

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 29-13141
Date Received 12/19/2000 12/27/00
Receipt Number E026350 E026400

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

- Name of Claimant (s) William & Karen Neely Phone (208) 775-3246
Mailing Address PO Box 456 Inkom ID Zip 83245
- Date of Priority (Only one (1) per claim) June 18, 1902 (2:54 p.m.)
- Source of water supply (a) Rock Creek
which is tributary to (b) Portneuf
- a. Location of existing point of diversion is: Township 8S Range 36E Section 11,
1/4 of NE 1/4 of NE 1/4, Govt. Lot, B.M., County of Bannock
Additional points of diversion if any: none
- b. If Instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____
_____ 1/4, Govt. Lot _____ B.M., County of _____
- Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. We use a 1 3/4 H.P. gas
pump with 3" suction and 1 1/2" discharge hose connected to
four and sometimes five 3/4" Rainbird type irrigation heads.
It is also part of the system to place or dig a place
to put a 55 gallon Barrel into the creek, midstream,
approximately 50' from the south end of the culvert
as a reservoir.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 04-01 to 10-01 amount 0.030 or _____

For Stock water purposes from 01-01 to 12-31 amount 0.020 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.050 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is n/a acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Stockwater for two horses

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			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	
<u>8S</u>	<u>36E</u>	<u>11</u>	<u>I</u>																
			<u>S</u>																

Total number of acres irrigated 1 (one)

11. In which county (ies) are lands listed above as place of use located? Bannock County, ID

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
No. 29-10297 or None ()

14. Remarks: Letter enclosed and intended for use with this claim -
Letter Explains existance of documents and asks for reply concerning filing of claim in regards to documents. Telephone 208-775-3246

Last Name Nealy Ident No. _____

Copies: White -State, Yellow-Claimant

Scale: 2 inches equals 1 mile

Township 8S

Range 36E

Section 71

Neely Property Location

Rock Creek flows through the property all along the frontage

NEALY

Ident No.

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice ☒ License _____ Permit _____

Decree _____

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs 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 _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) William M. Nealy Date 12-8-00

Karen Nealy Date 12-8-00

For Organizations: I do solemnly swear or affirm that I am _____ Title _____

of _____, that I have signed the foregoing

Organization

document in the space below as _____ of _____

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)

County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 8 day of Dec. 19 00

SEAL

Notary Public Quanna Sterner

Residing at Idaho

My Commission Expires Oct. 27, 03

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name Nealy Ident. Number _____

Copies White-State, Yellow-Claimant

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 29-13141
Date Received: 1/4/01
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

WILLIAM NEALY Phone: (208) 775-3246

PO BOX 456
INKOM ID USA 83245

KAREN NEALY Phone: (208) 775-3246

PO BOX 456
INKOM ID USA 83245

2. Date of Priority: 06/18/1902

3. Source: UPPER ROCK CREEK Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County
08S	36E	11	NE NE	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	04/01	10/01	0.03	
STOCKWATER	01/01	12/31	0.02	

7. Total Quantity Appropriated is:
0.05 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
08S	36E	11	NE	NE	IRRIGATION	1
			NE	NE	STOCKWATER	
					Section Acres	1
					Total Acres	1

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:

WE USE A 1 3/4" H.P. GAS PUMP WITH 3" SUCTION AND 1 1/2" DISCHARGE HOSE CONNECTED TO FOUR AND SOMETIMES FIVE 3/4" RAINBIRD TYPE IRRIGATION HEADS. IT IS ALSO PART OF THE SYSTEM TO PLACE OR DIG A PLACE TO PUT A 55 GALLON BARREL INTO THE CREEK, MIDSTREAM, APPROXIMATELY 5' 0" FROM THE SOUTH END OF THE CULVERT AS A RESERVOIR. LETTER ENCLOSED AND INTENDED FOR USE WITH THIS CLAIM. LETTER EXPLAINS EXISTENCE OF DOCUMENTS AND ASKS FOR REPLY CONCERNING FILING OF CLAIM IN REGARDS TO DOCUMENTS. STOCKWATER: 2 HORSES

15. Basis of Claim: Beneficial Use

Vandermeulen, Cheri

From: Smith, Danni
Sent: Tuesday, March 20, 2001 4:36 PM
To: Vandermeulen, Cheri
Cc: Ruberry, Allen
Subject: RE: A29-10297

This is a D&S claim already decreed. It has already gone to Allocations (Karilynn) and change of ownership done to reflect Nealy. I can fax down the partial decree, but depending on what the claimant needs I suggest just printing from the microfiche rather than check in and out of the state office. Let me know if you need the partial or other info from the file that I could fax down tomorrow. Have a great day, see ya in April.

-----Original Message-----

From: Vandermeulen, Cheri
Sent: Tuesday, March 20, 2001 3:49 PM
To: Smith, Danni
Subject: A29-10297

Hi Danni!

Allen Ruberry just asked me to e-mail you about the above mentioned claim. He has a claimant coming in to the office and he needs the file.

