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JUN 15 2004

Department of Water Resources

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Attorneys for Claimant/Objector

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) Subcase Nos. 41-00008C, 41-00008D,
) 41-00008E and 41-00008F
)
Case No. 39576) MOTION TO SET ASIDE
) PARTIAL DECREES
)

COMES NOW, Juan James Spillett, by and through his attorney of record, Jason D. Walker of the firm of Ling, Robinson & Walker, Rupert, Idaho, and moves this Court for an order pursuant to Idaho Rules of Civil Procedure 60(b) for an order setting aside the following partial decrees: 41-00008C, 41-00008D, 41-00008E and 41-00008F. The movant further moves the Court to consolidate the above-referenced subcases with 41-00008B pursuant to AO1(11) and Idaho Rules of Civil Procedure 42. This motion is based upon the following grounds:

1. Historically, water right 41-0008 was established by beneficial use

1
2 and confirmed by a decision of arbitration executed on or about April 1, 1890.

3 2. The decision of arbitration was recorded in Oneida County Book of
4 Judgments, but was never endorsed by the District Court as a judicial review decree.

5 3. Attached hereto as Exhibit "A" is a true and correct copy of the Final
6 Order Adopting Proposed Memorandum Decision and Order dated October 1, 1992, together
7 with the Second Proposed Memorandum Decision and Order adopted by that Order, in the
8 matter of the application for transfer of number 3518/water right number 41-00013 and
9 transfer number 3519/water right number 41-0008 in the name of James Juan Spillet

10 4. The Second Proposed Memorandum Decision and Order adopted by
11 the Department of Water Resources sets forth the history of water right 41-0008. Pursuant to
12 the Memorandum Decision and Order, water right number 41-0008 was originally for 3.2 cfs
13 or 160 inches of water.

14 5. Water right number 41-0008 has been delivered to five water users
15 through the Adshead ditch. The five water users each have been identified by split water
16 rights in the SRBA. These water users have historically rotated the water under water right
17 41-0008 on a 12-day rotation schedule with each water user diverting the entire decreed flow
18 for his proportionate share of the time. Juan Spillet is entitled to divert water for 2 days out
19 of every 12 for a total diversion rate of .6 cfs or 30 minor inches.

20 6. Attached hereto as Exhibit "B" are true and correct copies of the
21 Partial Decrees for right number 41-0008C, 41-0008D, 41-0008E and 41-0008F. Based on
22 the decrees entered for these other four water users, the water right was over appropriated to
23 the other users leaving Juan Spillet without enough water to satisfy the amount he is entitled
24 by historical use.

25 7. Based on the District Court's Order on Challenges in subcases 36-
26 0003A, etc., the court cannot decree more water than exists. The granting of more water to
27

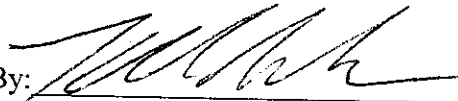
1
2 other users than they are entitled to, thereby diminishing the amount of water available to
3 Juan Spillett is mistake, inadvertence, surprise or excusable neglect and therefore the Partial
4 Decrees discussed herein should be set aside to correct this mistake.

5 8. A motion to set aside the partial judgments and decrees is in the best
6 interests of justice and in the interests of the proper administration of the water rights so
7 established.

8 ORAL ARGUMENT IS REQUESTED.

9 DATED this 11th day of June, 2004.

10 LING, ROBINSON & WALKER

11
12
13 By: 
14 ~~for~~ Jason D. Walker
15 Attorneys for Claimant/Objector
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CERTIFICATE OF MAILING

I hereby certify that on the 11th day of June, 2004, I served a copy of the foregoing **MOTION TO SET ASIDE PARTIAL DECREES** upon:

James Robinson
Bench Ditch Irrigation Co.
P.O. Box 157
Rockland, ID 83271

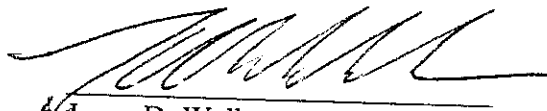
James Juan Spillett
P.O. Box 278
Rockland, Idaho 83271

James V. Spillett
Robert R. Spillett
P.O. Box 144
Rockland, Idaho 83271

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720

Scott Weston
4448 State Highway 37
Rockland, Idaho 83271

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said parties/entities at the foregoing addresses.


