

BLASER, SORENSEN & HANSEN, *Chartered*

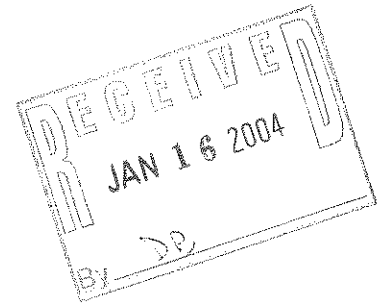
Attorneys at Law
(208) 785-4700
FAX No. 785-7080

Stephen J. Blaser
Murray Jim Sorensen
Scott H. Hansen
Justin B. Oleson

285 N.W. Main
MAILING ADDRESS:
P.O. Box 1047
Blackfoot, Idaho 83221

January 14, 2004

Department of Water Resources
Attn: Cindy Bird
15 West Center Street
Soda Springs, ID 83276



RE: Wayne & Cindy Telford, Claim No. 27-4079

Dear Ms. Bird:

I would have faxed this information to you today to comply with your response date, however, your assistant stated that mailing it would be sufficient.

In response to your letter dated December 18, 2003, enclosed is the evidence that we have been able to gather at this time. Specifically, three affidavits, one from George Oleson, one from Wallace Reid, and one from Ed Hall.

George Oleson was the previous property owner who is aware of the water being used back into the 1950's or early 1960's when he was a young child he helped irrigate the ground. Wallace Reid remembers the land being irrigated back into the 1940's, and Ed Hall's affidavit is based upon the fact that his grandfather owned the same property which was purchased in 1932.

All three affidavits and every individual that I have spoken to indicates that the ground has always been irrigated as far as they can remember. That the point of diversion for the ditch had always came out of Poison Creek and they all believe that the property had been irrigated by this water since the property was initially settled.

Ed Hall believes that it may have been a possibility that the water was transferred up there. Possibly Henry Dunn transferred water up there from his initial right down in the valley? If that is so, Department of Water Resources should have the evidence indicating that transfer of water. That would provide documentation and perhaps an earlier priority date (i.e. 1870). Otherwise, this property has been irrigated since the time that it was settled, which was approximately 1889 and the priority should be from at least that date.

The first deed in 1903, when Rawlings sold the property included all ditch, ditch rights, water and water rights used upon the tract of land. Therefore, obviously there was a ditch and water that was used at that time and it is believed that is the same ditch and water that is currently used.

This water was definitely not new in 1984, but it is just the claim that was made in 1983, as was required by the Department of Water Resources. At that time, Joe Oleson went to the Department of Water Resources in Idaho Falls and submitted the claim. He was assisted, according to the claim by a KCW, which was then checked by an HWJ. At the time, the water had to be claimed on, or according to the threats that were made, the failure to file would result in a forfeiture of the water rights. Therefore, individuals went up to the Department of Water Resources and filed claims. As is indicated in the map that is been drawn on, the labeling is not in Joe Oleson's handwriting and the map shows a clear point of diversion on the junction of Rawlins and Poison Creek with the place of use upstream from that point of diversion. We all know that you cannot irrigate uphill. It should have been known at the time the X was placed on the map, that this was an incorrect placement of the point of diversion. In fact the point of diversion has always been upstream on Poison Creek.

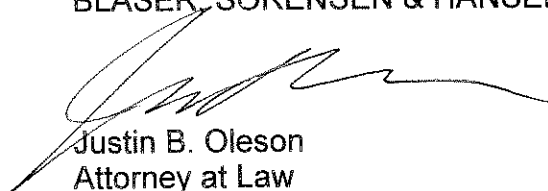
In reference to the irrigatable 30 acres. It is not known why there was only 30 acres claimed. It is also not known exactly how many acres are actually irrigated. It is estimated somewhere between 30 and 40 acres. The Department of Water Resources typed out the claim. It is also known that it does take additional water for a ditch right, beyond that which is actually put to beneficial use.

In regards to your request to show the date the change of point of diversion was made. There was no change in the point of diversion. The water has always been diverted out of Poison Creek and so there is absolutely no evidence that can be found to indicate a change in the point of diversion.

I believe the affidavits and documents previously provided to you should be sufficient to prove this claim. If you have any questions or need any other information, don't hesitate to contact me.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.



