

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-00598
Date Received: 3/29/1990
Receipt No: M006421
Received By: RWA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MARJORIE M. STRAWN
Address: 1979 GRANDVIEW AVE.
POCATELLO, ID

208-233-0394

83204

2. Date of Priority: AUG 08, 1924

3. Source: CUSICK CREEK

Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	34E	2	NW	SE	NE		BANNOCK

5. Description of diverting works:
DIVERSION PIPE TO SPRING BOX INTO PIPE LINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.240		

7. Total Quantity Appropriated is:
0.240 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 12.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	34E	1	NW	NW		IRR	5.0

Section Acres 5.0

Total Acres 5.0

A29-00598

Page 1

Date: 03/29/90

MICROFILMED
NOV 13 1992

A2900598

11. Place of use in counties: BANNOCK

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

A29-00599

14. Remarks:

IN A DROUGHT YEAR CUSICK CREEK DRIES UP IN EARLY IRRIGATION
SEASON.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

SALLIE F. ZWEIGART

Decree Plaintiff

vs

C. S. LAMB

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 12

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Margaret M. Atkinson Date: 3-29-90
Date: _____

State of Idaho)
County of Bannock) SS.

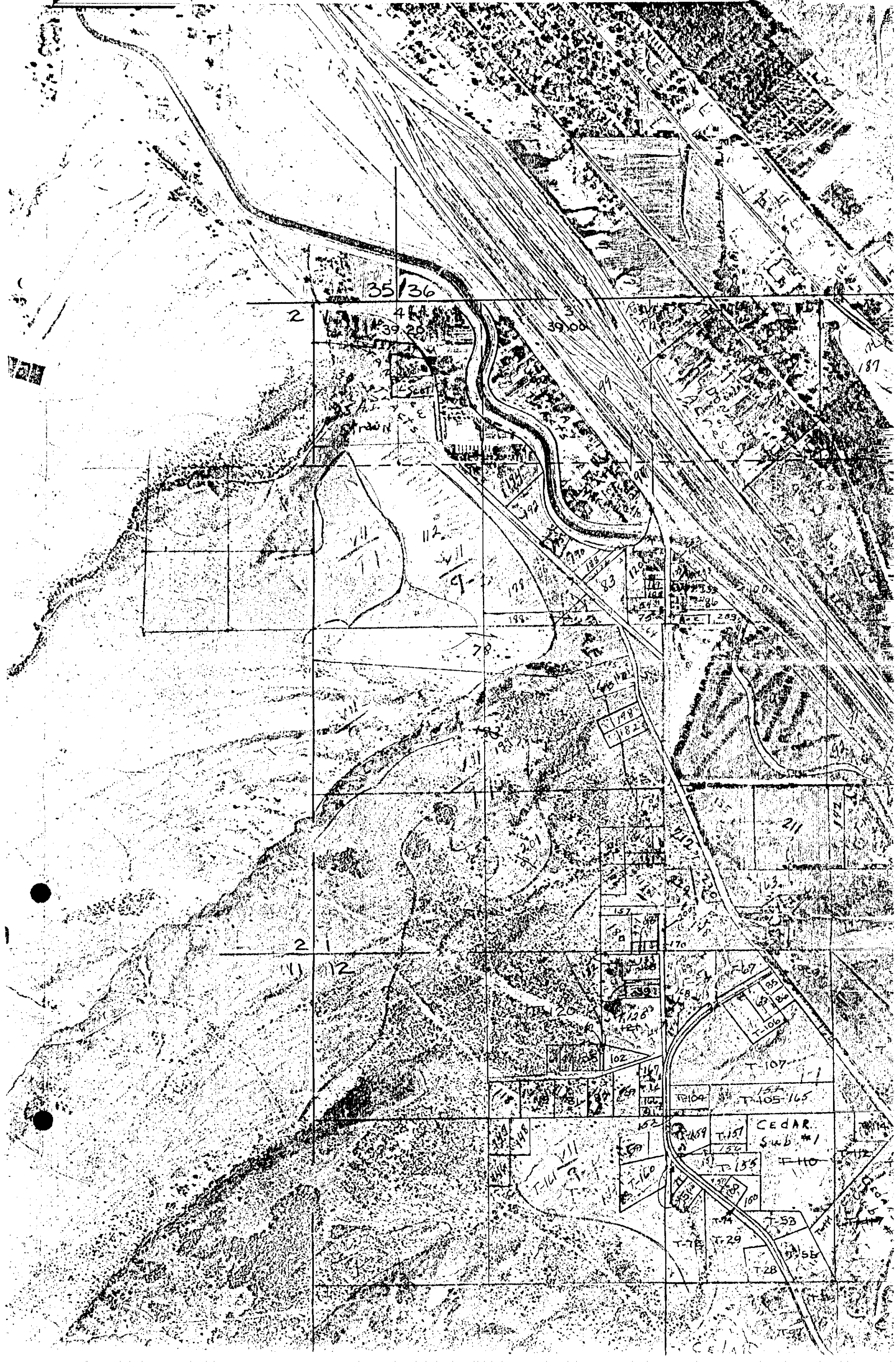
Subscribed and sworn (or affirmed) before me this 29th day
of March 19 90

