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Michael C. Creamer (ISB #4030)
John M. Marshall (ISB #5628)
Givens Pursley LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

John E. Bloomquist
Patti L. Rowland
Doney, Crowley, Bloomquist & Uda, P.C.
108 S. Washington
P.O. Box 1418
Dillon, MT 59725
Telephone: (406) 683-8795
Facsimile: (406) 683-8796

Attorneys for James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth
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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 Nos. 31-11440

Case No. 39576

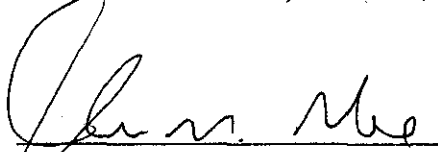
**OBJECTORS' MOTION FOR
SUMMARY JUDGMENT**

Objectors James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth, by and through undersigned counsel of record, hereby move this Court pursuant to I.R.C.P. 56(c) for an Order granting their objection to the recommended priority date of water right 31-11440. There are no genuine issues of material fact and the objectors are entitled to judgment as a matter of law.

This motion also is based upon the record on file, on the Hagenbarths' Opening Brief in Support of Motion for Summary Judgment and the Affidavit of Patti L. Rolland and its attached documents, filed contemporaneously herewith.

Respectfully submitted this 15th day of July, 2002.

GIVENS PURSLEY, LLP


John M. Marshall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Objectors' Motion for Summary Judgment was served upon the following by mailing a true and correct copy thereof on the 18 day of July, 2002, postage prepaid and addressed as follows:

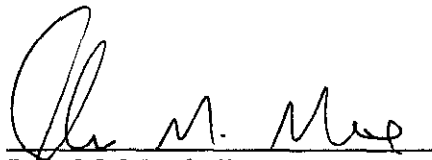
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Ray W. Rigby, Attorney
Rigby, Thatcher, Andrus, Rigby & Kam
P.O. Box 250
Rexburg, ID 83440

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724


John M. Marshall

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Boise, ID 83701
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Facsimile: (208) 388-1300

John E. Bloomquist
Patti L. Rowland
Doney, Crowley, Bloomquist & Uda, P.C.
108 S. Washington
P.O. Box 1418
Dillon, MT 59725
Telephone: (406) 683-8795
Facsimile: (406) 683-8796
Department of Water Resources

Attorneys for James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth
S:\Clients\5978\1\pleadings\Singleton\2002-06-30 Singleton SJ Brief.doc

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 Nos. 31-11440

Case No. 39576

**OBJECTORS' OPENING BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Objectors James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth ("Objectors" or "Hagenbarth") submit this opening brief in support of Objectors' Motion for Summary Judgment. As a matter of law, Objectors are entitled to an order that amends the recommended priority date for water right 31-11440 from June 21, 1902 to a date no earlier than December 30, 1959.

INTRODUCTION

Notice of Claim to Water Right 31-11440 by Larry Singleton ("Singleton") is an improper attempt to reinstate a stockwater right in Dry Creek that previously was decreed as abandoned by a final court judgment dated December 29, 1959. The Director of the Idaho Department of Water Resources ("IDWR") apparently was unaware of this prior court decree when he recommended right 31-11440 with the claimed priority date of June 21, 1902. Hagenbarth objects to the recommended priority for right 31-11440 because Hagenbarth owns junior priority stockwater and irrigation rights in Dry Creek that would be subject to a call to fill

right 31-11440 if it were reinstated in SRBA with the 1902 priority.

In this motion, Hagenbarth does not argue that Singleton cannot have a stockwater right in Dry Creek.¹ Rather, Hagenbarth demonstrates as a matter of law that if Singleton is to be adjudicated a stockwater right in Dry Creek, the priority date for the right must no earlier than December 30, 1959, the day after the prior judgment declaring the right abandoned. Singleton is barred by res judicata from arguing otherwise.

STATEMENT OF UNDISPUTED FACTS

The facts in this matter are based entirely on prior court decrees to which Claimants' predecessor was a party. Thus, the facts are undisputed.

On November 1, 1930, the United States District Court for the District of Idaho entered a decree adjudicating water rights on Dry Creek and other water sources in IDWR administrative basin 31.² *Ernest Suave vs. W.H. Abbott et al.*, no. 635 (Nov. 1, 1930) ("*Suave v. Abbott*").³ Water right no. 79 from *Suave v. Abbott* was decreed to Bert H. Miller in the amount of 2.5 cfs for "use" in the SE ¼ of the NE ¼, the W ½ of the NE ¼, and the NE ¼ of the NW ¼ with a priority of June 21, 1902 ("Right 79"). The term "use" in *Suave v. Abbott* is defined generally for all rights in the decree: "Water herein decreed for use on land shall be construed to include the usual ordinary and customary use thereof for irrigation, for **watering livestock**, and for other domestic purposes." *Suave v. Abbott*, (Rowland Aff., Ex. 6) (emphasis added). Hence, Right 79 includes "stockwater" as a purpose of use.

Subsequently, on October 24, 1957, the United States of America filed a Complaint

¹ Hagenbarth reserves the right to argue at trial that right 31-11440 has been forfeited or abandoned.

² *Suave v. Abbott* did not adjudicate water rights with places of use outside of IDWR administrative basin 31.

³ The relevant portion of the decree along with relevant excerpts from the pleadings and Findings of Fact and Conclusions of Law are attached as Exhibits 1-7 of the Affidavit of Patti L. Rowland ("Rowland Aff.")

initiating legal proceedings against Leo Singleton entitled *United States of America vs. Singleton*, No. 2083, United States District Court for the District of Idaho, Eastern Division (“*U.S. v. Singleton*”)⁴ (Rowland Aff., Exhibit 7). Defendant Leo Singleton was served a summons and appeared in the action through counsel. See the Summons and Motion to Dismiss filed by Singleton (Rowland Aff., Ex. 7). The court entered judgment on December 29, 1959 as follows:

That on the first day of November, 1930, there was entered in the District Court of the United States of America for the District of Idaho, Eastern Division, in the case of Ernest Suave v. W. H. Abbott, et al, case No. 635, a decree of distribution, decreeing among other things the water of Dry Creek and Spring Creek; that Water Right No. 79 of said decree was granted to Bert H. Miller, with a priority date of June 21, 1902, for 2.5 cfs from Dry Creek, a tributary of Camas Creek; that the defendant, Leo Singleton, is the successor in interest of the said land to which this water was decreed appurtenant; that there has been **no use** of said water right on the said land since May 1, 1924; and said water right has been **abandoned** by the said defendant, Leo Singleton, and his predecessors in interest.

Judgment, *U.S. v. Singleton* (Rowland Aff., Ex. 7) (emphasis added). Thus, all uses of Right 79, including the stockwater purpose of use, were decreed abandoned. The Judgment goes on to confirm a 10.0 cfs right in the name of the United States with a 1924 priority and to enjoin Singleton from interfering with the United States’ right. *Id.*

In this case, Singleton filed notice of claim for water right 31-11440 claiming a stockwater right for use in the SE ¼ of the NE ¼, the W ½ of the NE ¼, and the NE ¼ of the NW ¼ (the same place of use as Right 79) with a priority date of June 21, 1902 (the same place of use and priority as the abandoned Right 79).

STANDARD OF REVIEW

Summary judgment is proper when “the pleadings, depositions, and admissions on file,

⁴ A complete copy of the file in United States of America vs. Singleton is attached to the Affidavit of Patti L. Rowland as Exhibit 7 as it was reproduced by the National Archives-Pacific AK Region.

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). In this case, the facts are based on prior court decrees and are undisputed. The issue is solely a question of law—whether this Court can reinstate a water right previously decreed as abandoned to the detriment of junior users on Dry Creek. Summary judgment therefore is appropriate and should be granted in favor of Hagenbarth.

ARGUMENT

Right 79, which included purposes of use for irrigation, stockwater and domestic uses, clearly was decreed abandoned by the Judgment in *U.S. v. Singleton* in favor of the United States’ intervening 10.0 cfs right for irrigation and stockwater. As the facts discussed above indicate, the claim to water right 31-11440 in the SRBA is duplicative of Right 79’s priority date, place of use and the stockwater purpose of use. In other words, the claim to right no. 31-11440 is a claim to reinstate the stockwater portion of abandoned Right 79. Singleton is barred by the doctrines of res judicata or collateral estoppel from making this claim.

The doctrine of collateral estoppel precludes a party, or a party’s privy, from relitigating an issue previously decided in an earlier court action.⁵ *Rodriguez v. Dept. of Correction*, 136 Idaho 90, 903, 29 P.3d 401, 404 (2001). Collateral estoppel applies if the following five factors are met: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be

⁵ The doctrine of res judicata, which is more expansive than collateral estoppel, precludes a party from relitigating a prior cause of action, not merely the same issue. Hagenbarth believes that notice of claim 31-11440 presents the identical issue—the actual beneficial use of Right 79—that was litigated in *U.S. v. Singleton*. However, if the Court finds that the issue presented in this subcase is not identical, Hagenbarth also relies on the more expansive doctrine of res judicata to bar relitigation of the existence of right no. 31-11440 with a June 21, 1902 priority.

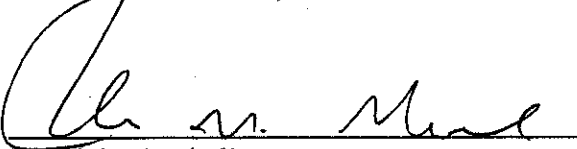
precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation. *Id.*

As demonstrated by the facts discussed above, all the elements of collateral estoppel are present in this case. There can be no dispute that Right 79 was decreed abandoned in the 1959 Judgment in *U.S. v. Singleton*. Leo Singleton was served a summons, entered an appearance and otherwise had a full and fair opportunity to litigate the issue of the abandonment of Right 79. The place of use, purpose of use, and priority date of the claim to right no. 31-11440 in this case are identical to the elements of abandoned Right 79; thus, there is clear privity between Larry Singleton, the claimant in this case, and Leo Singleton, the defendant in *U.S. v. Singleton*.

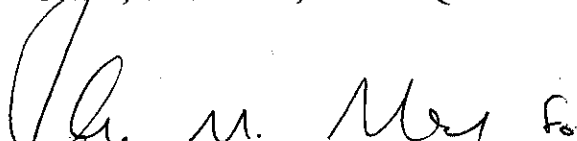
By claiming a priority of June 21, 1902 for right no. 31-1140, Singleton is attempting to relitigate the issue of whether Right 79 was abandoned. This issue was resolved on December 29, 1959 when the U.S. District Court entered judgment decreeing the right abandoned. Accordingly, right no. 31-11440 cannot be decreed in the SRBA with a priority earlier than December 30, 1959. The Court should rule accordingly.

Respectfully submitted this 1st day of July, 2002.

GIVENS PURSLEY, LLP


John M. Marshall

DONEY, CROWLEY, BLOOMQUIST & UDA, P.C.


Patti L. Rowland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Objectors' Opening Brief in Support of Motion for Summary Judgment with exhibits was served upon the following by mailing a true and correct copy thereof on the 14 day of July, 2002.