Jason D. Walker

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	FINAL ORDER ADOPTING
TRANSFER NO. 3518/ WATER RIGHT NO.)	PROPOSED MEMORANDUM
41-00013 & TRANSFER NO. 3519/WATER)	DECISION AND ORDER
RIGHT NO. 41-00008 IN THE NAME OF)	
JAMES JUAN SPILLETT)	
_____)	

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on September 15, 1992, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Transfer No.'s 3518 and 3519/Water Right No.'s 41-00013 and 41-0008 are APPROVED.

Dated this 1ST day of OCTOBER, 1992.


R. KEITH HIGGINSON
Director

EXHIBIT A

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CERTIFICATE OF MAILING

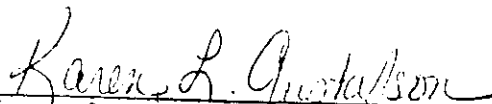
I HEREBY CERTIFY THAT on this 5th day of October, 1992, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following:

James Juan Spilleut
P.O. Box 278
Rockland, ID 83271

Kenneth E. Lyon
Attorney at Law
602 S Fifth Avenue
Pocatello, ID 83205

James Robinson
Bench Ditch Irrig.
Rockland, ID 83271

Ben Cavaness
P.O. Box 70
American Falls, ID 83211



Karen L. Gustafson
Secretary/Records Manager

MICROFILMED

MAR 01 1993

STATE OF IDAHO

SECOND PROPOSED
MEMORANDUM
DECISION AND ORDER

1. James Juan Spillett (Spillett) filed two applications for transfer of water right, numbered 3518 and 3519, with the Department on December 5, 1988. The applications proposed a change in the point of diversion for portions of water rights no.'s 41-00008 and 41-00013.

3. Timely protests against a change in point of diversion of water right no. 41-00008 were received from Farold Nelson and 7 UD Ranches (Nelson), and from Bench Ditch Irrigation Company (Bench).
4. Protests against a change in point of diversion of water right no. 41-00008 were received from Farold Nelson and 7 UD Ranches (Nelson), and from Bench Ditch Irrigation Company (Bench).

5. A pre-hearing conference was conducted on September 19, 1989, and a hearing was conducted on November 16, 1989, in American Falls, Idaho. Spillett represented himself. James Robinson represented Bench. Nelson was represented by Ben Cavaness, attorney at law. U.S. Ditch Company failed to appear at the hearing.

6. A proposed memorandum decision and order was issued January 23, 1990. Both parties filed exceptions to the decision. A final memorandum decision and order was issued on August 30, 1990. Both parties requested a rehearing, and a rehearing was granted. The rehearing was conducted on January 10, 1991.

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Spillett was represented by Kenneth Lyon, attorney at law. The rehearing was held to augment the prior record, and did not replace it.

7. After the hearing, the parties requested a delay in issuance of the decision because of negotiations between the parties which might resolve the conflict. On approximately January 1, 1992, the parties informed the Department that the matter had not been resolved, and resubmitted it for decision.

8. Spillett stated that he wants to move the point of diversion for his portion of water right no. 41-00008 downstream on Rock Creek so he could more efficiently use his water. Nelson objected to the transfer of water right no. 41-00008 because the use of water under the water right has historically been rotated among the users, and Nelson alleged that he would be injured by the withdrawal of a portion of the rotated right. Bench protested the transfer of both water rights because of possible enlargement and loss of downstream flows that would satisfy Bench water rights.

9. Water rights 41-00008 and 41-00013 were established by beneficial use, and confirmed by a decision of arbitration executed on or about April 1, 1890. The decision of arbitration was recorded in the Oneida County book of judgments, but was never endorsed by the district court as a judicial decree.

10. For purposes of administering the water rights on Rock Creek, the Department, and the parties diverting water from Rock Creek, recognized the decision of arbitration as a judgment decreeing the water rights in Rock Creek. The waters from Rock Creek were administered according to the decision of arbitration after the decision was rendered. A water district was created by the Department, and a watermaster distributed water from Rock Creek to the respective users.

11. The decision of arbitration which established water right no. 41-00008 authorized diversion of 160 miner's inches (3.2 cfs) of flow by three individuals in the following proportions: one-half to Charles Taysom, Sr., one-fourth to David Taysom, and one-fourth to William Adshead, all with a priority date of October 1, 1890.

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1879.

12. The location of and number of acres in the place of use for right no. 41-00008 is not described in the arbitration decision. When a place of use is described in the arbitration decision, however, the decision usually awards one miner's inch of water (0.02 cfs) per acre of land irrigated.

