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AUG 23 2004
DEPARTMENT OF
WATER RESOURCES

August 18, 2004

State of Idaho
Department of Water Resources

Carter Fritschle

In response to your July 23, 2004 letter requesting "Evidence of Priority Date"

Our water right (37-4112) shows a 03/26/1902 date. Trying to find a living person with firsthand knowledge of that date is proving to be impossible. In the process of checking records in Gooding County to see about a "posted notice", as I've been told that our water right came from a mining claim that failed, I discovered the mining claim was taken over by Glenns Ferry Land and Irrigation which was later turned into King Hill Irrigation District that diverted water from the Malad River in the year of 1908.

I have records from Gooding County that show the Glenns Ferry Land and Irrigation Company, Limited, on the 7th day of August, 1902, had a water right out of the Malad River in the amount of 500 cubic feet per second. In 1908 they combined this water right with another 500 cubic feet per second water right belonging to Herman Rapp and Ernest Pearson (25 March 1902) and sold it to The Malad Power Company with reserving enough water appropriations and rights to divert water to irrigate lands and towns in the Irrigation Company. This water right was granted by the State Engineer of the State of Idaho by permit No 438. The water right from Rapp/Pearson was the right from the first mining claim.

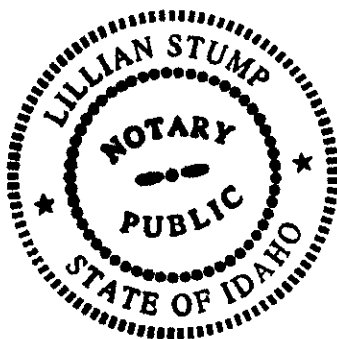
According to these records there was a permit issued by the State of Idaho for the water right that King Hill Irrigation ended up with.

I'm sending copies of the records from Gooding County plus copies of the book on history of Elmore County. I also included a maintenance record for 1913 but the form was made for 1910 maintenance. The 1910 book was lost in a fire back in 1913.

Please let me know if this information is not enough to prove our right.

Thank You,

Gardner Brown
Gardner Brown
Manager KHID



Subscribed to and sworn before me *to*
this *19th* day of *August* *18* 2004
Lillian Stump
Notary Public
expiration date *8-24-2008*



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0009
Phone: (208) 327-7900 FAX: (208) 327-7866 www.idwr.state.id.us

RECEIVED

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 23, 2004

37-4112
KING HILL IRRIGATION DISTRICT
PO BOX 428
KING HILL ID 83633

Re: Evidence of Priority Date

Dear Claimant:

RESPONSE DEADLINE
AUGUST 20, 2004

The Notice of Claim to a Water Right (claim) identified with the number shown above your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed, and are termed beneficial use rights. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. Since the priority date and historic use of a beneficial use right cannot be confirmed by field examination, **proof must be provided by the claimant** supporting the priority date claimed and the historic use of the water.

If you no longer own the property to which the claim is appurtenant please forward this correspondence to the present owner, or return it to Idaho Department of Water Resources (IDWR). If you have received this correspondence from the previous owner of the property it is recommended that you file a Change of Ownership form with IDWR in order to receive future mailings and to participate in the adjudication.

Enclosed you will find a computer printout of your claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: IDWR will recommend the SRBA Court decree the claim disallowed if no evidence of the priority date and of the historic use is submitted. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

Please submit the required evidence supporting the priority date and the historic use by the date shown above, referencing all documents with the corresponding claim number. If you have questions not covered by this letter or the enclosed pamphlet, please contact this office. Our toll free number is 1-800-451-4129.

