

2004 JUL -7 AM 10: 44  
DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED  
JM

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

|                |                                     |
|----------------|-------------------------------------|
| In Re SRBA     | ) Subcase No. 41-00042 and 41-00047 |
|                | )                                   |
| Case No. 39576 | ) ORDER GRANTING LATE NOTICES       |
|                | ) OF CLAIM SUBJECT TO               |
|                | ) CONDITIONS                        |
|                | )                                   |

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On February 24, 2004, Lance and Katrina Roper filed a *Motion to File Late Notices of Claim* for the above-captioned water rights. Because the irrigation and other water rights in Administrative Basin 41 have been substantially completed the matter was referred to the Special Master for further findings consistent with I.R.C.P. 55(c). In particular, the Court raised concerns about the degree of prejudice to other claimants on the same source who timely had their claims adjudicated.

On June 16, 2004, the Special Master issued a *Special Master's Report and Recommendation* recommending the late claim be granted, but acknowledged that the Court cannot collectively decree more water than was decreed under the prior arbitration.

The claim is based on a prior arbitration (*Houtz Arbitration*) involving a number of water rights. The Court cannot decree more water than previously authorized under the arbitration. Therefore, the Court will allow the late claim to proceed subject to the following: To the extent decreeing the late claims requires that other decrees based on the same *Houtz Arbitration* be set aside to satisfy the late claims, the Court may decline to allow the claim to proceed to decree. At this stage of the proceedings it is not clear

whether other decrees need to be set aside or whether there is sufficient water available under the former arbitration.

Therefore, IT IS ORDERED, that based on the foregoing conditions, the ***Motion to File Late Notices of Claim*** for water rights 41-00042 and 41-00047 is **granted**.

The original *Notices of Claim* as well as any attached filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action.

DATED July 7, 2004.

  
\_\_\_\_\_  
JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING LATE NOTICES OF CLAIM SUBJECT TO CONDITIONS was mailed on July 07, 2004, with sufficient first-class postage to the following:

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

LANCE ROPER  
3822 ROCK CREEK RD  
AMERICAN FALLS, ID 83211  
Phone: 208-406-4747

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".

Snake River

Lana Roper

Katrina Roper

3822 Rock Creek Rd. 548-2464

American Falls, ID 83211-5563

4428

92-155/1241

105

Date 2-24-04

Pay to the  
Order of

IDWR

\$ 100<sup>00</sup>

one Hundred and <sup>10</sup>/<sub>100</sub>

Dollars



Security features  
are included.  
Details on back.



KeyBank National Association  
American Falls, Idaho 83211

1-800-NOT2YOU® Key.com®



NATIONAL PARK  
FOUNDATION

For

Katrina D Roper

MP

⑆ 124101555⑆

050257709⑈ 4428

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

**NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

LANCE ROPER

3822 ROCK CREEK RD  
AMERICAN FALLS ID USA 83211

KATRINA ROPER

3822 ROCK CREEK RD  
AMERICAN FALLS ID USA 83211

2. Date of Priority: 09/15/1882

3. Source: ROCK CREEK

Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County | Type |
|----------|-------|---------|-----------------------|--------|------|
| 09S      | 30E   | 15      | NW NE SE              | POWER  |      |

5. Description of diverting works:

CONCRETE CHECK DAM TO DITCH.

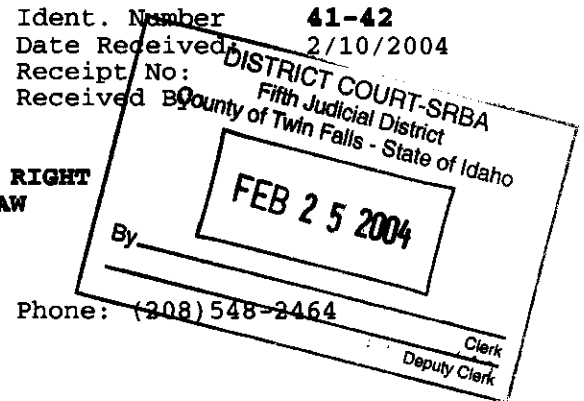
6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) A.F.A |
|------------|-------|-------|--------|------------|
| IRRIGATION | 04/01 | 10/31 | 3.9    |            |

