

From: Roda, Evan
Sent: Monday, May 12, 2025 2:23 PM
To: dylan@hedden-nicely.com
Cc: 'Lorraine Parlange'; 'Scott Mannakee'; 'Ray Entz'
Subject: RE: CFPRBA Claim nos. 97-7541 & 97-7544
Attachments: CLAIMS INVESTIGATION AND RESOLUTION PROCEDURE EXCERPT.pdf

Good afternoon Dylan,

I'll respond to your inquiries below individually.

97-7541 –

- Unfortunately, the aerial photo with GIS overlay you have attached is inconclusive as to what is being depicted. The orange areas noted as “farmed area” are concealed by the overlaid shape. Additionally, that identified area represents only a small portion of the 71.5 acres claimed for irrigation purposes (approximately 15-20 acres). The remaining area within the claimed place of use appears much more raw and unimproved. As previously discussed, the 1932 aerial photo does reflect some possible cultivation in the approximate vicinity you highlighted in orange, but if we rely on that photo for evidence supporting our recommendation of the claim, the recommended place of use and quantity of water will need to be reduced accordingly. The first available evidence we have on hand that reflects cultivation and potential irrigation throughout the claimed place of use is the aerial photo taken October 3, 1958. That aerial photo, along with the affidavit describing the use of Goose Creek for irrigation on the Harry Drake Ranch, is the evidence that currently supports a possible recommendation of your claim. However, the diversion works and system capacity is not reflected in available evidence and must be determined before the claim can be recommended.
- As this claim is based on beneficial use, the primary elements of the water right need to be confirmed. While we have aerial photos reflecting cultivation of the claimed place of use, our review and analysis of the property and surrounding area has also found that much of that region is heavily saturated at times through natural processes such as seasonal runoff. As such, it is more difficult to determine the extent of actual irrigation on site vs what may be saturated through natural processes. A field examination of the diversion works and irrigation system is needed to determine the extent of land irrigation and overall capacity of the system utilized. If the system is not actively being used, it may not be possible for us to confirm the diversion capacity and extent of beneficial use. However, if we are able to observe the diversion pump(s), the irrigation pipes, and the sprinkler heads used, along with details of how they are typically installed and used to irrigate the property, we may be able to calculate the system's capacity through theoretical equations.
- Since the tribe was unable to secure a hay lease for this season and will not be irrigating, are you able to provide us with records of your previous hay leases from recent years for this property? That may be helpful for us to determine the extent of land actively cultivated as the irrigation system is not currently operational.

97-7544 –

- The 1932 aerial photo does reflect cultivation in the vicinity of the claimed place of use for 97-7544; however, that is also within the claimed place of use for 97-7541. In claim 97-7541, you state that this area has historically been irrigated from Goose Creek. As previously discussed, affidavits had been submitted in support of statutory water right claim nos. 97-4011 & 97-4012, which were written by the same individuals and signed on the same date (9/2/1971). The affidavit written in support of 97-4011 describes the use of water from Goose Creek for irrigation purposes on the Henry Drake Ranch. The other, which was written in support of 97-4012, describes the use of water from Blonk Creek for stock and domestic purposes only. Based on this information and the historical aerial photos, we can reasonably determine that if the cultivated land pictured was being irrigated, it was more likely done so using water from Goose Creek rather than Blonk Creek. We only have evidence supporting a recommendation for the use of water from Blonk Creek for stockwater purposes. We do still need to get details from you regarding the number and type of livestock watered.

As for your follow up questions:

1. 97-4011 was claimed, but recommended as disallowed.
97-4012 was not claimed, but appears to be largely the basis of claim 97-7544.
97-4018 was claimed and has been recommended. Was included in the Director's Report for Basin 97 Part 1.
97-8766 is a beneficial use claim that was recommended as disallowed in the Director's Report for Basin 97 Part 1.
2. Field examinations are conducted by IDWR staff whenever the information we have is incomplete or does not match what was claimed. Guidance relating to our field examination procedures can be found in our Claims Investigation and Resolution Procedure document. I've attached scanned copies of the introduction pages 6 thru 9, which pertain to field examinations.

I hope this information provides answers to all your questions, but feel free to reach out if you have any more. Our time is growing short as we prepare for the submission of the Director's Report for Part 2 of Basin 97, and we'd like to complete any remaining field exams by the end of next month. Please provide contact information for Ray Entz so we can schedule the necessary exam for 97-7541 as soon as possible.

