

From: [Luke, Tim](#)
To: [Baxter, Garrick](#)
Cc: [Jones, Doug](#); [Carlson, Joseph](#); [Shaul, Sarah](#)
Subject: RE: Order forming WD 95-C Modification
Date: Friday, May 10, 2019 2:32:35 PM
Attachments: [image001.png](#)

Garrick, Doug, Joe,

I followed up on Garrick's suggestion in his prior email to look through the 1990 Water District 95 records from 1990 to confirm that domestic water users were assessed, which would support the conclusion that users who have domestic water rights and use them for irrigation were intended to be included in the water district.

I asked Sarah today to review annual water district microfiche records from 1990. The file includes the 1990 meeting minutes and a long list of water rights with individual assessment rates. A review of many of the rights on the list against the water rights database confirms that a majority of the rights assessed were domestic use rights. I agree therefore with Garrick's conclusion that owners of domestic rights that use them for irrigation were intended to be in the water district starting in 1990, the first year of district operations.

Thanks,

*Tim Luke
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From: Baxter, Garrick
Sent: Thursday, May 09, 2019 2:40 PM
To: Luke, Tim <Tim.Luke@idwr.idaho.gov>
Cc: Jones, Doug <Doug.Jones@idwr.idaho.gov>; Carlson, Joseph <Joseph.Carlson@idwr.idaho.gov>
Subject: RE: Order forming WD 95-C Modification

Tim,

I've had a chance to review the language in the Order creating the water district. The language is not a model of clarity. The Order provides, in relevant part: "The watermaster will not regulate the use of water ... for certain limited domestic purposes..." The Order then goes on to state that "The 'certain limited domestic purposes' shall be the portion of any water right used for domestic purposes, as that term is defined by Idaho Code § 42-230(e), *other than irrigation*." Idaho Code 42-230(e) defines "domestic purposes" as "water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where the total use is not in excess of thirteen thousand (13,000) gallons per day."

Reading the Order and Idaho Code 42-230(e) together, the Order excludes the use of water for household, livestock, and all other uses (including irrigation of up to ½ acre) from administration by the water district, but the very last part of the sentence (the part that says “*other than irrigation*”) undoes that exclusion for irrigation. In other words, the Order states the watermaster will not regulate those multiple uses which constitute domestic uses, but then it specifically exempts the irrigation component of the domestic definition from the exception. An odd way to do it but that is my conclusion based on the plain reading of the language.

This seems to be consistent with the cover letter sent to water users on October 20, 1989. The second paragraph of the cover letter states: “To determine the effect on your use of water, your attention is directed to the last paragraph of the Order. Idaho Code 42-230(e), reads in part... ‘water for household use or livestock’ ... ‘where total use is not in excess of thirteen thousand (13,000) gallons per day.’ ... ‘shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments.”

While this cover letter is also unclear and poorly drafted, what is interesting about this paragraph is that it specifically excludes the references to irrigation. This suggests to me that there was intent to distinguish between domestic uses for household and livestock and domestic use for irrigation. It bolsters the conclusion that they intended to exclude domestic uses for household and livestock uses and not exclude domestic uses the irrigation of up to ½ acre.

As an additional check, I think you could look back through water district records to see if domestic water users were assessed in 1990 (after Higginson signed the order creating the district). If yes, this would further support the conclusion that those water users who have domestic water rights and use them for irrigation were intended to be included in the water district.

So, from my perspective, a domestic water right holder who is using water for in house uses or livestock uses is not to be regulated by the water master, but a domestic water right holder who is using water for irrigation is to be regulated by the watermaster and thus may be assessed by the District.

Hope this helps. Please let me know if you have any questions.

Garrick



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From: Luke, Tim

Sent: Monday, March 25, 2019 11:51 AM

To: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>

Cc: Jones, Doug <Doug.Jones@idwr.idaho.gov>; Carlson, Joseph <Joseph.Carlson@idwr.idaho.gov>

Subject: FW: Order forming WD 95-C Modification

Garrick,

Doug, Joe and I discussed again this issue of what rights or which users are included in WD95C. Before we go further with any discussion with the advisory committee or users, I thought we should probably review the WD95C creation order, which is attached.

Note in the order section it says that:

“the watermaster will not regulate the use of water from springs or the use of water for certain limited domestic purposes until such time as the director of IDWR determines that such regulation is necessary. The “certain limited domestic purposes” shall be the portion of any water right used for domestic purposes, as that term is defined by Idaho Code § 42-230(e), other than irrigation.”

This language may raise questions about what rights are included in the district vs. what is regulated, as well as our options moving forward regarding modification of the district.

Do you have time today or tomorrow to discuss?

Tim