Sincerely,


Carter Fritschle
Water Rights Supervisor

Enclosures
cc: Daniel V. Steenson

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

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 37-4112
Date Received: 12/7/1989
Receipt No: W006868
Received By:

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

1. Name of Claimant(s)

KING HILL IRRIGATION DISTRICT Phone: (208)336-2243
PO BOX 428
KING HILL ID USA 83633

2. Date of Priority: 03/26/1902

3. Source: MALAD RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot		County	Type
05S	10E	12	NW	SE	ELMORE	
06S	11E	9	NW	SW	ELMORE	
06S	13E	35	NW	NW	GOODING	
05S	10E	28	SW	NW	ELMORE	
06S	12E	12	NW	SW	TWIN FALLS	

5. Description of diverting works:

DIVERSION DAM TO FLUME, SIPHON TO CANALS, LATERALS & PIPELINES.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/01	10/31	370	
STOCKWATER	01/01	12/31	30	
POWER	03/01	10/31	370	
DOMESTIC	01/01	12/31	30	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Legal description of the place of use was deleted to conserve paper. Claim will be recommended with the place of use described as within the service area of the King Hill Irrigation District.

Total Acres 11275.7

11. Place of use in counties: GOODING, Elmore, Twin Falls

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

13. Other Water Rights Used:

02-214, 02-215, 02-216, 02-217

14. Remarks:

WATER IS DELIVERED THROUGH THE IRRIGATION SYSTEM TO FARMS AND P/U T6S, R13E, S20, LOT 7 CHANGED TO LOT 9.

15. Basis of Claim: Statutory Claim

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DEPARTMENT OF
WATER RESOURCES

ELMORE COUNTY

Its Historical Gleanings

*A collection of pioneer narratives, treasured
family pictures, and early clippings about
the settling of Elmore County, Idaho*

BY
OLIVE GROEFSEMA

1949

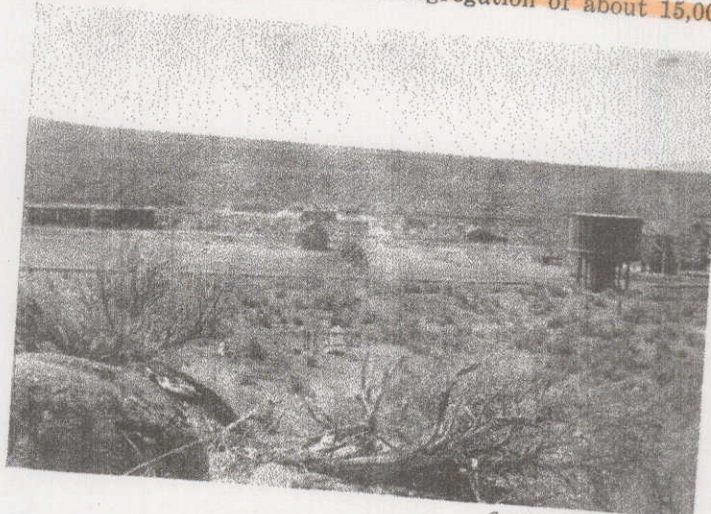
KING HILL IRRIGATION DISTRICT—ITS FOUNDING AND GROWTH

A SYNOPSIS OF THE HISTORY OF THE KING HILL IRRIGATION DISTRICT

(From material supplied by F. E. Wilson, T. H. Foster, and Mr. Ruberry.)

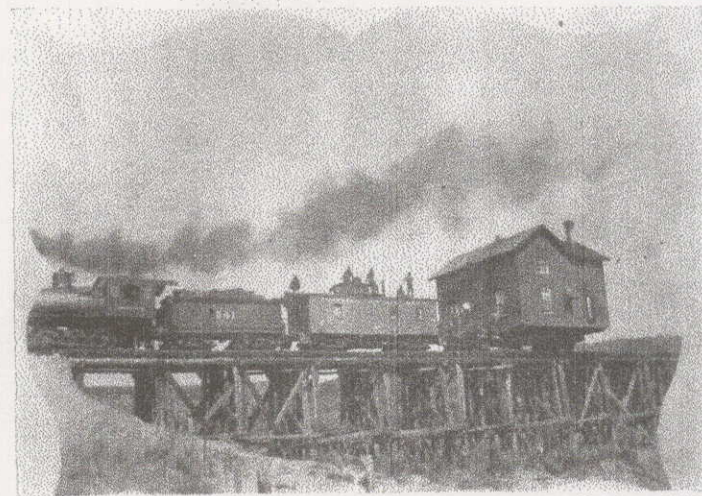
3/16/1902

About 1900 a group of private citizens of Glens Ferry, Idaho, composed of Martin King, Ralph Goodlife, and J. J. McGinnies, filed on waters of Malad River for the purpose of placer mining on and along Snake River to Cassia Gulch. Capital being limited, this venture failed and was taken over by a group composed of Joseph Rosevear, J. J. McGinnies, and Ernest Pierson, known as Glens Ferry Canal Company. In 1904 the State of Idaho contracted with a Cary construction company to build an irrigation system and procured from the government a segregation of about 15,000