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

8. Total consumptive use:

9. Non-irrigation uses:



Phone: (208) 548-2464

10. Place of use:

| Township      | Range | Section | 1/4 of 1/4 | Lot | Use        | Acres |
|---------------|-------|---------|------------|-----|------------|-------|
| 09S           | 30E   | 10      | SW         | SW  | IRRIGATION | 20    |
|               |       |         | SE         | SW  | IRRIGATION | 8     |
| Section Acres |       |         |            |     |            | 28    |
| 09S           | 30E   | 15      | NE         | NE  | IRRIGATION | 3.7   |
|               |       |         | NW         | NE  | IRRIGATION | 31    |
|               |       |         | SW         | NE  | IRRIGATION | 33    |
|               |       |         | SE         | NE  | IRRIGATION | 29    |
|               |       |         | NE         | NW  | IRRIGATION | 36.4  |
|               |       |         | NW         | NW  | IRRIGATION | 29.1  |
|               |       |         | SE         | NW  | IRRIGATION | 5.2   |
| Section Acres |       |         |            |     |            | 167.4 |
| Total Acres   |       |         |            |     |            | 195.4 |

11. Place of use in counties: POWER

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

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

Signature of Claimant(s): *Jane Lopez* Date: 2-10-04

\_\_\_\_\_ Date: \_\_\_\_\_

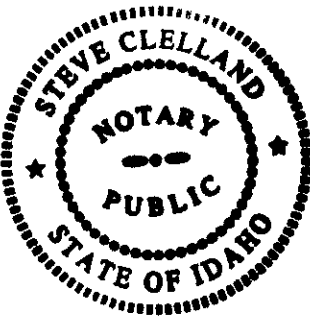
State of Idaho )  
County of ADA ) SS.

Subscribed and sworn (or affirmed) before me this 10<sup>th</sup>  
of FEBRUARY 2004 *Steve Clelland*

Notary Public

Residing at Meridian ID

My commission Expires 12/7/2006



-040 In May 1884 the following named parties to wit: J.I. May, Jude A. May, Ed. Hunter, Peter Halling, Peter Hansen, Nelson Davis, Robt. Hillhouse, Wm. Clark, James Frodsham, Isaac Horn and Wm. Kelly constructed a ditch from the main channel of lower Rock Creek to and upon the lands owned by the claimants in said ditch for the purpose of irrigating said lands; that the water from said ditch has been used each and every season by said claimants for irrigating crops grown on said lands.

That said ditch and the owners thereof are entitled to the flow at all times of 50 inches of water for the purpose of irrigating their said lands to be distributed among them according to their adopted custom; concerning which there is no controversy among them; said right to date from the 15th. day of May 1884. 41 0040

that in the year 1884 James Frodsham, Wm. Kelly, J.A. Lasley, A.W. Thompson and Jas. I May constructed a ditch from the main channel of lower Rock Creek sufficient in size to carry a large irrigating stream to and upon the lands owned by said parties lying under said ditch and during the season of 1884 irrigated portions of said lands and have continued in the use of said water and ditch each and every season since until now there are about 100 acres of land in lucerne and grain irrigated by means of said ditch; that said ditch is known as the Kelly & Frodsham ditch; that there is no controversy among the claimants thereto as to the use and regulations of the water therein flowing, among themselves; that said ditch and the owners thereof are entitled to a flow at all times to 100 inches of the waters of said Rock Creek for the purpose of irrigating their said lands lying under said ditch; the right to the use thereof to date from May 20th 1884. Frodsham

