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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

) Subcases: 65-05033C, 65-3681 & 65-22621
)
) ORDER VACATING STATUS
) CONFERENCE; AND
)
) ORDER OF REFERENCE TO SPECIAL
) MASTER THEODORE R. BOOTH

On June 30, 2004, Special Master Thomas R. Cushman issued a *Special Master's Report, Findings of Fact and Conclusions of Law* for the above-captioned subcases. Special Master Cushman also retired June 30, 2004. Thereafter *Motions to Alter or Amend* were filed by Kyle Ellis in subcases 65-05033C, 65-3681 and 65-22621, by the State of Idaho in subcase 65-05033C, and by Fredrick D. and Gloria J. Ringel in subcase 65-22621. In addition, this Court *sua sponte* raised issues regarding incomplete findings by the Special Master regarding the circumstances surrounding the accomplished transfer and whether the transfer resulted in an enlargement. This Court issued an *Order Rescinding Order of Reference to Special Master Thomas R. Cushman and Order Setting Status Conference* on August 2, 2004. A status conference was held on the matter September 21, 2004, but was ordered continued until October 19, 2004, to allow the Court to order a transcript of the proceedings before the Special Master and sort out issues regarding the procedural irregularity occasioned by the *Order of Reference* being rescinded. Some confusion was raised regarding the August 2, 2004, *Order* and the Court's reference to "hearing argument and evidence" pertaining to the issues raised by the Court. The reference to hearing "evidence" should have been qualified with the

ORDER VACATING STATUS CONFERENCE; AND
ORDER OF REFERENCE TO SPECIAL MASTER THEODORE R. BOOTH

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phrase "if necessary," as a result of the Special Master not making findings regarding whether the transfer at issue resulted in an enlargement and the Court not yet having a copy of the transcript from the trial. It was not clear from the record whether evidence was presented on the issue.¹

A transcript of the proceedings was ordered by the Court and filed October 12, 2004. The parties will be served a copy of the transcript contemporaneously with this *Notice*.

On October 1, 2004, Special Master Theodore R. Booth succeeded Special Master Cushman. In order to avoid procedural irregularities and any accompanying confusion, the Court will refer the matter to Special Master Booth to conduct the proceedings on the *Motions to Alter or Amend* and make findings and conclusions regarding the issues raised by this Court in August 2, 2004, *Order*. Thereafter, any challenges will be before the Presiding Judge in accordance with *Administrative Order 1*.

THEREFORE, IT IS ORDERED that Theodore R. Booth is appointed as special master for the above-captioned subcases and shall proceed under *SRBA Administrative Order 1*. The special master shall preside over subcases and issue reports as set forth in *SRBA Administrative Order 1* and shall have the authority to: fix the time and conditions for the filing of supplemental pleadings and amendments to pleadings; schedule and hear dispositive and non-dispositive motions of any party; schedule and conduct all pretrial matters, including pretrial, status and scheduling conferences; issue pretrial orders; schedule and limit the scope of discovery; order the discovery of facts known and opinions held by experts; issue protective orders; issue orders compelling discovery; sanction failure to comply with pretrial, trial-related or post-trial orders; summon witnesses and issue subpoenas; take such evidence as may be introduced or deemed

¹ Ordinarily, additional evidence may not be presented in conjunction with a motion to alter or amend. However, following the issuance of a special master's recommendation the Presiding Judge can recommit a matter to a special master with instructions to make additional findings or take evidence on a pertinent legal issue not addressed, if necessary. In this case, because the Presiding Judge was also sitting as the special master, the Judge, if necessary, could decide to hear limited evidence in conjunction with the motion to alter or amend instead of waiting until after the issuance of an order on the motion to alter or amend. However, to avoid any resulting confusion the Court is recommitting the matter back to a special master.

**ORDER VACATING STATUS CONFERENCE; AND
ORDER OF REFERENCE TO SPECIAL MASTER THEODORE R. BOOTH**

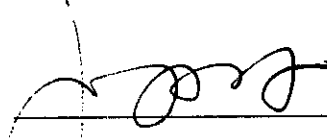
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necessary by him; rule on the admissibility of evidence; call witnesses on behalf of the court; and appoint expert witnesses for the court.

Special Master Booth shall set proceedings in conformity with **SRBA Administrative Order 1**, section 9, notwithstanding the provisions of I.R.C.P. 53(d)(1), and exercise the power to regulate all proceedings in every hearing and to do all acts and take all measures necessary or proper for the efficient performance of his duties under this **Order**.

IT IS FURTHER ORDERED that the status and scheduling conference previously set for October 19, 2004, before the Presiding Judge is **vacated**.

Dated October 13, 2004



JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

**ORDER VACATING STATUS CONFERENCE; AND
ORDER OF REFERENCE TO SPECIAL MASTER THEODORE R. BOOTH**

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING STATUS CONFERENCE AND ORDER OF REFERENCE TO SPECIAL MASTER BOOTH was mailed on October 14, 2004, with sufficient first-class postage to the following:

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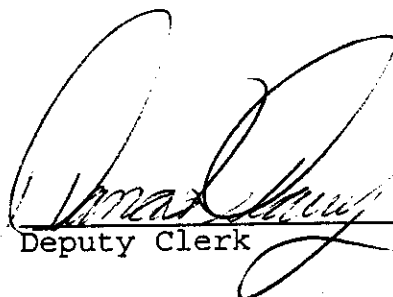
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1 IN THE DISTRICT COURT OF THE
2 FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
3 IN AND FOR THE COUNTY OF TWIN FALLS
4

5 * * * * *

6 IN RE SRBA)

7) REPORTER'S TRANSCRIPT
8)
9)
10)
11)
12)
13)
14)
15)
16)

Case No. 39576)
Subcases 65-05033C,)
65-3681 & 65-22621)

17 TRIAL

18 Before Thomas Cushman
19 Special Master, Presiding

20 DATE: March 25, 2004

21 TIME: 10:00 a.m.

22 PLACE: SUPREME COURT BUILDING
23 BOISE, IDAHO

24 Appearances:

25 CHARLES L. HONSINGER, ESQ., of the Ringert, Clark Law Firm,
P.O. Box 2773, Boise, ID 83701-2773
Appearing for the claimants.

CANDICE McHUGH, ESQ., of the Idaho Attorney General's
Office, P.O. Box 83720, Boise, ID 83720-0098,
Appearing for IDWR.

Reported by:

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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
Subcases 65-05033C,
65-3681 & 65-22621

REPORTER'S TRANSCRIPT

TRIAL
Before Thomas Cushman
Special Master, Presiding

DATE: March 25, 2004

TIME: 10:00 a.m.

PLACE: SUPREME COURT BUILDING
BOISE, IDAHO

Appearances:
CHARLES L. HONSINGER, ESQ., of the Ringert, Clark Law Firm,
P.O. Box 2773, Boise, ID 83701-2773
Appearing for the claimants.

CANDICE McHUGH, ESQ., of the Idaho Attorney General's
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Appearing for IDWR.

Reported by:
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1 preliminary matters first, Your Honor. The case that we
2 are dealing with here today is 5033C. 23621 and 3681 are
3 overlapping (inaudible). I also ask, Your Honor, to take
4 notice of -- take judicial notice of all claims and IDWR
5 recommendations for water right numbers 65-05033A; and
6 65-05033B and 65-05033C, all of the subparts for water
7 right number 5033.

8 SPECIAL MASTER CUSHMAN: So ordered.

9 MR. HONSINGER: Also ask you to take notice of
10 the recently issued Special Master's reports for water
11 right numbers 65-0533A and 65-05033B.

12 SPECIAL MASTER CUSHMAN: So ordered.

13 MR. HONSINGER: Finally we'd ask you to take
14 notice of the Payette River Adjudication decree.

15 SPECIAL MASTER CUSHMAN: (Inaudible).

16 MR. HONSINGER: I would call Ron Howerton to the
17 stand.

18 SPECIAL MASTER CUSHMAN: For clarification, that
19 decree was actually for 5033. It was not split at that
20 time.

21 MR. HONSINGER: That's correct, Your Honor.

22 I call Ron Howerton to the stand.
23
24
25

3

March 25, 2004

1
2
3 SPECIAL MASTER CUSHMAN: We're on record in the
4 Snake River Basin Adjudication, in the Fifth District Court
5 of Idaho, sitting in Ada County today on a case that
6 actually is (inaudible). The subcases we're going to deal
7 with today at trial are 65-5033C; 65-3681 and 65-22621. I
8 will note for the record that the plaintiffs are here
9 represented by counsel (inaudible) as well as the counsel
10 (inaudible).

