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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. 65-05033C, 65-03681, 65-22621
)
)
) CLOSING ARGUMENT
)

COMES NOW Claimants Fredrick D. and Gloria J. Ringel, by and through their attorneys of record, RINGERT CLARK, CHARTERED and hereby submit this Closing Argument pursuant to the bench order of the Court at the close of the trial on March 25, 2004.

SUMMARY

The primary issue in this dispute is whether or not water right no. 65-05033C is appurtenant to Ringel's property in Township 11 North, Range 4 East, Section 6, pursuant to an "accomplished transfer" as defined under I.C. §42-1425. Together, the testimony taken and the evidence admitted at the trial of this matter on March 25, 2004 establish that, in fact, an accomplished transfer of a portion of water right no. 65-05033 did occur 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 Snake River Basin Adjudication ("SRBA"). The factual and legal arguments which are contained in IDWR's Supplemental Director's Report and which led to the conclusion that

no accomplished transfer took place are erroneous, and should be disregarded. Instead, this Court should recommend that water right no. 65-05033C be decreed as appurtenant to the grounds claimed by Ringels pursuant to the “accomplished transfer” statute.

FACTS

Water right no. 65-5033, decreed in the PRBA to Ira Peterson, was diverted from Chipps Creek in Township 11 North, Range 4 East, Section 18 and conveyed north by a ditch along the west side of the Peterson property (the “Peterson Ditch”). *See* Ex. 16, *see also* map attached to Supplemental Director’s Report - 65-5033C (Oct. 1, 2003). The water right was decreed in the PRBA as appurtenant to property owned by Ira Peterson for the irrigation of 255 acres on October 29, 1986. *See* PRBA Decree. 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. Ex. 1. He and Gloria Ringel were married the next year, and moved to the property in Round Valley, Valley County, Idaho shortly thereafter. Over the years of his residence in Round Valley, Mr. Ringel assisted Mr. Peterson in his irrigation of the Peterson property, and became familiar with the irrigation diversion and distribution system on the Peterson property.

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. Ex. 5. Prior to the filing of their permit application, the Ringels had begun to dig a holding pond on their property in the SWSE of Section 6, Township 11 North, Range 4 East. The source of the proposed water right was a spring on the Accomplished Transfer Property. *Id.* Once the pond had been completed, the Ringels, pursuant to Ira Peterson’s permission and consent, began to divert water from a headgate in the Peterson Ditch (Head Gate “D” on the map attached to IDWR’s

Supplemental Director's Report) into a ditch running northeasterly across the Peterson property (erroneously labeled as an "unnamed stream" on the map attached to IDWR's *Supplemental Director's Report*) which eventually ended in the Ringel's pond in Section 6.

Once the pond had been completed, and the water diverted from the Peterson Ditch, the Ringels irrigated approximately 34 or 35 acres of their property in T11N, R 04 E, Section 6 SWSE and SESE (hereinafter referred to as the "Pond Property"). See Ex. 4, Exs. 6 - 11, Ex. 15. The Ringels have continued irrigated the Pond Property with water diverted from Chipps Creek via the Peterson Ditch and run through the ditch across the former Peterson Property to their pond to this day. Peterson irrigated his property with Dave Ringel's assistance from 1974 to his sale of the majority of his property to Mr. Ringel in 1996. However, Mr. Peterson did not irrigate the property near his house in Township 11 North, Range 04 East, Section 7, NWNW. See Ex. 2, Ex. 4, Ex. 9.

On November 18, 1988, Peterson filed a claim in the SRBA. Mr. Peterson claimed the entire quantity of water decreed him in the PRBA, 5.10 cfs, but, notably, claimed only 226 acres of irrigated property, not the 255 acres deeded to him in the PRBA. See Original Claim to Water Right no. 65-05033. 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. *Id, see also* PRBA decree.

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.*" See Exhibit A to the Affidavit of Lola Hays Peterson attached to IDWR's *Supplemental Director's Report*. 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. *See Exhibit C to the Affidavit of Lola Hays Peterson attached to IDWR's Supplemental Director's Report.*

On May 12, 1996, pursuant to an agreement with the Ringels, Ira and Lola Peterson deeded a portion of their ranch "[t]ogether with all of the Peterson interest in one-half of Water Right No. 22, Idaho Department of Water Resources, Adjudication Claim Profile Report Number A65-05033 dated January 4, 1897." The agreement with the Ringels provided for the sale of the Peterson ranch in two separate property transfers. Mr. Peterson passed away shortly after the execution of the May 12, 1996 Warranty Deed. 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. A lawsuit was brought, and after its initiation, a settlement agreement signed in which Lola Peterson agreed to deed the remainder of the property and water rights to Ringels. Ex. 12. 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, and transferring to Ringels "all of Peterson's interest in Water Right No. 22, Idaho Department of Water Resources, Adjudication Claim Profile Report Number A65-05033 dated January 4, 1897." Ex. 13.

