

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 29-4159
Date Received: 1/31/01
Receipt No: E 026451
Received By: Bar

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

HARDCASTLE FAMILY TRUST Phone: (208) 852-2455

675 N 8TH EAST
PRESTON ID USA 83263

2. Date of Priority: 06/01/1920

3. Source: SPRING Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
09S	37E	20	SW NW	BANNOCK	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	11/01	0.4	
STOCKWATER	1/01	12/31	0.02	

7. Total Quantity Appropriated is:
0.42 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
09S	37E	19	SE NE 3	IRRIGATION	27
Section Acres					27

09S	37E	20	SE	NE	5	IRRIGATION	21
			SE	NW	3	IRRIGATION	3
			SW	NW	4	IRRIGATION	25
			SW	NW	7	IRRIGATION	45
			NW	SE	6	IRRIGATION	48
			NW	SW	8	IRRIGATION	15
			NE	SE		IRRIGATION	32
			SE	SE		IRRIGATION	0.5
			SW	SE		IRRIGATION	35
						Section Acres	224.5
09S	37E	21	SW	NE	7	IRRIGATION	0.1
			SE	NW		IRRIGATION	18
			NW	SW		IRRIGATION	3.3
			NW	NE	5	IRRIGATION	17
			SW	NW	6	IRRIGATION	37
						Section Acres	75.4
						Total Acres	326.9

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:

14. Remarks:

CLAIMED ON PERMISSIBLE PLACE OF USE BASIS WITH 29-200 AND ~~31~~²⁵-4157. THIS CLAIM IS FOR 10 ACRES PER ORIGINAL RIGHT ~~31~~²⁹-4159. SEE ALSO BENEFICIAL USE CLAIM FOR SAME LANDS, PER AERIAL PHOTO.

(29-13145) 29

15. Basis of Claim: Statutory Claim

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: One aerial photograph, copy of statutory claim.

For Organizations:

I do solemnly swear or affirm that we are Trustees of Hardcastle Family Trust, that we have signed the foregoing document in the space below as Trustees of Hardcastle Family Trust and that the statements contained in the foregoing document are true and correct.

Alice B. Hardcastle
Signature of Authorized Agent

Trustee, Hardcastle Family Trust

Alice B. Hardcastle
Date

Alice B. Hardcastle
Signature of Authorized Agent

Trustee, Hardcastle Family Trust

1-31-01
Date

State of Idaho _____)
County of Bonneville) SS.

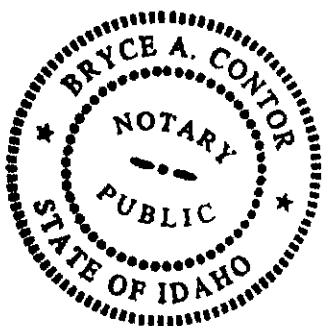
Subscribed and sworn (or affirmed) before me this 31 day
of Jan 2001

Bryce A. Contor

Notary Public

Residing at Med Lake ID

My commission Expires 10/14/05



29-4159

Qs: ① Actual Ac.

② Flow was.

① THE ORIGINAL 243 CLAIM FILED BY ROSOR JOHNSON, FEB. 1980 CLAIMS 0.40 cfs irrig on 10 AC (TWICE ALLOWABLE DIV RATE / AC BY STATUTE § 42-220 IC AND BY THE UNION GRAM ... DECREES (CIRCA 1932). THEREFORE, 29-4159 WILL BE CONSIDERED AT 1" / AC OR 0.02 cfs / AC, AND, BASED ON ACTUAL ACRES IRRIGATED AND THE MEASURED FLOW OF THIS CLAIMED SOURCE. BEST CASE (BASED ON .4 cfs) IS 20 ACRES.

② EVIDENCE OF PRIORITY IS LACKED (LETTER SENT, 1/31/01, B. CONTOR). AS OF 4/5/01 NO RESPONSE TO PRIORITY REQUEST.

MEASUREMENTS MUST
CONFIRM FLOW →

③ ORIGINAL 243 CLAIM AND SRBA CLAIM BOTH ADDRESSES STOCKWATER AT 0.02 cfs AS AN ADDITIVE VALUE TO 0.40 cfs FOR IRRIG.

④ 29-04159 FILED AS PPM WITH OTHER RIGHTS AS:
29-200
29-4157
29-13145

THERE EXISTS A QUESTION OF VALIDITY OF ALL OF THESE CLAIMS. PART OF THIS QUESTION IS CONTROVERSED AROUND THE CUTLER DITCH RIGHTS.