Anna Baumbach
Notary Public

Seal

Residing at Anna Baumbach, Notary Public

My Commission Expires Residing at Boise, Idaho
My Commission Expires December 7, 1994



Log for claim A29-00598

Spatial Dynamics LTD

8/28/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
07s34e	1	NWNW	5	20	Indiscernible
Totals:			5	20	

AJ5809NP
No. A29-00598

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/18/00
PAGE: 83

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	MARJORIE M STRAWN 1979 GRANDVIEW AVE POCATELLO ID 83204 (208) 233-0394	08/08/1924	IRRIGATION	03-15 11-15	0.240 CFS	
TOTAL DIVERSION:					0.240 CFS	
CONSUMPTIVE USE:						12.50 AFA

Water Source: CUSICK CREEK

Tributary to: PORTNEUF RIVER

Stage: DECREED

Point(s) of Diversion: T07S R34E S02 NWSENE BANNOCK County

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE																				
NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW		NESE		NWSE		SWSE		SESE		
T	R	S	: Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM	
07S	34E	1	:																												5.0	
TOTAL ACRES																														5.0		

POU County: BANNOCK

Other Rights: A29-00599

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A29-00599

Other Water Rights Listing Overlapping Place(s) of Use:
A29-00599 A29-04335 A29-10645

Remarks: GEN IN A DROUGHT YEAR CUSICK CREEK DRIES UP IN EARLY IRRIGATION
SEASON.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 03/29/90 KAUMANN 06/01/94 COX 03/29/95 POST-STD

6558

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK.

SALLIE F. ZWIGART,

Plaintiff,

vs.

U. S. LAMB,

Defendant.

D E C R E E

This cause having come on regularly for trial on the 10th day of February, 1925, before the above entitled Court, without a jury, Hon. Robert M. Terrell sitting as Judge thereof, on the complaint of the plaintiff and answer thereto of the defendant upon the cross-complaint of the defendant and cross-complainant, U. S. Lamb, and the answer of the plaintiff to said cross-complaint, the plaintiff appearing in person and by her counsel, Jones, Pomeroy & Jones, and the defendant appearing in person and by his counsel, Eleven & Downing; and evidence both oral and documentary having been submitted both for and on behalf of the plaintiff and defendant and cross-complainant and cross-defendant, and the case having been submitted to the Court for decision and thereafter, upon application of cross-complainant, the case having been on the 9th day of April, 1925, reopened for the submission of further testimony and testimony having been submitted by the cross-complainant and the plaintiff, and all testimony being fully submitted and counsel having been given three days in which to submit briefs and no briefs having been submitted to the Court, the Court being fully advised in the premises and having signed and filed its findings and conclusions of law herein,

NOW, THEREFORE, all and singular the law and the premises being by the Court fully understood and considered and by virtue thereof IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Sallie F. Zwigart, is entitled to the use of 22,500th cubic feet per second of time of the waters from Cusick Creek during the irrigation season, hereinafter defined, to be diverted from said Cusick Creek at a point 900 feet South and 17 feet East of the Northwest corner of Section 1, Township 7, South Range 34 E. B. M., for the benefit of eleven (11) acres of the following described property:

All of that certain piece of land, lying and situated on the Southside of the Portneuf River in the East half of the Southeast quarter of the Southeast quarter, Sec. 35, in Township 6, South Range 34, E. B. M., Idaho, containing 11 acres, more or less, in Bannock County, Idaho.

Beginning at a point 80 feet South of the Northwest corner of Lot 4, Section 1, Township 7, South Range 34, E. B. M., on the West boundary line of said lot 4, thence running in a Northerly direction along said West boundary line a distance of fifty feet to the Northwest corner of said Lot 4, thence at right angles in an Easterly direction following the North Boundary line of said Lot 4 a distance of 250 feet, thence at right angles in a Southerly direction, then running parallel with the said Western Boundary line of said Lot 4 a distance of 100 feet; thence in a Northwesterly direction a distance of 250 feet to the place of beginning, containing in all .40 acres, in Bannock County, Idaho.