Would you please send me the claim by friday??? Fed ex would probably be the best way to send it.

Let me know!

Thank you!
Cheri
Eastern Region

Allen,

this is Danni's response

3-12-01

Allen, E. Keith

Tharen Nealy called and
wanted me to give you her
phone & cell phone #'s in
case you need to get a hold
of her for investigation of
water right # 29-13141.

Additional phone # 747-3989

cell phone # 851-1565.

Home - 775-3246

Thanks,
Cheri

Also -
29-10297 - Spg.
Barr Cook shows Dennis S.
HAS IT IN BOISO -
B-MANUO REQUEST
TO SEND TO ME.
3/20/01
AM

→ Pending Decision
Issues

Idaho Department of Water Resources Receipt

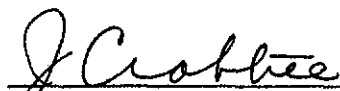
Receipt ID E026400

Payment Amount Date Received Region Status
Payment Type Check Number

Payer Comment

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$50.00	ADJUDICATION LATE FEE	0337		43503	1155
\$51.00	ADJUDICATION FILING FEE	0337		43503	1155



Signature Line (Dept. Representative)

November 28, 2000

Ms Karen Nealy

PO Box 456

Incom, ID 83245

Dear Ms Nealy:

Thank you for your letter regarding the flow of lower Rock Creek in Bannock County, Idaho. I have researched this matter with the Board's planning staff in Boise and the Department of Water Resources adjudication staff in Idaho Falls.

Based on information from the Department's adjudication staff, it appears that Rock Creek is fully appropriated. This precludes the Board from filing an application for a minimum stream-flow water right because state law requires that an appropriation for instream flow purposes not interfere with any vested water right.

Most likely your best option under existing regulation to maintain some flow in Rock Creek is to file an adjudication claim for domestic/irrigation purposes. I understand you are currently involved in filing such a claim through the Department's Eastern Region Office.

Please don't hesitate to contact me if I can be of assistance in any other way.

Sincerely,

Joe Jordan
Chairman

RECEIVED

NOV 20 2000

Department of Water Resources

November 6, 2000

Karen Nealy

698 E Upper Rock Creek Rd

Inkom, Idaho 83245

(Mailing)PO 456

Inkom, ID 83245

E-Mail wilnili@ida.net

29-10297
208/775-3246

Joseph L. Jordan
IDWR BOARD
1301 N. Orchard
Boise, ID83706-2273

Dear Mr. Jordan;

The purpose of this correspondence is to ask for your advice and assistance in our desire to keep the water flowing in Rock Creek, Bannock County Idaho. I thank you for any time you take in consideration of the following information. I was looking for information on the IWRD web page and read about the "right of in stream (or minimal flow)". I have been searching for a way that might help preserve the waters of Rock Creek. I believe that the waters of Idaho are her most important natural resource, and I am very concerned about the misuse and abuse of Rock Creek as a part of that natural resource. I know that Rock Creek is just one small creek among many in our state. But it seems to me that it takes people like me to let people like you know when there are problems that need resolving concerning any of Idaho's wonderful waters, because without your wisdom and help, through IDWR, that natural resource is in danger.

I realize that the Snake River Basin adjudication is now in progress. I have only been a property owner along Rock Creek for two years. Had I been aware and informed of the problem here sooner, I would have been seeking a resolution before now. But perhaps this is a good time, since this creek and area will soon be one focus of the IDWR Board's attention.

I am making a request that as the waters of Rock Creek are soon to be divided up according to court decreed "rights", would the IDWR Board consider establishing a right of "minimal flow" for the creek itself? I support the need for a minimal flow right based on the following information. The information is as correct as I am able to provide. The feelings, from myself, as well as the other property owners along this creek, are from the heart. Because I am certain that you are a very busy person at IDWR, I am going to try to concentrate on the facts of this matter, and not impose too long on your time.

During the past two spring/summer seasons that I have lived here, Rock Creek has been diverted and pumped down from its' very substantial normal flow, to a mud hole without even a trickle of water.

This year, from mid May to exactly September 18, 2000, the creek bed beyond an irrigation diversion, was dry. On November 1, 2000, my husband and I took a measurement of the water in the creek in front of our home, following directions from Keith Wilson at the Idaho Falls IDWR office. The measurements were as follows: Depth- 4.5 in., Width- 6 ft. We floated an orange peel a measured distance of 2(two) feet. It took 6 seconds for the orange peel to go that distance. (six was the average figure of three floatings done at that distance in the same spot). According to Mr. Wilson's calculations on Nov.6, 2000 and I quote, the creek was flowing at .75 cubic feet per second, and 336.7 gallons per minute. He stated that the test and its' resulting figures were approx. 90% correct. The same measurement was taken by Jay and Goldie Anthony, on October 28, 2000, at a point about downstream from our measuring point, resulting in the following figures: depth-1ft., width-4ft. The orange peel floated a distance of 2ft. in 3 seconds, so if the mathematics were applied correctly, the creek was flowing in that area at 2.64cfs and 1,184.83 gallons per minute.