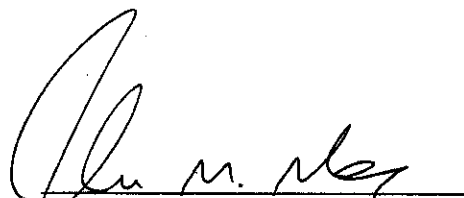
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Ray W. Rigby, Attorney
Rigby, Thatcher, Andrus, Rigby & Kam
P.O. Box 250
Rexburg, ID 83440

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P.O. Box 83720
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Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724


John M. Marshall

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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: SRBA

Subcase Nos. 31-11440

Case No. 39576

**AFFIDAVIT OF ATTORNEY
PATTI L. ROWLAND**

STATE OF MONTANA)

.ss

County of Beaverhead)

I, Patti L. Rowland, being duly sworn, do hereby depose and state as follows:

1. I am 43 years of age and reside in Dillon, Montana.

2. I have been a member of the State Bar of Montana since May of 1988.

3. I am employed as an associate attorney with Doney, Crowley, Bloomquist &

Uda, P.C. Our firm, in association with the law firm of Givens Pursley LLP, Boise,

Idaho, represents James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth.

4. The Exhibits attached to this Affidavit are true, correct, and accurate copies of
the following documents:

1. Counterclaim of Bert H. Miller, Sauve v. Abbott.

2. James H. Bramwell and James H. Cochran Notice of Water Right.

3. Statement of Claim of Clients represented by F.A. Miller and B.H. Miller in
Sauve v. Abbott.

1 4. Memorandum Opinion, Sauve v. Abbott.

2 5. Findings of Fact and Conclusions of Law, Sauve v. Abbott.

3 6. Decree, Sauve v. Abbott.

4 7. Complete file in United States of America vs. Singleton.

5
6 5. The original certified copies of documents that I have gathered are retained in
7
8 my possession. In the event a question of authenticity arises, I am able and willing to
9 produce the certified copies.

10 DATED this 26th day of June, 2002.

11 Patti L. Rowland

12 Patti L. Rowland

13
14
15
16
17 STATE OF MONTANA)
18 :ss.
19 County of Beaverhead)

20 On this 26th day of June, 2002, before me, Notary Public for the State of
21 Montana, personally appeared Patti L. Rowland, known to me to be the person whose name is
22 subscribed within and acknowledged to me that she executed the same.

23 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
24 day and year herein above first written.



26
27
28 Casey K Hopper
Notary Public for the State of Montana,
Residing at Dillon
My Commission expires: 10/13/2003

NOTICE OF WATER RIGHT.

STATE OF IDAHO,

County of Fremont

TO ALL CONCERNED, NOTICE IS HEREBY GIVEN:

1st. That James H. Bramwell and James H. Cochran
hereby claim the use of the waters of Dry Creek of Kilgore, Idaho,
to the extent of Eight (8) cubic feet per second.

2d. It is intended to divert said water at or near the point where a copy of this notice is posted, and more definitely described as follows: Near Eastern border of Section 26, Township 13 N. Range 39 E. being south of Butte and southeast of old road from Kilgore to Sheridan.

STATE OF IDAHO
COUNTY OF CLARK

I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.

Date 5-3

1902

Conni S. Owen

Clerk of the District Court

Deputy Clerk

Transcribed from Book B Water Rights, Page 461, Fremont County Records.

(In above description give legal subdivision of land or describe the place with reference to some prominent landmark.)

3d. The purpose for which said water is intended to be used is To irrigate lands claimed by us

The place of intended use is in Kilgore, Idaho,

4th. It is intended to divert said water by means of dam, canals and natural water ways

The general course of the proposed canal is south of westerly

The length of the proposed canal is - -

It is intended to use said water for irrigating the following described land: NE $\frac{1}{4}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, and W $\frac{1}{2}$ of NW $\frac{1}{4}$, of Section 26, also E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 27, Twp. 13 N. R. 39, E.

5th. It is intended to have the works for diversion and use of said water as aforesaid completed within three years.
(This must in no case exceed five years.)

WITNESS our hands at Kilgore Idaho,
this eleventh day of June 1902.

James H. Bramwell

James H. Cochran

Claimants.

STATE OF IDAHO,

County of Fremont

James H. Cochran

being first duly sworn, deposes and says that he is of lawful age and a claimant of the Water Right mentioned in the foregoing notice and whose name is subscribed thereto. That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the place of intended diversion (as provided by law) on the 11th day of June 1902, at 30 minutes past 3 o'clock P. M.

James H. Cochran

Subscribed and sworn to before me, this 19th day of June 1902

Soren Nelson, Justice of the Peace.

NOTE.—The above Certificate may, where there are several Claimants, be made and sworn to by one of them.

Filed for record this 21st day of June 1902, at 2:30 o'clock P. M.

By Deputy.

A. M. Carter

Recorder.

EXHIBIT

2

That continuously during the irrigation season of each and every year since the date of said decree, and for a long time prior thereto, this defendant in his representative capacity, and the grantors and predecessors in interest of the heirs of the estate of Annie J. Bennett, deceased, have diverted and used said waters, and the whole thereof, for and in the irrigation of said lands, and for domestic and other beneficial purposes, and that all of said water is necessary for the successful irrigation of said land, and that the said use of said water has been continuous, open, visible and adverse to the rights of the plaintiff and all the other defendants herein, and to all other appropriators from said source of supply, and that this defendant and counterclaimant, in his representative capacity, and his predecessors in interest, has used said water under a claim of right.

VI.

That the point of diversion of said water is located up-stream from said land, one ditch being headed in the northwest corner of Lot 4 of Section 5-12-39, and the other ditch heading in the NW $\frac{1}{4}$ of Section 32-13-39 E. B. M., in Clark County, Idaho.

VII.

23 That the above named plaintiff, as well as all the other defendants herein, excepting those defendants named in the foregoing answer, claim an estate or interest in and to said waters, or the right to the use thereof, adverse to this defendant and counterclaimant, as administrator of said estate, and to the rights and interests of the heirs of the estate of Annie J. Bennett, deceased, but that the claim of the plaintiff and all the other defendants herein, is without any right whatever, and is subsequent in time and inferior in right to the rights and claims of the heirs of said Annie J. Bennett, deceased, and to the rights of this defendant and counterclaimant, in his representative capacity, to the right to the use of said waters, that is, to the right to the use of 140 inches of the waters of East Camas Creek heretofore decreed to the predecessor in interest to the heirs of the estate of Annie J. Bennett, deceased, for the irrigation of the hereinbefore described land, and for domestic and other beneficial purposes, and that the above named plaintiff, and all the other defendants herein, and all appropriators from said source of supply, has not any estate, right, title or interest in and to the right to the use of said water, or any part thereof.

Counterclaim of Defendant,

Bert H. Miller.

That for and as a separate answer and defense to the bill of complaint and the amendment thereto, and as a counterclaim against the plaintiff, and all the other defendants herein, excepting those defendants named in the foregoing answer, this defendant and counterclaimant, being one of the defendants named in said answer, alleges, as follows:

I.

That he is the owner, in the possession and entitled to the possession, of the following described tract of land, situated, lying and being in the county of Clark, state of Idaho, and particularly described, as follows:

1. Northwest quarter of Section 34, T. 1 N., R. 1 E., S. 1 E., Clark County, Idaho.

EXHIBIT

I

and the Northeast quarter of Section 27; and the West Half of Northwest quarter of Section 26 in Township 13 North, Range 39 East Boise Meridian.

II.

That he is the owner, in the possession and entitled to the possession, of the following described tract of land, situate, lying and being in the county of Clark, state of Idaho, and particularly described as follows:

The East Half of Southeast quarter of Section 27; and North Half of Northeast quarter of Section 34 in Township 13 North, Range 39 East Boise Meridian.

III.

That he is the owner, in the possession and entitled to the possession, of the following described tract of land, situate, lying and being in the county of Clark, state of Idaho, and particularly described, as follows:

The Northeast quarter of Northwest quarter, Northwest quarter of Northeast quarter, and the South Half of the Northeast quarter of Section 26 Township 13 North, Range 39 East Boise Meridian.

IV.

24 That the above described lands are arid and desert in character and will not successfully grown and produce agricultural crops without irrigation, but that by the application of water thereto said lands will grown and produce crops of hay, and such other agricultural crops as are usually grown and produced in the vicinity of said lands.

V.

That on or about the 20th day of June, 1902, in the district Court of the Fifth Judicial District of Idaho, in and for the County of Fremont, (the county of Clark being then included therein) in an action entitled Levi Cartier, plaintiff, vs. W. W. Buck, et al., defendants, which said action was commenced and prosecuted for the purpose of determining and adjudicating the rights to the use of the waters of Camas Creek and its tributaries among the several parties to said action, and which said creek and its tributaries is a tributary of Mud Lake, it was ordered, adjudged and decreed that the waters of Camas Creek and its tributaries, in Fremont (now Clark) County, Idaho, be distributed and decreed to the several parties therein named, for beneficial purposes, and in the amounts and of the dates of priorities of rights as therein provided, (a copy of which said decree is hereto attached, made a part hereof, and marked Exhibit "A") and that by the terms and provisions of said decree this defendant and counterclaimant, by and through his grantors and predecessors in interest, to-wit, James H. Cochran, who was a party to said action, was decreed for the irrigation of the land described in paragraph "I" hereof, of the waters of Camas Creek and its tributaries, to-wit, Cottonwood Creek, 225 inches from May 1, 1899, to the lands then owned by the said James H. Cochran, and that this defendant and counterclaimant is the successor in interest to the rights of the said James H. Cochran, and to the whole thereof; and that this defendant and counterclaimant, by and through his grantors and predecessors in interest, to-wit, Thomas Barton, who was a party to said action, was decreed for the irrigation of the land described in paragraph "II" hereof, of the waters

of Camas Creek and its tributaries, to-wit, Cottonwood Creek, 40 inches from October 1, 1900, to the land then owned by the said Thomas Turton, and that this defendant and counterclaimant is the successor in interest of the said Thomas Turton, and to all his rights, and to the whole thereof; and that on or about the 11th day of June, 1902, this defendant and counterclaimant, by and through his grantors and predecessors in interest, to-wit, James H. Bramwell and James H. Cochran, posted at a conspicuous place, at or near the point of diversion, and caused to be recorded in the office of the recorder of Fremont (now Clark) County, Idaho, a notice of water right, to the extent of 8 cubic feet per second of the waters of Dry Creek and tributary of Camas Creek, for irrigation and domestic purposes, and for the irrigation of the land described in paragraph "III" hereof, which said notice of water right is recorded in book "B" at page 461 of the records of Fremont County, Idaho, (a copy of which is hereto attached, made a part hereof, and marked Exhibit "B") and that this defendant and counterclaimant is the successor in interest to the rights of the said James H. Bramwell and James H. Cochran, and to the whole thereof.

VI.

5 That continuously during the irrigating season of each and every year, since the date of said decree and location of water right, and for a long time prior thereto, this defendant and counterclaimant, and his grantors and predecessors in interest have diverted and used the said water, and the whole thereof, for and in the irrigation of the hereinbefore described lands, and for domestic and other beneficial purposes, and that all of said waters are necessary for the successful irrigation of said lands, and that the said use of said waters has been continuous, open, visible, and adverse to the rights of the plaintiff, and all the other defendants herein, and all other appropriators from said source of supply, and that this defendant and counterclaimant and his grantors and predecessors in interest has used said water, and the whole thereof, under a claim of right.

VII.

The the point of diversion of the water from Cottonwood creek is located on said creek about one- and one-half miles northwest of the said lands, and that the point of diversion of the water from Dry Creek is located on said creek near the eastern border of Section 25 Tp. 13 N. R. 39 E. B. M., in a northeasterly direction from said land, and all in the county of Clark, state of Idaho.

VIII.

