

240996 1-9

My name is J. Myron Fannesbeck and I wish to attest to the following series of events concerning the ownership of two groundwater wells located in Weston, Idaho.

Well #1 is located in the NE ¼ of the NE ¼ of Sec 36 T15S R37E

Well #2 is located in the NW ¼ of the NE ¼ of Sec 8 T16S R38E

In 1960, well #1 was drilled and cased by Gardner Drilling at the request of the Weston Creek Irrigation Company and who later declined to further develop it. Lewis Bingham, Lee Schvaneveldt, and Norman & Myron Fannesbeck, joined together by agreement to develop this well.

By the end of 1960, the undeveloped well #1, itself, was owned as follows:

- 1/3 Lewis Bingham
- 1/3 Lee Schvaneveldt
- 1/3 Norman and Myron Fannesbeck

Starting in 1961, improvements to the well #1 were installed and financed by Lee Schvaneveldt and Norman & Myron Fannesbeck. The first improvements include the installation of a 12' by 12' cement foundation and base to install a stationary diesel engine and vertical shaft driven turbine pump, horizontal gear head, 8 inch discharge to a 10 inch check valve and then enough 10 inch steel pipe to carry the water directly west to the main channel of Weston Creek which in also the main canal of the Weston Creek Irrigation Company (which runs through the Bingham property), a cement spill and weir box into the canal, and a diesel engine to drive the pump. We also had to put in some new weirs and dividers in the Georgeson ditch to separate our new water from water normally going further down the ditch to other users. We operated with a diesel engine for the first 2 and possibly 3 years until we could get 3-phase power to the well site and then we converted over to a 75 hp electric motor.

Also in 1961, Lee, Norm and I, joined together to find and develop another well site on our own property. We had drilled several test holes and the only one that proved satisfactory for irrigation was located on Lee's property north of the Weston Creek. Charlie Gardner gave us his best advice as to where to drill our last hole, but he had some commitments elsewhere, and Lee had another driller come in and do this one so we could stay on schedule.

By the end of 1961, the ownership in the improvements (pump, engine, fixtures to deliver water, etc.) to pump water from the well #1:

- ½ Lee Schvaneveldt
- ½ Norman and Myron Fannesbeck

Ownership in the well (potential water right and casing) itself:

- 1/3 Lewis Bingham
- 1/3 Lee Schvaneveldt
- 1/3 Norman and Myron Fannesbeck

Recorded at the request of

Jay Fannesbeck

____ a.m. MAR 26 2008 p.m. 2:37

V. ELLIOTT LARSEN, RECORDER
By Shauna Geddes Deputy
FRANKLIN COUNTY, IDAHO



240996 2A

Starting in 1962, plans were in the works for Utah Power and Light to bring 3-phase power "up the creek" from the substation in Weston to operate several wells being developed in the Weston Canyon area. Our well #1 was operating with a diesel engine, the same situation for Herbert Williams. Jack King had a well cased not far from our well #1 and we had well #2 cased on Lee's farm and were installing a pump and motor. Lee was also in the process of installing a 40 hp electric pump on his farm in section 10 and 11 to sprinkle irrigate this piece. All these irrigation systems were in preparation to go on line as soon as 3-phase power could be connected. We were all anxious to have power as soon as possible, yet I am not certain whether UP&L got the lines in that fall or by the following spring or summer. We had to put up some considerable front money to get the new line in and then sign into an agreement to guarantee to pay a minimum amount each year for the next 5 to 10 years.

At the end of 1962, the ownership in well #1 remained the same.

