



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

RECEIVED

R. KEITH HIGGINSON
Director

JUN 13 1994

Department of Water Resources

Donald B. Danner
Watermaster, District 45-F
PO Box 116
Albion, ID
83311

June 10, 1994

Dear Mr. Danner;

Warren Yadon has asked me to contact you concerning his water rights in the Marsh Creek drainage. The Cassia County assessor has verified that Mr. Yadon owns a half interest in the following property, along with Richard Flanders; to wit, the S 1/2 N 1/2 Sec. 9, and the S 1/2 SW 1/4, NW 1/4 SW 1/4, SW 1/4 NW 1/4 Sec. 10 T. 12 S R. 25E. Apparently they own the property jointly.

Our records show that decreed rights ^{1868/1892} 45-00218 & ^{1868/1892} 00243 are appurtenant to the land in Sec. 9. In addition, 10" of Rt. 45-00279 is appurtenant here. Mr. Yadon claimed 10" of this 20" right, while Leo Bell claimed the full 20" for his land. Lacking other information, it appears that Mr. Bell is only entitled to 10" of 45-00279. ^{not decreed}

Mr. Yadon owns 25% ^{sum sec 9} of the land to which Rt. 45-00326 was decreed, so he should be entitled to 25" of this 100" right. Helen Goodman owns 62.5% of the decreed land, but claims 100% of the right. Jim Chatburn owns 12.5% of the land, but has claimed 50% of the water right. ^{1880/1892}

Mr. Yadon owns 50% of the land to which Rt. 45-00526 was decreed, and has claimed half of the 8" right. Leo Bell has claimed the full 8", but it appears that he is entitled to only 4" of this right.

Licenses 45-02078 and 2091 cover the land in Sec. 10 owned by Mr. Yadon, so he should be entitled to delivery of these rights.

Our position is that water rights are split proportionally when the underlying property is split, unless some other arrangement is made in the land sale. Since the previous owner of the Yadon/Flanders property did not file SRBA claims, we recommended that Mr. Yadon file claims based on the proportional split of the land that he purchased. If he bought 50% of a farm, he should be entitled to 50% of the water rights appurtenant to it. If someone claims more than their proportional share of a water



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right, it is up to them to prove that they are entitled to the larger amount. In the absense of such proof, these water rights must be delivered according to the existing licenses and decrees. As watermaster, you cannot arbitrarily refuse to deliver a proper water right (assuming there is sufficient water available for delivery of that right). Since the place of use of these rights has never been legally changed by approved transfer, we assume that the rights are still used as originally established. If unrecorded transfers have occurred, as evidenced by SRBA claims, the validity of those unrecorded transfers will be determined at a later date. In fact, the statutes allowing such transfers are under legal review by the SRBA Court at this time; a final determination has not been made on this issue.

I hope this letter clarifies your responsibilities in this matter. If you have further questions, please feel free to contact me. Proof reports of the above-mentioned water rights are enclosed for your information.

Sincerely,

James E. Stanton
Sr. Water Resource Agent

cc: Warren Yadon
Tim Luke, IDWR



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June 21, 1994

RE: My Letter Dated 6-10-1994 Concerning Water Rights of Warren
Yadon

Dear Mr. Danner;

I met today with Leo Bell, Mr. Goodman, and one other man concerning the above-referenced letter. Mr. Bell directed my attention to the Parke vs Bell decree that gave all 8 inches of Rt. 45-00526 to him. Apparently this decree has not been entered correctly in our computer records, so the information I gave you in my last letter was wrong. Upon reading this decree, it is clear that Mr. Bell owns the full right and that Mr. Yadon is not entitled to any of it.

While there is a conflict over Rt. 45-00279 between Mr. Yadon & Mr. Bell, this right has been available so little of the time that Mr. Bell is not too concerned about it at this time.

That appears to leave Rt. 45-00326 as the main point of controversy. Mr. Goodman told me that the only ditch reaching the Yadon property from Howell Creek is the one used by Mr. Goodman and Mr. Chatburn. He further stated that the ditch is full with their rights, and that it could not carry additional water to the Yadon property. He also said that there is no pumps or laterals from this ditch to the Yadon property, which would support their belief that the Yadon property has not received water for many years. In fact, the previous owner of the Yadon property did not file SRBA claims for surface water from the Marsh Creek drainage.

Mr. Goodman asked how someone could move into a delivery ditch when they had not used the ditch for many years. I was not able to provide a good answer to this question. I did discuss this with Tim Luke of our Boise office after Mr. Bell and Mr. Goodman left. Tim is researching this question, so further direction may be forthcoming. Since I don't know how Mr. Yadon expects to get water to his property, I can't tell at this time whether or not



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he will be required to file a water transfer to change the point of diversion. If such a transfer is required, the question of abandonment of these rights will have to be considered. The SRBA will also have to consider the abandonment/forfeiture question eventually, but has been directed to work in other areas for this year.

I expect that additional correspondance will be forthcoming as more information becomes available on this problem, but I want to keep you apprised of developments as they occur. Mr. Bell and his neighbors were headed for their attorney's office when they left here, so information may be generated there. At least I have able to straighten out the problem the 526 right; our data base will be changed to reflect the correct information.

If you have any questions, please feel free to contact me.

Sincerely,

James E. Stanton

James E. Stanton
Sr. Water Resource Agent

cc: Warren Yadon
Tim Luke
Leo Bell
Jim Chatburn
Helen Goodman
John Hepworth

MEMORANDUM

TO: Water District 45F File

FROM: TIM LUKE

DATE: June 22, 1994

RE: Jim Stanton Letter of June 10, 1994

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Jim called me yesterday in response to visit from several water users who divert water from Howell Creek and have been seeking advice from both the watermaster and Jim as to whether certain rights or portions of rights claimed by Warren Yadon can be delivered by the watermaster. The users claim that Yadon's lands under the Howell Creek rights have not been irrigated in many years and that the rights have been abandoned. It appears the users are interested in having the Department declare the rights as abandoned and thereby keep Yadon from using or calling for his rights.

In question are two rights from Howell Creek which have 1892 priority dates and generally are not deliverable except during the high spring runoff period. The right which really is in focus is an 1880 priority right (45-00326) in which several SRBA claims have been filed, including one by Yadon. The users share a common ditch. Yadon's lands are along this ditch but the other user's claim he has no way of diverting water from the ditch. The other user's lands are below Yadon's lands. The other users may have used all of right 45-00326 on their lands at times when Yadon or his predecessor did not use their portion of the right. It appears the other users may want the full amount of water under the right delivered at the headgate, thereby maintaining the full 100 inches under the original right for their own benefit.

I believe Stanton's letter to the watermaster dated June 10 is the correct advice. The watermaster should deliver the full amount of water or 100 inches under 45-00326 to the ditch headgate and not concern himself with individual places of use. The place of use question and abandonment issues would be more appropriately addressed under the SRBA. If the Department at any point declared Yadon's portion of the right as abandoned, it is possible that the rate of diversion under right 45-00326 may be reduced. Under this scenario, it seems the other users may not gain anything by pushing the abandonment issue.

I reviewed 1980 infrared aerial photography on file at IDWR. The S1/2NE of section 9, T12S, R25E, is clearly irrigated at that time. It is inconclusive however whether the S1/2NW was irrigated. The 1986 remote sensing data for these lands was classified as irrigated by IDWR (see attached place of use comparison report).