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DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 39576

Subcase No. 45-00167A

STATE OF IDAHO)
 ss.
County of Cassia)

SUMMARY

CLAIMANT Leah Rose, *pro se*, hereby writes this summary of the water trial January 11, 2006 with objector to water claim 45-00167A, William Poulton. The water claim was filed by John and Margaret Koyle, and later by Clark and Tina Harman on August 23, 1988. The priority date is November 23, 1881 and based on a decree that includes Mr. Poulton's claim. Mr. Poulton filed an objection to the Rose water claim on January 3, 2005, stating the water right should not exist because of abandonment.

The Idaho Department of Water Resources filed a *Director's Report* recommending the claim for the irrigation of 1.6 acres and allowing .04 cfs

of water from the natural Willow Creek stream. *A Supplemental Director's Report* was filed after Mr. Poulton's objection was filed, and claimed that "the Department's recommendation for water right 45-167A is based on historical evidence of beneficial use and reasonable conclusions."

In the trial, IDWR Senior Water Resource Agent Jeanie Robertson gave testimony that the recommendation for the water was based on her knowledge of evidence of irrigation she saw on aerial photographs from 1962, 1968, 1976, 1987, 1992, and 2004.

The evidence Ms. Robertson presented at the trial was accurate. I am familiar with the area water patterns because of the time I have lived on the property. I believe the property was irrigated as the aerial photos, provided by IDWR, depicted and that they are "reasonable conclusions. "

Conversely, I do not think that Mr. Tribe, attorney for Mr. Poulton, proved by fact, that there was no irrigation on the property, but only attempted to discount the presence of irrigation by anecdotal evidence. The witnesses only gave an account as far as they knew, but couldn't have possibly stood on the property continuously, for five years to witness whether or not irrigation took place.

The witnesses in the trial who said they did not see any diversion works did not see the ditch on Mr. Poulton's property that would have easily provided water to the subject property pasture. Clark Harman told me that it was where he wanted to access the water to his property, because the structure was already there. Mr. Harman said that he did use the Willow Creek water for a short time, before Mr. Poulton prevented Mr. Harman from accessing Willow Creek water.

Also, as I was later told by them, the Burley Highway District thought about moving the Willow Creek channel from the eastern boundary of the subject property to the southern boundary of the property and around to Mr. Poulton's ditch. The district claimed that this idea did not suit Mr. Poulton, who wanted the water on his property only. So the present location was chosen.

I believe that Mr. Poulton irrigated the property because he thought he owned the property and that it should have reverted back to his family. I believe he used the property as his own, utilizing it for his cattle. If there was any feed on that corner, any resourceful livestock herder would not let that feed go to waste. Mr. John Anderson testified in court that he knew Mr. Poulton's cattle grazed the property. Other neighbors who were hesitant to testify also told me Mr. Poulton's cattle grazed the property but they would not testify in court because of fear of repercussion of such disclosures.

Those testifying in court that there was no irrigation on the property would also need to consider the large trees lining the property to obscure the view as Mr. Anderson also testified. The sharp turn in the highway on the southeast corner of the subject property takes the attention away from the property, as Mr. Anderson also testified in court. Obviously, standing cattle would be much easier to view than water lying on the ground. If Margaret Koyle did not live in the area after 1973 but owned the property until 1989, I would like to ask the court to consider that Bill Poulton could irrigate the property for his cattle without Mrs. Koyle's knowledge, thus providing explanation for the presence of water in the 1976 aerial photo provided by the IDWR.

I would like to ask that the *Deposition of Clark Harman from November 30, 2006* also be considered in this case as it gives an understanding of how the water was withheld from Mr. Harman's use and also counters Mr. Poulton's testimony in court with regard to the fact that Mr. Poulton testified he did not prevent Mr. Harman from using the water from Willow Creek. Also, Mr. Harman claims in the deposition that Mr. Poulton did indeed agree to buy the water claim of Clark Harman, which may raise questions of the validity of Mr. Poulton's claims when he testified to the contrary. Also, there was an agreement between Mr. Harman and Mr. Poulton that Mr. Poulton could use the corner

portion of the subject property to enable Mr. Poulton to keep his ditch in the present location.

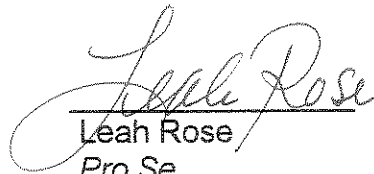
I ask that the IDWR recommendation for water right no. 45-167A of .04 cfs be granted because neither I, nor the previous claimants to this water, intended to abandon this claim, and that the scientific evidence provided by the IDWR indeed proves "historical evidence of beneficial use and reasonable conclusions." The channel of the natural stream of Willow Creek has been moved from any access to the subject property by the Burley Highway District, after four years of ownership, and huge poplar trees lining the east side of the property have died because of dependence upon the stream that ran alongside the trees on the east boundary of the property. The domestic well on the subject property is not adequate to irrigate the pasture.

The abundance of Willow Creek water is evident by the testimony of Cory King when he admitted to the large amount of water that flows down Willow Creek and the fact that the water runs for a few miles after use of the water is complete and that the water eventually soaks into the ground.

In conclusion, I would ask the court that even if the previous owners

failed to make beneficial use of the water from Willow Creek for five continuous years before 1962, to consider its use was resumed by Mr. Poulton himself before Mr. Poulton instituted proceedings to declare a forfeiture in 2005.

Submitted this 25th day of January, 2007.


Leah Rose
Pro Se

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of January, 2007, I served a copy of the foregoing *Summary* to:

Clerk of the District Court
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