Since that amount of water was measured in the creek at the end of the irrigation season, as soon as the water was released from at least one the reservoirs holding it, how much water was and is actually available from Rock Creek?

This year, my husband and I, with most of the other property owners along the creek, observed a reservoir, (described in a notice of claim filed with IDWR, Ident.number A29-04042,)throughout the irrigation season. The reservoir receives and stores water that is diverted from Rock Creek. It remained full and continuously receiving a steady flow of water through an approx. 12 inch pipeline, from mid May until mid October. I am including a picture of the reservoir and pipeline with the water flowing into the reservoir, that was taken by Deloy Armstrong at the end of September, this year. As you know, this area in Bannock County experienced a very dry irrigation season. We suggest that the picture and the statements of observation from the other property owners, clearly show that the amount of water that was stored in the reservoir was not needed or used by the person or persons who were diverting it there from Rock Creek.

We also suggest that since the reservoir remained, by our honest and mutual observations, at or very near the same depths throughout the entire very dry summer and early fall, and since a constant flow of water was going into the reservoir through the entire summer and early fall, that water from Rock Creek was diverted and stored, not used or needed, WHILE THE CREEK BED WAS EMPTY AND THE WILDLIFE, TREES, PLANTS, BIRDS, AND LAWNS AND GARDENS OF AT LEAST SIX OTHER PROPERTY OWNERS TURNED BROWN AND DRY, FROM LACK OF WATER THAT SHOULD HAVE BEEN IN ROCK CREEK.

The diversion and reservoir I have identified by number in the preceding paragraphs, I have, as have the other property owners, been able to observe directly. However, there is another reservoir, described in Snake River Basin Adjudication claims proof reading report numbered A29-04141 and also in claim numbered A29-04107, that I have not been able to observe personally, due to its' location. Water is diverted from Rock Creek for this reservoir also. I have been told by someone who has seen it, that it also remained full and receiving water through the entire season. (The claimant on numbers A29-04141 and A29-04107, diverts water from other in addition to Rock Creek for irrigation of the same lands, so one really wonders if he needs all the water he is claiming in the Snake River Basin. These other claims are A29-04106, A29-00603A and A29-04140.)

Since water is diverted from Rock Creek for claims A29-04141 and A29-04107 BEFORE it reaches the diversion point named in claim number A29-04042, the upstream diversion claimant must feel that he has more than enough water to meet his irrigation needs, or he would not let such a large amount of water come down through his diversion to A29-04042.

During the last week of October, within just a few days of the time the measurements of Rock Creek waters were taken as detailed on page 1 of this letter, the Anthonys observed that the reservoir on claim number A29-04042, was empty. The water that was finally flowing again in Rock Creek was coming from the unused water from that reservoir, and probably from the other reservoir mentioned as well.

If there was enough unused water at the end of a very dry season to put that much water back in the creek (rainfall amount at the time the water was measured was)then couldn't a minimal flow right be a possible means of saving Rock Creek, without creating a hardship on the farmers irrigation rights? And wouldn't it be good to save Rock Creek?

Mr. Jordan, I am respectfully aware of the policy regarding water rights in Idaho, "first in time, first right." I also understand that rights can be lost if not used. I would like to express my thoughts on those two points.

First, I know from my research that the oldest priority date on the claims to waters of Rock Creek, is 1902. If I understand it correctly, the priority date is the date when someone claims that the waters of Rock Creek were first put to "beneficial use" on a certain piece of property.

But Rock Creek itself claims a priority date that is older than any.

The waters of Rock Creek were first put to "beneficial use" by the Creator for creation, or if that offends some, by nature for the natural order of living things. The waters of Rock Creek were used by trees and plants, by the birds and all the wild things that come to her banks for water, shelter, and in turn, food from those plants and trees long before they were diverted

by man. Rock Creek brings water to the Portneuf, which in turn, carries that water to other places, where it, in the end, is for "beneficial use" for untold numbers of people and living things.

There is no older "priority date" than the one Rock Creek claims for itself.

As to a water right being lost if it is not used; the only time Rock Creek has not been used by the living things that depend on it, since it first became a flowing stream of water, is when man took all the water out of its' bed.

Mr. Jordan, I am not educated or trained in the field of water resources as you are. I admit to not understanding how monitoring of a body of water by government regulation is or could be done. I am certain is not an uncomplicated matter. But there must be some way to monitor and divide the waters of Rock Creek so that there is enough, first, for the creek itself to have a constant flow, then second, for the farmers, in an amount that is honestly needed and used, not greedily diverted and stored, and third, for the property owners who only want a little to keep their lawns from dying.