We find that in Sep., 1882 the Juniper Mining Company which was then engaged in placer Mining on Snake River lying below and near the mouth of Rock Creek made and constructed a flume and ditch by means of which they diverted and appropriated about 400 inches of the water of lower Rock Creek to and upon their said mining claim; that for the greater portion of said distance, the water was conveyed by a flume constructed of lumber; that said water was used by said company for the purpose of mining said claim a portion of every year thereafter until 1887 that about 1887 the said Juniper Co. became bankrupt and the said mining claims sold under foreclosure of mortgage, and the flumes and ditches and other improvement appertaining to said claim were sold for delinquent taxes due upon said property for taxes due Cassia County and Idaho Territory and were bought in at said delinquent sale by Wm. Stokes; that W.H. Philbrick now owns and claims through various titles bought by him in the year 1888, the mining property aforesaid and the ditch flumes and water rights pertaining thereto. The evidence shows that since the year 1887, no water was used through said flumes and ditch except the attempt to irrigate about 5 acres of grain upon said mining premises in the year 1888 James May testifies that there was plenty of water flowing at the point of diversion of said ditch during said season for that purpose, but the condition of the flume was so bad a sufficient amount of water could not be gotten through it. since 1887 there has been plenty of water in Rock Creek not claimed to fill the Juniper ditch during the fall, winter and spring months but no attempts have been made to use it except in the year 1889 J. Calder has said property rented but did not get the flume in condition to hold and convey any water that season and in June of said season the water gave out at the head of said flume by reason of the use of same for irrigating by the farmers on said stream above; that previous to 1887 there was plenty of water in Rock Creek not otherwise used to fill the Juniper ditch and flume at all seasons of the year but since said time it has been nearly or quite all used above for irrigating purposes during the irrigating season. that since the year 1887, the area of land brought under cultivation on Rock Creek above the Juniper dam has been largely extended under the general impression that the rights of the Juniper ditch had been forfeited by discontinuance of mining operations and upon the further fact that since said time said flume has been entirely out of repair and will have to be largely rebuilt before it will carry the water. under the above state of facts, we seriously doubt if the appropriation of water originally made in said ditch was for a beneficial purpose and if it were we more seriously doubt if the same could have been used since the year 1887 or now could be used for a beneficial and profitable purpose; therefore in view of all the facts mentioned we find that said W.H. Philbrick is entitled to the use of 400 inches of the water of said lower Rock Creek to

be taken from said lower Rock Creek through said Juniper ditch and to be used for mining purposes to and upon said mining claim, except during the months of June, July and August in every season and that during said 3 months he shall be entitled to 50 inches of water to be conveyed through said flume and ditch for the purpose of preventing said flume from warping and also during said last three months in addition to said last mentioned 50 inches, any flow of water from said Rock Creek that may find its way to the head of said ditch by reason of seepage or percolation or non use by claimants above; the right to the use of the water aforesaid and at the time aforesaid to date from the 15th. day of September 1892.

That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at notime in said box to be more than 6 inches in depth at the head thereof and without pressure except the natural flow of the stream; said box to be placed on a solid foundation and constructed of 2 inch lumber, and no claimant herein to whom water is herein awarded shall after the present season of 1890 receive the water herein awarded to him until his claim shall have been in every respect complied with; that the right to the use of water herein conveyed to different claimants shall date from the date of appropriation by them each respectively, and that no claimants right subsequent in time shall be permitted to use the water herein awarded to him until the right of each and every prior appropriator shall have been supplied; provided that at the time the prior appropriator shall be using said water for a useful and beneficial purpose; but if said useful and beneficial purpose does not exist then the water herein awarded to said prior appropriator and appropriators shall be subject to use by the subsequent appropriators according to the date of their appropriations respectively) that the costs and expences of the arbitration are \$500 and shall be paid by the claimants herein as follows to wit:

|                                 |        |
|---------------------------------|--------|
| The said H.P.Houtz to pay ..... | \$3.00 |
| Andrew Allen .....              | 15.00  |
| S.H.Morris .....                | 25.00  |
| Josenh Brown .....              | 15.00  |
| Wm.Furgerson .....              | 5.00   |
| David Tayson .....              | 7.50   |
| Chas.Tayson .....               | 15.00  |
| Wm.Adshhead .....               | 7.50   |
| S.C.Hatch .....                 | 10.00  |
| Jas. Hartley .....              | 5.00   |
| John Hartley .....              | 5.00   |
| Nyrum Hartley .....             | 5.00   |
| Nyrum Frodsham .....            | 5.00   |
| Bradley Jackson .....           | 10.00  |
| George Mc.Donald .....          | 5.00   |
| E.T.Olney .....                 | 2.50   |
| Jim Wgnm, Indian .....          | 2.50   |
| John Montewitch, Indian .....   | 2.50   |
| V.J.Stewart .....               | 2.50   |
| I.L.Stewart .....               | 5.00   |
| H.A.Pease .....                 | 2.50   |
| George Stanger .....            | 5.00   |
| G.Valdez .....                  | 30.00  |
| Neil Danilson .....             | 5.00   |
| Jas.Shearman .....              | 5.00   |
| H.C.Wood .....                  | 20.00  |
| Henry Houtz, Jr., .....         | 10.00  |
| J.Lewis .....                   | 2.50   |
| L.Lance .....                   | 22.50  |
| D.C.Tyler .....                 | 7.50   |
| L.Barnard .....                 | 7.50   |
| D.A.Budge .....                 | 7.50   |
| Prom.Stock Ranch Co .....       | 10.00  |
| Joseph Henry .....              | 10.00  |
| D.A.Parry .....                 | 5.00   |
| D.C.Tyler Sr., .....            | 5.00   |
| Bench Ditch Co., .....          | 45.00  |
| H.D.Lish .....                  | 2.50   |
| West Ditch Co., .....           | 35.00  |

