



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

May 8, 1997

Special Master Bridgette Bilyeu
Snake River Basin Adjudication
253 3rd Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Subcase 34-00470A - Report of IDWR

Dear Special Master Bilyeu:

Pursuant to your **ORDER SETTING DEADLINE FOR ADDITIONAL REPORT I** have enclosed the Idaho Department of Water Resources' Report regarding Subcase 34-00470A. The Department has also mailed a copy of this report to the individuals indicated on the mailing list below.

If IDWR can be of further assistance to you please do not hesitate to contact Matt Howard or me.

Sincerely,

A handwritten signature in cursive script, reading "Peter R. Anderson".

Peter R. Anderson
Deputy Attorney General
Department of Water Resources

PJR/dde

Encl.

cc: Dr. Lynn Reno
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IDAHO DEPARTMENT OF WATER RESOURCES
REPORT TO SPECIAL MASTER BILYEU
SUBCASE: 34-00470A

INTRODUCTION

On April 8, 1997, the claimant Lynn Reno filed a *Motion to Alter or Amend* in subcase 34-00470A. The *Motion* asserts that the claimant believes the legal description for the place of use of the point of diversion may be in error. Special Master Bilyeu requested IDWR to further investigate these two elements of this water right. This report is the result of that investigation.

REPORT

A. GENERAL LOCATION OF WATER RIGHT 34-00470A.

Attached to this report as Exhibit A is a G.I.S. map of water right 34-00470A. This map is illustrative of the location of possible points of diversion for this water right as IDWR Adjudication Agent Dave Carlson observed them. The map also depicts the place of use of water right 34-00470A as observed by Mr. Carlson.

B. DECREED PLACE OF USE AND POINT OF DIVERSION.

Water right 34-00470 was decreed in the Utah Construction adjudication to Rudolph Lehman. A copy of this portion of the decree is attached to this report as Exhibit B. IDWR maintains a copy of this decree and can make a true and correct copy available to the Special Master. Under the decree the point of diversion was:

SE 1/4 Sec. 34, T. 8 N. R. 22 E.

This is consistent with the point of diversion shown as the Upper Fish Hatchery Canal on Exhibit A. Under the decree the place of use was:

Lots 3, 4 Sec. 6, T. 7 N., R. 23 E.
Lot 4, E1/2 SW1/4 and NW1/4 SW1/4 Sec. 31, T. 8 N., R.23 E.
NE1/4 SE1/4 Sec. 36, T. 8 N., R 22 E.

C. PLACE OF USE AFTER TRANSFER 661.

In 1944 the place of use of water right 34-00470 was administratively transferred pursuant to an application filed by John Lehman. A copy of the approved transfer is attached to this report as Exhibit C. IDWR can make a true and correct copy of this approved transfer available to the special master. After transfer 661 the point of diversion

of water right 34-00470 remained the same as it was decreed. This is consistent with the point of diversion shown as the Upper Fish Hatchery Canal on Exhibit A.

After the transfer the place of use was:

Lots 1, 2 and 3, SE1/4 NW1/4 Sec. 1, T. 7 N., R. 22 E.
NE1/4 SE 1/4 Sec. 36, T. 8 N., R. 22 E.
Lot 3 (being NW1/4 SW1/4) Sec. 31, T. 8 N., R. 23 E.

D. PLACE OF USE AND POINT OF DIVERSION AS CLAIMED.

Claim 34-00470A was filed by Lynn and Diane Reno in January of 1990. Eric Verner of IDWR's Eastern Regional Office prepared the handwritten claim with the assistance of Lola Coates on December 5, 1989. The claim was then mailed to the Renos to be signed and notarized. A copy of the claim as filed with IDWR is attached as Exhibit D. The claimed point of diversion was:

SW1/4 NW1/4 NW1/4 Sec. 36, T. 8 N., R. 22 E.

The claimed point of diversion is indicated on Exhibit A. The claimed place of use was:

NE1/4 SE1/4 Sec. 36, T. 8 N., R. 22 E.
NW1/4 SW1/4 Sec. 31, T. 8 N., R. 23 E.

E. IDWR'S INITIALLY RECOMMENDED PLACE OF USE AND POINT OF DIVERSION

IDWR Adjudication Agent Dave Carlson conducted the field review and prepared the write-ups, and Director's recommendation for claim 34-00470A. He conducted the field review of this claim on September 6, 1990. Further, Dave Carlson visited the Reno property many times during this period to review various elements of the claim.

Dave Carlson observed that the place of use in question was irrigated primarily by with groundwater, pursuant to groundwater license 34-7245B, and partially by the claimed right 34-00470A from Warm Springs Creek. Dave Carlson observed the claimed point of diversion of claim 34-00470A in the Northwest Quarter of the Northwest Quarter of Section 36. Dave Carlson concluded that this was a plausible point of diversion for claim 34-00470A because water from Warm Springs Creek could both reach the claimed place of use and could irrigate the portion of the place of use that was not being irrigated by groundwater right 34-7245B. Based upon these observations the Director recommended the point of diversion in Section 36 with a minor change, as follows:

SE1/4 NW1/4 NW1/4 Sec. 36, T. 8 N., R. 22 E.

The point of diversion in section 36 was recommended as claimed because it was a plausible point of diversion for the Reno property and an accomplished transfer could have occurred to this location prior to the commencement of the SRBA. The Director recommended the place of use as claimed, with a six acre reduction.

