

MEMORANDUM

TO: John Homan
FROM: Steve Lester 
DATE: June 28, 2004
RE: Water Right Ownership Changes

7/15/04 ✓ John H. call-
agrees PTR Inc.
owns irrigation rights
based on info to date

Questions about ownership of a portion of several water rights decreed in the name of Pine Tree Ranch Inc. have arisen from a pending protested matter. This memo outlines the scenario and includes copies of information submitted to Western Region in this regard. Some but not all of these water rights are involved in competing changes of ownership filed with IDWR.

I discussed this situation in a generic sense, without all the facts of the matter, with Phil Rassier last week. My basic question concerned rights decreed in the name of an organization: would one presume from the decree that the organization owned the rights vs. a user of the rights owning his or her prorated share of the rights? Phil indicated an organization probably owns the rights, while a shareholder enjoys beneficial use of the rights subject to the organization's requirements. He did note, however, that the facts of a specific situation could lead to a different conclusion.

The water rights involved in this situation include 65-3221 through 65-3225, 65-8284 and 65-8290. All authorize irrigation from Scriver Creek except 65-8284 that covers a spring for stockwater use. The irrigation serves land developed as Pine Tree Ranch subdivisions in Garden Valley (encompasses several subdivisions, Pine Tree Ranch #1, #2 etc.).

Chronological Summary

1973 Pine Tree Ranch Inc. incorporates and registers with the Idaho Secretary of State.

1978

Pine Tree Ranch Inc. files claims for all these water rights in the Payette adjudication.

Another entity, PTR Inc., incorporates and registers with the Idaho Secretary of State.

Pine Tree Ranch Inc. deeds property to Elam subject to restrictions not specified in the deed. The property is within the Pine Tree Ranch development.

- 1989 Pine Tree Ranch Inc. files claims for all these rights in the SRBA.
- 1991 Elam deeds property to Weimer subject to restrictions not specified in the deed.
- 1994 Pine Tree Ranch Inc. conveys all these irrigation rights but not the stockwater right to PTR Inc.
- 1996 Pine Tree Ranch Inc. dissolves.
- 2003 All of these rights are decreed to Pine Tree Ranch Inc. in the SRBA.

PTR Inc. files Application for Exchange of Water Rights 65-3222 and 65-8290, two of the Scriver Creek irrigation rights decreed to Pine Tree Ranch Inc. The application proposes to substitute some water from the Middle Fork of the Payette River for water from Scriver Creek to deal with difficult maintenance problems in the Scriver Creek ditch system.

Weimer protests the Exchange application. Weimer is one of the users within the Pine Tree Ranch irrigation system.

PTR Inc. files Application for Transfer of Water Rights 65-3222, 65-3223 and 65-8290 to correct a long-standing error in the point of diversion description. This error persisted in the Payette and the Snake River adjudications. The transfer has not been processed yet. The transfer incorporates an ownership change for all the rights from Pine Tree Ranch Inc. to PTR Inc.

A prehearing conference for the protested Exchange suggests a settlement is forthcoming. Bryce Farris represents the applicant, and Matt Howard represents the protestant.

Instead of a settlement agreement, protestant files an ownership change to split off his alleged portion of irrigation rights 65-3222, 65-3223 and 65-8290. Recall 65-3222 and 65-8290 are part of the Exchange while 65-3223 is part of the Transfer.

Matt Howard withdraws as counsel for Weimer.

The above summary and the ownership information submitted by PTR Inc. suggest that the Scriver Creek irrigation system was developed and operated by Pine Tree Ranch Inc. to serve lands within several subdivisions developed by that entity. Based on the timing of incorporation for Pine Tree Ranch Inc. followed by incorporation of PTR Inc., it appears the former entity relied on the latter organization to manage things within the development. In any event, Pine Tree Ranch Inc. conveyed the irrigation operation to

PTR Inc. by the mid 1990s. PTR Inc. operated like a homeowners association, including assessments for services provided to members.

Ideally, PTR Inc. would have filed an ownership change during the SRBA process, resulting in rights decreed in its name. In any event, it appears clear that the rights in the name of one entity are now managed by the other entity.

