

RE: 29-4491



Fax Cover Sheet

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Telephone: 208.232.6646 Fax: 208.232.6647

Date 25 March, 2005

Number of pages 10 (including cover page)

To:

From:

Name Special Master Brigitte Bigler Name Charles & Jennie Winter

Company SRBA Court Company _____

Telephone _____ Telephone (208) 775-3178

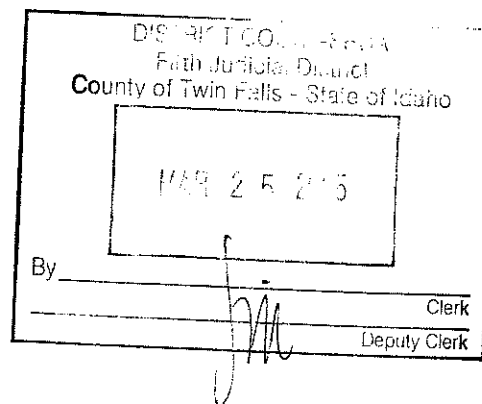
Fax 736-2121

Comments

170

Charles E. and Jennie L. Winter
1791 North Inkorn Road
Inkom, Idaho 83245

SRBA Court
P. O. Box 2705
Twin Falls, ID 83303



To the Court:

We, Charles E. and Jennie L. Winter, have resolved the payment issue with Giverns Pursley and will be represented at the hearing on March 30 of Sluder/Moon's Motion To Set Aside Claim. However, we feel it appropriate to take this opportunity to offer background information to the court in support of our claim #29-4491; especially as pertaining to the amount of water in dispute and the reasons why the amount in the partial decrees already issued to the court is a fair and just amount.

All of the information submitted to the court to prove our claim to water from the unnamed stream was substantiated with facts and past history of water use as evidenced under statutory water claims executed over the period of time they were required to be filed, advertised, and approved for 10 cfs according to Idaho Law. We were granted two acres out of forty five by the IDWR and the moons have less than one acre out of their four acres of ground. Of the land they designated as their POU .3 was never part of the original eighty acres as proven by the expert for the Givens Pursley law firm. We have been consistent in following procedure according to court rules throughout our claims process as guided by our attorney, Deborah Nelson. We have not at any time supplied false or misleading information to anyone concerned with our claim.

The information supplied by Moon/Sluder, however, is another story. We maintain that a proper investigation of the Sluder/Moon claim was never conducted by the IDWR even though we literally begged them to do so. Water has never been put to beneficial use on the Sluder/Moon property and a simple visit to the site would readily have proven that; however, since we did not follow through with our objection based on these facts and agreed to a junior water right for Sluder/Moon, we realize that the notarized affidavits and other evidence both oral and written supplied by long time residents of Inkom and the original owners of the Sluder/Moon property are not at present applicable. We also have evidence in the form of the original diversion ditch still in use on our property, and other original main ditches now in use which follow the pattern of the garden plots that were irrigated by the unnamed stream and show that water was never applied to beneficial use on the Moon property and that it would have been impractical and foolish to have tried to do so.

We are sending copies of letters written at the beginning of our claim process which indicate how the struggle began; e.g., the Moons were originally allotted slightly more water than we for some unknown reason and the originally recommended two acres granted our claim were only allotted .03, which is the recommended amount for one acre.

Dennis Dunn of the IDWR visited the stream in April of 2003 and estimated the flow at that time to be less than five gallons per minute. The stream sinks before it reaches the Moon's fence line when turned into the original stream bed during the summer months. We have to monitor it to get it to the orchard down by the county road each summer. We have attempted to tell the IDWR this from the beginning when the Moon/Sluder claim was filed; however, they have done nothing to check this other than Mr. Dunn, a well specialist who happened to be re-checking a complaint by the Moons about our having "built a burn" to interfere with the natural flow of the stream because Mr. Harold Jones was retiring and could not come to "photograph it and prove that it had been done." The complaint was unfounded. The only "burn" is the four foot flood channel which was built to aid in dealing with flash floods (but which Sluder/Moon claim is a "ditch" and evidence of prior use of water on their property). The "original pumping station" is nothing more than water backed up behind a culvert that runs under a concrete bridge

no longer in use that was built to cross the flood channel . The only pump, which we still have, was used by Leah Stanger, lifelong resident of the original eighty acres, who devised a pond just below the point of diversion with a pressure tank and pump in order to start cedar and pine trees on the dry bare hillside along their driveway. The trees still stand as evidence of her hard work and ingenuity. Dennis Dunn and Ernie Carlson have seen these ditches and the "pumping station." *

