

April 15, 1999

Cherry Grove Canal Co
C/O Joe Nethercott
375 S 100 N
Driggs, ID 83422

RE: Amendment of A22-00096 adding S1/2SW1/4 Sec 18, T04N, R46E, to the place of use

Dear Mr. Nethercott:

This letter is in response to your phone call and receipt of the amendment of A22-00096, adding the S1/2SW1/4 Sec 18, T04N, R46E (property of Steven H & Kendra Smith).

On March 15, 1999, I assisted Mr. Smith complete the enclosed amendment that you returned to this office. According to the decree that established 22-00096 for Cherry Grove Canal, the place of use listed the S1/2SW1/4 Sec 18, T04N, R46E (copy of decree, Attachment "A"). Based on the decree the S1/2SW1/4 Sec 18, T04N, R46E was included in the proposed amended adjudication claim. In order to amend the adjudication claim an official of the canal would be required to sign the proposed amendment and submit it to the department along with any additional fees.

The decree indicates that "... the sole objective ... is for the benefit of its several stockholders in the diversion and conveyance of ... waters for the irrigation of their lands ... the stockholders ... are entitled to the use of the quantity of water ... to the amount of capital stock or acreage of land owned by them ...". Therefore, Mr. Smith is required to own stock in Cherry Grove Canal Co. for his land to be included in the place of use of A22-00096, and the canal could require him to pay the additional acreage fee (\$80.00). The department has no way of determining if Mr. Smith has any shares in Cherry Grove Canal. Canal records, and any documentation that Mr. Smith can supply to Cherry Grove Canal must determine ownership of shares.

The following attachments are enclosed to assist in describing the S1/2SW1/4 Sec 18, T04N, R46E:

Attachment "B" (1987 NAAP aerial photo) the S1/2SW1/4 Sec 18, T04N, R46E, has been outlined, and appears to have been irrigated in 1987.

Attachment "C" (1974 Ortho-photo quad) the aerial photo of the S1/2SW1/4 Sec 18, T04N, R46E, appears to have been cultivated.

Hopefully the enclosed information will be of assistance to you.

Sincerely,

Keith C. Wilson
Senior Resource Agent

cc: Steven Smith

APPACHMENT "A"

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF IDAHO,
IN AND FOR THE COUNTY OF PREMONT.

[illegible]

CHERRY GROVE CANAL COMPANY,
a corporation,

Plaintiff,

- VS -

Lynn Crandall, Watermaster,
District 36, Idaho,

Defendant,

[illegible]

J U D G M E N T.

This cause coming on to be heard and tried by the Court this 16th day of November, 1937, F. A. Miller, of St. Anthony, Idaho, appearing as counsel for the plaintiff, and it appearing to the satisfaction of the Court that the defendant was served with a copy of the Summons and a copy of the Complaint in this action, and that he failed to appear and plead to said complaint, and that the default of the said defendant has been entered, and, -

It further appearing that an order was made on the 14th day of September, 1937, directing the publication of a Notice, once a week for not less than three weeks successively in the Teton Valley News, a weekly newspaper published at Driggs, Teton County, Idaho, containing the title of the Court and Cause, the name of the stream in the waters of which the plaintiff claims an interest, the date of priority claimed by it, as is required, and the date and short title of the decree of this court heretofore entered, fixing the permanent rights in and to the waters that the said notice was published in accordance with said order and the of Snake River and its tributaries; that no person or persons' proof of publication has been filed in this action, have appeared to defend against said action.

The plaintiff introduced oral and documentary proof in support of its Complaint and the court, after hearing the evidence and examining the proof submitted, finds as follows:

That the plaintiff is a corporation organized and existing under the laws of the State of Idaho, with its principal place

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of business in Teton County, Idaho; the sole object and purpose of its organization is for the benefit of its several stockholders in the diversion and conveyance of agricultural and domestic waters for the irrigation of their lands and domestic purposes, and that the stockholders of the said corporation are entitled to the use of the quantity of water diverted by the said corporation in proportion to the amount of capital stock or acreage of land owned by them.

That the stockholders of the plaintiff are the owners of, and the lands irrigated under the ditch or canal system of the plaintiff, are situate in Teton County, Idaho, and particularly described, to-wit:

The $S\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ section 15;
The NW $\frac{1}{4}$ and the S $\frac{1}{2}$ of section 14;
NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 22;
N $\frac{1}{2}$ NE $\frac{1}{4}$ of section 27, all in township
4 north, range 45 E.B.M.
The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of section 17,
S $\frac{1}{2}$ of section 18, all in township 4
north, range 46, E.B.M.

That the lands are arid in character and require artificial application of water by irrigation to produce agricultural crops; that the plaintiff, through its stockholders and predecessors in interest, ever since the 22d day of January, 1916, have diverted 29.6 cubic feet per second, or 1,480 miner's inches of the unappropriated waters of Darby Creek; that the diversion works of this plaintiff are located in the following legal subdivisions, to-wit:

One of the said diversions in Lot 1, section 17, township 4 north, range 46 E.B.M.

One located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 18, township 4 north, range 46 E.B.M., and, -

One located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 13, township 4 north, range 45 E.B.M. on Darby Creek, and ever since the said 22d day of January, 1916, have applied said quantity of water, during the irrigating seasons, to beneficial use in the irrigation of crops grown upon the above described lands, and which said quantity of stream flow has been in addition to any other rights fixed, decreed, or in any manner granted to the plaintiff through

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its stockholders and/or predecessors in interest.

From the above findings the Court concludes that the plaintiff is entitled, and, -

22 0096 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the plaintiff, for the use of its stockholders, and for the irrigation of the hereinbefore described lands, is awarded the use of 29.6 cubic feet per second of time, with a priority date of January 22, 1916, of the unappropriated waters of Darby Creek.

IT IS FURTHER ORDERED, That the rights awarded and decreed in that certain decree commonly known as the "Rexburg or Snake River Decree," made and entered in this Court December 10, 1910, both as to dates of priority and the amounts of the rights awarded, are binding upon the plaintiff in this action.

Done in open court this 16th day of November, 1937.

C. J. Taylor
District Judge.

L. Kingsford, Recorder

Filed for record Jan. 4, 1949
at 2:20 P.M.

RECORDED

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T 4 N

PLACE OF
USE

R 45 E

R 46 E

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ATTACHMENT 'B' N 1