I believe that given a chance, most of the property owners would monitor themselves, in all fairness for the good of the whole, including Rock Creek. They have, through many years past and in the very present, learned what bad feelings of mistrust, selfishness, and anger exist in a neighborhood where one or two land owners set about to monopolize all the natural waters in an area where water is so hard to come by. None of us want to take the irrigation water from the farmers. We know they must have water. We just want them to stop taking all of the water.

I have researched old courthouse records for weeks, in hopes of finding a solution to this growing problem, and have found, from deeds, posted water notices from 1902, as well as judgements and foreclosures from the early 1900's, that the men and women who originally settled this area including the courts, intended for the waters of Rock Creek to be used on most all of the land in the sections through which it flows. It was never their intent to have those waters held back from the land where it was needed, to be greedily used on only a few tracts of land belonging to one or two people. And I believe they had wisdom enough and moral fiber enough not to draw the creek down to a dry bed of rocks, leaving a rightful share to the natural living things to which it first belonged.

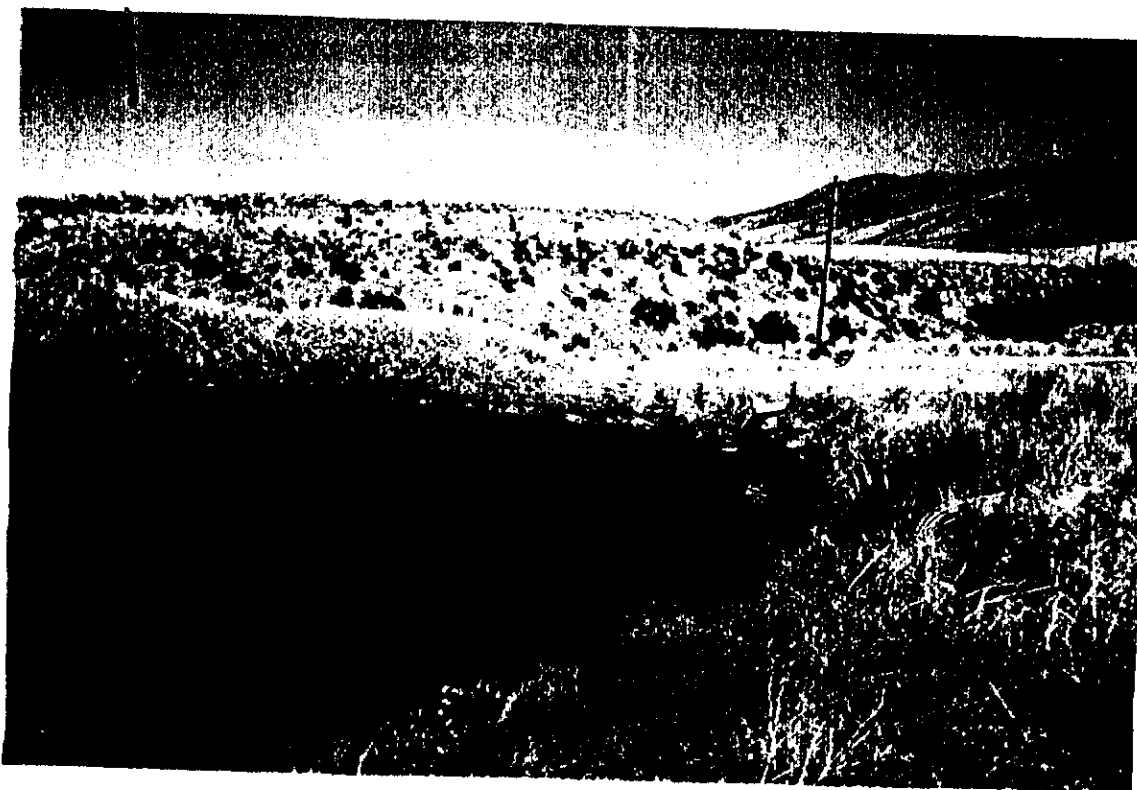
Mr. Jordan, again, we are not asking that the irrigation rights be taken away from the farmers. We are only asking that "a minimal flow" or "in stream flow" right first be established for the future of Rock Creek and the living things that depend on its' waters. And we are asking that the other property owners with claims to the water, have a monitored share of that water as was originally intended when the water was first diverted, to help water their lawns. If we cannot have both of those requests met, then the right of in stream flow, to save Rock Creek and its' habitat is the most important one.

We know sir, that is is not an easy issue to resolve. We thank you for your time and consideration of these requests, and for listening to this sincere need for your intervention in the situation concerning Rock Creek.

Very Truly Yours,

Karen Nealy

Note: Since I feel that I must do all I can to try to prevent the continued abuse of Rock Creek waters, I am in the process of trying to file a claim on Rock Creek to water my lawn. I have researched the matter as well as I know how, and I am convinced that if the water is allowed to flow in Rock Creek under a monitored system, the Creek will survive. If it is not monitored it will not. If an in stream flow right cannot be established, then perhaps I can attempt to show that the waters of Rock Creek were always legally meant to go with all the land for which it was first put to use in 1902, including my small 5 acre tract. I am going to take the liberty to enclose the information I have compiled since first learning of this process in September of this year. I would be grateful if you would review it also; it is a history of the waters of Rock Creek. If, however, I had to choose between a right to use the water on my lawn, or an in stream/minimal flow right to keep the creek flowing to benefit Idaho, I would cheerfully choose the latter.