11 The first thing I will do is take note is the
12 supplemental director's report which is part of the court's
13 file. (Inaudible) 2003. There's an affidavit that
14 basically adopted the information in the supplemental
15 record for testimony with evidentiary (inaudible).

16 Do you have any objection to that?

17 MR. HONSINGER: I don't have any objection to
18 this. As a matter of fact I would ask Mr. Howerton to
19 affirm his document and testimony when he is on the stand
20 today, Your Honor.

21 SPECIAL MASTER CUSHMAN: All right. The
22 affidavit filed by Mr. Howerton then on the (inaudible) of
23 March is in the record as well.

24 You may proceed, sir.

25 MR. HONSINGER: I would like to raise a couple of

2

1 Whereupon,

2 RON HOWERTON

3 having been first duly sworn, was examined and testified
4 follows, to-wit:

5
6 MR. HONSINGER: I have another preliminary matter
7 before I begin Mr. Howerton's testimony, Your Honor. It's
8 my intention -- it's my belief that Mr. Howerton's
9 affidavit and the Supplemental Directors Report lay the
10 foundation to the limited testimony I intend to elicit from
11 him today.

12 So my intent is that the story will come out
13 through Mr. Ringel's testimony and Mr. Howerton's testimony
14 will make sense upon review of his affidavit, Supplemental
15 Directors Report and Mr. Ringel's testimony.

16 SPECIAL MASTER CUSHMAN: That's fine.

17
18 BY MR. HONSINGER:

19 Q. Can you please state your name?

20 A. Ron Howerton.

21 Q. And can you spell your last name --

22 A. H-o-w-e-r-t-o-n.

23 Q. Mr. Howerton, what is your occupation?

24 A. Current occupation is an engineer technician for
25 (inaudible).

4

1 Q. And how long have you been doing that?
 2 A. Since November.
 3 Q. What was your occupation before November of 2003?
 4 A. I was a senior water right agent.
 5 Q. Did you investigate water right number 65-05033C
 6 for recommendation to the Snake River Basin Adjudication?
 7 A. Yes, I did.
 8 Q. Have you submitted an affidavit in this matter,
 9 Mr. Howerton?
 10 A. Yes, I have.
 11 Q. And through that affidavit you adopted the
 12 Supplemental Directors Report as your testimony; is that
 13 correct?
 14 A. That's correct.
 15 Q. Do you adopt that affidavit and Supplemental
 16 Directors Report as your testimony here today?
 17 A. I do.
 18 Q. Do you have a copy of the Supplemental Directors
 19 Report?
 20 A. Not in my hand (inaudible).
 21 Q. Mr. Howerton, could you review that Supplemental
 22 Directors Report and see if it is, in fact, the one that
 23 you adopt as your testimony?
 24 A. (Inaudible) correct.
 25 Q. Mr. Howerton, water right number 65-5033 was

5

1 decreed in the Payette River Basin Adjudication; is that
 2 correct?
 3 A. The C portion not being decreed in an earlier
 4 (inaudible).
 5 Q. That's correct. Can you please look at Exhibit 1
 6 in the Supplemental Directors Report that you have in front
 7 of you there?
 8 A. (Inaudible).
 9 Q. That's the Payette River Adjudication decree
 10 here?
 11 A. (Inaudible). Okay. I have it.
 12 Q. Okay. Can you tell me how much land was decreed
 13 in the Payette River Adjudication as irrigated by water
 14 right Number 5033 from looking at that (inaudible) decree?
 15 A. It appears 255 acres were.
 16 Q. Was any portion of the Payette River -- any
 17 portion of water right 5033 decreed to lands in section six
 18 within the same township range in the Payette River Basin
 19 Adjudication?
 20 A. I do not see any.
 21 Q. Is it your understanding that the Ringel's claim
 22 in the Snake River Basin Adjudication is for acreage -- the
 23 Ringel's transfer claim is for acreage in section six?
 24 A. I did understand that there was according to
 25 that, yes.

6

1 Q. And this water right -- it's possible this water
 2 right could have been moved to section six lands pursuant
 3 to accomplished transfer; is that correct?
 4 A. It's possible.
 5 Q. Now can you please look at the Payette River
 6 Basin Adjudication decreed page there and tell me what the
 7 acreage listed for the northeast/northeast quarter-quarter
 8 section in section seven?
 9 A. It's eight acres.
 10 Q. Now I'll ask you to turn to Exhibit 14 in the
 11 Supplemental Directors Report. And can you identify that
 12 document?
 13 A. Yes.
 14 Q. What is that document?
 15 A. It's the amended recommendation of water right
 16 5033C.
 17 Q. Can you tell me the acreage listed for the
 18 northeast/northeast quarter-quarter section in section
 19 seven on that recommendation --
 20 A. 18 acres.
 21 Q. Now that's different than the acreage that is
 22 listed in the Payette River Basin Adjudication decree; is
 23 that right?
 24 A. That's correct.
 25 Q. I'll ask you to do the same for the northeast,

7

1 northeast/northwest quarter-quarter section. What is it
 2 listed in the recommendation there?
 3 A. 30 acres.
 4 Q. Then I'll ask you to turn back to Exhibit 1 and
 5 tell me what it's listed in the Snake River Basin
 6 Adjudication?
 7 A. (Inaudible).
 8 Q. That's Exhibit 1, I believe, going backwards. It
 9 should be (inaudible) there.
 10 A. There we go. You had them both marked. Okay.
 11 Three.
 12 Q. Three acres. So there was more acreage
 13 recommended in the Snake River Basin Adjudication than was
 14 decreed in the Payette River Adjudication; is that correct?
 15 A. In that particular quarter-quarter.
 16 Q. Okay. And you made that recommendation; is that
 17 correct?
 18 A. Yes.
 19 Q. And did you make the increases in acreages within
 20 those quarter-quarter sections to make that increase
 21 pursuant to the accomplished transfer statute?
 22 A. No, I didn't.
 23 Q. How did you do it?
 24 A. It's a benign change. It's the same
 25 quarter-quarter that was decreed, and because there was an

8

1 actual change in the recommendation from the original, of
2 being more like a permissible place of use and the entire
3 255 acres which was on the original decree was not
4 completely covered by the A, B and C splits, so there were
5 acres out there that could still be used in that
6 quarter-quarter and (inaudible) change.

7 Q. Is that pursuant to your understanding of the law
8 in Idaho?

9 A. Uh-huh.

10 Q. Now, you didn't recommended the accomplished
11 transfer that was claimed by the Ringel's pursuant to their
12 amended claim in section six; did you?

13 A. That's correct.

14 Q. Now at the time that the Ringel's claimed their
15 accomplished transfer, all existing portions of water right
16 number 5033, that is 5033A, 5033B and 5033C, had been
17 amended; is that correct?

18 A. That's correct, to make sure it included the 255
19 acres.

20 Q. So the total acreage recommended pursuant to
21 those three water rights, those three portions of 5033, was
22 255 acres; is that correct? Okay. So there was nothing
23 left to recommend to the Ringel's; is that correct?

24 A. That's correct.

25 Q. So is that the reason you didn't recommend the

9

1 accomplished transfer that was made by the Ringels?

2 A. That's correct.

3 Q. Is it fair to say you didn't really investigate
4 very thoroughly whether or not the accomplished transferred
5 could be recommended?

6 A. At that point there was no further to go on
7 because all the acres has been accounted for that was in
8 the original decree.

9 Q. Okay. Now, I might add that's (inaudible). Now
10 you didn't investigate -- when you were recommending
11 65-5033B, which is the Peterson portion of the claim, you
12 didn't investigate whether or not the Peterson lands were
13 irrigated in 1986 or 1987; did you?

14 A. No, I didn't.

15 Q. Why not?

16 A. It was already previously recommended and it
17 wasn't a part of the issue in recommending C.

18 Q. So you didn't look at the -- you said it was
19 already previously recommended. You mean it was decreed in
20 the Payette River Basin Adjudication?

21 A. It was originally recommended before objections
22 came up with the current (inaudible), and so those were not
23 in question when I investigated C.

24 Q. So you didn't look to see whether or not the
25 water right claim by Petersons covered acres that had in

10

1 fact been irrigated in 1987; is that correct?

2 A. That's correct.

3 Q. Now you also didn't investigate whether or not
4 any of the Ringel's property in section six was irrigated;
5 is that correct?

6 A. I didn't really investigate that, no.

7 Q. Okay. Are you aware of the number of acres that
8 the recently issued Special Master's report lists for water
9 right number 65-5033A, which is recommended for decree to
10 the Klings?