Box  
Description

TITLE  
OF  
CASE

IN the matter of the application of H. F. Houtz, et al, SOURCE Hock Creek and tributaries  
for the arbitration of the claims to the use of the waters WATER DIST 29  
of Hock Creek and tributaries JUDICIAL DIST 5  
DATE OF DECREE Jun 6, 1903 COUNTY Power  
RECORDED IN BOOK NO 1  
(arbitration)  
Judge Frank C.

| DECREED<br>OWNER | NAME                                                                                                                         | PRESENT<br>OWNER | INCHES<br>AMT SEC. FT.                            | PRIORITY                                             | DIVERSION<br>SUBDIV SEC. TWP. RG.                                                        | REMARKS, AND TO BE IRRIGATED                                                                         |
|------------------|------------------------------------------------------------------------------------------------------------------------------|------------------|---------------------------------------------------|------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 1                | Joseph Brown                                                                                                                 |                  | MAIN CHANNEL<br>regardless of<br>all other claims | ROCK CREEK<br>Brown's Springs<br>trib. to Hock Creek | E2, SE, SE NE, sec. 19; SW SW, sec                                                       | no land description given in dec                                                                     |
| 2                | United states Ditch                                                                                                          |                  | 50                                                | 5-1-80                                               | main channel<br>Hock Creek<br>main channel<br>Hock Creek                                 | " " " " "                                                                                            |
| 3                | United states Ditch                                                                                                          |                  | 350                                               | 6-1-81                                               |                                                                                          |                                                                                                      |
| 4                | note: the combined totals of above 2 rights of United states Ditch never to exceed 350 inches.<br>(except June, July & Aug.) |                  | 400                                               | 9-15-82                                              | Hock Creek                                                                               | upon lands once owned by Juniper                                                                     |
| 4                | W. H. Filbrick                                                                                                               |                  | 50                                                | 9-15-82                                              | main channel<br>Hock Creek                                                               | " " " " "                                                                                            |
| 5                | note: all seepage, percolation or non use of upstream water to be added to Filbrick total.                                   |                  | 275                                               | 5-4-84                                               | main channel<br>Rock Creek                                                               | west side lower Hock Creek                                                                           |
| 6                | Hyrum Hartley                                                                                                                |                  | 48                                                | 5-8-84                                               | lander Creek & trib. SE NW, SE NE, sec 22, SW NW, sec 23<br>springs, trib. to Hock Creek | " " " " "                                                                                            |
| 6                | Hyrum Hartley                                                                                                                |                  | 18                                                | 5-8-84                                               | "                                                                                        | " " " " "                                                                                            |
| 7                | J. I. May                                                                                                                    |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | Jude A. May                                                                                                                  |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | Ed Hunter                                                                                                                    |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | Peter Halling                                                                                                                |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | Peter Hansen                                                                                                                 |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | Nelson Davis                                                                                                                 |                  | 50                                                | 5-15-84                                              | main channel<br>Hock Creek                                                               | no land description given in dec<br>note: this water to be distribute<br>water users adopted custom. |
| 7                | Robert Hillhouse                                                                                                             |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | William Clark                                                                                                                |                  |                                                   |                                                      |                                                                                          |                                                                                                      |
| 7                | James Frodsham                                                                                                               |                  |                                                   |                                                      |                                                                                          |                                                                                                      |

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

**NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

LANCE ROPER

3822 ROCK CREEK RD  
AMERICAN FALLS ID USA 83211

KATRINA ROPER

3822 ROCK CREEK RD  
AMERICAN FALLS ID USA 83211

Ident. Number **41-47**  
Date Received **2/10/2004**

Receipt No:  
Received By **DISTRICT COURT-SRBA**  
**Fifth Judicial District**  
**County of Twin Falls - State of Idaho**

**FEB 25 2004**

By \_\_\_\_\_

Phone: (208) 548-2464

Clerk  
Deputy Clerk

Phone: (208) 548-2464

2. Date of Priority: 09/15/1882

3. Source: ROCK CREEK

Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County | Type |
|----------|-------|---------|-----------------------|--------|------|
| 09S      | 30E   | 15      | NW NE SE              | POWER  |      |

5. Description of diverting works:

CONCRETE CHECK TO DITCH.

