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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

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) Subcase Nos. 65-03681, 65-05033C and 65-
) 22621

) FINDINGS OF FACT AND CONCLUSIONS
) OF LAW
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This SRBA Subcase was tried by the SRBA District Court, Special Master Thomas Cushman at the Idaho Supreme Court Building in Boise, Idaho on March 25, 2004. The Court, having heard all the testimony and evidence, having considered the briefs of the party and the Supplemental Director's Report of IDWR, having reviewed and examined all testimony and evidence offered and admitted, and having reviewed the proposed findings of fact and conclusions of law submitted, hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Water Right No. Water right no. 65-5033 was decreed in October 29, 1986 in the Payette River Basin Adjudication ("PRBA") to Ira Peterson for the irrigation of 255 acres in Round Valley, Valley County, Idaho.

2. Water right no. 65-05033 was diverted from Chipps Creek in Township 11 North, Range 4 East, Section 18 and conveyed north to the Peterson Property by a ditch along the west side of the Peterson property (the "Peterson Ditch").

3. Dave Ringel purchased the S½SE¼ of Section 6 in Township 11 North, Range 4 East (the "Accomplished Transfer Property") from Ira L. Peterson on August 15, 1974. He and Gloria Ringel were married the next year, moved to the property in Round Valley, Valley County, Idaho shortly thereafter, and have lived there since.

4. On September 23, 1977, Mr. Peterson deeded property in the SWSE of Section 7 and the NWNE of Section 18, Township 11 North, Range 04 East to James and Carolyn Kling "*exclusive of water rights.*"

5. Over the years of his residence in Round Valley, Mr. Ringel became friendly with Ira Peterson, assisted Mr. Peterson with the irrigation of the Peterson property, and became familiar with the irrigation diversion and distribution system on the Peterson property.

6. In November, 1981, the Ringels filed a permit application with the Idaho Department of Water Resources seeking a water right for irrigation of 45 acres of the Accomplished Transfer Property. Prior to the filing of their permit application, the Ringels had begun to dig a holding pond for water on their property in the SWSE of Section 6, Township 11 North, Range 4 East.

7. Although the proposed source of the water right sought by the Ringels was a spring on the Accomplished Transfer Property, after completion of their pond, the Ringels began to divert Chipps Creek water from a headgate in the Peterson Ditch into a ditch running northeasterly across the Peterson property which eventually ended in the Ringel's newly constructed pond on the Accomplished Transfer Property. The Ringels diverted this water to the Accomplished Transfer

Property with the permission and consent of Ira Peterson.

8. The Ringels irrigated approximately 34 or 35 acres of the Accomplished Transfer Property in T11N, R 04 E, Section 6 SWSE and SESE with water diverted from Chipps Creek from approximately 1981 to the present, and diverted water to their pond on the Ringel Property for the same period of time.

9. Although Ira Peterson irrigated his property with Dave Ringel's assistance from 1974 to to 1996, he did not irrigate the property near and around his house in Township 11 North, Range 04 East, Section 7.

10. On November 18, 1988, Ira Peterson filed a claim to water right no. 65-05033 in the SRBA. Mr. Peterson claimed the entire quantity of water decreed him in the PRBA, 5.10 cfs, but claimed only 226 acres of irrigated property, not the 255 acres decreed to him in the PRBA. Mr. Peterson claimed no lands irrigated pursuant to water right no. 65-05033 in Township 11 North, Range 04 East, Section 7, SWSE or NWNW, despite the fact that the water right had recently been decreed as appurtenant to lands in those $\frac{1}{4}\frac{1}{4}$ sections in the PRBA.

11. On October 4, 1990, Mr. Peterson and his wife, Lola Hays Peterson deeded "ONE-HALF ACRE OF WATER (.02 CFS/1.75 A/F/A) UNDER WATER RIGHT A65-05033" to James and Carolyn Kling.

12. On May 12, 1996, pursuant to an agreement with the Ringels, Ira and Lola Peterson deeded 138.38 acres of their ranch "[t]ogether with all of the Peterson interest in one-half of" water right no. 65-05033. The agreement with the Ringels provided for the sale of the Peterson ranch in two separate property transfers, both of which would result in the conveyance of separate 138.38 acre parcels.