Justin B. Oleson
Attorney at Law

JBO/prh/03-1589

enclosures

cc: Wayne & Cindy Telford



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 West Center Street, Soda Springs, ID 83276

Phone: (208) 547-3993 Fax: (208) 547-3939 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 18, 2003

Wayne and Cindy Telford
1016 E. 1000 N.
Shelley, ID 83274

Ref: Snake River Basin Adjudication (SRBA)
Claim No. 27-4079

Subject: Evidence of priority
Change in source and pod

Response Date: January 14, 2004

Dear Claimants:

I received the information that was forwarded to my office by Justin B. Oleson, Attorney at Law. After reviewing the information I've outlined several issues below.

The evidence does not support the claimed priority date. The documentation also does not support "decreed rights to the waters of Rawlings Creek with a priority of 1883". If you wish to claim the 1883 priority date then you will need to provide additional evidence to support that date. Otherwise, the priority date will be moved back to a later date.

IDWR has reviewed the basin 27 water master reports from 1975 to 1987 and found that delivery on the right was "new" in 1984? There is no listing or reference to the above water right until 1984. Was this water used prior to 1984? What evidence can be provided to support delivery and beneficial use of the water prior to 1984?

The warranty deed dated February 4, 1933 refers to "40 inches in Rawlins Creek" on 80 acres of land. Idaho Code allows for irrigation of an inch per acre. The above referenced Notice of Claim is for 30 acres and 40 inches of water. Why? It may be possible to recommend the additional diversion rate but the claimants must provide evidence to support a higher diversion rate is required.

Also, the Notice of Claim listed above indicates a change in the source and point of diversion as described below:

Previous source: Rawlins Creek
New source: Poison Creek

Previous point of diversion: NESE section 22, T3S, R39E.
New point of diversion: NWSW section 23, T3S, R39E.

A water right owner who has made a change in use of a water right prior to the commencement of the SRBA **without prior IDWR approval** may claim the change in the SRBA. IDWR may recommend a right as changed, however, only if the change meets certain requirements. One of those requirements is that the changes not result in injury to other water rights, or that the change be conditioned to prevent injury to other water rights.

Before IDWR may recommend this claim, your claimants must provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after the November 19, 1987.

This office must receive your response by the response date shown above. If no response is received, then your claim to water will not be recommended.

If you have any additional questions please feel free to contact me in my office in Soda at 547-3993.

Respectfully,

Cindy E. Bird
Adjudication Bureau

Cc: Justin B. Oleson
Attorney at Law
Blaser, Sorensen & Hansen

BLASER, SORENSEN & HANSEN, *Chartered*

Attorneys at Law

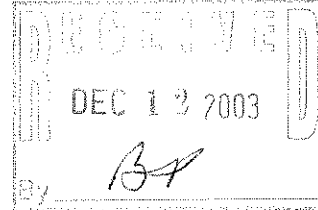
(208) 785-4700

FAX No. 785-7080

Stephen J. Blaser
Murray Jim Sorensen
Scott H. Hansen
Justin B. Oleson

285 N.W. Main
MAILING ADDRESS:
P.O. Box 1047
Blackfoot, Idaho 83221

December 10, 2003



Department of Water Resources
Attn: Cindy E. Bird
15 W. Center Street
Soda Springs, ID 83276

RE: Wayne and Cindy Telford
Claim No. 27-4079

Dear Ms. Bird:

In tracking down documentation regarding the above claim, I have discovered the following information:

This property was originally patented to a William J. Rawling, who according to the 1903 Warranty Deed between William J. Rawling and N.G. Franklin, made desert entry in 1889. He finally proved it in 1892. In that attached Deed, it specifically speaks of all ditches and ditch rights, water and water rights used upon, connected with, or pertinent to said track of land.

That property was immediately sold to Henry Dunn by N.G. Franklin. Henry Dunn should be familiar to the Department of Water Resources, in that he is listed as #2 in the Steven's Decree, with a priority right of 1870.

After he died, his family sold the property to William Hall in 1932. That attached Warranty Deed specifically describes 40 inches of water in Rawlings Creek. When Hall sold to Cornell Davis, that same language is included in that Deed.

The first time we found mention of a priority date is in Cornell Davis's mortgage to Utah Mortgage Loan Corporation in 1945. It states in the mortgage that the "decreed rights to the waters of Rawlings Creek with a priority of 1883".

