



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 24, 1991

Ron Carlson
Idaho Department of Water
Resources, Eastern Region
150 Shoup Avenue
Idaho Falls, ID 83402

Dear Ron:

I have reviewed my letter of October 4, 1991 relative to the court's decree in the Crow v. Carlson case. I believe the letter to be clear as to my instruction and that it requires no further explanation.

If there are other situations within Water District 01 on which you need direction, if you will provide the information on the court's decree and the physical locations, etc., I will be happy to respond to your requests. In general, however, we should both understand that we have no authority to change the court's decree or to subject it to our private interpretation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith', written over the printed name.

R. KEITH HIGGINSON
Director

RKH:dc



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

RECEIVED

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 4, 1991

Department of Water Resources
Eastern District Office

Ron Carlson, Watermaster
Water District 01
150 Shoup
Idaho Falls, ID 83402

Re: Crow v. Carlson, Teton Co. Case No. 1856, Sup. Ct. No. 14946

Dear Ron:

I have reviewed the decree in the above entitled case and have discussed it with various persons involved in the matter. While the decree is labeled as "Findings of Fact, Conclusions of Law, Judgment and Decree Quieting Title to Water Rights" (emphasis added) the description of the subject water rights contain all the necessary elements of an adjudicated water right.

Since you were named as a party to the action and were never dismissed from the case it would appear that we must consider the decree to be an adjudication of the rights including the point of diversion. This is given as On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

Therefore, you are hereby instructed to consider the decree as an adjudication of the rights and to deliver the 80 and 40 miners inches to the Crows and the Gordons, or their successors, at that point. This instruction will remain unless changed by the court in the Snake River Basin Adjudication or a separate action or unless the parties agree to some alternative means of delivery of the water to the lands served and such alternative means of delivery is approved under the provision of §42-222, Idaho Code.

Sincerely,

R. KEITH HIGGINSON
Director

RKH:dc

cc: Norm Young
Phil Rassier
Ray Gordon

Steven M. Crow
Ray Rigby

October 17, 1991

Keith Higginson, Director
Idaho Department of Water Resources
1301 N Orchard
Boise, Idaho 83706-2337

RE: WATER DISTRIBUTION ON FOX CREEK

Dear Keith:

I have received your instructions concerning the delivery of certain water rights on Fox Creek. I will immediately attempt to comply with these instructions. However, I believe I need some further clarification of your expectations in this matter.

Historically, watermasters have been advised by the Department that watermaster jurisdiction ends at the head of the canal. Consequently, we have consistently resisted the pressures of individual users to deliver water to their field headgate. Within Water District 1 there are many canals which are only organized to carry water rights decreed to individual water users. Typically, the decreed points of diversion are described at points different from that known to be the description for the head of the canal. Does your instruction that the watermaster now go down the Fox Creek Canal to deliver water rights at the field headgate of the successors of the Crow's and the Gordon's apply to other canal systems where the situation is similar? If so what criteria should be used in determining those cases where the watermaster is responsible to deliver to the field headgate? In those cases, where water is not measured at the head of the canal, where should the water be delivered and what should be the location of the measuring device? Do the parties in the Crow case have any responsibility to install measuring devices? In addition, we have told claimants in the SRBA that they could not claim their field headgate as the point of diversion for their right. Should opportunity be provided to amend these claims?

Keith Higginson
October 17, 1991
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The answer to these questions will not only assist me in complying with your instructions in this matter, it will also be helpful in preparing a Proposed Budget for 1992.

Sincerely,

RONALD D. CARLSON
Watermaster

RDC:cw

August 2, 1991

Ray Rigby
Attorney at Law
P.O. Box 250
Rexburg, Idaho 83440

Re: Crow v. Carlson et al

Dear Ray:

I have enclosed a couple of letters that I believe might shed some light on the Fox Creek point of diversion dispute.

As indicated in the enclosed letters, the Attorney General, the department and the watermaster had no interest in an action to quiet title to a water right. Since the purpose of this action was to resolve an ownership dispute over previously adjudicated water rights, the elements of the water right(s) could not be changed by this process. I believe the description found in the court decision(s) in this matter can be used by the watermaster for delivery only to the extent they are consistent with the description of the prior adjudicating court. The watermaster remains ready to deliver rights adjudicated for the top of the capitol, but only when the court finds it belongs there.

Very truly yours,

Ronald D. Carlson
Watermaster

Enclosures (2)

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, *Chartered*

25 NORTH SECOND EAST - P.O. BOX 250 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
JERRY R. RIGBY - KENNETH L. PERKES - MICHAEL S. KAM
TELEPHONE (208) 356-3633 - TELEPHONE (208) 529-5531 I.F.

August 18, 1988

Dee O'Brien
58 South 3rd East
Driggs, ID 83422

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AUG 22 1988

Department of Water Resources
Eastern District Office

Dear Mr. O'Brien:

Re: Crow v. Carlson and Gordon

On May 9, 1985, the District Court, in and for the County of Teton, entered its "Findings of Fact, Conclusions of Law, Judgment and Decree Quieting Title to Water Rights". Ronald Carlson, Watermaster of Water District No. 1 of the State of Idaho, was a party defendant in that case. The Department advised the Court that the watermaster would not appear at the trial because it admitted the existence of the water right in dispute, and would leave it to the Court to decide, as between the parties who would get the water.

