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AUG 11 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 10 2010	
By _____	Clerk
Deputy Clerk	

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

Case No. 39576

) Subcases 73-147A, 73-2165 and 73-12110
) (Flying Joseph Ranch LLC)
)
) SPECIAL MASTER REPORT
)

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 73* on January 25, 2007. The Director recommended claim 73-147A to Flying Joseph Ranch LLC, c/o Joseph Clark, 7213 Perimeter Road South, Seattle, Washington, 98108, for 4.4 cfs from the Pahsimeroi River to irrigate 1,857.6 acres in Custer County from April 1 to October 31 with a priority date of April 25, 1886, based on a decree. The Director recommended claim 73-2165 to for 2.05 cfs from groundwater to irrigate 294 acres in Custer County from April 1 to October 31 with a priority date of September 23, 1966, based on a license. The Director recommended claim 73-12110 be disallowed: "No beneficial use found."

The United States of America, Department of Interior, Bureau of Land Management filed an *Objection* in subcase 73-147A on December 18, 2007, objecting to place of use. The claimant filed an *Objection* in the same subcase on December 19, 2007, objecting to point of diversion and place of use. IDWR identified 73-2165 as uncontested and overlapping with subcase 73-147A.

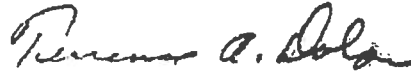
The claimant filed an *Objection* in subcase 73-12110 on December 19, 2007, objecting to the claim not being recommended as claimed. The BLM filed a *Response* on February 15, 2008, concerning place of use.

The claimant and BLM, with IDWR's concurrence, filed *Standard Forms 5* in all three subcases on July 19 and 28, 2010.

Conclusions of Law

Flying Joseph Ranch LLC is entitled to partial decrees adjudicating water rights as described in the *SF-5s* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 73-147A, 73-2165 and 73-12110*.

DATED August 10, 2010.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 73-12110

NAME AND ADDRESS: FLYING JOSEPH RANCH LLC
C/O JOSEPH CLARK
7213 PERIMETER RD S
SEATTLE, WA 98108

SOURCE: BIG CREEK TRIBUTARY: PAHSIMEROI RIVER

Point of injection into Goldburg Creek. Point of redirection
from Pahsimeroi River.

QUANTITY: 32.80 CFS

PRIORITY DATE: 04/01/1969

POINT OF DIVERSION: T13N R23E S13 NENW Within Custer County
S20 SESW (Rediversion)
S27 SESW (Injection)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	32.80 CFS

PLACE OF USE:	Irrigation	Within Custer County
T13N R22E S01	SWNW 19.0 SWSW 41.0	NWSW 35.0
S02 LOT 1	(NENE) 31.0 SWNE 8.3 NESE 40.0	LOT 2 (NWNW) 9.6 SENE 40.0 SESE 40.0
S11	NENE 37.0 NESE 27.0	SENE 33.0 SESE 29.0
S12	NWNE 0.5 NENW 2.6 SWNW 40.0 NESW 41.0 SWSW 30.0 NWSE 41.0	SWNE 23.0 NWNW 41.0 SENE 1.1 NWSW 31.0 SESW 37.0 SWSE 39.0
S13	NWNE 23.0 NENW 15.0 SWNW 9.9 NBSW 0.2 NWSE 23.0	SWNE 12.0 NWNW 37.0 SENE 16.0 SWSW 9.8 SESE 34.0
S14	NENE 17.0 NESE 36.0 SWSE 31.0	SENE 21.0 NWSE 20.0 SESE 37.0
S23	NENE 40.0 SWNE 23.0 NESE 12.0	NWNE 37.0 SENE 40.0
S24	NENE 8.0 SWNE 30.0 NENW 19.0 SWNW 40.0 NESW 37.0 NESE 39.0	NWNE 0.5 SENE 12.0 NWNW 40.0 SENE 40.0 NWSW 28.0 NWSE 39.0
R23E S18 LOT 4	(SWSW) 25.0	
S19	NWNE 25.0 SENE 27.0	SWNE 39.0 NENW 39.0
LOT 1	(NWNW) 36.0 SENE 38.0	LOT 2 (SWNW) 7.8 NESW 28.0

