

Williams, Meservy & Lothspeich, LLP
Attorneys at Law

153 East Main Street
Post Office Box 168
Jerome, Idaho 83338-0168



ROBERT E. WILLIAMS
JAMES C. MESERVY
JOHN B. LOTHSPREICH
BRIAN J. WILLIAMS - ASSOCIATE
THEODORE R. LARSEN - ASSOCIATE

EUGENE D. FRIEDRICKSEN - RETIRED

TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135
E-MAIL: REWILLIAMS@CABLEONE.NET

April 15, 2014

Steve Clelland
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

RE: Water Right No. 37-22797, Blaine County, Idaho

Dear Steve:

To follow up the status conference of last Wednesday, here are questions and requests on behalf of Alvin V. Shoemaker and Sally P. Shoemaker, claimants and Objectors to the Amended Director's Report for the above referenced water right. I appreciate Meghan Carter's commitment to respond to these questions and requests as soon as possible so that we can adequately meet the scheduling deadlines established by Special Master Brigitte Bilyeu. Please let me know if you have any questions concerning the following questions and requests for production of materials:

1. A. What specific evidence did IDWR examine to determine there was no irrigation from the pond on Seamans Creek in 1880, as claimed by the Shoemakers?

B. Please provide copies of all documents or photographs constituting the evidence identified in response to 1.A.

2. A. Does IDWR have possession of any evidence establishing the existence or non-existence of a pond on Seamans Creek at any time between 1880 and 1953?

B. If the answer to the foregoing question is yes, please provide copies of all documents or photographs constituting such evidence.

3. A. IDWR has provided Brockway Engineering, PLLC, a copy of an aerial photograph taken in 1950. Does IDWR have any evidence in its possession that there was a pond on Seamans Creek other than a copy of the Decree in *T. A. Joslyn vs M.J. Daly vs Neil Campbell* issued by the District Court, Fourth Judicial District, Blaine County, Idaho, on May 14, 1909? A copy of that Decree is attached hereto as **EXHIBIT A**. See paragraph III for the specific reference to the pond.

B. If your response to 3.A. is yes, please provide a photocopy of each item of evidence.

4. A. In formulating your recommendation for the above referenced water right, did you consider paragraph 2 of the Affidavit of Les Cameron, dated November 26, 2012, wherein he stated that during his frequent visits to the pond on Seamans Creek, in the 1950s and 1960s, that he observed the pond being used for the storage of irrigation water for what is now the Ee-Da-How Ranch?

B. If your answer to the previous question is no, please explain why you did not consider the statement in Mr. Cameron's affidavit. If your answer is yes, please explain why your consideration did not result in the recommendation of a storage right for irrigation.

5. A. Based upon the rectification of the aerial photographs of the area of the Seamans Creek for 1950, 1953 and 1964, which rectification has been provided to you by Brockway Engineering, PLLC, under cover letter of April 15, 2014, does IDWR admit that the pond on Seamans Creek as depicted in 1950 is in the same location as shown in the 1953 and 1964 photographs?

B. If your answer to the foregoing question is no, please state every fact known to IDWR which supports your contention.

6. A. Does IDWR have possession of any aerial photographs of the Seamans Creek area showing the location of a pond on Seamans Creek earlier than the 1950, 1953 and 1964 aerial photographs previously provided?

B. If your answer to the foregoing questions is yes, please provide a copy of such photograph.

7. A. Do you agree that a variation in the size of the pond on Seamans Creek as now constituted based upon the 2013 aerial photograph also included in the letter of today's date to you from Brockway Engineering, PLLC would allow the surface area of the pond to vary from 5.69 to 7.1 acres, depending on the time of year or draw down from irrigation?

B. If your response to the foregoing question is "no", please state every fact upon which you base your denial.

8. A. The surface area of the pond on Seamans Creek in the 1950 and 1953 photographs appears to be smaller than the surface area of the pond shown in the 1964 photograph. Would an adjustment in the priority date for the pending claim to 1964 have resulted in your recommendation for a right for storage for irrigation and/or a larger pond size?

B. If your answer to the foregoing question is yes, please state all of the water right elements that would have been recommended based upon a 1964 priority date.

9. A. Did IDWR make a site visit to Seamans Creek and the pond or make any measurements in order to determine the average depth of the pond on Seamans Creek?

B. If your answer to the foregoing question is yes, please provide the date upon which each site visit or measurements were made, the names of the person(s) who made the measurements and all data that resulted from the measurements.

10. A. Has IDWR concluded that the upper (most easterly) pond on Seamans Creek cannot be used for short term irrigation storage?

B. If your answer to the foregoing question is yes, please state or identify every fact, statute or IDWR policy that supports your position.

11. A. Is it the conclusion of IDWR that the upper (most easterly) pond on Seamans Creek has never been used for irrigation storage?

B. If your answer to the foregoing question is yes, please provide every fact, statute or IDWR policy that supports your position.

12. A. Is it the conclusion of IDWR that the upper (most easterly) pond on Seamans Creek cannot utilize storage to produce an outflow or more than 4.33 cfs during an irrigation season?

