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

12 -----
13 In Re SRBA

14 Case No. 39576

) Subcase Nos. 41-00008C, 41-00008D,
) 41-00008E and 41-00008F
)
) JUAN JAMES SPILLETT'S RESPONSE
) TO SUPPLEMENTAL DIRECTOR'S
) REPORT DATED 12/10/04
)
17 -----

18 COMES NOW, Juan James Spillett, by and through his attorney of record, Jason D. Walker,
19 of the firm of Ling, Robinson & Walker, Rupert, Idaho, and submits his response to the
20 Supplemental Directors Report dated December 10, 2004. This Response is timely based on the
21 Special Master's Order dated December 15, 2004.
22

23 **BACKGROUND**

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25 Currently before the Special Master is a Motion to Set Aside Partial Decrees filed by
26 Juan James Spillett in subcases 41-8C, 41-8D and 41-8F. Spillett is seeking to set aside these
27 decrees in conjunction with the determination of his own claims listed in the SRBA as 41-8B and
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1 41-13. The subcases that are at issue in the motion to set aside are integrally related to Spillett's
2 claim in 41-8B in that the water is delivered through one ditch and the parties utilize the water on
3 a rotational basis. The rotation is determined by the decreed water rights. The situation is
4 further complicated by the fact that Spillett has an accomplished and approved transfer of his
5 water out of the ditch.
6

7 The difficulty arises because all the rights at issue, together with Spillett's rights were
8 recommended using data that the Idaho Department of Water Resources freely admits is at
9 variance with historical data. The result was that the three water rights identified herein were
10 decreed with a quantity that Spillett recognized as inaccurate. Of course, it would not be an issue
11 for Spillett, but for the Court's belief that it cannot decree more water than exists under the District
12 Court's Order on Challenges in subcases 36-0003A, etc. In other words the Court cannot order the
13 Department to deliver water that does not exist. If the partial decrees at issue herein are not
14 corrected and Spillett were to be awarded the correct quantity of water based on the empirical
15 historic data for his right, the Department would be faced with the physical impossibility of
16 delivering water that did not exist. The District Court has referred to this situation as the creation of
17 "sunshine water."
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20 As further background, James Juan Spillett has prepared a "Reply to: "Supplemental
21 Director's Report Regarding Subcases Nos. 41-8C, 41-8D and 41-F." This document is attached
22 hereto as Exhibit "A" and is provided to help better clarify Mr. Spillett's position in this matter as
23 well as raise additional issues regarding the Departments Supplemental Report.
24

25 Discussion

26 What is clear from the Department's Supplemental report is that there are two sets of
27 data; "historical" numbers and "billed" amounts. IDWR has admitted and the watermaster has
28

1 explained that the "billed" amounts were not the "historical" amounts. See Report pp. 14.
2 Furthermore, the Department admits that they do not know whether their recommendation is in
3 error or not and even admit that the situation has not been clearly explained. The Department
4 knows that the "historic" numbers can be established by empirical evidence, but cannot provide
5 any proof or point to any empirical data that establishes how the "billed" numbers came into
6 existence or even their significance.
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8 The problem this creates is readily apparent. The water rights that have been partially
9 decreed are based on the "billed" amounts which have no real basis in fact other than they exist.
10 If Spillett accepts the "billed" amounts he will receive less water than what he would clearly be
11 entitled under the "historic" amounts which are based on empirical data. However, if the Court
12 awards the amount he is historically entitled to, the Department will potentially be faced with
13 delivering more water than has originally been delivered to the Adshead ditch.
14

15 Spillett should not be forced to accept the "billed" amounts and thereby take less water,
16 especially when he filed a timely objection to the Director's recommendation on his right. In
17 addition, it is not equitable for the parties to unjustly retain a quantity of water to which they may
18 not be legally entitled to receive. For these reasons, and in the interests of justice, the Court
19 should set aside the partial decrees to allow a determination of all the related subcases on the
20 merits. In the alternative, should this Court determine that the partial decrees cannot be set aside,
21 justice requires that Spillett should not be estopped from receiving the entire quantity of water to
22 which he can prove he is entitled.
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3 CONCLUSION
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5 For the reasons stated herein and those contained in Exhibit "A", the partial decrees at
6 issue herein should be set-aside and the cases consolidated with Spillet's subcase so the matter of
7 which amounts are correct can be fully and fairly litigated on the merits. In the alternative,
8 Spillet should not be estopped from receiving the entire quantity of water to which he can
9 establish he is legally entitled.