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

LOT 3	(NWSW)29.0	LOT 4	(SWSW)25.0
	SESW 40.0		NESE 39.0
	NWSE 40.0		SWSE 40.0
	SESE 35.0		
S20	NWSW 27.0		
S29	NWNW 37.0		SWNW 40.0
	NWSW 28.0		
S30	NENE 40.0		NWNE 40.0
	SWNE 40.0		SENE 40.0
	NENW 40.0	LOT 1	(NWNW) 25.0
2413.3 Acres Total			

Place of use does not include federal public lands.
Right Nos. 73-147A, 73-147B, 73-147C, 73-150D, 73-189, 73-259,
73-2165, 73-10040, 73-10041 and 73-12110 are limited to the
irrigation of a combined total of 2413.3 acres in a single
irrigation season.

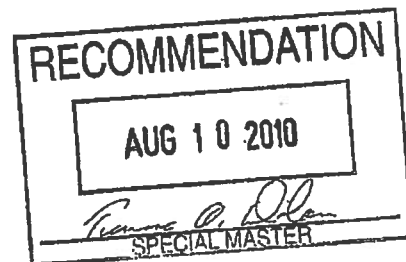
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



#5 = 73-10041
#9 = 73-10023

1994
water meter record

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	AI	AJ	AK	AL
1	#73 BIG CREEK-CUSTER	MONTH	MAY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTALS	MAY	
2	#1 NAME— PAGE 8	C.F.S.																																			
3	#1 LEON ZIEGLER	5.46 #1	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	5.46	169.26	#1
4	#2 BERT HATCH-CUNNINGHAM	8.30 #2	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	8.30	257.80	#2
5	#3 LARRY WHITTIER (JAMES 33)	4.50 #3	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	139.50	#4
6	#4 LARRY WHITTIER (JAMES 33)	3.20 #4	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	99.20	#5
7	#5 PINES GRAZ 260 L. TRTHART	7.20 #5	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	7.20	223.20	#6
8	#6 WING ESTATE	8.00 #8	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	124.00	#7
9	#7 LEON ZIEGLER	6.00 #7	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	186.00	#8
10	#8 WING ESTATE	6.20 #8	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20	192.20	#9
11	#9 C. WINSCH (G. BALDWIN 39)	9.60 #9	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	186.00	
12																																					
13																																					
14	#73 BIG CREEK-LEWIS CO.	C.F.S.																																			PAGE 9
15	#1 JUDG WHITWORTH	12.80 #1	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	201.50	#1
16	#2 WING ESTATE	6.00 #2	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	186.00	#2
17	#3 GEORGE MILLER (PHILIP 33)	2.80 #3	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	86.80	#3
18	#4 LEE WATSON (O. HAMILTON 33)	3.20 #4	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	99.20	#4
19	#5 JUDG WHITWORTH	9.60 #5	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	186.00	#5
20	#6 G. MADSEN-CUNNINGHAM	5.00 #6	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	155.00	#6
21	#13-289 SUPPLEMENT PAH. INV																																				
22	TO EXTENT OF 82P																																				
23																																					
24	#1 ZIEGLER BOUGHT PT. CUNNINGHAM PLACE																																				
25	WITH .980'S WATER-275 TOTAL																																				
26	#12 HATCH (CUNNINGHAM HAS .98 CFS LESS WATER																																				
27	BECAUSE OF SALE OF LAND—																																				

2-16-10
 Notes for e-mail
 to Spec 2-16-10

Big Creed
 A 12/10
 40 cfs

2126
 8/6/920
 69.2 cfs

16~
 Band
 Friehe
 Fahgimerai

12/41 148
 wire & group
 12/142 30m
 Street 7

Rio 8/12/13 535
 989
 2/18/1926

River
 2126
 work due 11/00/924
 Proof due 11/00/924
 11/00/924
 Exam 8/22/92

150 34
 300 62
 220 44
 220 42
 160 32
 400 87
 400 97

160 32

Shaff, Don

From: Shaff, Don
Sent: Tuesday, February 16, 2010 6:07 PM
To: 'Jim Speck'
Cc: 'Joe Clark'; jgalfano@aviationpartners.com; 'Debra Barnes'
Subject: RE: RE: Flying Joseph 73-12110

Hi Jim,

The claims and record is a bit confusing and conflicted. Please pardon some of the cryptic notes below, but I think you can follow it.