The ownership information submitted by PTR Inc. is far from perfect. That entity filed an ownership change for all the water rights previously decreed to Pine Tree Ranch Inc. The ownership change was included as an attachment with the unprocessed transfer application. The articles of incorporation referred to an Exhibit A. Page 1 of that exhibit lists most but not all of the tracts covered by the sum of the water rights as follows:

- Item 3 n/a to those tracts
- Items 4-7, 11 and 16 describe tracts in the place of use of 65-3222 and 65-8290 (for the Exchange application)
- Items 8, 10, 12, 13 and 17 reference tracts covered by the remaining rights (for the Transfer application and for rights not included with the Exchange or Transfer applications).

Some of the wording in item 13 appears erroneous. For example, the item lists the SW $\frac{1}{4}$ of NE $\frac{1}{2}$ of SE $\frac{1}{4}$ -- a meaningless description. Previous encounters with such errors in other settings showed that this type of description was a typing error. The other two pages of Exhibit A detail several minor exceptions to page 1. On balance, Exhibit A lists most of the tracts associated with the sum of all the rights decreed to Pine Tree Ranch Inc. except for the S $\frac{1}{2}$ of NW $\frac{1}{4}$ Section 23.

PTR Inc. also filed additional ownership details labeled as "Timeline for PTR Inc. Water Rights." The point of that information seemed to be this:

- Pine Tree Ranch Inc. held all the irrigation water rights.
- Pine Tree Ranch Inc. deeded property to Elam, who subsequently deeded it to Weimer. The property was subject to restrictions apparently recorded elsewhere. Therefore, Weimer does not own a portion of the irrigation rights from Scriver Creek for use on his property within the Pine Tree Ranch development.
- Pine Tree Ranch Inc. conveyed all the irrigation water rights to PTR Inc. (deed at end of the timeline document).
- Weimer's ownership change, interestingly not filed through his attorney in the protested Exchange application, describes Weimer's land in the subdivision. I recall his attorney's argument at the prehearing conference: rights were decreed, decrees list a place of use, rights are appurtenant to the place of use, Weimer

owns his land, Weimer owns a prorated share of the rights. Weimer's information addresses the rights in the Exchange, 65-3222 and 65-8290, plus right 65-3223 not associated with the Exchange but included with the Transfer application. The deeds in his submittal are the same Pine Tree Ranch Inc.–Elam–Weimer deeds also included with the ownership information provided by PTR Inc.

- Clearly Weimer owns his land. It is not clear that he therefore owns a portion of the irrigation rights from Scriver Creek serving his land through the community system.

The ownership trail provided by PTR Inc. is not crystal clear in this regard. But the following conclusions appear reasonably clear based on the information provided to IDWR so far:

- Pine Tree Ranch Inc. developed, operated and managed the Scriver Creek irrigation water system described by water rights 65-3221 through 65-3225 and 65-8290. The system functioned on behalf of the irrigators who enjoyed beneficial use of these rights. The Pine Tree Ranch Inc. articles of incorporation documented this arrangement.
- These rights have been twice decreed to Pine Tree Ranch Inc. The two adjudication processes provided ample opportunity for other parties to intervene in the decreeing of the rights to Pine Tree Ranch Inc. The rights have been owned and controlled by Pine Tree Ranch Inc.
- Pine Tree Ranch Inc. conveyed the rights to its successor organization, PTR Inc.
- PTR Inc. has operated and managed the irrigation system on behalf of the irrigators. The PTR INC. articles of incorporation documented this arrangement. PTR Inc. can be considered the owner of the irrigation rights.
- Weimer does not own nor control an individual share of the irrigation rights serving his property but can continue to make use of the rights under the PTR Inc. articles of incorporation.

65-8284 covers a spring for stockwater use within a small part of the irrigation place of use described by the other rights. The stockwater right was decreed to Pine Tree Ranch Inc. The information provided by PTR Inc. establishes its authority over the irrigation system but not for the stockwater right.

Conclusion

PTR Inc. owns irrigation water rights 65-3221 through 65-3225 and 65-8290. IDWR should record those rights in the name of PTR Inc.

Weimer does not own a portion of irrigation water rights 65-3222, 65-3223 and 65-8290. IDWR should reject Weimer's Notice of Change in Water Right Ownership.

PTR Inc. has not shown ownership of stockwater right 65-8284. IDWR should reject that portion of the ownership change, leaving the right in the name of Pine Tree Ranch Inc. until further information clarifies this ownership.

Original to JH included copies of:

Weimer's	3/15/04	own. change docs		
PTR's	8/14/03	"	"	"
PTR's	5/22/03	"	"	"