13. Mr. Peterson passed away shortly after the execution of the 1996 Warranty Deed conveying property to the Ringels.

14. After Mr. Peterson's death, relations between the Ringels and Lola Hays Peterson deteriorated and Mrs. Peterson refused to sell Ringels the remainder of the ranch and the water rights that she and Mr. Peterson had agreed they would sell to Ringels.

15. The Ringels sued Lola Hays Peterson to force her to sell them the remainder of the real property and water rights on which the Petersons and Ringels had agreed.

16. Lola Hays Peterson and the Ringels signed an agreement on January 28, 1998 settling their litigation. In the Settlement Agreement, Lola Peterson agreed to deed the remainder of the property and water rights to Ringels.

17. On January 28, 1998, Mrs. Peterson executed a Warranty Deed transferring the remainder of the property that she and Ira Peterson had agreed to sell to the Ringels (a different 138.38 acre parcel than that conveyed pursuant to the 1996 Warranty Deed), and transferring to Ringels all of Peterson's interest in Water Right 65-05033.

18. On April 6, 1999, James and Carolyn Kling filed a Notice of Claim to water right no. 65-05033 in the SRBA, claiming .48 cfs for the irrigation of 24 acres in the SWSE of Section 7, Township 11 North, Range 4 East despite the fact that Mr. Peterson's original SRBA claim did not include any lands in that location.

19. After the relationship between Lola Peterson and the Ringels deteriorated to the point that Mrs. Peterson made threats and brandished guns, Mrs. Peterson executed an affidavit in July, 1999 stating, in essence, that it was her and Ira Peterson's intent to deed to the Klings 0.48 cfs of water right no. 65-05033 pursuant to the October 4, 1990 Quitclaim Deed which, according to its

language, deeded to the Klings only ""ONE-HALF ACRE OF WATER (.02 CFS/1.75 A/F/A/) UNDER WATER RIGHT A65-05033".

20. On the basis of the Kling's claim and the Peterson affidavit, IDWR recommended water right no. 65-05033A to the Klings for the irrigation of 24 acres with 0.48 cfs.

21. Although "all" of Petersons' interest in water right no. 65-05033 had previously been transferred to the Ringels pursuant to the 1996 and 1998 Warranty Deeds, IDWR recommended that water right 65-05033B be decreed to Ira Peterson for the irrigation of 28 acres with .56 cfs.

22. IDWR's Supplemental Director's Report Regarding Subcase No. 65-5033C establishes that IDWR erroneously assumed the Ringels had purchased only 138.38 acres from the Petersons pursuant to the 1996 and 1998 Warranty Deeds from Petersons to Ringels.

23. IDWR recommended portions of both water right nos. 65 -05033A and 65-05033B as "accomplished transfers" pursuant to I.C. §42-1425.

24. The Ringels have claimed water right no. 65-05033C, requesting in part that the water right be decreed with 34 acres of irrigation in Section 6, Township 11 North, Range 04 East (32 acres in SWSE and 2 acres in SESE), and that the water right be decreed with a storage component of 6.0 acre feet per annum pursuant to an "accomplished transfer" claimed under I.C. §42-1425.

25. IDWR's Senior Water Rights Agent Ron Howerton investigated the Ringels' claim which included the request for storage and for the irrigation of acreage in Section 6, and issued a recommendation denying the Ringels' accomplished transfer claim. Mr. Howerton did not investigate whether the accomplished transfer requested by the Ringels could be recommended because, at the time of his investigation, the entire portion of the water right, 5.10 cfs, had already been recommended to the Klings, the Peterson Estate and the Ringels. Mr. Howerton did not investigate whether the

Ringel lands on which the accomplished transfer was claimed were irrigated during the 1987 irrigation season, nor did he determine whether any portion of the Peterson lands were not irrigated during that period. Mr. Howerton similarly did not investigate how or whether water was diverted from Chipps Creek to the Ringel pond in Section 6.

