

Mr. James Cephalo
Idaho Department of Water Resources
Eastern Regional Office
900 N. Skyline Drive
Suite A
Idaho Falls, ID 83402-1718

Re: Administrative Hearing for Transfer 70722 scheduled January 5, 2011.
Order requesting witness list and exchange of exhibits.

Mr. Cephalo,

The following is a list of witnesses as per request:

D. Glade Schvaneveldt
7909 W. Black Canyon Rd.
Weston, ID 83286 747-3970

Ron Carlson, IDWR
Eastern Regional Office

Theo Schvaneveldt
106 N. West Side Hwy
Weston, ID 83286 747-3541

Roger Warner, IDWR
Eastern Regional Office

Brian Balls
5139 W. hwy 36
Weston, ID 83286 747-3410

Dave Carlson, IDWR
Eastern Regional Office

Kent G. Aston
192 E. Depot
Weston, ID 83286 747-3721

Wayne Bingham
316 N. Westside Hwy
Weston, ID 83286 747-3209

Paul Campbell
297 E. Depot
Weston, ID 83286 747-3465



Enclosed are the following exhibits in their respective chronological order:

June 1, 1960	Exhibit 1	Minutes from Weston Creek Irrigation Company
June 30, 1960	Backfile pg. 3 and 4	application G- 36769, permit G- 28818
August 1960	Exhibit 2	Well log for permit G-28818
Nov. 23, 1960	Exhibit 3	Sales Receipt and Well Agreement
July 11, 1961	Exhibit 4	Application G-37949, Permit G-29935
Feb. 18, 1963	Exhibit 5	Payment receipt - \$\$ to Schvaneveldt from Fonnesbecks
July 28, 1964	Exhibit 6	Instr. No. 114606 Mortgage Schvaneveldt sells farm to Cooley
Nov. 12, 1965	Backfile pg. 19	Letter to LeRoy Cooley - IMPORTANT!!!!
October 10, 1966	Backfile pg. 9, 17,14,16,10,11,13,12	
Nov. 7, 1966	Exhibit 7	Cancellation Notice Permit # G-29935
Nov. 16, 1966	Backfile pg. 6, 2, 7, 1	Certificate of Completion, License
May 2, 1967	Exhibit 8	Lee sells farm and ¼ of well to ElRay
February 20, 1980	Exhibit 9	Bill of sale from Lee to Sid
February 20, 1980	Exhibit 10	Instr. # 152294 FHA loan
July 19, 1982	Exhibit 11	Instr. # 159728 Real Estate Mortgage
August 20, 1987	Exhibit 11.3	Instr. #176175 Soil and water loan
June 2, 2003	Exhibit 11.5	Attorney letter from Sid
June 23, 2003	Exhibit 11.6	Attorney letter
July 23, 2003	Exhibit 11.7	ElRay files for water transfer
July 25, 2003	Exhibit 11.8	Attorney letter, telecopy via Steve Fuller
November 2003	Exhibit 12	Myron Fonnesbeck affidavit for pre-conference hearing
November 2003/4	Exhibit 13	Agreement as advised by IDWR
July 28, 2004	Exhibit 14	Bill of sale from Sid to Clinton Aston
April 11, 2005	Exhibit 15	13-4120 owned by Zane Fredrickson
June 30, 2005	Exhibit 16	Ron Carlson notes and advisement

Let the record show that transfer 70722 was applied for with the assistance of a water resource officer. That for lack of current or up to date records existing at the Eastern Regional office at the time the application was made, it appeared to be the correct procedure for fixing my water right problem at the time.

That a chain of events took place beginning in 1960, which included a venture joining Lee Schvaneveldt, Norman Fannesbeck, and Myron Fannesbeck as partners in the development of two ground water wells.

That permits were issued allowing the Fannesbecks and Schvaneveldts the right to develop and put to beneficial use a total of 10 cfs of subterranean water from 3 separate diversion points.

That if 2 cfs and 1 of the diversion points (1/3 of the 6 cfs granted under permit G-28818) had been made exclusive to development by a third party, Mr. Lewis Bingham, separate of the Fannesbecks and Schvaneveldts, the Fannesbecks and Schvaneveldts still had the right by permit to develop and appropriate 8 cfs from two separate well locations or diversion points.

That a substantial amount of money was given to Mr. Bingham by the Fannesbecks and Schvaneveldt to come into a well site on his property, but more so, that for all intents and purposes, he would be able to develop another well site that had more interest to him at the time.

That the Fannesbecks and Schvaneveldts did proceed to develop and put into production two wells simultaneously which I will refer to as the following:

Well #1 located in the NE ¼ NE ¼ Sec. 36 T15S R38E permit #G-28818

Well #2 located in the NW ¼ NE ¼ Sec 8 T16S R38E permit #G-29935

That Well #1 was proven to produce 2.87 cfs as installed as a high volume low head pumping station, and well #2 will produce the same volume, but was installed and set up to deliver water at a much higher pressure.

That the Fannesbecks were mostly flood irrigating and the Schvaneveldts were sprinkler irrigating.

That by practicality of use, the Fannesbecks eventually made exclusive use of well #1 and the Schvaneveldts exclusive use of well #2.

That the Bingham had taken upon themselves the responsibility for making the filings leading toward perfecting the water rights on well #1, and Lee Schvaneveldt the same for making the filings on well #2.

That in the middle of critical years for finishing the proofs of completion for these wells, Lee sold his farm to LeRoy Cooley, and Mr. Cooley became the Fannesbecks new partner. This sale had troubles and before long, Lee was negotiating with the Fannesbecks to trade interests in the two wells. The Fannesbecks were not interested, the location and set up of well #2 had better potential for future use. As time went on, more problems were surfacing. The Cooleys were not proving themselves capable of satisfying the agreement between themselves and Lee. When they started selling off milk cows to cover payments that they were falling behind on, Lee knew he was most likely going to be getting the farm back if he didn't do something.