11 A. I may be aware of it if there hasn't been a
12 change since I left Water Resources.

13 Q. Would it surprise you to learn that it is
14 recommended (inaudible) decreed by the Special Master at
15 six acres?

16 A. (Inaudible) surprise me.

17 Q. Okay. And are you aware of whether or not the
18 water right number 65-5033B is recommended for decree at
19 all?

20 A. I wasn't aware that it was withdrawn (inaudible).

21 Q. So do you know what the amount of acreage that
22 you recommended to the Ringel's under 5033C is?

23 A. It's 215 acres.

24 Q. Okay. And if you add the six acres that are
25 recommended under 5033A claims, that comes to 221 acres; is

11

1 that correct?

2 A. Yes (inaudible).

3 Q. And the provisional Payette River decree lists
4 the water right at 255 acres; is that correct?

5 A. That's right.

6 Q. So if I do my math correct that leaves 34 acres
7 that have not currently been recommended for decree by
8 either IDWR or the Special Master?

9 A. (Inaudible).

10 Q. And is it possible that those 34 acres could have
11 been transferred to the Ringel's property in section six
12 pursuant to a (inaudible)?

13 A. Yes, it is.

14 MR. HONSINGER: I don't have any further
15 questions, Your Honor.

16 SPECIAL MASTER CUSHMAN: Thank you, Mr. Howerton.

17 MR. HONSINGER: I called David Ringel to the
18 stand, please.

19

20 Whereupon,

21 DAVE RINGEL

22 having been first duly sworn, was examined and testified as
23 follows, to-wit:

24

25

12

1 BY MR. HONSINGER:

2 Q. Can you please state your name and spell your
3 last name for the record.

4 A. Frederick David Ringel, last name, R-i-n-g-e-l.

5 Q. Mr. Ringel, what is your address?

6 A. Physical address 78 Bacon Creek Road.

7 Q. What is -- Bacon Creek Road where?

8 A. Valley County. Actually it's (inaudible).

9 Q. What's your occupation?

10 A. A rancher and also a professional surveyor.

11 Q. Can you describe for the Special Master a little
12 bit more specifically where the location of your home is?

13 A. Yes.

14 Q. Where's that?

15 A. South half of south half of section six

16 (inaudible).

17 Q. And can you tell him where that is in relation to

18 the Payette River Canyon, town of Cascade, 5055?

19 A. As you go north, pass through the Mountain Lodge

20 on Highway 55, you come out into the Round Valley, it's at

21 the south end of that, and you go along the west side of
22 the valley floor two miles and then east a mile.

23 Q. I'll ask you to turn to the aerial paragraph to

24 your right there, and if you could -- does this aerial

25 photograph show your property, Mr. Ringel?

13

1 A. Yes.

2 Q. Could you outline your property for the Special
3 Master? I'll ask you to do it with this red pen.

4 A. You want me to mark on it?

5 Q. Go ahead and outline all the property that you
6 own, that you can see on that map.

7 SPECIAL MASTER CUSHMAN: Before we go further can
8 we have that map marked as an exhibit for the record so
9 that the record is straight up (inaudible).

10 MR. HONSINGER: Let's mark it as Exhibit 16, if
11 we could.

12
13 Exhibit No. 16 marked.

14
15 SPECIAL MASTER CUSHMAN: Let the record reflect
16 that (inaudible).

17 BY MR. HONSINGER:

18 Q. Now, Mr. Ringel, you've also showed the Special
19 Master the location of the property that you are claiming

20 pursuant to this accomplished transfer, this amended claim.

21 Where is the acreage that you are asserting is irrigated?

22 A. Our house is right here and about 34 - 35 acres
23 over on this side.

24 Q. Can you please outline that in red as well?

25 SPECIAL MASTER CUSHMAN: Just so I'm clear, the

14

1 yellow outlined portion is the original five (inaudible)?

2 MR. HONSINGER: Yes, Your Honor, that's correct.

3 SPECIAL MASTER CUSHMAN: (Inaudible).

4 MR. HONSINGER: Immediately to the north, that's

5 correct (inaudible).

6 BY MR. HONSINGER:

7 Q. Now, Mr. Ringel, you've outlined a small area

8 within a red area that you have previously outlined; is

9 that correct?

10 A. Yes.

11 Q. And is that the land that you are claiming is

12 irrigated with water right 5033 pursuant to the (inaudible)

13 transfer?

14 A. Yes.

15 Q. Okay. Thank you.

16 Mr. Ringel, how long have you lived in Round

17 Valley, Idaho?

18 A. 38 years.

19 Q. And handing you what's been marked as Exhibit 1?

20 SPECIAL MASTER CUSHMAN: (Inaudible).

21 THE WITNESS: 38 years.

22 BY MR. HONSINGER:

23 Q. Handing you what's been marked as Exhibit 1 --

24 and, Your Honor, I did give you a copy of all the exhibits

25 there, can you please identify that exhibit?

15

1 A. It's a warranty deed from Ira Peterson to the
2 Ringels and it is for the original 80 acres, which would be
3 the south half southeast quarter, section six.

4 Q. And is that land that you outlined on Exhibit 16?
5 The small portion of that land that you outlined in Exhibit
6 16, is that within the legal description on that deed?

7 A. Yes.

8 Q. All right. And what is the date on the warranty
9 deed, Exhibit No. 1?

10 A. August 15, 1974.

11 Q. Small correction, Mr. Ringel: I note that the
12 deed states that it is from Ira Peterson to Frederick D.
13 Ringel, a single man, not the Ringels; is that correct?

14 A. Correct.

15 Q. So you weren't married at that time; is that
16 correct? Okay.

17 And is this the first property that you purchased
18 in Valley County, Idaho or in Round Valley?

19 A. Yes.

20 Q. Now, Mr. Ringel, what did you do on that
21 property? Did you farm it?

22 A. Yes.

23 Q. Okay. Did you irrigate it?

24 A. Yes.

25 Q. When did you start irrigating it?

16

1 A. Probably '83.
2 Q. Okay.
3 A. '82 maybe.
4 Q. Where did the water to irrigate that property
5 come from?
6 A. Out of a pond that I built.
7 Q. Out of a pond that you built. And can you show
8 where the pond is? Is the pond located on Exhibit 16?
9 A. Yes.
10 Q. Can you show the Special Master where the pond
11 is?
12 A. Are you going to mark on that, Mr. Ringel? Sure,
13 go ahead and mark on it with a green marker. That's fine.
14 A. (Inaudible).
15 Q. And where did the water to fill the pond come
16 from?
17 A. From the water rights. The point of diversion
18 started out at section 18, to the south.
19 Q. Out of what source did the water come from?
20 A. Chipps Creek.
21 Q. Chipps Creek. Okay. Can you show the Special
22 Master generally -- maybe you should stand up there for a
23 few minutes, Mr. Ringel -- I apologize -- can you show the
24 Special Master generally where Chipps Creek runs? You
25 don't need to mark on it. Just show (inaudible).

17

1 A. Section 18. And the next section to the south is
2 seven and it starts probably down in here somewhere. It
3 goes down a draw, through here, this way (inaudible).
4 Q. And you said you diverted water from Chipps Creek
5 into the pond; is that correct?
6 A. Yes.
7 Q. Okay. And where again was the diversion?
8 A. Section 18.
9 Q. Is it not shown on that map: The diversion?
10 A. The point of diversion was back here and then a
11 second diversion point is along the ditch line, and it
12 comes from here and out this way.
13 Q. I see.
14 A. This ditch here and it (inaudible) to the pond
15 and (inaudible).
16 Q. So there was water diverted from Chipps Creek in
17 section 18 into the ditch?
18 A. Yes.
19 Q. Okay. And that ditch ran where?
20 A. Can I just show you here?
21 Q. Yes.
22 A. From the headgate located here, and the ditch
23 runs out this way, and across the property here and then
24 across a county road here and then to the pond.
25 Q. Did the ditch from Chipps Creek -- as it ran from

18

1 Chipps Creek can you show the Special Master how it gets
2 to --
3 A. To this point?
4 Q. Yes.
5 A. Well, the point of diversion goes back here.
6 Chipps Creek, like I say, goes this way, and there was a
7 diversion rock down here that brought it along a ditch
8 line. It comes onto this photo approximately here. It
9 comes along the hillside to here, and it also continues on
10 around the (inaudible).
11 Q. Who owned the property across which the ditch ran
12 through which you used the water?
13 A. The point of diversion was on Boise Cascade. It
14 originated there for probably half a mile and then it went
15 onto the Kling property and ran through it probably a mile
16 and a quarter and then (inaudible).
17 Q. Who owned the property to the south of the small
18 area that you outlined, in about 1983?
19 A. This property?
20 Q. The next property to the north (inaudible)?
21 A. This here?
22 Q. Yes.
23 A. Originally owned by Ira Peterson.
24 Q. Ira Peterson. Okay. All right. So the ditch
25 ran across Mr. Peterson's property; is that right?

