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RECEIVED
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Department of Water Resources
Eastern Region

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Trent Galbraith
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

Re: Claims of Egbert Farms to Water Rights Nos. 21-172 and 21-11973

Dear Trent:

I have tried to figure out the numbering logic with respect to the Egbert claims to waters from Willow Creek, but I have been unsuccessful. I did not help to prepare the SRBA Claims or file them, so I do not claim to know how or why the numbers were assigned as they were.

Having finished the disclaimer, I have obtained copies of two SRBA claims filed by Egberts, numbers 21-172 and 21-11973. Both are really for the same water right, although 21-172 claims the 2.5 cfs from Henry's Fork with a priority of December 6, 1893, while 21-11973 claims the 2.5 cfs with the same priority from Willow Creek. I will try to explain my understanding of the claims, and then you can give us your best recommendation. I am skeptical that another claim to identify the water right as coming from Willow Creek will be helpful because that is what 21-11973 was for.

Egberts originally acquired much of their farm land from one A.J. Spratling, whom they knew as "Uncle Johnny". Mr. Spratling represented to them that 200 miner's inches of Willow Creek water, with a priority of December 6, 1893, went with the land. Egberts never diverted water directly from Willow Creek themselves, but in 1957 they installed pumps to pump water from back waters created in the Henry's Fork by the Utah Power and Light Company dam, a short distance downstream from the location of the two pumps. They have continued to pump water from Henry's Fork on an exchange basis under their claim of an accomplished transfer of 2.5 cfs of Willow Creek water with the December 6, 1893 priority ever since.

It is true that claims to this old "Spratling" water right from Willow Creek were filed by both Egberts and some people named "Seeley" in 1977 under the old "Summary Supplemental Adjudication" statute, *Idaho Code* § 42-1405. Egberts claimed 2.5 cfs of the "Spratling:" right and Seeleys claimed 5.5 cfs of the "Spratling" right. Two separate Summary Supplemental Adjudication lawsuits were filed at approximately the same time and were later consolidated for trial.

Both relied on an old document entitled "Water Location of Spratling Bros.", filed in the County Courthouse on December 6, 1893, by Ernst Spratling and Wayne Spratling, claiming 400 miner's inches (8.0 cfs) of the waters of Willow Creek (200 miner's inches or 4.0 cfs from the East branch, and 200 miner's inches or 4.0 cfs from the West branch). Seeleys claimed title to 275 inches through Hyrum P. Spratling and Egberts claimed title to 125 miner's inches through Emma Spratling, whose right had been acquired by A.J. Spratling. The information we were able to obtain indicated that Hyrum P. Spratling and Emma Spratling were siblings of Ernst and Wayne Spratling. So far as we know, A.J. Spratling was the son of one of these siblings, although we do not know which, and that he obtained some of Emma Spratling's land and her portion of the water right.

A number of measurements of the flows of Willow Creek by the United States Geological Survey were available at trial from a publication entitled "Water Resources Data for Idaho". Included were measurements of Willow Creek, at the point where it enters Henry's Fork, for 1974 and 1975. Such measurements showed the following:

1. May 23, 1974 - 10.3 cfs
2. November 1, 1974 - 7.95 cfs
3. July 30, 1975 - 5.83 cfs
4. September 14, 1975 - 7.09 cfs

All such measurements were taken downstream from the Seeley points of diversion, and, presumably during the irrigation season, would have been of flows of Willow Creek remaining after Seeleys had diverted water upstream. So, there appeared to have been adequate water contributed by Willow Creek to Henry's Fork to fill the right claimed by Egberts.

Judge Burton never seemed to understand the concept of diverting water from Henry's Fork on the basis of an exchange with waters from Willow Creek. In his decision, he awarded the following rights:

1. Seeleys: 275 miner's inches (5.5 cfs) from Willow Creek with a priority of December 6, 1893.
2. Seeleys: 125 miner's inches (2.5 cfs) from Willow Creek with a priority of 1947.

3. Egberts: 125 miner's inches (2.5 cfs) from Henry's Fork with a priority of 1957.

Although Judge Burton did decide that Egberts had established a right to divert from Henry's Fork with a 1957 priority, we are not convinced the decision is also finally determinative of their claim to Willow Creek water with an 1893 priority, and suggest that since Egberts have continued to divert water under this latter claim for an additional 30 years, the claim can be finally adjudicated in the Snake River Basin Adjudication proceeding.

While there has been, and can be, no impact on Seeley's water rights from the determination that Egberts hold a right to the waters of Willow Creek with a priority of December 6, 1893, Seeleys have nevertheless been very exercised in their efforts to deny this right to Egberts, as they still appear to be. That position does not help Seeleys, but it potentially hurts Egberts. As you know, there is limited value to Egberts from a 1957 priority right from Henry's Fork. They have now diverted 2.5 cfs, by means of their pumps, as if under a December 6, 1893 priority from Willow Creek, for 50 years. Whether they also have a right from Henry's Fork for 2.5 cfs with a 1957 priority, is not necessarily exclusive of their claim to Willow Creek water with an 1893 priority on an exchange basis. Such a claim is supported by 50 years of diversions pursuant to their claim, and harms no one. Exchanges are authorized under Idaho law, and we need to pursue this assertion with diligence because of its importance to the Egbert operation.

Yours very truly,



Kent W. Foster