B. If your answer to the foregoing question is yes, please provide every fact, statute or IDWR policy supporting your conclusion.

13. A. Brockway Engineering, PLLC, on behalf of the claimant/objector, made a calculation of the current storage volume of the pond to be 634 acre feet. In developing the calculation Brockway Engineering, PLLC, utilized the physical volume of the pond; quantity of evaporation from the maximum pond water surface; the sum of the drawdowns and refills made periodically to provide irrigation; and the estimated seepage from the pond. A copy of the Brockway Engineering, PLLC, calculations will be sent to you by Chuck Brockway, Sr. tomorrow. Does IDWR agree with the 634 acre feet calculation of Brockway Engineering, PLLC?

B. If your answer to the preceding question is no, please provide every fact or principle of law that supports your disagreement.

14. Please explain in detail the basis upon which IDWR determined that the storage volume of the upper (most easterly) pond was 5.6 acre feet in 1953 and 16.8 acre feet in 2013.

15. A. Does IDWR agree that the average depth of the upper (most easterly) pond on Seamans Creek is seven feet (7')?

B. If your answer to the preceding question is no, please state (i) which you contend the average depth of the pond is, and (ii) every fact which supports your contention.

16. A. If the average depth of the upper (most easterly) pond on Seamans Creek is seven feet (7'), should the storage volume be determined by multiplying the pond's surface area by average depth?

B. If your answer to the foregoing question is no, please provide every fact which supports your contention.

17. Please explain the use of the factor ".4" in IDWR's calculation of the average depth of the pond.

18. Please identify every witness that IDWR plans to call on its behalf at the trial of this matter. For every such witness, please identify them by name, address, telephone number and email address. For each such witness please provide a short summary of their expected testimony.

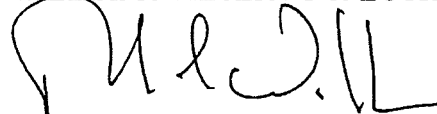
19. Please provide a list identifying every document, photograph, report or other item of physical evidence which you intend to introduce in evidence at the trial of this matter. Please identify each document photograph, report or other item of physical evidence by title, date and the person in possession of it.

20. Please provide a photocopy of every item of evidence identified in your response to the previous question.

Please let me know if you have any questions about any of the foregoing. My client and I look forward to receipt of your answers and responsive materials as soon as possible.

Very truly yours,

WILLIAMS MESERVY & LOTHSPREICH, LLP



ROBERT E. WILLIAMS

REW/bsb

Encl.

c: Client

Brockway Engineering, PLLC

Meghan Carter, Deputy Attorney General

\\SERVER\\share\\data\\Shoemaker Properties (Alvin)\\Clelland 14 April 15th.doc

①

~~XXXXXXXXXXXXXXXXXXXX~~

~~37-0X~~

37-A1.

IN THE DISTRICT COURT, FOURTH JUDICIAL DISTRICT, BLAINE COUNTY,

IDAHO.

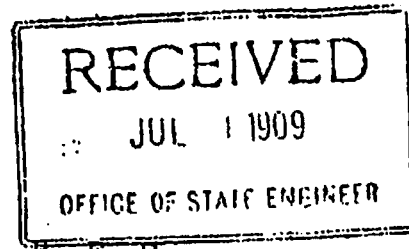
T. A. JOSLYN,
Plaintiff,

vs.

M. J. DALY,
Defendant,

vs.

NEIL CAMPBELL,
Intervenor.



D E C R E E .

This cause having been submitted to the court upon the issues raised by the pleadings, McFadden and Brodhead, appearing for the plaintiff and R. F. Buller, Esq., for the defendant and intervenor and thereupon pursuant to stipulation and agreement of parties and their counsel, the court now makes this its final decree.

I.

It is ordered, adjudged and decreed that the plaintiff, Joslyn, and the defendant, Daly, and the intervenor, Campbell, are each entitled to use one-third of the waters of Seemans Creek in Muldoon Gulch, Blaine County, Idaho, less the prior right of the City of Bellevue to one hundred fifty inches thereof, under a four inch pressure, by each party during the one-third of the time which he is authorized to use it at any place on said Seemans Creek so that each party can apply it on any part of his lands.

37 1198

II.

That the plaintiff is the owner of the right to use all of the waters

of certain springs described in the cross complaint, as about seven hundred seventy-five yards Easterly from plaintiffs residence on his ranch, known as the Kimbrough Ranch in Blaine County, Idaho, on the Northerly side of Seemans Creek. The same being the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32 and N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW NE $\frac{1}{4}$ of Section 33, Township 2, North Range 19 East, that said defendant and said intervenor have no right, title or interest therein or any part thereof.

III.

That a certain lake or pond situated on the so called Water Company Ranch, to-wit: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33 and W $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, Township 2, North Range 19 East, and the waters thereof are part of and tributary to Seemans Creek and that neither the plaintiff herein nor any of the other parties has any exclusive right to the use of the same nor any right thereto, except as part of the waters of said creek.