We asked the IDWR to do a thorough study of the volume, geography, and the nature of this stream and what it takes to keep it flowing at all. (See photo of canyon). We even contacted our Representative, Bert Marley to try and force the issue; however, no one seemed to care that we were being forced into an expensive process to defend a claim without those who had to recommend it having done a complete and thorough investigation. In checking with the IDWR and obtaining the Sluder/Moon file we see that according to his almost non-existent notes, Alan Ruberry based his recommendation on the false and misleading photos which are contained in the Sluder/Moon file. He admitted to me at the settlement hearing when I asked him a question as to the location of the "pumping station" of which I had a black and white photo, that he had never visited the site. He said that the IDWR "didn't always make a visit to a claim.

Although all this is, as stated earlier, of only informational use to the court at this time, we do feel that we have been forced into an expensive and untenable position by the failure of the IDWR to verify the truthfulness of the Sluder/Moon claim. Because of this (I stated to Mr. Marshall, our attorney at the time of settlement that I felt that we were actually defending our claim to the IDWR as well as Sluder/Moon) and due to the fact that we had exhausted our resources in defending our claim, we agreed junior water rights for Sluder/Moon. In consideration of the facts presented, and the evidence which our attorney will present as to her complete adherence to the rules of the Court, we maintain that our claim is legal in every way and should not be set aside for any reason. We believe that we have dealt more than fairly with Sluder/Moon because their original recommendation, based wholly upon false and misleading information, was flawed and should be thoroughly reinvestigated before any further motions against us are entertained.

Sincerely,


Charles E. Winter
Jennie L. Winter

Neither of these visits were at my request. Mr. Dunn came in response to Mr. Moon's complaint. Mr. Carlson arrived week before last to investigate my use of our domestic water claim #29-13665 re our water right application (late filing). None of my requests for the IDWR to come verify information Sluder/Moon supplied or to investigate their claim were given a response, yet one complaint by Moon generated two visits to check up on our practices. (the complaint was false)

*Copy of faxed request for details answer - July 2003
To Representative Marley*

Dear Senator Marley:

Thank you for promptly returning my telephone call after my recent fax to you outlining briefly my concerns about my dealings with the IDWR and the SRBA. The following are details of my complaint:

My main concern is that the amount of water that has been recommended is actually less than that for the neighbor who has filed a recent claim against the water. We were only allowed two acres and were recommended enough water for one acre. The neighbor was also allowed to file using the same prior and beneficial use date as ours under SRBA rules which preclude the person filing from advertising the claim in the newspaper, and he does not have to prove continuous use for five years as he would have to do if he were to file a new claim. My contention is that this is essentially a new claim since the land the neighbor owns was never watered by my father or other previous owners. The IDWR tells me my only recourse is to file objections and to file for a correction. We have had to hire an attorney to do so to insure that it is done correctly and in a timely fashion. The papers which I received today from the IDWR did not include instructions and forms or deadlines for filing an objection.

