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AT THE REQUEST OF
Ray Pighy, Attorney
AT 38 MINUTES PAST 11 a.m.
DATE *December 19, 1986*
E. Wayne Schiess
CLERK OF RECORDER
BY *Rora Hill*
DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JAMES W. PRICE and MARLENE T.
PRICE, husband and wife; and
DALE K. PRICE and VIRGINIA P.
PRICE, husband and wife.

Plantiffs,

vs.

RONALD D. CARLSON, Watermaster
of Water District No. 01 of the
State of Idaho, and ALL UNKNOWN
CLAIMANTS OF 1.5 cfs OF THE
WATERS OF A BRANCH OF WOOD CREEK,
A TRIBUTARY OF THE TETON RIVER,
TRIBUTARY OF THE SNAKE RIVER,
DIVERTED IN THE NE1/4SE1/4 of
SECTION 33, AND IN THE NW1/4
SE1/4 AND SW1/4SW1/4 OF SECTION
34, ALL IN TOWNSHIP 5, RANGE 45
EAST BOISE MERIDIAN, IN TETON
COUNTY, IDAHO,

Defendants.

Case No. 1948

DECREE

A Report in the Nature of Proposed Findings of Water Rights
(hereinafter the report) was filed with this Court by the
Director of the Idaho Department of Water Resources on June 25,
1986. The report contains findings of fact, conclusions of law,
and recommendations to the court as to the rights of James W. and

Marlene T. Price and Dale K. and Virginia P. Price to the use of water from an unnamed stream tributary to the Teton River within Teton County. The report is hereby incorporated in this decree by this reference.

IDAHO CODE § 42-1405 (3)(f) and 42-1411(4)(f) (Supp. 1986) provide for a period of 60 days from the filing of the report in which objections to the report may be filed. The objection period ended August 25, 1986, and no objections to the report were filed.

The findings of fact and conclusions of law set forth in the report are hereby adopted, and the recommendations to the court set forth in the report are hereby decreed.

DATED this 4th day of September 1986.



Grant Young
District Judge

C E R T I F I C A T I O N

I certify that these are true and correct copy
of Deeds

DATED this 8th day of September 1986

Bonnie Seese, Deputy



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JAMES W. PRICE and MARLENE T.)
PRICE, husband and wife; and)
DALE K. PRICE and VIRGINIA P.)
PRICE, husband and wife.)

Plaintiffs,)

vs.)

RONALD D. CARLSON, Watermaster)
of Water District No. 01 of the)
State of Idaho, and ALL UNKNOWN)
CLAIMANTS OF 1.5 cfs OF THE)
WATERS OF A BRANCH OF WOOD CREEK,)
A TRIBUTARY OF THE TETON RIVER,)
TRIBUTARY OF THE SNAKE RIVER,)
DIVERTED IN THE NE1/4SE1/4 OF)
SECTION 33, AND IN THE NW1/4)
SE1/4 AND SW1/4SW1/4 OF SECTION)
34, ALL IN TOWNSHIP 5, RANGE 45)
EAST BOISE MERIDIAN, IN TETON)
COUNTY, IDAHO,)

Defendants.)

Case No. 1948

REPORT IN THE NATURE
OF PROPOSED FINDING
OF WATER RIGHTS

22-685

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The above-entitled cause was initiated by the filing of a complaint, entitled COMPLAINT - QUIET TITLE TO WATER RIGHTS, but which provides that the action was filed pursuant to Idaho Code § 42-1405 (Supp. 1985), for the purpose of quieting title to rights to the use of water of a branch of Wood Creek, a tributary of the Teton River, which is tributary to the Snake River. The Idaho Department of Water Resources, acting for Ronald Carlson, defendant watermaster, prayed in its answer that plaintiffs not be decreed any water rights until such time as the Department had completed an examination of the claimed water right and submitted this report in the nature of proposed findings of water rights as provided in Idaho Code § 42-1405 (Supp. 1985).