That the above named plaintiff, and all the other defendants herein, excepting those defendants named in the foregoing answer, claim an estate or interest in and to the right to the use of said waters, or some part thereof, but that the claim of the plaintiff and all other defendants is without any right whatever, and is subsequent in time and inferior in right to the claims and rights of this defendant and counterclaimant in and to the right to the use of said waters, that is to say, in and to 225 inches from Cottonwood creek, decreed to James H. Cochran, and 40 inches from Cottonwood creek, decreed to Thomas Turton, and 8 cubic feet per second appropriated under date of June 11, 1902, appropriated by the said James H. Bramwell and James H. Cochran, for the irrigation of the lands hereinbefore described, but that the plaintiff and all the other defendants herein, has not any estate, right, title or interest in and to the right to the use of said waters, or any part thereof, and that the rights of defendant and counter-

claimant is superior to any other right or claims in and to said waters, and the whole thereof.

Exhibit "B"--Notice of Water Right.

"Notice of Water Right, State of Idaho, County of Fremont, ss. To all concerned, notice is hereby given: 1st. That James H. Bramwell and James H. Cochran of Kilgore, Idaho, hereby claim the use of the waters of Dry Creek to the extent of eight (8) cubic feet per second. 2nd. It is intended to divert the said waters at or near the point where a copy of this notice is posted, and more definitely described as follows: Near eastern border of Section 25 Township 13 North, Range 39 E., being south of butte and southeast of old road from Kilgore to Sheridan. 3rd. The purpose for which said water is intended to be used is to irrigate lands claimed by use in Kilgore, Idaho. The place of intended use is Kilgore, Idaho. 4th. It is intended to divert said waters by means of dams, canals, and natural water-ways. The general course of the proposed canal is south of westerly. The length of the proposed canal is. It is intended to use the water for irrigation of the following described land: NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ & W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 26, also E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27-Twp. 13-N. R. 39-E. 5th.-It is intended to have the works of diversion and use of said water as aforesaid completed within three years. Witness my hand at Kilgore, Idaho, this eleventh day of June, 1902.

James H. Bramwell

James H. Cochran,

Claimants.

State of Idaho, County of Fremont, ss. James H. Cochran, being first duly sworn, deposes and says, that he is of lawful age and one of the claimants of the water right mentioned in the foregoing notice, and whose name is subscribed thereto. That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the place of intended diversion (as required by law) on the 11th day of June, 1902, at 30 minutes past 3 o'clock P. M.

James H. Cochran

Subscribed and sworn to before me this 11th day of June, 1902.

Sorren Kelson,

Justice of the Peace.

Note. The above certificate may, when there are several claimants, be made and sworn to by one of them.

Filed for record this 21 day of June, 1902, at 2 o'clock P. M., and recorded in book "B" Notice of Water Right at page 461.

A. M. Carter,

Recorder.

RECEIVED

JUL - 3 2002

**Attachment to Affidavit of Patti L. Rowland
Objectors Exhibit Index
Subcase 31-11440**

Department of Water Resources

1. Counterclaim of Bert H. Miller, Sauve v. Abbott.
2. James H. Bramwell and James H. Cochran Notice of Water Right.
3. Statement of Claim of Clients represented by F.A. Miller and B.H. Miller in Sauve v. Abbott.
4. Memorandum Opinion, Sauve v. Abbott.
5. Findings of Fact and Conclusions of Law, Sauve v. Abbott.
6. Decree, Sauve v. Abbott.
7. Complete file in United States of America vs. Singleton.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

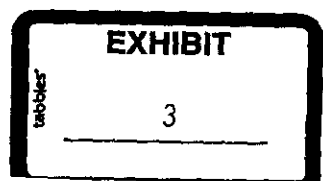
To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
under the seal of the National Archives and Records Administration, that the attached reproduction(s) is
a true and correct copy of documents in his custody.



SIGNATURE <i>Valorie J. Armstrong</i>	
NAME <i>for</i> Steven M. Edwards	DATE <i>1/03/02</i>
TITLE Regional Administrator, Pacific Alaska Region	
NAME AND ADDRESS OF DEPOSITORY National Archives & Records Admin. 6125 Sand Point Way NE Seattle, WA 98115-7999	

NA FORM 13040 (10-86)



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, EASTERN DIVISION.

ERNEST BAUME,	Plaintiff,)	Statement of Claims of Clients represented by
vs.		
W. H. A. BOETT, et al., Defendants.)		
		F. A. Miller & B. H. Miller

The following statement or brief is presented to the court on behalf of clients hereafter named, claimants to water rights in Camas Creek and its tributaries situate in Clark County, State of Idaho, represented by F. A. Miller of St. Anthony, Idaho, and B. H. Miller of Idaho Falls, Idaho.

At the hearing at Idaho Falls, Idaho, before Mr. L. G. Hamilton, master appointed by the above named court for the taking of testimony in this cause, a stipulation was made and entered into by all parties that in this action all claims to the use of water from said Camas Creek or its tributaries based upon priority and quantity as set out and contained in what is known as the Levi Cartier vs. W. W. Buck, et.al., decree, made and entered in the District Court of the Fifth Judicial District of the State of Idaho in and for Fremont County, under date of June 20th, 1902, for the purpose of this decree, should be given full credence and all rights so set out and decreed in said Levi Cartier vs. W. W. Buck, et. al., decree together with the dates of priority and quantity would be recognized as in said decree contained.

The claimants to the waters of said Camas Creek and its tributaries represented by above named counsel and whose rights were stipulated are as follows:

LOVISA BARNEY,

At page 22 of the proceedings the following stipulation effecting the rights of this defendant and cross-complainant was had, to-wit:-

"It is stipulated that the defendant and cross-complainant Lovisa Barney, may be decreed one hundred miners inches of the waters of West Camas Creek, with priority of October 1, 1898, for the irrigation of Lots one and two, and the south half of the northeast quarter of section 1, township 12 north, range 38, EBM, the point of diversion for said right being one-half mile up the stream from the land to be irrigated as above described. This right was decreed to Neal W. McMillan, a predecessor in interest of Lovisa Barney, by the terms of the decree in the contested case of Cartier vs. Buck."

And because of such stipulation no proof was required or submitted.

FREDERIK FREDERIKSEN,

At page 22 of the said record it was stipulates as follows:

Stipulated

Stipulated

BERT H. MILLER.

At page 29 of said record it is stipulated as follows:

"It is further stipulated and agreed that the defendant and cross complainant, Bert H. Miller, may be decreed a water right for 225 miners inches of the waters of Cottonwood Creek, a tributary of Camas Creek, with priority of May 1, 1898, and a water right for 40 miners inches of the waters of said Cottonwood Creek, with priority of October 1, 1900, for the irrigation of the northeast quarter of the northwest quarter, the northwest quarter of the southeast quarter, and the northeast quarter of section 27; the west half of the northwest quarter of section 26; the east half of the southeast quarter of section 27; the north half of the northeast quarter of section 34--all in township 13 north, range 39 EBM. Said right number 1, above mentioned, was decreed to James H. Cochran, a predecessor in interest of said Bert H. Miller, in the contested case of Cartier v. Buck. The said right number 2, above mentioned, was decreed to Thomas Burton, in the said case. The point of diversion for said rights is one and one-half miles northwest of the land above described."

And because of said stipulation no proof of the continuous and beneficial use of said waters was required or submitted.

BERT H. MILLER?

That in addition to the lands and water rights above described and for which it was stipulated that the said Bert H. Miller would be required to submit proof of the continuous and beneficial use, he, the said Bert H. Miller, being the then owner of the northeast quarter of the northwest quarter, the northwest quarter of the southeast quarter, and the northeast quarter of section 27; the west half of the northwest quarter of section 26, township 13 range 39, EBM, at pages 588-592 through himself and the witness Roscoe Smith made proof of the continuous and beneficial use of the water of Dry Creek herein it is shown that upward of 125 acres of said 160 acres has been continuously irrigated by the said Bert H. Miller and his predecessor in interest since the year 1903 and that said evidence of said water right from said Dry Creek is evidenced by notice of water right dated June 21st 1902 recorded in book B of notice of water rights at page 461 of the records of Fremont County, Idaho following an of eight cubic feet of the water of said Dry Creek by James H. Bramwell and James H. Cochran predecessors in interest of the said Bert H. Miller, which said notice of water right is set out in full in the answering cross-complainant of the said Bert H. Miller and marked Exhibit B.

ANNIE RASMUSSEN.

At page 30 of said record it was stipulated as follows:

"It is further stipulated that the defendant and cross complainant, Annie Rasmussen, may be decreed a water right for 250 miners inches of the waters of West Camas Creek, with priority of April 1, 1889, for the irrigation of lots 1 and 2, the east half of the northwest quarter, and Lots 3 and 4, and the east of the southwest quarter of section 31, township

-16-

CHARLES SAUREY

Charles Saurey is the owner of 14 shares of the capital stock of the Harmon Reservoir Company, a corporation. This company is the owner of a decreed right under the Cartier v. Buck decree introduced in evidence. The rights of this reservoir company were largely covered by stipulation, at page 1826 the quantity of water represented by each share was stipulated.

At pages 872-878 proof of the continuous beneficial use of the water claimed by this defendant was submitted showing him to be the owner of the west half of the east half of section 12 township 12 north, range 36 EDM on which said ~~water~~ is and has been used.

Respectfully submitted,

[Signature]
F. A. Miller
St. Anthony, Idaho
[Signature]
B. H. Miller
Idaho Falls, Idaho

Attorneys for above named
defendants and counter-
claimants

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.



SIGNATURE <i>Steven M. Edwards</i>	
NAME Steven M. Edwards	DATE 11/27/01
TITLE Regional Administrator, Pacific Alaska Region	
NAME AND ADDRESS OF DEPOSITORY National Archives & Records Admin. 6125 Sand Point Way NE Seattle, WA 98115-7999	

335C

NA FORM 13040 (10-86)

IN THE DISTRICT COURT OF THE UNITED STATES,
IN AND FOR THE DISTRICT OF IDAHO,
EASTERN DIVISION.

U. S. DISTRICT COURT
DISTRICT OF IDAHO

FILED SEP 11 1930

ERNEST SAUVE,

Plaintiff,

v.

W. H. ABBOTT, et al.,

Defendants.

W. D. McREYNOLDS, Clerk
By *Louise M. M. M.* Deputy

No. 635.
MEMORANDUM OPINION.

-----O-----
Sept. 11, 1930.
-----O-----

H. S. MacMartin, Attorney for Plaintiff.

Bash L. Bennett, C. E. Crowley, W. D. Gillis, Attorney
General, L. E. Glennon, E. M. Holden, Ivan L. Jensen,
O. A. Johannesen, Otto E. McCutcheon, F. A. Miller,
Bert H. Miller, J. H. Peterson, Edwin Snow, Frank L.
Soule, Soule & Spaulding, H. B. Thompson, and A. H.
Wilkie, Attorneys for Defendants.

CAVANAH, DISTRICT JUDGE:

This suit involves the adjudication of the use
of the waters of Mud Lake and its tributaries, and, like
many others of the same general character, presents for
solution questions difficult of adjustment in the adminis-
tration of the irrigation laws in different localities.
While a large number of the rights are settled by stipula-
tion, yet there remains certain rights relating to users
of water in dispute to be determined. Mud Lake is a natu-
lake, and its principal supply of water is furnished

RIGHT OF MERRITT E. STALEY, Sr.

This right is stipulated, and will be so awarded 120 inches of water from Mud Lake, with priority November 28, 1919. (Vol.1, p.116, Transcript.)

RIGHTS OF BERT H. MILLER.

