



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

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August 19, 1992

Oakley Canal Co.  
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Re: Whittle Decree and Interstate Water Uses

Gentlemen:

My meeting with certain members of the Oakley Canal Company on July 13 of this year resulted in several questions or issues concerning interpretation of the Whittle Decree and regulation of out of state water uses of Goose Creek and tributaries. These questions are summarized below.

1) Clarification of paragraph no.2, page 14 of the Whittle Decree concerning distribution of rights from Goose Creek when the combined flows of Goose and Trapper Creeks are less than 25 cfs and Oakley Reservoir is less than 15,000 acre-feet.

2) Status of Utah and Nevada rights. Specifically, what are the number and nature of rights in these two states? Are there decreed rights in these states which are different than those out of state rights in the Whittle Decree?

3) Regulation of Interstate streams. Does the Idaho Goose Creek watermaster have authority to regulate rights in Utah and Nevada? Can rights in these later two states be regulated conjunctively with Idaho rights via some cooperative effort among the three states?

Clarification of Conditions Regarding Distribution of Goose Creek Rights:

Water rights awarded to certain defendants in the Whittle Decree contain specific conditions about the period of use. These conditions are applicable to the Pacific Livestock Company right on page 4 of the decree and those rights granted to defendants A through L of the decree. The general irrigation season defined for these rights is from April 15 to July 20 of each year. The Pacific Livestock right is further limited by the following condition:

'...said defendant shall take no water for the irrigation of its lands when the combined flow of Goose Creek and Trapper Creek is less than 25 cfs, and there is not at the same time 15,000 acre-feet in said reservoir of plaintiff (Oakley Canal Co.). If there be more than 15,000 acre-feet in said reservoir said defendant may

use the waters herein specified between the dates herein limited to the said 5 second feet without regard to the flow of said Goose or Trapper Creeks.'

Rights granted to defendants A through L are conditioned similarly on page 14 of the decree:

'...none of the defendants named in sub-paragraphs "A" to "L" both inclusive, shall be entitled to take or receive any water from Goose Creek or any of its tributaries excepting when the combined flow of Goose Creek and Trapper Creek measured at or near the measuring stations of plaintiff (Oakley Canal Co.)... is less than 25 cubic feet per second, ... and where there is not at the same time in the reservoir owned and operated by the plaintiff 15,000 acre-feet of water..., but so long as there is more than 15,000 acre-feet of water in said reservoir, ... the said defendants (A through L) may use the waters herein specified to the extent hereinbefore set forth, within the periods as above limited without regard to the flow of said Goose Creek, Trapper Creek and their tributaries.'

The Oakley Canal Co. members told me that at least one upstream user who holds one or more rights described under sub-paragraphs A through L has a separate opinion of this latter condition than does the Oakley Canal Co. This water right holder believes that use of the word 'excepting' in the above condition means that the rights A through L can be delivered when the combined flow of Goose and Trapper Creeks is actually less than 25 cfs and the Oakley Reservoir holds 15,000 acre-feet or less. This opinion or interpretation by the upstream user appears to be incorrect and is inconsistent with the same condition given for the Pacific Livestock Co. right. As the conditions do provide for diversion of water within the April 15 to July 20 irrigation season when the reservoir contains more than 15,000 acre-feet, it is obvious that the decree did not also intend to allow diversion for these rights when the reservoir is also less than 15,000 acre-feet and the combined flows of Goose and Trapper Creeks is below 25 cfs. The Department therefore would direct a Goose Creek watermaster not to deliver the Pacific Livestock right and the 'A through L' rights when the combined flows of Goose and Trapper Creeks is less than 25 cfs and Oakley reservoir is less than 15,000 acre-feet.

#### Status of Idaho, Utah and Nevada Goose Creek Rights

Since my meeting with the Oakley Canal Co. members, I have contacted representatives from the water resource agencies which administer water rights in both Utah and Nevada. Both states submitted correspondence and their listing of water rights within the Goose Creek drainage. I have also reviewed the Department's records for all of the Goose Creek drainage rights upstream from the Oakley Reservoir. The Idaho rights above Goose Creek are summarized here as well.

- Idaho:

The Whittle decree identifies 17 irrigation rights from Goose and Trapper Creeks and tributaries above Oakley Reservoir. These rights include rights A through L (except right G where source is Birch Ck.) and the Pacific Land and Livestock right. Most of the remaining rights have specific conditions regarding periods and amount of use. The Department's records also show three licensed rights above the reservoir. One is a 1909 priority license for irrigation and domestic use of 1.0 cfs from Canyon Creek under the name of Eugene Emery. The second is a 1910 priority license for irrigation of 0.8 cfs from an unnamed stream tributary to Goose Creek under the name of A.L. Erickson. The other is a 1979 priority license for fish propagation use for 10.4 cfs of water from Trapper Creek under the name of Nolan Victor. There are also a number of small stockwatering rights above the reservoir. Most of these stock filings are owned by the BLM or Forest Service.

A review of the Department's Snake River Basin Adjudication database indicates that 15 irrigation use claims have been filed on Goose and Trapper Creeks and tributaries above Oakley Reservoir. Two of these claims are located on Trapper Creek, 10 claims are from Goose Creek, and three are from Goose Creek tributaries. These claims represent 13 of the 17 Whittle Decree rights above the reservoir. A claim for one of the 17 decreed rights (45-0147, rt. no. 15 in the decree) was filed for stock use only. There appears to be a total of 6 users who have filed these adjudication claims. The names include Bruce Bedke, Karl Bedke, Shoulder 3 Ranches, Morris Mitchell, Don Campbell and Carlson Canyon Ranch.