13. Right no. 41-00013 authorizes diversion of 30 miner's inches (0.60 cfs) of water to 30 acres of land, although the location of the place of use is not described. The right was given a priority of May 1, 1881.

14. Each application for transfer states that water is not available for diversion during the latter part of the irrigation season.

15. The locations of the points of diversion for both rights were not described in the arbitration decision. Application for transfer no. 3519 for water right no. 41-00008 alleges that the point of diversion was originally located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, Township 10S, Range 31E, and is the point of diversion for what is commonly known as the Adshead Ditch.

16. Application for transfer no. 3518 for water right no. 41-00013 alleges that the point of diversion is the head of the Jackson Ditch, located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 13E.

17. The applications for transfer allege that Spillettt owns 0.60 cfs (30 miner's inches) of right no. 41-00008 and 0.20 cfs (10 miner's inches) of water right no. 41-00013.

18. Application for transfer no. 3518 lists 70 irrigated acres as the total place of use for right no. 41-00013 rather than the 30 acres to which the right is decreed. Spillettt proposes to irrigate 29 of the 70 acres with 0.20 cfs (10 miner's inches), his portion of the right.

19. Application for transfer no. 3519 lists 290 irrigated acres as the total place of use for right no. 41-00008 with 3.2 cfs (160 inches) of water. Spillettt proposes to irrigate 75 of the 290 acres with 0.60 cfs (30 miner's inches), his portion of the right.

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20. Although the number of acres in the place of use is not decreed for right no. 41-00008, irrigation of 290 acres with 3.2 cfs (160 inches) of water greatly exceeds the 160 acres that would normally have been irrigated at a rate of 0.02 cfs (one inch) per acre. Both Spilletts applications propose irrigation of more acres than could be fully irrigated if the acreage was limited to one acre irrigated for each miner's inch (0.02 cfs) diverted.

21. Water right no. 41-00008 has been delivered to five water users through the Adshead Ditch. The five water users are Nelson (7 UD Ranches), Grace Spilletts, Taysom, Weston and Spilletts. The water users have historically rotated the water on a twelve day rotation schedule, with each water user diverting the entire decreed flow for his proportionate share of the time. Spilletts is entitled to divert water for two days out of every twelve days.

22. When the water right was first diverted, all of the water was delivered through the Adshead Ditch, located on the east side of Rock Creek. The Spilletts property irrigated by right no. 41-00008, was at the end of the ditch, and was all located on the east side of Rock Creek within the NW $\frac{1}{4}$ of Section 20, Township 10S, Range 31E, B.M.

23. The delivery ditch to the Spilletts property was difficult to maintain. Spilletts and his predecessors also suffered the greatest delivery loss of water because their land was located at the end of the ditch.

24. The Adshead Ditch washed out near the upstream end of the Spilletts property in the late 1920's, and has not been rebuilt.

25. An eight acre parcel on the east side of Rock Creek located above the break in the canal was irrigated by Spilletts in the 1950's, but has not been irrigated since.

26. For many years, Spilletts diverted his portion of water right no. 41-00008 through the Jackson Ditch instead of the Adshead Ditch when it was his turn to divert water in rotation. The Jackson Ditch diversion is located on the west side of Rock Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 31E, downstream from the Adshead diversion.

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* 27. Approximately 40 acres of land west of Rock Creek was irrigated with Spillett's portion of water rights no.'s 41-00008 and 41-00013. The irrigated land is located in the west half of Section 20, Township 10S, Range 31E, B.M. Irrigation of land on the west side of Rock Creek with water right no. 41-00008 resulted in an unrecorded transfer. Water diverted under right no. 41-00013 presumably irrigated the same lands to which it was originally appurtenant.

28. Applicant's exhibit #3 was submitted by the applicant to illustrate lands currently irrigated with Rock Creek water, and also to illustrate the land located on the east side of Rock Creek which was irrigated in the 1950's.

* 29. The current place of use, approximated from applicant's exhibit #3, is located in the following described survey tracts:

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

30. Spillett owns permit to appropriate water no. 41-07053 which proposes diversion of groundwater to irrigate 92 acres, some of which overlaps the land listed in paragraph 29. Proof of beneficial use has been filed for permit no. 41-07053. The record does not show, however, how much of the 92 acres has been irrigated with groundwater.

31. Spillett stated that he plans to commingle surface water and groundwater into one system, and irrigate approximately 100 acres if this transfer is approved.

32. Spillett desires to change the points of diversion to more efficiently use his water. The new point of diversion for both rights is located approximately two to three miles downstream from the Adshead Ditch point of diversion and one-half mile downstream from the Jackson Ditch point of diversion.