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) A.F.A |
|------------|-------|-------|--------|------------|
| IRRIGATION | 04/01 | 10/31 | 1.92   |            |

7. Total Quantity Appropriated is:  
1.92 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      | 30E   | 10      | SW         | SW |               | IRRIGATION    | 20    |
|          |       |         | SE         | SW |               | IRRIGATION    | 8     |
|          |       |         |            |    |               | Section Acres | 28    |
| 09S      | 30E   | 15      | NE         | NE |               | IRRIGATION    | 3.7   |
|          |       |         | NW         | NE |               | IRRIGATION    | 31    |
|          |       |         | SW         | NE |               | IRRIGATION    | 33    |
|          |       |         | SE         | NE |               | IRRIGATION    | 29    |
|          |       |         | NE         | NW |               | IRRIGATION    | 36.4  |
|          |       |         | NW         | NW |               | IRRIGATION    | 29.1  |
|          |       |         | SE         | NW |               | IRRIGATION    | 5.2   |
|          |       |         |            |    | Section Acres | 167.4         |       |
|          |       |         |            |    | Total Acres   | 195.4         |       |

11. Place of use in counties: POWER

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

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

Signature of Claimant(s):

*Jane Roper*

Date:

2-10-04

\_\_\_\_\_ Date:

State of Idaho

County of

ADA

)  
) SS.  
)

Subscribed and sworn (or affirmed) before me this

10th

of

FEBRUARY 2004

*Steve Clelland*

Notary Public

Residing at

Meridian ID

My commission Expires

12/7/2006



TITLE  
OF  
CASE

in the matter of the application of H. P. Moutz, et al,  
for the arbitration of the claims to the use of the waters  
of Rock Creek and tributaries

SOURCE Rock Creek and tributaries

WATER DIST 29

COUNTY Power

JUDICIAL DIST 5

(arbitration)  
JUDGE Frank Ca

DATE OF DECREE Jun 6, 1903

RECORDED 1  
IN BOOK NO.

| PN                                                                                             | DW    | DECREED<br>OWNER    | NAME            | PRESENT<br>OWNER | AMT INCHES<br>SEC. FT. □         | PRIORITY | DIVERSION<br>SUBDIV. SEC. TWP. RG.                   | REMARKS, LAND TO BE IRRIGATED                                     |
|------------------------------------------------------------------------------------------------|-------|---------------------|-----------------|------------------|----------------------------------|----------|------------------------------------------------------|-------------------------------------------------------------------|
|                                                                                                |       |                     |                 |                  |                                  |          |                                                      |                                                                   |
|                                                                                                |       |                     |                 |                  |                                  |          |                                                      |                                                                   |
| 1                                                                                              |       | Joseph Brown        |                 |                  | MAIN CHANNEL<br>all other claims |          | ROCK CREEK<br>Brown's Springs<br>trib. to Rock Creek | E <sub>1</sub> , SE, SE NE, Sec. 19; SW SW, Sec                   |
| 2                                                                                              |       | United States Ditch |                 |                  | 50                               | 5-1-80   | main channel<br>Rock Creek                           | no land description given in dec                                  |
| 3                                                                                              |       | United States Ditch |                 |                  | 350                              | 6-1-81   | main channel<br>Rock Creek                           | " " " " " "                                                       |
| note: the combined totals of above 2 rights of United States Ditch never to exceed 350 inches. |       |                     |                 |                  |                                  |          |                                                      |                                                                   |
| 4                                                                                              | Copy  | W. H. Filbrick      |                 |                  | 400                              | 9-15-82  | main channel<br>Rock Creek                           | upon lands once owned by Juniper                                  |
| 4                                                                                              | same  | W. H. Filbrick      |                 |                  | 50                               | 9-15-82  | main channel<br>Rock Creek                           | " " " " " "                                                       |
| note: all seepage, percolation or non use of upstream water to be added to Filbrick total.     |       |                     |                 |                  |                                  |          |                                                      |                                                                   |
| 5                                                                                              | Upper | West Ditch          | John H. Hartley |                  | 275                              | 5-4-84   | main channel<br>Rock Creek                           | west side lower Rock Creek                                        |
| 6                                                                                              |       | Hyrum Hartley       |                 |                  | 48                               | 5-8-84   | Lander Creek & trib.<br>Springs, trib. to Rock Creek | SE NW, S <sub>2</sub> NE, Sec 22, SW NW, Sec 23                   |
| 6                                                                                              |       | Hyrum Hartley       |                 |                  | 18                               | 5-8-84   | "                                                    | " " " " " "                                                       |
| 7                                                                                              |       | J. I. May           |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Jude A. May         |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Ed Hunter           |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Peter Halling       |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Peter Hansen        |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Nelson Davis        |                 |                  | 50                               | 5-15-84  | main channel<br>Rock Creek                           | no land description given in dec:                                 |
| 7                                                                                              |       | Robert Hillhouse    |                 |                  |                                  |          |                                                      | note: this water to be distributed<br>water users adopted custom. |
| 7                                                                                              |       | William Clark       |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | James Frodsham      |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | William Kelly       |                 |                  |                                  |          |                                                      |                                                                   |
| 7                                                                                              |       | Issac Horn          |                 |                  |                                  |          |                                                      |                                                                   |

