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FILED

AT THE REQUEST OF

Ray Rigby, Attorney

AT 30 MINUTES PAST 11 a.m.

DATE December 19, 1986

E. Wayne Schiess

CLERK OF RECORDER

BY Nora Hill

DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TETON

ALVIE C. CHRISTENSEN and GLORIA)
L. CHRISTENSEN, husband and)
wife,)
Plaintiffs,)

Civil No. 1855

v.)

DECREE

RONALD CARLSON, Watermaster of)
Water District No. 01 of the)
State of Idaho; ALL UNKNOWN)
CLAIMANTS OF 3.6 cfs OF THE)
WATER OF LOWER DARBY CREEK)
AND UNNAMED DRAINAGE; ALSO)
1.2 cfs OF THE WATERS OF TETON)
CREEK, ALL TRIBUTARY TO THE)
TETON RIVER, TRIBUTARY TO THE)
SNAKE RIVER, DIVERTED IN THE)
SOUTHWEST QUARTER SOUTHEAST)
QUARTER OF SECTION 9, TOWNSHIP)
4 NORTH, RANGE 45 EAST, BOISE)
MERIDIAN, AND NORTHEAST QUARTER)
SOUTHEAST QUARTER OF SECTION 35,)
TOWNSHIP 5 NORTH, RANGE 45 EAST,)
BOISE MERIDIAN, IN TETON COUNTY,)
IDAHO,)

Defendants.)

A Report in the Nature of Proposed Findings of Water Rights
(hereinafter the report) was filed with this court by the direc-
tor of the Idaho Department of Water Resources on August 4, 1986.
The report contains findings of fact, conclusions of law, and

recommendations to the court as to the rights of Alvie C. and Gloria L. Christensen to the use of water from Lower Darby Creek and Teton Creek, both tributary to the Teton River within Teton County. The report is hereby incorporated in this decree by this reference.

IDAHO CODE § 42-1405 (3)(f) and § 42-1411(4)(f) (Supp. 1986) provide for a period of 60 days from the filing of the report in which objections to the report may be filed. The objection period ended October 3, 1986, and no objections to the report were filed.

The findings of fact and conclusions of law set forth in the report are hereby adopted, and the recommendations to the court set forth in the report are hereby decreed.

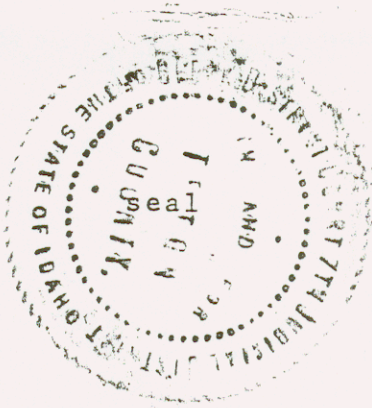
DATED this 9th day of October, 1986.

/s/
GRANT YOUNG
District Judge

C E R T I F I C A T I O N

I certify that these are true and correct copy
of DE Cree.

DATED this 14th day of October 1986.



Bonnie Reese

TABLE OF CONTENTS

	<u>Page</u>
FINDINGS OF FACT.....	1
Definitions.....	1
Initiation of the Supplemental Adjudication.....	2
Objections.....	3
Field Examination.....	3
General Description of the Plaintiff's Property and its Environment.....	4
Points of Diversion and Places of Use.....	6
The Plaintiffs' Right to Use Water.....	8
Prior Decrees Determining Rights to Use Water from the Teton River Drainage Basin.....	8
CONCLUSIONS OF LAW.....	12
Applicable Legal Principles.....	12
Application of Legal Principles.....	14
RECOMMENDATIONS TO THE COURT.....	17
EXHIBIT.....	22

report pursuant to Idaho Code § 42-1405(1)(e)(Supp. 1985) on July 14, 1986.