OLD KING HILL

Courtesy Mr. Omar Fricke



Courtesy Mr. Omar Fricke

MOVING DAY AT OLD KING HILL

The picture shows the method by which King Hill was moved to its present site in 1905.

acres of land to be reclaimed under the federal Cary Act. These lands are in Elmore County, and the project was known as King Hill Irrigation System. The original construction company was unable to carry out its contract with the state, and in 1908 the King Hill Irrigation and Power Company, having acquired its interests, made a new contract with the state to complete the system and reclaim these lands under the Cary Act. The water was diverted from the Malad River near the northwest corner of Sec. 35 T. 6 S. R. 13 E. B. M., about 30 miles from the place of intended use. The system was completed by the construction company to such an extent that a partial distribution of water was made and crops were raised for several years. A large part of the system consisted of wooden flumes, pipes, and syphons laid along steep hillsides and across deep gulches in loose formation. The structures were not permanent, and many breaks occurred causing poor water service and partial crop failures, which in turn prevented the settlers from paying the

1908



Gooding
County
BK A
pg 243

DEEDS 4

227

This assignment is executed, acknowledged and delivered in pursuance of and by authority of a Resolution of and by authority of the Board of Directors of the Twin Falls North Side Land and Water Company, duly adopted at a regularly convened meeting of the Board of Directors of said Company, held at Pittsburgh, Pennsylvania, on the 19th day of November, A.D. 1907.

The Twin Falls North Side Land and Water Company does hereby constitute and appoint J.B. VanWagener to be its attorney for it and in its name, to acknowledge this assignment before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

IN WITNESS WHEREOF, the Twin Falls North Side Land and Water Company has caused its corporate seal to be hereunto affixed by the hand of its President and the same to be duly attested by its Secretary, to day and year first above written.

TWIN FALLS NORTH SIDE LAND AND WATER COMPANY,

(Corp. SEAL)

By W.S. Kuhn

President.

ATTEST:

C.W. Scheck, Secretary.

Commonwealth of Pennsylvania)

) SS.

County of Allegheny.)

On this 10th day of March, A.D. 1908, before me, a Notary

Public in and for said County and State, personally appeared J.B. VanWagener, the attorney named in the foregoing assignment, and by virtue of the authority conferred upon him, acknowledged said assignment to be the act and deed of the said Twin Falls North Side Land and Water Company, to the intent that the same might be duly recorded.

Witness my hand and Notarial Seal the day and year above written.

A.A. Gilmore,

(N.P.S. At)

Notary Public.

My commission expires January 15, 1909.

Filed for record March 10th 1908 at 10:00 AM. Notary Public, Gooding, Idaho.

KINGS HILL IRRIGATION & POWER COMPANY to THE MALAD POWER CO.

THIS INSTRUMENT, Made this 15th day of March in the year of our Lord one thousand nine hundred and eight, between KINGS HILL IRRIGATION & POWER COMPANY, a corporation incorporated under the laws of the State of Nevada and doing business in the State of Idaho with its principal place of business at Boise, Idaho, the party of the first part, and THE MALAD POWER COMPANY, a corporation incorporated under the laws of the State of Nevada and doing business in the State of Idaho with its principal place of business at Boise, Idaho, the party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of One Hundred Thousand Dollars (\$100,000.00), lawful money of the United States of America, to said first party paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns forever, all water rights and water appropriations and rights to divert and utilize the waters of the Malad River in Lincoln County, Idaho, now owned, claimed or held by the party of the first part, and particularly the following water rights and water appropriations:

That certain water appropriation made on the 25th day of March, 1902, by one Herman Rapp and one Ernest Pearson for the diversion of 500 cubic feet of water from the Malad River at a point

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OWNER Henry C. Jones
ADDRESS Glenns Ferry, Idaho.
DESCRIPTION Lot 2, Sec. 18, Twp. 5, Rg. 11, E.M.B.,
containing 31.86 acres. No. shares 31.86.