Said water right to date from June 7, 1902, and to be appurtenant to the lands above described; and the said Sallie F. Zwigart is further entitled to the use of 1/100th cubic foot of water per second of time of Cusick Creek for domestic purposes during the non irrigating season, to be diverted from said Cusick Creek at the point of diversion mentioned, for domestic purposes on the lands above described.

MICROFILMED
NOV 13 1992



MARJORIE M. STRAWN
1979 GRANDVIEW AVE.
POCATELLO, ID. 83204

It is further ordered, adjudged and decreed that the water rights hereinbefore decreed to the plaintiff herein shall be and the same are paramount and superior to the rights of defendant and cross-complainant in this action.

It is further ordered, adjudged and decreed that the defendant and cross-complainant is entitled to the use of 12/50ths of one cubic foot per second of time of the waters of Cusick Creek, for the irrigation of the following described lands, to-wit:

Lot 4 in Section 1, Twp. 7, South, Range 34, East B. M., in the County of Bannock, State of Idaho; and containing thirty-nine and two-tenths (39 and 2/10) acres more or less, in Bannock County, Idaho.

Said water to be diverted from Cusick Creek at the defendants' and cross-complainant's point of diversion on said Cusick Creek in the Southeast quarter of the Northeast quarter of Section 2, Township 7, South Range 34, E. B. M.; the said water right of said cross-complainant, C. S. Lamb, to date from August 8, 1924, and said cross-complainant, C. S. Lamb, is entitled to 2/50ths of one cubic foot per second of time of the waters of Cusick Creek for domestic purposes during the non-irrigating season, to be diverted from Cusick Creek, at the cross-complainant's point of diversion, as above described, for domestic purposes on the cross-complainant's lands above described; and the said water right of the defendant and cross-complainant to date from February 13, 1924.

It is further ordered, adjudged and decreed that the irrigating season shall be and the same is hereby decreed to be from April 1st to October 1st of each and every year.

It is further ordered, adjudged and decreed that the defendant and all persons claiming under him, are hereby perpetually enjoined and restrained from interfering in any manner with the free use by plaintiff of the amount of water hereinbefore decreed to said plaintiff and that said plaintiff and all persons acting under said plaintiff is hereby restrained from interfering in any manner with the free use of defendant and cross-complainant's use of the waters herein decreed to said defendant and cross-complainant.

DONE IN OPEN COURT this 11th day of June, 1925.

Robert M. Terrell

DISTRICT JUDGE.

FILED R.C. Earley
CLERK, AUDITOR & RECORDER
BANNOCK COUNTY, IDAHO
Anna Keefe,
JUN 13 1925 3 45 PM

Section 1, Township 7, South Range 34, East B. M., line of said lot 4, thence running in a Northerly direction along said West boundary line a distance of fifty feet to the Northwest corner of said lot 4, thence at right angles in an easterly direction following the North Boundary Line of said Lot 4 a distance of 250 feet, thence at right angles in a Southerly direction, then running parallel with the said Western Boundary Line of said Lot 4 a distance of 100 feet; thence in a Northwesterly direction a distance of 250 feet to the place of beginning, containing in all .40 acres, in Bannock County, Idaho.

Said water right to date from June 7, 1902, and to be appurtenant to the lands above described; and the said Sallie F. Zweigert is further entitled to the use of 1/100th of one cubic foot of water per second of time of Cusick Creek for domestic purposes during the irrigating season, to be diverted from said Cusick Creek at the point of diversion mentioned, for domestic purposes on the lands above described.

MICROFILMED

NOV 13 1992

CLERK, ADJUTANT & RECORDER
BENNECK COUNTY, IDAHO
Spongberg, Dep
13 1925 10 41 AM

6558 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENNECK.

SALLIE F. ZWEIGART,

Plaintiff,

C. S. LAMB,

Defendant.

FINDINGS OF FACT AND

CONCLUSIONS OF LAW.