33. Spillett also proposes to divert his water continuously, rather than diverting the water in rotation, which was customary in the past. Proper operation of a well planned sprinkler system

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requires more frequent use than permitted by rotation.

34. Nelson testified that he is entitled to 1.4 cfs (70 inches) of water right no. 41-00008 with which he irrigates 107 acres.

35. Spillet's withdrawal from the traditional rotation scheme for right no. 41-00008 will reduce the total amount of water delivered in the Adshead Ditch, but will also increase the length of time over which the remaining users from the Adshead Ditch can divert water. Spillet's withdrawal from rotation will not prevent delivery of the remaining users' respective shares.

36. Nelson testified that if the amount of water diverted in the Adshead Ditch is reduced, the use of water by others will be less efficient. He testified that it will take longer to irrigate with a smaller stream, and that the delivery ditch will lose the same amount of water even if Spillet's water is not diverted through it. Losses which were once born by Spillet may be born by the remaining users.

37. Nelson's land is located near the diversion for the Adshead Ditch, and delivery of his water would result in less ditch loss than delivery of other water in the downstream part of the Adshead Ditch.

38. Nelson flood irrigates a portion of his land and sprinkles the remainder. He stated he would have to change his existing system to irrigate with a smaller flow rate by reducing his pump size or rearranging his method of irrigation.

39. At the rehearing, Galen McMasters, a professional engineer, testified on behalf of Nelson. McMasters analyzed Nelson's system, and calculated additional losses in Nelson's ditches and delivery system that would occur because of a lesser amount of water running in the ditches for a greater period of time. He estimated that the additional losses in the system would require reduction in irrigated acres of between approximately 1/2 and 3 acres.

40. The information submitted shows that Nelson irrigates approximately 107 acres. A loss of three acres of irrigation is

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not large, but significant. There are other factors such as how well the water is tended or how well the delivery system is maintained that probably would dwarf the effects of Spillet's withdrawal found by the McMaster calculations.

41. Gene Nelson, a relative of Farold Nelson, has operated the ranch for 30 years. He discussed the present system and its operation. He stated that if Spillet were allowed to withdraw from rotation, Nelson would be required to change their delivery system dramatically. He stated that he would not be able to irrigate in the present manner, and would either have to convert fully to sprinklers or change the sizes of main lines. He stated that the cost would be substantial.

42. Kelvin Taysom, a downstream user from the Adshead Ditch, hesitantly testified at the first hearing that the decrease in the amount of water and the increase in time of water availability would adversely impact him. After the initial decisions were issued, Taysom again testified at the rehearing that his hesitancy was a result of his not wanting to get involved, and he was certain Spillet's withdrawal from rotation would injure him.

43. Groundwater return flows contribute to surface flows of Rock Creek. Water Resources of Rockland Basin, Southeastern Idaho, U.S. Geological Survey Open File Report 82-755 (1982). Return flows from irrigation enhance these groundwater contributions to surface water flow.

44. Rock Creek gains water from groundwater inflow between the Adshead diversion and the proposed points of diversion. Spillet's water can be transported in the stream without substantial loss.

45. Spillet's proposed conversion to sprinkler irrigation will result in more efficient use of water by preventing delivery and application losses.

46. Bench Ditch Irrigation Company owns irrigation rights diverted from the East Fork of Rock Creek. Although flows from Rock Creek are not tributary to the East Fork, depletions in the flow of upper Rock Creek reduce the amount of water available to

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appropriators below the confluence of Rock Creek and East Fork of Rock Creek. The rights owned by Bench are some of the latest rights on the East Fork of Rock Creek, and are curtailed or not delivered when water from the East Fork and Rock Creek cannot provide water to downstream users and Bench at the same time.

47. A reduction in the flow of Rock Creek will result in an earlier curtailment of delivery of the Bench water rights.

48. Spillett's efficient use of water could reduce return flows to Rock Creek. If Spillett's total annual volumetric use and the place of use is properly limited, however, Spillett's use will not consume more water than has been traditionally consumed.

49. The Department has determined that the maximum annual consumptive irrigation requirement in the geographical area of the Spillett property is 3.0 acre feet per acre. An additional 1.0 acre foot per acre may also be delivered to the field headgate to compensate for delivery and application losses. A total annual field headgate volume of 4.0 acre feet per acre can be delivered to the Spillett field headgates.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, as enacted at the time of the rehearing, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho, and the change is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. Hidden Springs Trout Ranch, Inc. v. Allred, 101 Idaho 677, 619 P.2d 1130 (1981) held that an amendment to the statutes governing the appropriation of water must be applied to applications pending before the Department.

