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Alfred W. & Alice H. Stokes Trust



Robert A. &
Caroline Ann
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Ray W. Grouch et al

George H. King
Trust

George H. King
Trust

George H. King
Trust

FREMONT County

Q
Law Offices

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March 31, 1997

Joyce King
2382 Broderick Dr.
West Jordan, UT 84084

Re: Water Rights

Dear Joyce:

After talking with you by telephone the other day, I thought I should send on to you the information I have, including from my long discussions with the Conant Creek Canal Company, and particularly with Roger Bratt.

In your letter you said the Van Sickle property had storage water attached as well as capital stock. His answer is that the company never assigned stock to particular tracts. Further, at the time your father died, this Van Sickle property was irrigated out of Fall River and not out of Conant Creek.

You indicated that you had inquired of your mother just how many shares she thought there was. She said she had thought there were about 40 shares. The Company answers that it never inquired what the family members did among themselves. They simply acknowledged the water rights they did have and your father, while he was alive, and the family afterwards, distributed the water to their own lands as they desired. Only the family, and particularly your mother, knows where the water represented by any particular shares was used.

You also indicated that your dad had said he obtained the river right in 1957. The Company doesn't know where that is. They say that Conant Creek never gave your father the right to transfer Conant Creek water to Fall River. They say there is nothing that indicates it in the minutes and so far as they know, there has never been a formal

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Joyce King
March 31, 1997

Page 2

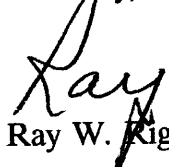
transfer through the Idaho Department of Water Resources pursuant to the requirements of the Code.

Apparently, the stock has never been distributed after your father's death among the family members so that your mother could vote the stock and have control of it. Again, it was a matter that the Company has left to your mother and the family.

You also indicate that in 1980 your dad moved additional storage water to the Van Sickle site, and the Company says that was not done through Conant Creek Canal Company. The Company recognizes 403 shares of the capital stock for all of your father's property. It doesn't designate where it is to go. There have been no transfers through the Company. They feel like it is a matter between your mother and her children, and would help in any way they could, but your mother is very careful with the board members to guard jealously not only the water right but who controls it and where it is to be used.

When I review the notes that you sent to me, you would indicate that the transfers were requested by your father. So there seems to be some real conflicts that ought to be resolved. In our telephone conversation, we both thought it might be a good idea for you to contact another attorney, such as Scott Marotz, and let him check into it. He is quite familiar with what has gone on with that Company, and knows the people. Since we have done so much work for the Company over several years, it would be improper for us to get in any dispute with the Company and its stockholders, unless we represented the Company itself. Nevertheless, I would like to be as accommodating and as helpful as possible to help you straighten this whole matter out, but need you to get someone who will represent you and then that attorney can work with me and with the board. I hope this has been of some help, but feel free, either yourself or your attorney, to call me at any time.

Sincerely,


Ray W. Rigby

dk

NOV 12 1998

R

Dear Mr. Thatcher & Mr. Moeller,

This is a reply to your letter of November 2, 1998 regarding the Henry Estate and any conflicts there might be with the Conant Creek Canal Co. There is a problem in that you state that there are 468 acre feet of Henry Fremont-Madison storage water with the Conant Creek Canal system. For at least the last 25 years, the years between 1964 and 1973 when K R Henry was Secretary the financial records are incomplete and many records missing, and there is no indication from existing records prior to 1964 that there was ever 468 acre feet of Henry storage water assessed by the Conant Creek Canal Company. Our existing records show a maximum of 279 acre feet of Henry storage water being assessed by the Conant Creek Canal Co. The Conant Creek Canal Co recognizes only 279 acre feet of Henry storage water being allocated to the Conant Creek Canal system. In the Annual Stockholders meetings of 1997 and 1998 the stockholders overwhelmingly rejected proposals from two different stockholders requesting that storage water owned by them be allocated into the Conant Creek Canal system. Because of the directions given by the stockholders on this matter, the Board of Directors couldn't recognize any Henry storage water over the 279 acre feet as being allocated to the Conant Creek Canal system.

No decreed water of the Conant Creek Canal Co since at least 1964 has been delivered to the Van Sickle and Kerr places.

Thank You,
Board of Directors

NOV 12 1998

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Dear Mr. Thatcher & Mr. Moeller,

This is a reply to your letter of November 2, 1998 regarding the Henry Estate and any conflicts there might be with the Conant Creek Canal Co. There is a problem in that you state that there are 468 acre feet of Henry Fremont-Madison storage water with the Conant Creek Canal system. For at least the last 25 years, the years between 1964 and 1973 when K R Henry was Secretary the financial records are incomplete and many records missing, and there is no indication from existing records prior to 1964 that there was ever 468 acre feet of Henry storage water assessed by the Conant Creek Canal Company. Our existing records show a maximum of 279 acre feet of Henry storage water being assessed by the Conant Creek Canal Co. The Conant Creek Canal Co recognizes only 279 acre feet of Henry storage water being allocated to the Conant Creek Canal system. In the Annual Stockholders meetings of 1997 and 1998 the stockholders overwhelmingly rejected proposals from two different stockholders requesting that storage water owned by them be allocated into the Conant Creek Canal system. Because of the directions given by the stockholders on this matter, the Board of Directors couldn't recognize any Henry storage water over the 279 acre feet as being allocated to the Conant Creek Canal system.