This case having come on regularly for trial the 10th day of February, 1925, before the above entitled Court, without a jury, Honorable Robert M. Terrell, sitting as Judge thereof, upon the complaint of the plaintiff and answer thereto of the defendant and upon the cross-complaint of the defendant and cross-complainant, C. S. Lamb, and the answer of the plaintiff to said cross-complaint, the plaintiff appearing in person and by her counsel, Jones, Pomroy & Jones, and the defendant appearing in person and by his counsel, Stevens & Downing; evidence, both oral and documentary, having been submitted for and on behalf of the plaintiff and in support of its complaint and evidence both oral and documentary having been submitted by the defendant in support of its answer to the complaint of the plaintiff, and likewise in support of his cross-complaint, and evidence having been submitted by the plaintiff in support of its answer to the cross-complaint and the case having been closed and taken under consideration by the Court, and thereafter, upon application of the cross-complainant the case was on the 9th day of April, 1925, reopened for the submission of further testimony and testimony having been submitted both by the cross-complainant and the plaintiff and the case finally closed and submitted to the Court for its consideration,

Whereupon the Court, after duly considering the matter, makes and files his findings of fact and conclusions as follows:

FINDINGS OF FACT

I.

That the grantors and predecessors in interest of the plaintiff at all times claiming the same, have been and the plaintiff now is the owner and in possession and entitled to the possession of the following described property, to-wit:

All of that certain piece of land, lying and situated on the Southside of the Portneuf River in the East half of the Southeast quarter of the Southeast quarter, Sec. 35, in Township 6, South, Range 34, E. B. M., Idaho, containing 11 acres, more or less, in Benneck County, Idaho.

The plaintiff is now and ever since the 6 day of May, 1918, has been the owner and in possession of the following described property, to-wit:

Beginning at a point 30 feet South of the Northwest corner of Lot 4, Section 1, Township 7, South Range 34, E.B.M. on the West boundary line of said Lot 4, thence running in a Northerly direction along said West boundary line a distance of fifty feet to the Northwest corner of said Lot 4, thence at right angles in an Easterly direction following the North Boundary line of said Lot 4 a distance of 250 feet, thence at right angles in a Southerly direction, then running parallel with the said Western Boundary line of said Lot 4 a distance of 100 feet; thence in a Northwesterly direction on a distance of 250 feet to the place of beginning, containing all .40 acres, in Benneck County, Idaho.

II.

That Cusick Creek is a small stream of water located in a Southerly direction from the City of Pocatello and is fed by flood waters and springs arising along its course and flows in a Easterly and Northerly direction, and empties into the Portneuf River in Benneck County, State of Idaho; that the amount of water flowing in said creek

MICROFILMED

NOV 13 1992

before the above entitled Court, without a jury, Honorable Robert M. Terrell, sitting as Judge thereof, upon the complaint of the plaintiff and answer thereto of the defendant and upon the cross-complaint of the defendant and cross-complainant, J. M. Lamb, and the answer of the plaintiff to said cross-complaint, the plaintiff appearing in person and by her counsel, Jones, Pomroy & Jones, and the defendant appearing in person and by his counsel, Stevens & Downing; evidence, both oral and documentary, having been submitted for and on behalf of the plaintiff and in support of its complaint and evidence both oral and documentary having been submitted by the defendant in support of its answer to the complaint of the plaintiff, and likewise in support of his cross-complaint, and evidence having been submitted by the plaintiff in support of its answer to the cross-complaint and the case having been closed and taken under consideration by the Court, and thereafter, upon application of the cross-complainant the case was on the 9th day of April, 1925, reopened for the submission of further testimony and testimony having been submitted both by the cross-complainant and the plaintiff and the case finally closed and submitted to the Court for its consideration.

Whereupon the Court, after duly considering the matter, makes and files his findings of fact and conclusions as follows:

FINDINGS OF FACT

I.

That the grantors and predecessors in interest of the plaintiff at all times hereinafter mentioned, have been and the plaintiff now is the owner and in possession and entitled to the possession of the following described property, to-wit:

All of that certain piece of land, lying and situated on the Southside of the Portneuf River in the East half of the Southeast quarter of the Southeast quarter, Sec. 35, in Township 6, South, Range 34, E. B. M., Idaho, containing 11 acres, more or less, in Bannock County, Idaho.

That the plaintiff is now and ever since the 6 day of May, 1918, has been the owner and in possession of the following described property, to-wit:

Beginning at a point 50 feet South of the Northwest corner of Lot 4, Section 1, Township 7, South Range 34, E.B.M. on the West boundary line of said Lot 4, thence running in a Northerly direction along said West boundary line a distance of fifty feet to the Northwest corner of said Lot 4, thence at right angles in an Easterly direction following the North Boundary line of said Lot 4 a distance of 250 feet, thence at right angles in a Southerly direction, then running parallel with the said Western Boundary line of said Lot 4 a distance of 100 feet; thence in a Northwesterly direction on a distance of 250 feet to the place of beginning, containing all .40 acres, in Bannock County, Idaho.