The ownership in Well #2 was as follows:

- 1/2 Lee and Jerry Schvaneveldt
- 1/2 Norman and Myron Fannesbeck

In 1963 Lew died and we learned that he had sold his farm and interest in well #1 to his sons, Sterling and Vereen. Norm, Lee, and I continued to pump well #1 with diesel and whether we had everything operating with well #2, I am not sure. **The water from well #1 was discharged into the Weston Creek canal and commingled with our shares of Weston Creek water.** The water was later divided into the Georgeson ditch or the Anker ditch at the main divider located in Section 5. The water was measured and rotated between ditches by the watermaster to accompany our water turns with Weston Creek. This gave us a double stream to irrigate with. We ran water all the way out to my farm on the east side of Stink Creek located in Section 21 and Lee was running water all the way to his farm located in section 10. We had other irrigated lands between these points. We were flood irrigators at this time and it took as big a stream as possible to do us the best good. When we got well #2 operating, Lee purchased some aluminum mainline, handlines, and sprinkle irrigated. We ran the water from this well down a ditch that went south from the well. We had problems getting the water past Weston Creek and it made more sense for us to use all the water out of well #1 and Lee use all the water out of well #2.

1964 was a big year for changes.

Jerry Schvaneveldt chose to leave the farm to pursue his ambition with horses and Lee was looking at selling out. Lee was making it known that he was going to sell both of his farms and dairy. Norm, Lee, and I, were having discussions on how we would handle this partnership we had established with these two wells. Norm and I had just purchased another tract of land from the Georgesons in section 9. This gave us another piece to irrigate that was closer to the source of water.

The best solution would have been for Norm and I to buy Lee's farm, but with the additional water, Lee's property suddenly got a little too pricey. It was difficult enough to pay for the land we had just purchased and the improvements on these wells. So, as bad as we would have liked to purchase Lee's farm, it was not feasible for Norm and I at this time. I can't remember what Lee did this year but Norm continued to irrigate our land out to the homestead by flooding (and may have been sprinkling by now) and continued to flood irrigate the ground on the Georgeson place. By late in the summer or by fall, Lee had found a buyer for his farm. His name was Cooley from Newton and he and his boys were now running the farm.

By the time the 1964 irrigation season arrived, I am sure we finally had 3-phase power "up the creek". We replaced our diesel pump with a 75 hp electric motor at well #1, and had a 100 hp electric motor and pump operating at well #2. Norm installed the diesel engine onto a trailer and connected it to a centrifugal pump with a suction hose and screen to make it portable. We were running the water from the well #1 into the Weston Creek system and it was divided later downstream into the Georgeson ditch together with our water turn from Weston Creek. Norm built a reservoir where the Black Canyon Creek entered our property at the homestead, and one further upstream. This gave him a way to store water and then pump it into a portable aluminum mainline and sprinkler pipe which he had now purchased. This worked well for sprinkle irrigating his land in section 16 and 21. We continued to flood irrigate our land in section 8 and 9.

We tried many combinations to establish the most efficient use of the water we had available. Lee, his family, or the Cooleys were doing the same. We could not get water from well #2 into the Georgeson ditch and so we irrigated our land in section 8 and 9 with this source. This was not easy. Flash floods coming down Weston Creek would destroy our flume over the creek. Norm and I, and the Mickelsens, had the same problem out south and spent a lot of time and money to bury a pipeline under Stink Creek with other improvements to use our water out south. We were thinking we would have to do the same kind of project under Weston Creek if we were to continue using the water out of well #2. This was considered for the next year. Until we solved this problem, we concluded that it worked at the time for Norm and I to use our share of water out of well #1 and Lee or Cooleys would continue to use the water from well #2.

1965.

Binghams decided they were going to use the well this year.

Lee (or our new partner, Mr. LeRoy Cooley) took responsibility for perfecting the water right for well #2 since it was on his property. Sterling and Vereen took responsibility for perfecting the water right for well #1 for the same reason.

I was busy with my job in Preston working at the ASCS office and Norm was extremely busy trying to take care of our farming operation which had grown quite large. To be quite honest, this was a new experience working through a water right application, and I was not always informed of all the details on what needed to be done or what was actually being done. Sterling and Vereen were getting help from sources in town (Preston), and I assumed Lee (or LeRoy) was doing the same. On occasions I was

informed and kept up to date on what was being done, and when I was needed, I did what I could or was necessary to help things move along.