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3. The applicant carries the burden of coming forward with evidence that his proposed change will not injure other water right holders, that it will not constitute an enlargement of the use, and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222.

6. When the Adshead Ditch delivered water to Spilletts property, Spilletts and his predecessors suffered a major portion of the losses in the Adshead Ditch because of the location of the Spilletts property at the end of the Adshead Ditch.

7. Idaho law requires that water be used in a reasonable and efficient manner. The Department also recognizes its responsibility to encourage efficient use of water. Rotation is one method by which water can be used more efficiently.

8. Helphery v. Perault, 12 Idaho 451, 86 P. 417 (1906), states that rotation and irrigation tend to conserve the waters of the state. "Experience seems to indicate that the use of the rotation system not only tends to conserve the already inadequate water supply, but also tends to contribute to larger and better crops and retention of soil fertility." Muir v. Allison, 33 Idaho 146, 191 P.206 (1920).

9. None of the cases cited, however, hold that rotation is a matter of right. Instead, the cases recognize rotation as a permissible method of conserving water.

10. Helphery stated that users have a right to rotate if they choose. The Muir court was asked to declare that all water rights are subject to rotation, but the court declined to establish rotation as a general rule, holding that most rights are based on a continuous flow. Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1, 154 P.2d 507 (1944) raised an issue about whether a proposed rotation pursuant to a transfer would injure other water rights. See also Idaho v. ...

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users. The case does not describe why rotation was injuring the other water rights. The court allowed some rotation within the irrigation company, but otherwise granted a continuous flow right to other users.

11. Finally, Simonson v. Moon, 72 Idaho 39, 237 P.2d 93 (1951) reversed a district court mandate that the defendants rotate their individual water rights in a ditch constructed by a plaintiff which was too small to carry the full rights of both defendants. The case focused on the fact that neither parties' rights could be fully delivered at the same time. It was not a case which determined rotation issues, but held that the plaintiff was required to reconstruct another ditch so that both defendants could irrigate with the amount of water to which they were entitled.

12. The best discussion about rotation is contained in Muir:
... [I]t may be added in passing that it is far from the purpose or intention of the court to close the door against the adoption of the rotation system in the state. Undoubtedly the courts would enforce contracts between the parties involving the use of the rotation system as has already been done by this court in the case of the State v. Twin Falls etc. Co., 21 Ida. 410, 121 Pac. 1039, L. R. A. 1916F, 236, and perhaps when property rights have grown up, or common practice and usage have made it a settled and fixed practice in a particular community, it might be the duty of the courts to enforce it.

33 Idaho at 163.

13. The court alluded that more experience may be necessary prior to imposing a requirement that water be rotated. It also alluded that the imposition of rotation may depend on the individual facts confronting the decision maker:

But when and in what cases the rules for the distribution of water should be changed must be left entirely to future investigation and determination, and this opinion should not be understood as laying down rules for any prospective modification of the law.

33 Idaho at 163.

14. In other words, rotation is a permissible and laudable method of beneficially using water, but will only be enforced when, viewing all of the facts, rotation is necessary to provide the most

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efficient and best use of the water. In addition, contractual obligations of the parties are important.

15. Most of the cases cited predate the development of mechanized irrigation systems that have greatly improved irrigation efficiency. Rotation of water delivery for flood irrigation was one of the few methods of conserving and more efficiently using water. Today, however, there are other ways to increase efficiency that perhaps may surpass the efficiency of rotation. Efficiency is a matter of public interest and will be discussed later.

16. Idaho Code § 42-222 requires a finding that "no other water rights are injured" prior to approval of an application for transfer. The terms "water right" and "injury" must be defined for purposes of this decision. A water right is an entitlement to use the waters of the state for a beneficial purpose. The right authorizes diversion of enough water for the beneficial use and enough additional water for reasonable losses.

17. For purposes of this decision, injury is defined as a detrimental effect on any component of the water right which would be substantially (or unreasonably) diminished or reduced as a result of the transfer.

18. Where an individual water user desires to withdraw from rotation, he must show that the water entitlements of the remaining users can be delivered through the existing delivery system without substantial reduction.

19. "Existing delivery system" is defined as the delivery works from the point of diversion to the wateruser's property. It does not include internal ditch or pipe networks which conduct water within an individual wateruser's property.

