

DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO

RECEIVED

AUG 17 2009

DEPARTMENT OF
WATER RESOURCES

SRBA CHAMBERS
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TWIN FALLS, IDAHO 83303-2707

TERRENCE A. DOLAN
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August 14, 2009

Robert L. Blackadar
10 N. Cherokee Road
Salmon, Idaho 83467

Garrick L. Baxter
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Trial Record
Subcases 75-14, et al.
July 16/17, 2009

Dear Messrs Blackadar and Baxter:

During the recent "Jesse Creek" trial in Salmon, the SRBA Court used a digital recorder for the first time instead of its customary cassette tape recorder. While the digital recorder offers substantial advantages, it has some unusual quirks. One of them is that when the recorder is paused for more than 30 minutes or so, instead of stopped, the recording on that track is lost and another track begins. The Court staff was not aware of that.

Unfortunately, that is exactly what happened during the 45 minutes of trial immediately before we left the courtroom for the 1½ hour site visit the morning of the second day. That is when Mr. Blackadar offered his Exhibits 24-29 and called Scott R. Ziegler to testify. Mr. Baxter and the Special Master also questioned Mr. Ziegler before he was excused and the site visit began. Enclosed is a copy of the Deputy Clerk's typed minutes taken during that 45 minute gap prepared from her contemporaneous handwritten notes of the entire two day trial.

The result is that we have the complete sound recording from day one of the trial (over 7½ hours) and the complete 2½ hour sound recording of the second day *except* for the 45 minute gap. The digital chip in the recorder during those 45 minutes has been carefully examined multiple times and we have been assured that portion of the record is irretrievably lost.

Because we lost a relatively small portion of the sound recording of the trial, I would like to propose a solution that will avoid re-doing that portion of the trial while ensuring there is a complete record. As I mentioned, the Deputy Clerk took minutes during the gap and I took notes during Mr. Ziegler's testimony.

In my view, recreating Mr. Ziegler's testimony from my notes will adequately complete the missing portion of the record, but those who participated in the trial must agree. By substituting my summary of Mr. Ziegler's testimony in lieu of retrying that portion of the trial, we can avoid implicating other parties and not prolong final resolution of Mr. Blackadar's objections to the claims. As to Mr. Blackadar's Exhibits 24-29, they were admitted and speak for themselves.

With that in mind, here is what I recall of Mr. Ziegler's testimony:
Mr. Ziegler was the water master of District 75-A in the early 1980s, from 1983 to 1987. He termed the conveyance heading north and east from the Pollard Headgate "Jesse Creek." The Pollard Headgate is where water from Chipps Creek, Pollard Canyon and Jesse Creek converge. As water master, he delivered water from the confluence along what some call the Farmer's Canal or Jesse Ditch. The "Lower Ditch" or "Blackadar Ditch" diverts water from Jesse Creek about 100 yards downstream from the confluence. In 1987, the District 75-A water master and administration changed. There were plenty unauthorized withdrawals of water from Jesse Creek – people stealing water.

Please let me know whether you agree with my summary of Mr. Ziegler's testimony or you want to suggest any corrections. Perhaps you remember something differently and if so, hopefully we can agree on the changes. But remember, we are attempting to reconstruct Mr. Ziegler's testimony – not change or add to it. I would appreciate hearing from you both in writing by **Monday, August 31, 2009**. If I do not hear from you by that date, I will assume you agree with my suggested resolution. My apologies to you both for the Court's mistake in failing to preserve this portion of the trial record, but I believe we can fairly and quickly remedy the mistake.

Sincerely,



Terrence A. Dolan
Special Master
Snake River Basin Adjudication

Date: 7/17/09 TRIAL CONTINUES – Day 2

:41 COURT CONVENES

1:24 Mr. Blackadar offers Exhibit 24 – Salmon School District Trustee Zones Map, dated 2006

2:47 Court admits Exhibit 24

3:00 Mr. Blackadar offers Exhibit 25 – 1999 Phone Directories Co. Inc. Map

4:19 Court admits Exhibit 25

4:50 Mr. Blackadar offers Exhibit 26 – Geology Along the Lewis & Clark National Historic Trail, Salmon, Idaho, date 2003

5:28 Court admits Exhibit 26

5:48 Mr. Blackadar offers Exhibit 27 – Lewis & Clark Historical Map, Salmon, Idaho, dated 2004

6:11 Court admits Exhibit 27

6:20 Mr. Blackadar offers Exhibit 28 – USDI Bureau of Land Management Map, dated 2006

7:05 Court admits Exhibit 28

8:19 Mr. Blackadar offers Exhibit 29 – 2006 Salmon – Challis National Forests Map

8:39 Court admits Exhibit 29

9:41 Mr. Blackadar offers History of Episcopal Church in Salmon, Idaho as exhibit

13:19 Court denies admission of exhibit

13:40 Mr. Blackadar calls Scott R. Ziegler (former Watermaster in District 75A)

Mr. Ziegler is sworn in

22:26 Court comments

27:30 Mr. Baxter comments

28:11 Mr. Blackadar questions Mr. Ziegler

33:37 Court questions Mr. Ziegler / he responds

35:47 Mr. Baxter cross-examines Mr. Ziegler

38:42 Court questions Mr. Ziegler

42:50 Testimony concluded

42:53 Mr. Ziegler is excused

42:59 Court confirms with Mr. Blackadar that all submission of exhibits and testimony is concluded

44:19 COURT IN RECESS FOR FIELD/SITE VISIT