

- Dan Beck said no irrigation comes from pond.
- Kane diverts from spring to POV via a ditch.
- Pond is for recreation storage.
 - Fish are no sold so it is not "Fish propagation"
- Pond is 6 feet deep and 84ft X 59ft (from GIS)
- Capacity assuming it is a flat bottomed pond.

$$\text{Surface Area} = \frac{84 \times 59}{43560} = .11$$

$$\text{Capacity} = .11 \times 6 \text{ feet deep} = .66 \text{ acre feet}$$

- Pond filled in fall of 1949
 - This is the priority of recreation storage
- Priority date for irrigation is 6/27/1898 per Nick Spencers e-mail.
 - Stock water will get a NOS NOS remark limiting it to 13,000 gpd.

TF 2-20-07

Feb 14-07

To whom it may concern:

My name is Paul Walker. I'm 80 yrs old & a retired photographer. Most of my professional career was spent here in the "Pankhanki". I was a long time friend of Edith Tolton Beger better known as Panketo. all of her friends. She passed away in 1964 leaving me as her only heir. I spent much time at the Ranch & The Wild Rose Guest Resort. I was living at the Ranch when the pond was dug & also present when it was filled. The year was 1949 in the fall when we stocked the pond with Brook Trout. Hoping this will help in some way.

Yours Truly

Paul Walker
11185 Avondale Loop
Hayden Lake, Idaho
83835

Tel. 1-208-762-0900

Galbraith, Trent

From: Spencer, Nick
Sent: Thursday, February 08, 2007 1:46 PM
To: Galbraith, Trent
Subject: RE: Dan Beck

Yes, he is at Fuller and Carr. The number is 524-5400.

-----Original Message-----

From: Galbraith, Trent
Sent: Thursday, February 08, 2007 8:42 AM
To: Spencer, Nick
Subject: Dan Beck

Nick,

Do you have a number for Dan Beck or a firm name so I can look him up? I have some questions about Mr. Kanes delivery system.

Trent

Galbraith, Trent

From: Spencer, Nick
Sent: Friday, February 09, 2007 10:03 AM
To: Galbraith, Trent
Subject: RE: Charles Kane

What we have done in the past is to create two SF-5s and add a paragraph on the face of each one explaining that water right XYZ is one of the uses claimed in claim ABC, but since it is being recommended with a junior priority date it is being recommended as a separate water right from right ABC. The court then enters the new number in its records and sets it up as a separate subcase. When the SF-5s are filed they go on the docket sheet with a special notice explaining what was done. (But Kane's right is going to go on the docket sheet again anyway because that is what the court routinely does when we sign an SF-5 that recommends a right which we previously disallowed.) Since we don't run into this situation very often, we may well need to include a letter to the court to explain what we're doing and to remind them that we have done this before. Of course the alternative to avoid this uncommon situation is to request Mr. Kane to file a second claim. The trouble with that approach is that he has to file a motion for leave to file a late claim that in effect claims what he has already claimed. And if the motion is granted, it comes to us as a late claim, and so wouldn't likely be recommended for a year or more. The other approach that I recommended allows us to take care of both rights at the same time so that he doesn't have to jump through additional hoops and then wait around for his second right to be recommended. NBS

-----Original Message-----

From: Galbraith, Trent
Sent: Friday, February 09, 2007 9:48 AM
To: Spencer, Nick
Subject: RE: Charles Kane

Nick,

If we end up creating a new number which I assume we will have to, what is the court process for doing so.

Trent

-----Original Message-----

From: Spencer, Nick
Sent: Friday, February 09, 2007 9:43 AM
To: Galbraith, Trent
Subject: RE: Charles Kane

I agree that the fish use will have to constitute a second water right unless Mr. Kane can come up with evidence that the pond went in in 1898 at the same time the irrigation use started. However, I don't think he necessarily has to file a separate claim for it. There is precedent for us peeling a use out of an existing multi-use claim and recommending it as a separate beneficial right with a junior priority date. The idea behind this is that the claim has given the world notice that Mr. Kane is claiming irrigation, stockwater, and fish propagation, each with an 1898 priority date. If we recommend the irrigation and stock with an 1898 priority date, and the fish with, e.g. a 1930 priority date, we are not exceeding any parameter that was claimed; we are actually recommending less than the claimant has asked for so nobody is hurt. However, since we can't have two priority dates on one water right we have to create a new water right number and recommend the junior use as a separate right. Thus, if the pond was built and the fish were added prior to May 20th, 1971, we can treat it as a separate beneficial use right and recommend it accordingly, without Mr. Kane having to file a new claim for it. Dan Beck will need to get a statement from somebody attesting to when the pond was built to support the proof of priority date. However, if it was built after May 20th, 1971, Mr. Kane will need to file an application for a permit. One question, though: does he grow fish for resale or just enough for his family and friends to catch? If the latter, we might want to ponder whether the beneficial use is fish propagation or recreation. Just a thought. Let me know if this approach causes you any heartburn. NBS

-----Original Message-----

From: Galbraith, Trent
Sent: Friday, February 09, 2007 8:12 AM
To: Spencer, Nick
Subject: Charles Kane

Nick,

I have been reviewing claim 21-10019 to do the recommendation for the SF5 and have run into a snag. On this claim there is of course irrigation but also stock water and fish propagation from the pond Mr. Kane has. I talked to Dan Beck and he said irrigation occurs only from the spring which then runs into the pond for his fish. The stock water should not be a problem because it is de-minimis; however, the fish propagation seems to be the snag. The notice of water right does not mention anything about fish. It states domestic and irrigation from the spring only. In my opinion Mr. Kane needs another claim for Fish Propagation with a later priority date. Does this coincide with your thoughts?