No decreed water of the Conant Creek Canal Co since at least 1964 has been delivered to the Van Sickle and Kerr places.

Thank You,
Board of Directors

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Dear Sir,

Before getting into the specifics of the questions in your inquiry, some general facts about the Conant Creek Canal Co might be informative. Fact One, unlike storage water, Capital Stock, which in one aspect represents decreed water, is not designated to specific parcels of land. So in the normal administration of the Conant Creek Canal Co, there isn't a great deal of attention paid to lands descriptions. Fact Two, the Conant Creek Canal Co is ninety six years old. In the long history of the canal company the lands watered by the system has changed over the years. The canal system itself has changed. Some sections of the system has been abandoned and ditches have been pushed or plowed in. Other sections have been added to the system. The lands being irrigated have been affected by these changes. So it becomes a legal question on when some of these lands thus affected are dropped from the system. Normal operating procedure when a question arises as to whether a parcel can irrigated is to consult on whether the parcel of land is within the boundaries of the Fremont-Madison Irrigation District. In summary, the By-Laws of the Conant Creek Canal Co does not define the boundaries of the system. As a result, the Board of Directors or an officer of the corporation would be very hesitant to define the system in legal land descriptions without specific legal consultation on what constitutes abandonment. Such a legal description of the system should be included in the By Laws and the consequent addition to the By Laws would need the approval of the stockholders.

In your letter you ask about the owners of parcels of land based on legal land descriptions. Since our records of stockholders are not based on land descriptions, we simply cannot identify the owners from a description of a parcel of land. If we can't identify the owners, we can't identify their water rights. Sorry we cannot be of help in this matter.

Thank You,

Board of Directors
Conant Creek Canal Co.
Donny Zundel
Shirley Bugler
Wager Smith
James C. Williams

Lynn Hossner
Attorney at Law

Telephone: (208) 624-3782
Fax: (208) 624-3783

February 8, 1999

John M. Ohman
Attorney at Law
P.O. Box 51600
Idaho Falls, ID 83405-1600

Re: Estate of Delila C. Henry - Conant Creek Water rights

Dear John:

I represent Conant Creek Canal with regard to your December 31st letter. My responses correspond with your numbered questions:

1. You asked how the Board determines if a piece of property is part of the system. That is determined by consultation with Conant Creek's watermaster and records as to whether the land is being watered out of the water distribution system of Conant Creek Canal Co. If the watermaster and/or records confirm that water is being delivered to the land, then the Board considers those lands to be served by the system. The watermasters who have served for at least the last ten years state that the full 403 shares of Capital stock in the Conant Creek Canal Company owned by the Henry family has been used exclusively on the Henry land now being watered out of the pipeline.

2 You stated that the Bylaws provide that the property watered by Conant Creek must be part of Fremont-Madison Irrigation District. In answer to your question of how the Board determines if the parcel is within the District, the short answer is it does not. The Board's reading of the Bylaws is that they do not require that property watered by Conant Creek Canal must be in the Fremont-Madison Irrigation District. Fremont-Madison requires that its water be delivered to land within the Fremont-Madison District. Fremont-Madison polices its own rules. Conant Creek Canal does not police Fremont-Madison's rules. I enclose a copy of the By-laws of Conant Creek Canal Co.

3. The Van Sickle and Kerr properties are not watered by Conant Creek Canal Company. There are no Conant Creek laterals which are maintained to either the Van Sickle or Kerr properties. The present Board of Directors knows that no water has been delivered to either the Van Sickle or Kerr properties through the Conant Creek system since 1964. When water was delivered, if ever, prior to 1964 is unknown to the present Board of Directors

COPY TO CLIENT-2-12-99

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109 North Second West
St. Anthony, Idaho 83445

Mr. John M. Ohman
February 8, 1999
Page 2

You also asked if the Van Sickle and Kerr properties are considered "land contained within Conant Creek Canal System" as defined by the Bylaws." The Bylaws do not define the lands within the system.

4. You asked if "... all of the water of the Conant Creek Canal System has to be put to beneficial use as a condition of allocation." Idaho State Water law requires that the canal put its decreed water to beneficial use or lose it. The Canal Company believes it and its members have complied and have a right to all of the water decreed to Conant Creek canal. Of course, the adjudication process will make the final determination of that matter.

The Canal Company received a telephone call from Tawny Weaver which said to disregard Mr. Ohman's January 21, 1999 letter so I will not attempt to answer her inquiry.

Sincerely,



Lynn Hossner

cc: Conant Creek Canal Company

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ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
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Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

u
March 12, 1999

COPY

Gordon S. Thatcher
P.O. Box 250
Rexburg, ID 83440-0250

Dear Gordon:

I have recently been employed by John M. (Mick) Ohman to assist him with respect to the water rights matters in connection with the Delila Henry Estate. In my review of documents and other evidence, I have also read the proposed "Allocation of Water Rights" contained in your "Revised Motion by Petitioners to Resolve Disputes and Compel Actions and Notice of Hearing", dated December 24, 1998.