Based on the files and records of the Department and of the above-entitled court, and on the field examination by the Department of the pertinent ditches, diversions, lands irrigated, and other uses of water, the Director recommends the following findings of fact, conclusions of law, and decree of water rights:

FINDINGS OF FACT

Definitions

1. The phrase "acre-foot" or the acronym "af" is the volume of water sufficient to cover one acre of land one foot deep with water; one af is equal to 43,560 cubic feet or about 325,851 gallons or 12 acre-inches.

2. The phrase "cubic foot per second" or the acronym "cfs" refers to a unit of measure of the rate of flow of water; one cfs

is equal to fifty miner's inches in Idaho, or about 449 gallons per minute.

3. The phrase "consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. For irrigation purposes, consumptive use is that amount of water used through evapotranspiration by the crop minus the effective precipitation.

4. The term "Department" refers to the Idaho Department of Water Resources; the term "Director" refers to the Director of the Idaho Department of Water Resources.

5. The phrase "irrigation use" means water use limited to application of water to the land surface or root zone of the soil for the purpose of producing crops on that land.

6. The term "permit" refers to a water right document authorizing the appropriation of water issued by the Department pursuant to Idaho Code § 42-204 (Supp. 1985).

7. The term "watermaster" refers to a person charged with distribution of water within a water district pursuant to title 42, chapter 6, Idaho Code.

Initiation of the Supplemental Adjudication

8. The plaintiff initiated this action by the filing of a complaint for quiet title in the District Court of the Seventh

Judicial District of the State of Idaho in and for the County of Teton on December 3, 1982, which complaint provided that the action was filed pursuant to Idaho Code § 42-1405 (Supp. 1985).

9. The plaintiff caused to be published in the Teton Valley News, a weekly newspaper published at Driggs, County of Teton, a notice of SUMMONS QUIET TITLE. The notice was published in said newspaper once a week for three consecutive weeks beginning with the December 16, 1982 issue.

10. Said notice contained the information required by Idaho Code § 42-1405(c) (Supp. 1985) with the following exceptions: the post-office address of the plaintiffs, the date of priority of the water right claimed, the nature of the water use, and the place of use. The notice incorrectly names Woods Creek as the source of water.

11. The Department filed its answer on January 20, 1983, praying that plaintiffs not be decreed any water rights until the Department had conducted an examination and submitted a report.

Objections

12. No objections were filed pursuant to Idaho Code § 42-1405(1)(d)(Supp. 1985) to the water right claimed by the plaintiffs.

Field Examination

13. The Department conducted a field examination July 12, 1982. The examination included an investigation of the diversion structures, the uses made of the water diverted, and the lands

upon which it was used.

General Description of the Plaintiffs' Property and Its Environment

14. Plaintiffs are owners of property located in Teton County as described below:

- a. SE1/4 Sec. 33, T. 5 N., R. 45 E., B. M.
- b. SW1/4 Sec. 34, T. 5 N., R. 45 E., B. M.

15. As shown on U.S. Geological Survey maps, Bates and Driggs Quadrangles, an unnamed stream, tributary to the Teton River, flows through plaintiffs' property. One branch flows in a southwesterly direction through the N1/2 SE1/4 Sec. 33, the other branch flows in a southwesterly direction through Sec. 34. Woods Creek and its tributaries are north of the drainage from which water is diverted.

16. Water rights in the Teton River drainage basin are located in the Department's administrative Basin 22 which is part of Water District No. 01, and are subject to regulation by the watermaster of Water District No. 01 of the State of Idaho.

17. The period of use when water is beneficially used for irrigation is when the chance of temperatures of 28°F. or lower is 50% or less. The period of use in the area where the plaintiffs' property is located is April 15 to October 15 of each year for a total of 184 days.

18. A maximum rate of flow of .02 cfs per acre of irrigated land is reasonably required for irrigation of land in the area where the plaintiffs' property is located. The consumptive use

for irrigation where the plaintiffs' property is located is 1.86 af per acre per year.

Description of Points of Diversion and Places of Use

19. Exhibit A shows the points of diversion and places of use of the rights claimed in this action. Exhibit A is incorporated herein by this reference.

20. The presently used points of diversion are as follows:

NE1/4 SE1/4 Sec. 33,
NW1/4 SW1/4 Sec. 34,
SW1/4 SW1/4 Sec. 34,
All in T. 5 N., R. 45 E., B. M.

