

To: Candice McHugh, Deputy Attorney General, IDWR; Michael Holliday, IDWR Contractor

From: Mark Petersen, Legal Extern

Date: March 10, 2004

RE: Water Rights 25-281, 25-282, 25-283

Status of Water Rights 25-281, 25-282, 25-283 Memorandum

I) Questions Presented

- A) Whether the decree in *Hoff v. Owen*, Decree (Bonneville County, Feb. 4, 1914) ("Hoff decree") supercedes the *Rexburg Irrigation Co., et al. v. Teton Irrigation Co., et al.*, Decree (Fremont County, Dec. 16, 1910) ("Rexburg decree") or the supplemental decree in that case, reiterates the Rexburg decree or the Rexburg Supplemental decree, or if the Hoff decree is an entirely separate decree
- B) Whether transfer nos. 182 and 183 affect all or part of the Hoff water rights 25-281 ("281"), 25-282 ("282"), 25-283 ("283") (also referred to collectively as the "Hoff water rights.")

II) The Hoff decree reiterates the Supplemental Rexburg decree of 1916

There appears to be conflicting decrees concerning the Hoff water rights. The original Rexburg decree of 1910 fails to mention the parties of the Hoff decree. The Rexburg decree also fails to mention Henry Creek, Dry Fork Henry Creek, or Taylor Creek that are the sources decreed in the Hoff decree. The Rexburg decree mentioned the party, Rasmus Hoff ("Hoff") but only as a water user of the Snake River Valley Canal Company. Hoff's rights with the Snake River Valley Canal Company did not originate on the same lands as the Hoff decree.¹

? mentioned
in Pol. rec.

The Hoff decree in 1914 declared Hoff had a right to 6.4 cfs with a priority date of May 1, 1880, with Henry Creek and the Dry Fork Henry Creek as its source. In 1916, 1912 the court issued the Rexburg Supplemental decree that quantified Hoff's rights at 18.4 cfs² that encompassed all of the land in the original Hoff decree but did not add any

¹ See Excel spreadsheet attachment.

² 6.4 cfs priority April 1, 1878 (source: Taylor Creek); 6.0 cfs priority May 1, 1885 (source: Henry Creek); 6.0 cfs priority July 1, 1898 (source: Henry Creek).

additional land. However, the Rexburg Supplemental decree did not have any language that specifically incorporated or superceded the Hoff Decree. A current search of the Hoff water rights does not reveal any use of 6.4 cfs on the original land in the Hoff decree. Nonetheless, it is possible that Hoff conveyed this land with its water right to another user.

because did not yet exist

It is difficult with the current information before the Department to make a concrete decision concerning the Hoff decree. The decreed water use of 6.4 cfs has a different priority date (May 1, 1880) than the water rights issued in the Rexburg Supplemental decree (April 1, 1878; May 1, 1885; and July 1, 1898). The water right of 6.4 cfs decreed in the Hoff decree exists on the same land as in the Rexburg Supplemental decree; yet, the water right is not included in any of the transfer proceedings. It is currently unknown if someone currently uses the 6.4 cfs decreed in the Hoff decree on the original land or if Hoff subsequently used only the 18.4 cfs granted in the Rexburg Supplemental decree essentially incorporating both decrees into one. It appears from the transfer records and the decrees that Hoff may have a claim to the 6.4 cfs declared in the Hoff decree as a separate water right from the 18.4 cfs declared in the Rexburg Supplemental decree. Nonetheless, the records indicate no claim by Hoff for an additional 6.4 cfs beyond the 18.4 cfs granted in the Rexburg Supplemental decree. Hence, it is reasonable to conclude that the 1916 Rexburg Supplemental decree is controlling, that Hoff has a right to 18.4 cfs, and that the Rexburg Supplemental decree incorporates the water decreed in the Hoff decree.

III) Transfer Nos. 182 and 183 affect all of water rights 281, 282, and 283

Transfer nos. 182 and 183 transferred 12.8 cfs of Rasmus and Jennie Hoff's³ (Rasmus Hoff's daughter) water rights from their original lands in Section 22⁴ to the current lands in Sections 23, 26, 27⁵ (land owned by Jennie), 22, and 23⁶ (land owned by Rasmus). Although transfer nos. 182 and 183 specify no specific water rights, the quantity of water mentioned in the transfer proceeding as well as the legal descriptions of the land allow this calculation.

However, claimed use of water under water rights 281(A & B), 282(A & B), and 283 (A & B) show a claimed use of 18.4 cfs⁷ on the lands granted a transfer under transfer nos. 182 and 183. Why only 12.8 cfs was transferred is unknown. There may be a subsequent transfer, either recorded or under an accomplished transfer that allowed the transfer of the remaining 5.6 cfs. Another possibility is that Hoff (or subsequent owner)

³ Rasmus Hoff conveyed portions of his land and water rights to his daughter Jennie Hoff at some point prior to the transfer proceedings.

⁴ This included all of the lands located in this description: Section 22, T.1 N, R.38 E., N. ½ and N. ½ of SW ¼.

⁵ Lands located in the following description: Section 23, T.1 N, R.38 E. (SW ¼ of SW ¼); Section 26, T.1 N, R.38 E. (W ½ of NW ¼ and NW ¼ of SW ¼); Section 27, T.1 N, R.38 E. (N ½ of NE ¼ and SE ¼ of NE ¼).

⁶ Lands located in the following description: Section 22, T.1 N, R.38 E. (S ½ of SW ¼ and SE ¼); Section 23, T.1 N, R.38 E. (SW ¼ of NW ¼ and NW ¼ of SW ¼).

⁷ 18.4 cfs is the quantity of water granted to Rasmus Hoff on the original lands under the 1916 Rexburg Supplemental decree. The Rexburg Supplemental decree issued seven months after the transfer proceeding was finalized.

may still use the 5.6 cfs on the original land, although that is not how the Hoff's claimed their water rights. From the claimed use of water rights 281, 282, and 283 it appears that transfer of the remaining 5.6 cfs occurred at some point prior to 1987. It is likely that Rasmus and Jennie Hoff transferred all of water rights 281, 282, and 283 to their current places of use around January 15, 1916, the date of the Rexburg Supplemental decree.

IV) Conclusion

Hoff has a right to 18.4 cfs decreed in the Rexburg Supplemental decree with a priority date of April 1, 1878 (6.4 cfs from Taylor Creek), May 1, 1885 (6 cfs from Henry Creek), and July 1, 1898 (6 cfs from Henry Creek). The Rexburg Supplemental decree incorporates the Hoff decree into the 18.4 cfs granted to Hoff. Neither the current water right records, the decrees, nor transfers 182 and 183 indicate that Hoff used the additional 6.4 cfs mentioned in the Hoff decree that arguably could have been a separate water right. It is reasonable to conclude that Hoff considered the 6.4 cfs of the Hoff decree as part of the 18.4 cfs of the Rexburg Supplemental decree. Transfer nos. 182 and 183 resulted in the transfer of 12.8 cfs from the lands in the Rexburg Supplemental decree to the claimed land. Hoff likely transferred the remaining 5.6 cfs, unaccounted for in these prior transfers, to the current places of use prior to 1987. Thus, the entire 18.4 cfs can be recognized, provided evidence supports its continual beneficial use, on the claimed place of use.