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Mar 29 1 21 PM '75

BY James Anderson
DEPUTY

1 IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

3 CHARLES SPIEGEL and KATHLEEN)
4 M. SPIEGEL, Husband and Wife,)
5 Plaintiffs,)
6 -vs-)
7 FRANK LEW, a single person,)
8 Defendant.)

Case No. 33099
STIPULATION AND ORDER

9
10 COME NOW the parties, by and through their attorneys
11 of record, and stipulate and agree that the above-captioned case
12 may be dismissed by the Court on the following express terms and
13 conditions:

14 1. This agreement is to be substituted for all plead-
15 ings on file herein and this agreement may be entered as a
16 judgment resolving all issues between the parties;

17 2. That henceforth Mr. Lew may appropriate, subject
18 to any other third party rights, up to a maximum of two (2)
19 c. f. s. from Cottonwood Creek;

20 3. That henceforth Mr. and Mrs. Spiegel may appro-
21 priate waters in excess of two (2) c. f. s. from Cottonwood
22 Creek, providing the same does not interfere in any manner
23 whatsoever with Frank Lew's prior right of appropriation recog-
24 nized hereunder;

25 4. That the foregoing appropriations from Cottonwood

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1 Creek are binding as between the parties and neither will wil-
2 fully nor intentionally interfere with the other's appropriations,
3 and that said appropriations shall be in force throughout the
4 year;

5 5. That the Spiegels may install, at their own
6 expense, a weir on Cottonwood Creek, the purpose of the same
7 being to indicate whether Mr. Lew is utilizing an excess of
8 two (2) c. f. s. of said waters, providing the same does not
9 interfere in any manner whatsoever with Frank Lew's appropria-
10 tion and division of two (2) c. f. s. of the said Cottonwood
11 Creek;

12 6. That the Spiegels are perpetually enjoined from
13 wilfull or intentional acts or omissions to interfere with Mr.
14 Lew's earthen dam upon Cottonwood Creek, the same now being
15 utilized by Mr. Lew to divert waters from Cottonwood Creek and
16 onto his property;

17 7. That Mr. Lew grant, transfer and convey to
18 Spiegels, their heirs, successors and assigns, the right to
19 divert and appropriate six (6) miner's inches of water from
20 Marsh Creek, the same to be an appertenance to their present
21 properties, with their own diversion point and pump to be
22 established by them, said transfer to be made to grant and
23 transfer to Spiegels that same 1947 priority now enjoyed by
24 Mr. Lew. Charles Spiegel and Kathleen M. Spiegel hereby
25 specifically recognize and accept full responsibility to
26 arrange with the proper authorities for the establishment of
27 the aforementioned point of diversion, and specifically agree
28 to pay each and every cost incident thereto.

29 8. That the foregoing agreement relating to the
30 utilization and use and appropriation of waters from Cottonwood
31 Creek, in no way constitutes a Court adjudication of water
32 rights, other than as between the above-captioned parties

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BY *[Signature]*
DEPUTY

1 themselves;
2 9. The parties agree to execute documents of title
3 transfer or conveyance in conformance with the above-mentioned
4 Paragraph 7.
5 10. That each of the parties bear their own costs
6 and attorney fees incurred in the above-captioned case;
7 11. That all terms and conditions of the real estate
8 agreement between the parties dated the 6th day of June, 1975,
9 shall otherwise remain in full force and effect;
10 12. That Charles S Spiegel and Kathleen Spiegel hereby
11 specifically waive, in consideration of the execution of this
12 stipulation, any and all claims, known or unknown, which they
13 might now or hereafter assert against Frank Lew as a result of
14 their purchase from him of that certain real property which is
15 the subject of this agreement.

17 *[Signature]*
18 CHARLES SPIEGEL

19 *[Signature]*
20 KATHLEEN M. SPIEGEL

22 *[Signature]*
23 FRANK LEW

24 ORDER

25 Upon reading the foregoing and good cause appearing
26 therefor, and the Court being fully apprised in the premises,
27 IT IS HEREBY ORDERED that the foregoing stipulation is adopted
28 by the Court, and that the Complaint and Counterclaim are hereby
29 dismissed based upon the terms and conditions contained in
30 said Stipulation.

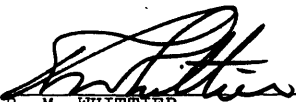
31 DATED this 29 day of March, 1976.

32 *[Signature]*

[Signature]
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing STIPULATION AND ORDER was mailed to W. Marcus W. Nye, Attorney at Law of the firm of Racine, Huntley & Olson, P. O. Box 1391, Pocatello, Idaho, 83201, postage prepaid, this 4th day of March, 1976.


R. M. WHITTIER

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