

FAX COVER SHEET

DATE: Wednesday, February 9, 2000

PAGES (INCLUDING COVER): 11

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RE: L & S Partners/Aslett Ranches

OUR FILE NO: 4562-4

FAX NO: 327-7866

TO: Tim Luke
Idaho Department of Water Resources

From:

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MESSAGE: Please see attached Stipulation, Settlement and Joint Motion for Order.

If this fax does not transmit fully or is difficult to read, please contact Deb Russell (208) 388-1225

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OCT 12 1999

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OCT 12 1999

Department of Water Resources

Attorneys for L&S PARTNERS
 and ASLETT RANCHES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
 FOR PERMIT NO. 34-07591,)

STIPULATION, SETTLEMENT, AND
 JOINT MOTION FOR ORDER

IN THE NAME OF L&S PARTNERS.)
)
)

DAVID STOECKLEIN AND MARY)
 STOECKLEIN,)
)

Protestants,)
)

MARK T. GATES and SIX X RANCH)
 LLC.)
)

Intervenors.)
)
)

IN THE MATTER OF APPLICATION)
 FOR TRANSFER OF WATER RIGHT)
 NOS. 34-00703B and 34-00704B)
)

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 1

U.S. Court of Appeals for the Ninth Circuit, 1999-10-12

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. T5456; WATER)
RIGHT NOS. 34-00469 AND 34-00471)

APPLICANT: ASLETT RANCHES)

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5400; WATER)
RIGHT NO. 34-04035C)

IN THE NAME OF L&S PARTNERS)

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 34-08591)

L AND S PARTNERS,)

Applicant)

DAVID AND MARY STOECKLEIN,)

Protestants)

AND)

APPLICATIONS FOR TRANSFER NOS.)
5001 AND 5004)

DAVE STOECKLEIN,)

Applicant)

ASLETT RANCHES)

Protestant)

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4985; WATER)
RIGHT NO. 34-00850. IN THE NAME OF)
MARK T. GATES, TRUSTEE)

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 2

FILED: 2009 APR 09 PM 2:24 (please do not file or distribute outside)

In order to resolve the various water right disputes among them, the undersigned parties hereby stipulate and agree as follows:

1. Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, hereby stipulate and agree to withdraw with prejudice their respective protests and/or motions to intervene to Application for Transfer No. 5400, in the name of L & S Partners. Transfer No. 5400 seeks the transfer of Water Right Number 34-04035C.

2. Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, hereby stipulate and agree to withdraw with prejudice their respective protests and/or motions to intervene to Application for Transfer No. 5456 (formerly Application for Transfer No. 4906), in the name of Aslett Ranches. Application for Transfer No. 5456 seeks the transfer of Water Rights Number 34-00469 and 34-00471.

3. L & S Partners, by and through Steve Aslett, Sr., hereby stipulate and agree to withdraw with prejudice their Application for Permit No. 34-07591.

4. Aslett Ranches hereby stipulates and agrees to withdraw with prejudice its protest to Application for Transfer No. 5004, in the name of David and Mary Stoecklein. Application for Transfer No. 5004 seeks the transfer of Water Rights Nos. 34-00703E, 34-00704E, 34-00699E, 34-00700E, 34-00701E, and 34-00702E.

5. Aslett Ranches hereby stipulates and agrees to withdraw with prejudice its protest to Application for Transfer No. 5001, in the name of David and Mary Stoecklein. Application

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 3

FILED: 2009-02-09 15:47:00 (WED) 15:47:00 (WED) 15:47:00 (WED) 15:47:00 (WED)

for Transfer No. 5001 seeks the transfer of Water Rights Nos. 34-00123B, 34-00124B, 34-00125B, 34-00230B, and 34-00483B.

6. The undersigned parties hereby stipulate and agree that they shall not protest the Application for Transfer of Water Rights Number 34-00703B and 34-00704B, filed in the name of Idaho Cowboy, Inc., an entity of David Stoecklein. The parties also understand that 6X Ranch intends to file a transfer application to transfer its Water Right No. 34-00963 out of the Upper Fish Hatchery Canal, which transfer will be subject to the same ditch loss requirements as other rights so transferred, as provided herein. The parties hereby stipulate and agree that they shall not protest such Application for Transfer by 6X Ranch.