-040 In May 1884 the following named parties to wit: J.I. May, Jude A. May, Ed. Hunter, Peter Halling, Peter Hansen, Nelson Davis, Robt. Hillhouse, Wm. Clark, James Prodsham, Isaac Horn and Wm. Kelly constructed a ditch from the main channel of lower Rock Creek to and upon the lands owned by the claimants in said ditch for the purpose of irrigating said lands; that the water from said ditch has been used each and every season by said claimants for irrigating crops grown on said lands.

That said ditch and the owners thereof are entitled to the flow at all times of 50 inches of water for the purpose of irrigating their said lands to be distributed among them according to their adopted custom, concerning which there is no controversy among them; said right to date from the 15th day of May 1884. 41-0040

That in the year 1884 James Prodsham, Wm. Kelly, J.A. Lasley, A.W. Thompson and Jas. I May constructed a ditch from the main channel of lower Rock Creek sufficient in size to carry a large irrigating stream to and upon the lands owned by said parties lying under said ditch and during the season of 1884 irrigated portions of said lands and have continued in the use of said water and ditch each and every season since until now there are about 100 acres of land in lucerne and grain irrigated by means of said ditch; that said ditch is known as the Kelly & Prodsham ditch; that there is no controversy among the claimants thereto as to the use and regulations of the water therein flowing, among themselves; that said ditch and the owners thereof are entitled to a flow at all times to 100 inches of the waters of said Rock Creek for the purpose of irrigating their said lands lying under said ditch; the right to the use thereof to date from May 20th 1884. 41-0041

We find that in Sep., 1882 the Juniper Mining Company which was then engaged in placer Mining on Snake River lying below and near the mouth of Rock Creek made and constructed a flume and ditch by means of which they diverted and appropriated about 400 inches of the water of lower Rock Creek to and upon their said mining claim; that for the greater portion of said distance, the water was conveyed by a flume constructed of lumber; that said water was used by said company for the purpose of mining said claim a portion of every year thereafter until 1887 that about 1887 the said Juniper Co. became bankrupt and the said mining claims sold under foreclosure of mortgage, and the flumes and ditches and other improvement appertaining to said claim were sold for delinquent taxes due upon said property for taxes due Cassia County and Idaho Territory and were bought in at said delinquent sale by Wm. Stokes; that W.H. Philbrick now owns and claims through various titles bought by him in the year 1888, the mining property aforesaid and the ditch flumes and water rights pertaining thereto. The evidence shows that since the year 1887, no water was used through said flumes and ditch except the attempt to irrigate about 5 acres of grain upon said mining premises in the year 1888 James May testifies that there was plenty of water flowing at the point of diversion of said ditch during said season for that purpose, but the condition of the flume was so bad a sufficient amount of water could not be gotten through it. since 1887 there has been plenty of water in Rock Creek not claimed to fill the Juniper ditch during the fall, winter and spring months but no attempts have been made to use it except in the year 1889 J. Calder has said property rented but did not get the flume in condition to hold and convey any water that season and in June of said season the water gave out at the head of said flume by reason of the use of same for irrigating by the farmers on said stream above; that previous to 1887 there was plenty of water in Rock Creek not otherwise used to fill the Juniper ditch and flume at all seasons of the year but since said time it has been nearly or quite all used above for irrigating purposes during the irrigating season. that since the year 1887, the area of land brought under cultivation on Rock Creek above the Juniper dam has been largely extended under the general impression that the rights of the Juniper ditch had been forfeited by discontinuance of mining operations and upon the further fact that since said time said flume has been entirely out of repair and will have to be largely rebuilt before it will carry the water. under the above state of facts, we seriously doubt if the appropriation of water originally made in said ditch was for a beneficial purpose and if it were we more seriously doubt if the same could have been used since the year 1887 or now could be used for a beneficial and profitable purpose; therefore in view of all the facts mentioned we find that said W.H. Philbrick is entitled to the use of 400 inches of the water of said lower Rock Creek to

