



January 29, 2010

RMEA 09-0087

Andrea L. Courtney
State of Idaho Office of the Attorney General
Natural Resources Division
Water Resources Section
P.O. Box 83720,
Boise, ID 83720-0098

Re: Response to December 11, 2009 Request. Case No. 39576.

Dear Ms Courtney,

In response to your letter request, please find attached an affidavit from Mrs Donetta Nelson.

In regards to the request concerning the "Extent of Wetlands on the claimed place of use."

We are unaware of any such designation by a professional or otherwise. However, plants that occur under shallow ground water conditions appear on the property. The reported practices of the Nelson's was that the property was naturally sub-irrigated by ground water during portions of the year but when there was not sufficient sub-irrigation occurring (i.e. late summer), that actions were taken to back up surface water in both the "ditch" and creek to increase the ground water elevation sufficiently to again adequately sub-irrigate most all of the lands in question. The sub-irrigated lands were used for grazing.

Areas that did not respond to the sub-irrigation techniques were equipped with a sprinkler pipe irrigation system and irrigated conventionally.

Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger", with a stylized flourish at the end.

W. Roger Warner, Hydrologist
Vice-President

enclosures: Donetta Nelson Affidavit signed and dated on January 29, 2010.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS
SNAKE RIVER BASIN ADJUDICATION DIVISION

In RE: SRBA

Subcase: 35-2019

Case No. 39576

AFFIDAVIT OF DONETTA NELSON

STATE OF IDAHO)

ss.

County of Madison)

Donetta Nelson, having been duly sworn, states under oath as follows:

1. I am a resident of Bingham County, Idaho and reside at 757 Aspen Ave., Shelley ID 83274-1464.
2. I was married to Merlin Nelson on October 16, ¹⁹⁴⁰~~1941~~. *DN* Soon after marrying, my husband and I moved into a small home located just west of the property next to a canal located at Section 20, R32E, T04S EBM. The house was originally owned by my husband's family but was later gifted to my husband and me along with 40 acres of property surrounding the house.
3. *Merland* *DN* *OK* Merlin's father, Ed Nelson, purchased the subject property around 1971. The ditches that are on the property today are basically the same that existed at that time. At that time, the ditches were not as deep as they are today but they still required regular maintenance. I recall on many occasions bringing my husband

something to eat and/or drink while he was working on the ditches and irrigating the lands set forth in the above entitled claim (hereinafter "the Land").

4. The water which irrigated the Land entered from two locations along the north boundary along the roadway. One fork of the creek entered the Land in the northeast corner. The other fork of the creek from the northwest corner. Both entry locations were from the same source, a spring fed creek that split and flowed two different directions. Only recently did I learn that one of the forks of the creek was considered by the Idaho Department of Water Resources (IDWR) to be a ditch. At some point in time, someone installed a headgate on the west fork of the creek. This headgate is located on what is known as the Degullio property.

This west fork of the creek always flowed at about 25 inches.

5. ^{in law D Nelson} My father had to constantly work the ditches off of the creek to get our water. We diverted water out of the creek onto the adjacent land by placing hay bales or if the ditch was smaller, flakes of hay bales to back up the water so that it would flood and/or sub-irrigate the adjacent lands. We also shoveled out smaller cross ditches to aid in the distribution of water. Most of the property was used for grazing purposes and therefore keeping the vegetation growing was of high importance. My husband was a cattle buyer and at any given time we would be grazing 150 +/- head of cattle.

6. Other than small diversions out of the creeks, we had the following four main locations which were important in providing water to the Land:

- a. T32E, R04S, Section 20, NW quarter of the NE quarter. This is the

location of the pump that was used to pressurize sprinkler lines which irrigated all of the upland areas. The pipe was purchased soon after we acquired the property in about 1974.

- b. T32E, R04S, Section 20, NW quarter of the NE quarter. This location is just north of the pump diversion location. At this location, straw bales were used to dam up the creek to the point that it would overflow the banks. Nearby, is a high spot in the ground which, as I recall, was a culvert bridge to the upland irrigated by sprinklers. Concrete and wood debris used to dam up water still exists at this location today. At times, it would require cutting notches into the bank allowing the water a pathway to follow.
- c. T32E, R04S, Section 20, NW quarter of the SE quarter. This location is the furthest south and is located on the creek at a point which was also dammed with straw bales until later it was equipped with a headgate/culvert. By damming this location, water would back up and be directed to all lowland areas in the Koompin's Corner area. Areas which were not directly irrigated by flooding were subirrigated by the backed up water.
- d. T32E, R04S, Section 17, SE quarter of the SW quarter. As discussed above, we always considered this to be from the same source as the other water since it was just a split from the same creek. In fact, my husband or his father, routinely would have to walk up that "ditch" to get more water

to flow down the "ditch" channel. His routine consisted of removing debris from the so-called "ditch" and placement of debris in front of the other channel to get more water flow into the west channel. Water which flowed down this channel was then dammed with straw bales and forced to spread and also to subirrigate adjacent low lands.

7. My husband purchased sprinkler pipe for the purpose of better irrigating the uplands of the Land in about 1974. We installed the pump and mainline and irrigated all of the Lands where we possibly could even beyond fence barriers since we pastured those areas regularly. It was routine and customary to attach hand lines through the fence to irrigate as much pasture beyond the hay field as possible.
8. The reason that I remember so much of this is because I baled (harvested) all of the hay crop off of the Land and this ground myself since my husband had an asthma condition which prohibited him from doing this part of the work. Basically, ^{Merland D.N.C.B.R.}Merlin performed the irrigation and I cut and baled the hay.
9. ^{Merland D.N.C.B.R.}Merlin was a potato inspector for the state of Idaho for 22 years. He was also a cattle buyer and often we had 100 head of mother cows. He died in 2003.
10. The conditions I have described within this affidavit would apply to each and every year from the time we acquired the Land up to the time of the sale of the Land to Dr. ^{D.N.C.B.R.}Sheiglitz, who is the present owner of the Land. The only major change in the conditions described herein was during the last two years of my husbands life due to the illness which eventually took his life. However, even

though the watering wasn't as consistent and as plentiful as before his illness,
there was NOT one year where NO watering occurred on any one parcel of the
Land.

Respectfully submitted, this 29 day of January, 2010.

Donnetta Nelson
Donetta Nelson

SUBSCRIBED AND SWORN to before me this 29 day of January, 2010.



[Signature]
Notary Public for Idaho
Residing at: BONNEVILLE County, IDAHO
My Commission Expires: 12/09/2011