General Description of the Plaintiffs' Property and Its Environment

16. The plaintiffs own the following property located in Teton County, Idaho:

a. Count 1

The E1/2 NE1/4 SE1/4 Section 8, and the SW1/4 Section 9, all in T. 4 N., R. 45 E, B.M., comprising 180 acres.

b. Count 2

Beginning at the Northwest corner of the Southeast Quarter of Section 35, Township 5 North, Range 45 East, Boise Meridian, and running thence South 25 rods, thence East 40 rods, thence South 55 rods, thence East 40 rods, thence North 80 rods, thence West 80 rods to the place of beginning, LESS the highway right of way.

ALSO: The Northeast Quarter Southeast Quarter of Section 35, Township 5 North, Range 45 East, Boise Meridian, LESS Beginning at a point that is 2640 feet South of the Northeast corner of Section 35, Township 5 North, Range 45 East, Boise Meridian, and running thence West 330 feet, thence South 200 feet, thence East 165 feet, thence South 130 feet, thence East 165 feet, thence North 330 feet to the place of beginning,

ALSO LESS: Beginning at a point that is 330 feet South of the East Quarter corner of Section 35, Township 5 North, Range 45 East, Boise Meridian, and running thence South 200 feet, thence West 330 feet, thence North 330 feet, thence East 165 feet, thence South 130 feet, thence East 165 feet to the place of beginning. ALSO: Beginning at a point 330 feet West of the East Quarter corner of Section 35, Township 5 North, Range 45 East, Boise Meridian, and running thence West 81 feet, thence South 530 feet, thence East 81 feet, thence North 530 feet to the place of beginning, LESS the highway right of way,

ALSO LESS: Beginning at the Southeast corner of the Northeast Quarter Southeast Quarter of Section 35, Township 5 North, Range 45 East, Boise Meridian, and running thence North 265 feet, thence West 490 feet, thence south 265 feet,

The second ditch also collects wastewater from lands to the east, which is delivered to plaintiffs' lands through the four northern laterals.

29. The plaintiffs irrigate 39 acres in the NE1/4 SW1/4, 35 acres in the NW1/4 SW1/4, 40 acres in the SW1/4 SW1/4, and 37 acres in the SE1/4 SW1/4, all in Sec. 9, and 3 acres in the E1/2 NE1/4 SE1/4 Sec. 8, for a total of 154 acres. The plaintiffs also water approximately 200 head of range cattle in the SW 1/4 Sec. 9 and the E1/2 NE1/4 SE1/4 Sec. 8.

30. The points of diversion for the right claimed in Count 2 are located in the NE1/4 NW1/4 SE1/4 and the NW1/4 NW1/4 SE1/4 Sec. 35, T. 5 N., R 45 E., B.M.

31. A small pump diverts water in the NW1/4 NW1/4 SE1/4 Sec. 35 for the irrigation of land around the plaintiffs' home. A larger pump ^{20 HP} diverts water in the NE1/4 NW 1/4 SE1/4 Sec. 35, which then flows through a quarter-mile mainline which follows the boundary between the east and west halves of the NW1/4 SE1/4, then through laterals which run east of the mainline.

32. The plaintiffs irrigate 29 acres in the NE1/4 SE1/4 and 21 acres in the NW1/4 SE1/4 Section 35. The plaintiffs also water approximately 300 head of range cattle and 50 head of dairy cattle in the N1/2 SE1/4 Section 35.

15. A flow of 2.02 cfs provides sufficient water for the irrigation of 101 acres, with a maximum annual volume of consumptive use of 187.9 af.

16. There are four points of diversion for the waste water right, three of which are located in the NE1/4 SW1/4 Sec. 9, one of which is located in the SE1/4 SW1/4 Sec. 9, all in T. 4 N., R. 45 E., B.M.

17. The plaintiffs use water pursuant to Water Right No. 22-0092 for the irrigation of 37 acres of land in the SE1/4 SW1/4 Sec. 9, T. 4 N., R. 45 E., B.M. The maximum annual volume of consumptive use for the irrigation of 37 acres is 68.8 af. The water in excess of .02 cfs per acre is used for the watering of 200 head of range cattle in the SW1/4 Section 9 and the E1/2 NE1/4 SE1/4 Section 8, T. 4 N., R. 45 E., B.M. The change in point of diversion from a point on Lower Darby Creek to a point further downstream on Lower Darby Creek will not cause injury to other water users, nor will the change in place of use of that portion of the water used for stockwatering.