CONTRACT PRICE \$2070.90

PAID \$207.09

MAINTENANCE ACCOUNT
DUE FOR THE YEARS 1910, 1911, 1912

AMOUNT PAID
(AS PER STATEMENT FURNISHED BY THE CONSTRUCTING COMPANY)

Amount due on account 1913 maintenance
" " " " 1914 "
" " " " 1915 "
" " " " 1916 "

DR.		CR.	
57	36	57	36
19	12		
19	12		
19	12		
19	12		

Amount due on account 1917 maintenance
" " " " 1918 "

31.86.
31.86.

June 11th 1913
Aug. 5th 1914 (By A.W.Tingwall)
Apr. 6th 1915 (By Evans)
Apr. 8th 1916

19 12
19 12
19 12
19 12
31 86

May 8" 1917

The records for 1910, 1911, 1912 were lost due to fire.

the great project of the North Side Twin Falls Extension Irrigation Company stretches out for miles, and most of this project when completed will trade at the town of Hammett as it is the logical, down-hill trading and transportation center of this great area. Just across the river on the south is the famous Bruneau Extension, on which over a million dollars has been spent in exploitation work and the building of which seems now assured. In this project is over 600,000 acres of fertile land, a large part of which will by force of circumstances do its trading in the town of Hammett. To the southwest is the famous Bruneau Valley, one of the richest in Idaho. The enterprising citizens of Hammett and Medbury Valley have constructed a wagon road from Hammett to Bruneau and now have the shortest and most easily accessible road for the people of this valley to a railway point. This means that the great quantities of wool, sheep, cattle and the many other products of the large Bruneau Valley will find their outlet through Hammett, Idaho, thus adding to its growth and development.

A tract of land known as the Brown's Flat, directly west, will be served with water within another season. All of this land will find Hammett its logical trading and transportation center, as a first-class wagon road is already constructed from this locality to the town of Hammett.

PIONEER LIFE IN HAMMETT VALLEY

(Information supplied by Mr. and Mrs. F. E. Wilson)

A very few pioneers came to Hammett Valley before 1908, and nothing definite can be found about them.

The Wilsons came in 1908 and were met at the train by Charlie Turner and bought land with W. J. Turner of Mountain Home on which they built the first ranch home. The first place adjoined the present homesite of Frank Wilson whose home was built in 1909, after clearing off the sagebrush on that location. They have resided there to the present time, of course remodeling the house to make it more comfortable and to give more rooms. To this ranch they have added many acres along the river front and several islands.

Jim Wadell, another early settler, also had a ranch east of the Frank Wilson place. The Turners and Wilsons used a pumping plant the two years they lived on the place, and in 1910 the Kings Hill Irrigation Project came into the valley, then known as the Medbury Valley.

The Clark and Rice families were other early settlers of the valley with the Rice family locating on the highway where their chicken sandwiches in later years became well

384 ELMORE COUNTY—ITS HISTORICAL GLEANINGS

the year 1910. The prizes won at the fair were on potatoes, cabbage, mammoth squash, tomatoes, corn, soft-shelled almonds, black walnuts, grapes, peaches and other garden products to the extent of 21 prizes.

J. B. Heller's father was a railroad man in New York. Joseph died at the age of 70 years, March 26, 1933, at his home.

EPPERSONS ATTAIN HALF CENTURY OF MARRIED LIFE

(From a newspaper clipping in the year 1944)

Mr. and Mrs. Thomas C. Epperson, pioneer Idahoans, celebrated their golden wedding anniversary August 15th at their home at King Hill. They lived in Mountain Home 21 years and have since resided at King Hill.

Thomas Epperson was born in Riceville, Tennessee, in 1869, and came to Idaho when he was eight years old. The family settled at Bruneau. Epperson is one of the few survivors of the settlers besieged by Indians at Bruneau during the Bannock War in June, 1878. He attended school at Boise, and after finishing his schooling, moved to Elmore County.