20. If a change is necessary to the existing delivery system (excluding internal conveyance) it must be shown that the change will not cause unreasonable inconvenience to other users or will not cause a substantial reduction of the availability of water to the other users. The applicant must bear the cost of any reasonable change in the system which delivers water to the property of the other users.

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21. Once a hearing officer is convinced that this test has been satisfied, the burden shifts to the protestants to show that injury will occur, or that there are matters of public interest, including the existence of a contract, that should force continued participation in rotation.

22. The following is a list of factors which the Director will consider to determine whether the transfer proposing withdrawal from rotation would be in the local public interest:

a. The efficiency of the proposed continuous use by the person withdrawing versus the loss of rotation efficiency resulting from withdrawal.

b. The monetary cost to the remaining parties of modifying their internal systems.

c. Evidence of any existing contracts between the parties to rotate water.

d. The customs or traditions of water use in the area.

23. The continuous diversion of water through a sprinkler system by Spillett will increase his efficiency of use.

24. The withdrawal of Spillett from the scheme of rotation will result in a reduction in irrigated acres by Nelson, and will cost him money to modify his system to prevent the loss.

25. The withdrawal from rotation will also cause injury to other users on the Adshead Ditch.

26. The monetary cost of modifying the Nelson system is substantial.

27. Although there are no existing contracts between the parties to rotate water, the custom and tradition of water use from the Adshead Ditch and within the entire Rockland Basin is to rotate water.

28. Spillett must continue rotating water with the other users of the Adshead Ditch.

29. The Department should encourage more efficient methods of irrigation, but still protect other water rights. Other water rights could be injured if efficiency of delivery substantially reduces return flows to the creek.

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30. If Spillettt is required to compensate Rock Creek for the entire amount of water he saves, the incentive to be more efficient will be frustrated. If he is allowed to divert and use all the water he saves, downstream water rights will be injured.

31. The amount of water originally lost from delivery of Spillettt's water through the Adshead Ditch that would reach downstream surface water right holders cannot be determined from the information now before the Department. Nevertheless, only a portion of the losses would resurface for downstream use.

32. If Spillettt's use of water is limited to irrigation of the same number of acres as irrigated previously, the delivery losses saved will remain in the Rock Creek hydrologic system. Consumptive use, flow rate, total volume diverted, and acres irrigated must all be limited to ensure that Spillettt's use is not enlarged.

33. The interconnection of Spillettt's surface water and groundwater systems could result in an enlargement of his use of surface water. If the groundwater and surface water systems are interconnected, a totalizing meter must be installed on Spillettt's diversion works from Rock Creek. Diversion from Rock Creek must cease when 160 acre-feet has been diverted, or when water is no longer available for diversion.

34. Spillettt is entitled to divert 0.20 cfs under right 41-00013B and 0.60 cfs under right 41-00008B to irrigate 40 acres. Total consumptive irrigation use should not exceed 120 acre-feet annually.

35. The 40 acres currently irrigated by Spillettt will be irrigated by 0.80 cfs, or an application rate of 0.02 cfs (one miner's inch) per acre, when the flow rates of the partial rights owned by Spillettt are added together.

36. Spillettt should specifically designate thirty (30) acres as the place of use for his portion of right no. 41-00008 and ten (10) acres as the place of use for his portion of water right no. 41-00013 prior to final approval of these transfers.

37. Water is not available to fully satisfy the rights during

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the latter part of the irrigation season. Rock Creek is a gaining stream, and a change in the point of diversion to a downstream location could result in diversion of more water than was available at either the Adshead Ditch diversion or the Jackson Ditch diversion. Spillettt should be entitled to divert only his pro rata share of water available for diversion at the Adshead Ditch diversion for right no. 41-00008 and at the Jackson Ditch diversion for right no. 41-00013.

38. The applications for transfer attempt to identify the location and number of acres irrigated by other parties with the residual portion of the rights not owned by Spillettt.

39. The place of use identified for the residual portions of right no.'s 41-00008 and 41-00013 will not be recognized as represented on the application for transfer. If the land alleged as the place of use is being irrigated, the water right has been enlarged and cannot be recognized as part of the administrative transfer process.

ORDER

IT IS HEREBY ORDERED that the portions of applications for transfer no.'s 3518 and 3519 proposing to change the point of diversion are APPROVED, but the water must be diverted in rotation with the other users of the Adshead Ditch.