10 DATED this 21st day of January, 2005.

11 LING, ROBINSON & WALKER

12
13 By Michael P. Trile for
14 Jason D. Walker
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CERTIFICATE OF MAILING

I hereby certify that on the 21st day of January, 2005, I served a copy of the foregoing **RESPONSE TO SUPPLEMENTAL DIRECTOR'S REPORT DATED 12/10/04** upon:

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

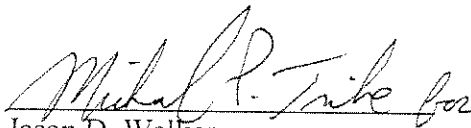
James V. Spillett
Robert R. Spillett
P.O. Box 144
Rockland, Idaho 83271

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

Scott Weston
4448 State Highway 37
Rockland, Idaho 83271

Kelvin Taysom
Suzanne Taysom
2809 W. Sandhollow Road
Rockland, ID 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

P.O. Box 278
Rockland, ID 83271
January 5, 2005

SUBJECT: Reply to: "Supplemental Director's Report Regarding Subcases
Nos. 41-8C, 41-8D and 41-F" (dated December 10, 2004)

Overview:

The first settlers entered the Rockland Valley in the spring of 1879. Some of these settled and established homesteads upon lands now served by the Adshead and Jackson Ditches (41-00008 and 41-00013, respectively). Based on filing dates, the Adshead Ditch is the 3rd oldest water right in the valley and the Jackson the 8th.

In October of 1896, the Spillett family purchased all of the land pertaining to the Adshead and Jackson Ditches - except for that portion presently owned and operated by the Nelsons (7-UD Ranches). The Spillett subsequently divided their land and water rights and sold portions of them (i.e. the properties presently operated by Kelvin Tayson and Scott Weston).

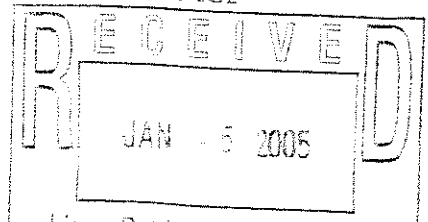
J. Juan Spillett operated the 120 A, which was owned by his father (J. Oren Spillett) and which is located on the lower ends of both the Adshead and Jackson Ditches, during the early 1950's - until he was drafted into the military service. He did not return to live in the Valley until 1961, at which time he purchased this property from his father.

When he operated this property during the 1950's, he used Adshead water to irrigate approximately 50 A. i.e. 9 A on the East and 45 A on the West side of the South Fork of Rock Creek. Historically, Adshead water was used on the East side of the creek to water land next to King Lane and Jackson water was used on the West side of the creek. However, because it was difficult to maintain a ditch along the hill in the center of the property, only about 9 A were continued to be irrigated with Adshead water on the East side of the creek and Adshead and Jackson waters were combined to irrigate approximately 45 A on the West side of the creek.

Dry dams then were used to divert the water from Rock Creek into both the Adshead and Jackson Ditches. No measuring devices were installed nor used in either ditch from the inception of both of these ditches in 1879 until the mid-1960's - a period of more than 80 years! The Ranch Ditch (41-036), which is located on the East Fork of Rock Creek and is the largest but also one of the youngest water rights in the Rockland Valley, and the IDWR then forced the Adshead and Jackson Ditch water users to install and measure their diversions through "Route measuring devices". Somehow (?) during this process the amount of water allocated to J. Juan Spillett's 120 A also was reduced from in excess of 53 miner's inches (SEE Attachment #1) to 40 miner's inches (30 inches in the Adshead Ditch and 10 inches in the Jackson Ditch). Ray Spillett (Robert and James Spillett's father) then was leasing and operating this property and neither J. Oren nor J. Juan Spillett were aware that the water allocated to the property had somehow been reduced. Ranch Ditch water users also did not realize that the removal of the dry dams for the Adshead and Jackson Ditches actually resulted in lesser amounts of water

EXHIBIT

A



being available for downstream users during the late summer when water for irrigation often is limited in the Valley. This is because Adshead and Jackson Ditch water users had for more than 30 years "watered-up" their lands with high waters or early spring run-offs. Then, later in the summer, much of this water gradually seeped back into the South Fork of Rock Creek; thereby, providing more late-season water for downstream users and reducing the amounts of water the Bench Ditch had to turn down for use by prior-right water users.

