

Norm 104
Transfer file 4221-7
RECEIVED

JAN 15 1998

Department of Water Resources

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Fax: (208) 523-9518

J. Evan Robertson
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Fax: (208) 736-0041
01119803.NMS

Attorneys for Appellant, Sagewillow, Inc.

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

SAGEWILLOW, INC.,	)	
	)	
Petitioner/Appellant,	)	Case No. CV-96-39
	)	
v.	)	NOTICE OF APPEAL
	)	
IDAHO DEPARTMENT OF WATER	)	
RESOURCES, JAMES MAYS, MAYS	)	
LAND AND LIVESTOCK, and	)	
BLAINE COUNTY CANAL	)	
COMPANY,	)	
	)	
Respondents.	)	
	)	

COMES NOW, Sagewillow, Inc., Appellant, by and through its attorneys of record, and
gives notice of its appeal of this Court's Memorandum Decision and Order Re: Appeal, dated
December 4, 1997, in Case No. CV-96-39.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

NOTICE OF APPEAL PURSUANT TO I.A.R. 17

**TO: EACH PARTY AND ITS ATTORNEY, AS SET FORTH IN THE ATTACHED
CERTIFICATE OF MAILING, AND THE CLERK OF THE ABOVE-ENTITLED
COURT**

NOTICE IS HEREBY GIVEN THAT:

1. Appellant, Sagewillow, Inc., appeals against the above named respondents to the Idaho Supreme Court from the Memorandum Decision and Order Re: Appeal, dated December 4, 1997, entered in Case No. CV-96-39, by the District Court for the Seventh Judicial District of the State of Idaho, in and for the County of Butte, the Honorable Judge James C. Herndon presiding.

2. The Appellant has the right to appeal the memorandum decision described in paragraph 1 to the Idaho Supreme Court pursuant to Idaho Appellate Rule 11(a).

3. Pursuant to I.A.R. 17(f), the following is a preliminary statement of the issues on appeal which the Appellant now intends to assert in the appeal and does not prevent Appellant from asserting other issues on appeal¹:

a. Did the District Court err in ruling that clear and convincing evidence exists to establish that Sagewillow's water rights have been forfeited?

b. Did the District Court err in ruling that resumption of use is not an available defense to forfeiture of Sagewillow's water rights?

c. Did the District Court err in ruling that the Department is not estopped or otherwise precluded from voiding its approval of an earlier transfer by Sagewillow?

¹ The Appellant does not intend to appeal or otherwise challenge the District Court's determination that partial forfeiture exists in Idaho, pursuant to the Idaho Supreme Court's recent opinion in In Re SRBA Case No. 39576, 91-00010 Ex. Rel Partial Forfeiture Re: Basin-Wide Issue No. 10, 97.19 ISCR 926 (1997). The briefing and oral argument in this matter occurred prior to the Idaho Supreme Court's decision regarding partial forfeiture.

1 d. Did the District Court err in ruling that the Department should not be
2 dismissed as a party to this action on judicial review?
3

4 4. Pursuant to I.A.R. 17(h) and 25, the Appellant requests the preparation of a
5 standard and supplemented transcript, which includes but is not limited to:

6 a. The hearing on the Motion to Dismiss IDWR as a Party; Motion to Strike
7 IDWR's Brief; Motion to Limit IDWR's Involvement on Judicial Review, held in Arco, Idaho
8 on January 21, 1997.
9

10 b. The hearing on the Petition for Judicial Review, held in Arco, Idaho on
11 May 19, 1997.

12 5. Pursuant to I.A.R. 17(i) and 28, the Appellant requests preparation of the
13 following portions of the clerk's record, in addition to the standard record:

14 a. The Agency's Record on Appeal, compiled by the Idaho Department of
15 Water Resources, dated September 27, 1996.
16

17 b. The Supplemental Agency Record, compiled by the Idaho Department of
18 Water Resources, dated March 7, 1997.

19 c. The agency transcript of the administrative hearing before the Idaho
20 Department of Water Resources, held on January 31 and February 1, 1995.

21 d. The Petition for Judicial Review, dated May 3, 1996.

22 e. The Petitioner's Opening Brief, dated October 31, 1996.

23 f. The Motion to Dismiss IDWR as a Party; Motion to Strike IDWR's Brief;
24 Motion to Limit IDWR's Involvement on Judicial Review and the Brief in Support, all dated
25 December 20, 1996.
26

g. The Petitioner's Reply Brief, dated January 2, 1997.

1 h. The Memorandum Decision and Order Re: Motion to Dismiss, dated
2 February 24, 1997.

3
4 i. The Memorandum Decision and Order Re: Appeal, dated December 4,
5 1997.

6 6. The Appellant certifies that:

7 a. A copy of this notice of appeal has been served on the reporter.

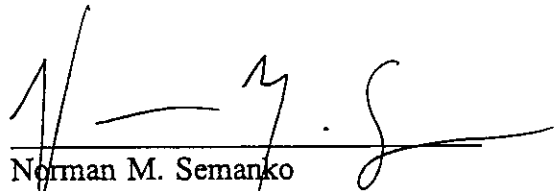
8 b. The clerk of the district court has been paid the estimated fees for
9 preparation of the designated reporter's transcript as required by Rule 24.

10 c. The estimated fees for preparation of the clerk's record have been paid.

11 d. The appellate filing fee has been paid.

12 e. Service has been made upon all parties required to be served pursuant to
13 I.A.R. 20.
14

15 DATED THIS 13th day of January, 1998.

16
17
18 
19 Norman M. Semanko
20 ROSHOLT, ROBERTSON & TUCKER
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

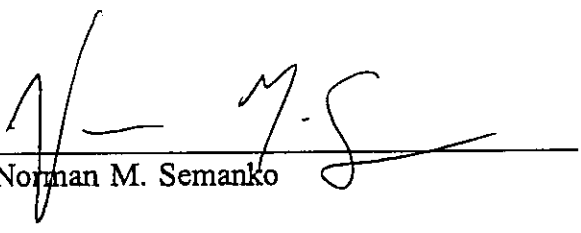
The undersigned certifies that on the 13th day of January, 1998, he caused a true and correct copy of the foregoing NOTICE OF APPEAL, to be mailed, postage prepaid, to the following persons at the addresses listed below:

Michael C. Creamer
GIVENS, PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701

Philip J. Rassier
IDAHO DEPARTMENT OF WATER RESOURCES
1301 N. Orchard Street
Boise, ID 83706-2237

Judge James C. Herndon
P.O. Box 717
Blackfoot, ID 83221

Reporter: Darrell D. Ruckman
P.O. Box 717
Blackfoot, ID 83221



Norman M. Semanko