19

1 A. Yes.
2 Q. Okay.
3 A. He originally (inaudible).
4 Q. Can we call that the Peterson ditch? How long
5 did you irrigate that property up in section six? You
6 started in 1983 you said?
7 A. Yeah.
8 Q. How long --
9 A. Present.
10 Q. Okay. About how much of that property have you
11 irrigated?
12 A. The property in section six?
13 Q. Yes.
14 A. 35 acres and a little bit around the house,
15 probably two or three acres.
16 Q. What kind of crops have you grown on that
17 property over the years?
18 A. Hay for cattle. Just alfalfa and Timothy oats.
19 Oats over grasses.
20 Q. Did you irrigate that property in 1986?
21 A. Yes.
22 Q. Did you irrigate it in 1987?
23 A. Yes.
24 Q. And did you ever ask Mr. Peterson or did Mr.
25 Peterson ever give you permission to use water to irrigate

20

1 that property?
2 A. Yes.
3 Q. Mr. Ringel, handing you what's been marked as
4 Exhibit 2, can you please describe that exhibit?
5 A. That's an aerial I had flown by Boise Aerial. It
6 is facing southwest and it's looking at the southwest
7 corner of Round Valley. The road going left and right is
8 Bacon Creek Road and the one going to the north and south
9 toward the mountain is (inaudible) road.
10 Q. Does that aerial photograph show your house?
11 A. Yes, it does.
12 Q. And can you tell the Special Master about where
13 that is? Perhaps it would be easiest to mark on that
14 (inaudible)?
15 A. Mark it here?
16 Q. Yes.
17 A. The house sits there.
18 Q. Does that property also show the property that
19 you are claiming pursuant to this accomplished transfer?
20 A. Yes.
21 Q. Okay. And can you show the Special Master,
22 outlining that property as best you can?
23 A. Yes, sir.
24 Q. Mr. Ringel, when was this photograph taken?
25 A. 10-20 of '81.

21

1 Master?
2 A. Yes.
3 Q. Can you again show the Special Master, outline
4 the property that you are claiming pursuant to this amended
5 claim?
6 A. Yes. I've got to go around the pond that's being
7 built there.
8 Q. That's fine.
9 A. You can see (inaudible).
10 Q. And then finally does this show the ditch through
11 which you delivered water to your property?
12 A. Yes. Not all of it.
13 Q. Okay. Can you outline or mark that ditch in
14 blue?
15 A. Yes.
16 Q. And this photograph is taken facing which
17 direction?
18 A. This is facing east. A little bit north of east.
19 The road going this way. East west (inaudible).
20 Q. Now you mentioned a pond being built; is that
21 right?
22 A. Yes.
23 Q. And that photograph shows that a pond is
24 beginning to be built there?
25 A. Yes, it does. Both of them do.

23

1 Q. And this was taken at your direction?
2 A. Yes.
3 Q. Okay. Did you have that property flown; was that
4 it?
5 A. Yes.
6 Q. Does this aerial photograph show the ditch
7 through which you diverted water from the Peterson ditch,
8 across the Peterson property at that time, to your
9 property?
10 A. Yes.
11 Q. Can you outline that in blue as well?
12 A. Part of it's back in the trees. I'll start
13 (inaudible).
14 Q. Mr. Ringel, I'm handing you what has been marked
15 as Exhibit No. 3. Can you identify that exhibit?
16 A. That's another shot of the aerial that the aerial
17 mapping did for us. Flew around the property (inaudible).
18 Q. Is this aerial photograph dated the same as the
19 last aerial photograph?
20 A. Yes, it is.
21 Q. And this was taken at your request as well?
22 A. Yes.
23 Q. Does this show your property?
24 A. Yes.
25 Q. Can you again mark your house for the Special

22

1 Q. Were you building that pond?
2 A. Yup.
3 Q. What was the purpose of that pond? What was the
4 purpose of that pond?
5 A. To irrigate with.
6 Q. Irrigate what property?
7 A. To the west. Pete always told me that the best
8 property was to the west of that house.
9 Q. And who is Pete, by the way?
10 A. Ira Peterson.
11 Q. That's the person from whom you purchased your
12 property?
13 A. Yes.
14 Q. And the person who owned the property across
15 which that ditch ran?
16 A. Yes.
17 Q. And, Mr. Ringel, I apologize, if you can't hear
18 me. Sometimes I don't speak up very well. Would you
19 please let me know?
20 Handing you what's been marked as Exhibit No. 4,
21 can you identify that exhibit?
22 A. Other than it's my good old buddy, it's a picture
23 of a field and a ditch and a pasture north -- correction,
24 south and west of the house 300 feet.
25 Q. Who took this photograph?

24

1 A. I did.
2 Q. And when did you take it?
3 A. 7-18 of '87.
4 Q. Does it fairly and accurately represent the
5 conditions on the ground at that time (inaudible)?
6 A. Yes.
7 Q. In which direction is this photograph taken?
8 A. It's south and a little bit west.
9 Q. And I note that there's a ditch running through
10 the middle of this photograph. Which ditch is that?
11 A. That's the Peterson ditch.
12 Q. Is that -- where is that ditch located? Is it
13 located north or south of Bacon Creek Road?
14 A. North of Bacon Creek Road.
15 Q. And where's that ditch run to?
16 A. Runs to the pond.
17 Q. Excuse me?
18 A. Runs into the pond.
19 Q. Okay. Does this photograph show land that was
20 irrigated from water that ran through that ditch?
21 A. Yes. Not very much, but it's to the -- looking
22 at the photo, to the right, or west, and behind the horses.
23 Q. Can you show the Special Master about where this
24 was located on the map? Just show right here on this map.
25 A. Probably right in there somewhere.

25

1 Q. So that's essentially what the photograph shows
2 is that area right in there?
3 A. Yes looking this direction.
4 Q. Okay. Now, did Ira Peterson irrigate his
5 property during the time frame we're speaking of from 1983
6 to, say, 1987 - 1988?
7 A. Which property are we talking about?
8 Q. You tell me. Which property did he irrigate?
9 A. He irrigated this area in here.
10 Q. Okay. Did he irrigate -- can you show me where
11 Ira Peterson's house is on that map?
12 A. Yes.
13 Q. Where's that?
14 A. Here.
15 Q. Did he irrigate -- and you marked the house with
16 blue pen; is that correct?
17 A. Yes.
18 Q. Okay. Did he irrigate the property to the north
19 of his home?
20 A. No.
21 Q. No, he didn't? Okay. And looking again at
22 Exhibit No. 4, Mr. Ringel, the photograph with the horses
23 in it -- 1987 photograph with the horses in it, does that
24 show any portion of Mr. Peterson's property?
25 A. Yes.

26

1 Q. And where's the portion of the property shown on
2 the photograph there? On the photograph directly, Mr.
3 Ringel. Can you tell the Special Master where
4 Mr. Peterson's property is? In the back --
5 A. To the south --
6 Q. Is it in the background there?
7 A. Yeah, it's in the background, across Bacon Creek
8 Road.
9 Q. What color was that property?
10 A. Brown.
11 Q. And was that property irrigated at that time?
12 A. No.
13 Q. Can you tell that from this photograph?
14 A. Yes.
15 Q. How can you tell that?
16 A. Well, it should be green, (inaudible).
17 Q. Okay. Asking you to turn back to Exhibit 2,
18 please, Mr. Ringel.
19 A. 3?
20 Q. Two. Now, does Exhibit 2 -- now Exhibit 2,
21 correct me if I'm wrong, but it faces generally -- it's an
22 aerial photograph facing generally southwest; is that
23 correct?
24 A. Yes.
25 Q. And does that show Mr. Peterson's property south