21. The places of use are as follows:

NW1/4 SE1/4 (28 acres)
NE1/4 SE1/4 (23 acres)
SW1/4 SE1/4 (2 acres)
SE1/4 SE1/4 (8 acres)
All in Sec. 33 (61 acres subtotal)

NW1/4 SW1/4 (14 acres)
SW1/4 SW1/4 (5 acres)
All in Sec. 34 (19 acres subtotal)

All in T. 5N., R. 4. B. M. (80 acres total)

22. The wooden diversion works and ditches have a capacity of 1.5 cfs. Measuring devices and lockable headgates or other control devices have not been installed at any of the points of diversion.

Plaintiffs' Rights to Use Water From The Teton River
Drainage Basin

23. An application for permit to appropriate water was received by the Commissioner of Reclamation on June 19, 1920 from the plaintiffs' predecessor in interest. A certificate of

Completion of Works was issued July 15, 1921. Proof of beneficial use was due July 10, 1922, but was not filed. On October 20, 1975, the permit was cancelled by the Department, after notice to the permit holder and an opportunity for the permit holder to show cause why the permit should not be cancelled.

24. The original permit incorrectly named Woods Creek as the source of water. The point of diversion and place of use shown on the original permit are different from those claimed in this action. The point of diversion was the SW1/4 NW1/4 Sec. 34, the place of use was 80 acres in the N1/2 SE1/4 Sec. 33, all in T. 5 N., R. 45 E., B. M. There has been no expansion of use even though the point of diversion and places of use are different than those stated in the original permit. The Department has no record of any water rights with a point of diversion from the unnamed stream which would be affected by the change.

Prior Decrees Determining Rights to Use Water from the Teton River Drainage Basin

25. General adjudications:

Rexburg Irrigation Co. v. Teton Canal Co. (9th Dist., Fremont Co. 1910).

26. Adjudications supplemental to Rexburg:

- a. Woodville Canal Co. v. Clark & Edwards Canal Co. (E.D. Id. 1929);
- b. Garner v. Baldwin (9th Dist., Fremont Co. 1930);
- c. Saurey v. Crandall (9th Dist., Fremont Co. 1932);
- d. Teton Valley Power & Milling Co. v. Crandall (9th Dist., Fremont Co. 1936);

- e. Cherry Grove Canal Co. v. Crandall (9th Dist. Fremont Co. 1937);
- f. Fox Creek Irrigation Co. v. Crandall (9th Dist., Fremont Co. 1937);
- g. Grand Teton Canal Co. v. Crandall (9th Dist., Fremont Co. 1937);
- h. String Canal Co. v. Crandall (9th Dist., Fremont Co. 1938);
- i. Garden Water Co. v. Crandall (9th Dist., Fremont Co. 1938);
- j. Griggs v. Crandall (9th Dist., Fremont Co. 1938);
- k. Hansen v. Crandall (9th Dist., Fremont Co. 1938);
- l. Johnson v. Crandall (9th Dist., Fremont Co. 1938);
- m. Leigh Creek Canal Co. v. Crandall (9th Dist., Fremont Co. 1938);
- n. Gillette v. Crandall (9th Dist., Fremont Co. 1938);
- o. Cache Canal Co. v. Crandall (9th Dist., Fremont Co. 1948);
- p. Rasmussen v. Crandall (9th Dist., Fremont Co. 1950);
- q. Rasmussen v. Crandall (9th Dist., Fremont Co. 1952);
- r. Buxton v. Crandall (9th Dist., Fremont Co. 1954);
- s. Gardner v. Crandall (9th Dist., Fremont Co. 1954);
- t. Smith v. Crandall (9th Dist., Fremont Co. 1955);
- u. Price v. Crandall (9th Dist., Fremont Co. 1955);
- v. Rammell v. Crandall (9th Dist., Fremont Co. 1956);
- w. Sorenson v. Crandall (9th Dist., Fremont Co. 1956);
- x. Christensen v. Eagle (12 Dist., Fremont Co. 1959);
- y. Pehrson v. Eagle (12th Dist., Fremont Co. 1959);
- z. Ricks v. Eagle (12th Dist., Fremont Co. 1964);

- aa. Buxton v. Eagle (12th Dist., Fremont Co. 1966);
- bb. Aberdeen-Springfield Canal Co. v. Eagle (7th Dist., Fremont Co. Civil No. 6117, 1969);
- cc. Hoopes v. Larson (7th Dist., Fremont Co. Civil No. 6513, 1971);
- dd. Rammell v. Dunn (7th Dist., Teton Co. Civil No. 1912, 1986).