Best Regards,

~ Evan

From: dylan@hedden-nicely.com <dylan@hedden-nicely.com>

Sent: Thursday, May 1, 2025 4:38 PM

To: Roda, Evan <Evan.Roda@idwr.idaho.gov>

Cc: 'Lorraine Parlange' <lparlange@kalispeltribe.com>; 'Scott Mannakee' <SMannakee@kalispeltribe.com>; 'Ray Entz' <rentz@kalispeltribe.com>

Subject: RE: CFRBA Claim nos. 97-7541 & 97-7544

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Reports of Beneficial Use Investigation	Idaho Code § 42-217
Water Right Licenses	Idaho Code § 42-219
Applications to Change Water Right	Idaho Code § 42-222
Approved Water Right Changes(Transfers)	Idaho Code § 42-222
Extensions of Time Extending Time for Forfeiture	Idaho Code § 42-222/42-223
Emergency Transfers During Drought Conditions	Idaho Code § 42-222A
Well Drilling Permits	Idaho Code § 42-235
Well Drillers Reports	Idaho Code § 42-238
Consent Orders	Idaho Code § 42-238b(3)/351(3)
Water Right Claims	Idaho Code § 42-243
Permit Cancellations	Idaho Code § 42-310
Orders Revoking Licenses	Idaho Code § 42-350
BLM Stockwatering Permits, Licenses, Certificates	Idaho Code § 42-501
Reports of Watermasters	Idaho Code § 42-606
Reports of Water Diversions	Idaho Code § 42-701(5)
Reports of District Hydrographers	Idaho Code § 42-708
Water Measurement Reports	Idaho Code § 42-706/708
Water Right Decrees	Idaho Code § 42-1403/1413
Approved Minimum Stream Flows	Idaho Code § 42-1503
Dam Plans, Drawings and Specifications	Idaho Code § 42-1712
Supplementary Dam Drawings or Descriptive Matters	Idaho Code § 42-1716
Carey Act Proposals	Idaho Code § 42-2002/2003
Carey Act Contracts	Idaho Code § 42-2009
Applications to Enter Carey Act Lands	Idaho Code § 42-2014
Certificates of Location of Entry on Carey Act Lands	Idaho Code § 42-2014
Proofs of Reclamation and Settlement of Carey Act Lands	Idaho Code § 42-2019
Carey Act Land Patents	Idaho Code § 42-2022
Carey Act Contractors Annual Reports	Idaho Code § 42-2037
Transfers of Water Right in Carey Act Projects	Idaho Code § 42-2504
Petitions to Establish Flood Control Districts	Idaho Code § 42-3105
Reports of Aquifer Recharge Districts	Idaho Code § 42-4212

When you have completed the review of IDWR documents, the GIS information and other photography in IDWR's possession you should have an initial impression of whether the right claimed is consistent with IDWR's in-office records. If IDWR's information is consistent with the claim, then the agent may prepare the preliminary recommendation without further investigation or claimant contact. If the IDWR information is incomplete or does not match the claim, the next step in the investigation is the initial claimant contact and field examination.

B. INITIAL CLAIMANT CONTACT AND FIELD EXAMINATION.

1. Claimant Contact.

During the field investigation process, there needs to be some claimant contact in all cases where the in-office review makes it look likely that IDWR's recommendation will significantly change or reduce any element of the claim. The agent should develop a schedule of field exams for rights within the sub-basin needing further investigation. The schedule should allow the agent to concentrate the field work to minimize the number of times the agent is required to visit an area. The schedule should be developed in cooperation with the claimants to be visited. The agent may use discretion in the means of contacting the claimant, but the following information should be conveyed:

- explain the investigation process;
- identify the agent conducting the investigation;
- set an appointment time for the field exam;
- explain that if the claimant cannot be at this appointment, he/she should call to reschedule the exam within a reasonable amount of time; and
- explain that the claimant should gather all evidence in his/her possession regarding their water use to show the agent during the field exam.

When arranging for the field exam, conducting the exam, and putting the final recommendation together you will likely speak with the claimant often. A written or taped record **MUST** be made and included in the file, which states the name of the person with whom the water agent spoke, the name of the agent, the date of the conversation, notes of the relevant portions of the conversation, and notes of any other relevant information the agent has about the issue.

2. Field Examination.

The agent should try in as many cases as possible to do the field exam with the claimant present to the full extent the claimant wants to participate. Whenever possible the field exam should be done per an appointment the agent has made with the claimant. The following procedures should be followed during the exam:

- (a.) The agent should always take a copy of the GIS map to the field exam. (Two copies may be preferable in cases where it appears likely that the claimant will be asked to mark locations of POD, POU, etc. on the map. The agent should also have a copy for the agent's own use, since a major purpose of the field exam will be to determine on the ground the truth and accuracy of the GIS map itself.) If available, the agent should also take a copy of the ASCS map covering that POU wherever it appears that the claimant may be able to orient himself to the map better than to the GIS map file.