be taken from said lower Rock Creek through said Juniper ditch and to be used for mining purposes to and upon said mining claim, except during the months of June, July and August in every season and that during said 3 months he shall be entitled to 50 inches of water to be conveyed through said flume and ditch for the purpose of preventing said flume from warping and also during said last three months in addition to said last mentioned 50 inches, any flow of water from said Rock Creek that may find its way to the head of said ditch by reason of seepage or percolation or non use by claimants above; the right to the use of the water aforesaid and at the time aforesaid to date from the 15th. day of September 1892.

Box Description  
 That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at notime in said box to be more than 6 inches in depth at the head thereof and without pressure except the natural flow of the stream; said box to be placed on a solid foundation and constructed of 2 inch lumber, and no claimant herein to whom water is herein awarded shall after the present season of 1890 receive the water herein awarded to him until his claim shall have been in every respect complied with; that the right to the use of water herein conveyed to different claimants shall date from the date of appropriation by them each respectively, and that no claimants right subsequent in time shall be permitted to use the water herein awarded to him until the right of each and every prior appropriator shall have been supplied; provided that at the time the prior appropriator shall be using said water for a useful and beneficial purpose; but if said useful and beneficial purpose does not exist then the water herein awarded to said prior appropriator and appropriators shall be subject to use by the subsequent appropriators according to the date of their appropriations respectively) that the costs and expences of the arbitration are \$500 and shall be paid by the claimants herein as follows to wit:

|                           |        |
|---------------------------|--------|
| The said H.P.Houtz to pay | \$3.00 |
| Andrew Allen              | 15.00  |
| S.H.Morris                | 25.00  |
| Josesh Brown              | 15.00  |
| Wm.Furgerson              | 5.00   |
| David Tayson              | 7.50   |
| Chas.Tayson               | 15.00  |
| Wm.Adshend                | 7.50   |
| S.C.Hatch                 | 10.00  |
| Jas. Hartley              | 5.00   |
| John Hartley              | 5.00   |
| Hyrum Hartley             | 5.00   |
| Hyrum Frodsham            | 5.00   |
| Bradley Jackson           | 10.00  |
| George Mc.Donald          | 5.00   |
| E.T.Olney                 | 2.50   |
| Jim Wgnm, Indian          | 2.50   |
| John Montewitch, Indian   | 2.50   |
| V.J.Stewart               | 2.50   |
| I.L.Stewart               | 5.00   |
| H.A.Pease                 | 2.50   |
| George Stanger            | 5.00   |
| G.Valdez                  | 30.00  |
| Neil Danilson             | 5.00   |
| Jas.Shearman              | 5.00   |
| H.C.Wood                  | 20.00  |
| Henry Houtz, Jr.,         | 10.00  |
| J.Lewis                   | 2.50   |
| L.Lance                   | 22.50  |
| D.C.Tyler                 | 7.50   |
| L.Barnard                 | 7.50   |
| D.A.Budge                 | 7.50   |
| Prom.Stock Ranch Co       | 10.00  |
| Joseph Henry              | 10.00  |
| D.A.Perry                 | 5.00   |
| D.C.Tyler Sr.,            | 5.00   |
| Bench Ditch Co.,          | 45.00  |
| H.D.Lish                  | 2.50   |
| West Ditch Co.,           | 35.00  |