

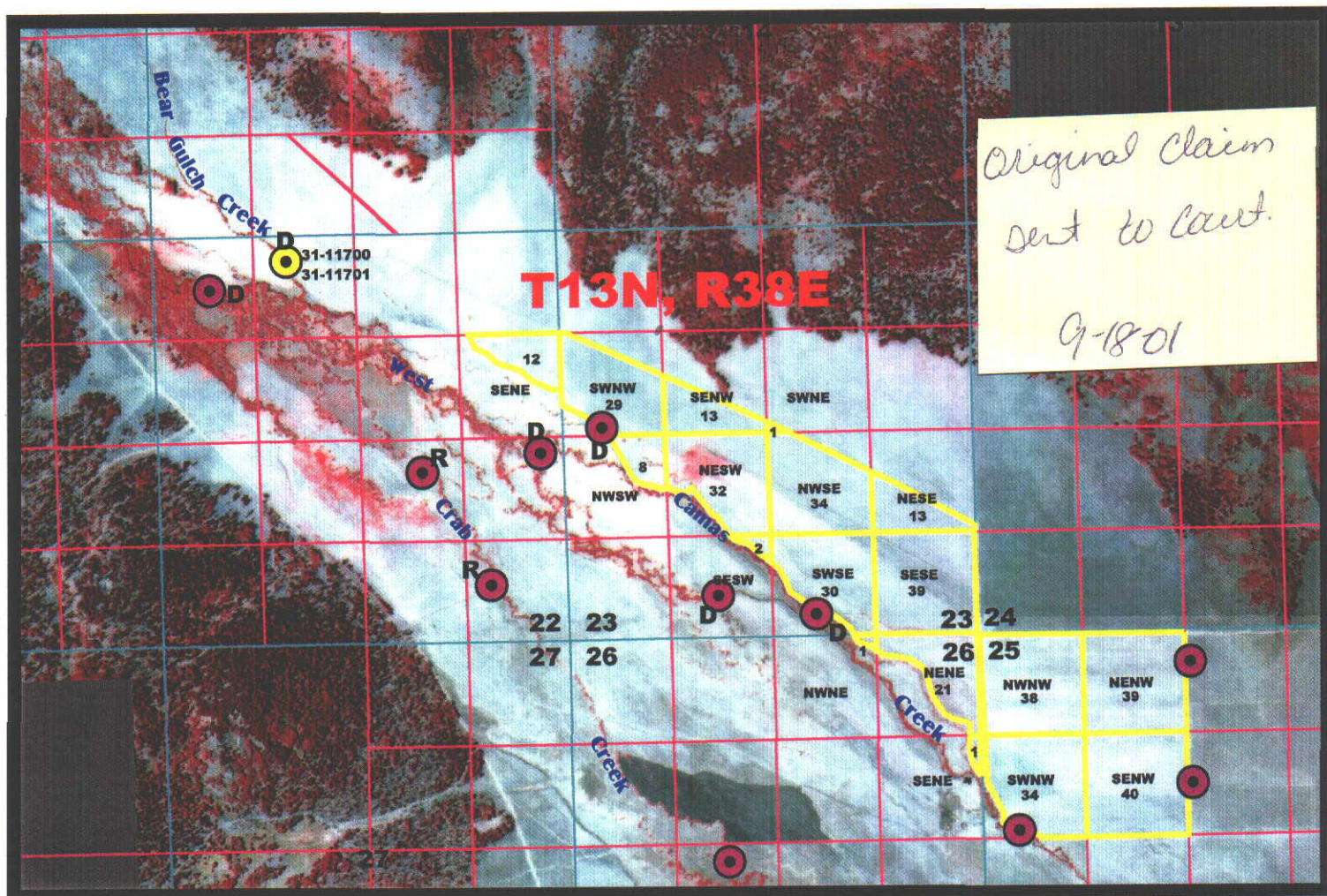


STATE OF IDAHO

Department of Water Resources

Eastern Region

Water Right(s): 31-11700, 31-11701



1000 0 1000 2000 3000 4000 5000 6000 7000 8000 9000 10000 11000 12000 13000 Feet

LEGEND



Point of Diversion

SESE

Place of Use



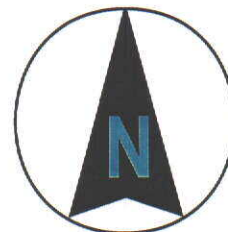
Section Line



Quarter-section line

Legal Description: T13N, R38E
(parts of) Secs. 22, 23, 25, 26

Point(s) of Diversion: T13N, R38E
Sec. 22 NWNENW (Bear Gulch Ck)



GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by: A. Ruberry
Date: April 2001