IT IS FURTHER ORDERED that, because the applications for transfer also sought a change in the place of use, the change in the place of use can be approved if Spillettt identifies 30 acres as a place of use for right no. 41-00008B and 10 acres as a place of use for right no. 41-00013B within the acres irrigated as identified in the findings of fact. The information must be submitted within 42 days of service of this order.

IT IS FURTHER ORDERED that failure to identify irrigated acreage for each of the rights will result in a full denial of the applications for transfer.

IT IS FURTHER ORDERED that the following conditions shall govern the water rights if the transfers are partially approved:

OCT 26 1992

1. This transfer approves a total diversion of 0.80 cfs for irrigation purposes authorizing diversion of 0.60 cfs under water right no. 41-00008B and 0.20 cfs under right no. 41-00013B.

2. Total consumptive irrigation use shall not exceed 120 acre-feet annually.

3. The place of use shall be limited to the following (with PROPOSED 10 NO CHA IN POV, WEST OF ROCK CREEK FROM P 4 AND a future designation of 30 acres to right no. 41-00008B and acres to right no. 41-00013B):

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

4. If the surface water and groundwater systems are interconnected, a measuring device and totalizing meter approved by the Department must be installed and maintained as part of the surface water diversion works. Diversion must cease when 160 acre-feet has been diverted from Rock Creek.

5. This approved transfer does not address or recognize apparent expanded acreage listed as a place of use for the residual portions of water rights no.'s 41-00008 and 41-00013 not owned by Spillet.

6. Diversion of water under the rights as approved by this transfer is subject to the control of the watermaster of Water District No. 41, Rock Creek.

Dated this 15th day of September, 1992.

Gary Spackman
Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 15th day of September, 1992, I mailed a true and correct copy of the foregoing Proposed Memorandum Decision and Order and Order Issuing the Proposed Memorandum Decision and Order, postage prepaid, to the following:

James Juan Spillet
P.O. Box 278
Rockland, ID 83271

Kenneth E. Lyon
Attorney at Law
602 S Fifth Avenue
Pocatello, ID 83205

James Robinson
Bench Ditch Irrig.
Rockland, ID 83271

Ben Cavaness
P.O. Box 70
American Falls, ID 83211

Karen L. Gustafson
Karen L. Gustafson
Secretary/Records Manager

OCT 26 1992

SRBA

PARTIAL DECREE 41-00008C

Issued on 03-12-2001. THIS PARTIAL DECREE MAY HAVE BEEN AMENDED.

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Contact IDWR or the Court for a Certified Copy.

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NAME AND ADDRESS:

KELVIN TAYSOM
SUZANNE TAYSOM
PO BOX 309

SOURCE:

QUANTITY:

ROCKLAND, ID 83271
ROCK CREEK, SOUTH FORK TRIBUTARY: ROCK CREEK
0.367 CFS

THE QUANTITY LISTED ABOVE SHALL BE MEASURED AT THE POINT OF DIVERSION LISTED FOR THIS RIGHT BY MEANS OF A MEASURING BOX OF THE TYPE AND DIMENSIONS DECREED BY IN RE HOUTZ ET AL (ONEIDA COUNTY, SIXTH JUDICIAL DISTRICT COURT, JUNE 6, 1903). ANY CHANGE IN THE METHOD OF MEASUREMENT SHALL CONSTITUTE A CHANGE IN THE POINT OF DIVERSION REQUIRING APPROVAL BY THE IDAHO DEPARTMENT OF WATER RESOURCES AS A TRANSFER PURSUANT TO I.C. SECTION 42-222.

PRIORITY DATE:

POINT OF DIVERSION:

PURPOSE AND

PERIOD OF USE:

PLACE OF USE:

10/01/1879

T10S R31E S33

NENENW

Within Power County

PURPOSE OF USE

Irrigation

Irrigation

T10S R31E S29

PERIOD OF USE

04-01 TO 10-31

QUANTITY

0.367 CFS

Within Power County

SENE 6.9

SWNE 35.0

SENE 5.7

47.6 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 41-10237 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 47.6 ACRES IN A SINGLE IRRIGATION SEASON.

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. I.C. SECTION 42-1412(6).