- a.) ARE THERE / WERE THERE ANY?
- b.) ACCOMPLISHED CHANGES IN SOURCES & POD? WHEN?
- c.) DID THE ACCOMPANYING % FOR 29-4157 STATE "CUTLER DITCH RIGHTS WITHHELD"?
 - 1.) WHAT HAPPENED TO THEM?
 - 2.) WHOSE NAME / WHERE?
 - 3.) SPLITS, TRANSFERS, ANYTHING TO FOLLOW THEM?

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Roger Sylvan Johnson
(Name of Claimant)

Box 354, Lava Hot Springs, ID 83246 Telephone No. 776-5617
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) June 1, 1920

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
unnamed spring (warm water spring) tributary to Portneuf River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, gpd, AFA)		(Domestic, Irrigation, Stock, Etc.)		(Both dates inclusive)	
				(Mo., Day)	(Mo., Day)
Quantity	<u>.40 cfs</u>	Use	<u>irrigation</u>	Period of Use From <u>4/1</u>	To <u>11/1</u>
Quantity	<u>.02 cfs</u>	Use	<u>stockwater</u>	Period of Use From <u>1/1</u>	To <u>12/31</u>
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To

(4) .42 cfs TOTAL QUANTITY USED.
(cfs, gpd, AFA)

(5) A) Point of diversion: (Location of point where water is diverted from its source)
SW 1/4 NW 1/4, Sec. 20 Twp. 9S Rge. 37E B.M., County of Bannock
Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Spring is used to raise the subwater level and to sub-irrigate.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
9S	37E	20							10										10
									X (stockwater)										