My husband and I own almost forty-five acres. Our neighbor and friend, Bishop Ray Taysom pastures his horses there. We irrigate with the stream in question to keep the old orchard and the evergreen trees as well as other trees and plants alive. We also water the lower pasture ground as far as the water will go, which at this time of year is not very far. We spent a considerable amount of money last summer to build a small cabin out of the cinder block portion that remained of the old house which we had torn down and disposed of, and to clear the volunteer trees and other overgrowth from the land that had been previously cultivated in preparation to restore and renew the gardens and orchards. We cleared the flood channel, which was to our neighbor's benefit as well as our own. Yet the site of this work has not been visited except by Mr. Dennis Dunn who was sent to investigate (and disproved) the charge that I had "blocked the original stream bed." I tried to get Mr. Ruberry to reconsider his original recommendation and to visit the site again since we have done the work. He said that he didn't intend to become involved in a "neighborhood squabble." I may have couched the request within my complaint of the way Mr. Moon, the neighbor, was allowed to file his claim and their prompt and devoted attentiveness to his complaint against me so perhaps he misunderstood the request. I also told him that Mr. Moon had been a hostile and litigious neighbor and I did not see how we could manage the stream because he, being at the very end, would only benefit from our hard work in keeping the stream flowing. I also informed him that Mr. M. has been harassing me ever since he moved there to turn the water down to him. I suppose that it did sound like a "neighborhood squabble," however, it is anything but. These are concerns that will have to be dealt with if Mr. Moon is granted a water right. The stream does require constant cleaning and pampering to facilitate maximum flow. It all has to be done with a shovel. Since the man has already threatened to sue everything and everyone but the night crawlers, I would have to be crazy to allow him on my property. Such comments as, "How would you know if the land Mr. Moon owns has ever been irrigated. You don't even live there. You live in Orofino." Or, I know you built a berm in that stream bed. I saw it with my own eyes." and "That is NOT YOUR WATER" stated emphatically and with indignant tones by several different IDWR employees on several different occasions, as well as a letter and verbal arguments and accusations leveled against me with regard to a charge of "altering the stream bed," are revelatory of a rather uncalled for attitude at the IDWR.

I have lived with my father while caring for him in the white house adjoining the farm acreage and we also lived for five months last summer in our motor home on the old homestead. We established both a temporary and an expensive permanent underground electrical service there to prove it. I am looking forward to retiring on the site of my former home and have children who have an interest in helping to restore and improve the old place. This water business is not pleasant for any of us, and is an added expense that we can ill afford. I want you to do everything that you can to help us preserve our rightful claim to the proper amount of water required to fulfill this goal and to find out why the IDWR seems to be in use as a tool for continued harassment of my husband and me by a man who has stated to me and to others that he "just wants a small stream of water" to run through his wife's garden.

TIA Jennie Winter

Note p. 1

Note re: recommendation p. 33 (the following narrative is offered because I have read the rules that govern water rights and have learned that if it can be proved that the water has not been put to "beneficial use" for the past five years the claim can be lost. Harrison Moon has been trying to establish his own use as superior to ours and to paint our use as not beneficial because we do not sell anything from it). We or other relatives and neighbors have always had horses pastured there.

a. I am concerned about the IDWR's refusal to grant me water for more than one acre. Historically, we have had the right to 0.10 cfs. (See past statutory claims) My property was visited before we bought it when it was still in a rough and overgrown state due to the fact that my aging father had been unable to keep it up and had not been able to afford to hire anyone to do the work. My husband and I visited every summer and cleaned the ditches and took care of the watering of the orchard and other fruit trees as well as the pasture, but we had neither the equipment nor the time to do much more than that. We and other members of our family as well as friends reaped apples and plums for canning and freezing every year for our own consumption, and horses were pastured in the upper pasture and the lower one, which was irrigated. The unnamed stream was the source of water for animals using both pastures. In 1999, while living with my father to care for him at home, I raised a garden which I watered solely from the unnamed stream. I did not sell the produce, but gave what we didn't use to neighbors, friends and relatives.

b. Mr. Moon's claim was recommended for the same amount of water as mine. He has much less than an acre of irrigable land and would have to pump it or otherwise drastically change the flow of the stream. We were told that we had to use the water on land historically irrigated from the stream. In a first step toward restoring the Property to its former use, we cleared the volunteer box elder and Chinese elm trees off the land previously where my mother had planted gardens and small fruits which she sold as well as cherry, apple and apricot trees. Therefore, the possibility that I could water more than two acres is a very real one. With proper care and monitoring, the unnamed stream watered produce both above and below the house because my mother had a small pond built in which she placed a pressure tank and pump, using black plastic pipe and hose to transfer the water behind the house and up to the hillside where mature cedar and other evergreens still grow in evidence of this.