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PARTIAL DECREE 41-00008D

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NAME AND ADDRESS: HERBERT R WESTON
R SCOTT WESTON
4448 STATE HWY 37
ROCKLAND, ID 83271
SOURCE: ROCK CREEK, SOUTH FORK TRIBUTARY: ROCK CREEK
QUANTITY: 0.533 CFS

THE QUANTITY LISTED ABOVE SHALL BE MEASURED AT THE POINT OF DIVERSION LISTED FOR THIS RIGHT BY MEANS OF A MEASURING BOX OF THE TYPE AND DIMENSIONS DECREED BY IN RE HOUTZ ET AL (ONEIDA COUNTY, SIXTH JUDICIAL DISTRICT COURT, JUNE 6, 1903). ANY CHANGE IN THE METHOD OF MEASUREMENT SHALL CONSTITUTE A CHANGE IN THE POINT OF DIVERSION REQUIRING APPROVAL BY THE IDAHO DEPARTMENT OF WATER RESOURCES AS A TRANSFER PURSUANT TO I.C. SECTION 42-222.

PRIORITY DATE:
POINT OF DIVERSION:
PURPOSE AND
PERIOD OF USE:

10/01/1879
T10S R31E S33

NENENW

Within Power County

PLACE OF USE:

PURPOSE OF USE
Irrigation
Irrigation

PERIOD OF USE
04-01 TO 10-31

QUANTITY
0.533 CFS

Within Power County
SESW 17.0

T10S R31E S20

NESW 9.0

26.0 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 41-10251 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 26 ACRES IN A SINGLE IRRIGATION SEASON.

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. I.C. SECTION 42-1412(6).

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PARTIAL DECREE 41-00008E

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NAME AND ADDRESS:

JAMES V SPILLETT
ROBERT R SPILLETT
PO BOX 144
ROCKLAND, ID 83271

SOURCE:

ROCK CREEK, SOUTH FORK TRIBUTARY: ROCK CREEK

QUANTITY:

0.355 CFS

THE QUANTITY LISTED ABOVE SHALL BE MEASURED AT THE POINT OF DIVERSION LISTED FOR THIS RIGHT BY MEANS OF A MEASURING BOX OF THE TYPE AND DIMENSIONS DECREED BY IN RE HOUTZ ET AL (ONEIDA COUNTY, SIXTH JUDICIAL DISTRICT COURT, JUNE 6, 1903). ANY CHANGE IN THE METHOD OF MEASUREMENT SHALL CONSTITUTE A CHANGE IN THE POINT OF DIVERSION REQUIRING APPROVAL BY THE IDAHO DEPARTMENT OF WATER RESOURCES AS A TRANSFER PURSUANT TO I.C. SECTION 42-222.

PRIORITY DATE:

10/01/1879

POINT OF DIVERSION:

T10S R31E S33

PURPOSE AND

NENENW

Within Power County

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

PLACE OF USE:

Irrigation

04-01 TO 10-31

0.355 CFS

Irrigation

Within Power County

T10S R31E S29

- NWNE 22.5

NENW 20.5

43.0 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 41-10230 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 43 ACRES IN A SINGLE IRRIGATION SEASON.

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. I.C. SECTION 42-1412(6).

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PARTIAL DECREE 41-00008F

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NAME AND ADDRESS:

7 U D RANCHES
PO BOX 177

SOURCE:

ROCKLAND, ID 83271

QUANTITY:

ROCK CREEK, SOUTH FORK TRIBUTARY: ROCK CREEK
1.41 CFS

THE QUANTITY LISTED ABOVE SHALL BE MEASURED AT THE POINT OF DIVERSION LISTED FOR THIS RIGHT BY MEANS OF A MEASURING BOX OF THE TYPE AND DIMENSIONS DECREED BY IN RE HOUTZ ET AL (ONEIDA COUNTY, SIXTH JUDICIAL DISTRICT COURT, JUNE 6, 1903). ANY CHANGE IN THE METHOD OF MEASUREMENT SHALL CONSTITUTE A CHANGE IN THE POINT OF DIVERSION REQUIRING APPROVAL BY THE IDAHO DEPARTMENT OF WATER RESOURCES AS A TRANSFER PURSUANT TO I.C. SECTION 42-222.

PRIORITY DATE:

POINT OF DIVERSION:

PURPOSE AND

PERIOD OF USE:

PLACE OF USE:

10/01/1879
T10S R31E S33

NENENW

Within Power County

PURPOSE OF USE

Irrigation

Irrigation

T10S R31E S28

PERIOD OF USE

04-01 TO 10-31

QUANTITY

1.41 CFS

Within Power County

NESW 11.0

SWSW 1.0

SWNW 5.0

NWSW 35.0

SESW 12.0

NESE 26.0

NWSE 22.0

S29
112.0 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 41-10265 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 112.0 ACRES IN A SINGLE IRRIGATION SEASON.

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. I.C. SECTION 42-1412(6).

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