Figure 1

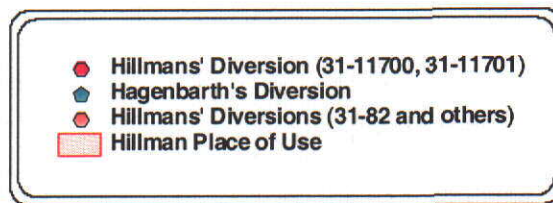
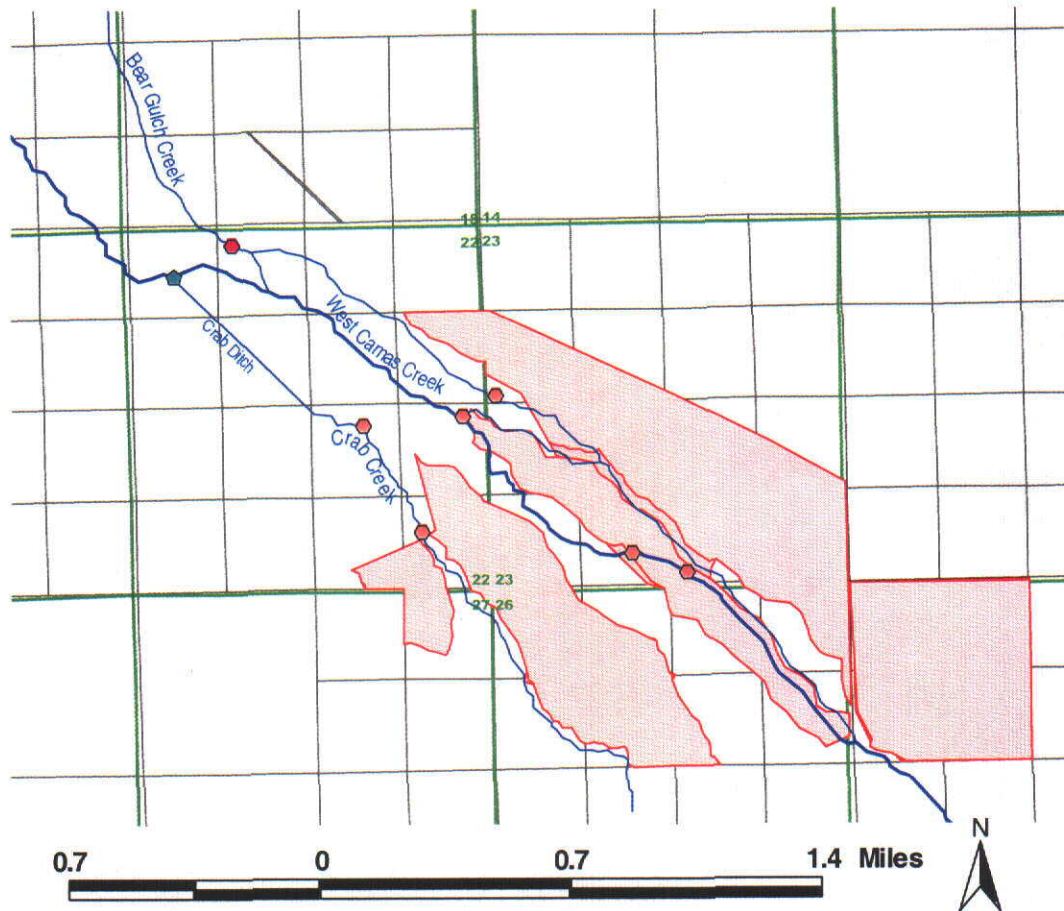
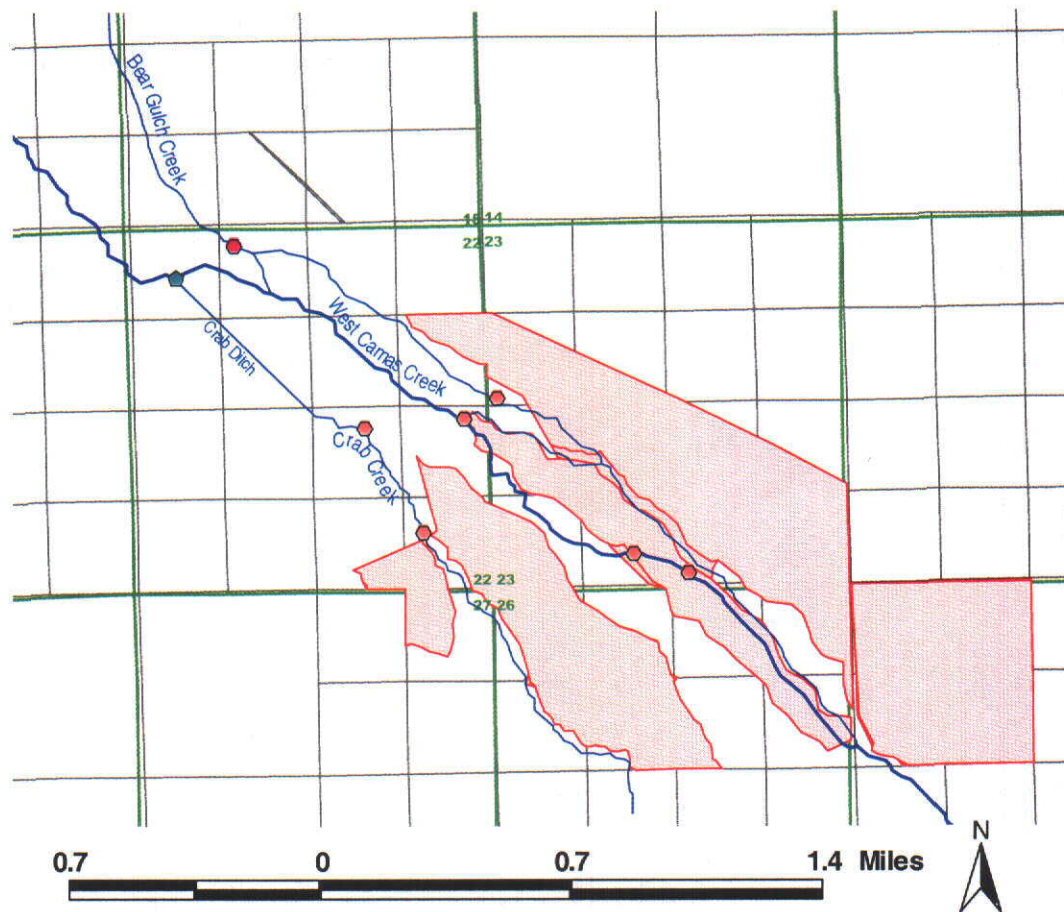
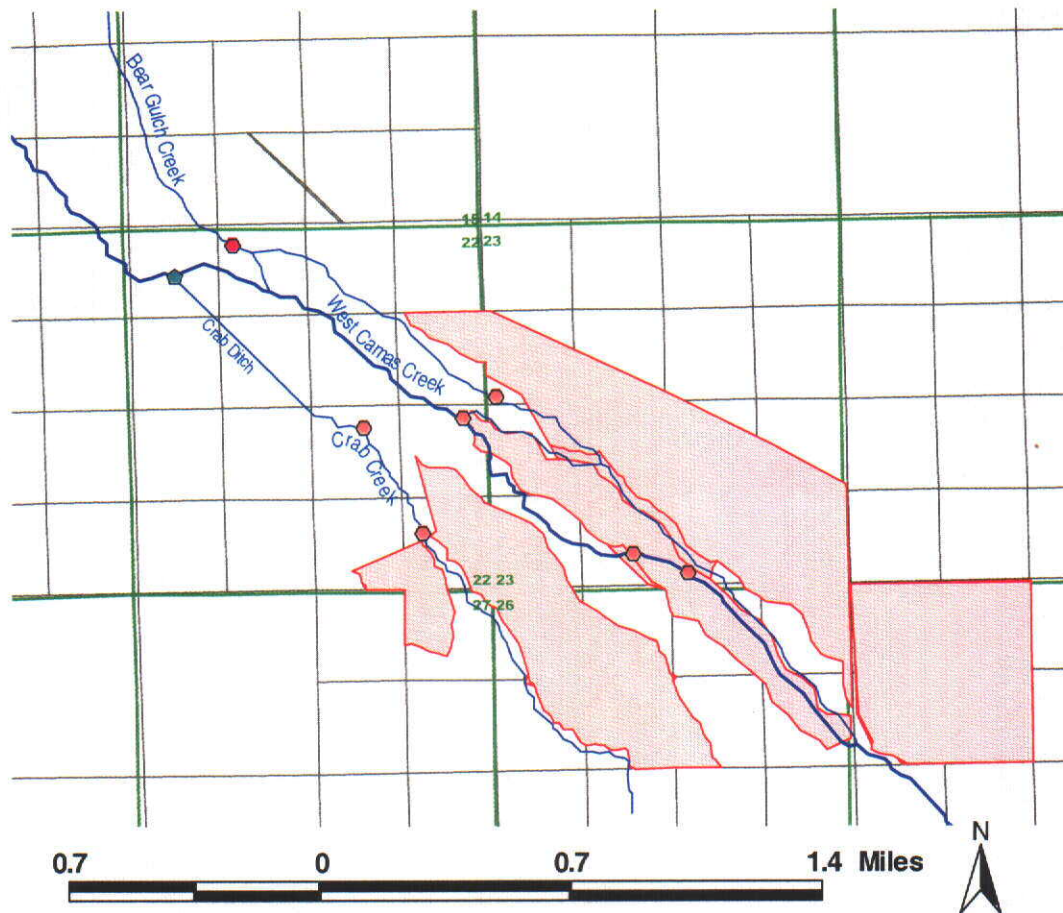


