

36-7130

July 13, 1988 1:42pm

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

COLLEGE OF SOUTHERN IDAHO,

Case No. 37298

Plaintiff/
Counterdefendant,

ORDER OF DISMISSAL

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES, an executive
agency of the State of Idaho;
Professional Investors Life
Insurance Company; Los Lagos
Property Owners Association,
Inc.; Michael Kestler; Gary
Stone; First Church of the
Nazarene; J.D. McCollum;
Hydrotube of Idaho; Arnold
Elsing; Ronald Elsing; Twin
Falls School District No. 411;
Magic Gardens; City of Twin
Falls, Idaho; John Does 1
through 50,

Defendants/
Cross Defendants,

and

LOS LAGOS PROPERTY OWNERS
ASSOCIATION, INC.,

Defendant/
Counterclaimant/
Cross Claimant.

* * * * *

1 THIS MATTER, having come on for hearing before this
2 court on Wednesday, July 13, 1988; the court having reviewed
3 the pleadings on file herein; and

4 Based upon the Stipulation executed between the
5 parties thereto, attached and incorporated by reference herein,
6 and the Motion of counsel to dismiss this action pursuant to
7 the terms of the Stipulation, good cause appearing therefore;

8 IT IS HEREBY ORDERED that:

9 1. As between the stipulating parties, Professional
10 Investors Life Insurance Company's licensed water right
11 (License No. 36-7130) in and to the geothermal aquifer that
12 underlies portions of Twin Falls and Jerome counties in the
13 vicinity of Twin Falls, Idaho, shall be and hereby is
14 established and declared to be 4.5 c/f/s;

15 2. Any and all claims regarding Professional
16 Investors Life Insurance Company are hereby dismissed with
17 prejudice, each party to bear its own costs;

18 3. As between the stipulating parties, it is hereby
19 declared and established that the propagation of any species of
20 fish (warm, cold, tropical, or any kind of fish) is and shall
21 be a beneficial use of the water pursuant to Professional
22 Investors Life Insurance Company's licensed right and that the
23 College of Southern Idaho may not now or hereafter file any
24 claim or raise any defense in any action, proceeding or dispute
25 to the contrary; and

26 4. All other defendants above-named be dismissed
27 without prejudice, bearing their own costs and fees.
28

1 DATED this 13 day of July, 1988.

2
3 /s/ Daniel C. Hurlbutt
4 Hon. Daniel C. Hurlbutt, Jr.
5 DISTRICT JUDGE

6 CERTIFICATE OF MAILING

7 I hereby certify that on this _____ day of July, 1988,
8 I served a copy of the foregoing ORDER OF DISMISSAL, by
9 depositing same in the United States Mail, postage prepaid, in
10 an envelope, addressed to the following:

11 Mr. Robert C. Weaver
12 WEAVER & MELANSON
13 130 North Broadway
14 Buhl, Idaho 83316
15 Attorneys for Professional Investors Life Insurance Co.

16 Mr. Gary R. Stone
17 Route 1
18 Kimberly, Idaho 83341
19 Pro Se

20 Mr. William L. Nungester
21 HEPWORTH, NUNGESTER, FELTON & LEZAMIZ
22 P.O. Box 389
23 Twin Falls, Idaho 83303-0389
24 Los Lagos Property Owners Association, Inc.

25 Mr. Don A. Olowinski
26 HAWLEY, TROXELL, ENNIS & HAWLEY
27 P.O. Box 1617
28 Boise, Idaho 83701-1617
Attorneys for Mr. J.D. McCollum, Sr.

Mr. Jim Jones
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Attorney for The Idaho Department of Water Resources

Mr. Edward L. Benoit
BENOIT, ALEXANDER, SINCLAIR, HARWOOD & HIGH
P.O. Box 366
Twin Falls, Idaho 83303-0366
Attorney for Twin Falls School District No. 411

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Dr. Charles Brockway
Snake River Conservation Research
Rt. #1 Box 186
Kimberly ID 83341

Mr. Shane O. Bengoechea
City Attorney
P.O. Box 1907
Twin Falls ID 83303-1907

Mr. Lloyd J. Walker
P.O. Box 1923
Twin Falls ID 83301

Mr. Dave Wuthrich
Magic Gardens
560 Filer Avenue
Twin Falls ID 83301

Hydrotube of Idaho
Addison Avenue East
Twin Falls ID 83301

Mr. Arnold Elsing
816 Mountain View Drive East
Twin Falls ID 83301

Mr. Ronald Elsing
127 Bonnie Drive
Twin Falls ID 83301

Terry T. Uhling

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3 151 Daniel C. Hurlbutt
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816 Mountain View Drive East
Twin Falls ID 83301

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127 Bonnie Drive
Twin Falls ID 83301

Terry T. Uhling

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 19th day of May, 1988, by PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, a corporation with principal offices in Tulsa, Oklahoma (hereinafter "Professional") and the COLLEGE OF SOUTHERN IDAHO, a Junior college district (hereinafter "CSI");

RECITALS

1. Professional and CSI are parties to that certain action filed in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Twin Falls, Civil No. 37298. It is contemplated that the other parties to Civil No. 37248 will enter into an agreement with Professional identical to this agreement. Signing of that agreement is not meant to affect this agreement.

2. Civil No. 37298 involves the parties' respective rights and obligations to the hot water from a common hot water aquifer ("the hot water aquifer") that underlies portions of Twin Falls and Jerome Counties in the vicinity of the City of Twin Falls, Idaho.

3. Professional is the holder of License No. 36-7130, for the diversion of 6 cfs of hot water from the aquifer. License No. 36-7130 is the only licensed water right for the aquifer.