27

1 of Bacon Creek Road?
2 A. Yes.
3 Q. Does it show the un-irrigated portion?
4 A. Yes.
5 Q. All right. And this obviously -- was this
6 property irrigated in 1981?
7 A. No.
8 Q. Can you show the Special Master where (inaudible)
9 where the Peterson property was that was not irrigated?
10 A. Was not irrigated?
11 Q. Yes. Can you outline it with a red pen, please?
12 Can we tell from that photograph whether the Peterson
13 property was irrigated?
14 A. Yes.
15 Q. How can we tell that?
16 A. Light colored.
17 Q. Can we tell from this photograph that your
18 property was irrigated?
19 A. Yes.
20 Q. How can we tell that?
21 A. Darker.
22 Q. And is it your remembrance that you did irrigate
23 your property at that time?
24 A. Yes.
25 Q. And do you remember --

28

1 SPECIAL MASTER CUSHMAN: At what point?
2 BY MR. HONSINGER:
3 Q. In 1981 when this photograph was taken.
4 A. In '81 I wasn't (inaudible). '83 because the
5 (inaudible).
6 Q. Is it your remembrance that Mr. Peterson was not
7 irrigating the property?
8 A. Mr. Peterson?
9 Q. Yes.
10 A. He was not irrigating it.
11 Q. Now we talked a little bit about the pond, Mr.
12 Ringel, and you said that you constructed a pond on your
13 property in section six. And I believe you said you
14 started it in about 1981 - '82, is that correct;
15 A. '81. It starts to show here. You can see the
16 drag line sitting out there starting to pull up and so this
17 would have been in '81.
18 Q. All right. You are referring to exhibit number
19 what that you're appointing to?
20 A. 2. Also 3. They both show the pond being
21 started.
22 Q. When did you complete the pond?
23 A. That fall.
24 Q. Fall of --
25 A. Fall of '81.

29

1 A. That is an application for permit.
2 Q. Is that a filed application for permit?
3 A. Yes.
4 Q. Who filed it?
5 A. Frederick D. And Gloria J. Ringel.
6 Q. Is that you that filed it?
7 A. Yes.
8 Q. That's you that filed the permit; is that
9 correct?
10 A. Yes.
11 Q. Okay. What -- this is a permit for -- to
12 appropriate water; is that correct?
13 A. Yes.
14 Q. All right. What is the source of the water you
15 desired to appropriate at that time?
16 A. The source of the water?
17 Q. Yeah.
18 A. From the spring.
19 Q. From the spring. And where was the spring
20 located?
21 A. It's in the pond.
22 Q. It's in the pond. Okay. And --
23 A. Toward the northeast side of the pond.
24 Q. Okay. So was your intent in submitting this
25 application for permit to be able to appropriate water from

31

1 Q. And does the pond exist on your property today?
2 A. Yes.
3 Q. What is the size of the pond?
4 A. It's about 1.3 acres - 1.2 acres in size.
5 Q. How deep is the pond?
6 A. Up to 12 feet, so probably an average 8 foot
7 deep.
8 Q. Okay. Has it existed in the same dimensions
9 since you built it?
10 A. Yes.
11 Q. Handing you what has been marked as Exhibit No.
12 5 --
13 A. Can I make a comment here? SCS cost shared with
14 us to build this headgate and spillway.
15 Q. In the pond?
16 A. For the purpose of irrigation. Also they
17 provided us with the size pond we needed for a 15-day
18 rotation period over this 34 acres.
19 SPECIAL MASTER CUSHMAN: Soil conservation
20 Service?
21 THE WITNESS: Yes.
22 BY MR. HONSINGER:
23 Q. Handing you what's been marked as Plaintiffs
24 Exhibit 5, Mr. Ringel. Can you please identify Exhibit No.
25 5?

30

1 the spring and divert it into the pond itself that you were
2 building?
3 A. Yes.
4 Q. Okay. And when was this permit submitted? I'll
5 ask you to turn to the last page, Mr. Ringel. And at the
6 top it says date received 9-16-81. Do you see that?
7 A. 9-16 of '81.
8 Q. Is that the date that you recall submitting this
9 permit application?
10 A. Yes.
11 Q. Now after you built this pond did you divert
12 water from the Peterson ditch into this pond?
13 A. Yes. Ira Peterson and I discussed this many
14 times and he says that the water that he would let down
15 through that ditch would help supplement the spring water
16 that he was applying for and make a holding pond.
17 Q. So you diverted water from the Peterson ditch and
18 through the Peterson property into your pond?
19 A. Yes.
20 Q. Pursuant to discussions and permission?
21 A. Yes.
22 Q. With Mr. Peterson; is that correct?
23 A. Yes.
24 Q. When did you start doing that?
25 A. Probably '82.

32

1 Q. And you've been doing that ever since?
 2 A. Yes.
 3 Q. Did you -- how did you get water out of the pond
 4 to irrigate your property?
 5 A. From a PTO off the tractor through a four-inch
 6 pump and into a five-inch aluminum pipe.
 7 Q. When did you start pumping water from that pond
 8 to irrigate your property?
 9 A. '83 or '84.
 10 Q. Have you continued to do so ever since?
 11 A. Yes.
 12 Q. Mr. Ringel, handing you what's been marked as
 13 Exhibit No. 6. Can you please identify that document?
 14 A. It's a request for extension of time through
 15 Water Resources.
 16 Q. Is that a request for extension of time to submit
 17 proof of beneficial use for a water right permit?
 18 A. Yes.
 19 Q. And is the permit it references permit number
 20 65-12457?
 21 A. Yes.
 22 Q. Is that the same permit as was applied for with
 23 Plaintiff's Exhibit No. 5, the application permit?
 24 A. 65-12457, yes.
 25 Q. Okay. What is the date of submission of this

33

1 front of the spillway, the SCS design was not deep enough
 2 and the water came up underneath the concrete spillway so
 3 we had to redesign the -- put more depth to the head wall
 4 of the spillway.
 5 Q. But you had done substantial work on the permit
 6 application or the permit project at that time; hadn't you?
 7 A. It was all built prior to that time.
 8 Q. Does it show on the exhibit, Exhibit No. 6, that
 9 you had finished a portion of the application permit?
 10 A. Yes.
 11 Q. What does it tell us about what had been done?
 12 A. We dredged out the pond, the concrete spillway
 13 was laid, drain pipe, headgate installed, and we'd
 14 purchased four-inch -- it should be five-inch aluminum
 15 mainline, 1200 feet of it, and pumped with a four-inch pump
 16 off the PTO on the tractor.
 17 Q. Okay. Mr. Ringel, turning back to Exhibit No. 4,
 18 the horse photograph, I forgot to ask you a question: That
 19 photograph shows the ditch, does it not?
 20 A. Yes.
 21 Q. Does the ditch look like this today?
 22 A. Yes.
 23 Q. And you still used that ditch?
 24 A. Yes.
 25 Q. To divert the same water from the Peterson ditch

35

1 request for extension of time?
 2 A. The date -- excuse me?
 3 Q. The date this was submitted.
 4 A. June 1st, '87.
 5 Q. If I look at the upper left hand corner it
 6 says --
 7 A. Oh, it's approved.
 8 Q. It was received in April of 1987; do you see
 9 that?
 10 A. Yes.
 11 Q. Is that your remembrance of when you submitted it
 12 as well?
 13 A. Yes.
 14 Q. Okay. And why did you submit this request for
 15 extension of time?
 16 A. To finish the headgate.
 17 Q. To finish the headgate. It was you and
 18 Mrs. Ringel that submitted this (inaudible) request; is
 19 that correct?
 20 A. Yes.
 21 Q. Okay. And you needed more time; is that correct?
 22 A. Yes.
 23 Q. To show beneficial use of the water that you had
 24 attempted to appropriate under the permit?
 25 A. Yes. We had one problem there. The head wall in

34

1 to your pond?
 2 A. Yes.
 3 Q. Okay. Now handing you what's been marked as
 4 Exhibit No. 7 (inaudible) at the same time. I've handed
 5 you two photos marked as Exhibits 7 and 8. Can you please
 6 identify Exhibit No. 7 for me?
 7 A. Yes. That is a photograph looking west from the
 8 house, a little bit northwest of the house, across the pond
 9 and to the 35 acres that we've got baled hay on.
 10 Q. And what is the date of this photograph?
 11 A. 6-10 of '88.
 12 Q. Who took this photograph?
 13 A. I did.
 14 Q. Does this photograph fairly and accurately depict
 15 conditions as of that time to your remembrance?
 16 A. Yes (inaudible).
 17 Q. Did the pond look like this in 1987?
 18 A. Yes.
 19 Q. During the summer of the irrigation season of
 20 1987?
 21 A. Yes.
 22 Q. Did the acreage that you had irrigated look the
 23 same as this in 1987?
 24 A. Yes.
 25 Q. I notice quite a bit of baled hay out there in

36

1 the pasture out there in the fields. And I assume you
2 baled hay in 1987, as well?
3 A. Yes.
4 Q. And is that the same with respect to Exhibit No.
5 8?
6 A. Yes.
7 Q. Okay. Now Exhibit No. 8 is a photograph also.
8 Can you please tell me what Exhibit No. 8 shows?
9 A. Again this was taken from the house and it's
10 looking northwest and shows the north end of the pond,
11 looking toward the north fence line of the 34 acres.
12 Q. Is it dated the same as Exhibit No. 7?
13 A. Yes.
14 Q. Did you take this photograph as well?
15 A. Yes.
16 Q. And does this photograph fairly and accurately
17 depict conditions as you remember them at that time?
18 A. Yes.
19 Q. And did the pond and the field beyond look the
20 same in 1987 as it did -- the irrigation season in 1987, as
21 it did in 1988?
22 A. Yes.
23 Q. Okay.
24 A. I do notice the green even showing through after
25 we hayed it. You can see it on here.