1966.

This was an important year for finishing the work to get our water rights established. I know that I was informed that everything was taken care of. Bingham chose to use the well again this year, especially when they thought the water inspector from the State might be showing up. Norm and I, and our new partner, felt if they were going to use the well, this created an obligation for them to pay for their 1/3 share of the improvements to well #1 as agreed upon. **Norm and I approached Sterling and Vereen, and I thought or assumed they had agreed to act on this, but we never got anything from them. To the best of my knowledge, neither did Lee or the Cooleys.**

Lee was having problems with the sale of his farm, (something to do with the Cooleys getting their own financing to cash him out or payments, or whatever), and he approached Norm and I about trading interests in the two wells. Supposedly, that would help, or was necessary at the time. Lee was a true wheeler dealer and he had a problem he was trying to solve. He needed us to trade our 1/2 interest in well #2 for his 1/2 interest in well #1. This was not beneficial to us, and it was a hard and really a bad decision for us to go with this proposal. Well #2 was closer to our farm and had better potential for use. Our goal was to have a source of water that was on our farm or closer than well #1, and it made no sense for us to bargain away our use of this well, but, Lee was quite motivated to solve his problem and came at us with an incentive; that by trading, the established water rights that went with well #1 and appurtenant to his farm would be ours, and, he would be assuming the rights established by well #2. It was getting difficult to know exactly who we were going to be partners with at this point, and we chose to be accommodating to Lee and make the trade, which gave him or the Cooleys the full ownership in well #2 and Norm and I owned everything but a 1/3 interest in the well itself at well #1.

LeRoy Cooley and his boys seemed like good and capable people, and I just assumed Lee had turned everything over to them to finish up the water right on well #2. I had talked to them and they seemed to be on top of it. LeRoy said he had been talking with the people in Boise and I felt assured that he was getting the job done.

By fall, our water right on well #1 was completed and we were notified that we would be issued a license. Sometime later, either Norm or I was notified that our permit and application for a water right on well #2 was cancelled. Our agreement to trade interests in the two wells was firm at this point and well #2 was no longer our concern. At this moment in time, Norm and I had bargained, traded, and acquired, a major interest in well #1 and the right to irrigate 347 acres of ground with it. This was now our concern and we went to work to utilize our investment.

240996 6-8

1967.

Another year for big changes. The sale to Cooleys had failed and Lee was working out some other agreements with his kids to help them purchase the farm. In the spring, Lee ended up selling his farm and dairy in Weston (sections 10 and 11) to his son-in-law, ElRay Balls, and daughter, Janice, and included with it; all of his water stock in Weston Creek and a $\frac{1}{4}$ interest in well #2.

Lee retained a $\frac{3}{4}$ interest in the well, for the farm where well #2 is located (section 8), and, this was to be the source of water that went with this particular farm.

I was realizing that I could not farm at the scale Norm and I had reached and also manage my Government job. The two of us decided this year to divide the farm operation. Norm would continue to farm all of the land west of town and lease my share. I had just purchased a piece of irrigated land from Marcell Pitcher and was planning on running this place with another piece we had southeast of town.

The obligation and opportunity came for Bingham's to come into their full $\frac{1}{3}$ ownership of well #1 ($\frac{1}{3}$ in well itself and $\frac{1}{3}$ share of improvements), and, they chose instead to dodge, ignore, refuse, decline, or whatever, and did not pay anything toward honoring our agreement. Norm and I had invested a lot of money in this venture, we needed them to pay their fair share of the expenses, we needed the money for our own operations, and we would have been greatly appreciative if they would have paid it, but we were not going to fight over it.

The logical conclusion, and one that we could see we would be living with, was simple; that if they chose not to pay or buy in on the share offered to them by agreement at this time, then the improvements would belong to Norm and I. A fair and reasonable conclusion, and one that was predictably going to be the outcome. Their reasoning became that they were not using the well enough or even planning on using it enough to owe us anything, but if things changed, they assured us that they would make it right.