5

RECEIVED

NOV 20 2000

Department of Water Resources

William and Karen Nealy

November 15, 2000

LIST OF FACTS OF SUPPORTING CLAIM
ROCK CREEK, BANNOCK COUNTY IDAHO
All in T8S, R36E, B.M.

1. Exhibit A - (In support of priority date)
1902 - Notice of water right-(posted)-part of several tracts-----NE1/4of NE1/4, Sec. 11
Waters of Rock Creek at 10cfs
2. Exhibit B - Full Primary Water Right from Rock Creek
1919- Decree of Foreclosure and Order of Sale-----E1/2 of NE1/4, Sec.11(full primary water right)
1919- Decree of Foreclosure and Order of Sale-----W1/2of NW1/4, Sec.12(1/8 interest in all the waters of Rock Creek)
1923- Decree of Foreclosure and sale—Parcels in Sec.1, and 2, T8S, R36E B.M.(undivided 1/2 interest in and right to use of the waters of Rock Creek)
3. Exhibit C. - Statements from Hofhine descendants concerning use of water on Nealy property
1930's through 1951
4. Exhibit D. - (sale or transfer of 1/4 of the waters of Rock Creek)to buyer of E1/2of NE1/4 Sec. 11
1951- Indenture/deed
5. Exhibit E.- Deeds/chain of title Nealy property parcel in the NE1/4of the NE1/4 Sec.11
1951 through present

Note: I have the above documents in my files at home. K.N.

November 15,2000
William and Karen Nealy
698 E Upper Rock Creek Rd
Mailing address- Box 456
Inkom, ID 83245

To whom it may concern;

We believe that we have a right to the use of the waters of Rock Creek based on the following statement/s;

Rock Creek has been used for irrigation and/or domestic and stock water use on property we own on Upper Rock Creek Rd, Inkom, Bannock County Idaho, since it was diverted by Edwin Lish etal., in 1902. The documents and records,(which we have researched, listed, and included with our claim) and statements of previous owners and/or their descendants, in our opinion verify this.

In 1956, when D.(Robert) Lloyd purchased the property, the ditches and diversions were probably still in place just as they were through all the time Hofhine, Tripp, and Nichols owned the same property. Mr. D. (Robert) Lloyd told me(Karen Nealy) that he " irrigated his orchard from the creek", the same orchard that Hofhine irrigated from the creek through 1951. The lawn and garden were watered from the creek also. There was never a well on the property. There was a small undeveloped spring that fed the creek, but it did not produce enough water for stock or irrigation. Three years after Mr. Lloyd bought the property he developed another spring, the one that is in use now for domestic purposes. His priority date on that spring is 1959 and the diversion rate .060cfs. It is not enough for a home, stock, and irrigation of the 10 acres he had.

Both Mr. D.(Robert) Lloyd and his son Ron Lloyd told me that Fred Tripp, Mr. Dalke. and Art Neilson said they could not use the water from Rock Creek, because the rights belonged to those three men. Those same men, Tripp, Dalke, and Neilson, told everyone on Rock Creek Rd the same thing for as long as they owned the land. That untruth, has been passed down from owner to owner of those three properties, until this very day.

In Mr. Lloyds' day, the threat of being sued or taken to court was a serious matter. The small farmer did not have the money or the information to oppose or question such a threat. So water from Rock Creek was used in secret by everyone except the two big property owners, Tripp,(Orders now), and Dalke(Gilbert now). The property owners, used the water but denied it. Mr. Lloyd believed that he did not have the right to use the water. But I have stated here what he and his son both told me.

If you talk to any of the property owners who have claims on Rock Creek now, you will hear the same story of false representation and intimidation. The two large property owners who claim to have the rights to all the waters of Rock Creek, say they have always had those rights.

They have taken more and more water out of Rock Creek each year until, as in the past two summers, it is literally Rock Creek. So the property owners have used the water in secret until this very day. The neighbors on either side of my property, both upstream and down, have barrels and diversion points and hoses or pipe from Rock Creek to their property that they now admit to having used for years,(Except when the creek is dry.)

I have a notarized statement from Romriel saying he used the water from May to June each year. But I saw him, as did the real estate agent, and my husband, pumping from the creek in late July. I have a sales advertisement that says water can be taken from the creek as long as there is water there. Romriel demonstrated for us in July how he pumped from the creek. So he irrigated this property when he bought it from Lloyd in 1994 until he sold it to us in 1998. We have a gas pump and fittings and hose for pumping from the creek.

I believe that I have demonstrated, with documents and statements, and affidavits, that I have a valid right to the use of Rock Creek waters as I am stating in my claim.