7. The undersigned parties further stipulate and agree that a study shall be conducted, and measurements of the Upper Fish Hatchery Canal taken, by Watermaster Doug Rosenkrance, who shall consult with the Eastern Region Office of the Idaho Department of Water Resources to assure that his methodology and procedures for the conduct of the study are appropriate. The study must begin at the beginning of the irrigation season in the year 2000. The study shall take place over a minimum two-year, but not to exceed three-year, time period after the date of execution of this Stipulation. The purpose of the study is to determine ditch loss in Upper Fish Hatchery Canal.

Each of the undersigned parties, or their representative, shall have the right to be present when readings and/or measurements are taken by Watermaster Rosenkrance, and each party, or their representative, shall have the right to take their own reading at the same time and location as the reading taken by Watermaster Rosenkrance. Watermaster Rosenkrance shall provide at least 48 hours' notice to the undersigned parties prior to taking any measurements.

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 4

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The undersigned parties further stipulate and agree that they shall fully cooperate with the measurements and study, share equally in Watermaster Rosenkrance's costs and expenses, and shall not hinder the study and measurements in any way.

The term "ditch loss" shall mean the amount of each water right lost due to seepage and/or evapotranspiration between the Upper Fish Hatchery Canal diversion headgate and the end of the Upper Fish Hatchery Canal, located on the Aslett Ranch properties.

The undersigned parties further stipulate and agree that they will be bound by the results of the measurements, readings and/or studies conducted by Watermaster Rosenkrance.

8. The undersigned parties stipulate and agree that until the measurement and/or studies referenced in Paragraph 7, *supra*, have been completed, any party to this Stipulation, and their heirs and assigns, who have filed an Application for Transfer with the Idaho Department of Water Resources, the effect of which shall be to transfer the point of diversion and/or place of use from lands currently served by the Upper Fish Hatchery Canal or the groundwater system hydrologically connected thereto, shall leave 21 percent of the water associated with the water right(s) being transferred in the Upper Fish Hatchery Canal.

Upon completion of the measurements and/or studies referenced in Paragraph 7, *supra*, the parties will be bound by the results of the measurements, readings, and/or studies conducted by Watermaster Rosenkrance without need for further agreement, even if the result is that more or less than 21 percent of the water should be left in the Upper Fish Hatchery Canal.

The study results shall specifically apply to applications before the Idaho Department of Water Resources, including but not limited to past, pending or future transfer applications which

seek or sought to change the point of diversion from the Upper Fish Hatchery Canal to another location.

9. The undersigned parties further stipulate and agree that during the study described in Paragraph 7, *supra*, the Upper Fish Hatchery Canal shall be maintained in the condition as exists of the date of execution of this Stipulation. However, the parties may perform such work as may be needed in the case of an emergency, or if the all the parties to this Stipulation agree thereto in writing.

10. The undersigned parties further stipulate and agree that they shall properly install and maintain headgates and accurate measuring devices at their respective turnouts from the Upper Fish Hatchery Canal, prior to the beginning of the year 2000 irrigation season, and that such headgates and measuring devices are of a type approved by the Idaho Department of Water Resources.

11. The undersigned parties further stipulate and agree that each party shall not pursue allegations of partial or complete forfeiture of the water rights of another party to this agreement, if such allegation is based upon non-use of water up to and including the date of execution of this Stipulation. This limitation shall apply to the Snake River Basin Adjudication and any administration proceedings of the Idaho Department of Water Resources.

However, the undersigned parties are specifically not precluded from raising any water right forfeiture issues for those rights for which statutory forfeiture time period begins to run as of the date of execution of this Stipulation.

12. Except as otherwise stated herein, and specifically with the exception of Paragraphs 7, 8, and 11, *supra*, the undersigned parties stipulate and agree that this Stipulation

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 6

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shall apply only to the water right matters specifically listed herein, and shall not apply to any future applications for transfer, applications for permit, applications for amendment of permit, or any other applications or other documents pertaining to water rights, filed by the undersigned, their heirs, or assigns, before the Idaho Department of Water Resources or any court.

13. The undersigned parties stipulate and agree that the terms of this Stipulation are mutually dependent upon each other, and that should any party fail to perform its duties under this Stipulation, the Stipulation in its entirety shall be null and void, unless otherwise agreed to in writing by the parties. Any party which breaches this Stipulation shall be responsible for any resulting damages to the other parties to this Stipulation, including but not limited to legal costs and attorney fees.