There are two rights of claimant stipulated:

Under first stipulation he is entitled to 40 inches of the waters of Cottonwood Creek, with priority of October 1, 1900, and 225 inches of the waters of Cottonwood Creek, with priority of May 1, 1898.

Under the second stipulation he is entitled to, and the proof shows continuous use of, 125 inches of the waters of Dry Creek, with priority of June 21, 1902.

RIGHTS OF ANNIE RASMUSSEN

This claimant has two stipulated rights:

First for 10.3 cubic feet of the waters of Sawmill Creek, Spring Creek and seepage water, with priority of September 20, 1904

Second for 250 inches of the waters of West Camas Creek with priority of April 1, 1889.

The proof shows that there has been continuous^{use} of the water under these claims upon the land owned by claimant,, and should be included in the decree.

RIGHT OF UNION CENTRAL LIFE INSURANCE CO.

Claimant is successor in interest of defendant Marlborough Smith, and is entitled, under the stipulation, to 150 inches of the waters of Ching Creek, with priority of June 1, 1889.

In addition to the above right, claimant is entitled to

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IDAHO, EASTERN DIVISION

ERNEST SAUVE,

Plaintiff,

-vs-

W. H. ABBOTT, et al.,

Defendants.

No. 635 in Equity

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

EXHIBIT

5

And WHEREAS, thereafter due and regular service of Summons issued on said complaint as amended was made upon all of the remaining parties defendant mentioned in said complaint as amended, either personally or by due publication, as shown by the records and files in said cause, or such defendants have appeared generally in this action by and through their duly authorized solicitor or solicitors, there being included within this latter class both original defendants and intervenors, and

WHEREAS, Joseph H. Peterson, Esq., of Pocatello, Idaho, Messrs. George H. Smith, H. B. Thompson, and John H. McEvers, of Salt Lake City, Utah, and Pocatello, Idaho, respectively; T. C. Coffin, Esq., of Pocatello, Idaho; Edwin Snow, Esq., of Boise, Idaho; Messrs. Merrill and Merrill, of Pocatello, Idaho; A. H. Wilkie, Esq., of Idaho Falls, Idaho; L. E. Glennon, Esq., of Pocatello, Idaho; C. E. Crowley, Esq., of Idaho Falls, Idaho; Bash L. Bennett, Esq., of Rigby, Idaho; E. M. Holden, Esq., of Idaho Falls, Idaho; Messrs. Bert H. Miller and Frank A. Miller, of Idaho Falls and St. Anthony, Idaho, respectively; O. A. Johannesen, Esq., of Idaho Falls, Idaho; Otto E. McCutcheon, Esq., of Idaho Falls, Idaho; Frank L. Soule, Esq., of St. Anthony, Idaho; L. Ivan Jensen, Esq., of Shelley, Idaho; Messrs. Frank L. Stephan and W. D. Gillis, Attorneys General of the State of Idaho; Messrs. O'Melveny, Tuller & Myers, of Los Angeles, California, (not of record but of counsel in connection with two clients of Solicitor Joseph H. Peterson); and Soule and Spalding, of Salt Lake City, Utah, (not of record but of counsel

in connection with Solicitor Frank L. Soule), represented the defendants who appeared in this cause and whose names are set forth in the following list -- the names of the solicitors of such defendants, respectively, being written opposite their several names, to-wit:

<u>Defendant</u>	<u>Attorney</u>
Abbott, Fay	Johannesen
Abbott, W. H.	Johannesen
Adels, Mary C.	McCutcheon
Allen, G. B.	Peterson
Anderson Bros. Bank, a corporation	McCutcheon
Auldhouse, Clauson (otherwise known as Ouldhouse and Oldhouse)	McCutcheon
Auldhouse, Gerret (otherwise known as Gerrett Ouldhouse and Oldhouse)	McCutcheon
Barnes, Edward C.	McCutcheon
Barney, Lovisa	Miller & Miller
Bauerle, Ernest	Wilkie
Beck, William	Holden
Beckner, Ambrose J.	Bennett
Bohney, Ray	Bennett
Boucher, W. B.	McCutcheon
Brauer, Gus. E., Administrator of the Estate of Annie J. Bennett, deceased	Miller & Miller
Burnside, Arthur G.	Holden
Burnside, Don R.	Holden
Burnside, John H.	Holden
Burnside, Robert	Holden
Burnside Bros., a co-partnership con- sisting of John H. Burnside and Don R. Burnside	Holden

Harwood, Charles	Bennett
Harwood Brothers Company, Limited, The,	
a corporation	Bennett
Hays, John W.	Holden
Hays, John W., Jr.	Holden
Hays, Olive M.	Holden
Henninger, Elvin W.	Miller & Miller
Henninger, Dolly M.	Miller & Miller
Hervey, William Rhodes, as trustee	Peterson <i>Maloney, Fuller,</i>
Hillman, M.	Miller & Miller <i>NY</i>
Hirchi, David, Sr., (also spelled Hirschi)	Miller & Miller
Hirchi, David, Jr., (also spelled Hirschi)	Miller & Miller
Hjort, Charles A.	Peterson
Hoffman, E. V.	Holden
Holley, William C.	
Holley Water Users Association, The, a	Johannesen
corporation	Holden
Hoops, Jonathan N.	McCutcheon
Hutchinson, William H.	McCutcheon
Hyland, John J.	
Jackett, Frank S.	Glennon
Jackett, H. R.	Glennon
Jackson, Thos. A.	Bennett
Jacoby, Elizabeth	Holden
Jacoby, Joseph P.	Holden
Jefferson Irrigation Company, Limited, a	
corporation	Johannesen
Jefferson Irrigation District, a public	
corporation	Johannesen
Jemmett, Fred G., Administrator of the	
Estate of William Jemmett,	McCutcheon
Deceased	McCutcheon
Jensen, Alma	Holden
Jensen, Emil	Miller & Miller
Jensen, H. P.	
~~Johnson, Oscar Julius~~	
Johnson, Oscar Julius	Johannesen
Kearney, Arvilla	L. Ivan Jensen
Kelson, Neils	Miller & Miller
Kendrick, Sarah Ann	Holden
King, Paul A.	Holden
Knotwell, Thomas	Miller & Miller
Kroker, Elsbeth Marie Adolphine (see	
Reber)	Miller & Miller
Kroker, Elsbeth Marie Adolphine, as	
Executrix of the Estate of	Miller & Miller
Joseph Kroker, Deceased	

XVIII

That the following rights have been agreed upon by stipulation of all counsel in this cause as of the date of the state permit and/or license or decree upon which initiated or based -- proof of continuous beneficial use subsequent to the issuance of such permit and/or license or the rendition of such decree being required. From such stipulations and from the evidence, the Court finds that the several defendants hereinafter named are respectively the owners of the water rights, with the dates of priority indicated in connection with their respective names, in the following schedule, to be diverted from the source or sources and at the point or points, and to be used on their respective lands, as described in such schedule, and that said defendants or their predecessors in interest have respectively made continuous beneficial use of said waters from the date of the issuance of permit and/or license or the rendition of the decree upon which said rights are respectively based, to-wit:

Bert H. Miller

1902 - June 21

2.5 c.f.s. Source: Dry Creek, a tributary
of Camas Creek.

Point of Diversion: About two miles
in an easterly direction from the
lands to be irrigated and hereinafter
described, said point being in
Section 19, Township 13 North,
Range 40 East, B.M.

For use on the following described
land, to-wit: The Southeast Quar-
ter of the Northeast Quarter; the
West Half of the Northeast Quarter;
and the Northeast Quarter of the
Northwest Quarter of Section 26,
Township 13 North, Range 39 East,
B.M.

CONCLUSIONS OF LAW

I

That the Court has jurisdiction of all of the parties to this suit (including intervenors), and of the subject matter thereof;

That the corporate existence, citizenship, residence, and marital or other status or representative capacity of the parties (including intervenors) hereto is as set forth in plaintiff's complaint as amended.

II

That this action should be dismissed as against Thomas Wagoner.

III

That Edward C. Barnes and Robert D. Clinton are not entitled to any decree or award herein.

IV

That the rights of Henry W. Curtis, deceased, should be decreed to the Hamer Canal Company, a corporation;

That the rights of Thomas A. Jackson, deceased, should be decreed to Earl Jackson as administrator of his estate;

That the rights of Adolph Miller, Deceased, should be decreed in the name of William H. Miller as Administrator of his estate;

XVI

That neither the plaintiff nor any of the defendants and intervenors is entitled to any award or decree herein except as hereinafter set forth.

XVII

The Court concludes that there should be awarded fully stipulated rights to the respective defendants hereinafter named in the following schedule, in the amount or amounts, with date or dates of priority, from the source or sources of supply, at the point or points of diversion, and for use upon the land or lands in such schedule set forth:

XVIII

From the stipulations and proof herein, the Court concludes that there should be awarded rights to the respective defendants hereinafter named in the following schedule, in the amount or amounts, with date or dates of priority, from the source or sources of supply, at the point or points of diversion, and for use upon the land or lands, in such schedule set forth:

Bert H. Miller

1902 - June 21

2.5 c.f.s.

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For use on the following described
land, to-wit: The Southeast Quar-
ter of the Northeast Quarter; the
West Half of the Northeast Quarter;
and the Northeast Quarter of the
Northwest Quarter of Section 26,
Township 13 North, Range 39 East,
B.M.

No. _____

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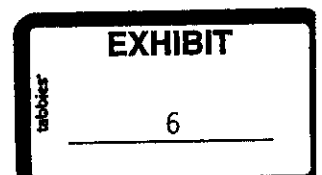
By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is true and correct copy of documents in his custody.



SIGNATURE <i>Valorie J. Ambrose</i>	
NAME <i>for</i> Steven M. Edwards	DATE 11/27/01
TITLE Regional Administrator, Pacific Alaska Region	
NAME AND ADDRESS OF DEPOSITORY National Archives & Records Admin. 6125 Sand Point Way NE Seattle, WA 98115-7999	

3356

NA FORM 13040 (10-88)



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF IDAHO, EASTERN DIVISION.

