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16063/SETTLEMENT-AGR/mj
Attorney for Dean R. Rogers, III

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

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SETTLEMENT AGREEMENT

SUBCASE NOS.: 37-118

NOW, THEREFORE, it is hereby agreed as follows:

1. Stevenson's right No. 37-118 (as decreed in the Frost decision with a priority date July 1, 1904) will be measured at the Willis #1 Headgate, the current location of measurement of that right, by the Water Master for Water District No. 37.

2. Rogers' right No. 37-2598 (priority date September 27, 1957), shall be measured at the designated Points of Division by the Water Master for Water District No. 37.

3. Rogers' shall have the obligation to clean and maintain the drains on his property in Sections 17 and 18 for the delivery of water right No. 37-118.

4. Stevenson and Rogers shall retain the right, in the event that issues arise over the delivery of water for water right No. 37-118, to take other action necessary to address such issues, including but not limited to requesting assistance from the Water Master for Water District 37, the Idaho Department of Water Resources and the courts. This Agreement shall provide no third party any rights to address the subject matter of this Agreement.

5. Acknowledging that all irrigation water carries some silt and sediment and that all such silt and sediment cannot be removed, Rogers shall as part of the maintenance take all reasonable actions to prevent excessive amounts of sediment and pollutants from being delivered to the Wills #1 headgate, while not interfering with delivery of water at Rogers discretion. If Stevenson is dissatisfied with the impacts of the actions taken by Rogers, Stevenson retains all rights as noted in paragraph 4 above.

6. Water right No. 37-118 to be amended to show the source as developed swamp water collected in a swamp ditch now known as the Bueller Drain. This current version of the Bueller Drain as shown by IDWR and USGS is also known as the Rogers' ditch.

7. Upon execution of this Agreement, Rogers shall withdraw his objection to water right No. 37-118 as amended by paragraph 6. Stevenson shall make no objection to Rogers' water No. 37-2598 as that right is currently recommended by the Idaho Department of Water Resources.

8. This Agreement shall bind the parties and their respective successors, heirs, and assigns, and the obligations shall run with the land.

DATED this 17th day of August, 2011.

Dean R. Rogers Jr.
Dean R. Rogers, Jr.

STATE OF IDAHO,)
COUNTY OF Twin Falls) ss.

On this 17th day of August, 2011, before me, the undersigned, a Notary Public for Idaho, personally appeared DEAN R. ROGERS, JR., known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.



Michele Jeske
Notary Public for Idaho
My Commission Expires on 1-12-12

Dean R. Rogers, III.
Dean R. Rogers, III.

STATE OF IDAHO,)
COUNTY OF Twin Falls) ss.

On this 17th day of August, 2011, before me, the undersigned, a Notary Public for Idaho, personally appeared DEAN R. ROGERS, III., known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.



Michele Jeske
Notary Public for Idaho
My Commission Expires on 1-12-12

John F. Stevenson

STATE OF IDAHO,)
) ss.
COUNTY OF _____)

On this _____ day of August, 2011, before me, the undersigned, a Notary Public for Idaho, personally appeared JOHN F. STEVENSON, known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

Notary Public for Idaho
My Commission Expires on

08/26/2011

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-118

NAME AND ADDRESS: JOHN F STEVENSON
36 HILLSIDE RANCH RD
BELLEVUE ID 83313

SOURCE: BUHLER DRAIN

TRIBUTARY: STALKER CREEK

Water developed for this right resulted from drainage of a swamp by a ditch now known as the Buhler Drain (also locally known as the Rogers Ditch).

QUANTITY: 8.000 CFS

Rediversion from Stalker Creek in Section 28 is limited to the measured flow rate injected into Stalker Creek or 0.02 cfs per acre for the lands served, whichever is less.

PRIORITY DATE: 07/01/1904

Pursuant to a call in times of scarcity, this right is senior to all other rights that did not result from saved or developed water in Silver Creek, as established and controlled by, and subject to, the provisions included within In Re: S C Frost et al vs Alturas Water Company et al decree (Lincoln County, entered 12-13-1909).

POINT OF DIVERSION:

T01S R19E S20 SWNNWN Within BLAINE County
T01S R19E S28 SESENE Rediversion Within BLAINE County
T01S R19E S29 SWSNW Injection Within BLAINE County

The point of injection described above is where Buhler Drain water flows into Stalker Creek for rediversion from the pump further down Stalker Creek.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	8.000 CFS

PLACE OF USE:

IRRIGATION in BLAINE County

T01S R19E S19	NENE	3.00	T01S R19E S19	SENE	28.00
T01S R19E S19	NESE	25.00	T01S R19E S19	SESE	29.00
T01S R19E S20	SWNW	6.00	T01S R19E S20	NWSW	11.00
T01S R19E S20	SWSW	28.00	T01S R19E S27	SWNW	28.00
T01S R19E S27	NWSW	26.00	T01S R19E S28	SWNE	15.00
T01S R19E S28	SENE	27.00	T01S R19E S28	NESE	30.00
T01S R19E S28	NWSE	10.00	T01S R19E S28	SESE	22.00
T01S R19E S29	NWNW	32.00	T01S R19E S29	SWNW	38.00
T01S R19E S29	SENW	5.70	T01S R19E S29	NESW	37.00
T01S R19E S29	NWSW	38.00	T01S R19E S29	NWSE	18.00
T01S R19E S30	NENE	34.00	T01S R19E S30	SENE	32.00
T01S R19E S33	NENE	2.30			

525 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 525 acres in a single irrigation season. Combined Right Nos.: 37-118, 37-2576, 37-2681, and 37-7644.