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. The relationship between Lola Peterson and the Ringels deteriorated to the point that Mrs. Peterson made threats and brandished guns. On July 27, 1999,

Mrs. Peterson executed an affidavit 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. *See Affidavit of Lola Hays Peterson attached to IDWR's Supplemental Director's Report.* 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. In addition, despite the fact that Ira and Lola Peterson had previously deeded "all" of water right no. 65-05033 to the Ringels, IDWR issued an SRBA recommendation that water right 65-05033B be decreed to Ira Peterson for the irrigation of 28 acres with .56 cfs. IDWR's senior water rights agent Ron Howerton testified at trial that IDWR recommended both water rights pursuant to the accomplished transfer statute. The Ringels filed SRBA objections to both water right nos. 65-05033A and 65-05033B, both the Klings and the Peterson Estate (Lola Peterson's successor in interest in SRBA Claim no. 65-05033B) filed objections to IDWR's recommendation of water right no. 65-05033C to the Ringels, and litigation ensued.

The Ringels and Klings settled their objections to each other's water right recommendations, resulting in a Special Master's Recommendation that water right no. 65-05033A be decreed to the Klings for the irrigation of 6 acres with .12 cfs. The Peterson Estate's objection to the Ringels' water right no. 65-05033C was dismissed on the basis of precedential law regarding the non-forfeiture of water rights during the pendency of the SRBA, and the Estate withdrew its claim to water right no. 65-05033B, resulting in a Special Master's Recommendation that the Estate's claim be decreed as dismissed.

The Ringels filed their Amended Notice of Claim to water right no. 65-05033B on August 23, 2001, requesting 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. IDWR's Senior Water Rights Agent Ron Howerton investigated the 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 testified that he didn't even 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 under water right nos. 65-05033A, 65-05033B and 65-05033C. Mr. Howerton testified that he did not specifically look to determine 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 testified that he did not investigate whether these lands had been irrigated or not because forfeiture could not have been a possibility between the PRBA decree in 1986 and initiation of the SRBA in 1987 due to the "Forfeiture Tolling Rule"). Mr. Howerton testified that he did not investigate to determine how water was diverted from Chipps Creek to the Ringel pond in Section 6. Mr. Howerton did confirm in his testimony that the total acreage recommended under water right no. 65-05033 is currently 221, leaving 34 acres that were decreed in the PRBA which have not been recommended in the SRBA, and further confirmed that it was possible those 34 acres could have been transferred to the Ringel Pond Property.

Dave Ringel testified at trial that the Pond Property was irrigated from the pond during the 1987 irrigation season and that it had been irrigated from the pond since and before that time. He testified that the pond is 1.3 acres in size and approximately 8 feet deep. The evidence presented,

including photographs and a Request for Extension of Time to submit proof of beneficial use establish that the pond was complete and that the property was irrigated before, during and after the 1987 irrigation season. Exs. 4, 6 - 10, 14. Mr. Ringel's testimony and the photographs he submitted (both aerial photos and on the ground recent photos) establish the existence of the pond and the ditch through which water from Chipps Creek is conveyed from the Peterson Ditch to the Ringel Pond Property. Exs. 2 - 4, 14, 15. Mr. Ringel's testimony, together with the aerial and ground photos admitted as evidence also establish that a portion of the Peterson property was not irrigated before, during and after the 1987 irrigation season. In short, all facts point to the conclusion that an accomplished transfer of water right no. 65-05033C occurred prior to the initiation of the SRBA on November 19, 1987.

ARGUMENT

The Director's Report constitutes prima facie evidence of the elements of water rights reported therein. Idaho Code § 42-1411(4). The "prima facie" status accorded to the Director's Report in I.C. § 42-1411(4) is a rebuttable evidentiary presumption. *In re SRBA Case No. 39576*, 128 Idaho 246, 255, 912 P.2d 614, 623 (1995). "The determination of facts by the Director is presumptively correct." *Fremont-Madison Irr. Dist & Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 462, 926 P.2d 1301, 1309 (1996) (emphasis added).