To this day, from all of my discussions with Norm and anyone else, to the best of my knowledge, they, being Sterling, Vereen, or any of their successors, have not paid or offered anything toward honoring this part of our original agreement. All of the capital and expenses to add the improvements to pump water from well #1 have been paid for by Norm, Lee, or myself.

Therefore, at the end of 1967, the ownership in well #1 was as follows:

- 1/3 of the well itself (water and casing) still belonged to Sterling and Vereen Bingham, with the right to irrigate 59 acres from water right 13-2209.
- 2/3 of the well itself (water and casing), with the right to irrigate 347 acres of land from water right 13-2209.
and
- 2/2 of the improvements (pump, motor, piping and electrical service) belonged to Norman and Myron Fannesbeck.

The ownership in well #2 and improvements were as follows:

- 3/4 Lee Schvaneveldt
- 1/4 ElRay and Janice Balls.

1968.

From this time and forward on, my involvement with well water "up the creek" became minimal, and in approximately '79 or '80, I approached Norm about buying my share. He had just installed a new pumping station, buried mainline, and sprinkling equipment on the Georgeson farm to convert from flooding. We were both quite involved with a proposed piping project for Weston Creek Irrigation Company that would convert everyone over to gravity pressure.

Norm had quit leasing my share of the farm out on Stink Creek and was focusing more attention on his irrigated land. I wasn't involved with the water anymore and assumed Norm should have the control. He declined my offer.

I approached Glade Schvaneveldt who was now leasing my land and the Mickelsen farm which is directly adjacent. He had other land that he was irrigating and felt this would be a great benefit to him and we worked out an agreement for him to own my share of the well and water rights.

Glade had made improvements to his irrigating system on the Mickelsen place and was now sprinkle irrigating instead of flooding. He had purchased a diesel pump and portable mainline and was pumping directly out of the Black Canyon creek. He had also installed a new pumping station and mainline on his property in the NW1/4 of Sec. 16 and was able to pump directly out of Weston Creek. Having the well water to supplement creek water was viewed as a huge benefit to him.

In '82, my nephew, Jay, purchased the Mickelsen farm. This brought some changes to Glade's plans, and he moved his share of using the water elsewhere.

I thought I had arrived at a point in my life where I was neither involved or concerned anymore with water problems in Weston. I believe that we have been using water within our right to use it, and, to the best of our understanding at the time. Now that we are learning more correctly how water is administered, and with what has changed over the years, it is apparent that records need to be brought up to date and some things may be required to be done differently than in the past.

This is what I know and know to be true, and I hope it can help with whatever needs to be done.

240996 7-8

To the best of my knowledge, judgment, and understanding of what I have done, seen, and heard, and been party to, I would declare that the ownership of well #1, as of today, would be as follows:

Norman Fannesbeck estate	1/3 of the well and 1/2 of the improvements,
Glade Schvaneveldt	1/3 of the well and 1/2 of the improvements,
Sterling & Vereen Bingham	1/3 interest in the well itself.

and,

To the best of my knowledge, judgment, and understanding of what I have seen and heard, and been party to, I would declare that the ownership of well #2, as of today, would be as follows:

Sid Schvaneveldt	3/4 of well and improvements
ElRay Balls	1/4 of well and improvements

J. Myron Fannesbeck
J. Myron Fannesbeck
~~November 10, 2003~~
April 6, 2006

State of: UTAH, County of: WASHINGTON

On 4/6, 2006, J. Myron Fannesbeck
personally appeared before me, Schuyler F. Best (4954943-0200)

_____ who is personally known to me

X whose identity I proved on the basis of DL - UTAH

_____, a credible witness

to be the signer of the above instrument, and he/she acknowledged that he/she signed it.

Schuyler F. Best
Notary Public, My commission expires 6/21/2009