J. Juan Spillettt desired to make the 120-A property he purchased from his father as productive as possible. Knowing that the Nelsons would protest any action which he might take to better utilize his water rights in the Adshead and Jackson Ditches, he drilled and attempted to develop a well to irrigate his property. However, when this proved to be unsuccessful, he first consulted with the SCS. Evaluations were made as to how he could most effectively use his water from the Adshead and Jackson Ditches on his property. The SCS concluded that by far the most practical method was to change the point of diversion and to pump directly from Rock Creek into a sprinkler irrigation system.

J. Juan Spillettt then consulted with what was reported to be one of the best water lawyers in Idaho (Mr. Foster in Idaho Falls) regarding his making application to the IDWR to change the point of diversion for his water rights and to pump and sprinkle irrigate directly out of Rock Creek. Mr. Foster assured him, "There is no way they can legally stop you from changing your point of diversion and making more beneficial use of your water." Mr. Foster gave him information regarding court cases where similar transfers had been protested and negated. And, he assured him with, "Should there be any protests, I could win this hands-down for you. But, you can't afford me for the small amount of water involved." Based on this, J. Juan Spillettt made application to the IDWR (Transfer 3519) in 1988 to change the point of diversion for his 30 miner's inches of Adshead water and 10 miner's inches of Jackson water and to pump directly out of the South Fork of Rock Creek to sprinkle irrigate his property.

As expected, Nelsons protested, as did James Robinson and the Bench Ditch. Lawyers were engaged by both the Nelsons and J. Juan Spillettt and several hearings were held. The IDWR representative (Gary Spackman) didn't seem to even know what was going on, i.e. after maps depicting the Adshead and Jackson Ditches had been posted on the wall and explained, Mr. Spackman inquired as to, "Are there two ditches involved? I thought there was only one."

At the end of the hearings, Farold Nelson stated to J. Juan Spillettt that if he would make arrangements with the other Jackson Ditch water users, the Nelsons would not protest his changing the point of diversion for the Jackson Ditch and pumping out of the creek. Thus, J. Juan Spillettt talked to Robert Spillettt and Scott Weston about exchanging 10 miner's inches of his Adshead water for each of their 10 miner's inches in the Jackson Ditch. Thus, J. Juan Spillettt installed a pump and main line on his property and began to use the 30 miner's inches of water from the Jackson Ditch to sprinkle irrigate his property. While awaiting a final decision from the IDWR, he also leased his remaining 10 miner's

inches of water in the Adshead Ditch to Kelvin Tayson.

Based on the initial hearings, the IDWR (Gary Spackman) recommended that J. Juan Spillettt be allowed to change his point of diversion for both the Adshead and Jackson Ditches and to pump directly out of Rock Creek. BUT, it also was specified that he had to irrigate in the rotational pattern used on the Adshead Ditch. This meant he would have 190 miner's inches of water (160 from the Adshead Ditch plus 30 from the Jackson Ditch) for a little more than 2 out of every 12 days during the irrigation season. Because this was impractical, J. Juan Spillettt submitted a protest to the IDWR. However, his protest was either ignored or lost in the paper shuffle between the IDWR's Boise and Twin Falls offices, because it was not considered with regards to the IDWR's subsequent decree.

Thereafter, for some unexplained reason (?), the IDWR disallowed Weston's 10 inches of Jackson water and decreased Robert Spillettt's Jackson water from 10 to 5 inches. This opened another "can of worms". The IDWR's actions were protested by the Jackson Ditch water users. And, the IDWR eventually reinstated Weston's and Robert Spillettt's Jackson Ditch water rights.

To complicate matters even more, during the mid-1990's it was discovered that the "Houtz measuring devices" do not measure water flows either consistently nor accurately. INSTEAD, they provide "15-30% less than a normal miner's inch". Thus, the IDWR - claiming that these measuring devices historically had been accepted and used by water users in the Rockland valley for more than 100 years - attempted to reduce water allocations accordingly, i.e. although a water user is deeded 30 miner's inches, he can only use 26.67 miner's inches. The IDWR apparently overlooked the fact that Adshead and Jackson Ditch water users had not accepted nor used "Houtz measuring devices" until they were forced to do so during the mid-1960's. Furthermore, they, as well as other water users in the Rockland valley, were under the impression their deeded amounts of miner's inches of water were being supplied to them. How then can the IDWR arbitrarily reduce deeded and recorded water rights?