I. **IDWR's Recommendations and Conclusions are Erroneous, and as a Result, the Presumptive Weight Accorded the Director's Recommendation has been Rebutted**

IDWR did not recommend the accomplished transfer of water right no. 65-05033C claimed by the Ringels. However, it is apparent from the testimony of Ron Howerton that IDWR did not even consider whether an accomplished transfer of the water right could have occurred because the

entire quantity of the water right decreed in the PRBA had already been recommended by IDWR. Additionally, the “facts” on which IDWR based its conclusion were incomplete and erroneous, and the analysis it conducted was flawed.

IDWR states as one of the issues in this subcase “Did Ringels purchase 5.10 cfs of water (255 miners inches) when they only purchased a total of 138.8 acres of property from the Petersons.” *Supplemental Director’s Report - 65-5033C*, p. 4. The factual basis for IDWR’s stated issue is completely erroneous. The true nature and enormity of IDWR’s error becomes apparent when the *Supplemental Director’s Report* is reviewed in light of the deeds transferring property from Lola and/or Ira Peterson to the Ringels. The *Supplemental Director’s Report* treats the 1996 Warranty Deed from Lola and Ira Peterson to the Ringels as follows:

On May 12, 1996, a Warranty Deed was executed conveying 138.38 acres from Ira L. and Lola B. Peterson to the Ringels The Warranty Deed stated: “Together with all of the Peterson interest in one-half of Water Right No. 22, Idaho Department of Water Resources, Adjudication Claim File Report Number A65-5033. . . .”

Supplemental Director’s Report - 65-05033C, p. 7. (Emphasis in original). IDWR next discussed the 1998 Warranty Deed from Lola Peterson and the Estate of Ira Peterson to the Ringels:

Another Warranty Deed was executed on January 28, 1998, between Lola B. Peterson and the Personal Representative of the Estate of Ira Peterson, deceased, and the Ringels. This Warranty Deed was for the exact same number of acres (138.38 acres) but stated: “Together with all of Peterson’s interest in Water Right No. 22 Idaho Department of Water Resources Adjudication Claim Profile Report No. A65-05033” Even if there was not an earlier deed conveying some interest in this water right to the Klings, **this second Peterson-Ringel deed would give Ringels more than one inch per acre** which would increase the decreed amount of water used per acre under this water right.

Supplemental Director’s Report, pp. 7 - 8. (Underlined emphasis in original; bolded emphasis added). It is true that both deeds specify the transfer of a parcel of land 138.38 acres in size. *See*

Exhibits 5 and 6 to the *Supplemental Directors' Report*. However, despite what is obviously IDWR's conclusion to the contrary, the two deeds convey two separate 138.38 acre parcels - a fact that was confirmed by the testimony of Dave Ringel at trial. Even a cursory examination of the legal descriptions in each Warranty Deed would have revealed that fact to IDWR. Moreover, the 1996 deed truly does convey one-half of water right no. 65-05033 to Ringels and the 1998 Warranty Deed truly conveys the remainder of Peterson's interest in that water right to Ringels. Exs. 5, 6.

This aspect of IDWR's analysis is particularly disturbing, because it appears that IDWR has assumed from the time of their own original recommendations of water right nos. 65-05033A, 65-05033B and 65-05033C that Ringels could not have purchased 5.10 cfs of water from the Petersons. Presumably, it was on the basis of this erroneous factual conclusion that IDWR erroneously recommended .48 cfs pursuant to the claim for water right no. 65-05033B and .56 cfs pursuant to water right no. 65-05033A - claims which were later either completely released or substantially reduced.¹ It is even more disturbing to Ringels to understand that IDWR's mistake on this point was likely responsible for the extensive and hostile litigation in which they have been forced to engage against their neighbors.

IDWR's error on this point alone is substantial enough to rebut the presumptive weight accorded the Director's Report under the law. However, IDWR's conclusion as to its second issue leaves no question that it was simply completely oblivious to the facts of this case. IDWR concludes that because

¹ In fact, it is difficult to understand how a claim to a water right by the Peterson Estate (the successor in interest to Lola Hays Peterson) could have possibly been maintained as against Ringels due to the fact that Lola Hays Peterson had previously conveyed all of her interest in water right no. 65-05033 to the Ringels pursuant to the January 28, 1998 Warranty Deed. See Ex. 6 to the Supplemental Director's Report.

the Ringels did not purchase their property until 1996 and 1998, even if they are correct that they own the entire water right, they must file a transfer under I.C. §42-222 to change the place of use In addition, the Ringels argument that the change from certain quarter-quarters in Section 7 to Section 6 occurred prior to 1986 is not supported by the evidence showing that such an accomplished transfer took place during the summer of 1987.