But if I had to make a choice between a right to the waters of Rock Creek for my own property and a "right of minimal/in stream flow, I would choose the latter without hesitation. I want to see water in the creek all year, for the future of Rock Creek, and Idaho's wonderful natural resource, more than I want to see a right for myself.

Karen Neely

RECEIVED

NOV 20 2000

Department of Water Resources

to JH
for Review

Nov. 16, 2000

Dear Mr. Graham,

This is a copy of the letter
I am sending to Mr. Jordan as
you suggested.

I thank you for your past
and future advice,

and wish you a Happy
Thanksgiving Holiday.

Sincerely,

Karen Nealy

P.S. I am looking forward to your
comments.

November 6, 2000
Karen Nealy
698 E Upper Rock Creek Rd
Inkom, Idaho 83245
(Mailing)PO 456
Inkom, ID 83245
E-Mail wilinili@ida.net

Joseph L. Jordan
IDWR BOARD
1301 N. Orchard
Boise, ID83706-2273

Dear Mr. Jordan;

The purpose of this correspondence is to ask for your advice and assistance in our desire to keep the water flowing in Rock Creek, Bannock County Idaho. I thank you for any time you take in consideration of the following information. I was looking for information on the IWRD web page and read about the "right of in stream (or minimal flow)". I have been searching for a way that might help preserve the waters of Rock Creek. I believe that the waters of Idaho are her most important natural resource, and I am very concerned about the misuse and abuse of Rock Creek as a part of that natural resource. I know that Rock Creek is just one small creek among many in our state. But it seems to me that it takes people like me to let people like you know when there are problems that need resolving concerning any of Idaho's wonderful waters, because without your wisdom and help, through IDWR, that natural resource is in danger.

I realize that the Snake River Basin adjudication is now in progress. I have only been a property owner along Rock Creek for two years. Had I been aware and informed of the problem here sooner, I would have been seeking a resolution before now. But perhaps this is a good time, since this creek and area will soon be one focus of the IDWR Board's attention.

I am making a request that as the waters of Rock Creek are soon to be divided up according to court decreed "rights", would the IDWR Board consider establishing a right of "minimal flow" for the creek itself? I support the need for a minimal flow right based on the following information. The information is as correct as I am able to provide. The feelings, from myself, as well as the other property owners along this creek, are from the heart. Because I am certain that you are a very busy person at IDWR, I am going to try to concentrate on the facts of this matter, and not impose too long on your time.

During the past two spring/summer seasons that I have lived here, Rock Creek has been diverted and pumped down from its' very substantial normal flow, to a mud hole without even a trickle of water.

This year, from mid May to exactly September 18, 2000, the creek bed beyond an irrigation diversion, was dry. On November 1, 2000, my husband and I took a measurement of the water in the creek in front of our home, following directions from Keith Wilson at the Idaho Falls IDWR office. The measurements were as follows: Depth- 4.5 in., Width- 6 ft. We floated an orange peel a measured distance of 2(two) feet. It took 6 seconds for the orange peel to go that distance. (six was the average figure of three floatings done at that distance in the same spot). According to Mr. Wilson's calculations on Nov.6, 2000 and I quote, the creek was flowing at .75 cubic feet per second, and 336.7 gallons per minute. He stated that the test and its' resulting figures were approx. 90% correct. The same measurement was taken by Jay and Goldie Anthony, on October 28, 2000, at a point about downstream from our measuring point, resulting in the following figures: depth-1ft., width-4ft. The orange peel floated a distance of 2ft. in 3 seconds, so if the mathematics were applied correctly, the creek was flowing in that area at 2.64cfs and 1,184.83 gallons per minute.

Since that amount of water was measured in the creek at the end of the irrigation season, as soon as the water was released from at least one the reservoirs holding it, how much water was and is actually available from Rock Creek?

This year, my husband and I, with most of the other property owners along the creek, observed a reservoir, (described in a notice of claim filed with IDWR, Ident.number A29-04042,)throughout the irrigation season. The reservoir receives and stores water that is diverted from Rock Creek. It remained full and continuously receiving a steady flow of water through an approx. 12 inch pipeline, from mid May until mid October. I am including a picture of the reservoir and pipeline with the water flowing into the reservoir, that was taken by Deloy Armstrong at the end of September, this year. As you know, this area in Bannock County experienced a very dry irrigation season. We suggest that the picture and the statements of observation from the other property owners, clearly show that the amount of water that was stored in the reservoir was not needed or used by the person or persons who were diverting it there from Rock Creek.

We also suggest that since the reservoir remained, by our honest and mutual observations, at or very near the same depths throughout the entire very dry summer and early fall, and since a constant flow of water was going into the reservoir through the entire summer and early fall, that water from Rock Creek was diverted and stored, not used or needed, WHILE THE CREEK BED WAS EMPTY AND THE WILDLIFE, TREES, PLANTS, BIRDS, AND LAWNS AND GARDENS OF AT LEAST SIX OTHER PROPERTY OWNERS TURNED BROWN AND DRY, FROM LACK OF WATER THAT SHOULD HAVE BEEN IN ROCK CREEK.