37

1 Q. Mr. Ringel, handing you what's been marked as
2 Exhibit No. 9. Can you identify that photograph?
3 A. Yes.
4 Q. And what's that photograph show?
5 A. My wife and I were mowing and raking 34 acres
6 west of the field and that is oats over grasses.
7 Q. And what is the date of that photograph, can you
8 tell?
9 A. 9-30-88.
10 Q. Okay. And --
11 A. (Inaudible) I'm not sure.
12 Q. Who took this photograph?
13 A. I did.
14 Q. And it shows a portion of the 35 acres we're
15 discussing; is that correct?
16 A. Yes.
17 Q. And is that the area off to the right there,
18 right of the tractor?
19 A. And behind the tractor, yes.
20 Q. And behind the tractor. Okay. Does it fairly
21 and accurately depict conditions at that time?
22 A. Yes.
23 Q. Does this photograph show the Peterson property?
24 A. Yes.
25 Q. Does it show the un-irrigated portion of the

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1 Peterson property?
2 A. Yes.
3 Q. Where is that?
4 A. Right between the pickup and the tractor wheel.
5 Looking southwest you see his house back there. Between
6 the house and the county road.
7 Q. And is that the brown area that is --
8 A. Yes.
9 Q. And does that comport with your remembrance? Can
10 you tell me why that property is brown?
11 A. It wasn't irrigated.
12 Q. Okay. And does that comport with your
13 remembrance of the conditions in 1987 as well?
14 A. Yes.
15 Q. Handing you what's been marked as Exhibit No. 10,
16 can you please identify that photograph?
17 A. That's looking west from the house, across the
18 south end of the pond.
19 Q. Who took that photograph?
20 A. I did.
21 Q. When was the photograph taken?
22 A. 8-15 of '89.
23 Q. Does it show the 35 acres we're discussing here
24 today?
25 A. Yes.

39

1 Q. Does it show irrigation of the 35 acres?
2 A. Yes, it does.
3 Q. How can I tell that?
4 A. In the center of the photo there's three water
5 spouts coming out of the pipeline and I can see part of the
6 pipeline there.
7 Q. Does this photograph fairly and accurately depict
8 conditions as you remember them at that time?
9 A. Yes.
10 Q. Does it also show the conditions as they existed
11 in the irrigation season in 1987?
12 A. Say again.
13 Q. Does it also show conditions as they existed in
14 irrigation season 1987?
15 A. Yes, other than probably the pipeline was swung
16 to the north.
17 Q. In other words if I looked at your property in
18 1987, June of 1987, would I have seen plumes of water
19 coming out of the mainline?
20 A. Yes.
21 Q. Okay. Now eventually, Mr. Ringel, did you
22 purchase more property from Ira Peterson?
23 A. Yes.
24 Q. Handing you what's been marked as Exhibit 11, can
25 you please identify that document?

40

1 A. A warranty deed from Ira and Lola to the Ringels.
2 Q. And who's Lola Peterson?
3 A. That's the wife of Ira Peterson.
4 Q. Okay. What property does this deed -- I should
5 ask the date of the map there, Mr. Ringel.

6 A. 12th day of May 1996.

7 Q. Okay. And what property does this deed grant to
8 the Ringels?

9 A. This would be the north half of the agreement of
10 what we were going to purchase from (inaudible).

11 Q. Can you maybe show the Special Master just with
12 your finger or with a pen?

13 A. We had entered into an agreement with Ira
14 Peterson before he got married that we was going to
15 purchase 276 acres that year, and the first year we were to
16 buy half of it and the second year the other half. And so
17 the first half we purchased was just the north portion of
18 that 276 acres. So the line would be probably through here
19 somewhere.

20 Q. And that's the property that was granted to
21 you -- the north half of the property that was granted to
22 you by the deed of May 1996?

23 A. Yes.

24 Q. Exhibit No. 11?

25 A. Yes.

41

1 A. Yes.

2 Q. Okay. Handing you what's been marked as Exhibit
3 No. 12, can you identify that document?

4 A. That's a settlement agreement from (inaudible)
5 and court proceedings between Lola Peterson and the
6 Ringels.

7 Q. So you settled your lawsuit with Mrs. Peterson;
8 is that correct?

9 A. Yes.

10 Q. And what's the date of this settlement agreement?

11 A. 28th day of January, '98.

12 Q. And did you sign this agreement?

13 A. Yes.

14 Q. Did Lola Peterson sign this agreement as well?

15 A. Yes.

16 Q. I'll draw your attention to paragraph one on the
17 first page there. Can you review that for me real quick?

18 A. Water rights: Peterson assigns all of her water
19 right, title and interest in that certain property known
20 and described as water right number 22, or A65-05033.

21 Q. Okay.

22 A. 1897.

23 Q. Is this the paragraph by which Mrs. Peterson
24 agreed to deed to you the remainder of water right No.
25 5033?

43

1 Q. What does this deed, Plaintiff's Exhibit No. 11,
2 grant to the Ringels with respect to a water right?

3 A. Subject to all of the Peterson's interest and one
4 half of water right number 22.

5 Q. Does it also specify water right number 65-05033?

6 A. Yes.

7 Q. Is it your understanding that you purchased one
8 half of 65-05033 with this deed?

9 A. Yes.

10 Q. Okay. Now what happened after the first deed was
11 executed?

12 A. Ira Peterson died.

13 Q. Okay. Did Mrs. Peterson then sign you -- deed
14 you the rest of the property?

15 A. No.

16 Q. Why not?

17 A. That's a long story, but basically she wanted to
18 maybe put in a subdivision or give it to an attorney.

19 Q. Did she attempt to get out of the contract that
20 you had with Ira Peterson?

21 A. Yes.

22 Q. Okay. What did you do in response?

23 A. We had to file a Quitclaim in order to get her to
24 honor her agreement (inaudible).

25 Q. Did you have to file a lawsuit?

42

1 A. Yes.

2 Q. And did this settlement agreement also result in
3 you getting the remainder of the property that you had
4 agreed to purchase from Mr. Peterson?

5 A. Yes.

6 Q. Okay. Handing you what has been marked as
7 Exhibit Number 13. Can you please identify that document?

8 A. Warranty Deed from Lola Peterson to the Ringels.

9 Q. When is this Warranty Deed dated?

10 A. 28th day of January, '98.

11 Q. And what property is transferred to the Ringels
12 pursuant to this deed?

13 A. This be by the southern portion of the 276 acres.

14 Q. This also transfers to the Ringels all of
15 Peterson's interest in water right number 65-05033?

16 A. Yes, it does.

17 Q. Now, Mr. Ringel, have you continued to use the
18 ditch that diverts water from the Peterson ditch through
19 what was formerly the Peterson property since you have
20 owned this property as well?

21 A. Yes.

22 Q. Okay. And I take it you continue to divert water
23 through that ditch from 1983 through the present,
24 encompassing 1987 as well; is that correct?