Three of the original decree rights (45-0145, 146 & 148/or 13, 14, & 16 in the decree) have not been filed on in the adjudication. Also, no SRBA claims have been filed on the Emery and Erickson licensed rights, but an SRBA claim has been filed for the Victor fish propagation license on Trapper Creek. A number of small stockwater claims have also been filed in the SRBA.

- Utah:

The Whittle Decree identifies six rights which have a point of diversion and place of use in Utah. These rights are identified by the department as rights no.s 45-139 through 45-140, and 45-157 through 158 (or rights 7, 8, 9, and H, I and J in the Whittle Decree). Utah completed an investigation of water uses in the Goose Creek drainage in 1956. This effort was part of a larger state adjudication for the Raft River area in Utah, including Goose, George and Johnson Creeks. While the rights within these other drainages have been confirmed by a court order, the Goose Creek uses have not yet been confirmed. The Goose Creek uses therefore are represented only by claims and not decreed rights. Whereas George and Johnson Creeks each have a watermaster which regulates rights on those drainages, Goose Creek has no watermaster or regulation.

The Utah list of rights within the Goose Creek drainage basically consists of four separate irrigation uses with different priority dates (there are actually more than four rights or claims listed by Utah because Utah has separate claims for each point of diversion). The uses are summarized below.

Source	Name	Priority	Amount	Acres
Goose Ck.	Karl Bedke	04/1890	6.4 cfs	Total of 359.1 acres for all Bedke rights
Goose Ck.	Karl Bedke	8/14/1911	1.9 cfs	
Hardesty Ck.	George Carson	1884	NA*	Total of 137.8 acres for all Carson Rights
Little Pole Ck.	E. Stevens	1884	2.0 cfs	115.6

\* Flow rates not given for Hardesty Ck. diversions/rights. However based on rates recommended for other rights, total rate of diversion for Carson's Hardesty Creek diversion is about 2.48 cfs.

Recommended annual period of use for Utah irrigation rights above are April 1 to October 31.

The Utah rights above include place of use descriptions which overlap 5 of the 6 Utah rights identified in the Whittle Decree. I assume therefore that all but one of the Utah Whittle Decree rights (IDWR no. 45-0141 or no. 9 in the Decree) are accounted for by the State of Utah in its list of recommended rights. These Utah irrigation rights have a later priority than most of the Whittle decree rights held by Oakley Canal Co.

The list of Utah rights also includes a number of stockwatering filings. Nearly all of the stockwatering filings have been made by the Bureau of Land Management (BLM) and involve very small uses of water.

- Nevada:

The State of Nevada Division of Water Resources reports that there are no other rights recorded for the Goose Creek drainage in Nevada other than those uses listed in the 1916 State Engineer's Order of Determination which were confirmed by a Nevada Court in March of 1923. There has been no recent adjudication effort for this basin in Nevada. The 1923 decree therefore is the only water right information available. This decree contains a total of 20 rights over two separate irrigation seasons. Rights used for pasture irrigation are limited to a season from April 1 to July 1. Rights used for meadow irrigation are extended for a longer season,

from April 1 to October 1. The total diversion rate for all rights over the longer season is 9.72 cfs. The total diversion rate for all rights over the shorter pasture season is 2.02 cfs. The total diversion for all rights between April 1 and July 1 is about 11.74 cfs. The one right in the Whittle decree which is appurtenant to land in Nevada does not appear to be listed in the Nevada decree.

The state of Nevada reports that there is no regulation or watermaster control of uses in the Goose Creek drainage within Nevada. The priority dates of the Nevada rights range from 1875 to 1904.

#### Regulation of Interstate Streams:

Regulation of interstate streams is generally accomplished by compacts among the states. The state currently has several compacts with neighboring states. Examples are the Bear River compact between Idaho, Utah and Wyoming, and the Snake River compact between Idaho and Wyoming. The Idaho Code does not provide any particular statutes or authority which direct how interstate streams should be regulated unless a specific compact has already been approved by the legislature. There are no situations in the state that I am aware of whereby water rights located completely outside of the state are regulated by an Idaho watermaster.

Representatives of Utah and Nevada which I have talked with indicated that some type of compact would be required among the three states to accomplish interstate regulation of Goose Creek. The number of rights and cumulative rates of diversion in the three states may not be significant enough to generate interest in formulating any type of compact. If the Oakley Canal Co. wishes to pursue interstate regulation of Goose Creek, then I recommend writing directly to the Director of the Idaho Department of Water Resources and petitioning for interstate regulation and a compact.

#### Further Investigations:

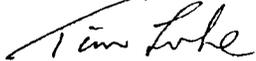
While interstate regulation may not be forthcoming, Goose Creek drainage users within Idaho should be more immediately concerned with distribution of water within Idaho. As I have advised before, the Department is willing to assist with reactivating the water district and working with the users towards election of a watermaster and adoption of a district budget. We can also provide training and assistance to the watermaster. If necessary, the Department can require installation of headgates and measuring devices. This latter requirement can be achieved and enforced more efficiently if there is an active water district.

As discussed in our last meeting, I still plan to return to the area and inspect many of the Idaho diversions above the reservoir. I hope to do this toward the end of this month or very early next month. Jerry Stanger has offered to guide and work with

me on this inspection. I already have the irrigation diversions located on one large scale map.

If you have further questions or concerns regarding any of this information, please contact me at this office.

Respectfully,



Tim Luke  
Hydrologist  
Water Allocation

cc: Loren Holmes, Southern Region