Figure 1



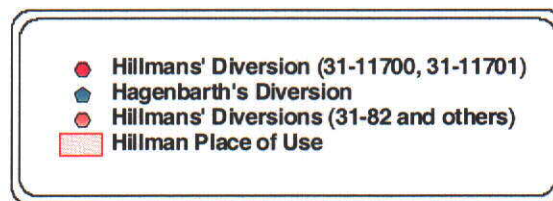
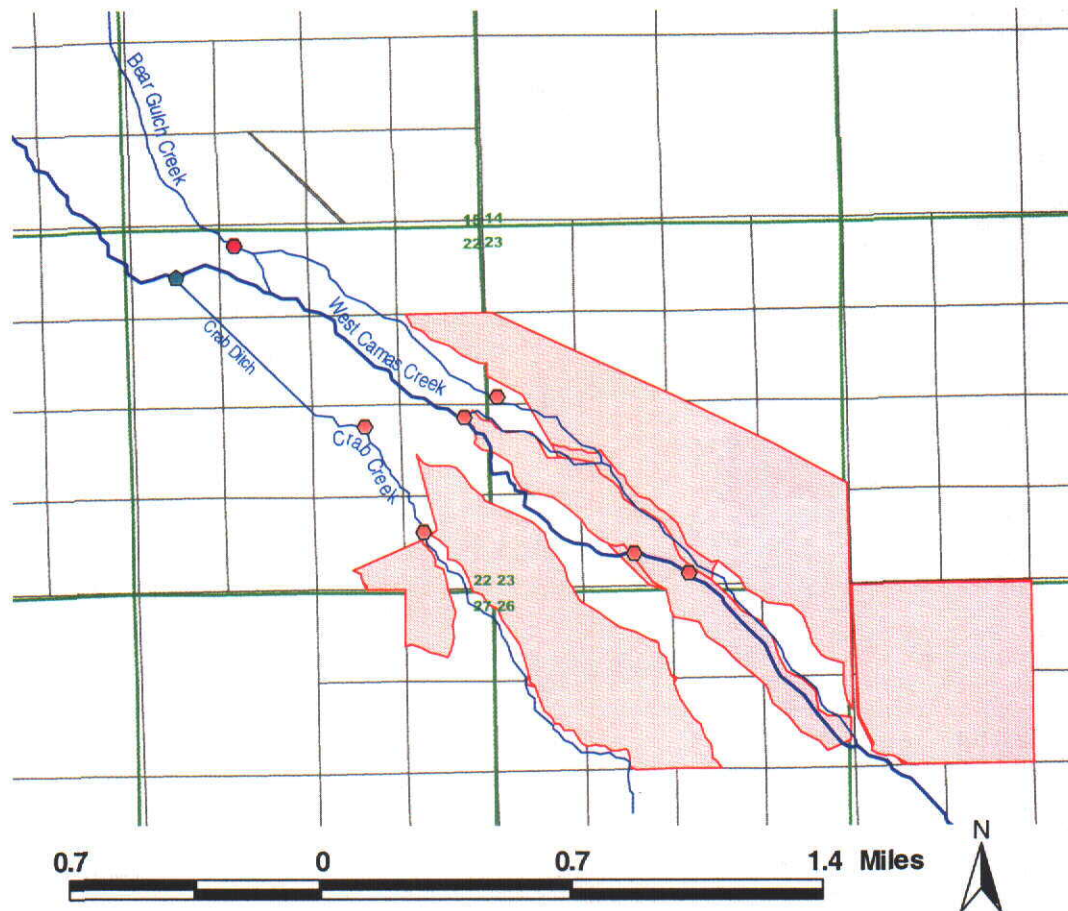
- Hillmans' Diversion (31-11700, 31-11701)
- Hagenbarth's Diversion
- Hillmans' Diversions (31-82 and others)
- Hillman Place of Use

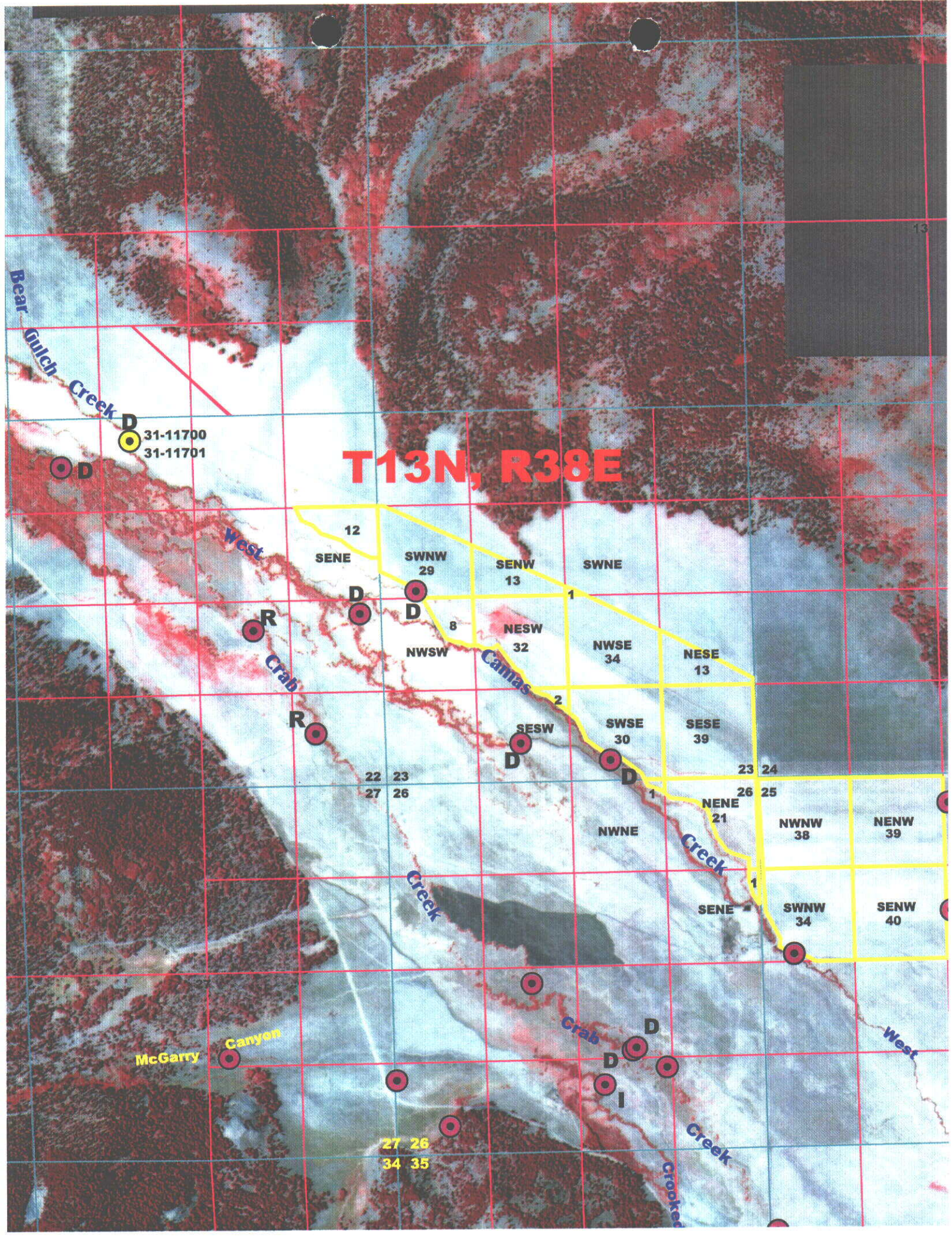
Figure 1



- Hillmans' Diversion (31-11700, 31-11701)
- ◆ Hagenbarth's Diversion
- Hillmans' Diversions (31-82 and others)
- Hillman Place of Use

Figure 1





09/17/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 31-11700
NAME AND ADDRESS: RANDY J HILLMAN
5518 N 4000 W
REXBURG ID 83440

RON R HILLMAN
3120 E 2200 N
HAMER ID 83425

NICK R HILLMAN
2300 N 2800 E
HAMER ID 83425

VERSION 2

SOURCE: BEAR GULCH CREEK TRIBUTARY: WEST CAMAS CREEK
QUANTITY: 4.00 CFS
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 7.74 CFS. COMBINED RIGHT NOS.: 31-82, 31-83,
31-84, 31-85, 31-86, 31-11700, 31-11701.
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT
EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 09/01/1909

POINT OF DIVERSION:
T13N R38E S22 NWNENW Within CLARK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	05/01 10/31	0.200 CFS
IRRIGATION	05/01 10/31	4.000 CFS

PLACE OF USE:	T13n R38e S22	SENE	12.0	T13n R38e S23	SWNE	1.0
	T13n R38e S23	SWNW	29.0	T13n R38e S23	SENW	13.0
	T13n R38e S23	NESW	32.0	T13n R38e S23	NWSW	8.0
	T13n R38e S23	SESW	2.0	T13n R38e S23	NESE	13.0
	T13n R38e S23	NWSE	34.0	T13n R38e S23	SWSE	30.0
	T13n R38e S23	SESE	39.0	T13n R38e S25	NENW	39.0
	T13n R38e S25	NWNW	38.0	T13n R38e S25	SWNW	34.0
	T13n R38e S25	SENW	40.0	T13n R38e S26	NENE	21.0
	T13n R38e S26	NWNE	1.0	T13n R38e S26	SENE	1.0

STOCKWATER same as IRRIGATION

387 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 387 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 31-82, 31-83, 31-84, 31-85, 31-86, 31-11700,
31-117001.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 200 ACRES WITHIN THE PLACE OF
USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

09/17/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.