After that, I believe the property was sold to my grandfather, Joe Oleson. After his death, my grandmother sold it to Wayne and Cindy Telford.

Enclosed are copies of the deed from Rawling to Franklin, the deed from Dunn to Hall, and the mortgage from Davis to Utah Mortgage Loan Corporation. These are out of Cornell Davis's Abstract of Title. I have double checked the actual deeds in the

Records Office and found that they match.

For your information, Rawlings Creek flows through the middle of the property. The ditch that supplies the water to the property actually comes out of a tributary of Rawlings Creek, which is commonly called Poison Creek. It is approximately 300-400 yards from where the two streams join inside Telford's property. Rawlings Creek then flows another couple of miles where it joins Brush Creek.

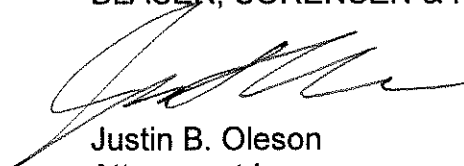
Our family is aware, through personal information and knowledge that has been passed through the years, that the property has been irrigated from the time it was initially settled.

If you need any further information in regards to the deeds, I will be happy to provide it. Otherwise, this appears to be the best evidence we have of the water rights.

Thank you.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.



Justin B. Oleson
Attorney at Law

JBO/kd
Enclosures

RECEIVED
DEC 12 2003
BA

WARRANTY DEED

This Indenture, made this 6th day of May, 1903, by and between William J. Rawling and Helen Rawling, his wife, parties of the first part and N. G. Franklin and R. J. Hays, parties of the second part, Witnesseth,

That Whereas, said William J. Rawling, on the 18th day of December 1889, made desert entry No. 1061, at the Blackfoot Land Office for the unsurveyed lands hereinafter described and thereafter, to-wit:- on or about April 4, 1892 made final proof thereon.

Now, Therefore, the said parties of the first part, for and in consideration of the sum of \$500.00 lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by theses presents, sell, convey and quit-claim unto the said parties of the second part and to their heirs and assigns forever, the land embraced in said entry, more particularly bounded and described as follows:-

Commencing at a point of rocks on the North Fork of Brush Creek; thence N. 160 rods; thence E. 80 rods, thence S 160 rods; thence W 80 rods to the point of beginning. Said lands being situate in Bingham County, state of Idaho, together with all ditches and ditch rights, water and water rights used upon, connected with or appurtenant to said tract of land.

And the said parties of the first part hereby represent and warrant that they, the first parties, have as complete and perfect a title to said land as can be obtained thereto, until the same shall be surveyed, and they further represent and warrant that their said title is unencumbered and that they, the first parties, have not conveyed any interest therein or created any lien thereon and that their title to said premises is good against all the world, except the United States of America.

In Witness Whereof, said parties of the first part have hereunto set their hands and seals the day and year first above written.

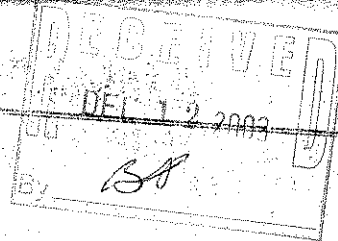
William J. Rawling
Helen Rawling

Acknowledged by William J. Rawling and Helen Rawling, his wife, May 6th, 1903, before Fred G. Caldwell, Notary Public of Bingham County, Idaho. Wife separately examined. Sealed.

Recorded May 19, 1903 at
11:10 a.m., in Book "V" of Deeds at
page 569 of the records of Bingham
County, Idaho.

Notary Public for Idaho

No. 17-



WARRANTY DEED

Lydia Dunn, Henry Dunn, a single person, and Blanche Dunn Christensen, three of the Devises named in the last will of Henry Dunn, deceased and George W. Dunn and Julia Dunn, husband and wife

TO

William E. Hall

Dated- April 16th, 1932-

Consideration- \$400.00-

Recorded- February 4th, 1933 at-

11:05 A.M., in book "56" of Deeds at-

Page 76 of the records of Bingham County, Idaho-

Witness-Earl W. Cory

Lydia Dunn
Henry Dunn
Blanche Dunn Christensen
George W. Dunn
Julia Dunn

Acknowledged by Lydia Dunn, Henry Dunn, Blanche Dunn Christensen, George W. Dunn and Julia Dunn, April 16, 1932, before Earl W. Cory, a Notary Public for Idaho, residing at Blackfoot, Idaho. Sealed. Commission expires February 6th, 1933.

