

RECEIVED

MAY 06 2004

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

Department of Water Resources

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT
LISA R. TANNER (CA ONLY)

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODSELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN
BRENT L. WHITING

May 4, 2004

Candice McHugh
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Ernest Carlson
Water Right Analyst
Idaho Department of Water Resources
900 N. Skyline Drive
Idaho Falls, Idaho 83402

Re: *Henderson Ranches, Inc.*
Water Right Nos. 29-4202, 29-4203, 29-11089, 29-13479, 29-13481

Dear Candice and Ernie:

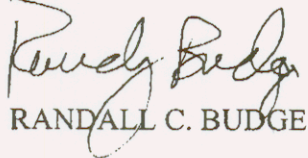
This will follow up on the April 19, 2004 initial hearing before Special Master Brigitte Bilyeu regarding the captioned water rights. You will recall that the claimant Henderson Ranches, Inc., filed Objections to the recommended priority date asserting that it should be the June 1, 1881 date claimed. Following our discussions, it was my understanding that the claimed priority date would be accepted if Henderson Ranches, Inc., could come up with additional documentation in support of the priority date. Accordingly, I am submitting the Supplemental Supporting Affidavit of Alice H. Dunn. Attached to that is her original Supporting Affidavit dated January 27, 2003, which may not have come to your attention. This Affidavit was based upon extensive research and genealogy performed by Mrs. Dunn concerning the property ownership and water right use history. The Supplemental Affidavit provides additional documentation, which consists of a newspaper article published in 1881 concerning the construction of the home on the property where Mrs. Dunn and her parents lived and still is in existence, Exhibits "A" and "B". Additionally, Exhibit "C" attached is the original Homestead Claim in 1865.

Candice McHugh
Ernest Carlson
May 4, 2004
Page 2

The claimed 1881 priority date appears conservative, given the homestead in 1865 and that the property most certainly was productively used for irrigated agricultural purposes well before such a substantial home would have been constructed in 1881. I further note that the *Union Elevator v. McCammon Ditch Decree* shows many rights in 1881 time frame, with priority dates on the main Portneuf River, Marsh Creek and other tributaries. These rights were earlier than the canal company rights of Portneuf-Marsh Valley Canal Company, McCammon Ditch Company and others. This is because the early settlers began diverting and using water in smaller quantities where it was more easily available on the tributaries. It is my understanding that the SRBA has recognized many other claims in the area for domestic, livestock and irrigation with priority dates in the 1880s and 1890s. Additionally, other rights of Henderson Ranches, Inc., for domestic and stock water purposes have already been decreed with an 1884 priority.

Based on the foregoing, we would respectfully request that an SF-5 Settlement Agreement be entered into providing for an 1881 priority date with respect to these rights. To my knowledge there are no other elements of these rights or other issues in dispute, as there are no other objectors. If you have any questions or would like to discuss this further, please do not hesitate to contact me.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Alice Dunn, Secretary/Henderson Ranches, Inc. (w/encls.)
Thomas Henderson (w/encls.)

STATE OF IDAHO)
 : ss
COUNTY OF BANNOCK)

homesteaded 160 acres in 1865. In support of this, I am attaching a true and correct copy of the "Preemption Claim of C.D. Carpenter" in Oneida County Records, Malad, Idaho, which was copied and provided to Robert W. Henderson by the County Recorder and states in pertinent part:

Pre-emption)
Of)
C.D. Carpenter)

Know all men by these pr[esents] that I, C. D. Carpenter, do hereby give notice that o[n] the 27th day of June 1865 I located and Settled on and claimed one Hundred and Sixty acres of la[nd] for Agricultural and Grazing purposes being a part of the unsurveyed public lands of the United St[ates] in the County of Oneida and Territory of Idaho: th[e] same being located on Marsh River in Marsh Va[lley] about seven miles south of the Portneuf Canon a[nd] bounded and described as follows, towit:

Commencing at a Stake about ten feet East of [C] D Carpenters house and running north Three Hundred[-] Twenty rods Thence West Eighty Rods Thence South [?] Hundred and twenty rods Thence East Eight[y rods] to the place of beginning and containing one Hund[red] and Sixty Acres of land

And further that I claim the foregoing deser[t)] One Hundred and Sixty Acres of land as a homeste[ad] under the laws of the United States and of the Territ[ory] of Idaho, and further, that I do hereby claim sai. . .