II.

That Cusick Creek is a small stream of water located in a Southerly direction from the City of Pocatello and is fed by flood waters and springs arising along its course and flows in a Easterly and Northerly direction, and empties into the Portneuf River in Bannock County, State of Idaho; that the amount of water flowing in said creek below the point of diversion of the City of Pocatello, hereinafter described, varies at different seasons of the year from approximately fifty inches in the early spring during the time that it is augmented by flood waters to about two inches in the latter part of the irrigation season, except at intervals during the irrigation season, when there are freshets in the mountains and waste waters or flood waters escape over the point of diversion of the said City of Pocatello, when the amount is increased from two inches up to thirty inches and upwards at such intervals. That the point of diversion of the City of Pocatello referred to on said Cusick Creek is located about three quarters of a mile above the point of diversion of plaintiff on said creek.

MICROFILMED

NOV 13 1992

That on or about the 7th day of July, 1902, the plaintiff grantors and predecessor in interest constructed a ditch leading from Cusick Creek to the premises above described by means of said ditch and a dam diverted the waters of said Cusick Creek from the bed thereof at a point 906 feet South and 17 feet East of the Northwest corner of Section 1, Township 7, South Range 34, E. B. M., and conducted the same to and upon the lands above described. That the ditch so constructed was of sufficient capacity to carry and foot of water from said Cusick Creek to and upon said lands and that the plaintiff predecessor in interest have each and every irrigation season since the year 1902, used said dam and ditches and conducted the waters therefrom and used the same to and upon said land each and every year for the irrigation of crops and for domestic purposes, and the amount of water so conveyed in said ditch varied according to the season of the year and the Court finds that in the early season the said plaintiff has conducted onto said lands three-fifths of a cubic foot per second of time of water, and that when the flow of water into said Cusick Creek did not exceed one-half cubic foot of water the said plaintiff has used the full amount thereof during the irrigation season for the irrigation of crops and for domestic purposes.

IV.

That the lands, above described, are arid in character and require the artificial water thereon for the production of crops, and that there have been grown during each year since 1902 upon said lands agricultural crops of various kinds and fruit and vegetables and that the said lands require the use of one-twenty-fifth cubic foot of water per second of time per acre for the proper irrigation thereof, and the Court finds that the plaintiff has cultivated and irrigated during said time eleven acres of the lands above described.

V.

The Court further finds that for the proper irrigation of said lands that the plaintiff is entitled to the use of 22/50ths cubic foot per second of time of the waters of Cusick Creek arising or flowing below the point of diversion of the City of Pocatello, diverted at the point above mentioned.

VI.

The Court further finds that the use of said water by the said plaintiff, as aforesaid, has been continuous and uninterrupted each and every irrigation season and that the plaintiff is entitled to the use of all the waters of said Cusick Creek and all springs and wells contributing thereto, arising or flowing below the point of diversion of the City of Pocatello, to the extent of 22/50ths cubic foot per second during the irrigating season and that the same is appurtenant to the lands above described.

VII.

The Court finds that the irrigation season commences April 1st and ends October 1st of each year.

VIII.

The Court further finds that the defendant and cross-complainant, during the year of 1924, wrongfully entered upon the waters of certain springs which contributed to the flow of Cusick Creek and has dug up a portion of the channel of the natural bed of the creek through which the water flows to the plaintiff's point of diversion, and that said action on the part of said defendant and cross-complainant was without right.

IX.

That the defendant and cross-complainant is, and at all times hereinafter mentioned, has been the owner of, in possession of, and entitled to the possession of the following described land, to-wit:

Lot 4 in Section 1, Twp. 7 South, Range 34 East, B. M. in the county of Blaine, State of Idaho; and containing thirty-nine and two-tenths (39 and 2/10) acres more or less, in Blaine County, Idaho.

X.

That the cross-complainant in the early part of 1924, excavated and built a dam on the springs and channel of Cusick Creek in the Southeast quarter of Section 1, Township 7, South Range 34, E. B. M., for the purpose of developing the water therefrom, and the defendant and cross-complainant did not develop any water which was not already contributing to said Cusick Creek, did not bring to the surface and make available for irrigation and domestic use waters that had never entered into or contributed to the flow of Cusick Creek or any other natural stream.

XI.

