

Let the record show that a transfer was applied for, in error, with the assistance of a water resource officer for lack of current or up to date records existing at the Eastern Regional office at the time the application was made.

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 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 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 of well #2 had better potential for future use. As time went on, more problems were surfacing, and one of great importance involved getting the necessary filings made in regard to establishing water rights.

That noticeable mistakes were being made that could have been corrected at the time had the Fannesbecks been given more involvement in the filings process, and some of these mistakes need to be discussed and corrected.

That there came a point where Lee Schvaneveldt insisted that he needed full ownership of well #2 to solve his problems with the sale of his farm and the Fannesbecks agreed to trade out of well #2 with the understanding that as part of the trade, they would also own all of the water rights that were established under well #1.



Therefore, the water rights associated with the use of Well #1 had already been moved or transferred from the property of Lee Schvaneveldt, by agreement, before Elray and Janice Balls took possession of the subject place of use and applied on lands belonging to the Fannesbecks.

From that time and through the following years, the water users in the area have peacefully acknowledged this move and the Weston Creek Irrigation Company has accommodated the move by having the Water Master schedule our turns so that we would use our well water comingled with our shares of Weston Creek and delivered through Irrigation Company canals to our land in Sections 8, 9, 16 and 21.

That NRCS records acknowledge this move.

That the U.S. Geological Survey acknowledges on its 1968 printing of the Weston Canyon Quadrangle Map, the pond Norman Fannesbeck built in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 16 T16S R38E to accommodate the additional source of water on Fannesbeck land in sections 16 and 21.

That this series of events took place prior to March of 1969, and during this period of time, laws had not been enacted requiring the application process as is followed today, and therefore, moving the water from Schvaneveldt land in sections 8, 10, and 11, to Fannesbeck land was accomplished legally according to the rules and laws existing at that time. (In fact, the understanding that was adopted in the minds of water users in our area was, that, if you could secure a point of diversion, you were given a right to pump X amount of water and you could use it where ever as long as you didn't exceed X amount. That it could only be used on specific acres on a land list was not part of our understanding and the land list was only seen as important in the earlier stages for establishing the X amount that could be used.) A needed updating of records (and thinking) did not take place, and therefore, a current and more accurate record needs to be completed at this time.

That prior to April of 2005, the Eastern Regional Office would provide an electronic record of pertinent details on a water right, but in our case, did not make or have available 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 made to make records more accessible, has helped immensely with getting our arms around additional 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 Mr. ElRay Balls drove to Idaho Falls on July 23, 2003 with the intent to file a Statutory Claim for water he has been using out of well #2 located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8 T16S R38E and was later steered to file an application for transfer based upon an electronic record that still showed his 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 the correct action based on the face of the record.

Mr. Sidney Schvaneveldt made the same trip on January 18, 1980 and filed a Statutory claim #13-4120. He had discovered that Water Resources could not produce or recover any record of a License or any water right issued for the use of well #2, yet, he strongly asserts that one was issued. By filing the claim, he acknowledged that License 13-2209 issued for well #1 was off limits to him due to the previous trade by our fathers. The same should apply to ElRay.

For the previously mentioned reasoning alone, Transfer #70722 should have never been applied for, should have been withdrawn, or should now be denied.

Also, If the transfer were to be approved, it is proposed that the maximum volume of water that would then be allowed to be pumped from well #1, after the transfer, would be reduced from 2.87 to 1.94 cfs which is an injury under issue #1 for consideration in an application for transfer and I cannot accept this.

There are mistakes that need to be discussed and corrected with License 13-2209, and under advisement of IDWR officers, Claim #13-7661 has been filed to prevent any further delays to ElRay using water he is entitled to and also to try to get our arms around and pull back together everything that took place earlier in the history of these two wells and create an accurate record. 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.

There are bigger issues that this transfer application is drawing out, that need to be discussed in an environment of civil obedience, and a record established with some authority. For this I welcome the upcoming scheduled hearing.

Thank you for your attention to this matter,

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 21, 2010:

Mr. James Cephalo,

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

ElRay Balls, 203 N. Westside Hwy Weston, ID 83286


Jay Norman Fannesbeck
Weston, ID