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

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE WATERS
AND TRIBUTARIES FROM WHATEVER
SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN.

CIVIL NO. 4948
PROPOSED FINDING OF
WATER RIGHTS

The above-entitled cause was initiated under provisions of Section 42-1406, Idaho Code, by the submission of a petition from eight (8) water users in the Lemhi River Basin, requesting that the Department of Water Administration (changed to Department of Water Resources in 1974) obtain authority from the Court to prepare a proposed finding of water rights in the Lemhi River Basin. The petitioners specifically requested that the study reflect the present practice and use of water within the Lemhi River Basin.

Pursuant to Section 42-1407, Idaho Code, R. Keith Higginson, Director of the Department of Water Resources petitioned the Court on April 30, 1970, for an order of authorization for the commencement of an adjudication of water rights in the Lemhi River Drainage.

An order was signed on August 13, 1970, by District Judge Arnold T. Beebe, authorizing the Department to commence an investigation and determination of the various rights to the use of the water of the Lemhi River and its surface tributaries including ground water which may be either tributary to the Lemhi River or its surface tributaries within the Lemhi River Drainage Basin, such waters lying or being used within Lemhi County.

An order of joinder signed on June 17, 1971, made approximately 457 land owners and possible water users parties to the adjudication. An additional 351 water users were joined by an order signed November 1, 1971. Approximately 1,900 claims of water rights were submitted to the Department.

Based upon all existing court decrees adjudicating water rights within the Lemhi River Drainage Basin, the claims submitted, the files and records of the Department and the Court, the examination and studies of the Lemhi River Drainage Basin and the various ditches and other diversions of water therein and the lands irrigated or other uses of water, the Department of Water Resources, in July 1974, filed a proposed finding of water rights with the Court. Objections to the proposed finding were resolved either by stipulation or hearing before the Court. The Court then adopted the following findings of fact, conclusions of law and decree of water rights, in which the

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following definitions apply:

- a. "Director" means the Director of the Department of Water Resources.
- b. "Department" means the Idaho Department of Water Resources.
- c. "Ident. No." is the abbreviated form of "Identification Number". An identification number is assigned to each water right for purposes of identification. The first two (2) numerals of an identification number indicate the basin number as reflected in Department files, i.e., "74" indicates the Lemhi River Basin.
- d. "Name and address" are self-explanatory and indicate the owner of the right at the time the "Notice of Claim to a Water Right" was submitted to the Department.
- e. "Priority" indicates the priority date of the water right and is generally the date when the water was first applied to a beneficial use.
- f. "Purpose" is self-explanatory except for "Fish Return" as shown on numerous Idaho Department of Fish and Game rights. Fingerling fish are prevented from entering irrigation ditches by means of a screen across the irrigation ditch and a by-pass pipe for the fish to return through to the river. Hence, the term "Fish Return". This is a non-consumptive use.
- g. "Period of use" indicates the period of time during each year when a particular right may be used each year.
- h. "Acre-foot" is a volume of water sufficient to cover one acre of land one foot deep with water and is equal to 43,560 cubic feet.
- i. "Maximum rate of diversion, c.f.s." indicates the rate of diversion from a water source in cubic feet per second. The term "miner's inch" formerly used in hydraulic mining and irrigation is also a measure of a rate of flow. The miner's inch in Idaho is defined as the quantity of water which will flow through an orifice one inch square under a four inch head. One cubic foot per second is equal to fifty miner's inches in Idaho, or 0.02 c.f.s. equals one miner's inch.
- j. "Place of use and lands irrigated" indicate the number of irrigated acres and legal description of the places of use within each 40-acre subdivision.
- k. Under the general heading "Basis of Right":
 - "Beneficial Use" indicates the right was based upon a Constitutional right or so called "use right", initiated and maintained by actual diversion and application to beneficial use.
 - "License" indicates the right has been initiated through application to the Department with appropriate statutory proof submitted in the past with subsequent examination and issuance of a license by the Department.
 - "Decree" indicates that the right has been adjudicated in a court of law prior to this general determination of water rights.
- l. "Domestic purposes" is defined as water for household use or livestock and water used for all other purposes including irrigation of up to one-half (1/2) acre of land in connection with said household where total use is not in excess of 13,000 gallons per day. Idaho Code,

