

Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered

Roy W. Rigby
 Gordon S. Thatcher
 C. Rich Andrus
 Jerry R. Rigby
 Michael S. Kam (1954-2001)
 Gregory W. Mueller

P.O. Box 250
 25 North Second East
 Rexburg, ID 83440

Telephone: (208) 356-3633
 Facsimile: (208) 356-0768
 E-mail: jrighby@rigby-thatcher.com

December 10, 2002

Mr. Robert Foster
 IDWR - Salmon Region Office
 206 Van Dreff Offices, Suite B
 Salmon, ID 83467

Post-it® Fax Note	7671	Date	12-16-02	# of pages	3
To	SK:p	From	Bob FOSTER		
Co./Dupl		Co.			
Phone #		Phone #			
Fax #		Fax #			

Re: Williams Creek/Highline Ditch vs. John A. Benzon

Dear Mr. Foster,

This firm represents Bill Gattung and other water users on the privately owned Highline Ditch which has, as its point of diversion, Williams Creek in the following location: SE1/4NE1/4NE1/4 of Section 11, Twp. 21 North, Rge. 22 E.B.M. It has come to our attention that pursuant to a mandate given to the Highline Ditch water users by you and/or the Department of Water Resources, Highline Ditch water users are now required to allow a Mr. John A. Benzon to divert his claimed Water Right No. 75-27L in the amount of .080 cfs from the Highline Ditch in order to water his approximately four acres. Our understanding is that you have based your determination based upon an affidavit of Mr. Shoup, who is now deceased.

After extensive review of the records, the chain of titles to the properties and conversation with all witnesses who were alive at the time of the original applicable diversions from Williams Creek, it is clear that Mr. Benzon does not have a water right out of Williams Creek. According to our investigation, the history of the Highline Ditch is as follows:

1. A Colonel George L. Shoup originally owned certain property now being watered by the Highline Ditch. He initially began construction of a ditch from Williams Creek but stopped at a draw well above property now owned by Mr. Benzon as well as the present water users of Highline Ditch. No water was diverted. The question at that time was whether or not to flood across the draw or engineer around the draw.
2. In 1935, the Colonel Shoup property was then divided and sold to a Mr. Gar Hodges and a Mr. Corbett. The property taken by Mr. Corbett is not at issue in this matter as such property is the north half of the original Shoup Ranch toward Williams Lake road. Mr. Hodges then contracted with Mr. Corbett, as a contractor, to construct the balance of the Highline Canal to the Hodges property purchased from the Shoups. (As a point of interest, the Corbetts and Hodges also built what is now

Page 2

December 10, 2002

Mr. Robert Foster

Re: Williams Creek/Highline Ditch vs. John A. Benzon

known as Rainbow Ditch for the purpose of diverting water directly from the Salmon River to their properties as well).

3. When the Highline Ditch was completed, only the Hodges ever diverted from it. Prior to that time, even when Shoups owned the property, the present property being watered by the Highline Ditch (excluding Mr. Benzon's property) was the only property ever watered from the original diversion.

4. Approximately, during the same period of time, another son of Colonel Shoup, by the name of Will Shoup, purchased some additional property which was unrelated to the property transferred to the Hodges as discussed above and some portion of which eventually became the property now owned by Mr. Benzon.

5. Mr. Hodges had three children, Garr Hodges, Paul Hodges and a daughter by the name of Delcith (sp). The property was then divided among the three children and the water rights from the Highline Ditch were divided in three equal portions.

6. The property originally owned by Paul Hodges eventually became owned by the Capps. The property originally owned by Garr Hodges eventually was divided up and sold to Mr. Bill Gattung, Jason Beyelerr and D. Logan. The property originally owned by Delcith Hodges went to her heirs and is now owned and or operated by Kevin Rice.

7. The only modifications to the Highline Ditch, from the time of its construction and when it originally carried water, have been two new head gates (one by Mr. Gattung and the other by Mr. Rice) representing the three original points of diversion from the original water rights within the Highline Ditch.

8. Testimony from Mr. Gar Hodges himself will evidence that the property now owned by Mr. Benzon absolutely never had any water on it from the beginning of the original construction of the Highline Ditch by Mr. Shoup and completed by Mr. Hodges. This testimony will be confirmed by Mr. George Rice who came to the area in 1945. Both of these gentlemen are willing to testify at any hearing or meeting required to resolve this matter.

8. Both Mr. Hodges and Mr. Rice confirm that the Benzon property was always sage brush and was never cleared until recently. In fact, the property actually had a small saw mill on it and was never intended for irrigation purposes. The sage brush was five to six feet high, hardly evidencing any clearing in modern times.

9. In the early 1980s, a new diversion on Williams Creek was constructed which essentially allowed all of the water of Williams Creek to be diverted into the Highline Ditch and then within a few yards from the creek, a re-diversion takes place which dumps water for all other water rights on Williams Creek back into Williams Creek.

As stated above, it is our understanding that the Department has granted Mr. Benzon's request based

December 10, 2002

Page 3

Mr. Robert Foster

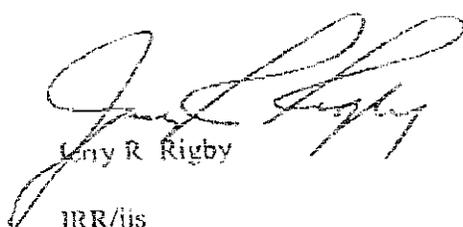
Re: Williams Creek/Highline Ditch vs. John A. Benzon

upon an Affidavit of Richard M. Shoup (deceased) prepared by his attorney of record in 1974. The fact of the matter is, the Affidavit is unsubstantiated and certainly is inconsistent with the testimony of those who were there and are presently alive and willing to testify. Furthermore, it is obviously incorrect in other ways: i.e. it states the priority date as May 1, 1888 and it should be 1886. At best, the Affidavit can only be claimed to be confused with the fact that some of the property purchased by Will Shoup lying below Mr. Benzon's property (on the other side of the road) was in fact watered from another point of diversion down stream of the point of diversion the Highline Canal on Williams Creek, located in the NE1/4SW1/4NW1/4 of Section 12. This property is presently owned by a Mr. Gale Anderson. However, this diversion could never have reached property lying up-gradient above the road and now owned by Mr. Benzon.

Basically, the bottom line to this correspondence is that we believe Mr. Benzon's claim to water right is in error and that he does not have any water rights on his property (except for a well which was drilled by his predecessor in interest, a Mr. Snider). Furthermore, even if his predecessors in interest did own a water right (as claimed within the original Shoup water right from either the Section 11 or Section 12 diversion), it has long ago been forfeited and/or abandoned. For these reasons, we must insist that the water master and/or the Department of Water Resources reverse its direction to the Highline Ditch shareholders that they must allow Mr. Benzon to divert from the Highline Ditch. We request a specific meeting to be held when we can present our case and our witnesses. If for any reason you are unwilling to provide the same, we will of course be forced to bring whatever action is necessary to enforce what we believe are our legal rights. We await your reply.

Please contact me as soon as possible

Sincerely yours,



Jerry R. Rigby

JRR/jjs

cc: Bill Gattung

cc: Ron Carlson

12/16/02 09:40 AM