EXPLANATORY MATERIAL: Beneficial Use

STOCKWATER; 1200 CATTLE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

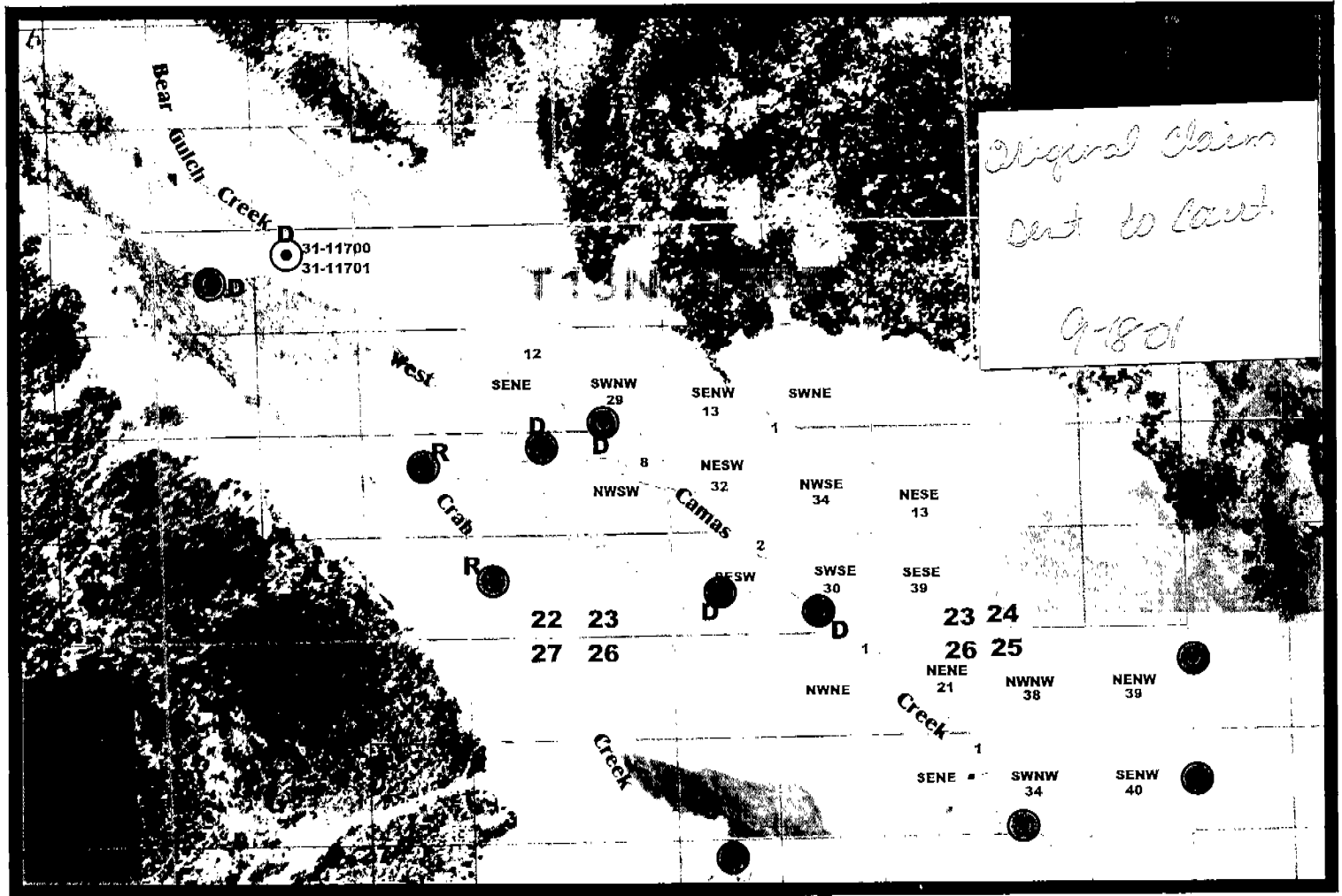


STATE OF IDAHO

Department of Water Resources

Eastern Region

Water Right(s):
31-11700, 31-11701



1000 0 1000 2000 3000 4000 5000 6000 7000 8000 9000 10000 11000 12000 13000 Feet

LEGEND



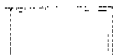
Point of Diversion

SESE

Place of Use



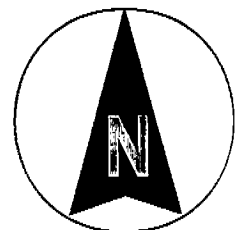
Section Line



Quarter-section line

Legal Description: T13N, R38E
(parts of) Secs. 22, 23, 25, 26

Point(s) of Diversion: T13N, R38E
Sec. 22 NWNE (Bear Gulch Ck)



GIS Place of Use illustration
1987/1988 NAPP photography
Prepared by: A. Ruberry
Date: April 2001

04/11/2001

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 31-11700

NAME AND ADDRESS: NICK R HILLMAN
2300 N 2800 E
HAMER, ID 83425

RON R HILLMAN
3120 E 2200 N
HAMER, ID 83425

RANDY J HILLMAN
5518 N 4000 W
REXBURG, ID 83440

SOURCE: BEAR GULCH CREEK TRIBUTARY: WEST CAMAS CREEK

QUANTITY: 4 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 7.74 CFS. COMBINED RIGHT
NOS.: 31-82, 31-83, 31-84, 31-85, 31-86, 31-11700, 31-11701.

PRIORITY DATE: 10/19/1897

POINT OF DIVERSION: T13N R38E S22 NWNENW Within CLARK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	05-01 10-31	4.00 CFS
STOCKWATER	05-01 10-31	0.20 CFS

PLACE OF USE:

IRRIGATION Within CLARK County					
T13n R38e S22	SENE	12	T13n R38e S23	SWNE	1
T13n R38e S23	SWNW	29	T13n R38e S23	SENE	13
T13n R38e S23	NESW	32	T13n R38e S23	NWSW	8
T13n R38e S23	SESW	2	T13n R38e S23	NESE	13
T13n R38e S23	NWSE	34	T13n R38e S23	SWSE	30
T13n R38e S23	SESE	39	T13n R38e S25	NENW	39
T13n R38e S25	NWNW	38	T13n R38e S25	SWNW	34
T13n R38e S25	SENE	40	T13n R38e S26	NENE	21
T13n R38e S26	NWNE	1	T13n R38e S26	SENE	1

STOCKWATER Use same as IRRIGATION

387 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 200 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION
SEASON.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 387 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-82, 31-83, 31-84, 31-85, 31-86, 31-11700, 31-117001.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
STOCKWATER; 1200 CATTLE.