1. Permit 73-2126 filed on 8/21/1920 for use of Pahsimeroi River for 69.2 cfs by means of a New Ditch south of and intersecting with Pines Ditch.
2. Proof of Works due 11/08/1924; Proof of B/U initially 11/08/1930, extended 10/31/1931 (I think.)
3. Engineer Exam 8/23/1931 (more later)
4. SRBA claim by Berend Friehe (73-2126B) for use of Pahsimeroi River for 16 cfs with 8/21/1920 date.
5. Flying J predecessor claimed (73-2126A, renumbered to 73-12110) for use of Big Creek for 40 cfs with 8/01/1921 date (source and date are emphasized).
6. Rights for Friehe successors were recommended and have SRBA decrees (73-12141 to 73-12143) totaling 9.89 cfs from the Pahsimeroi River with 2/18/1926 dates.
7. Affidavit of Garth Chivers in 2005 states 2000 inches came from Big Creek into Goldberg and re-diverted at what I presume is the Pines Grazing main ditch.
8. State Engineer Order on 73-2126 - I conclude the finding was not that water had not been conveyed down the New Ditch. The issue was no more acres were irrigated than had been irrigated with the previous decreed rights of sufficient quantity of an inch or more to the acre (Falls decree, I believe) before the New Ditch was built. This last fact was the reason, in my opinion, for finding no water had been put to beneficial use.
9. The examining engineer, I believe, did acknowledge high water might serve the land.
10. The Friehe set of rights were recommended with priority dates of 2/18/1926 placing the rights junior to the Falls decree and certainly making them "high water" rights.
10. My question is the source Big Creek or Pahsimeroi River for 73-12110? Source of Big Creek creates a burden of when the water under the right was diverted; no history available from permit. Source of Pahsimeroi River has permit history and Friehe SRBA decreed rights precedent. So far, the evidence (Chivers' affidavit) indicates water from Big Creek was conveyed to the ranch from April 1969. Perhaps 1926 and 1969 from a practical standpoint makes no difference. Recommendations for rights 73-10023 (1915) and 73-10041 (1909) from Big Creek total 16.8 cfs. Perhaps "high water" is diverted from both sources: 73-12110 from Big Creek and nothing to do with the permit and 73-4004A from the River and maybe related to the permit.

Talk to you further, I am sure.

Don Shaff
(208)287-4921
don.shaff@idwr.idaho.gov
Happiness is a journey, not a destination.

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

From: Jim Speck [mailto:jim@speckkandaanestad.com]
Sent: Tuesday, February 16, 2010 3:16 PM
To: Shaff, Don
Cc: 'Joe Clark'; jgalfano@aviationpartners.com; 'Debra Barnes'
Subject: FW: RE: Flying Joseph 73-12110

Don,

Please put this right and our questions below on your "to do" list for this ranch!
Thanks!

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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

From: Jim Speck
Sent: Sunday, December 27, 2009 11:55 AM
To: 'Shaff, Don'
Cc: 'Bromley, Chris'; 'Cooley-Denney, Suzy'; 'Debra Barnes'; 'Joe Clark';
'jgalfano@aviationpartners.com'

Don,

Roxanne's claim investigation notes merely state that 73-2126 was "cancelled" after some lengthy protest as the basis for disallowals. Don Barnes tells me this water is used every spring. It looked to me from the documents you sent that the permit was cancelled due to failure to submit proof of beneficial use. This does not necessarily mean the water was not put to beneficial use! Can you look into this a little further and let me know what you would like from us to get this claim recommended in some way?
Many thanks and Happy New Year!!

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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

From: Shaff, Don
Sent: Tuesday, December 22, 2009 5:19 PM
To: Jim Speck
Cc: Bromley, Chris; Cooley-Denney, Suzy

Hi Jim,

Last August you requested having the IDWR claim file placed in its electronic documents. I have finally accomplished the task. Some of the documents are from Permit 73-2126 existing only in the Department's microfilm records. As a result some of the documents you will see are of poor quality. Most of the more critical documents are legible.

Merry Christmas to you and your family.

Don Shaff

(208)287-4921

don.shaff@idwr.idaho.gov

Happiness is a journey, not a destination.