26. Water Right No. 65-05033B has been recommended "decreed disallowed" pursuant to the Special Master's Recommendation filed on March 18, 2004. Water Right no. 65-05033A has been recommended to the Klings with a place of use of 6 acres irrigated by .12cfs pursuant to the Special Master's Recommendation filed on March 18, 2004.

27. The total acreage recommended under water right no. 65-05033 pursuant to the Special Master's Recommendations of water right nos. 65-05033A and 65-05033B, and the current IDWR recommendation of water right no. 65-05033C is 221 acres. This leaves 34 acres of water right no. 65-05033 that were decreed in the PRBA which have not been recommended in the SRBA.

28. IDWR confirms the possibility that the 34 acres not currently recommended in the SRBA could have been transferred to the Ringel Pond Property as part of an "accomplished transfer."

29. The pond on the Accomplished Transfer Property is 1.3 acres in size and approximately 8 feet deep. The pond was complete and the Accomplished Transfer Property was irrigated consistently from the pond before, during and after the 1987 irrigation season to the present.

30. Water is and has been consistently diverted from Chipps Creek and conveyed to the pond on the Accomplished Transfer Property through the Peterson Ditch along the west side of what was formerly the Peterson property, and through the ditch running north across the former Peterson Property to the pond from approximately 1981 to the present, including during the 1987 irrigation season.

CONCLUSIONS OF LAW

1. The Director's Recommendation of water right no. 65-05033C carries with it a rebuttable presumption of prima facie weight. Idaho Code § 42-1411(4).

2. The basis of IDWR's failure to recommend that the accomplished transfer of water right no. 65-05033C claimed by the Ringels was its conclusion that there was no water under water right 65-05033 to recommend to the Ringels because it had already been previously recommended. Because IDWR did not investigate the facts comprising or related to the Ringels' claim, its recommendation is not entitled to prima facie weight.

3. IDWR's recommendation that the Ringels' claim to an "accomplished transfer" should be denied is also based upon the erroneous conclusion that the Ringels purchased only 138.38 acres of property from the Petersons pursuant to the 1996 and 1998 Warranty Deeds, which, according to IDWR, resulted in the placement of too much water on the 138.38 acres that IDWR assumed the Ringels owned, and led to IDWR's erroneous recommendations of water right nos. 65-05033A and 65-05033B. Based upon the serious nature of the error, the subsequent errors to which it led, and the fact that IDWR did not investigate the facts of the accomplished transfer claimed by the Ringels, the Director's Recommendation denying the accomplished transfer is accorded no weight.

4. Idaho Code § 42-1425 provides in relevant part that

Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right.

5. The primary issue in this proceeding is whether the place and nature of use of water right no. 65-05033 were changed by Ira Peterson between October 29, 1986, when water right no. 65-5033 was decreed in the Payette River Basin Adjudication ("PRBA"), and November 19, 1987, the date of initiation of the SRBA.

6. The evidence clearly establishes that the change claimed by the Ringels took place on the ground prior to the 1987 irrigation season and has carried over to the present.

7. Based upon the facts that no additional acreage was irrigated and that no additional water diverted pursuant to the changes in place of use and nature of use which occurred during, prior to and after the irrigation season of 1987, the Court concludes that no water rights were or will be injured by the change claimed by the Ringels.

8. Pursuant to the permission and consent of Ira Peterson, water right no. 65-05033C was used upon the Accomplished Transfer Property and in the Ringel Pond during, prior to, and after the irrigation of 1987, and the "accomplished transfer" of water right no. 65-05033C claimed by the Ringels pursuant to I.C. §42-1425 should be decreed.

9. Water right no. 65-05033C should be decreed with the elements listed in the attached water right description.

10. Water right nos. 65-03681 and 65-22621 are overlapping uncontested water rights with combined use remarks which are affected by the changes to IDWR's recommendation of water right no. 65-05033C.

11. Water right nos. 65-03681 and 65-22621 should be decreed with the elements listed in the attached water right descriptions.

Dated this ____th day of _____, 2004.