F. FIELD INVESTIGATION PURSUANT TO MOTION TO ALTER OR AMEND POINT OF DIVERSION/PLACE OF USE

1. Field Observations:

On April 17, 1997, Dave Carlson field reviewed the proposed amended point of diversion of claim 34-00470A.

Dave Carlson first examined the Upper Fish Hatchery Canal as a proposed point of diversion to determine how it would deliver water to the Reno place of use. Dave Carlson observed that water could be delivered from the Upper Fish Hatchery Canal through a series of canals and ditches to the claimed place of use. However, the last 100 yards or so of ditch to the southwest corner of the place of use is not in good working condition. The ditch disappears. Dave Carlson observed a stream of water in the ditch flowing from the Upper Fish Hatchery Canal to the Reno property, but the water disappeared before it arrived at the place of use.

Although the ditch from the Upper Fish Hatchery Canal is not in the best condition, this route for the water to the place of use would be the logical route for the claimants. The water would be delivered to the higher, western and southern edges of the property, and could be distributed over the place of use via a gravity flood system.

2. Interview of Doug Rosenkrance, Basin 34 Watermaster:

On April 30, 1997, Dave Carlson talked to the Basin 34 Watermaster, Doug Rosenkrance. Mr. Rosenkrance stated that water right 34-00470A was historically delivered through the canal called the Upper Fish Hatchery Canal and that is where he and his assistant have delivered it. Mr. Rosenkrance confirmed that the ditch Dave Carlson followed from the Upper Fish Hatchery Canal to the Reno Property, was the ditch that delivers right 34-00470A to the place of use. Mr. Rosenkrance further stated that there used to be a ditch through the Aslett property (further to the east) that delivered this water right to the Reno property, but this ditch was filled in. A ditch through the Aslett property would be a shorter and more direct route to the place of use. Mr. Rosenkrance finally stated that the ditch now used for the Reno property, also delivers seventeen inches of water to the Johnson property to the west.

3. Interview of Steve Aslett Jr. of Aslett Ranches:

On May 8, 1997, Dave Carlson talked with Steve Aslett Jr. of Aslett Ranches, the lessee of the Reno property. Mr. Aslett stated that he has been leasing this property since

1988-1989. He stated that water right 34-00470A has been delivered through the Upper Fish Hatchery Canal while he has been the lessee. Mr. Aslett indicated that he filled in the original ditch from the Upper Fish Hatchery Canal that went through the Aslett ranch property. He stated that the water right was then delivered through the ditch system that is presently in place via the Upper Fish Hatchery Canal. According to Mr. Aslett water right 34-00470A is used on the Reno property on a yearly basis and is beneficial in irrigating the entire place of use.

Regarding the ditches that Dave Carlson observed in poor condition, Mr. Aslett stated that they had not received their spring maintenance and presently looked that way because of weathering and cattle trampling. He stated that early in the spring the water in the ditch sinks because the soil needs to soak up water and build up the sub-water. He stated that after sub-water buildup the water right can be delivered to the Reno place of use. Mr. Aslett stated that Scott Johnson, a neighboring land owner, could confirm the water usage and that Mr. Johnson does the yearly maintenance on the ditch.

4. Affidavit of David Stoecklein:

The Stoecklein property is generally identified on Exhibit A. The point of diversion described as the Johnson #2 headgate in the Affidavit is the claimed and recommended point of diversion shown on Exhibit A. Dave Carlson's interview of Doug Rosenkrance confirms paragraph 9 of Mr. Stoecklein's Affidavit, but contradicts paragraph 5. IDWR has statements from Doug Rosenkrance, Basin 34 Watermaster, and Steve Aslett Jr. (Reno lessee) that this water right has been delivered and used. IDWR can confirm that there is presently a means of conveyance to the Reno property from the Upper Fish Hatchery Canal. On April 30, 1997, IDWR's Water Distribution Section provided direction to the Basin 34 Watermaster to deliver water in accordance with the Order for Interim Administration in Basin 34. A copy of that letter is attached as Exhibit E.

G. IDWR'S RECOMMENDATION FOR POINT OF DIVERSION

Based upon IDWR's observations, interviews and review of documentation regarding water right claim 34-00470A, IDWR concludes that Mr. Reno could legitimately claim either point of diversion for this claim.

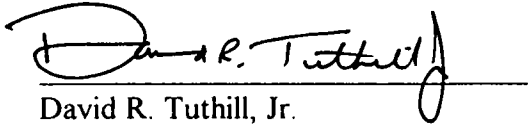
The point of diversion reflected in the historic records of IDWR is at the Upper Fish Hatchery Canal. The Basin 34 Watermaster states that he delivers the right at this location. If the claimant amends his claim, IDWR would recommend the point of diversion as the Upper Fish Hatchery Canal on the amended claim.

CONCLUSION

IDWR is available to assist either the Special Master or the parties to this matter in placing the finding in this report before the Court, either in the form of supporting

affidavits or in the form of testimony and exhibits. The contact person from IDWR regarding the contents of this report is Dave Carlson, at the Eastern Regional Office.

DATED this 8th day of May 1997

A handwritten signature in dark ink, appearing to read "David R. Tuthill, Jr.", is written over a horizontal line.

David R. Tuthill, Jr.
Chief, Adjudication Bureau
Idaho Department of Water Resources

Water Right No. 34-00470A