4. Based on the foregoing and my previous supporting Affidavit, it appears clear that water was diverted and applied to beneficial use at the latest by June 1, 1885, if not sooner, since the property had been homesteaded in 1865.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 4th day of May, 2004.



ALICE H. DUNN

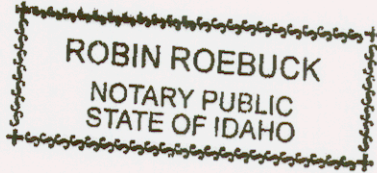
SUBSCRIBED AND SWORN TO before me this 4th day of May, 2004.

Robin Roebuck

NOTARY PUBLIC FOR IDAHO,

Residing at Pocatello.

My Commission Expires ~~10/11/2004~~ 8/18/2006



**SUPPORTING AFFIDAVIT OF
ALICE H. DUNN**

STATE OF IDAHO)
 : ss
County of Bannock)

Alice H. Dunn, being first duly sworn under oath, deposes and states that the following is true and correct to the best of her knowledge, information and belief:

1. I am a resident of the State of Idaho and have resided at 1414 Delphic Way, Pocatello, Idaho 83201, since August 20, 1993. I was born in the ranch house of Henderson Ranches, Inc. on August 14, 1931 and lived there continuously until August 1, 1953, except from September 7, 1949 until January 7, 1951. I have been familiar with and closely involved in the operation of Henderson Ranches throughout my life. I have served as the secretary of Henderson Ranches, Inc., an Idaho corporation, from 1976 to 1984 and from 1993 to present. Henderson Ranches, Inc., is a closely-held corporation whose shares are owned by me and other family members. Henderson Ranches owns and operates a ranch near Arimo, Idaho, together with all appurtenant water rights.

2. This Affidavit is submitted for the purpose of further supporting the Notice of Claim to a Water Right No. A29-04203 filed by Henderson Ranches, Inc., on April 4, 1990, in the Matter of the General Adjudication of the Rights to the Use of the Water from the Snake River Basin Water System, Twin Falls District Court Civil Case No. 39576. The statements made in the Claim were sworn to be true and correct by Robert S. Henderson, who is now deceased, and was then acting as Vice President of Henderson Ranches, Inc. Following an on-site inspection in October 2002 of the extensive and complex irrigation system utilized by Henderson Ranches, Inc., Idaho Department of Water Resources agent Dave Carlson requested that additional evidence be submitted to support the June 1, 1885 date of priority under Right No. A29-04203; and, further, recommended that five additional Notices of Claim to a Water Right be filed to supplement our previous claims. These additional claims are being filed simultaneously with this Affidavit.

3. I have extensively researched and am familiar with the genealogy of the owners of Henderson Ranches, Inc., as well as the predecessors in interest to the property now owned by

Henderson Ranches, Inc. Additionally, I have extensively researched and am familiar with the real property owned and appurtenant water rights claimed by Henderson Ranches, Inc., together with the ownership and use of the same by its predecessors in interest. Based thereon, it is my sworn testimony and belief that the priority dates and all other statements concerning the diversion and use of water under Claim No. A29-04203, together with the five additional water right claims being filed herewith, are true and correct.

4. The following additional information is submitted in support of the June 1, 1885 priority date claimed under Right No. A29-04203 based upon my knowledge gained in researching the genealogy and property ownership and water right use history. The property which is the subject matter of this claim included 360 acres located in Section 18 of Township 10 South, Range 37 East, B.M., Bannock County, Idaho, which was acquired by my grandfather, Benjamin Williams Henderson and uncle, William M. Woodland, in 1913, and has been continuously owned and operated by Henderson family members until Henderson Ranches, Inc., was incorporated January 11, 1963. Benjamin Williams Henderson, was familiar with the diversion and use of water as set forth in this claim from the time Vincent Cooper purchased it from Mr. Watson who had purchased it previous to 1881, the year Watson built the presently existing ranch house. The first owner of the land was Mr. Carpenter who owned the ranch at least as early as 1865 and operated a way station there for the stage line to Montana. Benjamin W. Henderson's familiarity is based on the fact that he was a nephew living nearby and acquainted with the farm and its operation by the owners, Vincent Cooper and Celia Jane Woodland Cooper, husband and wife, who were married in January 1890 and set up housekeeping in the aforementioned house, Vincent Cooper having purchased the land previous to that date. Vincent Cooper and Benjamin Williams Henderson operated and managed this property for the benefit of the minor children, Laura and Veda Woodland, until he acquired the property from them in March of 1913. The above dates and building of the house have been verified by me from newspaper clippings and also H. Leigh Gittins' well-documented book on Carpenter Ranch.