Fos: Chain 50⁰⁰
Lats 50⁰⁰
Ac 78⁰⁰
8 178⁰⁰

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 31-11700
Date Received: 4/9/01
Receipt No:
Received By: 2026618
8026619

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

NICK R HILLMAN Phone: (208)662-5434

2300 N 2800 E
HAMER ID USA 83425

RANDY J HILLMAN Phone: (208) 359-1877

5518 N 4000 W
REXBURG ID USA 83440

RON R HILLMAN Phone: (208)662-5483

3120 E 2200 N
HAMER ID USA 83425

2. Date of Priority: 10/19/1897

3. Source: BEAR GULCH CREEK Trib. to: WEST CAMAS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13N	38E	22	NW NE NW	CLARK	

5. Description of diverting works:

HEAD GATE TO DITCH WITH WEIR.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	05/01	10/31	4	
STOCKWATER	05/01	10/31	0.2	

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

8. Total consumptive use:

9. Non-irrigation uses:
 Number of other uses: 1200

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
13N	38E	22	SW	NE	IRRIGATION	12
			NE	SE	IRRIGATION	9
			SE	SE	IRRIGATION	25
			SW	SE	IRRIGATION	7
Section Acres						53
13N	38E	23	NW	NE	IRRIGATION	1
			SE	NW	IRRIGATION	13
			SW	NW	IRRIGATION	29
			NW	SW	IRRIGATION	26
			NE	SW	IRRIGATION	36
			NW	SE	IRRIGATION	34
			NE	SE	IRRIGATION	13
			SW	SE	IRRIGATION	34
			SE	SW	IRRIGATION	24
			SW	SW	IRRIGATION	23
			SE	SE	IRRIGATION	39
			Section Acres			
13N	38E	25	NW	NW	IRRIGATION	38
			NE	NW	IRRIGATION	39
			SW	NW	IRRIGATION	34
			SE	NW	IRRIGATION	40
Section Acres						151
13N	38E	26	NE	NE	IRRIGATION	24
			NW	NE	IRRIGATION	22
			SW	NE	IRRIGATION	10
			SE	NE	IRRIGATION	16
			NE	NW	IRRIGATION	21
			NW	NW	IRRIGATION	32
			SW	NW	IRRIGATION	11
			SE	NW	IRRIGATION	36
Section Acres						172
13N	38E	27	NE	NE	IRRIGATION	12
			NW	NE	IRRIGATION	6
Section Acres						18
Total Acres						666

11. Place of use in counties: CLARK

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

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS BASED ON A NOTICE OF WATER RIGHT FROM THE FREMONT COUNTY RECORDS. FRANK SERFAS, 19 OCTOBER 1897. NOT ENJOINED TO THE SUAVE DECREE, 1930. STOCKWATER PLACE OF USE SAME AS IRRIGATION. PERMISSIBLE PLACE OF USE WITH OTHER RIGHTS; 31-82, 31-83, 31-84, 31-85, 31-86, THIS RIGHT IS LIMITED TO 200 ACRES.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): *Mike R Hillman* Date: 4-9-01
Gon R Hillman Date: 4-9-01
Randy J Hillman Date: 4-9-01

State of Idaho)
County of BONDEVILLE) SS.

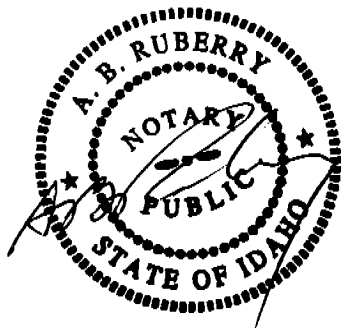
Subscribed and sworn (or affirmed) before me this 9th
of April 2001

Aaron B. Ruberry

Notary Public

Residing at *Idaho Falls ID*

My commission Expires 9/23/03



Idaho Department of Water Resources Receipt

Receipt ID E026618

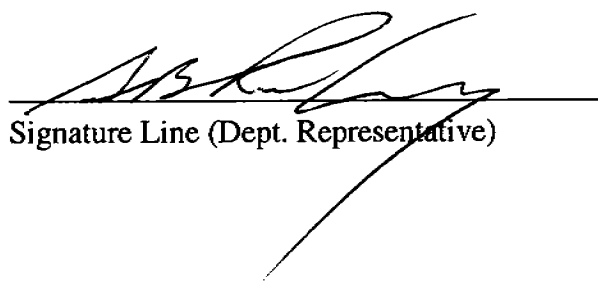
Payment Amount Date Received Region State
Payment Type Check Number

Payer

Comment

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$139.00	ADJUDICATION FILING FEE	0337	43503	1155	


Signature Line (Dept. Representative)

22
T13N

SENE
12

SWNW
29

SENW
13

NWNE
1

23

NESE
36

NWSE
34

NESE
13

NESE
9

NWSW
26

SESW
24

SWSE
34

SESE
39

SWSE
7

NWNE
6

NENE
12

SWSW
23

NWNW
32

NENW
21

NWNE
22

NENE
24

NWNW
38

NENW
39

SWNW

SENW

NWNE

SENE
18

SWNW
34

SENW
40

26

27 26

34

Unsubstantiated

Sec. 25, Township 13 North, Range 38 East

1/2 sec 25

(In above description give legal subdivision of land or describe the place with reference to some prominent land)
3d. The purpose for which said water is intended to be used is agricultural and domestic

The place of intended use is Kelgore, Fremont County, Idaho

4th. It is intended to divert said water by means of a ditch and headgate

The general course of the proposed canal is East

The length of the proposed canal is two miles

POU

It is intended to use said water for irrigating the following described land: the NW 1/4 Sec. 25, Township 13 North, Range 38 East

NW 1/4 Sec. 25 13N/38E

Priority

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

WITNESS my hand at Kelgore, Fremont County,
this nineteenth day of October, 1897

Frank Serfas

Clk

STATE OF IDAHO,
County of Fremont ss.

Frank Serfas

being first duly sworn, depose and say that he is of lawful age and the claimant of the Water Right mentioned in the foregoing notice and whose name he subscribed thereto, the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was in a conspicuous place at or near the place of intended diversion (as provided by law) on the 19th day of October, 1897, at 3 minutes past 3 o'clock P.M.

Frank Serfas

Subscribed and sworn to before me this 27th

Ernest Bramm
1897
Notary Public for the District Court

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

Filed for record this 27th day of October, 1897

By Ernest Bramm
Deputy.

Post-It™ brand fax transmittal memo 7671 # of pages ▶ <u>5</u>	
To <u>CANDICE</u>	From <u>Ac</u>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

THIS INDENTURE, made the 10th day of September, in the year of our Lord, one thousand nine hundred and sixteen, between M. Hillman, and Elyabeth Hillman, his wife, of Madison, County, State of Idaho, parties of the first part, and Chas. P. Bartlett, of Pocatello, Bannock County, State of Idaho, party of the second part,

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Fourteen Thousand Five Hundred Dollars, (\$14,500.00) do by these presents, Grant, bargain, Sell and Convey unto the said party of the second part, and to his heirs and assigns forever, all that certain real property situate in the County of Fremont, and State of Idaho, and bounded and particularly described as follows, to-wit:

*NW 1/4 Sec. 25
NE 1/2 Sec. 26
S2SE, SW Sec. 23
NENE Sec. 27
S2N, SNE, NENE
E2NW Sec. 22*

The Northwest quarter of Section 21; the North Half of Section 26; the South Half of the Southeast quarter, and the Southwest quarter of Section 20; the Northeast quarter of the Northeast quarter of Section 27; The Southeast quarter, the South Half of the Northeast quarter, the Northwest quarter of the Northeast quarter, and the East Half of the Northwest quarter of Section 25; all in Township 13, North Range 26, East of the Boise Meridian, in Fremont County, Idaho, containing 1120 acres, more or less, according to the Official plat of the survey of the said lands returned to the General Land Office by the Surveyor General.

31-11700

Also all of our right, title and interest in and to any and all water appertaining to the said land, and more particularly all our right, title and interest in and to 4 cubic feet of water per second of time of the waters of X Bear Creek and its tributaries in Fremont County, Idaho, as the same is shown and recorded in Book "E" of Notice of Water Rights, at page 74, in the Office of the County Recorder of Fremont County, Idaho, which said waters have since October 19, 1897, been used upon the northwest quarter of Section 25.

168

Also 80 miners inches of water dating from the 1st day of May, 1898, and used at all times since for the irrigation of the northwest quarter of Section 21, as shown in a decree of the District Court of Fremont County, Idaho, in the case of Levi Cartier vs. J. W. Buer, et al., said decree being entered by said Court June 20, 1903, and said decree being recorded in Book "A" of Judgments, page 170, in the Office of the Clerk of the District Court in Fremont County, Idaho.

31-11701

31-00084
10/29/1904

Also all our right, title and interest in and to that certain water right to 4.8 second feet of the waters of Bartlett Springs, referred to in Permit #910, Certificate of Completion of Works, issued out of the State Engineer's Office August 17, 1907, recorded in Book "4" of Permits, page 910, in the Office of the State Engineer.