25 A. Yes.

44

1 Q. Okay.
2 A. It's flowing strong today.
3 Q. It's flowing strong today. I'll bet it is. I'll
4 bet it was flowing stronger yesterday. Now, Mr. Ringel,
5 I'm handing you -- I've asked -- Can we go off the record
6 for just a second?
7
8 Off-the-record.
9
10 BY MR. HONSINGER:
11 Q. Mr. Ringel, I've handed you what's been marked as
12 Exhibit No. 14. Can you please identify that exhibit?
13 A. That's an aerial photo that I took in the spring
14 of the year. Just wanted to see the property.
15 Q. When was this photograph taken?
16 A. 6-7 of '87.
17 Q. And you took this photograph?
18 A. Yes, I did.
19 Q. You obviously took it from the air?
20 A. Yes, I did.
21 Q. So you got in a plane and flew over your property
22 and took photographs; is that correct?
23 A. Yes. It helps a lot in our cultivating of the
24 fields. I get a higher (inaudible) and then go down and
25 circle the property and photograph it so we can see dry

45

1 of photographs; isn't it?
2 A. Yes.
3 Q. Have you reviewed those photos recently?
4 A. Yes.
5 Q. Where did you review them?
6 A. At your office.
7 Q. And when was that?
8 A. Yesterday.
9 Q. When were these photographs taken?
10 A. Last fall.
11 Q. Were you present when these photographs were
12 taken?
13 A. Yes.
14 Q. What do these photographs generally depict,
15 without going through them one by one? We will go through
16 them one by one, but without going through them one by one,
17 generally tell me what they depict.
18 A. The ditch line.
19 Q. The ditch line that you divert water from the
20 Peterson ditch to your pond?
21 A. Yes.
22 Q. And do these photographs fairly and accurately
23 show conditions on the ground at that time?
24 A. Yes.
25 SPECIAL MASTER CUSHMAN: For the record, you're

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1 areas or whatever we have to have.
2 Q. Okay. Does this photograph fairly and accurately
3 represent the conditions of that date as you remember them?
4 A. Yes.
5 Q. Does this photograph show the ditch that you
6 divert water from the Peterson ditch to your pond
7 (inaudible)?
8 A. Yes.
9 Q. Can you show the Special Master on the photograph
10 you have in front of you where that is? Which ditch that
11 is? If you don't mind, go ahead and mark on it with that
12 blue pen as well that ditch.
13 Now, Mr. Ringel, after you filed your amended
14 claim seeking irrigation of the 35 acres we were discussing
15 today, did anybody from IDWR ever come out to look at that
16 ditch that you have just marked?
17 A. Not that I recall, no.
18 Q. Okay. What ditch do you use to deliver water to
19 your property from the Peterson ditch today? Same ditch?
20 A. Yeah, same ditch.
21 Q. And that ditch still exists, right?
22 A. Yes.
23 Q. Handing you what has been marked as Exhibit 15 --
24 do we have a stapler by any chance? Handing you what's
25 been marked Exhibit 15, Mr. Ringel, Exhibit 15 is a series

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1 referring to Exhibit 15, a series of seven photographs.
2 MR. HONSINGER: That's correct, Your Honor.
3 BY MR. HONSINGER:
4 Q. I ask you to look at photograph number one of
5 Exhibit 15. Can you tell me what photograph number one
6 depicts, Mr. Ringel?
7 A. That's the south end of the pond, probably where
8 the ditch line enters into it, where we have the rip rap
9 (inaudible).
10 Q. And can you tell me what picture number two of
11 Exhibit 15 is?
12 A. That is again the south end of the pond where the
13 rip rap and the ditch enters in, coming from the south.
14 Q. Turning to photograph number 3, can you tell me
15 what that depicts?
16 A. That's 25 feet south of the south end of the
17 pond, looking south down the ditch.
18 Q. That depicts the ditch --
19 A. (Inaudible).
20 Q. That depicts the ditch as well?
21 A. Upper ditch. What?
22 Q. That depicts the ditch as well?
23 A. Yes.
24 Q. And photograph number four?
25 A. Probably another hundred feet south along the

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1 ditch and looking at the county road.
2 Q. So we're still north of the road; is that
3 correct?
4 A. Yes.
5 Q. Photograph No. 5, can you please describe that?
6 A. It's just north of the county road on the ditch
7 line.
8 Q. And looking to the south?
9 A. Yes.
10 Q. Okay. Photograph number six.
11 A. That's the north end of the culverts that go
12 underneath the county road.
13 Q. Photograph number seven.
14 A. That's looking north, from the north edge of the
15 county road at the ditch line.
16 Q. Mr. Ringel, I might ask you this question: Were
17 these photographs taken after the irrigation season in
18 1987? Excuse me, after the irrigation season last fall?
19 A. Yes.
20 Q. Okay. Photograph number eight.
21 A. That's on the south side of the county road. The
22 culvert sits (inaudible) on to the county road, looking
23 south of the ditch line.
24 Q. Okay. And, Mr. Ringel, were these photographs
25 all taken on the same day?

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1 Q. It shows the ditch as well?
2 A. Yeah.
3 Q. Okay.
4 A. It's in here.
5 Q. And these photographs run in sequence from north
6 to south as they're numbered?
7 A. Yes.
8 Q. In other words, one being the most northerly
9 portion of the ditch and 17 being the most southerly
10 portion; is that correct?
11 A. Right.
12 Q. Photograph number 11, does that show the ditch as
13 well?
14 A. Yes, it does.
15 Q. Is that the ditch curving in the background in
16 that photograph that I see? Curving to the right?
17 A. Yes it is.
18 Q. Can you show the Special Master where that is?
19 A. In here. What we're looking at here is a
20 straight away here and then a curving to the right
21 (inaudible).
22 Q. And number 12. Photograph number 12, is that the
23 ditch as well?
24 A. Yes.
25 Q. Can you show the Special Master approximately

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1 A. Yes.
2 Q. Okay. Now I note, Mr. Ringel, that the ditch as
3 I'm looking at it appears to be somewhat shallow. Can you
4 give me an explanation why the ditch appears to be somewhat
5 shallow, without looking at photograph number eight?
6 A. The water runs south and (inaudible).
7 Q. Do you maintain that ditch to keep it a certain
8 depth?
9 A. I try not to disturb it very much. We want the
10 vegetation in it so (inaudible) and the way SCS says is
11 just leave the grasses flowing and keep (inaudible).
12 Q. So you don't maintain that ditch is that correct?
13 A. I won't put a ditcher in it, no.
14 Q. Okay. Won't dig it out?
15 A. Pardon me?
16 Q. You won't dig it out?
17 A. No, I won't.
18 Q. Okay. Turning to photograph number nine of
19 Exhibit 15, can you tell me where that photograph is?
20 A. Can I show on the map?
21 Q. Sure. That will be fine. You can stand up there
22 (inaudible).
23 A. Number nine is approximately (inaudible).
24 Q. And photograph number ten, what does that show?
25 A. That shows what happens when the road's out.

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1 where that is?
2 A. The trees in the background here are in this area
3 here and we're looking -- we're probably standing in here
4 somewhere and then it will curve to the right and
5 (inaudible).
6 Q. Photograph number 13.
7 A. Yes.
8 Q. Is that the ditch as well?
9 A. Yes.
10 Q. Okay.
11 A. That would be in here.
12 Q. A little bit closer to the trees?
13 A. Yes. The two groups of trees that you're seeing
14 in 13 and 14 are there and there respectively. The ditch
15 will go between them.
16 Q. And photograph No. 14, does that show the ditch
17 as well?
18 A. Yes.
19 Q. That shows water from the ditch; doesn't it?
20 A. Yes, it does.
21 Q. And is that a -- as I look in there is there
22 water -- is that water moving?
23 A. Yes, it's flowing over a dirt bank there.
24 Q. Where's that water come from?
25 A. From the headgate out of the irrigation ditch

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1 line.
2 Q. Out of the Peterson ditch?
3 A. Yes.
4 Q. Okay. Is that water diverted from Chipps Creek
5 or is that water flowing -- that just water that might be
6 flowing from some other source?
7 A. (Inaudible).
8 Q. Photograph number 15, can you please describe
9 where that is and tell me what it is?
10 A. 15 is standing on an old railroad grade that is
11 located right here. Railroad grade laying through this way
12 and back up and across up that way. There's a culvert
13 that's crossing underneath the railroad grade and you're
14 looking to the east and downstream.
15 Q. Okay. And photograph 16?
16 A. (Inaudible). It's a headgate that's coming out
17 of the irrigation ditch, located west of the railroad
18 grade, approximately there. You're looking at the outlet
19 structure of the pipe.
20 Q. Is that you in that photograph?
21 A. Yeah.
22 Q. Are you standing (inaudible) on the bank of the
23 irrigation ditch? The Peterson ditch?
24 A. Yes, I am.
25 Q. And finally photograph No. 17?