c. Mr. Dennis Dunn, the man who came to investigate the complaint against us to the IDWR on June 13, 2002 which Harry Moon filed, has not yet complied with my request to receive a copy of his report of the visit or a letter verifying that I had not "built a berm across the original stream bed" in violation of IDWR rules that one must not alter the natural flow of a stream...." as Mr. Harold Jones had verbally accused me of doing, rejecting my attempts at explanation and my pleas for clarification of what he was talking about. I walked with Mr. Dunn and his intern up the flood channel which was built under the supervision and encouragement of the county road department after a particularly devastating flash flood in the 1970s. When I had this channel cleaned last summer, at considerable expense, Mr. Moon threatened to sue the backhoe operator for "killing one of my trees when you were digging." He also called the police and tried to file a complaint against us. When the officer saw the "evidence" he told Mr. Moon that we were entitled to dig anything out that we wanted to on our side of the fence, and that it was evident that we had not dug on his side of the fence. He dismissed the complaint as frivolous. Dunn also told me that he thought there was little more than a gallon of water running in the ditch at the time that he came out to investigate; therefore, he did not think that I had to install a measuring device at this time. He has yet to send me a letter of verification of these

"Note" p.2

findings, however, even though I have requested one. He was a very pleasant man with a solid professional manner who didn't raise his voice or use accusatory tones with me as Mr. Jones had done. I believe that they will ask for proof of a measuring device which I don't have.

\$ 55.00

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number
Date Received:
Receipt No:
Received By:

29-4491
2/8/01

E026461

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

JENNIE L WINTER Phone: (208)435-4466

4297 LOWER FORDS CREEK RD
OROFINO ID USA 83544

ALVIN N STANGER Phone: (208)775-4925

PO BOX 335

INKOM ID USA 83245

ALFRED NEIL STANGER Phone:

PO BOX 146
BURLINGTON WY USA 82411

CALVERT STANGER Phone:

13957 MALT RD
CALDWELL ID USA 83607

LYNN D STANGER Phone: (208)528-7914

6242 N 25TH E HITT RD
IDAHO FALLS ID USA 83401

TOM STANGER Phone:

1365 CAYUSE DR
HELENA MT USA 59602

VIRGIL STANGER Phone: 707-443-5350

3204 LUCIO AVE
EUREKA CA USA 95501

2. Date of Priority: 06/26/1916

3. Source: UNNAMED STREAM Trib. to: SINKS

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

07S 36E 26

NW NW

BANNOCK

5. Description of diverting works:

HEADGATE TO DITCH/POND/PUMPED TO SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	0.1	
STOCKWATER	01/01	12/31	0.04	
DOMESTIC	01/01	12/31	0.04	

7. Total Quantity Appropriated is:
0.14 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:
Number of homes: 1

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
07S	36E	26	NW NW	IRRIGATION	5
				Section Acres	5
				Total Acres	5

11. Place of use in counties: BANNOCK

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

STOCKWATER, 25 CATTLE, 10 HORSES

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) Jessie L. Hunter Date: 8 Feb 01
Arin D. Hunter Date: 01-02-01
Gym D. Hunter 8 Feb 001

State of Idaho

County of Bonneville } SS.

Subscribed and sworn (or affirmed) before me this

Dave C. G.