DESCRIPTION and REMARKS

The parties of the first part do grant, bargain, sell, convey and confirm unto the party of the second part, his heirs and assigns forever, all their right, title and interest in and to the following described land situate, lying and being in Bingham County, Idaho, to-wit:

The E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 22 in Township 3 South of Range 33 E.B.M., in Idaho together with 40 inches of water, more or less, in Rawling Creek.

To Have and To Hold in the quiet and peaceable possession of the party of the second part, his heirs and assigns forever, and the said first parties will warrant and forever defend.

RECEIVED 12 2 2003

DEC 12 2003

MORTGAGE

Cornell W. Davis and
wife, Fern Davis

TO

Utah Mortgage Loan
Corporation, a corporation

Dated- June 19th, 1945-

Consideration- \$222.00-

Recorded- July 27th, 1945 at-

1:50 p.m., in book "73" of Mortgages at-

Page 297 of the records of Bingham County, Idaho-

Witness-

H.L.Crandall Jr.

Cornell W. Davis
Fern Davis

Acknowledged by Cornell W. Davis and wife, Fern Davis,
June 25th, 1945 before H.L.Crandall Jr., Notary Public
for Idaho, residing at Idaho Falls, Idaho: Sealed:
Commission expires 2/10/48:

DESCRIPTION and REMARKS

The first parties do hereby grant, bargain, sell and convey unto the party of the second part, and to its successors and assigns forever, all that certain real property situated in Bingham County, Idaho, and particularly described as follows, to-wit:

The E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 22, Township 3 South, Range 39 E.B.M.; NW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 15, and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 10, Township 2 South, Range 40 E.B.M.

Together with a decreed right to the waters of Rawlins Creek with a priority of 1883. Together with the tenements, hereditaments and appurtenances and any and all water rights and irrigating ditches thereto belonging or in anywise appertaining.

This grant is intended as a Mortgage to secure the payment of one certain promissory note for \$222.00 payable at Logan, Utah, in graduated installments as specified in said note.

The Mortgagee may collect a "late charge" not to exceed 2¢ for each \$1 of each payment or advancement more than ten days in arrears to cover the extra expense involved in handling delinquent payments.

This mortgage is subject to a prior mortgage of even date herewith on the premises herein described, made by mortgagors to mortgagee herein for the sum of \$3000.00.

Bird, Cindy

*in the v-
files.*

From: Music, Vicky
Sent: Wednesday, December 03, 2003 3:45 PM
To: 'bsh@ida.net'
Cc: Bird, Cindy
Subject: To Justin Oleson re SRBA claim nos. 27-14, 27-4079, 27-4y, 10390, 10398

Justin -

This e-mail is in response to our conversations of the past few weeks re the water rights/ SRBA claims referenced above. Attached is an e-mail with scanned documents. The first 2 pages are from the Stevens Decree [IDWR decree # 27-C] regarding decreed rights 27-4 and 27-14. I have also included 2 pages from the land list in the Stevens case with information about the places of use of the 2 decreed rights 27-14 and 27-4.

Re 27-4y, 27-10390, 27-10398 - [you indicated you thought this last right should be 10389]:

27-4Y-this right is in the name of Casey Reid and was formed from a split from 27-4J
27-13090 - this right is in the name of Marlene and Wallace Reid and was formed from a split from 27-4J
27-10398 - this right is in the name of Marlene and Wallace Reid and was formed from a split from 27-4K
27-10389 - this right is in the name of Fred Vincent and was formed from a split from 27-4K

Re 27-4079:

Our database indicates that this was a statutory claim not a decreed right [not decreed in the Stevens decree]. Making a statutory claim was an old method of claiming a water right which does not mean that the right was proven to be valid or awarded in any way by IDWR or its predecessor. This method of claiming of right is not longer used, though the statutory claim is used to provided information to substantiate an SRBA claim. That is all the information our database contains - I doubt that Cindy has additional information because the purpose of the letters we sent our was to obtain more information regarding claims.