Ida May Walker, who became his wife, was born at Cold Springs Creek, Elmore County, a stage station and post office in the Old Oregon Trail, in 1875. Her parents kept the post office and station there for a number of years, and she became acquainted with Epperson when he and his father ran sheep near the Walker Ranch.

On August 15, 1894, they were married at the Walker Home at Cold Springs by Judge C. C. Glenn of Glenns Ferry, and spent their honeymoon in the mountains near Atlanta.

Four children were born, three of whom are living. Mrs. James W. Stewart, of Mountain Home; Mrs. R. Lynn Parsons, formerly of Boise and now of Fort Benning, Georgia; and Mrs. Harry W. Brown, Jr., of Ogden. There are three grandchildren, Mrs. Rex V. Fairless, Robert Alyn Parsons and Harry Brown, of Illinois, and Lila who passed away in about 1920 in Mountain Home.

KING HILL ONCE HAD FRUIT BOOM

(Copied from a clipping furnished by Mrs. Bessie Woodard)

"She was a fruit boom right, and I'm a bugger for fruit," says King Hill oldie, A. P. Carnahan. "But I was lucky enough NOT to have the money with which to buy trees."

King Hill was opened for settlement under the King Hill Irrigation project in October 1908, with water enough for 15,000 acres promised for the following spring. Drawer of first ticket was Henry Jones, who had pooled his chances with Carnahan. The later had come down from Yakima when he heard of Idaho's King Hill opportunity.

Though the fruit "boomers" were driven out by bad luck and the



The lucky num
Pennsylvania, o

high cost of wa
from the soil. I
out again. Toda
Among the ol
came in on dese
and now spends
mountains

Vic Walker v
country "as fast
got out because
up to Cold Sprin
"As a boy I s
the Old Oregon
Indians, and I
now."

In his early
country, staked
and had to rep
fine big horses a
"A country th
to retire on is
writer.

VICTOR WAL

According t
custom among
goods and me

1908= we had water on South side of River
1910= King Hill Bridge built to get water
on North side of river.

September 22, in the five precincts of the district. There will be no opposition to the contract.

The chief provision of this very important "scrap of paper" is that the federal government will expend one million dollars in rebuilding and repairing the King Hill project. An essential qualifying provision is that the money must first be appropriated by congress. The bill which has passed congress promises the expenditure of but six hundred thousand dollars, one-third of which will be available every year for three years. It is figured that the appropriation as made will take care of the project, but the contract is made to include an extra four hundred thousand as a safety precaution and to care for the possibility of the project's being enlarged.



Courtesy Mrs. Minnie Howard

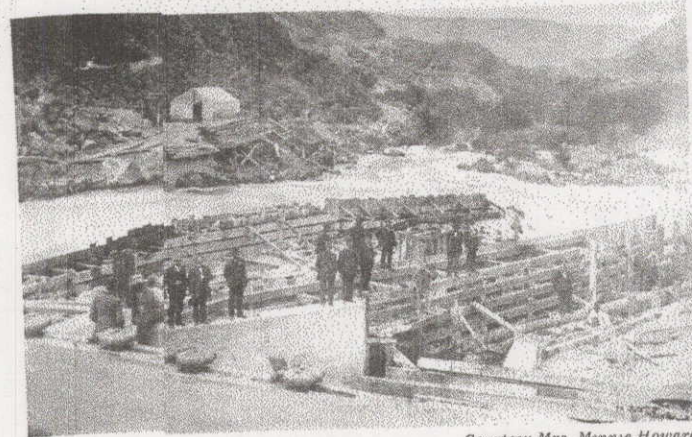
MALAD RIVER, SUPPLY SOURCE FOR KINGS HILL PROJECT

The State of Idaho has agreed to deliver to the federal government all of the ditch system of the project for the sum of one dollar. The state's expenditure on the tract probably aggregates about \$100,000, including the purchase price of \$30,000. The state's purchase of the tract wiped out all previous indebtedness, and the system is now turned over to the federal government with no strings attached.