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05/04/83

INDICATES TOTAL		SOURCE: BIG TIMBER CREEK		TRIBUTARY TO: LEWIS RIVER		
RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
74-0059A	PURCELL, BETTY M. P.O. BOX 15 LEADORE			2.00 CFS	T15N R26E N4SW(21) S33 T16N R26E	
74-0059B	SMITH, LINNIS P.O. BOX 594 SALMON	07-08-1911	IRRIGATION 03-15 11-15	.28 CFS	SENE S05 S4SW(07) T15N R26E S33 T16N R26E	DEGREE
74-0063	SHINER, WILFORD SHINER, CHARLES LEADORE	07-18-1911	IRRIGATION 03-15 11-15	.96 CFS	NWSE S08 NESW(35) SESH(40) T15N R26E NESE(40) NWSE(40) S4SE(40) S25 T16N R25E S25 T16N R25E	DEGREE
74-1801	ADAMS, ROBERT H. ADAMS, OPAL C. P.O. BOX 54 LEADORE	04-01-1920	IRRIGATION 03-15 11-15	.16 CFS	NWSE S08 N4SE(08) T15N R26E S08 T15N R26E	DEGREE
74-1619	COLEMAN, HARRY L. COLEMAN, SHIRLEY R. P.O. BOX 43 LEADORE	04-01-1922	IRRIGATION 03-15 11-15	.50 CFS	SWNW S20 N4SW(12) SWSW(13) T15N R26E S17 T15N R26E	DEGREE
74-1103	WHITTAKER, FLOYD J. P.O. BOX 177 LEADORE REMARKS: AC. IRR.=24.2. P/U H.E.S. 657. P/U: T15N R26E S32 SWSW(06) P/U: T14N R26E S05 SWNW(08)	11-19-1922	IRRIGATION 03-15 11-15	.48 CFS	SWNW S05 T14N R26E	DEGREE
74-0398	PURCELL, ALLAN F. PURCELL, BETTY M. P.O. BOX 15 LEADORE	09-12-1933	IRRIGATION 03-15 11-15	5.76 CFS	NWSE S08 NENE(26) NWNE(40) T15N R26E S4NE(20) NENW(40) N4NW(33) SWNW(40) SENW(40) S25 T15N R25E S25 T15N R25E	DEGREE
74-0992	STOUT, HARRY	05-15-1940	IRRIGATION 03-15 11-15		NWNW S33 N4NW(01)	DEGREE

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PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

SOURCE: Timber Creek and Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED		BASIS OF RIGHT and REMARKS
				From	To					
74-1619	COLEMAN, Harry L. and/or Shirley R. Box 43 Leadore, Idaho	4 -1 -1922	Irrigation	4/1	11/1	0.50	SW $\frac{1}{4}$ NW $\frac{1}{4}$, S.20 T15N, R26E	Sec. 17 NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, T15N, R26E	12.0 13.0 <u>25.0</u>	Beneficial Use Big Timber Creek
74-1103	WHITTAKER, Floyd J. Box 177 Leadore, Idaho	11-19-1922	Irrigation	4/1	11/1	0.48	SW $\frac{1}{4}$ NW $\frac{1}{4}$, S.5 T14N, R26E	Sec. 5 Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, T14N, R26E	10.1 8.1	Beneficial Use Big Timber Creek
	Place of use is H.E.S. No. 657.									
74-2210	KELLY, Kenneth R. and/or Betty C. Box 64 Leadore, Idaho	8 -21-1925	Irrigation	4/1	11/1	5.70	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.23 T15N, R25E	Sec. 2 Lot 4, Sec. 3 Lot 1, Lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11 SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, T15N, R25E	8.0 36.7 9.7 40.0 35.0 29.2 40.0 16.7 17.8 <u>233.1</u>	License Little Timber Creek
74-0398	PURCELL, Allan F. and/or Betty M. Box 15 Leadore, Idaho	9 -12-1933	Irrigation	4/1	11/1	5.76	NW $\frac{1}{4}$ SE $\frac{1}{4}$, S. 8 T15N, R26E	Sec. 25 NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, T16N, R25E	26.0 40.0 20.0 40.0 33.0 40.0 40.0	Decree Big Timber Creek

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JAN 28 2002

Department of Water Resources

FILED IN CHAMBERS

at Idaho Falls

Booneville County

Honorable Richard T. St. Clair

Date 1/24/02

Time 3:10

Deputy Clerk M. Southwick

Filed 74-00056
&
74-01103

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 5244 IN THE NAME OF
JAMES AND/OR PAULA WHITTAKER

JAMES AND/OR PAULA WHITTAKER,

Applicant-Appellant,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES,

Agency-Respondent

and

BEVA LUE CLARK

Protestant-Respondent.

Case No. CV-00-009

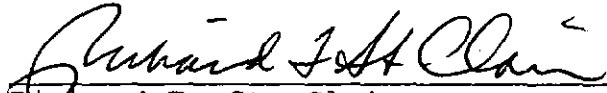
ORDER DISMISSING APPEAL

The appellants having filed a motion to dismiss appeal with prejudice, and the agency-respondent having joined in the motion, and the protestant-respondent not having appeared after her attorney was granted leave to withdraw, and this Court finding good cause for the granting of said motion, and being fully advised in the premises;

ORDER DISMISSING APPEAL

NOW THEREFORE IT IS HEREBY ORDERED that the appeal is dismissed with prejudice, and the agency record and transcript is to be returned to the agency by the Clerk of Court.

DATED this 23rd day of January, 2002.


Richard T. St. Clair
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2002, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Jerry R. Rigby, Esq.
25 North Second East
Rexburg, ID 83440

(MAIL)

Phillip J. Rassier, Esq.
Deputy Attorney General
P. O. Box 83720
Boise, ID 83720-0098

(MAIL)

RONALD LONGMORE
Clerk of the District Court
Bonnevill County, Idaho

By 
Deputy Clerk

MEMORANDUM

TO: FILE 74-01103

FROM: PAM SKAGGS

RE: TRANSFER # 5844

DATE: 4-21-98

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 74-00056.

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