X 18. It is concluded that the plaintiffs initiated a right to the use of water from the three unnamed springs with a priority of April 1, 1938.

19. The plaintiffs have beneficially used the waters of the unnamed springs for the watering of 300 head of range cattle and 50 head of dairy cattle, and for the irrigation of 50 acres in T. 5 N., R. 45 E., B.M., more particularly described as follows:

Section 35: NW1/4 SE1/4 (21 acres)

NE1/4 SE1/4 (29 acres)

20. A flow of 1 cfs provides sufficient water for the irrigation of 50 acres, a flow of .04 cfs provides sufficient water for 50 head of dairy cattle, and a flow of .07 cfs provides sufficient water for 300 head of range cattle. The maximum annual volume of consumptive use is 93 af.

21. The points of diversion (2) are located in the NE1/4 NW1/4 SE1/4 and the NW1/4 NW1/4 SE1/4, Section 35, T. 5 N., R. 45 E., B.M.

22. The period of use for irrigation is April 15 to October 15 of each year; the period of use for stockwater is January 1 to December 31 of each year.

23. The plaintiffs have not installed measuring devices and lockable headgates or other flow control devices in accordance with Idaho Code § 42-701 (1977).

24. Matter herein expressed as a conclusion of law which is later deemed to be a finding of fact is hereby made a finding of fact.

RECOMMENDATIONS TO THE COURT

Based on the foregoing findings of fact and conclusions of law, the Director makes the following recommendations:

1. The plaintiffs' right to the use of water from Darby Creek shall be as follows:

a. source: Darby Creek, tributary to Teton River

Sec. 9: NE1/4 SW1/4 (39 acres)

NW1/4 SW1/4 (35 acres)

SW1/4 SW1/4 (15 acres)

SE1/4 SW1/4 (9 acres)

All in T. 4 N., R. 45 E., B.M.

g. period of use: April 15 to October 15 each year

h. maximum annual volume of consumptive use: 187.9 af

i. basis of right: Beneficial use

4. The use of water pursuant to rights set forth in paragraphs 1-3 shall not exceed a combined diversion rate of .02 cfs of water diverted per acre of land irrigated nor 1.86 af of water consumed per acre of land irrigated. The total diversion rate for irrigation under all of these rights shall not exceed 3.08 cfs and the total annual consumptive use shall not exceed 286.4 af.

X 5. The plaintiffs' right to the use of water from the unnamed springs shall be as follows:

a. source: Unnamed Springs, tributary to Teton Creek
thence Teton River

b. date of priority: April 1, 1938

c. rate of diversion: 1 cfs (irrigation)

0.11 cfs (stockwater)

1.11 cfs total

d. nature of use: Irrigation

Stockwater

e. points of diversion: NE1/4 NW1/4 SE1/4

NW1/4 NW1/4 SE1/4

All in Section 35, T. 5 N.,

R. 45 E., B.M.

f. place of use:

NW1/4 SE1/4 (21 acres)

NE1/4 SE1/4 (29 acres)

All in Sec. 35, T. 5 N., R. 45 E., B.M.

g. period of use:

irrigation: April 15 to October 15 each year

stockwater: January 1 to December 31 each year

h. maximum annual volume of consumptive use: 93 af

i. basis of right: beneficial use

6. The plaintiffs shall be required to install and maintain measuring devices and lockable headgates or other flow control devices acceptable to the Department in accordance with Idaho Code § 42-701 (1977).

Dated this 30TH day of July, 1986.

Respectfully submitted,

A. KENNETH DUNN, Director
Idaho Department of Water
Resources

By Norman C. Young
NORMAN C. YOUNG
Administrator, Idaho
Department of Water
Resources

CHRISTENSEN Vs CARLSON
EXHIBIT B

T.5N., R.45E.