The project will remain in the control of the state until the state's appropriation for it has been exhausted, which will probably not be until after the crop season of 1918. When the state releases control of the tract, the water delivery will be managed by the board of directors of the irrigation district.

Under the terms of the contract the payment for the cost of rebuilding the system, whatever the amount shall be, shall be paid in five equal annual installments, without interest, the first installment to be paid December 1, 1921.

There is an entailed provision that is very important. If, in 1921 a settler has 20 percent of his land under cultivation, he will be re-



Courtesy Mrs. Minnie Howard

CONSTRUCTION ON MALAD RIVER DAM AND FLUME

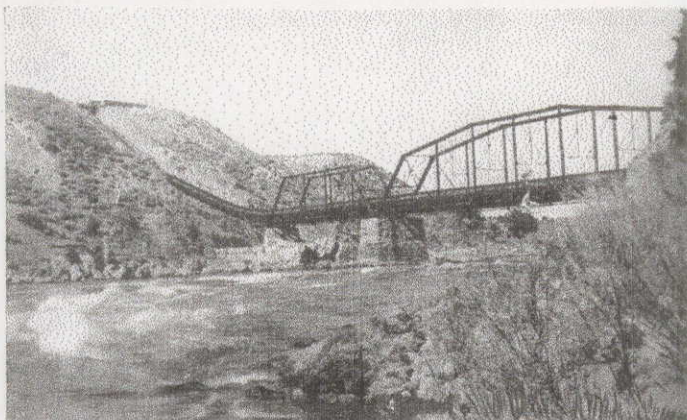
quired to pay out 2 percent of his water right cost the first year; if in 1922 he has 40 percent under cultivation, he will pay but 2 percent the second year; and if in 1923 he has 60 percent under cultivation he will pay but 2 percent the third year. The remainder of his payments will be 2 percent, two or 4 percent, and 4 or 6 percent, making 20 annual payments in all.

The terms are that payments are to be by the district to the United States, the burden of collection falling upon the district and not upon the government, and the responsibility for payments to the



Courtesy Mrs. Minnie Howard

INSPECTORS AT MALAD RIVER DAM



Courtesy Mrs. Minnie Howard

STEEL SPAN AND SYPHON CROSSING SNAKE RIVER

the settlers who have operated the district since that time. The directors and managers have overhauled many features of the canal system since taking the project over on January 1, 1926. The system is steadily improving under district

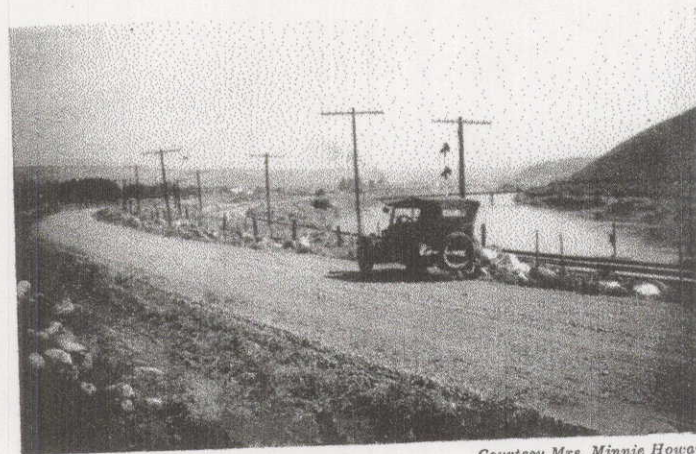


Courtesy Mrs. Minnie Howard

FORMER SITE OF GOLD DREDGE ALONG THE SNAKE RIVER

It was operated in the late 1800's and very early 1900's. The arrow points to the Robert Robertson Ranch.

management, and the water service and delivery is excellent. At the present time approximately 9,000 acres are irrigated. Practically all kinds of crops raised in Southern Idaho can be raised on this project, especially excelling in production and quality of melons, early potatoes, corn, and alfalfa.