(b.) The agent should communicate to the claimant during the field exam what the agent is observing/ what problems the agent is seeing at that time. The agent should also note comments made or information provided by the claimant--especially numbers repeated by the claimant (such as acres or inches), information on previous/historical use, crop rotation, previous owners, or conflicts with neighbors. The agent should communicate with the water user regarding the appearance or existence of previous diversion systems that may have served the property.

(c.) The agent should have the claimant draw or mark on the GIS map (or the ASCS map if appropriate) the particulars of the water right (e.g. point of diversion, location of ditches, and especially the boundaries/location of the acres irrigated). If the claimant cannot draw the particulars on the map the agent should do so and ask the claimant if he/she agrees. This copy of the map should be clearly identified for the claim file as the claimant's representation of the particulars of the water right. The agent subsequently will prepare the agent's own map, which also should be clearly identified in the claim file.

(d.) The agent should try to reach general consensus with the claimant on the big points during the field exam, but the agent must base recommendations on findings and in some instances agreement may not be possible.

(e.) The agent should take care to photograph land which the claimant asserts is being used or irrigated, but as to which the agent has doubts--especially areas which the claimant asserts are irrigated but which do not appear to the agent to have been irrigated. Notes should be prepared documenting the time, location, orientation, photographer, other persons present, and content of photographs.

(f.) The agent should ask to examine any documentary evidence the claimant might have regarding any element of the water right (e.g. date of priority of a beneficial use right). The agent should make notes (see section (h.) below) as to what these documents are and what they purport to show. The agent should ask the claimant to send copies of whatever documents the agent believes are necessary for retention in the claim file to support the recommendation of any particular element of the right. If--based upon the field exam and the evidence the agent has seen up to that point--the agent believes there is at least an initial disagreement between the claimant and the agent as to any element of the water right, the agent should specify to the claimant either orally or in writing what that initial disagreement is and specify what additional information the claimant might provide the agent in order for the agent to be able to recommend that element as the claimant wants it.

(g.) The agent should leave a business card or field exam card at the conclusion of the exam, and should ask the claimant to call if the claimant thinks

of any additional information about any aspect of the exam or the water right that the claimant thinks the agent should know about. The agent should emphasize and encourage further communication from the claimant.

(h.) Immediately following the field exam the agent should make oral notes of the conversation and his/her observations on a hand-held tape recorder. That recording should then be placed and noted in the claim file. The hand-held tape recorder may not be used to record the agent's conversation with the claimant, unless the claimant knows that the recorder is being used and the recording is made with their full permission. This should be done in rare circumstances, but may be useful to memorialize the observations of an elderly or sickly witness, or one who may leave the jurisdiction.

If the accuracy of the GIS map can be determined during a "drive by" field examination--where the agent would not otherwise meet with the claimant and walk the property--this type of exam should be done if the parcel to be viewed is near other parcels that are to be investigated and would not require a special or time-consuming trip. The "ground-truthing" of the GIS map should be noted on the map by date and time, and the agent's name.

C. PREPARATION OF PRELIMINARY RECOMMENDATION

Following the field exam and the review of the claimant's evidence the agent should be in a position to make IDWR's preliminary recommendation. If the claimant's information has not been provided, the preliminary recommendation should be made as if that information does not exist. The claimant will have another opportunity during the notice of error process to provide the information.

Generally, a right should not be preliminarily recommended substantially "in excess" of the right claimed. This includes a priority earlier than the priority claimed, amounts in excess of the amount claimed, purposes of use in addition to purposes of use claimed, or a total number of irrigated acres greater than the number claimed. An amended claim (or additional claim) is required before the excess may be recommended. An amended claim is generally not required to recommend a different place of use, a different point of diversion, additional points of diversion, or a longer season of use for irrigation.

The agent should generally assume that the claimant claimed everything the claimant wanted to claim. The agent may contact the claimant to inquire whether this assumption is correct or whether they wish to claim the remainder. This contact generally should not be made unless the water right is clearly underclaimed. "Clearly underclaimed" means that there is a significant difference between the claim and a general adjudication decree, license, or the field exam for a beneficial use claim. What is a significant difference requires an exercise of judgment on the part of the agent. For example, a difference of an acre or two on a forty acre claim might not be significant, whereas a difference of an acre or two on a claim to a few acres might be.