Finally, on December 9, 2003, "another settlement meeting" was held in Rockland between the IDWR and the Adshead Ditch water users. During the meeting, the IDWR essentially proposed that the Adshead and Jackson Ditches be combined and that J. Juan Spillettt be allowed to change his point of diversion and pump directly out of Rock Creek. However, his 30 miner's inches in the Adshead Ditch would be reduced to 26.67 miner's inches. This would have meant the Adshead Ditch water users would have to place a 1-inch board along one side of their "Houtz measuring device" and the total flow in the Adshead Ditch would be reduced by only 4% (6.67 miner's inches). This, however, would not reduce the amounts of water used by those on the Adshead Ditch, because they would have longer water turns.

J. Juan Spillettt reluctantly accepted this reduction. He, Kelvin Tayson, Robert and James V. Spillettt, and Scott Weston accepted the IDWR's proposal. However, Gene Nelson did not. Thus, the matter remains in limbo.

During the December 2003 settlement meeting it also was discovered that the rotational pattern used on the Adshead Ditch did not equitably distribute water to all users, i.e. Nelsons received somewhat more than they were entitled to and Kelvin Tayson received twice his deeded amount; whereas, Robert & James V. Spillettt received a little less than they were entitled to and both J. Juan Spillettt and Scott Weston were grossly under allocated in the number of hours they should have had during their water turns. Insofar as can be determined, this resulted from Farold Nelson and the then water master Jack Robinson (James Robinson's father) arbitrarily establishing during the 1960's this water-turn schedule, which did not adhere to deeded amounts nor the previous rotational pattern used on the Adshead Ditch. This presents a problem yet to be resolved.

Specific Comments:

1. page 4 --- Although the "Houtz Decree" of 1890 gave specific details on construction and placement of measuring boxes to be used to measure water flows, no such measuring devices were used in either the Adshead nor Jackson Ditches - until the water users on these ditches were forced to do so in the 1960's. Instead, between 1879 and the mid-1900's, these two ditches used dry dams and diverted ALL of the water in the South Fork of Rock Creek for irrigation.

Regarding the "Houtz measuring devices" delivering "approximately 15-30% less than a normal miner's inch", should not deeded and recorded water amounts still be honored?

2. bottom page 4 and top page 5 --- Following the forced installation of "Houtz measuring devices" in the Adshead and Jackson Ditches during the 1960's, it was Farold Nelson and the watermaster Jack Robinson who arbitrarily established what is referred to as the "historic rotation agreement" for the Adshead Ditch. Neither J. Oren nor J. Juan Spillettt had any say in this agreement. Ray Spillettt was then operating their property. When J. Juan Spillettt operated his now 120-A property in the early 1950's, his Adshead water turn was then 2.25 out of every 12 days during the irrigation season.

3. page 5 --- During the hearings regarding J. Juan's Spillettt's proposed change of points of diversion, watermaster James Robinson claimed that Idaho law stipulates that a miner's inch of water can be used to irrigate ONLY 1 A of land. This is not true! To the contrary, Idaho law stipulates that - to constitute beneficial use - a miner's inch must be used to water AT LEAST 1 A of land. Cary Spackman from the IDWR apparently believed Mr. Robinson's statement, as he tried to stipulated that J. Juan Spillettt could only irrigate 1 A with each miner's inch of his water. He further stipulated that J. Juan Spillettt had to designate specific acres of land for both his Adshead and Jackson miner's inches of water. This was despite the fact that Spillettt had previously irrigated about 50 A with 40 miner's inches of water and that virtually all water users on the Adshead Ditch irrigate more acres than they have deeded miner's inches of water (i.e. Nelsons irrigate 112 A with 70 inches or 1.6 A per inch). Furthermore, during the Snake River Adjudication process, the IDWR (James Stanton in the Twin Falls IDWR office) told Spillettt that his water rights pertained to ALL of his 120 acres and he was charged fees by the IDWR accordingly. J. Juan Spillettt protested Mr. Spackman's

recommendations. He believes his water pertains to ALL of his land and that his water can be used on any or all portions of of his property - as he deems to be most beneficial.