ERNEST SAUVE,

Plaintiff,

-vs-

No. 635 -- In Equity

D E C R E E

W. H. Abbott, Fay Abbott, Mary C. Adels, Allen Almonda, G. B. Allen, Allen & Harn, a co-partnership, consisting of G. B. Allen and H. R. Harn; Wm. A. Andrews, Joseph Andrasen, Anderson Bros. Bank, a corporation; Gerret Auldhouse (sometimes known as Gerret Oldhouse); Clausen Auldhouse (sometimes known as Clausen Oldhouse), William Axline, Ernest Bauerle, Edward C. Barnes, May L. Barnes, Lovisa Barney, Arthur J. Barber, Charles Bartlett, Ambrose J. Beckner, Laura E. Beckner, William Beck, David Bethune, Lloyd Bennett, Gus E. Brauer, Administrator of the Estate of Annie J. Bennett, deceased; A. W. Belnap, C. W. Belnap, The Bennett Investment Company, Limited, a corporation; Gussie Binnard, Burka Binnard, Horace L. Birch, Binnard Ranch Company, a corporation; B. Binnard, Sarah Binnard and E. F. Mobley, Trustees for Binard Ranch Company, a defunct corporation; Charles O. Rickman, as Trustee in Bankruptcy of Binnard Ranch Company, a corporation; Oscar A. Johanneson, as Receiver of Binnard Ranch Company, a corporation; Heber J. Blackburn, W. B. Boucher, Ray Bohney, R. T. Boatman, Mary Nicholas Boyd, Frank Boe, Charles E. Brosic, E. L. Browning, Adna E. Bramwell, Afton Bradshaw, Theresa Brinkmann, Lottie Burcham, G. F. Burcham, Katherine Burggraf, Anna M. Burggraf, John Burks (sometimes known as John Birks); John H. Burnside, Don R. Burnside, Arthur G. Burnside, Robert Burnside, Alexander Burrus, Burnside Bros., a co-partnership, consisting of John H. Burnside and Don R. Burnside; Vienna Carter, Luther V. Capps, Fred C. Carrell, Alice M. Cain, Charles G. Carlson, Albert Calkins, Elizabeth G. Capps, John Campbell, A. E. Carlson, Charles Campbell, Camas Mutual Irrigation District, a public corporation of Clark County, Idaho; Irene M. Cerney, Central Idaho Irrigation District, a public corporation of Jefferson County, Idaho; Chris Christensen, E. L. Chesney, Annie Chesney, Mrs. Margaret Chambers, Louella May Cherry, Oscar R. Christenson, Frank H. Churchill, C. F. Churchill, William P. Chisholm, Allie D. Charles, John Henry Cline, John Doe Clarke, Robert D. Clinton, S. K. Clark, W. R. Clark, Clark County, one of the organized counties of Idaho; Kadiah Cormack, Geo. Councman, Robert A. Counell, Jos. J. Conway, J. Sturlin Cochran, Ross J. Comstock, David Coe, Marguerite Comstock, Cleo Cramer, C. C. Crapo, John E. Criddle, Mary A. Crigler, Crystal Lake Irrigated Lands Company, a corporation; Aggie D. Cutler, Henry W. Curtis, W. W. Curran, William Dalton, Charley E. Davis, E. W. Davis, Lillian J. Woodruff Dahman, John Doe Denning, Denning-Clark Live Stock Company, Limited, a corporation; J. W. Dill, Henry Dieringer, Margaret Donahue, Administratrix of the Estate of Patrick J. Donahue, deceased; Margaret Donahue, H. S. Dudley, Harry Dunn, Dubois Irrigation Company, a co-partnership; Julius E. Edell, J. Orval Elsworth, Jennie Ellis, R. P. Ellis, Emily E. Elsworth, H. A. Englund, Mary L. Englund, Mari Amanda Engquist, Lulu M. Ewing, Robert H. Ewing, Robert P. Fairbanks, John M. Fausett, William Fausett, Farm Credit Corporation, a corporation; Mike Fedezak, W. F. Felhaber, Mrs. W. F. Felhaber, Federal Land Bank of Spokane, a corporation; Henry Fitter, First National Bank of Blackfoot, a corporation; First National Bank of Dubois, a corporation; First National Bank of Los Angeles, a corporation; Frederick Fluekiger, Mattie Forbes, Charles Foe, Hans E. Fredrickson, Fred C. Fredrickson, Fredrick Fredrickson, Christine Fredrickson, John Chas. Fullmer, Jr., La Verne Hoops Gayle, Robert E. Gallagher, Harry P. Gerard, Lester W. McGovern, Administrator of the Estate of Raymond S. Glover, deceased; F. H. Godfrey, Jane Goe, Marietta Green, Geo. Green, Edgbert C. Griffin, Virgil Greene, John Hansen, Nettie Hale, Marie Hartwell, Alice F. Hanny, Nellie M. Harwood, James F. Hart, Charles Harwood, Allen Harwood, Denby Harwood, John W. Hays, Olive M. Hays, Elwyn B. Hardy, Katrena D. Hardy, David V. Hagenbarth, Charles Hart, John W. Hart, John W. Hart, Jr., Sally G. Haines, Newell L. Haines, F. H. Hales, Ernest Halverson, F. J. Hagenbarth, Sidney A. Hanks, Wallace D. Hayes, Martin D. Harmon, John W. Hays, Jr., Martha E. Hanks, The Harwood Brothers Company, Limited, a corporation; Harmon Reservoir Company, Limited, a corporation; Harwood Bros., a co-partnership, consisting of Charles Harwood, Allen Harwood and Denby Harwood; Hamer Canal Company, a corporation; Hamer Land and Irrigation Company, a corporation; The Hamer Feeder Canal Company, a corporation; William C. Holley, David A. Sanders, Mark C. Pratt, J. C. Lang, George R. Larsen, C. Woidemann, Frank P. Whitney, J. S. Truex, Ove Andreasen and F. W. Taylor, as trustees for The Hamer Feeder Canal Company, a defunct corporation; Hamer Artesian Wells Irrigation District, a public corporation of Jefferson County, Idaho; William Rhodes Hervey, as trustee; Edna E. Smith Head, Elvin W. Henninger, Dolly M. Henninger, William N. Herrick, Rolla C. Hix, Walter L. Hicks, Mrs. Caroline Hicks, David Hirchi, Jr., David Hirchi, Sr., John Doe Hirchi, M. Hillman, David Hirchi & Sons, a co-partnership, consisting of David Hirchi, Sr., David Hirchi, Jr., and John Doe Hirchi; Charles A. Hjort, C. E. Howard, Emile Hohler, William S. Horsman, John Howes, William C. Holley, Edith F. Hogan, George Hogg, George A. Hoops, Jonathan N. Hoops, E. V. Hoffman, Henry J. Hoffman, Mary Hoe, Charles G. Hoops, The Holley Water Users Association, a corpor-

ation; John L. Hutton, Guy Hulderbran, William H. Hutchinson, F. A. Hyde, John J. Hyland, Idaho Realty and Investment Company, a corporation; D. H. Janssen, Thos. A. Jackson, Frank S. Jackett, H. R. Jackett, Joseph P. Jacoby, Elizabeth Jacoby, Harry E. Jackson, W. M. Jardine, as Secretary of Agriculture of the United States; Janssen & Englund, a co-partnership, consisting of D. H. Janssen and H. A. Englund; Harry L. Jenkins, Fred G. Jemmett, Administrator of the Estate of William Jemmett, deceased; Alma Jensen, Nina Jensen, The Unknown Heirs of Ellen Jensen, deceased; The Unknown Devises of Ellen Jensen, deceased; Roy Jernberg, Emil Jensen, H. P. Jensen, Halvor Jeldness, Chris P. Jensen Ezra P. Jensen, Edward Jernberg, Jefferson County, one of the organized counties of Idaho; Jefferson Irrigation District, a public corporation of Jefferson County, Idaho; Jefferson Irrigation Company, Limited, a corporation; Charles Jernberg, Frank E. Jones, Oscar Julius Johnson, John W. Jones, Gregory Jones, Barnard F. Johnson, Roy E. Joslin, Charlotte F. Joslin, John L. Jones, Anna H. Johnson, Charles Johnson, Edw. T. Johnson, Arvilla Kearney, Sarah Ann Kendrick, George H. Keeth, Samuel M. Kennell, Neils Kelson, Wm. J. Kirk, Paul A. King, Leon Kirkham, Herman F. Klamt, John P. Klein, Thomas Knotwell, Tony Konda, Nicholas J. Konen, August Kreutzer, Michael Kreutzer, Charles Kroker, Elsbeth Marie Adolphine Kroker, Elsbeth Marie Adolphine Kroker, as Executrix of the Estate of Joseph Kroker, deceased; Peter Kuharski, Geo. Lake, Lynn Lake, William S. Lair, John C. Lang, Geo. R. Larson, James Laird, Joseph Laird, E. W. Laird, Frank N. Lauder, Pete Lawson, Chas. Larson, Polly A. Landon, Samuel Leek, Jr., Peter Lenner, Tony W. Levy, Jesse D. Lewis, James R. Leavitt, Ralph D. Leatherman, Richard E. Lee, Frank Livermore, William G. Liebel, Joseph L. Lorey, John B. Loewin, Earl J. Love, Orin W. Louis, Los Angeles Trust & Savings Bank, a corporation, as trustee; Geo. E. Lufkin, Samuel Lundholm, Cynthia Lundholm, Titus Marshall, Edgar Magill, C. O. Magill, Wm. H. Martin, M. C. Madison, Edward McCauley, Maud R. McGuire, Peter McKeivitt, Frank E. McClain, Mary L. McCann, Orrin H. McClelland, Pete McGary, Sabinus M. McWhorter, William McGovern, Henry McGary, Isabella McGary, Leah McGovern, Lester McGovern, Minnie McNeley, James A. Melton, Rosa Miller, Dudley Milano, Joseph Milano, Wm. A. Miller, Edwin T. Miller, Hugh Mitchell, Alexander Mitchell, Bernice M. Milburn, Mary Mitchell, Adolph Miller, Lee Charles Miller, Albert E. Miller, Bert H. Miller, Ross Miles, Orin D. Morse, Bernard J. Mooney, E. C. Mobley, Ida Muehlfeit, Thomas D. Murphy, Alvin W. Munns, D. T. Murphy, Mud Lake Canal Company, a corporation; Mud Lake Irrigation District, a public corporation of Jefferson County, Idaho; T. W. Naylor Company, a corporation; Anders Neilson, Thomas Newnhan, Louisa Neville, Melvin Neilson, Andrew E. Newbold, Andrew Nelson, Daniel C. Neville, Clyde A. Nickel, Carl F. Nordstrum, North Lake Canal Company, a corporation; John Joe, Richard Koe, Henry Loe, John Moe and Richard Poe, as trustees for North Lake Canal Company; Josephine O'Brien, Bartholomew O'Brien, John J. O'Brien, Henry O'Leary, Geo. A. Olmstead, Mabel E. Orin, August W. Ossman, The Oregon Mortgage Company, Limited, a corporation; Oregon Short Line Railroad Company, a corporation; Charles O'Toole, Bertha I. Owsley, Merritt M. Owsley, Owsley Co-operative Ditch Company, a co-partnership; Owsley Canal Company, a corporation; Erie Palmgren, E. F. Palmer, William A. Patt, Frank Patt, Bert H. Paul, Andrew J. Patt, Gardiner A. Pease, O. E. Peterson, John R. Peterson, Martin Peterson, Marie V. Peterson, Isabel M. Peterson, George D. Peterson, Lloyd G. Peterson, Vier Peterson, Alvelda Peterson, Augustine Pierre, Gustave Pierre, Richard S. Pingree, I. V. Pitner, Frank Plastino, James A. Potter, Joseph P. Potter, Jas. W. Polson, Emry Poulson, Lottie Collins Poulson, Carrie Elizabeth Preston, Prudential Insurance Company of America, a corporation; C. A. Randall, G. M. Rasmussen, Annie Rasmussen, Myers Rasmussen, Agnes Rasmussen, Anna M. Rasmussen, The Rays Lake Irrigating Company, Limited, a corporation; Henry C. Remington, Jas. L. Riley, James H. Richardson, Emma M. Riley, Alvin Richardson, Michael J. Rowan, Luke Rowan, Paul Robinson, Lloyd Roberts, Mrs. Emma Robbins, Gordon W. Rossback, Frank Robinson, Rufus Rush, Geo. R. Rymer, Andreas Sandbeck (sometimes known as Andreas Sandbach); D. A. Sanders, J. L. Sanders, Fred Sanders, Charles Saurey, George S. Samuel, Irwin L. Schnaverly, Carl Schindler, Charles J. Schaller, Benj. C. Scott, William Sellers, Frank Shivers, Alice Shuttleworth, Bert Shoaf, John T. Sidley, Jacob A. Simmons, John W. Simpson, Nellie Sidley, O. O. Skallet, A. Skoda, (sometimes known as A. Scoda); William Sloan, Henry C. Smith, Chet T. Smith, Gustave Spong, Merritt E. Staley, Jr., J. I. Staker, Merritt E. Staley, Sr., State of Idaho, J. B. Stringham, Marlborough Smith, David Stringham, Wilbur Street, P. D. Stoops, Albert C. Swanstrom, Frank Sykes, J. T. Sykes, E. J. Taylor, Cleo Thieman, A. S. Thompson, D. S. Thomas, Ruthven B. Thompson, Chas. Thieman, The Unknown Heirs of Bert Toliver, deceased; The Unknown Devises of Bert Toliver, deceased; Sadie Turman, James R. Turman, Jr., The Unknown Owners, Users and Appropriators of the waters of Beaver Creek and its tributaries, a stream rising in the northern part of Clark County, Idaho, and flowing in a southerly direction through Clark and Jefferson Counties, Idaho, until its junction with Camas Creek, of which it is a tributary; The Unknown Owners, Users and Appropriators of the waters of Camas Creek and its tributaries, a stream rising in the northeastern part of Clark county and flowing in a southwesterly direction through Clark and Jefferson Counties, Idaho, until it reaches and empties into what is known as Mud Lake (sometimes called Crystal Lake) in Jefferson County, Idaho; The Unknown Owners, Users and Appropriators of the waters of what is known as Mud Lake (sometimes called Crystal Lake) situated in Jefferson County, State of Idaho; The Unknown Owners, Users and Appropriators of the waters of North Lake, Deadline Lake, Rays Lake, Sandhole Lake and various unnamed lakes and sloughs whose waters contribute to the supply of and flow into Mud Lake in Jefferson County, Idaho; Union Central Life Insurance Company, a corporation; George H. Van Houten, Ludger Vadnis, Hannah Vosatka, C. B. Watts, Thos. E. Watts, William B. Wardle, Thomas Wagoner, Catherine A. Walker, William Walker, Robert S. Watson, John H. Walker, Oliver Warmoth, Thos. A. Wagoner, Clara M. Welchman, Geo. Welchman, Earl H. Weaver, Thomas Whorton, Mary J. Wilson, Thomas H. Winder, Logan B. Wilson, M. L. Wilmot, James McKay Winchester, Alice Williams, John L. Wilson, Marie Wiley, H. C. Wood, Perry B. Woodard, John W. Wood, Wood Live Stock Company, a corporation; Will E. Yorty, Clement A. Young, Joseph H. Zink, Katie E. Zink, ~~and~~ and