Trent

Galbraith, Trent

From: Spencer, Nick
Sent: Tuesday, February 06, 2007 4:30 PM
To: Galbraith, Trent
Cc: Carlsen, Ernie; Harvey, Becky
Subject: FW: From " 208 524 7167"(Fax Message NO.3410)



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Hi Trent. Look at this affidavit that Dan Beck sent me in support of Charles Kane's claimed priority date. The affiant's statements arguably are hearsay, but we routinely accept hearsay to establish ancient facts. The affidavit in effect says that Mrs. Boger, who owned all the property covered by the Wild Rose Ranch, Kane's parcel, and a third parcel, established water right 21-4004 in 1903. If in 1903 she owned the property covered by the William R. Bowers 1898 posted notice, as this affidavit indicates, then it is irrelevant whether that Bowers was the same Bowers who was defaulted in the Rexburg adjudication. To bring the 1898 posted notice right into the Rexburg adjudication Mrs. Boger herself would have had to have been named as a party. According to Dan Beck, Mrs. Boger is not listed as a party in the Rexburg Decree, or in the findings and conclusions. This looks to me like a reasonably credible explanation establishing that the 1898 posted notice right was not extinguished in the Rexburg adjudication, especially considering that in subsequent deeds the parties obviously believed the 1898 right was still valid. I'm thinking this may well be sufficient evidence to entitle Mr. Kane to his 1898 priority date. It also establishes that the Wild Rose Ranch also should have the same priority date, since their right is a piece of the same 1898 posted notice right. However, their right has gone to partial decree with a 1957 priority date. I rather dislike the idea of Kane's right becoming senior to theirs, but I don't know what to do about it. Anyway, what do you think? Am I out to lunch in my analysis? NBS

-----Original Message-----

From: Boardman, Anne On Behalf Of IDWR Fax
Sent: Tuesday, February 06, 2007 3:52 PM
To: Spencer, Nick
Subject: FW: From " 208 524 7167"(Fax Message NO.3410)

-----Original Message-----

From: idwrfax@idwr.idaho.gov [mailto:dwrfax@idwr.idaho.gov]
Sent: Tuesday, February 06, 2007 1:34 PM
To: IDWR Fax
Subject: From " 208 524 7167"(Fax Message NO.3410)

This E-mail was sent from "State_507_BW" (Aficio 2045e).

Queries to: webmaster@idwr.idaho.gov

RECEIVED

IN THE MATTER OF:

CLAIM TO A WATER RIGHT
NO. 21-4004

OCT 15 1973

Department of Water Administration
Eastern District OfficeAFFIDAVIT OF C. G. DAY
AND OBJECTION TO CLAIM
TO A WATER RIGHT NO. 21-4004

State of Idaho

County of FremontC. G. DAY being first duly sworn,

deposes and says: That he is the owner of the Wild Rose Ranch situate in Fremont County, State of Idaho, and that commencing in the year 1903, he has a priority and a beneficial use to the water claimed by Mr. Val Dietrich, Claim to a Water Right No. 21-4004. Mr. Day's priority date commences in the year 1903 and runs to this date.

The right extends by virtue of a Deed which specifically sets forth said water right.

That Mr. and Mrs. C. G. Day purchased the Wild Rose Ranch from a Mrs. Edith Felton Roger in the year 1952, and the Contract of Sale included the water right herein claimed by Mr. Val Dietrich.

That on the 15th day of May, 1965, said Contract of Sale was fully paid off and a Warranty Deed was issued according to the Contract of Sale's terms and conditions, a copy of which is attached hereto and made a part hereof.

That Mrs. Roger established said claim and priority in the year 1903, and that said water has been used continuously and for a beneficial use since 1903 by Mrs. Roger and/or Mr. and Mrs. C. G. Day.

That Mr. Val Dietrich has no claim to said water and this Affidavit is in strict denial of any such claim.

That said water has been used for domestic purposes from 1903 to date by either Mrs. Roger and/or Mr. and Mrs. C. G. Day.

If you have any questions, please advise, and please acknowledge receipt of this Affidavit and Objection to Claim to a Water Right No. 21-4004.

(signature)

Subscribed and sworn to before me this 16th day of October 19 73.

(notary public)

Residing at etchum, IdahoMy commission expires 3/4/76

4004