5. Based on my research, it appears clear that the water rights identified by Water Right No. A29-04203 had been diverted and applied to beneficial use at the latest by June 1, 1885, at the beginning of the irrigation season that year. The use of these water rights was necessary to make the

land productive and make a living farming. Flood irrigation would have taken place at that time by diverting water of Marsh Creek into ditches, which would permit flood irrigation of adjacent lands. The same system of ditches has continuously existed and remained in place until 1942, when the flood irrigation system began to be replaced by sprinkler irrigation.

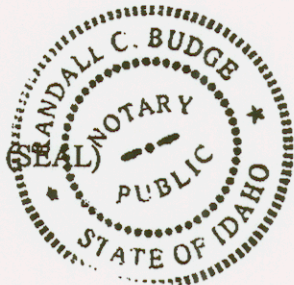
6. My father, Robert W. Henderson, who died June 11, 1996 at the age of 92, lived on the ranch from March 1913, and spent most of his life operating Henderson Ranches. His Affidavit dated July 11, 1995, was made at the request of an agent of the Idaho Department of Water Resources (who may have been named Ernie Carlson) during a meeting at the Department's Idaho Falls Office by my father and myself on that date, and further supports the June 1, 1885 priority date. According to his Affidavit, residents in the area personally told him about diversion from Marsh Creek using a rock dam to irrigate the property no later than June 1, 1885. This dam was used during the ownership of Vincent Cooper and could have been there much earlier.

FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 27 day of January, 2003.

Alice H. Dunn
ALICE H. DUNN

SUBSCRIBED AND SWORN TO before me this 27th day of January, 2003.



Randall C. Budge
NOTARY PUBLIC FOR IDAHO
Residing at Pocatello
My Commission Expires: 10/11/2006

EXHIBIT "B"

Transcription of the portion of the article found in *The Register*, Blackfoot, Idaho, Saturday, October 30, 1881, "Local Brevities," pertinent to the house built by John Watson about two miles south of Oneida. Oneida was the town on the narrow gauge railroad that moved up the hill when the standard gauge railroad came through. The town, at the behest of the USPS, had to be renamed, and the residents chose to name it Arimo in honor of the Indian chief of that name. ("Edmo" is another rendition.)

Through the kindness of ex-sheriff John Z. Watson we were driven down to his ranch, about two miles below town, where he is building what might be called a mansion for this country. It is certainly one of the finest dwellings in this part of the country; is one and a half stories high and will cost when completed and furnished nearly ten thousand dollars. He has one of the best ranches in the county and has concluded to settle down on it instead of looking for a better location. Messers Lundberg & Garff of Logan are the builders. They contracted to build it from the foundation to the entire completion ready to move into. It was commenced on October 10th and by next Saturday, less than thirty days, will be ready for occupancy.

Copied from Oneida County records on file at the land office
in Malad, Idaho. Copies obtained by R. W. Anderson &
H. Leigh Gittins in the late 1970's when Gittins was
researching for his book "The Gold Road".

EXHIBIT "C"

Mr. Gittins' Column
C. D. Confortin

Some all over by three
what Mr. Confortin to hereby and notice that
the 27th day of June 1861 I located and settled
and claimed one Town Lot and City Lots of Lo
for Agricultural and Grazing purposes being a
part of the unincorporated lands of the United St
in the County of Oneida and Territory of Idaho
I have being located my "Mound River" in Malad
about seven miles south of the "Gardiner" location
located and described as follows
Beginning at a stake about two feet east of
a Confortin house and running north three hundred
fifty rods thence west forty rods thence south
thence east twenty rods thence east eight
to the place of beginning and containing one half
and fifty rods of land
And further that I claim the foregoing
one hundred and sixty rods of land as a homestead
under the laws of the United States and of the Terri
of Idaho and further that I do hereby claim as