14. The undersigned parties further stipulate and agree that the terms of this Stipulation are expressly subject to the acceptance by the Idaho Department of Water Resources of the withdrawals referenced in Paragraphs 1 to 6 of this Stipulation and the signing of the Order requested by the Joint Motion included herein. Further proceedings in the matters encaptioned above are suspended pending acceptance by the Idaho Department of Water Resources of the withdrawals referenced in Paragraphs 1 to 6 of this Stipulation and the signing of the Order requested by the Joint Motion included herein.

15. The undersigned parties further agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving this legal dispute, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of the above-referenced

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - *

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Applications or Protests or Motions to Intervene thereto, in any other manner by any party to this Stipulation in future proceedings before the Idaho Department of Water Resources, or by any party in the SRBA in any future proceedings in the SRBA, other than those for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408 and IDWR Rule of Practice and Procedure 610, IDAPA 37.01.01.610.

16. The undersigned parties further agree that this Stipulation shall be binding on them and their successors and assigns.

JOINT MOTION FOR ORDER ACCEPTING STIPULATION AND SETTLEMENT

The undersigned parties, in accordance with Idaho Department of Water Resources Rules of Practice and Procedure 610-614, hereby move that the Department order as follows:

1. The protests of Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5400 in the name of L&S partners, are hereby deemed withdrawn with prejudice.

2. The protests of Mark T. Gates, Trustee; Blake Quinn; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5456 (formerly application for Transfer No. 4906) in the name of Aslett Ranches, are hereby deemed withdrawn with prejudice.

3. Application for Permit No. 34-07591, in the name of L&S Partners, is hereby deemed withdrawn with prejudice.

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

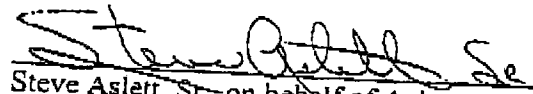
STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 8

Idaho Department of Water Resources

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This 20 day of Sept, 1999.


Steve Aslett, Sr., on behalf of Aslett
Ranches, Inc. & L & S Partners

DATED This ___ day of _____, 1999.

Mark T. Gates, Trustee

DATED This ___ day of _____, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This ___ day of _____, 1999.

David Stoecklein

DATED This ___ day of _____, 1999.

Mary Stoecklein

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 11
IN: This is a DRAFT of the stipulation and settlement.

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This ____ day of _____, 1999.

Steve Aslett, Sr., on behalf of Aslett
Ranches, Inc. & L & S Partners

DATED This ____ day of _____, 1999.

Mark T. Gates, Trustee

DATED This 20 day of September, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This ____ day of _____, 1999.

David Stoecklein

DATED This ____ day of _____, 1999.

Mary Stoecklein

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 9
SEP-17-99 FAX 01:00 PM CLERK'S OFFICE

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.


DATED This ____ day of _____, 1999.

Steve Aslett, Sr., on behalf of Aslett
Ranches, Inc. & L & S Partners

DATED This ____ day of _____, 1999.

Mark T. Gates, Trustee

DATED This 7 day of Sept, 1999.



Blake Quinn, on behalf of 6X Ranch LLC

DATED This ____ day of _____, 1999.

David Stoecklein

DATED This ____ day of _____, 1999.

Mary Stoecklein

4. The protests of Aslett Ranches to Applications for Transfer No. 5001 and 5004 are hereby withdrawn with prejudice.

5. The remaining terms of the Stipulation and Settlement are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

DATED This ____ day of _____, 1999.

Steve Aslett, Sr., on behalf of Aslett
Ranches, Inc. & L & S Partners

DATED This ____ day of _____, 1999.

Mark T. Gates, Trustee

DATED This ____ day of _____, 1999.

Blake Quinn, on behalf of 6X Ranch LLC

DATED This 9th day of Sept, 1999.

David Stoecklein

DATED This 9th day of Sept, 1999.

Mary Stoecklein

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER . . .
OF THE IDAHO DEPARTMENT OF WATER RESOURCES


DATED This ____ day of _____, 1999.

Vic Johnson

DATED This ____ day of _____, 1999.

Scott Johnson

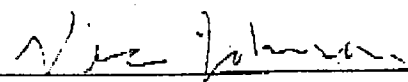
DATED This 22 day of September, 1999.


Lynn Reno

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 10


12. This WPDVC 1352- pleading stipulation-17. xia

DATED This ____ day of _____, 1999.



Vic Johnson

DATED This 29 day of September, 1999.



Scott Johnson

DATED This ____ day of _____, 1999.

Lynn Reno

STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER - 10

(1. This WP/DA 3524 precedes stipulation - 01/1/99)