Supplemental Director's Report, p. 4. First, IDWR neglects to mention that Ringels purchased the property to which they are claiming water right no. 65-05033C as appurtenant pursuant to I.C. §42-1425 in 1974. The relevance of the 1996 and 1998 deeds is not that they transferred land, but that they transferred to the Ringels the entirety of water right no. 65-05033 - a portion of which they had already been using pursuant to the permission and consent of Ira Peterson. To the extent that IDWR's statements are construed to argue that Ringels can not claim an accomplished transfer of a water right that they did not own at the time, it is relevant to point out that IDWR recommended water right no. 65-05033B to Ira Peterson and the Peterson Estate as appurtenant to lands not claimed by Ira Peterson in the SRBA, when, clearly, Peterson did not own any portion of water right no. 65-05033 (having deeded all interest in that water right to Ringels pursuant to the 1998 Warranty Deed); and likewise recommended water right no. 65-05033A to Jim and Carolyn Kling even though IDWR had a deed establishing that Klings owned only that quantity of water they had been deeded by Peterson in 1990: "One-half acre of water (.02 CFS/1.75 A/F/A/)." ²Finally, Ron Howerton testified at trial that portions of water right no. 65-05033 had already been recommended as appurtenant to lands different than those decreed in the PRBA pursuant to the accomplished transfer statute. Obviously, IDWR does not believe that ownership of the water right is a necessary predicate to the recommendation of an accomplished transfer despite its apparent argument to the contrary.

²Notably, the only evidence available establishes that the Klings did not own any portion of water right no. 65-05033 until 1990 - well after the 1987 initiation date of the SRBA.

Second, given Ron Howerton's testimony at trial - that IDWR did not even look to determine whether an accomplished transfer of the water right from Section 7 lands to Section 6 lands could have occurred, the statement that Ringels' claim of an accomplished transfer "is not supported by the evidence" is disingenuous at best. The fact is that IDWR did not look to determine whether any evidence existed, because it held an erroneous belief that such an accomplished transfer could not occur - based upon its erroneous belief that Ringels had only been conveyed 138.38 acres.

In light of these uncontroverted facts, it is quite obvious that the Director's Recommendation denying Ringels' claim of an accomplished transfer of water right no. 65-05033C should not be accorded prima facie weight because the facts and the law establish otherwise. It is more appropriate that because IDWR based its recommendation on erroneous facts and did not even look at the real facts surrounding the accomplished transfer, no weight whatsoever should be accorded the Director's Recommendation.

II. An Accomplished Transfer of Water Right No. 65-05033C Took Place

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.

A water right owner can, by abandoning the use of water on one tract of land and by applying it to use on another tract, accomplish a transfer of the water. *Federal Land Bank of Spokane v. Union Central Life Insurance Company*, 54 Idaho 161, 29 P.2d 1009.

The primary issue before this Court 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. The evidence clearly establishes that the change took place on the ground in about 1981, when the Ringels constructed their pond, and carried over through 1987 to the present. Dave Ringel testified that Ira Peterson gave him permission to irrigate the property that he owned in 1981 with Chipps Creek water, and that in fact, the irrigation of Ringels' property in Section 6 took place from that date until the present, including the period encompassing the 1987 irrigation season. In addition, Mr. Ringel testified that Mr. Peterson did not irrigate the property surrounding his home during that time, further establishing that the water had actually been moved from what was then the Peterson Property to the Ringel Property. Other evidence, including aerial and on the ground photos from before, during and after the 1987 time period support these facts and this conclusion. It is obvious that Mr. Peterson intended to transfer water right no. 65-05033 to the Ringel Property in Section 6, and that such transfer was in fact accomplished.

The only evidence contradicting Mr. Ringel's testimony and the evidence admitted at trial is the Affidavit of Lola Hays Peterson. Ms. Peterson did not testify at trial, and thus was not available for cross examination regarding the statements in her affidavit - she is deceased. Mrs. Peterson's statements to the effect that Ira Peterson did not irrigate his property from 1977 are directly contradicted by the testimony of Dave Ringel that Mr. Peterson did irrigate his property during that time, and are directly contradicted by the 1981 aerial photographs clearly showing a delineation between the area surrounding the Peterson home which was not irrigated, and the remainder of the Peterson Property south of the Ringel home which was clearly irrigated. Exs. 2, 3. In fact, water can

be seen in the ditches on the right hand side of Ex. 3.