A certified copy of the Decree was recorded in Teton County, Idaho, and a copy was also delivered to Mr. Carlson for inclusion in the State water records. That Decree granted to the Gordons a water right on Fox Creek, in the amount of 40 miners inches, with a priority date of June 1, 1890, for use on S1/2 SW1/4 of Section 26, Township, 4 North, Range 45 E.B.M. and S1/2 SE1/4 of Section 27, Township 4 North, Range 45 E.B.M.

Said Decree decreed the point of diversion of that water right as follows: On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 26, Township 4 North, Range 45 E.B.M., in Teton County, Idaho.

Mr. Gordon advises me that the Department is of the opinion that the point of diversion had been established at a point approximately a mile and three-fourths east at Meyers, and insists on delivering his water at that point. At the trial, there was testimony that, except in years of short water, all the water rights had been delivered to the Fox Creek Canal and distributed by its watermaster. However, that was the very essence of the lawsuit, as we find in so many of the water

Dee O'Brien
August 18, 1988

Page two

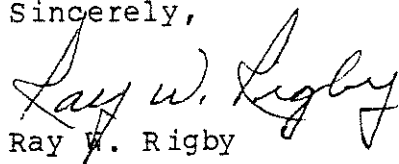
rights in the Rexburg decree, all of the points of identification of a water right were not in the record.

In any event, the Court has spoken, the Supreme Court finalized it, and there have been no objections from the Department or otherwise. We have to be guided now by provisions of that decree, regardless of what happened in the past. The decree is clear and the point of diversion is clearly specified. Mr. Gordon must insist that the District use that decree as its authority and its command in determining the point of distribution.

Mr. Gordon says that since the decree states that the point of diversion is "on Fox Creek", that it can't be on the Fox Creek Canal. I understand that a branch of Fox Creek is within a few feet of the canal, and it would be "splitting hairs" to say that it cannot be diverted on Fox Creek at the place specified in the decree.

I understand you already have a copy of the decree so will not send one herewith. If that isn't true and you want one, or if you have any question, please advise. I am sending a copy of this letter to Mr. Carlson.

Sincerely,


Ray W. Rigby

dk

cc: Ronald Carlson

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, *Chartered*

25 NORTH SECOND EAST - P.O. BOX 250 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
JERRY R. RIGBY - KENNETH L. PERKES
TELEPHONE (208) 356-3633 - TELEPHONE (208) 529-5531 I.F.

May 18, 1985

Ronald Carlson
Watermaster - District 1
Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, ID 83401

RECEIVED

MAY 21 1985

Department of Water Resources
Eastern District Office

Dear Ron:

Re: Crow v Gordon

Enclosed herewith is a certified copy of Findings of Fact, Conclusions of Law, Judgment and Decree Quieting Title to Water Rights in the above-entitled case. A certified copy thereof has been recorded in the official records of Teton County, Idaho.

We would also appreciate having this certified copy filed in the official decrees of the Idaho Department of Water Resources and appear in the official records of the District and the State.

If anything else is necessary, please advise.

Yours very truly,


Ray W. Rigby

RWR:pae

Enclosure



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

October 27, 1980

Lynn Hossner
Attorney at Law
Court House
St. Anthony, Idaho 83445

Re: Crow v. Gordon & Carlson (Teton civil no. 1856)

Dear Lynn,

This letter is to confirm the substance of our phone conversation on Friday morning, October 24, 1980.

I informed you that on October 23, Water Resources had received notice of your intent to take default in the above action. However, because my client, watermaster Ron Carlson, is considered an officer of the Department of Water Resources, a default judgment cannot be entered against him unless you first adduce evidence of your claim against him. IRCP 55(e).

Furthermore, since the complaint reveals that no affirmative relief is actually sought against the watermaster, there is no basis for keeping him in as a defendant. I would normally move to dismiss the watermaster as a defendant; however since you plan to dismiss the action as to him once you have obtained judgment as to the other defendants, Ray Gordon and Mary Jean Gordon, I will withhold filing a motion to dismiss at this time.

As I explained in our conversation, since the objective of your client's lawsuit is to establish the ownership of a decreed water right without changing either the rate of diversion or priority of that right, the watermaster is already bound under Idaho Code 42-607 to deliver the decreed right. Any change in the ownership of the right, as decided in this lawsuit, would also be binding on the watermaster without his being a party to the action.

Lynn Hossner
October 27, 1980

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I am sending a copy of this letter to the court as an additional record of our understanding. I look forward to hearing from you regarding a final judgment.

Very truly yours,

Josephine P. Beeman
Deputy Attorney General
Department of Water Resources

cc: Ron Carlson
Clerk, District Court
Teton County

October 9, 1980

Kent Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 129
Idaho Falls, ID 83401

Dear Kent,

I am enclosing two more quiet title actions which have been filed by Ray Rigby. A third complaint, filed by Lynn Rossner, seeks amendment of the 1890 Rexburg decree.

It appears that all of Ray's complaints may be subject to dismissal for failure to join other water users. Lynn's complaint appears to be more of a "neighbor dispute" which may be of no consequence to your clients.

Your office may have already informed you of the meeting here in Boise on November 13 (9 a.m. - Water Resources' conference room) to discuss with Ray Rigby the various quiet title proceedings which he has filed. Steve Allred and Ken Dunn are anxious to resolve these matters, so we will immediately reschedule if November 13 isn't suitable.

Thank you again for your interest.

Very truly yours,

Josephine P. Beeman
Deputy Attorney General
Department of Water Resources

JPB:gh

Enclosure

cc: Ron Carlson ✓

RECEIVED

OCT 20 1980

Department of Water Resources
Eastern District Office