

**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

A: Sub-case 1-71E

Case No. 39576

I am an attorney representing claimant R. Wydell Johnson.

My name is Nathan M.Olsen

My address is 2105 Coronado Street, Idaho Falls, ID 83404

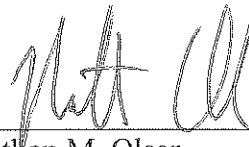
My Phone number is 208-557-5209

MOTION TO SET ASIDE PARTIAL DECREE

Pursuant to I.C.R.P 60(b), this motion is necessary because a recent discovery of an unrecorded transfer suggests that the water right described under the partial decree for sub-case 1-71E actually belongs to the claimant, R. Wydell Johnson. Attached with this motion are notes (Exhibit A) dated November 1, 2007 from IDWR investigator Michael Holliday indicating the history of the transfer, and how the record appears to provide basis for the claimant's right to this water. This information has not been apparent to the adjudication proceedings until recently. Therefore, it is necessary for this partial decree to be set aside and the decreed water right be disallowed so that the water may be rightfully designated to its true owner, the claimant Mr. Johnson.

Mr. Johnson has filed a late claim for this water, 1-71F, which the court has allowed.

Respectfully submitted this 13 day of November, 2007.

A handwritten signature in dark ink, appearing to read "Nathan Olsen", written over a horizontal line.

Nathan M. Olsen
Beard, St. Clair, Gaffney P.A.

F.

VERIFICATION (must be completed)

State of Idaho)
County of Bonneville)ss.

Nathan M. Olsen, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Nathan M. Olsen
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

November 14, 2007

Judy Carter
Notary Public for

Residing at:

My Commission Expires:

Idaho Falls
1-01-09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on November 13, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

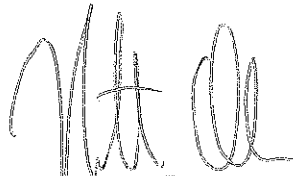
Name: R. Gene Scott
Address: 4644 E. 185 N.
Rigby, ID 83442

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

1-71F

November 1, 2007

Wydell Johnson came to the office today to discuss late claim 1-71F. On 12/29/2006 Ernie Carlsen assisted the claimant in the preparation of the claim. On 1/8/2007 the claimant filed a motion to file late notice of claim. The court granted the motion and forwarded the claim to IDWR on 4/19/2007. Claim 1-71F was disallowed in the Director's Report filed in November 2007 because water right 1-71 had already been fully recommended between claims 1-71B, 1-71C, 1-71D, 1-71E, and 1-10022.

Right 1-71 was originally decreed in the Rexburg decree to Frederick Hatfield. The right was for 3.20 cfs and the place of use was the north half of the NE quarter of section 30. Transfer 819 moved 1.60 cfs off the NWNE quarter leaving it with high water rights only. Transfer 819 left 1.60 cfs on the NENE quarter.

Upon further investigation into the history of this right, I have discovered additional information that may have an impact on the allocation of right 1-71. It appears that Mr. Johnson may have a legitimate claim to 0.80 cfs of this right based on my conversation with him and the additional information I gleaned through my research. However this 0.80 cfs has already been recommended (or partially decreed) to Gene Scott, Table Rock Development, and Table Rock Irrigation Association.

Prior to Transfer 819, apparently an unrecorded transfer took place. The 1936 Water District 36 book shows 0.80 cfs of the Hatfield right delivered to the Steele ditch. The books from 1942 through 2002 show 0.80 cfs of the Hatfield right delivered to the Cheney ditch. Some handwritten notes in the 1942 book show that in 1921, 0.80 cfs of the Hatfield right was moved from the Kite and Nord to the Steele, then to the Cheney by verbal orders of Rulen Johnson (former owner was Durant).

During our meeting today, I asked Wydell to tell me what he knew about the history of the irrigation of the land that appeared on his claim. He told me that his grandfather, King Durant, irrigated the claimed acreage via the Steele and Cheney ditches from the 1940's through the 1960's. Wydell indicated that water in the ditch was shared with another water user, R. Dewayne Scott. Some time in the 1960's he stopped using those ditches because it was difficult to get the water down the over 2 miles of ditches. Wydell said that there was an agreement at that time to get the water delivered via the Rudy Canal, and that this land is still irrigated today from the Rudy. Mr. Johnson stated that the claimed place of use has been irrigated with wheelines for the past 4 or 5 years.

Although the land described in claim 1-71F is located within the decreed place of use, the water district records show delivery of this right through the Cheney Canal, and the claimant says that he is getting this water via the Rudy Canal.

If 1-71F is recommended to the claimant, the following claims would need to be disallowed since they are competing claims with this right: 1-71B, 1-71C, and 1-71E. Also the following rights would require adjustments to their combined acreage remarks: 1-35B, 1-35C, 1-35E, 1-177A, 1-177C, 1-177D, 1-10017, 1-10470, and 1-10494.