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1 A. That's the headgate for the Peterson ditch. The
2 irrigation ditch that comes down from Chipps Creek.
3 Q. All right. That's water -- is water flowing
4 through that ditch, through that headgate now?
5 A. Yes.
6 Q. Okay. And that's a headgate that diverts water
7 into the pipe that is shown in photograph 16 out of the
8 Peterson ditch; isn't it?
9 A. Yes.
10 Q. Okay. Mr. Ringel, can you summarize your
11 position with respect to your claim for the 35 acres in
12 section six that you claim are irrigated pursuant to this
13 (inaudible) for your claim?
14 A. When we first built the pond Pete said to
15 irrigate that side because it was the best ground to grow
16 hay and oats on. And he told me to go ahead and run it
17 down the ditch line and to couple it together with the
18 sprinkler. And when we built the pond we was concerned
19 about losing the spring and contacted the SCS about going
20 down through the clay layers and so forth. We only went so
21 deep until we got to that clay layer. So it's always been
22 that we were to irrigate out of that pond. And SCS cost
23 shared in this with us to do this.
24 Q. You've always diverted water since 1983 --
25 diverted water out of the Peterson ditch which diverts

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1 water out of Chipps Creek --
2 A. Yes.
3 Q. -- into that pond?
4 A. Yes.
5 Q. And consistently irrigated that property?
6 A. Yes.
7 Q. Including the irrigation season of 1987?
8 A. Yes.
9 Q. Okay.
10 A. You showed it in a couple photos there: The '89
11 springs photo where we're pumping water out, I mean, that's
12 no different than we would have done in the spring of '88
13 and '87. Those are the spring photos of when we first
14 started pumping. And of course we removed the pipe lines
15 and so forth in the ones with the baled hay so that
16 (inaudible).
17 MR. HONSINGER: At this point I would move for
18 admission of exhibits 1 through 16, and I don't have any
19 further questions of this witness.
20 THE COURT: (Inaudible).
21 MR. HONSINGER: Call Gloria Ringel to the stand.
22
23 Whereupon,
24 GLORIA RINGEL
25 having been first duly sworn, was examined and testified as

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1 follows, to-wit:
2 EXAMINATION
3 BY MR. HONSINGER:
4 Q. Can you please state your name?
5 A. Gloria Jean Ringel.
6 Q. Mrs. Ringel, where do you live?
7 A. I live at 78 Bacon Creek Road, Cascade, Idaho. I
8 reside there with my husband.
9 Q. And when did you move onto the property in Round
10 Valley?
11 A. I moved to Idaho in 1975. My husband and I were
12 married that year and we didn't actually build our home on
13 the land until 1980.
14 Q. But you observed water use from 1980 on that
15 property to the present?
16 A. Yes.
17 Q. Have you assisted your husband in farming/
18 ranching activities on the property?
19 A. Yes, I sure have.
20 Q. You say that with some trepidation.
21 A. Yes. I have grease under my fingernails of
22 working on the Caterpillar tractor.
23 Q. And that was this morning I take it?
24 A. No, thank goodness.
25 Q. And are you aware of the locations of ditches,

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1 irrigation lines, et cetera --
 2 A. Yes.
 3 Q. -- on the property? Okay. Fully involved in
 4 moving irrigation lines and such?
 5 A. I certainly have been.
 6 Q. Were you present in the courtroom during David
 7 Ringel's testimony?
 8 A. Yes.
 9 Q. Do you agree that his testimony reflects actual
 10 conditions at the time he testified to and actual events
 11 and occurrences as you remember them?
 12 A. Yes.
 13 Q. Do you adopt the substance of Dave Ringel's
 14 testimony?
 15 A. Yes, I do.
 16 MR. HONSINGER: I don't have any further
 17 questions of this witness, Your Honor.
 18 SPECIAL MASTER CUSHMAN: (Inaudible).
 19 MR. HONSINGER: At this moment, Your Honor, we
 20 will rest. It's my understanding that you would like to
 21 see written closing argument; is that correct?
 22 SPECIAL MASTER CUSHMAN: Closing argument as well
 23 as proposed findings and conclusions.
 24 MR. HONSINGER: Okay. And a due date.
 25 SPECIAL MASTER CUSHMAN: Two weeks? Is that too

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1 short? Four weeks better?
 2 MR. HONSINGER: Three weeks might be better. I
 3 have mediations coming up. Three weeks would be great.
 4 SPECIAL MASTER CUSHMAN: (Inaudible).
 5 MR. HONSINGER: Could I please recall Mr. Ringel?
 6 I have a couple questions I forgot to ask.
 7 SPECIAL MASTER CUSHMAN: (Inaudible) you may
 8 reopen your case.
 9 Mr. Ringel, you're still under oath.
 10
 11 Whereupon,
 12 FREDRICK D. RINGEL
 13 having been previously sworn, was examined and testified as
 14 follows, to-wit:
 15
 16 EXAMINATION
 17 BY MR. HONSINGER:
 18 Q. I apologize, Mr. Ringel, I forgot to ask you just
 19 a couple questions. After the lawsuit that Mrs.
 20 Peterson -- during the lawsuit that you entered against
 21 Mrs. Peterson, did you get along with her?
 22 A. No.
 23 Q. Okay. Have you had a chance to review her
 24 affidavit that she submitted and is part of the
 25 supplemental directors report?

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1 A. Yes.
 2 Q. All right. Do you agree with it? Do you agree
 3 with her affidavit?
 4 A. Yeah. I mean, it's her affidavit.
 5 Q. Do you agree with the assertions in her
 6 affidavit?
 7 A. No.
 8 Q. Okay. Do you have reason to believe that Mrs.
 9 Peterson may have attempted to injure you or your property
 10 interests?
 11 A. Yes.
 12 Q. And why? Why would she have done that?
 13 A. I believe she was persuaded by an attorney who
 14 wanted the land and she could see bettering herself by
 15 doing that.
 16 Q. Are there any incidents that you can recall in
 17 any way in which Mrs. Peterson expressed extreme anger
 18 towards you?
 19 A. Yes. She threatened my life once. She asked me
 20 to come over to her house and Larry (inaudible), her
 21 attorney at that time, was there, and regarding exclusive
 22 easement, and she was getting worried that Pete's in-laws
 23 were going to go ahead and try and take the land away from
 24 her. And so she wanted to go ahead and (inaudible) take an
 25 option on some of the timber ground and use for timber

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1 ground (inaudible). And in that process she wanted to
 2 change this exclusive easement to a non exclusive. And I
 3 said, well when we do purchase the rest of the land your
 4 attorney at that time can go ahead and straighten it all
 5 out. And she got mad right at that point and told me that
 6 under different circumstances the matter could be taken
 7 care of privately and Larry (inaudible) said, You can't
 8 talk like that and I didn't hear it.
 9 There was another time that later on she wanted
 10 to go and do some logging back in there and was asking for
 11 permission to go up and down our land at this time. And
 12 Boise Cascade was there and her surveyor and her fence
 13 builder and my grandson, and she came down the road wearing
 14 a pistol on her hip. And she was a little hard at seeing,
 15 but she didn't really recognize me until she got close and
 16 she asked her granddaughter who was with her who was in the
 17 van. And her granddaughter told her Dave Ringel, and she
 18 said, Well, I'm going to shoot you right here and now and
 19 started to draw the pistol. And John Quade(sic) from Boise
 20 Cascade got behind her and took it away from her before she
 21 did so. Meanwhile my grandson was in the back seat on the
 22 floor.
 23 So, yes, there was a lot of tension there between
 24 her and I. There was numerous other things she rustled
 25 cattle and cut fences and (inaudible).

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1 Q. Safe to say that there was a lot of acrimony
2 there?
3 A. Yes.
4 Q. Okay. I don't have any further questions, Your
5 Honor. Thank you.

6
7 End of hearing.
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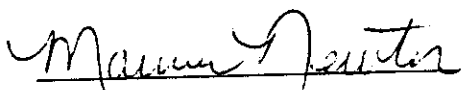
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1 REPORTER'S CERTIFICATE

2
3
4 STATE OF IDAHO)
5)
6 COUNTY OF MINIDOKA)
7

8 I, MAUREEN NEWTON, Official Court Reporter and
9 Notary Public, in and for the Fifth Judicial District of
10 Minidoka County, Idaho, do hereby certify that the above
11 and foregoing typewritten pages contain a true and correct
12 transcription of my shorthand notes taken upon the occasion
13 set forth in the caption hereof, as reduced by means of
14 computer-aided transcription by me or under my direction.

15
16 Witness my hand, this the 10th day of October,
17 2004.
18
19

20
21 

22 MAUREEN NEWTON, CSR #321
23 Court Reporter and Notary Public
24 For the State of Idaho
25 My commission expires 9-10-2006

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