Thomas R. Cushman
Special Master
SRBA District Court

DESCRIPTION OF WATER RIGHT ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 65-05033C

NAME AND ADDRESS: FREDRICK D. RINGEL
GLORIA J. RINGEL
PO BOX 582
CASCADE, ID 83611

SOURCE: CHIPPS CREEK TRIBUTARY: CAMP CREEK

QUANTITY: 4.98 CFS

USE OF THIS RIGHT WITH RIGHT NO. 65-22621 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.98 CFS.

USE OF THIS RIGHT WITH RIGHT NO. 65-22621 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.09 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 5.12 AF. FOR STOCKWATER USES.

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-3681 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY

PRIORITY DATE: 01/04/1897

POINT OF DIVERSION: T11N R04E S7 SWSE Within VALLEY County
T11N R04E S6 SWSE Within VALLEY County

PURPOSE AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4-15 10-15	4.98 CFS
STOCKWATER	1-01 12-31	0.04 CFS
IRRIGATION STORAGE	4-15 10-15	6.0 AF

PLACE OF USE:

IRRIGATION Within VALLEY County

T11N R04E S6	SWSE	32	T11N R04E S6	SESE	2
T11N R04E S7	NENE	8	T11N R04E S7	NWNE	40
T11N R04E S7	SWNE	40	T11N R04E S7	SENE	27
T11N R04E S7	NENW	30	T11N R04E S7	SENW	26
T11N R04E S7	NESW	12	T11N R04E S7	NWSE	38

STOCKWATER Use is same as IRRIGATION
IRRIGATION STORAGE use is in T11N R04E S6 SWSE

255 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 249 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

EXPLANATORY MATERIAL: BASIS OF CLAIM - decree

DESCRIPTION OF WATER RIGHT ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 65-22621

NAME AND ADDRESS: FREDRICK D. RINGEL
GLORIA J. RINGEL
PO BOX 582
CASCADE, ID 83611

SOURCE: CHIPPS CREEK TRIBUTARY: CAMP CREEK

QUANTITY: 0.23 CFS

USE OF THIS RIGHT WITH RIGHT NO. 65-05033C IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.98 CFS.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.12 CFS AND A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 6.7AF. FOR STOCKWATER USES. COMBINED RIGHT NOS.:
65-05033A & 65-05033C.
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY

PRIORITY DATE: 05/01/1986

POINT OF DIVERSION: T11N R04E S18 SENE Within VALLEY County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4-15 10-15	0.23 CFS
STOCKWATER	1-01 12-31	0.12 CFS

PLACE OF USE:

IRRIGATION Within VALLEY County
T11N R04E S7 NESW 12

STOCKWATER Use is same as irrigation

12 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 65-05033C IS LIMITED TO THE IRRIGATION OF
A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON. USE OF
THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF
A COMBINED TOTAL OF 281 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS.: 65-03681 & 65-05033C

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY
FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION
OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT
AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE.
SECTION 42-1412(6).
THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 65-05033C
PURSUANT TO SECTION 32-1426, IDAHO CODE.
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER
USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL:

BASIS OF CLAIM - decree
STOCKWATER, 350 RANGE CATTLE

DESCRIPTION OF WATER RIGHT ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 65-03681

NAME AND ADDRESS: FREDRICK D. RINGEL
GLORIA J. RINGEL
PO BOX 582
CASCADE, ID 83611

SOURCE: CHIPPS CREEK TRIBUTARY: CAMP CREEK

QUANTITY: 0.76 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY

PRIORITY DATE: 01/15/1898

POINT OF DIVERSION: T11N R04E S07 NENE Within VALLEY County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4-15 10-15	0.64 CFS
STOCKWATER	1-01 12-31	0.12 CFS

PLACE OF USE:

IRRIGATION Within VALLEY County
T11N R04E S7 NENE 32

STOCKWATER Use is same as IRRIGATION

32 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 65-5033C IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 259 ACRES IN A SINGLE IRRIGATION SEASON

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 271 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-5033C & 65-22621.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6).

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - decree