Also, please note this old license is for Mud Creek and not wastewater. I think the reason they bring it up is simply that it matches their place of use.

The reason 65-4192 was disallowed is because claims were also filed in the SRBA for 65-4192A and 65-4192B for the PRBA decreed pod and pou in the E1/2SE1/4. Mel wrote a note stating that because 65-4192 did not reflect the decreed pod or pou and no evidence of an accomplished transfer was apparent (they only had between 2/86 and 10/87 to accomplish a transfer from the Payette decree) that he was recommending the two splits claiming the decreed pou and disallowing the duplicate claim because it claimed different 1/41/4s

There is some strangeness on the maps for the wastewater source and Mud Creek where I think the only way they can get this rescinded is to enter in the other owners under A & B to find out if they use any water in those 1/41/4's since it does not appear there is a source, except Lake ID water in the 1/41/4s covered under the A & B split.

Gotta go.

Jan

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A65-04192
Date Received: 11/23/1988
Receipt No: C003563
Received By: JP

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: HARVEY D. FLORENCE 208-634-5289
Address: BOX 637
LAKE FORK, ID 83635

2. Date of Priority: JUN 01, 1952

3. Source: WASTE WATER Trib. to: MUD CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
17N	03E	4	NE	SW	SE		VALLEY

5. Description of diverting works:
DIVERSION DAM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	1.500		

7. Total Quantity Appropriated is:
1.500 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 150.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
17N	03E	4	NW	SE		IRR	36.0
			SW	SE		IRR	39.0

Section Acres 75.0

A65-04192

Page 1

Date: 11/23/88

MICROFILMED
SEP 22 1992

10. Place of Use: Continued

Total Acres 75.0

11. Place of use in counties: VALLEY

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A65-02514, A65-04190

14. Remarks:

THIS RIGHT WHEN COMBINED WITH RIGHTS OF LAKE IRRIGATION DISTRICT
SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 1/21/1986

STATE OF IDAHO

Decree Plaintiff

vs

A & C CORP., ET AL.

Decree Defendant

MICROFILMED

SEP 22 1992

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 0

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Hancey D. Florence Date: 11-23-88
Date:

State of Idaho)
County of ADA) ss.

Subscribed and sworn (or affirmed) before me this 23rd day
of NOVEMBER 19 88

Jeff P. [Signature]
Notary Public

Seal

Residing at BOISE, IDAHO
My Commission Expires 11/8/1994

June 11, 2010

SNAKE RIVER BASIN ADJUDICATION
253 3rd AVENUE NORTH
P.O. BOX 2707
TWIN FALLS, ID 83303-2707

RE: Water right #65-4192

To Whom It May Concern:

This is a request for a reconsideration of disallowance for the water right claim #65-4192, under the name of Harvey D. Florence. While doing just a random check on our water rights, we discovered that this right was disallowed in 1999, unknown to us until now. We feel that this was an incorrect action taken, due to clerical errors.

This water right was purchased from an uncle in the early 1970's and enclosed you will find his original license for this water right in 1965. When the paper work was filled out for the transfer into the name of Harvey D. Florence in 1971, the wrong legal address was written on the application. In 1988, during the re-adjudication process, this mistake was realized and corrected. We believe this is the cause for the confusion in where this water right lies.

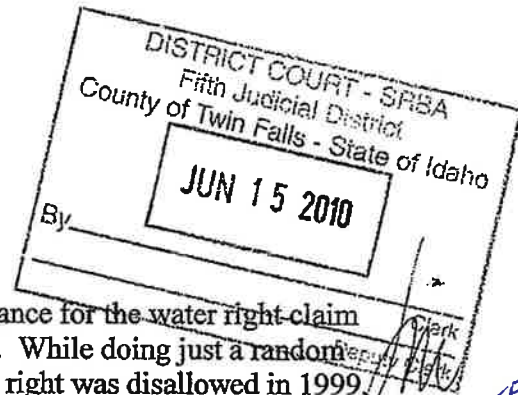
The correct and original Point of Diversion (POD) is located in the NE ¼ SW ¼ SE ¼ sec 4, twp 17N r 3E, with the Point of Use (POU) being in the W ½ SE ¼ sec 4, twp 17N, r 3E. This matches the original application in 1965 of Herman Heinrich and the notice of claim form under Harvey D. Florence in 1988. This water has been used on this piece of property from 1965 until now.

In the disallowance decreed in 1999, the comment states a different POU and POD. This comes from the clerical error in 1971 when the application erroneously stated the POD as NE ¼ SE ¼ SE ¼ sec 4, twp 17N, r 3E. This POD has never been an actual POD for water from the tributary Mud Creek. In fact, water from Mud Creek does not flow here. This is a ditch that delivers Lake Irrigation District water to its users. The disallowance states the POU as being in the NESE and SESE. The comment states they recommend a disallowance because there is no evidence of a transfer being legally completed, and that is because there never was a transfer. The water is and has always been used on the original land and has never been used on this said piece of property.