PART II.

SCHEDULE OF RIGHTSDefinitions:

- c.f.s. is used throughout this schedule to designate a flow of one cubic foot of water per second of time.
- inch (meaning one inch) where and if used in this decree to indicate water rights shall be construed to be the equivalent of 1/50th of a cubic foot per second of time.
- use Water herein decreed for use on land shall be construed to include the usual ordinary and customary use thereof for irrigation, for watering livestock, and for other domestic purposes.

Note: The left-hand column of this schedule of rights, headed "Name and Date of Priority", shows the name of the owner of the water right or water rights, the date or dates of priority, and for convenience the water right or water rights of each individual are given a number, which number appears at the lower left-hand corner of the paragraph defining the water right or water rights decreed to each individual. The center column shows the amount of water in c.f.s. under each date of priority. The right-hand column gives the source, the point of diversion, and the description of the land constituting the place of use.

Bert H. Miller

1898 - May 1 4.5 c.f.s.

Source: Cottonwood Creek, a tributary of Camas Creek.

1900 - October 1 0.8 c.f.s.

Point of Diversion: One and one-half mile Northwest of the land to be irrigated, and hereinafter described.

For use on the following described land, to-wit: The Northeast Quarter of the Northwest Quarter; the Northwest Quarter of the Southeast Quarter; and the Northeast Quarter of Section 27; the West Half of the Northwest Quarter of Section 26; the East Half of the Southeast Quarter of Section 27; the North Half of the Northeast Quarter of Section 34; all in Township 13 North, Range 39 East, B.M.

1902 - June 21 2.5 c.f.s.

Source: Dry Creek, a tributary of Camas Creek.

Point of Diversion: About two miles in an easterly direction from the lands to be irrigated and hereinafter described, said point being in Section 19, Township 13 North, Range 40 East, B.M.

For use on the following described land, to-wit: The Southeast Quarter of the Northeast Quarter; the West Half of the Northeast Quarter; and the Northeast Quarter of the Northwest Quarter of Section 26, Township 13 North, Range 39 East, B.M.

No. 79

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
2 EASTERN DIVISION U. S. DISTRICT COURT
3 Lodged. Filed at _____ M
4 UNITED STATES OF AMERICA, U. S. DISTRICT COURT
5 Filed at 11:20 P M DEC 29 1959
6 Plaintiff, ED. M. BRYAN Clerk
7 - VS - CIVIL NO. 2083
8 Defendant.) J U D G M E N T

9
10 THIS CAUSE coming on for final hearing on the 9th day of June,
11 1958, pursuant to order of the Court heretofore made and entered herein,
12 the plaintiff appearing by and through Ben Peterson, United States
13 Attorney, and R. E. Whittier, Assistant U. S. Attorney, and the defend-
14 ant appearing neither through his counsel nor in person, and the
15 plaintiff having offered oral and documentary evidence, and the Court
16 having entered Findings of Fact and Conclusions of Law in this case,
17 NOW, THEREFORE,

18 IT IS HEREBY ORDERED, DECREED AND ADJUDGED:

19 I

20 That Dry Creek, which runs into Spring Creek and is a tributary
21 of Camas Creek is a natural stream of water situated in Clark County,
22 Idaho;

23 II

24 That the United States of America is the owner of the following
25 described lands:

26 The Northeast Quarter of the Northwest Quarter,
27 the West Half of the Northeast Quarter, the
28 Northwest Quarter of the Southeast Quarter, the
29 Northeast Quarter of the Southwest Quarter, the
30 Northwest Quarter of the Southwest Quarter, the
31 Southeast Quarter of the Northwest Quarter, the
32 Southwest Quarter of the Northwest Quarter, all
in Section 30, Township 13 North, Range 40 East, B.M.

Also, the Southeast Quarter of the Northwest Quarter,
the Northeast Quarter of the Southwest Quarter and
the Southeast Quarter of the Southwest Quarter of
Section 19, Township 13 North, Range 40 East, B.M.

The Northeast Quarter of the Southwest Quarter;
the Southwest Quarter of the Southwest Quarter, all in
Section 30, Township 13 North, Range 40 East, B. M.

The Southeast Quarter of the Southwest Quarter;
the Southwest Quarter of the Southwest Quarter,
the Northwest Quarter of the Southwest Quarter,
the Northeast Quarter of the Southwest Quarter;
The Southeast Quarter of the Northwest Quarter;
the Northeast Quarter of the Northwest Quarter,
all in Section 19, Township 13 North, Range 40 East, B.M.

The South Half of the Northeast Quarter of Section 25,
Township 13 North, Range 39 East, B.M.

III

That on the 1st day of November, 1930, there was entered in the
District Court of the United States of America for the District of
Idaho, Eastern Division, in the case of Ernest Suave v. W. H. Abbott,
et al, Case No. 635, a decree of distribution, decreeing among other
things the water of Dry Creek and Spring Creek; that Water Right No. 79
of said decree was granted to Bert H. Miller, with a priority date of
June 21, 1902, for 2.5 cfs from Dry Creek, a tributary of Camas Creek;
that the defendant, Leo Singleton, is the successor in interest of the
said land to which this water was decreed appurtenant; that there has
been no use of said water right on the said land since May 1, 1924;
and that said water right has been abandoned by the said defendant,
Leo Singleton, and his predecessors in interest.

IV

The plaintiff, United States of America, is entitled to the follow-
ing water right:

10.0 c.f.s. of the waters of Dry Creek which run into Spring Creek,
a tributary of Camas Creek with a priority date of May 1, 1924.

Points of Diversion: SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 9, T. 13 N., R. 40 E., B.M.;
SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, T. 13 N., R. 40 E., B.M.; and the SE $\frac{1}{4}$ SW $\frac{1}{4}$
Sec. 19, T. 13 N., R. 40 E., B.M.

For use on the following described land, to-wit:

The Northeast Quarter of the Northwest Quarter, the
West Half of the Northeast Quarter, the Northwest
Quarter of the Southeast Quarter, the Northeast
Quarter of the Southwest Quarter, the Northwest
Quarter of the Southwest Quarter, the Southeast
Quarter of the Northwest Quarter, the Southwest
Quarter of the Northwest Quarter, all in Section 30,
Township 13 North, Range 40 East, B.M.

1 Also, the Southeast Quarter of the Northwest Quarter,
2 the Northeast Quarter of the Southwest Quarter and
3 the Southeast Quarter of the Southwest Quarter of
4 Section 19, Township 13 North, Range 40 East, B.M.

5 The Northeast Quarter of the Southwest Quarter;
6 the Southwest Quarter of the Southwest Quarter, all
7 in Section 30, Township 13 North, Range 40 East, B.M.

8 The Southeast Quarter of the Southwest Quarter;
9 the Southwest Quarter of the Southwest Quarter,
10 the Northwest Quarter of the Southwest Quarter,
11 the Northeast Quarter of the Southwest Quarter;
12 the Southeast Quarter of the Northwest Quarter;
13 the Northeast Quarter of the Northwest Quarter, all
14 in Section 19, Township 13 North, Range 40 East, B.M.

15 The South Half of the Northeast Quarter of Section
16 25, Township 13 North, Range 39 East, B.M.

17 V

18 That all the lands hereinbefore mentioned and described are semi-arid
19 in character and require water for irrigation and without irrigation are
20 incapable of producing ordinary agricultural crops; that it is necessary
21 that 10.0 cfs of water be used to properly irrigate the aforescribed
22 land;

23 VI

24 That the irrigation season, during which the water users from Camas
25 Creek and its tributaries shall be entitled to the use of the water for
26 irrigation purposes, extends from May 1 of each year to on or about
27 September 30 of each year, that irrigation depends upon climatic conditions
28 and changes in the season, the season hereby fixed shall not prevent water
29 users awarded a right herein from using the waters of Camas Creek and its
30 tributaries for the purposes of irrigation according to their relative
31 rights of priority, and in quantities in accordance with this decree, at
32 other times when such use will be beneficial to the land and the crops
grown thereon when the ground is not frozen and the same can be used
without needless waste;

33 VII

34 The defendant is enjoined from interfering with plaintiff's use of
35 said water right.

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Dated this 29th day of December, 1959.


FRED M. TAYLOR, District Judge
United States District Court.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO COURT
DISTRICT OF IDAHO
EASTERN DIVISION

U. S. DISTRICT COURT
DISTRICT OF IDAHO
DEC 29 1959

UNITED STATES OF AMERICA, Filed at 1120 P M
Plaintiff, DEC 29 1959 ED. M. BRYAN Clerk

- vs -

LEO SINGLETON, ED. M. BRYAN Clerk CIVIL NO. 2083
Defendant.) FINDINGS OF FACT

AND CONCLUSIONS OF LAW

The plaintiff, United States of America, having duly filed its complaint in equity in the above entitled court on October 24, 1957, and the court having jurisdiction under Title 28, U. S. Code, Section 1345; and

The defendant having appeared through his attorney E. H. Casterlin by the filing of a motion to dismiss and the defendant having thereafter on January 30, 1958, filed a withdrawal of motion and refusal to plead further; and

This cause having come on regularly for final hearing on June 9, 1958, the plaintiff appearing by and through Ben Peterson, United States Attorney, and R. M. Whittier, Assistant U. S. Attorney, and the defendant appearing neither through his counsel nor in person, and the plaintiff having offered oral and documentary evidence;

NOW, THEREFORE, the court being fully advised in the premises, makes the following findings of fact and conclusions of law in this case:

FINDINGS OF FACT

I

This is an action involving the United States of America and jurisdiction is based upon Title 28, U. S. Code, Section 1345;

II

Dry Creek which runs into Spring Creek is a natural stream of water situated in Clark County, Idaho, and is a tributary of Camas Creek;

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III

The United States of America is the owner of the following-described lands;

The Northeast Quarter of the Northwest Quarter, the West Half of the Northeast Quarter, the Northwest Quarter of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, the Northwest Quarter of the Southwest Quarter, the Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, all in Section 30, Township 13 North, Range 40 East, B.M.