31-00083
10/29/1904

Also that certain water right to 12 second feet of the waters of Goudy Spring, referred to in Permit #911, Certificate of Completion of Works, issued out of the State Engineer's Office, August 21, 1907, recorded in Book "4" of Permits, page 911, in the office of the State Engineer.

Also all our right, title and interest in and to the filings on high waters out of the West Fork of Camas Creek in said Fremont County, according to the records of Fremont County. 7

This mortgage is given subject to a certain subsisting mortgage on said property made by Chas. P. Bartlett and H. Bertha Bartlett, his wife, in the sum of \$2500.00, dated March 10, 1914, and recorded in Fremont County, Idaho,

This mortgage is given subject to a certain lease made by Chas. P. Bartlett, and H. Bertha Bartlett, his wife, to C. A. Colishaw, dated about May 1st, 1914, which said lease is for a period of five years and expires about May 1st, 1919.

This mortgage is given as a part of the purchase price of the land herein conveyed by Chas. P. Bartlett and H. Bertha Bartlett, his wife, this date, to the grantor herein.

Together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

And the said parties of the first part hereby agree to keep the buildings on said premises fully insured against loss by fire in some reliable fire insurance company, with loss, if any, payable to the party of the second part, as mortgagee, as his interest may appear.

THIS GRANT is intended as a mortgage to secure the payment of one certain promissory note of even date herewith. executed

and delivered by said parties of the first part to the party of the second part, of which the following is a copy:

"\$14,500.00 (copy)

Pocatello, Idaho, 1916
September 20, 1916.

Five Years after date, without grace, for value received, we, or either of us, promise to pay to the order of Chas. P. Bartlett, Fourteen Thousand Five Hundred Dollars, negotiable and payable at the office of FLETCHER R. BURRUS & COMPANY, #248 North Main Street, Pocatello, Idaho, without defalcation or discount, with interest at the rate of seven per cent. per annum, from date until paid, and if suit be instituted for the collection of this note, we agree to pay a reasonable attorney's fee.

Right is reserved of paying \$100.00 or more on this note on any interest paying date.

Interest payable annually.

(Signed) H. Hillman.

(Signed) Elinor Hillman. "

And these presents shall be void if such payment be made. But in case default shall be made in the payment of said principal sum of money or any part thereof as provided in the said note, or if the interest be not paid as therein specified, then it shall be optional with the said party of the second part, his executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second party, his heirs, executors, with the interest on the same, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators, or assigns.

IN WITNESS WHEREOF, the said parties of the first part
have hereunto set their hands and seals the day and year first
above written.

Signed, Sealed and
delivered in the
presence of:

M. Hillman

Elizabeth Hillman.

James R. Wright

STATE OF IDAHO,)
 (ss.
County of Madison.)

On this 26th day of September, 1916, before me,

James R. Wright a Notary Public in and for said County
and State, personally appeared M. Hillman and, Elizabeth
Hillman, his wife, known to me to be the persons whose names are
subscribed to the within instrument and acknowledged to me that
they executed the same.

In Witness Whereof I have hereunto set my hand and
affixed my official seal the day and year in this certificate first
above written.

James R. Wright
Notary Public **NOTARY PUBLIC.**

Residing at Rexburg, Madison County, Idaho,
My Commission Expires February 5th, 1920.

ALAN G. LANCE
Attorney General

CANDICE M. MCHUGH
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 372-7920
Fax: (208) 327-7866
ISB # 5908

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

In Re SRBA	)	Subcase No. 31-11700 and 31-11701
	)	
Case No. 39576	)	AFFIDAVIT OF ALLEN RUBERRY
	)	
_____	)	

State of Idaho)
) ss.
County of Ada)

Allen Ruberry, being first duly sworn, deposes and states as follows:

1. My name is Allen Ruberry. I am a Senior Water Resources Agent with the Adjudication Bureau of the Idaho Department of Water Resources ("IDWR" or the "Department"). This affidavit is based upon my own personal knowledge.
2. My work address is Idaho Department of Water Resources, 900 North Skyline Drive, Suite A, Idaho Falls, Idaho 83402. I reside in Idaho Falls, Idaho.

3. My educational background is as follows: BS Geology, Boise State Univ. 1980; Assoc. Degree, Civil Engineering, Idaho State Univ., 1979; Cert. Drafting and Design, 1968.

4. My Department of Water Resources work experience includes the following: 1975 to 1977, IDWR, Hydrologic Aid, Adjudication Bureau; 1979 to 1980, IDWR, Water Resource Agent, Dam Safety; 1993 to Present IDWR, Sr. Water Resource Agent, Adjudication Bureau.

5. As part of my duties as Senior Water Resources Agent, I conduct field investigations for water right claims filed in the Snake River Basin Adjudication.

6. I understand that on May 16th the Court held a scheduling conference on subcase nos. 31-11700 and 31-11701. The parties involved in these subcases are: Claimants, Nick R. Hillman, Randy J. Hillman and Ron R. Hillman (Hillmans) and objectors, Margaret Hagenbarth, David J. Hagenbarth and James F. Hagenbarth (Hagenbarths). At that scheduling conference the Court requested an affidavit from the Department addressing whether or not the Department considered these two water rights to be duplicate claims of claim no. 31-82. This affidavit responds to that request.

7. I have attached a diagram as Figure 1 that provides an overview of the water rights discussed in this report as well as a visual perspective of their relationship to the Hagenbarths' water rights. The diagram shows West Camas Creek, Bear Gulch Creek and Crab Creek. The area around West Camas Creek and Crab Creek below the confluence of Bear Gulch Creek and West Camas Creek has many springs that contribute water to the main channel of West Camas Creek and Crab Creek. Bear Gulch Creek does not contribute significant amounts of water to West Camas Creek. The Hillmans water right nos. 31-11700 and 31-17701 are the only water rights from Bear Gulch Creek. As the diagram shows, the confluence of Bear Gulch Creek and West Camas Creek is downstream from the diversion used by objector, Hagenbarths. Water

right nos. 31-11700 and 31-11701 with the source as Bear Gulch Creek do not affect water users upstream from the Bear Gulch Creek confluence with West Camas Creek.

8. The following information sets forth the basis of my recommendation of Hillmans' water right nos. 31-82, 31-11700 and 31-11701. On April 9, 2001, I met with Nick Hillman concerning his water rights, which, include for purposes of this report, water right nos. 31-82, 31-11700 and 31-11701.¹ I did not consider 31-11700 and 31-11701 as duplicates of 31-82 for the following reasons:

9. The claim for 31-82 was from the source West Camas Creek based on a prior decreed right from the *Sauve v. Abbott* decree. *Sauve v. Abbott*, Case No. 635, Decree (Dist. Idaho Nov. 1, 1930). Both claim nos. 31-11700 and 31-11701 claim Bear Gulch Creek tributary to West Camas Creek as their source.

- a. In addition to having different sources than 31-82, claim nos. 31-11700 and 31-11701 also have a different basis. According to a Mortgage document I received from Nick Hillman, (a copy of which is attached hereto as Attachment A) claim no. 31-11700 is based on a posted notice dated October 19, 1897 and is referenced in the second single-spaced indented paragraph in the Mortgage document. Claim no. 31-11701 has a priority date of one year later, May, 1898, and is discussed in the third single-spaced indented paragraph in the Mortgage document which states that there is a water right based on a decreed right in a case titled *Cartier v. Buck*.²

¹ Hillmans have several other water rights from West Camas Creek that are not discussed in this report because they are not relevant. Those water right numbers include 31-83, 31-84, 31-85, 31-86.