Courtesy Mrs. Minnie Howard

OLD OREGON TRAIL BETWEEN GLENN'S FERRY AND KINGS HILL

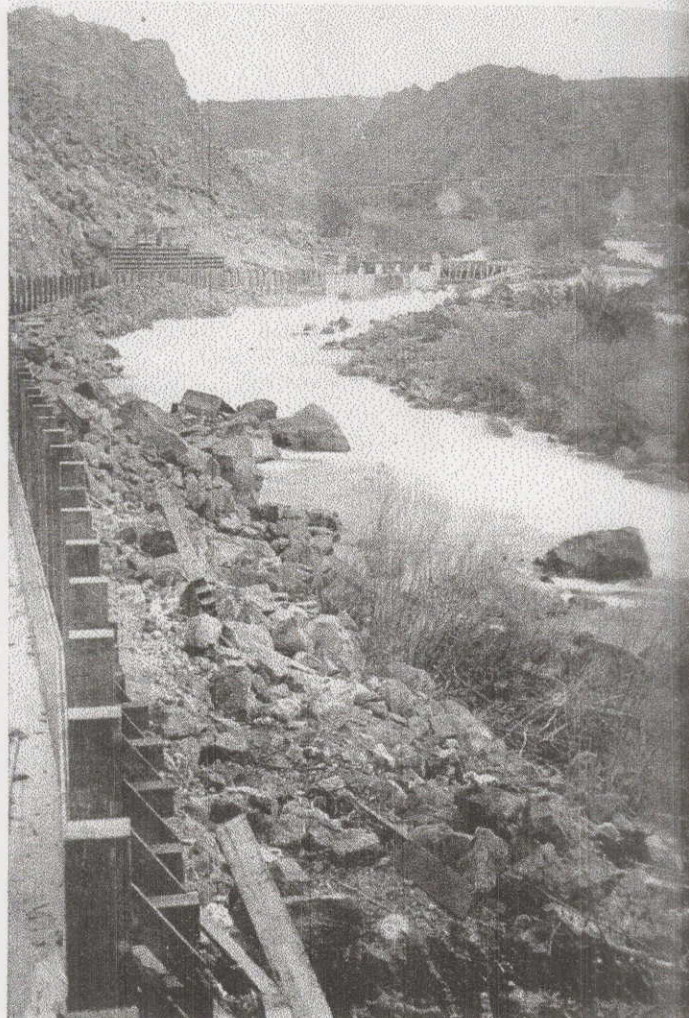
KING HILL CONTRACT

DOCUMENT AGREED TO BY STATE, SETTLERS AND RECLAMATION SERVICE PROVIDES LIBERAL TERMS FOR REPAYMENT AND ELECTION TO BE HELD

(Reprinted from the original document as given in the *Glenns Ferry Gazette*, August 24, 1917.)

At a meeting held in Boise during last week the state land board, representatives of the United States reclamation service, and members of the board of directors of the King Hill Irrigation District decided fully upon the details of the contract which will govern future activities in connection with the King Hill Project. Practically no changes were made in the contract as originally prepared by the reclamation service and the irrigation district directors. The only noticeable change was that the limit of expenditures which may be made by the federal government under this contract was raised to one million dollars. It was set at eight hundred thousand dollars in the tentative contract.

Before the contract is binding it must first be authorized by a two-thirds majority of the land owners residing within the irrigation district. The election to ratify the contract will be held on Saturday,



Courtesy Mrs. Minnie Howard

MALAD RIVER SHOWING PORTION OF FLUME AND DAM

construction company payments due. The state, a short time later, purchased the interest of the construction company for \$30,000. In 1909 a permit was issued to L. G. Bradley by the State Engineer ... for one hundred and fifty cubic feet of water per second of the waters of the Malad River and also the right to an undivided one third interest in the water rights and water appropriations of King Hill Irrigation and Power Company. Mr. Bradley promoted the extension of the project to Medbury and was known as King Hill Extension Company, Ltd. and financed the project with several hundred thousand dollars. From 1915 to 1918 it was maintained by the state by legislative appropriations. The state's original estimate of its cost was \$600,000, but by 1915 there had been expended upon this system \$1,600,000 and the legislature requested the government through the reclamation service to complete the system. Along about this time a move was made to organize the district and the first meeting of the directors of the King Hill Irrigation District was held in Glens Ferry on March 28, 1917. R. D. Gorby was made temporary chairman. The directors were R. D. Gorby, F. E. Wilson, T. H. Foster, A. B. Montgomery, and J. A. Poteet. The directors were duly sworn in ... and proceeded to act on district business at this meeting and in the future. The matter of entering into a contract with the United States to complete the construction of the irrigation system would have to be acted upon by an election of the settlers. On September 22, 1917, a special election was held which was approved by the settlers with no opposition. On December 4, the Irrigation District board passed a resolution authorizing the president to sign a contract between the King Hill Irrigation District, the State of Idaho, and the United States for the rebuilding and reconstruction of the irrigation works. This contract was signed on December 17, 1917. The government spent approximately \$2,000,000 under the management of Walter Wand who represented the government in King Hill construction work until 1923, when the government ceased construction and operated the system and delivery of water to the settlers with a manager by the name of George Harris until January 1, 1926 when the government withdrew and the project was turned over to