Also, the Southeast Quarter of the Northwest Quarter, the Northeast Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 19, Township 13 North, Range 40 East, B.M.

The Northeast Quarter of the Southwest Quarter; the Southwest Quarter of the Southwest Quarter, all in Section 30, Township 13 North, Range 40 East, B.M.

The Southeast Quarter of the Southwest Quarter; the Southwest Quarter of the Southwest Quarter, the Northwest Quarter of the Southwest Quarter, the Northeast Quarter of the Southwest Quarter; the Southeast Quarter of the Northwest Quarter; the Northeast Quarter of the Northwest Quarter, all in Section 19, Township 13 North, Range 40 East, B.M.

The South Half of the Northeast Quarter of Section 25, Township 13 North, Range 39 East, B.M.

IV

On November 1, 1930, there was entered in the District Court of the United States of America for the District of Idaho, Eastern Division, in the case of Ernest Suave v. W. H. Abbott, et al, case No. 635, a decree of distribution, decreeing among other things the water of Dry Creek and Spring Creek; Water Right No. 79 of said decree was granted to Bert H. Miller, with a priority date of June 21, 1902, for 2.5 cfs from Dry Creek, a tributary of Camas Creek; the defendant, Leo Singleton, is the successor in interest of the said land to which this water was decreed appurtenant; there has been no use of said water right on the said land since May 1, 1924; and said water right has been abandoned by the said defendant, Leo Singleton, and his predecessors in interest.

V

The plaintiff, United States of America, has appropriated to

beneficial use water in the amount of 10.0 cfs, said amount having been used continuously, openly, notoriously and exclusively by the United States of America since May 1, 1924;

VI

All the lands hereinbefore mentioned and described are semi-arid in character and require water for irrigation and without irrigation are incapable of producing ordinary agricultural crops; it is necessary that 10.0 cfs of water be used to properly irrigate the aforescribed land;

VII

The irrigation season, during which the water users from Camas Creek and its tributaries are entitled to the use of the water for irrigation purposes, extends from May 1 of each year to on or about September 30 of each year, irrigation depends upon climatic conditions and changes in the season, the season hereby fixed should not prevent water users awarded a right herein from using the waters of Camas Creek and its tributaries for the purposes of irrigation according to their relative rights of priority, and in quantities in accordance with this decree, at other times when such use will be beneficial to the land and the crops grown thereon when the ground is not frozen and the same can be used without needless waste;

VIII

The points of diversion of all of the aforementioned water are located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, Township 13 North, Range 40 East, B.M.; SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, Township 13 North, Range 40 East, B.M.; and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 19, Township 13 North, Range 40 East, B.M. Each of the above stated points of diversion are used alternately or concurrently depending upon the amount of water available during the irrigating season;

CONCLUSIONS OF LAW

I

The Court has jurisdiction of all parties of this suit and the subject matter thereof;

II

The plaintiff, United States of America, is entitled to the following water right:

10.0 c.f.s. of the waters of Dry Creek which run into Spring Creek, a tributary of Camas Creek with a priority date of May 1, 1924.

Points of Diversion: SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 9, T. 13 N., R. 40 E., B.M.; SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, T. 13 N., R. 40 E., B.M.; and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 13 N., R. 40 E., B.M.

For use on the following described land, to-wit:

The Northeast Quarter of the Northwest Quarter, the West Half of the Northeast Quarter, the Northwest Quarter of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, the Northwest Quarter of the Southwest Quarter, the Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, all in Section 30, Township 13 North, Range 40 East, B.M.

Also, the Southeast Quarter of the Northwest Quarter, the Northeast Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 19, Township 13 North, Range 40 East, B.M.

The Northeast Quarter of the Southwest Quarter; the Southwest Quarter of the Southwest Quarter, all in Section 30, Township 13 North, Range 40 East, B.M.

The Southeast Quarter of the Southwest Quarter; The Southwest Quarter of the Southwest Quarter, The Northwest Quarter of the Southwest Quarter, The Northeast Quarter of the Southwest Quarter; The Southeast Quarter of the Northwest Quarter; The Northeast Quarter of the Northwest Quarter, all in Section 19, Township 13 North, Range 40 East, B.M.

The South Half of the Northeast Quarter of Section 25, Township 13 North, Range 39 East, B. M.

III

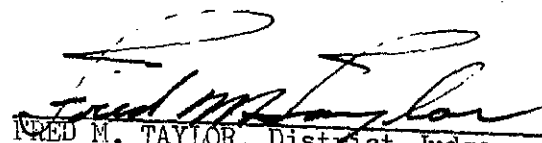
Dry Creek, which runs into Spring Creek and is a tributary of Camas Creek is a natural stream of water situated in Clark County, Idaho, and the lands aforescribed should have a total of 10.0 cfs of water for irrigation purposes;

IV

The defendant and his predecessors in interest have abandoned the Bert H. Miller right which was decreed to the land owned by him on Page 113 as Right No. 79 of Decree No. 635 in the above-entitled court;

V

The defendant should be enjoined from interfering with plaintiff's
use of said water right.


FRED M. TAYLOR, District Judge
United States District Court
for the District of Idaho.

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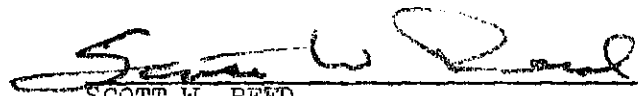
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
U. S. DISTRICT COURT
EASTERN DIVISION DISTRICT OF IDAHO
Filed at 1120 P M

DEC 29 1959

UNITED STATES OF AMERICA,)
Plaintiff,)
- VS -)
LEO SINGLETON,)
Defendant.)

ED. M. BRYAN Clerk
By LM
CIVIL NO. 2083
M O T I O N

COMES NOW the plaintiff by and through Scott W. Reed, Assistant United States Attorney, and moves this court for an order permitting the removal from the court file in the above entitled action of the unsigned findings of fact, conclusions of law and judgments lodged with the United States District Clerk on February 26, 1959, and December 10, 1959, on the grounds that said documents have no force and effect and further may tend to mislead.


SCOTT W. REED
Assistant United States Attorney

O R D E R

Plaintiff having made the above motion and good cause appearing therefore,

IT IS HEREBY ORDERED that the Clerk of the United States District Court shall forthwith remove from the file and destroy all unsigned findings of fact, conclusions of law and judgments.

Dated this 29th day of December, 1959.


FRED M. TAYLOR, District Judge
United States District Court.

United States of America
vs.
Leo Singleton, Defendant

) June 9, 1958
) No. 2083-E., Civil
) (Judge Fred M. Taylor)

This cause came on for hearing before the Court, R. Max Whittier, Assistant United States Attorney, appearing for the plaintiff, the defendant not appearing by counsel or otherwise, the default of the defendant having been heretofore entered.

Sterling Keith Erkanbrack, Alvin W. Henninger and Lee Jefferies were sworn and testified as witnesses on the part of the plaintiff and the cause was submitted to the Court.

The Court, being fully advised in the premises, granted decree for 10 cubic feet of water with priority date of May 1, 1924 and directed counsel for the plaintiff to prepare formal decree.

In the District Court of the United States,

DISTRICT OF IDAHO.
EASTERN DIVISION.

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 9:20 A.M.

UNITED STATES OF AMERICA,

JUN 9 1958

Plaintiff

vs.

No. 2083

ED. M. BRYAN, Clerk

By L.M. Deputy

LEO SINGLETON,

DEFAULT.

Defendant

IN THIS ACTION, The defendant Leo Singleton

having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the time allowed by law for answering having expired, the default of the said defendant Leo Singleton

in the premises is hereby duly entered according to law.

Witness my hand and the seal of said Court this 9th day of June, 1958

ED. M. BRYAN

Clerk.

By Lena Manser, Deputy Clerk.

GOVERNMENT PRINTING OFFICE

United States of America	)	(April 14, 1958)
vs.	)	No. 2083-E., Civil
Joe Singleton	)	(Judge Taylor)

This cause came on for disposition, R. Max Whittier, appearing for the plaintiff and E. H. Casterlin for the defendant. After a discussion between the Court and counsel, counsel for defendant advised the Court he refused to plead against the amended complaint. Thereupon, counsel was advised the case would be set for hearing at a later date.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at Idaho M

EASTERN DIVISION

MAR -7 1938

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
LEO SINGLETON,
Defendant.

ED. M. BRYAN Clerk

No. 2083

AMENDED COMPLAINT

The Plaintiff, the United States of America, by the United States Attorney's Office for the District of Idaho, acting under the direction of the Attorney General and pursuant to the provisions of Sec. 1345, Title 28, U.S.C., brings this proceeding against Leo Singleton, residing at St. Anthony, Idaho.

I

Plaintiff is the owner of certain water rights in Water District 66, Idaho; Clark County, Idaho; to-wit:

A. Water right #39 in the name of Elvin W. Henninger and Dollie M. Henninger, his wife, with a priority of September 2, 1922, for 4.2 cfs from the waters of Dry Creek which run into Spring Creek, a tributary of Camas Creek and further described in Decree in Equity #635 in the District Court of the United States for the District of Idaho, Eastern Division.

B. An unnumbered water right in the name of Elvin W. Henninger and Dollie M. Henninger, his wife, appropriated and put to beneficial use on May 1, 1932, for 5.8 cfs from the waters of Dry Creek which run into Spring Creek, a tributary of Camas Creek and further described in Decree in Equity #635 in the District Court of the United States for the District of Idaho, Eastern Division, entitled Ernest Suave v. W. H. Abbott et al., reference to which is hereby made.

C. Water right #79 in the name of Burt H. Miller with a priority date of June 21, 1902 for 2.5 cfs from Dry Creek, a tributary of Camas Creek and further described in Decree in Equity #635 in the District Court of the United States for the District of Idaho, Eastern Division.

II

That during all times herein mentioned the defendant and his predecessors in interest had a use for said water.

That Leo Singleton is the grantee of the land to which water right #79, aforementioned, was appurtenant, but your plaintiff alleges that defendant Leo Singleton and his predecessors in interest have manifested an intent to abandon, and have abandoned the water right referred to heretofore as water right #79 in Equity case #635 District of Idaho, Eastern Division and defendant Leo Singleton and his predecessors in interest have forfeited water right #79 described in paragraph I(C) above, under the provisions of Sec. 42-222 ICA by non-use for a period in excess of five (5) years; that the plaintiff is now the owner of water right #79 described in the aforementioned decree and that for the past twenty (20) years the plaintiff has beneficially made use of the said water; and has used said water, together with the water mentioned in paragraph I(A) and I(B) of this Amended Complaint on the following described real property, to-wit:

The Northeast Quarter of the Northwest Quarter, the West Half of the Northeast Quarter, the Northwest Quarter of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, the Northwest Quarter of the Southwest Quarter, the Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, all in Section 30, Township 13 North, Range 40 East, B. M.