² According to the Mortgage, this decree was entered by the District Court of Fremont County, Idaho on June 20, 1902, recorded in Book "A" of Judgments, page 570 in the Office of the Clerk of the District Court in Fremont County, Idaho.

b. The claimed (and recommended) points of diversions between 31-82 and 31-11700 and 11701 are also different. The point of diversion for 31-82 from the *Sauve v. Abbott* decree states that the point of diversion is “[o]ne-fourth mile up stream from the land to be irrigated (land located in Township 13 North, Range 38 East, Section 25, NW quarter).” However, the posted notice upon which claim no. 31-11700 is based discusses a point of diversion “[a]bout two miles West” of the land in the NW quarter of Section 25 Township 13 North, Range 38 East. Claim no. 31-11701 is mentioned in the Mortgage following reference to the Posted Notice for water from Bear Gulch Creek so I concluded that it too was a water right from Bear Gulch Creek.

c. The following chart provides a comparison of the three claims.

Claim No.	Source Claimed	Point of Diversion Claimed	Priority Date Claimed	Basis of Claim
31-82	West Camas Creek	13N 38E S22 NWSENE 13N R38E S23 SWSWSE	5/1/1898	Decreed <i>Sauve v. Abbott</i>
31-11700	Bear Gulch Creek	13N 38E S22 NWNENW	10/19/1897	Beneficial Use
31-11701	Bear Gulch Creek	13N 38E S22 NWNENW	5/1/1898	Beneficial Use

Given the above information, I did not consider 31-11700 and 31-11701 as duplicates of 31-82.

10. The objector Hagenbarths allege that the *Cartier v. Buck* decree was superseded by the *Sauve v. Abbott* decree and that water right nos. 31-11700 and 31-11701 are duplicates of water right no. 31-82 which was decreed in *Cartier v. Buck*. I have made a brief review of that decree since Hagenbarths have provided a copy. The *Cartier v. Buck* decree apparently sets

forth water rights from Camas Creek and its tributaries and has priority dates that range from April 1, 1883 to May 1, 1901. The *Cartier v. Buck* decree does not set out for each water right decreed, the source of that right or the place of use. A brief comparison between the *Sauve v. Abbott* decree and the *Cartier v. Buck* decree demonstrates that other water rights from tributaries to Camas Creek and Camas Creek itself existed in addition to the rights decreed in *Cartier v. Buck*. In other words, the *Cartier v. Buck* decree does not appear to decree all the water rights from Camas Creek and its sources. For example, water right 31-53 (decreed in *Sauve v. Abbot* as water right no. 29) is for 0.4 cfs (20 inches) from Camas Creek with a priority date of May 1, 1896. This water right is not decreed in *Cartier v. Buck* even though it is from Camas Creek with a priority date similar to the water rights decreed in *Cartier v. Buck*. Similarly, water rights 31-85 and 31-86 (decreed in *Sauve v. Abbott* as water right no. 41) are both for 4.0 cfs (200 inches) with a priority date of August 18, 1899 and August 17, 1899 respectively. The source for these two water rights is West Camas Creek a tributary to Camas Creek. However, water rights with these priority dates and amounts of water were not decreed in the *Cartier v. Buck* decree. Thus, although Hillman's predecessor, Frank Serfas, was decreed a water right in *Cartier v. Buck*, this does not necessarily mean that the one water right decreed to Mr. Serfas was the only water right he owned. As the above examples show, other water rights existed besides the ones decreed in *Cartier v. Buck*.

11. I recommended claim nos. 31-11700 and 31-11701 with a priority date that pre-dated the *Sauve v. Abbott* decree because Bear Gulch Creek as a source was not specifically decreed in the *Sauve v. Abbott* decree. Thus, I recommend beneficial use irrigation rights from Bear Gulch Creek with priority dates that pre-dated the *Sauve v. Abbott* decree. However, if the source was specifically decreed in the *Sauve v. Abbott* decree, I recommended the irrigation water right with a priority date one day after the decree. For example, Hagenbarths claimed a

beneficial use irrigation water right from Dry Creek with a November 10, 1893 priority date.

However, since Dry Creek was decreed in *Sauve v. Abbott*, I recommended Hagenbarths' claim no. 31-10740 with a November 2, 1930 priority date (one day after the *Sauve v. Abbott* decree).

Hagenbarths have objected to this recommendation wanting the 1893 priority date.

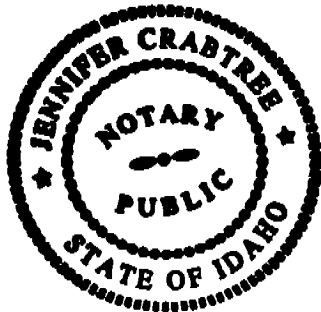
12. The information that I was provided for claim nos. 31-11700 and 31-11701, including the Posted Notice and the Mortgage, demonstrated that these water rights were valid historical beneficial use rights so I recommended them accordingly.

Further, your affiant sayeth naught.

DATED this 14 day of June, 2002.


ALLEN RUBERRY
Senior Water Resources Agent, IDWR

SUBSCRIBED AND SWORN to before me this 14 day of June, 2002.




Notary Public for Idaho
Residing at Boise Idaho Falls, Idaho
My Commission Expires: 9/23/03

CERTIFICATE OF MAILING

I certify that on June 14, 2002, I mailed and/or delivered the original and copies of this form, including all attachments, to the following interested parties, by placing them in sealed envelopes, addressed as follows:

1. Original to:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Chief, Natural Resource Division
Office of the Attorney General
Box 83720
Boise, ID 83720-0010

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Ray Rigby
Attorney for Nick, Randy & Ron Hillman
P.O. Box 250
Rexburg, ID 83440-0250

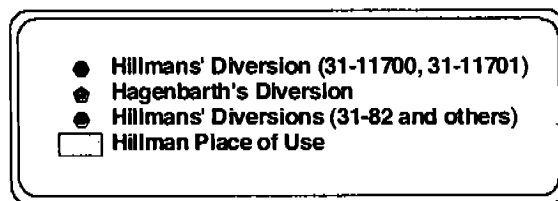
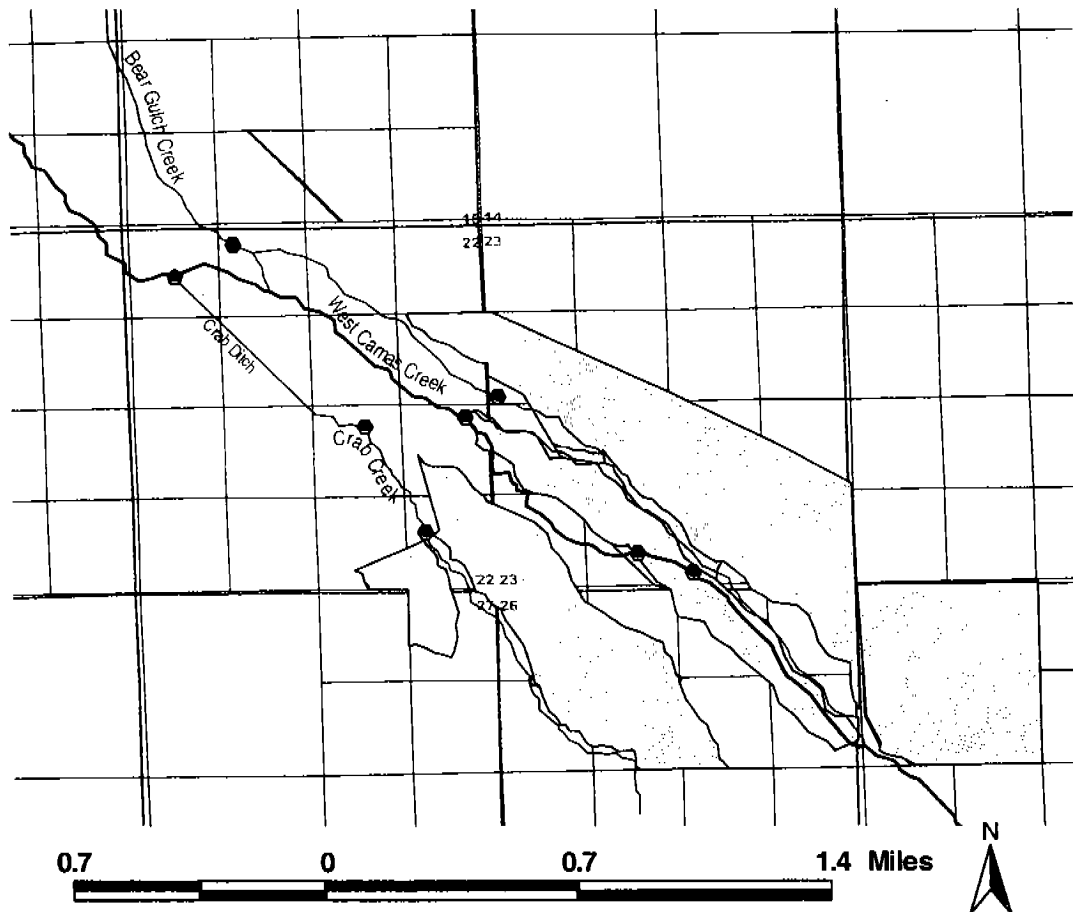
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