The diversion and reservoir I have identified by number in the preceding paragraphs, I have, as have the other property owners, been able to observe directly. However, there is another reservoir, described in Snake River Basin Adjudication claims proof reading report numbered A29-04141 and also in claim numbered A29-04107, that I have not been able to observe personally, due to its' location. Water is diverted from Rock Creek for this reservoir also. I have been told by someone who has seen it, that it also remained full and receiving water through the entire season. (The claimant on numbers A29-04141 and A29-04107, diverts water from other in addition to Rock Creek for irrigation of the same lands, so one really wonders if he needs all the water he is claiming in the Snake River Basin. These other claims are A29-04106, A29-00603A and A29-04140.)

Since water is diverted from Rock Creek for claims A29-04141 and A29-04107 BEFORE it reaches the diversion point named in claim number A29-04042, the upstream diversion claimant must feel that he has more than enough water to meet his irrigation needs, or he would not let such a large amount of water come down through his diversion to A29-04042.

During the last week of October, within just a few days of the time the measurements of Rock Creek waters were taken as detailed on page 1 of this letter, the Anthonys observed that the reservoir on claim number A29-04042, was empty. The water that was finally flowing again in Rock Creek was coming from the unused water from that reservoir, and probably from the other reservoir mentioned as well.

If there was enough unused water at the end of a very dry season to put that much water back in the creek (rainfall amount at the time the water was measured was) then couldn't a minimal flow right be a possible means of saving Rock Creek, without creating a hardship on the farmers irrigation rights? And wouldn't it be good to save Rock Creek?

Mr. Jordan, I am respectfully aware of the policy regarding water rights in Idaho, "first in time, first right." I also understand that rights can be lost if not used. I would like to express my thoughts on those two points.

First, I know from my research that the oldest priority date on the claims to waters of Rock Creek, is 1902. If I understand it correctly, the priority date is the date when someone claims that the waters of Rock Creek were first put to "beneficial use" on a certain piece of property.

But Rock Creek itself claims a priority date that is older than any.

The waters of Rock Creek were first put to "beneficial use" by the Creator for creation, or if that offends some, by nature for the natural order of living things. The waters of Rock Creek were used by trees and plants, by the birds and all the wild things that come to her banks for water, shelter, and in turn, food from those plants and trees long before they were diverted

by man. Rock Creek brings water to the Portneuf, which in turn, carries that water to other places, where it, in the end, is for "beneficial use" for untold numbers of people and living things.

There is no older "priority date" than the one Rock Creek claims for itself.

As to a water right being lost if it is not used; the only time Rock Creek has not been used by the living things that depend on it, since it first became a flowing stream of water, is when man took all the water out of its' bed.

Mr. Jordan, I am not educated or trained in the field of water resources as you are. I admit to not understanding how monitoring of a body of water by government regulation is or could be done. I am certain is not an uncomplicated matter. But there must be some way to monitor and divide the waters of Rock Creek so that there is enough, first, for the creek itself to have a constant flow, then second, for the farmers, in an amount that is honestly needed and used, not greedily diverted and stored, and third, for the property owners who only want a little to keep their lawns from dying.

I believe that given a chance, most of the property owners would monitor themselves, in all fairness for the good of the whole, including Rock Creek. They have, through many years past and in the very present, learned what bad feelings of mistrust, selfishness, and anger exist in a neighborhood where one or two land owners set about to monopolize all the natural waters in an area where water is so hard to come by. None of us want to take the irrigation water from the farmers. We know they must have water. We just want them to stop taking all of the water.

I have researched old courthouse records for weeks, in hopes of finding a solution to this growing problem, and have found, from deeds, posted water notices from 1902, as well as judgements and foreclosures from the early 1900's, that the men and women who originally settled this area including the courts, intended for the waters of Rock Creek to be used on most all of the land in the sections through which it flows. It was never their intent to have those waters held back from the land where it was needed, to be greedily used on only a few tracts of land belonging to one or two people. And I believe they had wisdom enough and moral fiber enough not to draw the creek down to a dry bed of rocks, leaving a rightful share to the natural living things to which it first belonged.

Mr. Jordan, again, we are not asking that the irrigation rights be taken away from the farmers. We are only asking that "a minimal flow" or "in stream flow" right first be established for the future of Rock Creek and the living things that depend on its' waters. And we are asking that the other property owners with claims to the water, have a monitored share of that water as was originally intended when the water was first diverted, to help water their lawns. If we cannot have both of those requests met, then the right of in stream flow, to save Rock Creek and its' habitat is the most important one.

We know sir, that is is not an easy issue to resolve. We thank you for your time and consideration of these requests, and for listening to this sincere need for your intervention in the situation concerning Rock Creek.