Notary Public

Residing at Rigby, Id

My commission Expires 2/16/2002

216 of FEB 2001

State of Idaho

Department of Water Resources

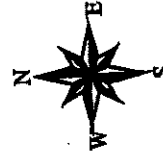
Eastern Region

Water Right(s): 29-04491



Place of Use: T7S, R36E
(part of) Sec. 26 NWNW

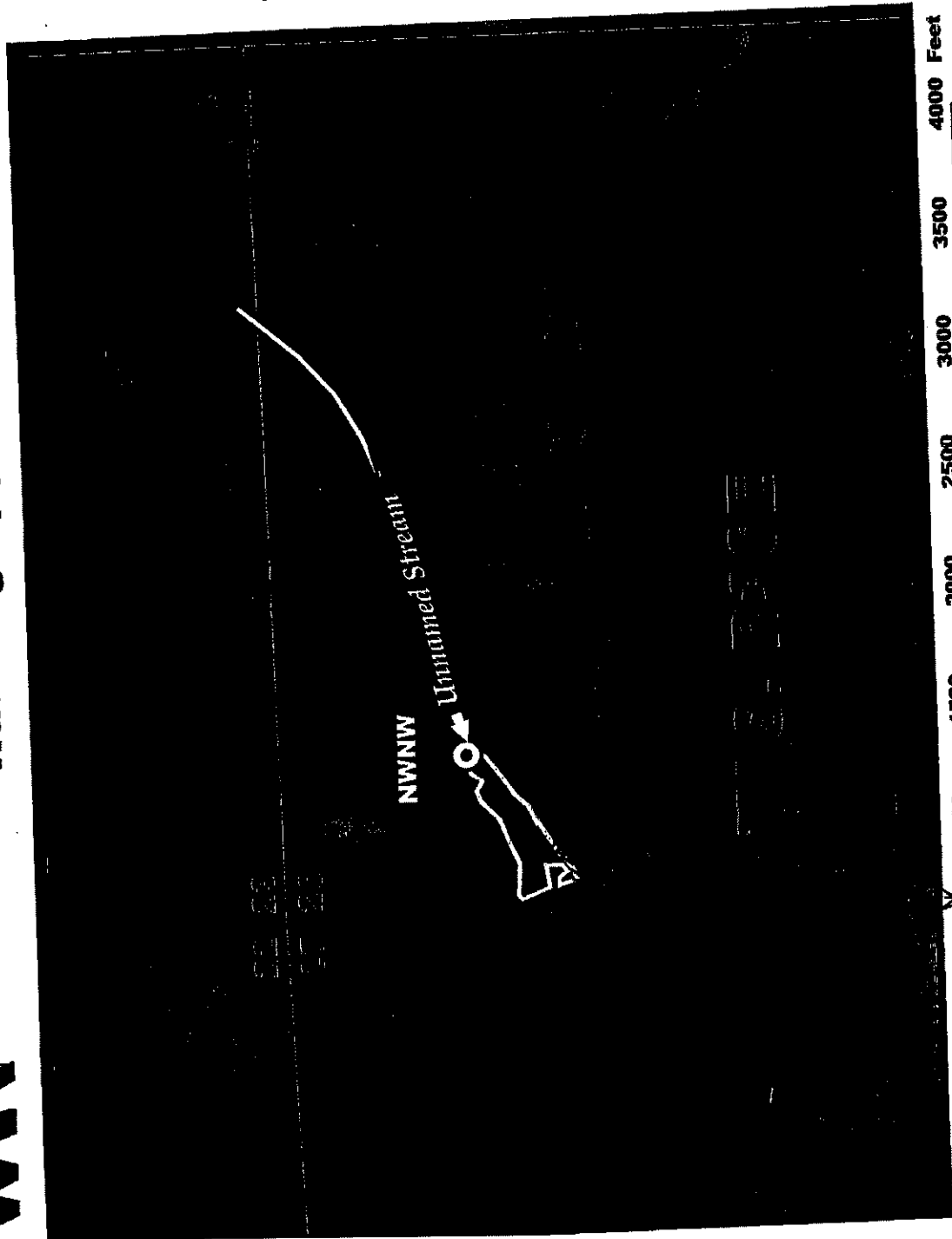
Point(s) of Diversion: T7S, R36E
Sec. 26 SENWNW



LEGEND

- Point of Diversion
- SESE Place of Use
- Section
- Quarter-Quarter

GIS Place of Use Illustration
1987/1989 MAPS Photography
Prepared by A. Roberts
Fall 2002



all at end of stream 2500 ft
Unmanned Stream which stream runs