We appreciate your consideration on this matter. Enclosed you will find a copy of the original claim, the change of ownership in 1971, the re-adjudication claim in 1988, and an updated map showing the area. Thank you for your time.

Sincerely,


Harvey D. Florence



IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-4192A

17N 03E 4					16.0	39.0	55.0
Total Acres: 55							

Conditions of Approval:

1. RIGHT NO. 65-04192B IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
2. C18 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.
3. W13 USE OF THIS RIGHT IS COMBINED WITH WATER FROM LAKE IRRIGATION DISTRICT.

Remarks:

Comments:

1. AJU10-JS 9/25/1999 AJU10 CONDITION UPDATE
Comment: CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-4192B

WATER RIGHT NUMBER: 65-4192B

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	HARVEY D FLORENCE PO BOX 637 LAKE FORK, ID 83635 (208)634-5289
Directors Report Owner	CAROL A SULLIVAN 13889 HWY 55 MC CALL, ID 83638 (208)634-2095
Directors Report Owner	DENNIS D AMBURGY 13889 HWY 55 MC CALL, ID 83638 (208)634-2095
Current Owner	MICHELLE A BUTLER 13889 HWY 55 MC CALL, ID 83638 (208)634-5010

in Rept

*Also
65-13408 WA
13409*

Priority Date: 06/01/1952
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	MUD CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/15 to 10/15	0.300 CFS	
	<u>Total Diversion:</u>	0.300 CFS	

<u>Location of Point(s) of Diversion</u>	
WASTE WATER	SE1/4SE1/4 Sec. 4, Twp 17N, Rge 03E, B.M.
VALLEY County	

Place of Use
IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17N	03E	4																	15.0

Total Acres: 15

Conditions of Approval:

- RIGHT NO. 65-04192A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-4192B

2. C18 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.
3. W13 USE OF THIS RIGHT IS COMBINED WITH WATER FROM LAKE IRRIGATION DISTRICT.

Remarks:

Comments:

1. AJU10-JS 9/25/1999 AJU10 CONDITION UPDATE
Comment: CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.
2. dbuffing 4/17/2001 Ownership change
Comment: Ownership changed by DB

Water Supply Bank:

DATE 9/18/92

FROM Cindy Hodges

TO Files A65-4192 A & B, A65-4192

SUBJECT Duplicate filings

Splits • A & B of this right were filed by current landowners on the lands listed in original right. However, a claim was also filed on the ^(entire) tract right by the original owners, who have changed the place of use from that shown.

Proof of accomplished transfer should be the burden of former owners?

SIGNATURE

MICROFILMED

AUG 03 1994



**Change of Ownership
Simnnich
Metes and Bounds in Orange
are exclusions to E1/2 SE1/4 of S 4
Tax Lots in Purple**

A. AJ CLAIM: # A65-04192 PRIORITY DATE: 06-01-1952 STAGE: D

B. WR RECORD: # 65-04192 PRIORITY DATE: 06-01-1952 STAGE: D

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE?

Y ☒ N ☐

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE?

Y ☐ N ☒

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE? (IF YES, DESCRIBE BELOW)

Y ☒ N ☐

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED

N/A ☒ Y ☐ N ☐

FIELD EXAM COMPLETED

N/A ☒ Y ☐ N ☐

FIELD EXAM SENT TO STATE OFFICE

N/A ☒ Y ☐ N ☐

LICENSE ISSUED

N/A ☒ Y ☐ N ☐

* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT, USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE OF THE PRIORITY DATE REQUIRED?

N/A ☒ Y ☐ N ☐

* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED, INCLUDING THE ANALYSIS OF THE EVIDENCE.

H. IS THE STAGE OF THE CLAIM CODED CORRECTLY?

Y ☒ N ☐

NOTES:

Reallowed. 65-04192 was deemed for the N/SE and SESE S4, 17N, 3E. The right was claimed as A65-04192 A & A65-04192 B with the correct P.O.U. This claim A65-04192, claims a P.O.U. in the N/SE & SESE, S4, 17N, 3E as if the right was transferred but there is no evidence of transfer was legally completed. The ownership of the right claims was transferred with the Yellow County Records office to be in the name of the Edwards. This is a dual claim recommended to the right claims.

RECOMMENDED PRIORITY DATE:

06-01-1952

REVIEWED BY

DATE 3-11-99

65-4192 - Deeded ^{as claimed} in the PRBA for
NW 1/4 to Mud Creek NESE-36
2044P SESE-39 POU
POD in the SESE S. 4, 17N, 4E

Orig. license ^{submitted} is for Mud Creek &
not the same as 65-4192.

Old license submitted w/o a current
water

65-4192A & B were filed for the deeded
POU

DAUGHTER IN LAW - SHIRLEY FLORENCE
- 208-634-7209 -

Set for the 12th of October.

