

IN Re SRBA
Case # 39576

Subcase 22-2280E

Pre Trial Brief

LODGED
DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED
2009 SEP 23 AM 10 18

INTRODUCTION

Trees, Inc., a nursery, purchased 40 acres from LaReil Kunz and proceeded to dig their own 6" casing well as a solution to their problem of not having enough water when part of the overall Cedron Irrigation system. Cedron Irrigation continued to water the same number of lines onto their lands and the Trees, Inc. well operates independently. Either Trees, Inc must stop pumping out of respect for the transfer or Cedron Irrigation must reduce pumping by the amount of the transfer. After 5 years had gone by, Trees Inc. decided to dig a 10" casing well to supply their needs. Although they had forfeited their right to do this by the 5 year rule, they were allowed to proceed in spite of my objections to IDWR. This must be corrected. The original claim of .53 cfs by Trees, Inc., was incorrect. The deeds associated with Cedron Irrigation clearly state the amount of water per 40 acre field is 80% of 1/4 mile line. Since most 1/4 mile lines can't use more than 0.40 cfs, the maximum amount claimed should have been 80% of .40 cfs which is 0.32 cfs. Since the Cedron Well was only used 6 days a week, the 0.32 cfs should further be reduced by 1/7th to 0.28 cfs. Also, the Trees, Inc. field was the last to come under cultivation, sometime after 1970, and should be assigned its own priority date. Any additional use of water by Cedron Irrigation or Trees, Inc., comes as a direct blow to the production of Paradise Springs and material injury to the senior right holders on Paradise Springs.

Argument

Since the initiation of the Trees, Inc. well, the quantity of groundwater pumped has increased and subsequent negative effect on Paradise Springs has been more pronounced. Either there must be an equal decrease in the parent right or this well must cease operation. The season of use must not be altered from the original claim because this impacts spring users both immediately and cumulatively. Trees, Inc., overclaimed the amount of water knowing that they were legally deeded only 80% of 1/4 mile line which is less than 0.32 cfs. Trees, Inc. uses more water on their 40 acres than any other 40 acre field in this district. Instead, they should be limited to the water use that was developed on their place up through 1987, including the season that water was used. Growing trees takes a lot more water than hay or grain and if needed, this water should have been claimed with a later priority. Together, the Cedron Irrigation and Trees, Inc. claims should not exceed what was used according to the electrical records. I and any witnesses I question will say that the well can pump 9 one-quarter mile lines, which isn't more than 3.6 cfs. Thus, their claims together should not exceed 3.6 cfs, along with the Cedron Cemetery. Mr. Don Miller and Mr. Craig Kunz will most likely testify to the 9 line status of the well and that more water has been used since the tree farms bought in.

So sworn this 22nd day of September, by



Michael L Reid

A true copy of this reply was served by US Mail on the following on ^{Sept 22}~~July 2~~, 2009:

TJ Budge, Counsel for Objectors
SRBA Court
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