MICROFILMED
NOV 13 1992

The Court further finds that the flow of said Cusick Creek has been continuous and uninterrupted each and every year. Plaintiff is entitled to the use of all the waters of said Cusick Creek and all waters contributing thereto, rising or flowing below the point of diversion of the City of Idaho, to the extent of 22,500ths cubic foot per second during the irrigating season and the same is appurtenant to the lands above described.

VII.

The Court finds that the irrigation season commences April 1st and ends October 1st each year.

VIII.

The Court further finds that the defendant and cross-complainant, during the year of 1924, wrongfully entered upon the waters of certain springs which contributed to the flow of Cusick Creek and has dug up a portion of the channel of the natural bed of the creek through which the water flows to the plaintiff's point of diversion, and that said action on the part of said defendant and cross-complainant was without right.

IX.

That the defendant and cross-complainant is, and at all times hereinafter mentioned, has been the owner, of, in possession of, and entitled to the possession of the following described land, to-wit:

Lot 4 in Section 1, Twp. 7 South, Range 34 East, B. M. in the county of Bannock, State of Idaho; and containing thirty-nine and two-tenths (39 and 2/10) acres more or less, in Bannock County, Idaho.

X.

That the cross-complainant in the early part of 1924, excavated and built certain ditches on the springs and channel of Cusick Creek in the Southeast quarter of the Northeast quarter, Section 2, Township 7, South Range 34, E. B. M., for the purpose of developing from subterranean sources, underground springs thereon, waters by such means, but the Court finds that the defendant and cross-complainant did not develop any water which was not already contributing to said Cusick Creek, did not bring to the surface and make available for irrigation and domestic use waters that had never entered into or contributed to the flow of Cusick Creek or any other natural stream.

XI.

The Court further finds that there is no evidence that there are underground springs in the immediate vicinity of the springs, mentioned in the preceding paragraph of these findings, from which water may be developed and made available for irrigation or domestic use that has never entered into or contributed to the flow of Cusick Creek.

XII.

That the defendant and cross-complainant now and for several years last past has resided upon the lands described in Paragraph IX. and has been engaged in the dairy business and owns and maintains in connection with said business milk cows, and that he needs for the conduct of said dairy and for general household and domestic purposes certain water for said purpose, but finds that he is not entitled to the waters of the spring referred to in his cross-complaint for such or any purpose.

MICROFILMED

NOV 13 1992

XII.

That cross-complainant on or about the 13th day of February, 1924, made application to the Commissioner of Reclamation of the State of Idaho, for a permit to appropriate .12 of one cubic foot of water per second of time from such subterranean waters that he might develop or make available from the Springs hereinbefore described, and that said application was approved by said commissioner of Reclamation on the 18th day of March, 1924, and that said permit is in force and effect subject to the conditions thereof, and that said cross-complainant has complied with the conditions of said permit; but the Court finds that the cross-complainant is not by reason thereof or any reason entitled to the use of the waters of said Springs and finds that the same are not subterranean waters, but that they contributed to the springs and stream which supplied Cusick Creek to which the plaintiff was entitled.

XIII.

That cross-complainant has, pursuant to the terms of said permit, performed excavating work and constructed filtering basins, constructed pipe lines from said basins to the intended point of use at an expense of approximately \$3,000.00, but the Court finds that the cross-complainant has not dammed off any subterranean waters, but has interfered with waters that contributed to Cusick Creek.

XIV.

That the lands of cross-complainant are arid and desert in character and requires the artificial use of water in order to produce crops.

XV.

That for the purpose of irrigating said lands, cross-complainant on or about the 8th day of August, 1924, made application to the Commissioner of Reclamation of the State of Idaho for a permit to appropriate three-fourths of one cubic foot of water per second of time per acre of the waters of Cusick Creek; that said application was approved by the Commissioner of Reclamation on or about the 5th day of September, 1924, and that said permit is now in full force and effect, subject to the completion of the works necessary for the appropriation and diversion of said water within the time allowed by said Commissioner therefor; that the requirements of said permit have been met by said cross-complainant, but the Court finds that the cross-complainant has not under said permit applied any of the waters to the irrigation of cross-complainant's land.

XVI.

The Court further finds that the cross-complainant's lands require two-fiftieths cubic foot per second of time of water for the successful and profitable irrigation and reclamation thereof; and from the evidence and stipulation on file, the Court finds that the cross-complainant is entitled to the use of 12/50ths cubic foot per second of time of the waters of Cusick Creek for irrigation of the lands of the cross-complainant with a priority of August 8, 1924, the same to be appurtenant to said lands.

XVII.

