
Water Right 11-128

From Cefalo, James <James.Cefalo@idwr.idaho.gov>

Date Tue 6/16/2026 8:20 AM

To kyle.boehme4@gmail.com <kyle.boehme4@gmail.com>

Cc Buffi Morris (buffi.morris@pacificorp.com) <buffi.morris@pacificorp.com>; Malmen, Erika E. (BOI) <emalmen@perkinscoie.com>

Kyle,

Yesterday, I held a settlement conference for a contested case involving PacifiCorp. As we were wrapping up, Buffi Morris mentioned that the conference for your transfer application was more than one month away and wondered if it were possible to address some of the issues prior to the conference. She said that one of her questions was related to an unclaimed water right, 11-128, that partially overlaps the proposed place of use in your transfer application. I agreed to investigate the records for water right 11-128. This email is a summary of what I discovered.

Water right 11-128 was included in the 1903 Decree for the Thomas Fork. The Thomas Fork Decree was made up of two parts. One part set forth the priority dates and diversion rates for the water rights. The other part set forth the irrigation places of use for the rights. The decreed owner of water right 11-128 in 1903 was J.M. Dalton. Here are the entries from the Thomas Fork Decree for water right 11-128:

J. M. DALTON, 2-4/5 second feet, being 140 miners inches of water, diverted from Two Story Dam, of date April 1st-1907.

J. M. DALTON:-

Lots (3) and (4) Section 14 Township 47 South Range 46

E. B. M., containing 80 acres.

As you can see, the place of use for the J.M. Dalton right (11-128) is clearly in error. There is no Township 47 South in Idaho. Idaho Townships, which are based on the Boise Meridian, only go to 16 South. At some point in the past, someone drew a large question mark in the decree book (which is visible in the copy above). When the Department digitized the water rights from the Thomas Fork Decree, the person who created the record for water right 11-128 assumed that the correct place of use was Lots 3 and 4, Section 14, Township 13S, Range 46E, but that was only a guess. When the Department created map shapes for the water rights from the Thomas Fork Decree, the person making the map shapes simply carried forward the place of use assumption.

The other two rights in the Thomas Fork Decree that describe the Two-Story Dam as a point of diversion are located in Sections 20, 21 and 28, T13S, R46E, on the west side of the Thomas Fork. However, there are no government lots on the west side of the Thomas Fork. Simply put, we don't know the correct

place of use for water right 11-128. We don't even know whether any of the place of use elements (lot, section, township, or range) are correct. If water right 11-128 was actually diverted at the Two-Story Dam, it seems likely that the place of use should have been on the west side of the river, near the other Two-Story Dam rights.

The easiest way to establish the correct place of use is to figure out what land J.M. Dalton owned in 1903. This would entail searching the land records at the Bear Lake County Recorder's office. Perhaps you want to invest the time to find the correct place of use for water right 11-128, but there is a risk that you will spend a lot of time to discover that the right belongs on someone else's property. For now, I am going to add a comment in our database, explaining that the place of use is in error, and delete the map shape for the water right.

James



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