on the right bank of the Malad River situated about 1195.5 feet S. 75° 22' E. from the S.W. corner of Section 27, Twp. 6 S. of Range 13 E., B.M.; also that certain appropriation made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for the diversion and appropriation of 500 cubic feet per second of the waters of said river and to be diverted at or near the point above described; also that certain right and permit to divert and appropriate water, granted by the State Engineer of the State of Idaho on the 23rd day of January, 1904, to F.J. Hagenbarth and R.J. Shields, and evidenced by Permit No. 438 issued by said State Engineer for 1,100 cubic feet per second, the same to be diverted at or near the point above described.

Reserving, however, to the party of the first part out of its said water appropriations and rights to divert water, an amount sufficient to properly irrigate any lands which first party may hereafter reclaim or cause to be reclaimed and irrigated, or which may be entitled to water from such canal by reason of any contract between first party and the State of Idaho, or any one else; and reserving, also, out of said appropriations such amount of water as may be required or needed by communities and towns situated under or tributary to the canal of first party, or that in the opinion of first party can reasonably be served from its said canal or proposed canal, the aggregate amount of the water so reserved not to exceed 300 cubic feet per second. All of said water, however, may be used by the party of the second part, when not required or used by the party of the first part for the purposes above stated. The water so reserved to the party of the first part, or such portion thereof as said party may require, shall be delivered to it by the party of the second part as and when required, at the head of the syphon pipe above the east bank of Snake River in Lot 2, Section 27, and the right of the said first party to its said water, or so much thereof as may be required for the purposes above stated, shall be a first and prior right to the waters of said Malad River, and the water hereby conveyed to the party of the second part shall be held and used by second party, its successors and assigns, subject and subordinate to the right of first party to take and receive the amount which it may require for the purpose above stated, not exceeding, however, 300 cubic feet per second.

First party by these presents does further grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, an undivided three-fourths interest in and to those certain pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, used and intended to be used as a right of way for the dam, canal, flume and ditches required for diverting and carrying the said water hereinbefore mentioned, which said right of way is more particularly described as follows:

A strip of land 200 feet wide lying 100 feet on each side of the following described line: Beginning at a point S. 76° 55' E. 1,251.8 feet from the N.E. corner of Sec. 34, Twp. 6 S., R. 13 E., B.M.; thence S. 8° W. 250 feet; also beginning at said point lying S. 76° 55' E. 1,251.8 feet from said N.E. corner of said Sec. 34; thence N. 8° E. 50 feet; also a strip of land 100 feet wide lying 50 feet on each side of the following centreline beginning at a point in the N.W. 1/4 of the N.W. 1/4 of Sec. 35, said Township and Range, S. 76° 55' E. 1,251.8 feet from the N.E. corner of said Sec. 34; thence N. 60° 51' W. 100 feet; thence S. 84° 56' W. 257 feet; thence W. 715 feet; thence N. 58° 7' W. 128 feet; thence S. 89° 55' W. 260 feet; thence S. 74° 2' W. 644 feet; thence N. 69° 32' W. 298 feet; thence N. 72° 23' W. 887 feet; thence S. 89° 52' W. 128 feet; thence N. 74° 25' W. 127 feet; thence S. 89° 17' W. 269 feet; thence N. 87° W. 457 feet;