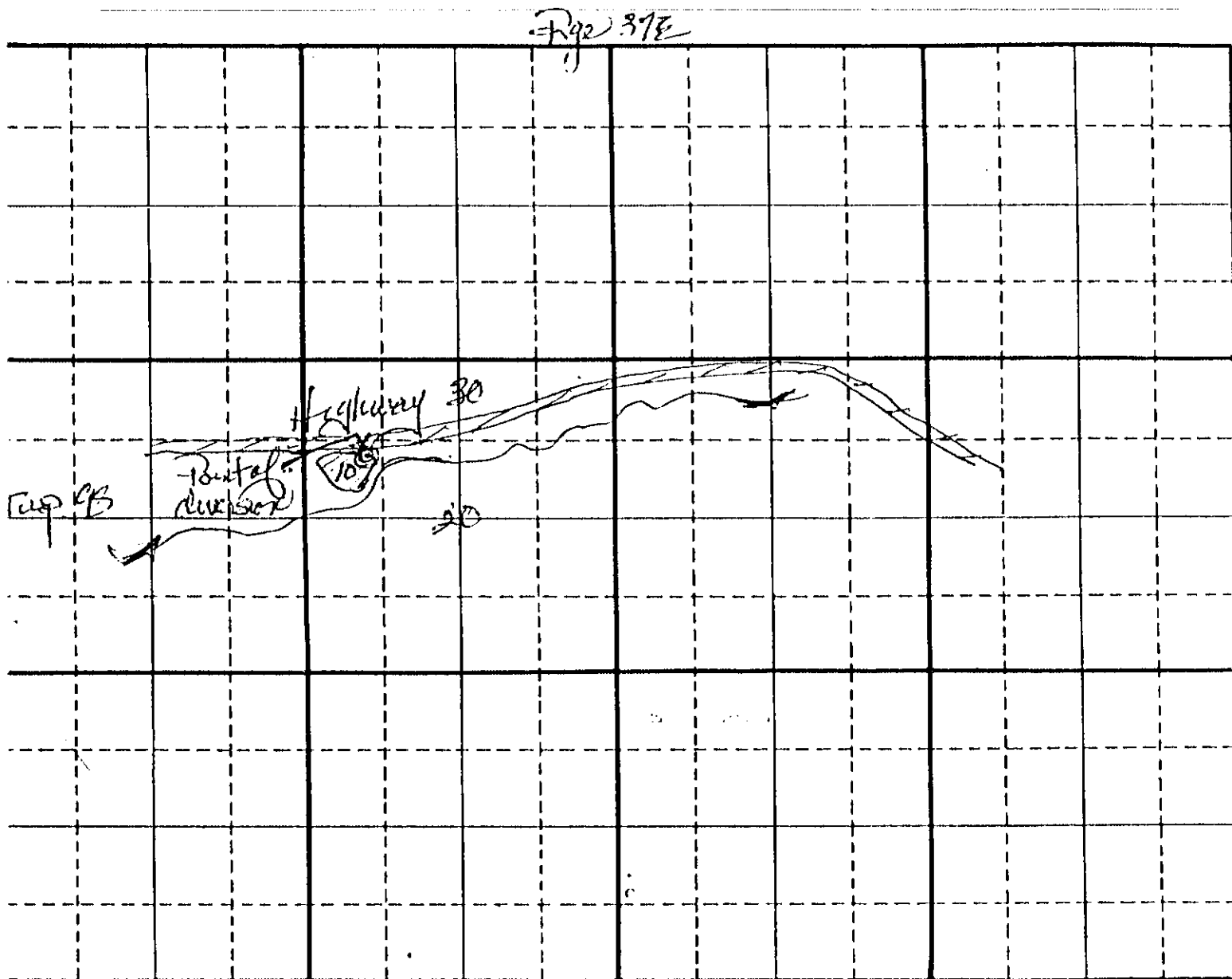
No. of acres 10

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered: 100 head of range cattle, 400 head of sheep

(7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Bonneville) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Roger Johnson
(Claimant)

Sworn to before me this 25 day of February, 1980.

Kathryn A. Walker
Notary Public
Residing at Idaho Falls

My commission expires life

FOR DEPARTMENT USE ONLY

Received by <u>ARK</u>	Date <u>2-25-80</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>EMC</u>	Date <u>2-26-80</u>		claimant by:	
\$20.00 fee received by <u>KW</u>	Date <u>2/25/80</u>	# <u>13810</u>		
Published in <u>Idaho State Journal</u>				
Dates <u>3/6 & 3/13/80</u>				



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: Hardcastle Family Trust
Fr: Bryce Contor
Date: 1/31/2001

Re: Evidence of Priority

In order to recommend adjudication claims 29-4159 and 29-13145, we need documentation of the earliest date that water was put to beneficial use as claimed. The enclosed pamphlet describes some sources that may help.

If the documentation is an affidavit from a person who personally saw or performed the beneficial use of the water, some details are very important:

- The affidavit needs to clearly state "I saw..." or "I irrigated..."
- Details of dates and circumstances are very important.
- Any recollection of how much water was used, how many acres were irrigated, the type of system used and irrigation performed, is useful.
- The affidavit needs to carefully indicate where the water was used.

It will also be very helpful if you can find out the history of the use of Cutler Ditch water and use of water that was separate and independent from the Cutler Ditch water.

MEMORANDUM

To: File 29-200
File 29-4159
File 29-13145
Hardcastle split of 29-4157
Fr: Bryce Contor
Date: 1/31/2001
Re: Cutler Ditch

Hardcastles came in today in response to a request for a more complete chain of title for a Notice of Change of Ownership for a portion of 29-4157, and to file claims on 29-200 and 29-4159, which appear to be appurtenant to this land but have not previously been claimed in the Adjudication.

The deed specifically excludes "Cutler Ditch Water" from the sale. AJ query indicates that an entity called "Cutler Ditch" has several AJ claims, and the names in the files appear to be neighbors of Hardcastles. A search of "Cutler Ditch" on the Secretary of State website failed to produce a result, so apparently the Cutler Ditch is not a formally organized entity.

29-200 is noted in the decree as delivered via the Cutler Ditch, but it is neither decreed to nor claimed by Cutler Ditch nor any of the identified owners of Cutler Ditch. At this point I interpret this to mean 29-200 was a private right originally conveyed via the Cutler Ditch but not owned by the Ditch association. On that assumption, I accepted AJ claim 29-200 with an accomplished change in POD to the heading of the current delivery ditch.

Hardcastles have not owned this property long and are not certain exactly where the Cutler Ditch is, but the current users appear to be on the north side of the highway. The current delivery ditch for Hardcastles' land is on the south of the railroad.

The 1987 NAPP clearly indicates more acres of irrigation than the combination of 29-200, 29-4159, and Hardcastles' portion of 29-4157. At this point it is unclear whether this irrigation was from Cutler Ditch shares owned by Hardcastles' predecessors, and retained in the deed, or whether this is a beneficial use right.

I accepted claim 29-13145 as a beneficial use claim, with the intention that if evidence is not provided, it still may be possible to recommend some of it as an enlargement. I cautioned the claimants that the exclusion of the "Cutler Ditch" water in the deed (copy in Notice of Change of Ownership 29-4157) is problematic.

Harold Jones is familiar with some of the history of the Cutler Ditch, and indicated that watermaster Arlin Olsen says the Cutler Ditch had severe leakage and water seldom made it as far down the ditch as this general area. Jones says the Cutler Ditch claims were filed by Roger Johnson and there is not actually a Cutler Ditch association to his knowledge. Jones also relates that Ken Andrus and his brother have inquired about a transfer of the Cutler Ditch rights which they have purchased or intend to purchase, Jones told them to wait until the AJ determines what the rights may actually be.