As nearly as I can determine, there appear to be two remaining matters of probable disagreement respecting that allocation proposal: first, the allocation of 25 acre feet of Fremont-Madison storage under assessment no. 835 to the K.C. Henry Trust for use on the "Bratt" and/or "Hendricksen" places; and, more importantly, the allocation of 149 shares of Conant Creek Canal Company stock to Joyce King for use on the "Van Sickle" and "Kerr" places.

As to the 25 acre feet of Fremont-Madison storage under assessment no. 835, the only evidence I have seen indicates that all of the storage under this number (96 acre feet) is appurtenant to and has been used upon lots 1 to 4 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, Township 8 North Range 43 East. As I understand it, this description would not include any of the Bratt and/or Hendricksen places. Are you aware of any records or documents, or perhaps the testimony of any individuals, that storage water under assessment no. 835, or some of it (25 acre feet) has actually been used on the "Bratt" and/or "Hendricksen" places?

With respect to the 149 shares of Conant Creek Canal Company stock, you mentioned in the proposed allocation language that the point of diversion for all water used in recent

Gordon S. Thatcher

March 12, 1999

Page 2

years on the Van Sickle and Kerr places is a pump in Fall River. That is consistent with the information I have reviewed. Apparently the pump and the Vansickle and Kerr properties have been operated continuously since the late 1980s by Mr. Dan Reynolds. But the information we have is that since the early 1950s, the only water diverted from Fall River for use upon this property has been Fremont-Madison storage water. The Conant Creek Canal Company officers with whom we have visited and the Water District 01 Deputy Watermaster insists that no water has been diverted from Fall River through the Reynolds (originally the Owen Jensen) pump pursuant to natural flow rights of the canal company. Mr. Reynolds believes that at one time there was a ditch system which could bring canal company water to the Van Sickle or Kerr properties, or some portion thereof, but he remembers moving sprinkler pipe on these places in about 1956 and he states that the ditch system was no longer in existence at that time. He thinks those ditches were removed and filled in the early 1950s or before.

Apparently there have been some who have insisted over the years that water under the decreed rights of the canal company could be diverted by pump from Fall River. Mr. Reynolds and, to his knowledge, the Henrys themselves, are among those who have may believed that. However, we can find no record with Idaho Department of Water Resources or Water District 01 to the effect that one or more pumps on Fall River (with the sole possible exception of a small pump of Jay Hill) are legal points of diversion for any of the decreed rights of Conant Creek Canal Company. District 01 officials indicate that for many years they have taken the position that until there was formal IDWR or court approval of any such pumps being a legal point of diversion for such decreed rights, the deputy watermaster is to deliver no decreed Conant Creek Canal Company water from Fall river through the pumps, and is to require that the pumps be shut down when storage supplies are exhausted. So, it seems there will likely be significant difficulty in establishing with clarity that water, diverted pursuant to decreed rights of Conant Creek Canal Company, has been used to irrigate the Vansickle and Kerr places for some 4 or 5 decades, either based on 149 shares of stock in the company or any other amount. Are you aware of any good evidence which it appears to you I have not considered?

If the parties all agreed to allocate the water as it has been used historically, I suppose there can be a debate about what historical means. If they intended to refer to the manner in which water has been used and delivered for the past several years, then perhaps the 149 shares should be divided between certain K.C. Henry Trust lands and the Marklund Trust

Gordon S. Thatcher

March 12, 1999

Page 3

lands. I have not been able to verify the irrigated acreages, but you have figures in your proposal which may very well be correct. If the 196.5 acres (Vansickle and Kerr irrigated acres) is deducted from the 532.1 total, then of the resulting 335.6 remaining acres, apparently 230.9 (or 68.802%) is Marklund Trust land, and 104.7 (or 31.198%) is K.C. Henry Trust land. If the 149 shares of Conant Creek Canal Company stock were divided on that basis, 102.5 shares would be added to the Marklund Trust allocation and 46.5 shares to the K.C. Henry Trust allocation.

However, if the parties intended by their use of the term "historical" that if some amount of water represented by shares of Conant Creek Canal Company stock were ever, at any time in the past, used on certain land, it should now be allocated to that land, it seems that would present a fertile ground for much argument without a great deal of certainty as to the outcome. Mick asserts that in his mind, the intent was that land currently being irrigated would continue to be irrigated as it had been for many years and that land which had not been irrigated for some time would not be irrigated and that the water rights used for irrigation of the irrigated lands would not be changed.

In any event, I hope to be able to provide assistance in resolving these items, and would very much appreciate your views and copies of any relevant documentation you have found. You are surely welcome to review anything I have as well, but I suspect I came to the matter so recently that you will already have seen everything I have.

I will look forward to hearing from you as soon as it is convenient.

Very truly yours,



Kent W. Foster

c. Mick Ohman

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