It having been stipulated in open court that if the Court decided that the plaintiff was entitled to the use of any water for domestic use during the non-irrigating season that the Court should fix the amount at one-half miners inch, and the Court finds that the plaintiff has used some water for domestic purposes during the non-irrigating season and is entitled to the use of one-hundredth cubic foot of water per second of time for domestic purposes from Cusick Creek during the non-irrigating season at her point of diversion, with priority of July 7, 1902. The Court finds that during the non-irrigating season that the cross-complainant is entitled for domestic purposes 2/50ths cubic foot per second of time of the waters of Cusick Creek, with a priority of August 13, 1924, for domestic purposes at his point of diversion on Cusick Creek in the southeast quarter of the Northeast quarter, Section 2, Township 7, South Range 34, T. 7 S. R. 34 E. 1/4.

XVIII.

The Court further finds from the evidence that the cross-complainant has wrongfully interfered with the natural flow of the waters of Cusick Creek by excavating in the natural channel of said stream and by the construction of concrete works to impede the flow of said waters in the channel as it formerly ran, and has there-

MICROFILMED
NOV 13 1992

XIV.

That the lands of cross-complainant are arid and desert in character and requires the artificial use of water in order to produce crops.

XV.

That for the purpose of irrigating said lands, cross-complainant on or about the 8th day of August, 1924, made application to the Commissioner of Reclamation of the State of Idaho for a permit to appropriate three-fourths of one cubic foot of water per second of time per acre of the waters of Cusick Creek; that said application was approved by the Commissioner of Reclamation on or about the 5th day of September, 1924, and said permit is now in full force and effect, subject to the completion of the works necessary for the appropriation and diversion of said water within the time allowed by said Commissioner therefor; that the requirements of said permit have been met by said cross-complainant, but the Court finds that the cross-complainant has not under said permit applied any of the waters to the irrigation of cross-complainant's land.

XVI.

The Court further finds that the cross-complainant's lands require two-fiftieths cubic foot per second of time of water for the successful and profitable irrigation and reclamation thereof; and from the evidence and stipulation on file, the Court finds that the cross-complainant is entitled to the use of 12/50ths cubic foot per second of time of the waters of Cusick Creek for irrigation of the lands of the cross-complainant with a priority of August 8, 1924, the same to be appurtenant to said land.

XVII.

It having been stipulated in open court that if the Court decided that the plaintiff was entitled to the use of any water for domestic use during the non-irrigating season that the Court should fix the amount at one-half miners inch, and the Court finds that the plaintiff has used some water for domestic purposes during the non-irrigating season and is entitled to the use of one-hundredth cubic foot of water per second of time for domestic purposes from Cusick Creek during the non-irrigating season at her point of diversion, with priority of July 7, 1902. The Court finds that during the non-irrigating season that the cross-complainant is entitled for domestic purposes 2/50ths cubic foot per second of time of the waters of Cusick Creek, with a priority of February 13, 1924, for domestic purposes at his point of diversion on Cusick Creek in the Southern quarter of the Northeast quarter, Section 2, Township 7, South Range 34, E. B. M.

XVIII.

The Court further finds from the evidence that the cross-complainant has wrongfully interfered with the natural flow of the waters of Cusick Creek by excavation in the natural channel of said stream and by the construction of concrete works so as to impede the flow of said waters in the channel as it formerly ran, and has thereby invaded the rights of the plaintiff to the prior rights of said water.

CONCLUSIONS OF LAW

From the foregoing findings of fact the Court concludes, as follows:

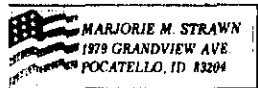
I.

That the plaintiff herein is entitled, during the irrigating season, between April 1st and October 1st of each year, to the use, for irrigation and domestic purposes on her land described in Paragraph 1, of the Findings of Fact herein, of 22/50ths cubic foot per second of the waters of Cusick Creek at plaintiff's point of diversion above described, with a priority of July 7, 1902, and that the said waters are appurtenant to the lands of the plaintiff, above described, and that the plaintiff is entitled during the non-irrigating season for domestic purposes to the use of 1/100th cubic foot of water per second of time, with a priority of July 7, 1902, at her point of diversion above described; and that the defendant, his agents and servants, and all persons acting for him, are enjoined and restrained from interfering with plaintiff's right to the use of said waters of plaintiff, as herein specified.

referred to in his cross-complaint for such of any purpose.

MICROFILMED

NOV 13 1992



II.