37 1200

IV.

That the defendant, Daly, as successor in interest of Jennie B. Galbraith, has the exclusive right to the use of the whole of the one-third of the waters of Seemans Creek formerly owned by said Jennie B. Galbraith (less one hundred fifty inches, belonging to the City of Bellevue) for the purpose of irrigating his lands, as follows: E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 31, and W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 32, Township 2 North Range 19 East NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31, Township 2 North Range 19 East.

37 1201

V.

That the intervenor, Campbell, as successor in interest of R. F. Buller has the exclusive right to the use of the whole of the one-third of waters of Seemans Creek formerly owned by Simpson Goble (less one hund-

fty inches, belonging to the City of Bellevue) for the purpose of
ting his lands; to-wit: Lots four and five (4 & 5) SE NW Section
nship 1, North Range 19 East 118.17 acres, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$,
, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 31, Township 2 North, Range 19 East.

VI.

2
hat the plaintiff, Joslyn as successor in interest of Asa M. Kim-
, has the exclusive right to the use of the whole of the one-
of waters of Seemans Creek formerly owned by Asa M. Kimbrough
one hundred fifty inches belonging to the City of Bellevue) for the
e of irrigating his lands; to-wit: E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ section 32,
 $\frac{1}{4}$ Section 32 N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33 NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,
n 34 all in township 2 North Range 19 East Boise Meridian.

VII.

each party, hereto, is to have the right to use the whole of the
to which they are entitled in rotation for an equal period of time,
d of one-third thereof, for all the time (save and except the
s aforementioned rising on the Kimbrough Ranch on the Northerly side
Seamans Creek, the waters of which plaintiff is entitled to the
continuously), said period of time to be one week for each during
rigating season.

VIII.

It is further ordered, adjudged and decreed, that the plaintiff,
, and the defendant, Daly, and the intervenor, Campbell, and each of
m, their servants, agents, employees or successors, in interest or

those acting by, through or under them, be and are hereby perpetually enjoined and restrained from in any manner interfering with or obstructing, the use of the said waters or the various allotments thereof, in time and manner and to the extent hereinbefore set forth.

The plaintiff, Joslyn, and defendant, Daly, to each pay his own costs not heretofore paid; except that the costs of entering this decree, which shall be divided equally between the said parties and paid by them in equal portions.

Dated May 14th, 1909.

Edward A. Walters,

District Judge.

Certificate of True Copy.

STATE OF IDAHO,

County of Blaine.

} ss.

I, W. F. Horn

Clerk of the District Court of the Fourth Judicial

District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a true and correct copy of the original Decree

in the above entitled action now on filed of record in my office,

Given under my hand and the seal of said Court, at office in Hailey, this, the 24th

day of May, A.D. 1909.

Attest:

By Geo. W. God

Clerk.

Deputy

SIMPSON GOBLE, MRS. JENNIE GALBRAITH,
-- WOMACK, JOHN W. BROWN,
MICHAEL BROWN, MIKE SMITH, A. BRYAND,
JOHN HUBBARD, AND THE WOOD RIVER
SMELTING COMPANY.

DO C R E E .

Defendant.

This cause came on regularly to be heard at the May Term 1885 of this Court and by stipulation of the parties was by order of this Court made and entered on the 25th day of July, A.D. 1885, referred to D. E. Waldron, Esq., to take the testimony and report his findings of fact and conclusions of law therein at the October Term, A.D. 1885 of this Court and the said Referee having taken said testimony and having made and filed his report containing his findings of fact and conclusions of law thereon, which report was filed herein on the 31st day of October, 1885, whereby the said Referee found that the plaintiff is entitled to 300 inches of the waters of Seamand's Creek measured under a four inch pressure and that the Defendants had unlawfully interfered with the plaintiff's right to the use thereof as stated in the complaint to which report and findings reference is hereby made, Now on motion of G. L. Waters, Esq. and Messrs. Angel & Sullivan, Attorneys for the Plaintiff,

37-1208 It is ordered, adjudged and decreed that the plaintiff in this action, the City of Bellevue, is the owner of and entitled to the possession of Three Hundred ^{150 (see modification at end of decree)} (300) inches measured under a four inch pressure of the waters of Seamand's Creek under and by virtue of the appropriation, diversion, and use thereof as stated in the complaint and found by the said Referee and that the

37-AG

1. DECREE -- T. A. Joslyn -vs- M. J. Daly 37-1198 thru 37-1202
2. LAND LIST -- M. J. Daly, et al. -vs- Torrensto A. Josslyn
3. DECREE -- The City of Bellevue -vs- Simpson Goble, et al.
4. JUDGMENT -- Frank Drake, et al. -vs- Gustave Bohlke, et al.
5. FINDINGS OF FACT AND CONCLUSIONS OF LAW -- Frank Drake, et al. -vs- Gustave Bohlke, et al.
6. JUDGMENT -- John E. Miller vs. Peter Weber, et al.

also

37-1208, 1209 thru 1211