That there came a point where Lee was looking at options for refinancing the farm and he was being told that he needed full ownership of well #2 to satisfy these other arrangements and possibly solve his problems with Cooleys.

That LeRoy Cooley had been talking to people in Boise and had learned that permit # 28818 was for the use of two wells and that well #2 could be added to this permit by amendment as a replacement for the undeveloped well site that was listed on the original application.

That Lee had approached the Bingham and the Fannesbecks about combining the two well permits.

That if you look closely at the backfile for 13-2209, you can see some evidence that this was being looked at but did not get included in the final record, and amidst all the problems that were in need of being solved, finishing up the water rights on well #2 fell through the cracks.

That the Fannesbecks eventually agreed to make the trade with the wells, and this happened before or shortly after I bought the farm.

From the time that well #2 was first put to use in 1962, water has been dumped into the Weston Creek Irrigation canal from this well and transported to the farm I now own and operate.

In 1966, my Brother-in-law, Theo was raising cabbage on what would later become my farm in sec. 10, and was running well water for this crop.

In 1967, I bought the lower farm in sec. 10 and 11, which included all of the Weston Creek Irrigation Stock being used on these farms at the time, and, because Lee knew that was not quite enough, he included a $\frac{1}{4}$ interest in well #2 to supplement my water supply. And, it was not questioned that the $\frac{1}{4}$ interest included whatever else was necessary to get the water from the well to the irrigation canal.

In 1971, Lee sold the upper farm to his son, Sidney, which included the remaining $\frac{3}{4}$ interest in well #2.

That both Sid and I bought our farms with an understanding that a license existed for the use of the water out of well #2, and until 2003 when I contacted IDWR, I had never had occasion to question or believe otherwise. (I had no knowledge about claim 13-4120, and wonder to this day why Sid did not talk to me about needing to file something when he first realized a record was not on file)

From that time and through the following years, the water users in the area, including Sid, have peacefully acknowledged this use and the Weston Creek Irrigation Company has accommodated having our well water comingled with our shares of Weston Creek and delivered through Irrigation Company canals to our land in Sections 10 and 11.

That the use of this water was consistent on an annual basis until approximately years 1979 through 1985 when the weather conditions changed and we were receiving excessive amounts of precipitation and heaven was providing all the water we could use plus some. There was no need to pump ground water during this time. Following this period, Elsie Bastian sold her farm, and the new owners never used the water that went with her place, which allowed additional creek water to come to my farm, making it unnecessary to pump ground water. This same additional water has been available right up to this past year when a subsequent new owner has now made improvements and now demands he will be using it.

There have been some years in between that have been so dry and Weston Creek water has run out so early in the year, that to finish out the year I have relied solely on groundwater. There has been a year or two that has been so dry, that the lack of Weston Creek water has left the ditch so dry that well water could not make it to my farm.

Nine years ago, Mr. Sidney L. Schvaneveldt had fell upon such financial pressures that he chose to put the farm up for sale. Rumors and stories get told, but a fact that persists is that Sidney decided that my ownership in the well was somehow preventing him from selling his farm and has taken on a mentality that he will do or try whatever he can to terminate my ownership and use.

He did find a buyer, and

The current owner was given notice of the ownership issues in the well by some of my neighbors before he purchased Sid's farm and this new owner informed all of us that he is so much more knowledgeable and connected to those who know about water issues that he has things worked out and we need not concern ourselves. That I no longer have any ownership in well #2 and it is 100 % his now because Sid gave him a bill of sale and I apparently signed a deed that relinquished my ownership, and further, that it would be illegal for him to allow me to use water from the well because I do not have a water right.

That Jay Norman Fonnesbeck and I have somewhat joined together to try to get to the bottom of some of these issues because this problem I have, comes from the same blood line as another problem he has, and we have made some trips to Idaho Falls and made phone calls and visits to talk with people that were recommended for help in these matters.

That prior to April of 2005, the Eastern Regional Office did not have many of the records that could have helped move this process along in a more timely manner. Since then, our digging and prodding for information, and the advances in technology being utilized by IDWR to make records more accessible, has helped immensely with getting our arms around a preponderance of evidence needed to bring our activities and current water rights record in line with current needs.

In summary, the IDWR Eastern Regional Office could not find a record, therefore I drove to Idaho Falls on July 23, 2003 with the intent to file a Statutory Claim for water I have been using out of well #2 located in the NW ¼ NE ¼ Sec. 8 T16S R38E. I was steered to file an application for transfer based upon an electronic record that still showed my land listed on the License for well #1. Water Resources maintain that it was the most current record they had on file and therefore it was assumed that filing the transfer was legal and the correct action based on the face of the record.

That the transfer was protested has brought out some bigger issues that need to be resolved.

That the transfer is appropriate and should be allowed if license 13-2209 can be corrected to show that well #2 could have been included under permit G-28818, and the volume of water established to be diverted from well #1 can remain the same and not reduced.

Claim #13-7661 has been filed upon review and advisement of IDWR to prevent any further delays or injury regarding my having or not having a right to use groundwater pending this transfer. I would be more than glad to discuss this claim if you find it to be of value and within the scope of this hearing.

I certify that I have delivered copies of the proposed witness list and exhibits to the following parties to this hearing on or before December ___, 2010:

Mr. James Cephalo,

Sidney Schvaneveldt, 6762 W. 2200 S., Weston, ID 83286

Jay N. Fannesbeck 6022 W. Hwy 36 Weston, ID 83286

ElRay Balls
Weston, ID