That cross-complainant is entitled to the use of 12/50ths cubic feet of water per second of time of the waters of Cusick Creek during the irrigating season, as herein set at cross-complainant's point of diversion described in Paragraph IX. of the Final Decree herein, for the irrigation of cross-complainant's lands herein described, with a priority of August 8, 1924, which said waters are appurtenant to the lands of the cross-complainant herein described, and that the cross-complainant is entitled to the use of 8/50ths cubic feet per second of time of the waters of Cusick Creek at its point of diversion for domestic uses during the non-irrigating season, with a priority of February 13, 1924.

III.

That the plaintiff is enjoined and restrained from interfering, with the right of the cross-complainant to the use of the waters to which cross-complainant is entitled as herein set forth.

Let Judgment and Decree be entered accordingly.

DATED, at Pocatello, Idaho, this 11th day of June, 1925.

Robert A. Terrell

MICROFILMED
DISTRICT JUDGE
NOV 13 1992

FILED R.C. Earley
CLERK, AUDITOR & RECORDER
BAINBOCK COUNTY, IDAHO
Anna Keefe, Deputy
JUN 13 1925 3 45 PM

444111

AGREEMENT

1 WHEREAS, CHARLES E. GRISINGER and ELLA S. LAMB GRISINGER,
2 and the owners of a certain water right and the water derived from a certain spring
3 located at or near what is known as the Police Cabin, and

4 WHEREAS, there is a pipeline running from said spring across the hereinafter described property, and

5 WHEREAS, Charles E. Grisinger and Ella S. Lamb Grisinger desire to
6 sell said pipeline and any and all water rights that they may have by virtue thereof in
7 and to the spring, and also desire to release any and all easements that they may have
8 across said described land.

9 NOW, THEREFORE, IN CONSIDERATION of \$75.00 the said Charles E.
10 Grisinger and Ella S. Lamb Grisinger, husband and wife, do hereby sell and convey
11 any and all interest that they may have in and to said spring and the pipeline running
12 therefrom and hereby quit claim and release and cancel any and all easements that
13 they may have against the following described property:

14 All of Lot 30 of Grandview Tracts, a subdivision in Lots three
15 and four, Section 1, Township 7 South, Range 34 East, .1BM.,
16 excepting therefrom the following described tract:

17 Beginning at the Northwest corner of Lot 30 of Grandview Tracts,
18 running thence easterly along the north line of said Lot 30, 369.82
19 feet to an intersection with the westerly right of way of Grandview
20 Avenue, thence S. 0°01' W., 18.59 feet to a point of curvature,
21 thence southeasterly on a 24°00' curve to the left, having a radius
22 of 265.5 feet and a central angle of 46°20', 198.6 feet, more or
23 less, to a point on said curve that is 200 feet at right angles
24 southerly from said north line of Lot 30 and an easterly extension
25 thereof, thence westerly on a line that is 200 feet southerly from
26 and parallel to said north line, 450.0 feet, more or less, to the
27 west line of said Lot 30, thence N. 6°19' W., along said west line,
28 200.0 feet to the point of beginning, containing 1.82 acres, more
29 or less.

30 and that the same is conveyed to JAMES ALBERT STRAWN and MARJORIE YARGER
31 STRAWN, husband and wife, it being the intention of the parties hereto that said
32 Charles E. Grisinger and Ella S. Lamb Grisinger convey to said James Albert
33 Strawn and Marjorie Yarger Strawn the pipeline along with all water and to cancel
34 and release any easements that they may have in and to said land.

35 DONE this 22nd day of May, 1962.

36 *Charles E. Grisinger*
37 *Ella S. Grisinger*

38 MICROFILMED

39 NOV 13 1992

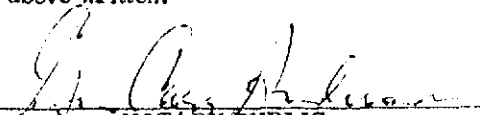
MARJORIE M. STRAWN
1879 GRANDVIEW AVE.
POCATELLO, ID. 83204

444111

STATE OF IDAHO)
 : ss
County of Bannock)

On this 22nd day of May, 1962, before me, the undersigned, a Notary Public in and for said County and State, personally appeared CHARLES E. GRISINGER and ELLA S. LAMB GRISSINGER and JAMES ALBERT STRAWN and MARJORIE YARGER STRAWN, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC
Residing at Pocatello, Idaho

NO. 444111
RECORDED AT REQUEST OF
Marjorie Y. Strawn
Route 3, South
Oct 30 9 09 AM '67
OFFICIAL 217
FEE 1.50
FEL

MICROFILMED
NOV 13 1992