4. page 5 --- J. Juan Spillettt submitted a protest to the IDWR's Second Proposed Memorandum Decision and Order of September 1952 regarding "Transfer 3519". His protest, however, was never acknowledged nor apparently given consideration in the IDWR's final decision, which he also protested.

5. page 7 --- Insofar as can be determined, the rotational pattern of water use for the Adshead Ditch was arbitrarily established during the 1960's by the then watermaster Jack Robinson and Farold Nelson, a major water user on the Adshead Ditch. This rotation did not adhere strictly to deeded amounts of water nor to the rotational pattern previously used. It appears that the Nelsons and their lackeys have dictated water use in the Rockland valley for so long that they think they are a law unto themselves.

6. page 8 --- Why did the IDWR use "billed" quantities, rather than deeded quantities, for its recommendations for the rights out of the Adshead Ditch? Does this mean arbitrary changes in rotational patterns of water use negates deeded water rights, which have been duly and legally recorded in the County Courthouse?

7. page 9 (41-82) --- J. Juan Spillettt's claim for 40 inches IS ACT for 10 inches more than the historic quantity of water. Historically his property was deeded in excess of 53 inches (SEE Attachment 1). And, even after "Route measuring devices" were placed in the Adshead and Jackson Ditches during the 1960's, he was acknowledged to have rights to 40 inches (30 inches in the Adshead Ditch and 10 inches in the Jackson Ditch).

8. page 13 --- The historic quantities of 10 inches for 41-8C and 20 inches for 41-8E ARE correct. J. Cren Spillettt sold 40 A with an associated 10 inches of water, which he had inherited from his father (James Edward "Ted" Spillettt), to Thomas McLean in 1946 - but with the stipulation that should this 40 A ever be sold, Ray Spillettt (his brother) should be given the first opportunity to buy it. When the McLean family sold their property to Taysons, the 40 A previously owned by J. Cren Spillettt was sold to Ray Spillettt. However, it appears the 10 inches of water pertaining to this property was never transferred to Ray Spillettt.

Finally, isn't it time that the IDWR protected the rights of ALL water users in the Rockland Valley, rather than catering to the desires of the larger or more influential water users?

I trust that what is herein submitted will be of help to the IDWR in resolving water issues on the Adshead and Jackson Ditches, as well as throughout the Rockland Valley.

Sincerely,

J. Juan Spillettt

Sheet #FLE 67

Instrument #49425

QUITCLAIM DEED

James E. Spillet, and Lamona Spillet, his wife,
 Raymond Spillet and Grace Spillet, his wife,
 Frank Spillet, and Erma Spillet, his wife,

Grantors

TO

Benjamin Joseph Spillet,

Grantee

Dated: January 10, 1934.

Consideration: One Dollar and other good and valuable.

Acknowledged: January 12th, 1934, before Thos. B. Bernard, Notary Public
 for the State of Idaho, Residing at Rockland, Idaho.

Commission expires Nov. 12, 1934. SEALED - REGULAR.

Recorded: March 9th, 1934, at 9:40, A. M., in Book 30, page 128. Records
 of Power County, Idaho.

DESCRIPTION

The West one-half of the North-west quarter ($\frac{1}{2}$ NW $\frac{1}{4}$) and the North one-half
 of the Northwest quarter of the south-west quarter ($\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$) and the North
 one-half of the Northeast quarter of the Southwest quarter ($\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section
 Twenty (20), Township (10), South of Range Thirty-one (31), E. B. M.; also
 twenty-six and two-thirds (26 $\frac{2}{3}$) miners' inches of water more or less from the
 Adzhead and the Tayson irrigating ditch from the South fork of Rock Creek in
 Power County, Idaho, also eleven and two-thirds (11 $\frac{2}{3}$) miners' inches of water
 more or less from the Charles Tayson Jr., irrigating ditch from Rock Creek in
 Power County, Idaho; also thirteen and one-third (13 $\frac{1}{3}$) miners' inches of water
 more or less from the Stradder irrigation ditch from Rock Creek in Power County,
 Idaho; also all the right, title and interest in the flumes, head-gates
 and ditches conveying said water upon the land to be irrigated.