27. Other actions affecting water rights:

- a. Taylor v. Hulet (6th Dist., Fremont Co. 1912)(action between water users);
- b. Koon v. Empey (9th Dist., Bonneville Co. 1922)(re ownership of rights decreed in Rexburg);
- c. Madsen v. Miekle (9th Dist., Teton Co. 1933)(re ownership of rights decreed in Rexburg);
- d. McClellan v. Row (9th Dist., Madison Co. 1935)(re ownership of rights decreed in Rexburg);
- e. Roxana Canal Co. v. Daniels (Equity No. 2447, D Wyo. 1941)(stipulation between Idaho and Wyoming water users);
- f. Neeley v. Browning (9th Dist., Madison Co. 1954)(stipulation between water users);
- g. Kunz v. Kunz (12th Dist., Teton Co. Civil No. 1459, 1967)(action between water users);
- h. Jardine v. Eagle (7th Dist., Teton Co. Civil No. 1647, 1968)(groundwater right);
- i. Crow v. Carlson (7th Dist., Teton Co. Civil No. 1856, 1985)(re ownership of right decreed in Rexburg);

28. Matter herein expressed as a finding of fact which is later deemed to be a conclusion of law is hereby made a conclusion of law.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Director makes the following conclusions of law:

Applicable Legal Principles

1. Idaho Code § 42-1405 (Supp. 1985) states in part as follows:

(1)

(b) The claimant shall in his complaint, set out his own right and he shall further set forth his acceptance as binding upon him of all prior applicable decrees and the findings of fact and conclusions of law upon which they are based....

(c) After return of service of summons, the claimant in said action shall cause to be published once a week for not less than three (3) weeks a notice of the pendency and purpose of said action in such newspaper or newspapers as the judge of said district court may order, which notice shall contain the title of the court and the cause, the name and post-office address of the plaintiff, the date of priority of the water right claimed, the source of the water supply, the amount of water claimed, in general the nature of the water use, the approximate location of the point of diversion, and the place of use; and

(d) Any person claiming a water right which may be injured thereby, and who objects to the water right claimed by the plaintiff, as described in the published notice, shall, within forty-five (45) days of the date of the first publication of notice, file with the district court written notice of such objection stating the reasons for the objection. . . .

. . . .

(f) Upon completion of the report by the department of water resources, it shall be filed with the court and a copy thereof shall be sent to all parties to the action. Objections to the report of the department and hearing upon such objections

shall be in accordance with the provisions of section 42-1410, Idaho Code;

.

(2) The court by its decree in said action shall determine the rights of said plaintiff in accordance with the proof submitted but subject to the terms of the original decree or decrees.

2. An appropriative right is defined by a determination of the following:

- a. source of water supply
- b. date of priority
- c. rate of diversion
- d. nature of use
- e. point of diversion
- f. place of use
- g. period of use
- h. annual volume of consumptive use

Idaho Code § 42-1410 (Supp. 1985).

3. Beneficial use is the measure and limit of an appropriative water right.

4. Prior to May 19, 1971, two methods of initiating a new right to the use of surface water existed in Idaho. The first method was to follow the then existing statutory procedure. The second method was to divert unappropriated water and apply it to a beneficial use. The date of priority under the first method related back to the date of posting the required notice or the filing of an application with the state engineer. The date of

priority under the latter method is the date of application of the water to a beneficial use. Sand Point Water & Light Co. v. Panhandle Development Co., 11 Idaho 405, 83P. 347 (1905); Nielson v. Parker, 19 Idaho 727, 115 P.488 (1911); Crane Falls Power & Irrigation Co. Ltd. v. Snake River Irrigation Co. Ltd., 24 Idaho 63, 133 P.655 (1913).