This right is limited to the irrigation of 300 acres within the place of use described above 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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380
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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 5, 2009

Albert Barker
PO Box 2139
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John Stevenson
36 Hillside Ranch Rd
Bellevue, ID 83313

Stephan Kvanvig Stone & Trainor
PO Box 83
Twin Falls, ID 83303-0083

Dean Rogers Inc
28 Hillside Ranch Rd
Bellevue, ID 83313

RE: Delivery of Rt. 37-118 and others in area

Gentlemen:

Precipitated by the Barker letter of May 20th, Kevin Lakey (Watermaster of WD37 and 37M) and I visited the Hillside Ranch Road area on May 28th. We met with Mr. Stevenson and later met with Mr. Rogers. Mr. Rogers gave us a tour of the water features on the Rogers' property that relate to both the Stevenson's and Rogers' water rights.

The water uses on these two properties have a symbiotic relationship. The water sources for the uses consists of a combination of ground water developed from drilled wells that are either pumped or flow artesian at land surface, shallow ground water or springs captured via the excavated Buhler (Buller sp?) drain and wastewater or unnamed streams collected by the Buhler drain. It is my understanding that the Buhler drain as shown on the USGS Quad is a constructed drain and not a natural stream channel. At times ground water from the wells is directed into the Buhler drain and then re-diverted. At times ground water is directed into natural streams in the area (Patton or Stalker Creek) and then re-diverted downstream.

On the Rogers' recommended rights, the water flowing in the Buhler drain is described as "Unnamed stream tributary to Stalker Creek". The Rodgers' recommended rights include:

37-2598	Unnamed stream
37-11614	Unnamed stream
37-2643	Ground water and Unnamed stream
37-2661	Ground water and Unnamed stream
37-7633	Ground water and Unnamed stream

On the Stevenson's recommended rights, the water flowing in the Buhler drain is described as "Swamp tributary to Sinks". The Stevenson's recommended rights include:

37-118	Swamp
37-2576	Ground water
37-2681	Ground water
37-2649A	Ground water
37-2649B	Ground water
37-7644	Ground water

The record indicates that right 37-118 was initially decreed to Buller in the Frost Decree. The right is based on development of water from a "swamp" in the "Swamp ditch". I have attached copies of documents subsequent to the Frost Decree that may further define this right. Of importance to note is the requirement to maintain the ditch by the right holder and the exclusive nature of the priority which has not been captured in the current recommendation.

The issue raised in the Barker letter appears to focus on the installation of several gravel dams in the Buhler drain on the Rogers property that impede the flow down the Buhler drain to the Stevenson property. When Mr. Rogers was asked why these gravel check dams have been installed he indicated it was to raise the sub-water in the area. He indicated that over the years the sub-water has decreased as a result of land use changes up gradient and the sub-water is not as it used to be. He indicated that the original Buller ditch (Swamp ditch) was filled in around the 1950's and his family constructed what is now known as the Buhler drain. He indicated that water flowing off of his property is largely a result of the ground water that he diverts and conveys through the Buhler drain system or waste water or sub-water as a result of his ground water application that is captured by the Buhler drain. Mr. Rogers maintains that he has a right to modify this drainage system on his property.

My review of the recommendations finds there are numerous inconsistencies with how the points of diversions, re-diversions, injection and sources have been described in the rights listed above. The issue of the drainage ditch appears ripe for litigation in either a private civil matter or the SRBA. Note that the parties have not objected to the recommendations of each other nor raised the issue of the Buhler drain in the SRBA. My review finds that Stevenson has a senior right as compared to Rogers for the water from the Buhler drain; however, since the Buhler drain flows into Stalker Creek tributary to Patton Creek tributary to Silver Creek tributary to Little Wood River these rights as recommended should be regulated with the priorities of these other streams.

Review of the points of diversions, re-diversion or injection finds there presently are not adequate measuring devices or control works for the watermaster to adequately regulate the water rights for these two properties.

Because this letter likely only captures a portion of the potential issues, I propose that IDWR and the watermaster host a meeting in this office or participation by phone with the parties (and their attorneys if desired) in the near future to further the discussion.

Please let me know in the next 10 days what days you may be available in late June or early July to schedule such a meeting.

Respectfully,

Allen Merritt, PE
Southern Region Manager

CC: Kevin Lakey – Watermater 37&37M
Tim Luke, Chris Bromley, Doug Jones - IDWR