Very Truly Yours,

A handwritten signature in cursive script that reads "Karen Nealy". The signature is written in dark ink and is positioned below the typed name "Karen Nealy".

Note: Since I feel that I must do all I can to try to prevent the continued abuse of Rock Creek waters, I am in the process of trying to file a claim on Rock Creek to water my lawn. I have researched the matter as well as I know how, and I am convinced that if the water is allowed to flow in Rock Creek under a monitored system, the Creek will survive. If it is not monitored it will not. If an in stream flow right cannot be established, then perhaps I can attempt to show that the waters of Rock Creek were always legally meant to go with all the land for which it was first put to use in 1902, including my small 5 acre tract. I am going to take the liberty to enclose the information I have compiled since first learning of this process in September of this year. I would be grateful if you would review it also; it is a history of the waters of Rock Creek. If, however, I had to choose between a right to use the water on my lawn, or an in stream/minimal flow right to keep the creek flowing to benefit Idaho, I would cheerfully choose the latter.

RECEIVED

DEC 14 2000

Department of Water Resources
Eastern Region

12/10/2000

Mr. Wilson,

all the above is enclosed, including
a letter of explanation concerning documents.

Thank you for your help and please
notify me if I need to do anything more.

Also, if necessary, would you share
this enclosed info with Mr. Ruberry?

Sincerely,
Karen Neely



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

November 29, 2000

Karen Nealy
P.O. Box 456
Inkom, ID 83245

RECEIVED

NOV 29 2000
Department of Water Resources
Eastern Region

RE: Adjudication Claim

Dear Mrs. Nealy:

Enclosed is your check #2485 for \$76.00, and a blank form for filing for an Irrigation water right in the Snake River Basin Adjudication.

You will need to complete the adjudication claim form and return the signed, notarized copy to this office with the \$101.00 filing fee.

It is usually best to include a copy of all documentation supporting your adjudication claim at the time of filing as this could streamline the review process.

Sincerely,

Keith C. Wilson
Senior Resource Agent

~~602-350~~

November 15, 2000
William and Karen Nealy
698 E Upper Rock Creek Rd
Mailing address- Box 456
Inkom, ID 83245

To whom it may concern;

We believe that we have a right to the use of the waters of Rock Creek, and would like to have the following letter included and reviewed with our claim.

The waters of Rock Creek have been used for irrigation and/or domestic and stock water on property we own on Upper Rock Creek Rd, Inkom, Bannock County Idaho, since a Notice of Water Right was first posted in 1902. Several documents and deeds of record, as well as statements of previous owners and/or their descendants, in our opinion, verify this.

We have researched chains of title, deeds, judgements, and water right notices, that pertain to our property from 1902 through the present. According to these legal documents, as well as written statements from previous owners of this property, the waters of Rock Creek were diverted, used, and intended for use on this property since the 1902 posting and recording of that Notice of Water Right.

I believe that the IDWR and perhaps the Snake River Basin Adjudication Team, are aware of the contention that has been going on for years concerning Rock Creek waters. Current and past owners of two separate large tracts of land along the Creek have always claimed that they have had the "rights" to the waters of the creek, and that no one else has any right to the water at all.

I have spent many hours searching for and researching the information I have concerning posted notices, and several other legal documents pertaining to the "rights" to the use of Rock Creek water on our property. I have copies of those documents, in chronological order, as well as written statements from previous owners, in support of our claim, carefully filed and readily available for inspection by the Snake River Basin Adjudication Team, and IDWR.

I do realize that the adjudication team and IDWR are very busy and pressed for time, but since my claim file will become public record, accessible to anyone, I have decided to respectfully request to withhold these documents and produce them for inspection when our claim is actually reviewed. I do not wish to share the information I have with other claimants who may try to oppose my claim, until those claimants officially object to or protest my claim.

I will gladly go the extra mile, to accommodate the adjudication team when my claim is reviewed, and the documents are needed. I thank the adjudication team and IDWR for their patience in considering this request. I also ask for a reply to this letter and that the letter be

included in my file with my claim. If the documents MUST be in my file at the time of filing this claim, and I cannot withhold them until review of the claim, please inform me.

Thank you for your time, attention and assistance concerning this matter, especially to Mr. Wilson, who is a very patient and well- informed IDWR officer.

(The documents consist of five one or two page items, and three one page statements and/or affidavits.)

Sincerely,

A handwritten signature in cursive script that reads "Karen Nealy". The signature is fluid and written in black ink.

Karen Nealy

ROUTING SLIP

Distribution	Provided for your:	
Date: 12-13-00	Information	RECEIVED ✓
To: Jen	Comments	
From: Sal	Approval DEC 26 2000	
	Signature	Department of Water Resources Eastern Region

Special Notes: Don talked to Ms. Neely - who is happy now. Ms. Neely will be sending you her irr. claim. Pls keep these papers for insertion in her irr. claim! She also has a disclaimer 29-1-297. Pls don't put these

papers there, as all this will come up during the investigation. This is what Don asked me to write you. - Sal