Additionally, the statement of Mrs. Peterson that she and Mr. Peterson intended to convey .48 cfs to irrigate 24 acres of land to the Klings pursuant to the 1990 Warranty Deed clearly conflicts with the language of that deed providing that Klings only received "One-half acre of water (.02 CFS/1.75 A/F/A)." Those statements should not have been used by IDWR to interpret the 1990 deed to recommend more than one-half acre of irrigated land or .02 cfs to the Klings. Both the deed's meaning and the intent of the parties to it must be determined from the plain meaning of the Warranty Deed's own words. *Taylor v. Browning*, 129 Idaho 483, 489, 927 P.2d 873, 879 (1996). Because the Warranty Deed's terms are clear and unambiguous, its meaning and legal effect are questions of law. *State v. Barnett*, 133 Idaho 231, 234, 985 P.2d 111, 114 (1999). No outside information is necessary to assist in the interpretation of the Warranty Deed. *Bilow v. Preco, Inc.*, 132 Idaho 23, 28, 966 P.2d 23, 28 (1998).

Mr. Ringel testified that the relationship between he and Mrs. Peterson was extremely hostile during the time period in which Mrs. Peterson made her affidavit. In fact, they had just settled litigation over the water right. It is obvious that Mrs. Peterson had a motive to "get back" at the Ringels after the settlement of the lawsuit, and that she did so by making her Affidavit. Its contents should simply be ignored.

IDWR concludes that Chipps Creek is not the source of the Ringel Pond because there "was no direct injection of Chipps Creek water into the pond." *Supplemental Director's Report*, p. 12. IDWR then goes on to state that "[n]o ditch was ever proven." *Id.* However, Mr. Howerton testified that IDWR did not even investigate the facts which could have resulted in a recommendation that the accomplished transfer claimed by Ringels actually occurred. To the extent that IDWR's supposed

“investigation” of the diversion from the Peterson Ditch into the ditch leading to the Ringel Pond is even considered, it is completely contradicted by the testimony of Dave Ringel regarding the existence and use of the ditch and headgate, the photos establishing the existence of the headgate from the Peterson Ditch, and the photos establishing the existence of the ditch leading to the Ringel Pond. *See* Exs. 2, 3, 4, 15.

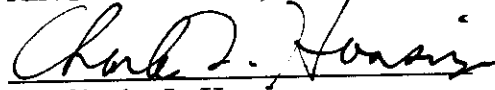
Finally, because the elements of the original water right decreed in the PRBA were not and have not been exceeded, no injury has occurred or will occur as a result of the accomplished transfer.

SUMMARY

The evidence admitted at trial establishes that IDWR, based upon an erroneous factual conclusion that the Ringels had only purchased 138.38 acres from the Petersons, did not even consider Ringels’ claim that water right no. 65-05033 had been transferred to their property for irrigation and storage purposes. Mr. Howerton, the investigating agent for IDWR, admitted that an accomplished transfer of the water right could have taken place, but that he simply did not investigate the facts comprising such. IDWR’s errors necessarily lead to the conclusion that the prima facie weight legally accorded the Director’s Recommendation has been effectively rebutted, and that the Director’s Recommendation should in fact carry no weight whatsoever. The testimony and evidence presented by Ringels at trial establishes that before, during and after the irrigation season of 1987, water right no. 65-05033C was diverted from Chipps Creek and conveyed directly to the Ringel Pond through the Peterson Ditch, and the ditch leading north across the Peterson Property to the Ringel Property, where it was deposited in the Ringel Pond, and then used to irrigate the Ringel Property in Section 6. This Court should hold that the accomplished transfer claimed by the Ringels occurred, and should recommend the water right for decree as claimed by Ringels.

Respectfully submitted this 22nd day of April, 2004.

RINGERT CLARK, CHARTERED

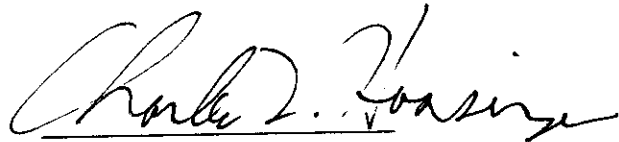


By: Charles L. Honsinger

CERTIFICATE OF SERVICE

The undersigned certifies that on the 22nd day of April, 2004, a true and correct copy of the within and foregoing document was transmitted to the following person(s) by U.S. Mail:

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