Please call if you have questions regarding this e-mail.



Vicky, will these
work?

Vicky L. Music
Office of the Attorney General
Paralegal - IDWR
(208) 327-7928

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank You.

BLASER, SORESEN & HANSEN, *Chartered*

Attorneys at Law
(208) 785-4700
FAX No. 785-7080

Stephen J. Blaser
Murray Jim Sorensen
Scott H. Hansen
Justin B. Oleson

285 N.W. Main
MAILING ADDRESS:
P.O. Box 1047
Blackfoot, Idaho 83221

November 24, 2003

Department of Water Resources
Attn: Cindy E. Bird
15 W. Center Street
Soda Springs, ID 83276
SENT VIA FAX: 208-547-3939

RE: Wayne and Cindy Telford
Claim No. 27-4079

Dear Ms. Bird:

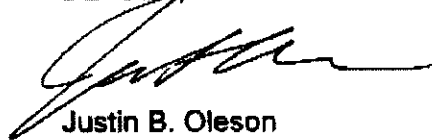
Wayne and Cindy have contacted me in regards to your letter recommending a disallowance of their claim. This property was actually sold to them from my grandmother, Lila Oleson, in 1994. The claim on that water should be valid. I am in the process of tracking down documentation to substantiate the claim.

Please allow us time to get the information to you. If you need a specific date, please let me know. Please do not recommend a disallowance until we get the documentation to you.

If you have any questions, don't hesitate to contact me.

Yours very truly,

BLASER, SORESEN & HANSEN, Chrt.



Justin B. Oleson
Attorney at Law

JBO/kd

cc: Wayne and Cindy Telford



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 West Center Street, Soda Springs, ID 83276

Phone: (208) 547-3993 Fax: (208) 547-3939 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

18 November 2003

COPY

Wayne and Cindy Telford
1016 East 1000 North
Shelley, ID 83274

Re: Snake River Basin Adjudication (SRBA)
Claim 27-4079

Subject: **CLAIM RECOMMENDATION - DISALLOW**

Dear Claimant(s):

Please be advised that since we have had no response from you, we will recommend to the Court that the above referenced claim be disallowed.

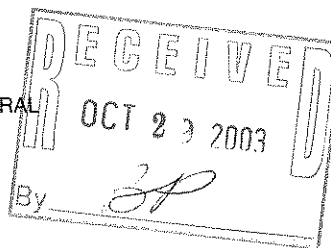
Very truly yours,

Cindy E. Bird

CEB/bjp



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
October 23, 2003



Wayne and Cindy Telford
1016 East 1000 North
Shelley, ID 83274

RE: SRBA Claim No. 27-4079

Dear Wayne and Cindy Telford:

I am the Deputy Attorney General assigned to represent the Idaho Department of Water Resources in Basin 27 in the Snake River Basin Adjudication.

The Department of Water Resources has previously contacted you regarding the need for priority evidence for your SRBA claims no. listed above. However, the Department has not received the information requested. I have enclosed a brochure that discusses the type of evidence that can be helpful in proving the priority date for a water right claim.

In order to make a complete and accurate recommendation of your water rights, each element of the water right must be proven. At this time, the Department will not be recommending your water rights as claimed because you have not provided proof of priority for your claim.

Please contact Cindy Bird at the Soda Springs Office for the Idaho Department of Water Resources at 208-547-3993 or you can contact me directly at 208-327-7900.

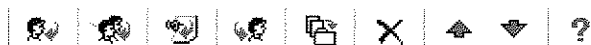
Very truly yours,

A handwritten signature in black ink, appearing to read "Chris M. Bromley".

CHRIS M. BROMLEY
Deputy Attorney General
Idaho Department of Water Resources

Enclosure

cc: Cindy Bird

[Close](#)**From:** Payne, Barbara**To:** Music, Vicky**Cc:****Subject:** Claim 27-4079**Sent:** 10/22/2003 10:47 AM**Importance:** Normal

Hi Vicky,

Here is another claim that needs your attention. Wayne and Cindy Telford, 1016 East 1000 North, Shelley, ID 83274. The claim was originally in the name of George Oleson. The water right name was changed in 1995.

We sent the Telfords a letter in April requesting evidence of priority with no response. Perhaps a letter from the AG might get their attention. Thanks.

Barbara :-}