Also the Southeast Quarter of the Northwest Quarter, the Northeast Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 19, Township 13 North, Range 40 East, B. M.

For use on the following described land, to-wit: The Northeast Quarter of the Southwest Quarter; the Southwest Quarter of the Southwest Quarter, all in Section 30, Township 13 North, Range 40 East, B. M.

The Southeast Quarter of the Southwest Quarter; the Southwest Quarter of the Southwest Quarter, the Northwest Quarter of the Southwest Quarter, the Northeast Quarter of the Southwest Quarter; the Southeast Quarter of the Northwest Quarter; the Northeast Quarter of the Northwest Quarter, all in Section 19, Township 13, N. R. 40 East, B. M.

The South Half of the Northeast Quarter of
Section 25, Township 13 North, Range 39 East,
B. M.

that the right of the defendant to the use of said water was lost by
abandonment for a period exceeding five (5) years and the defendant has
forfeited his right to use said water; that the beneficial use of the
water by the plaintiff for the past twenty (20) years has been open,
notorious, hostile, continuous, and adverse to the rights of the
defendant, Leo Singleton; that the use of the water by the plaintiff
has been known to the defendant Leo Singleton; that notwithstanding
such knowledge on his part of such use he has not at any time prior
to the filing of this action used or claimed the right to use any
of such water of Dry Creek; and has not interrupted the use of the
water by the plaintiff; that by reason of the beneficial use of the
said water by the plaintiff, it has acquired a right to use said
water.

III

The plaintiff is informed and believes and therefore alleges,
on information and belief, that defendant Leo Singleton now threatens
to reuse and reestablish abandoned and forfeited water rights on the
said Dry Creek, described in paragraph I(C) above, and that such reuse
and reinstatement would cause the plaintiff irreparable injury and
damage and that insufficient water would be available to the plaintiff
to permit continuance of its operations. The defendant Leo Singleton
continues to threaten to interfere and will interfere with plaintiff's
use of said water unless he is restrained and enjoined from doing so
by this court. The said defendant Leo Singleton has lost all claim of
right to the aforementioned water right #79 and the plaintiff is
entitled to the quiet use and enjoyment of all of the water heretofore
mentioned without interference by the defendant Leo Singleton.

WHEREFORE THE PLAINTIFF PRAYS:

1. That it be adjudged, decreed and declared that the plaintiff is the owner of 4.2 cfs from the waters of Dry Creek which run into Spring Creek, a tributary of Camas Creek which is described in Decree of Equity #635 as water right #39, said decree having been rendered in the United States District Court for the District of Idaho, Eastern Division, with priority date of September 2, 1922.

2. That the plaintiff be decreed the owner of an unnumbered water right referred to in paragraph I(B) of this Amended Complaint which unnumbered water right was originally referred to in the name of Elvin W. Henninger and Dollie M. Henninger, his wife, with a priority date of May 1, 1932, for 5.8 cfs from the waters of Dry Creek which run into Spring Creek a tributary of Camas Creek and described at length in Decree of Equity #635 rendered in the above-entitled court for the District of Idaho, Eastern Division, with priority date of September 2, 1922.

3. That the plaintiff be declared the owner of 2.5 cfs of water from Dry Creek, a tributary of Camas Creek, and referred to as water right #79 in Decree of Equity #635 which was rendered in the above-entitled court, Eastern Division, by reason of adverse possession and beneficial use for the prescriptive period, with a priority date of June 21, 1902.

4. That the title of all the aforescribed water be quieted in the name of the plaintiff.

5. That the defendant Leo Singleton be enjoined from interfering to the plaintiff's use to any of the aforescribed water.

BEN PETERSON
United States Attorney
By:

*Service this 15th day
of April 1958 in
I admitted
Ed Singleton
Atty for defendant*

[Signature]
R. M. WHITTIER
Assistant U. S. Attorney for the
District of Idaho

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
DISTRICT OF IDAHO
EASTERN DIVISION Filed at IDAHO M

MAR -7 1958

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
LEO SINGLETON,)
)
Defendant.)

ED. M. BRYAN Clerk
By RM Deputy
No. 2083

MOTION TO AMEND COMPLAINT

The plaintiff moves the Court for leave to file the attached
amended complaint in this cause.

BEN PETERSON
United States Attorney
By

R. M. Whittier
R. M. WHITTIER
Assistant U. S. Attorney

ORDER

Upon the foregoing, IT IS HEREBY ORDERED that plaintiff's complaint
submitted with its motion to amend be filed by the Clerk, and the
defendant, Leo Singleton, be given 20 days from the date hereof to
answer said complaint, in accordance with the rules of this Court.

Dated this 7th day of February, 1958.

Sharon A. Clark
DISTRICT JUDGE
United States District Court

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
OF IDAHO, EASTERN DIVISION

Filed at 9:15 a M

JAN 29 1958

UNITED STATES OF AMERICA
Plaintiff
vs
LEO SINGLETON
Defendant

NO. 2083

ED. M. BRYAN Clerk

By L M Deputy

WITHDRAWAL OF MOTION TO
DISMISS AND REFUSAL TO PLEAD

Comes now the defendant and withdraws his Motion
to Dismiss heretofore filed herein and refuses to plead
further in this action.

E. H. Carter
Attorney for Defendant
Pocatello, Idaho

I certify that on January 28, 1958, I mailed a full
true and correct copy of the foregoing, by United States
mail, postage prepaid, to Honorable Ben Peterson, United
States Attorney, box 1776, Boise, Idaho.

E. H. Carter
Attorney for Defendant.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
OF IDAHO, EASTERN DIVISION

Filed at 9 a M

NOV 26 1957

UNITED STATES OF AMERICA
Plaintiff,
vs
LEO SINGLETON,
Defendant

NO. 2083

ED. M. BRYAN Clerk

By LM Deputy

MOTION TO DISMISS

The defendant moves to dismiss this action on the ground that the complaint fails to state a claim against the defendant on which relief can be granted.

E. H. Castelin
Attorney for Defendant
Pocatello, Idaho
P.O. Box 1384

I certify that on November 25th, 1957, I mailed a full true and correct copy of the foregoing, by United States mail, postage prepaid, enclosed in an envelope addressed to Ben Peterson, United States Attorney, Room 217, Post Office Building, Boise, Idaho.

E. H. Castelin
Attorney for Defendant.

United States District Court

FOR THE

DISTRICT OF IDAHO

EASTERN

DIVISION

CIVIL ACTION FILE NO. 2083

UNITED STATES OF AMERICA,

U. S. DISTRICT COURT
DISTRICT OF IDAHO

Filed at 2:30 P.M.

NOV 22 1957

ED. M. BRYAN, Clerk

By *PL* Deputy

Plaintiff

v.

SUMMONS

LEO SINGLETON,

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon Ben Peterson
U.S. District Attorney

plaintiff's attorney , whose address is Room 217
Post Office Building, Boise, Idaho

an answer to the complaint which herewith served upon you, within 20 days after service
of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will
be taken against you for the relief demanded in the complaint.

Ed. M. Bryan

Clerk of Court.

Shirley Carr
Deputy Clerk.

Date: October 24, 1957

[Seal of Court]

RETURN ON SERVICE OF WRIT

day of October

1957 ,

I received this summons and served it together with the complaint herein as follows: By exhibiting the original. Then handing to and leaving with Elva Singleton the wife of Leo Singleton a true and correct copy of the within Summons together with a copy of the complaint. Served at the Leo Singleton Ranch near St. Anthony, Idaho on the 9th day of November 1957.

MARSHAL'S FEES

Travel	\$19.80
Service	2.00
	<u>\$21.80</u>

Saul H. Clark

United States Marshal.

By

Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of

19

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____

FOR THE
United States District Court

2.

SUMMONS IN CIVIL ACTION

Returnable not later than
after service.
days

Attorney for Plaintiff.

FPI INC ERO 1-4-51-300H-4080

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
2 EASTERN DIVISION
3 1.30 P

4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 LEO SINGLETON,
8 Defendant.

No. 2083 PB

C O M P L A I N T

9 The Plaintiff, the United States of America, by the
10 United States Attorney's Office for the District of Idaho,
11 acting under the direction of the Attorney General and
12 pursuant to the provisions of Sec. 1345, Title 28, U.S.C.,
13 brings this proceeding against Leo Singleton, residing at
14 St. Anthony, Idaho.

15 I

16 Plaintiff is the owner of certain real property in
17 Clark County, Idaho, to which are appurtenant the following
18 water rights in Water District 66, Idaho:

19 A. Right #39 in the name of Elvin W. Henninger and
20 Dollie M. Henninger, his wife, with a priority of September
21 2, 1922 for 4.2 cfs from the waters of Dry Creek which run
22 into Spring Creek, a tributary of Camas Creek and further
23 described in Decree in Equity #635 in the District Court
24 of the United States for the District of Idaho, Eastern
25 Division.

26 B. An unnumbered right in the name of Elvin W.
27 Henninger and Dollie M. Henninger, his wife, appropriated
28 and put to beneficial use on May 1, 1932, for 5.8 cfs from
29 the waters of Dry Creek which run into Spring Creek, a
30 tributary of Camas Creek and further described in Decree
31 in Equity #635 in the District Court of the United States
32

1 for the District of Idaho, Eastern Division. Ernest Suave
2 v. W. H. Abbott et al, reference to which is hereby made.

3 II.

4 Plaintiff alleges on information and belief that
5 defendant Leo Singleton has acquired and claims to own a
6 decreed water right #79 in the name of Burt H. Miller, with
7 a priority of June 21, 1902 for 2.5 cfs from Dry Creek, a
8 tributary of Camas Creek and further described in Decree
9 in Equity #635 in the District Court of the United States
10 for the District of Idaho, Eastern Division. Ernest Suave
11 v. W. H. Abbott et al, reference to which is hereby made.

12 III

13 Defendant Leo Singleton and his predecessors in interest
14 have manifested an intent to abandon, and have abandoned the
15 water right described in paragraph II above.

16 IV

17 Defendant Leo Singleton and his predecessors in interest
18 have forfeited water right #79 described in paragraph II
19 above, under the provisions of Sec. 42-222 ICA by non-use
20 for a period in excess of five (5) years.

21 V

22 The plaintiff is informed and believes and therefore
23 alleges, on information and belief, that defendant Leo
24 Singleton now threatens to re-use and re-establish abandoned
25 and forfeited water rights on the said Dry Creek, described
26 in II above, and that such re-use and re-instatement would
27 cause the plaintiff irreparable injury and damage and that
28 insufficient water would be available to the plaintiff to
29 permit continuance of his operations. The defendant Leo
30 Singleton is continuing and will continue to set up and
31 claim title to the aforesaid water rights unless he is
32 restrained and enjoined from doing so by this court and the

1 said invalid water right described herein is cancelled,
2 set aside and declared to be null and void by this court
3 and removed as an encumbrance and cloud upon the water
4 rights of the plaintiff.

5 WHEREFORE THE PLAINTIFF PRAYS:

6 (1) That it be adjudged that aforescribed water
7 right #79 is abandoned and forfeited.

8 (2) That defendant Leo Singleton be enjoined from
9 attempting to reinstate the aforesaid water right.
10

11 BEN PETERSON
12 United States Attorney
13 By:

14 
15 R. M. WHITTIER
16 Assistant United States Attorney
17 for the District of Idaho

18 Attorney for Plaintiff, The
19 United States of America.
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