4. Professional has and does contend that it has a valid licensed water right for 6 cfs which it has not abandoned or forfeited.

5. CSI contends that Professional has abandoned or forfeited all or part of its licensed water right.

6. With the exception of Professional, the parties to Civil No. 37298 have entered into an agreement dated July 13, 1987 ("the Moratorium Agreement"), a copy of which is attached hereto and made a part hereof, whereby they have consented to a stipulation for dismissal without prejudice of Civil No. 37298 and have agreed to a five (5) year moratorium on the approval of applications for permits to develop water from the aquifer pursuant to I.C. §42-1805(7) and Rule 7 of the Water Appropriation Rules and Regulations of the State of Idaho.

7. Professional refused to sign the moratorium agreement and CSI pursued Civil No. 37298 against Professional on theories of abandonment, forfeiture and exclusive applicability of the Geothermal Resources Act.

8. Professional and CSI, in the interest of avoiding unnecessary legal expense and other risks associated with the pending litigation, desire to compromise and resolve their disputes and differences referred to herein and otherwise contained in Civil No. 37298 and desire to declare and establish between themselves Professional's licensed water right. Professional will allow its water right to be limited to 4.5 cfs in return for CSI's dismissing with prejudice all claims against Professional and agreeing that Professional's use of the hot water for propagation of any species of fish (warm, cold, tropical, or any other kind of fish) is a beneficial use of water

pursuant to Professional's licensed water right and agreeing not to file any claim or raise any defense in any action, proceeding or dispute to the contrary.

OPERATIVE PROVISIONS

In consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the parties hereto agree and covenant as follows:

1. Professional and CSI agree to entry of an order declaring and establishing Professional's ownership and use and the validity of its licensed water right in the amount of 4.5 cfs. This limitation upon the licensed water right in no way may be interpreted by the parties hereto as an admission of actual abandonment or forfeiture of any water right by Professional nor can it be used in any way now or hereafter as evidence of Professional's intent to abandon any part of Professional's water right. The limitation is made purely to compromise the existing dispute.

2. CSI will dismiss with prejudice all claims against Professional now contained in Civil No. 37298, each party to bear its own costs, and CSI for itself, its subsidiaries, divisions and affiliates and its officers, directors, employees and agents, if any, does hereby release and forever discharge Professional and its subsidiaries, divisions and affiliates and its officers, directors, employees and agents, if any, from any and all claims, demands, controversies, actions, causes of actions, obligations or liabilities of any nature, whatsoever, whether at law or in

equity which have accrued to date whether or not now or heretofore known, unknown, expected, alleged or claimed which the CSI had, or now has against Professional which were asserted or might have been asserted in Civil No. 37298.

4. Professional and CSI agree that the propagation of any species of fish (warm, cold, tropical, or any kind of fish) is a beneficial use of water pursuant to Professional's licensed water right and that CSI will not now or hereafter file any claim or raise any defense in any action, proceeding or dispute to the contrary.

5. Professional and CSI agree that this agreement is and will be binding on them in any subsequent water right adjudication, specifically including the Snake River Basin Adjudication. CSI agrees that it will not file or make any statements, reports or objections against Professional's ownership and use of its licensed water right in the amount of 4.5 cfs in the Snake River Basin Adjudication.

6. Professional agrees to support the efforts of IDWR to obtain funding from the Idaho Legislature so as to perform adequate and continuing hydro-geological studies for the common hot water aquifer which is the subject of this litigation.

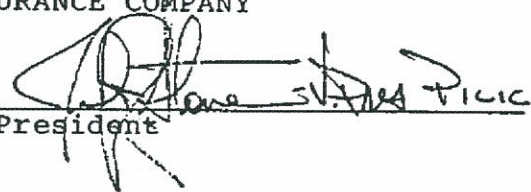
7. Professional agrees to the installation of a measuring device, approved by IDWR, which will provide an instantaneous readout and totalizing head so that the systems can be readily monitored and integrated volumetric measurements of pumpout obtained over the period of the existing moratorium.

8. Professional and CSI agree that nothing herein contained shall prevent either party from seeking relief by injunction or otherwise or an order requiring modification or closing of any well found to be in violation of Idaho Code §§42-237(a) and 42-1601 et seq.

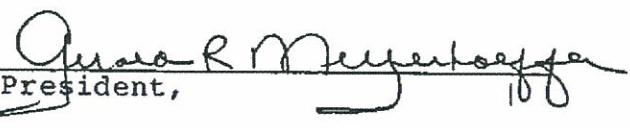
9. Professional and CSI hereto bind their heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, this Settlement Agreement has been executed on the day and year first above written.

PROFESSIONAL INVESTORS LIFE
INSURANCE COMPANY

BY: 
Vice President

COLLEGE OF SOUTHERN IDAHO

BY: 
President,

SBO:051188A

STATE OF Idaho)
County of Twin Falls) ss.

On this 19th day of May, 1988, before me, a Notary Public, in and for said County and State, personally appeared Jell D. Stone, known or identified to me to be the Vice President of PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

John A. Rosholt
NOTARY PUBLIC FOR Idaho
Residing at: Twin Falls
My commission expires: 1989

STATE OF IDAHO)
County of Twin Falls) ss.

On this 19th day of May, 1988, before me, a Notary Public, in and for said County and State, personally appeared Gerald R. Meyerhoeffer, known or identified to me to be the President of the COLLEGE OF SOUTHERN IDAHO, the entity that executed the foregoing instrument, and acknowledged to me that such entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

William L. Lamm
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 10/4/92