5. Prior to the 1969 amendments to Idaho Code § 42-108 (see 1969 Idaho Session Laws, Ch. 303, p. 905) requiring persons seeking to change the point of diversion or place of use of a water right to obtain the approval of the Department, the place of use or point of diversion of a water right could be changed without filing an application for change in use with the Department, provided that the change did not cause injury to the rights of other water users.

6. Idaho Code § 42-701 (1977) requires the plaintiffs to install and maintain measuring devices and lockable headgates or other control devices of a type acceptable to the Department, at the point where water is diverted, for use by the watermaster in the delivery of the water right.

Application of Legal Principles

7. The plaintiffs have not strictly complied with the provisions of Idaho Code § 42-1405(c) (Supp. 1985) concerning publication of notice of the present action, but the notice published was sufficient to apprise interested persons of the pendency and purpose of the present action.

8. The doctrines of res judicata, collateral estoppel, and Idaho Code § 42-1405 (Supp. 1985) do not preclude a claimant from acquiring a right to the use of water after entry of a decree in a prior general adjudication.

9. It is concluded that the plaintiffs initiated a right to the use of waters from an unnamed stream with a priority of June 19, 1920.

10. The rate of diversion is 1.5 cfs, the maximum annual volume of consumptive use is 148.8 af.

11. The nature of use is irrigation, the period of use for irrigation is April 15 to October 15 each year.

12. The points of diversion are located in:

NE1/4 SE1/4 Sec. 33,
NW1/4 SW1/4 Sec. 34,
SW1/4 SW1/4 Sec. 34,
all in T. 5 N., R. 45 E., B. M.

13. The place of use is 61 acres in the SE 1/4 Sec. 33, and
* 19 acres in the W 1/2 Sec. 34, all in T. 5N., R.45E., B.M.

14. The plaintiffs have not complied with Idaho Code § 42-701 (1977).

15. This action is supplemental to the Rexburg Decree (see Finding of Fact No. 25) and the decree and the findings of fact and conclusions of law upon which it is based are binding upon the plaintiffs.

16. Matter herein expressed as a conclusion of law which is later deemed to be a finding of fact is hereby made a finding of fact.

Should read W²SW Sec. 34

RECOMMENDATIONS TO THE COURT

Based upon the foregoing findings of fact and conclusions of law, the Director makes the following recommendations:

1. The plaintiffs' right to the use of water shall be as follows:

- a. source: unnamed stream, tributary to Teton River
thence the Snake River
- b. date of priority: June 19, 1920
- c. nature of use: Irrigation
- d. rate of diversion: 1.5 cfs
- e. points of diversion: NE1/4 SE1/4 Sec. 33
NW1/4 SW1/4 Sec. 34
SW1/4 SW1/4 Sec. 34
All in T. 5 N., R. 45 E.,
B. M.

f. place of use:

Section 33: NW1/4 SE1/4 (28 acres)
NE1/4 SE1/4 (23 acres)
SW1/4 SE1/4 (2 acres)
SE1/4 SE1/4 (8 acres)
Section 34: NW1/4 SW1/4 (14 acres)
SW1/4 SW1/4 (5 acres)

All in T. 5 N., R. 45 E., B. M. (80 acres
total)

g. period of use: April 15 to October 15 of each year

SCALE: 1 INCH—1 MILE

[illegible]

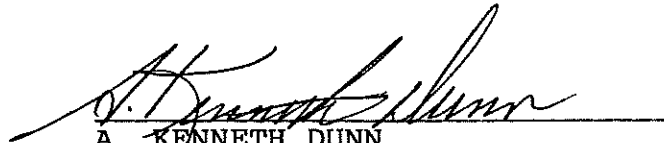
h. maximum annual volume of consumptive use: 148.8 af

i. basis of right: Beneficial use

2. The plaintiffs shall be required to install and maintain measuring devices and lockable headgates or other flow control devices of a type acceptable to the Department in accordance with Idaho Code § 42-701 (1977).

DATED this 11th day of June, 1986.

Respectfully submitted,


A. KENNETH DUNN
Director, Idaho Department of
Water Resources