Michael Creamer
Attorney for Margaret Hagenbarth
P.O. Box 2720
Boise, ID 83701-1200

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Jennifer Crabtree
Signature of person delivering form

Figure 1



THIS INSTRUMENT, made the 20th day of September, in the year of our Lord, one thousand nine hundred and sixteen, between E. Hillman, and Elizabeth Hillman, his wife, of Madison, County, State of Idaho, parties of the first part, and Chas. P. Bartlett, of Pocatello, Bannock County, State of Idaho, party of the second part,

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Fourteen Thousand Five Hundred Dollars, (\$14,500.00) do by these presents, Grant, bargain, Sell and Convey unto the said party of the second part, and to his heirs and assigns forever, all that certain real property situate in the County of Fremont, and State of Idaho, and bounded and particularly described as follows, to-wit:

The Northwest quarter of Section 21; the North Half of Section 26; the South Half of the Southeast quarter, and the Southwest quarter of Section 22; the Northeast quarter of the Northeast quarter of Section 27; The Southeast quarter, the South Half of the Northeast quarter, the Northwest quarter of the Northeast quarter, and the East Half of the Northwest quarter of Section 28; all in Township 13, North Range 36, East of the Boise Meridian, in Fremont County, Idaho, containing 1120 acres, more or less, according to the Official plat of the survey of the said lands returned to the General Land Office by the Surveyor General.

Also all of our right, title and interest in and to any and all water appertaining to the said land, and more particularly all our right, title and interest in and to 4 cubic feet of water per second of time of the waters of Bear Creek and its tributaries in Fremont County, Idaho, as the same is shown and recorded in Book "E" of Notice of Water Rights, at page 74, in the Office of the County Recorder of Fremont County, Idaho, which said waters have since October 19, 1897, been used upon the northwest quarter of Section 25.

Also 80 miners inches of water dating from the 1st day of May, 1898, and used at all times since for the irrigation of the northwest quarter of Section 21, as shown in a decree of the District Court of Fremont County, Idaho, in the case of Levi Cartier vs. W. M. Buer, et al., said decree being entered by said Court June 20, 1902, and said decree being recorded in Book "A" of Judgments, page 270, in the Office of the Clerk of the District Court in Fremont County, Idaho.

Also all our right, title and interest in and to that certain water right to 4.0 second feet of the waters of Bartlett Springs, referred to in Permit #910, Certificate of Completion of Works, issued out of the State Engineer's Office August 17, 1907, recorded in Book "4" of Permits, page 910, in the Office of the State Engineer.

Also that certain water right to 12 second feet of the waters of Goudy Spring, referred to in Permit #911, Certificate of Completion of Works, issued out of the State Engineer's Office, August 21, 1907, recorded in Book "4" of Permits, page 911, in the office of the State Engineer.

Also all our right, title and interest in and to the filings on high waters out of the West Fork of Camas Creek in said Fremont County, according to the records of Fremont County.

This mortgage is given subject to a certain subsisting mortgage on said property made by Chas. P. Bartlett and H. Bertha Bartlett, his wife, in the sum of \$2500.00, dated March 10, 1914, and recorded in Fremont County, Idaho,

This mortgage is given subject to a certain lease made by Chas. P. Bartlett, and H. Bertha Bartlett, his wife, to C. A. Colishaw, dated about May 1st, 1914, which said lease is for a period of five years and expires about May 1st, 1919.

This mortgage is given as a part of the purchase price of the land herein conveyed by Chas. P. Bartlett and H. Bertha Bartlett, his wife, this date, to the grantor herein.

Together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

And the said parties of the first part hereby agree to keep the buildings on said premises fully insured against loss by fire in some reliable fire insurance company, with loss, if any, payable to the party of the second part, as mortgagee, as his interest may appear.

THIS GRANT is intended as a mortgage to secure the payment of one certain promissory note of even date herewith executed

and delivered by said parties of the first part to the party of the second part, of which the following is a copy:

"\$14,500.00 (copy) Pocatello, Idaho, 1916
September 28, 1916.

Five Years after date, without grace, for value received, we, or either of us, promise to pay to the order of Chas. P. Bartlett, Fourteen Thousand Five Hundred Dollars, negotiable and payable at the office of FLETCHER R. BURRUS & COMPANY, #246 North Main Street, Pocatello, Idaho, without defalcation or discount, with interest at the rate of seven per cent. per annum, from date until paid, and if suit be instituted for the collection of this note, we agree to pay a reasonable attorney's fee.

Right is reserved of paying \$100.00 or more on this note on any interest paying date.

Interest payable annually.

(Signed) H. Hillman.

(Signed) Elin Abbott Hillman. "

And these presents shall be void if such payment be made. But in case default shall be made in the payment of said principal sum of money or any part thereof as provided in the said note, or if the interest be not paid as therein specified, then it shall be optional with the said party of the second part, his executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second party, his heirs, executors, with the interest on the same, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators, or assigns.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and delivered in the presence of:

James R. Wright M. Hillman
Elizabeth Hillman

STATE OF IDAHO,)
(ss.
County of Madison.)

On this 26th day of September, 1916, before me, James R. Wright a Notary Public in and for said County and State, personally appeared M. Hillman and, Elizabeth Hillman, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

James R. Wright
Notary Public, NOTARY PUBLIC,
Residing at Rexburg, Madison County, Idaho,
My Commission Expires February 5th, 1920.

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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2002 NOV 6 AM 9 51

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 31-11700

NAME AND ADDRESS: NICK R HILLMAN
2300 N 2800 E
HAMER, ID 83425

RON R HILLMAN
3120 E 2200 N
HAMER, ID 83425

RANDY J HILLMAN
5518 N 4000 W
REXBURG, ID 83440

SOURCE: BEAR GULCH CREEK TRIBUTARY: WEST CAMAS CREEK

QUANTITY: 4.00 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 7.74 CFS. COMBINED RIGHT NOS.:
31-82, 31-83, 31-84, 31-85, 31-86, 31-11700, 31-11701.

PRIORITY DATE: 09/01/1909

POINT OF DIVERSION: T13N R38E S22 NWNEW Within Clark County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	05-01 TO 10-31	4.00 CFS
	Stockwater	05-01 TO 10-31	0.20 CFS

PLACE OF USE:	Irrigation	Within Clark County
	T13N R38E S22	SENE 12.0
	S23	SWNE 1.0
		SESW 13.0
		NESW 13.0
		NWSW 8.0
		SESE 13.0
		NWSE 13.0
		SESE 10.0
	S25	SESE 39.0
		NWNW 38.0
		SESW 34.0
	S26	SESW 40.0
		NWNE 1.0
		SENE 1.0
	187.0 Acres Total	

Stockwater Within Clark County
Same as Irrigation

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 200 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 187 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-82, 31-83, 31-84,
31-85, 31-86, 31-11700, 31-11701.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

USE.

RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECEIVED

NOV - 7 2002

Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2002 NOV 6 AM 9 51

**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

Case No. 39576

)
) **ORDER OF PARTIAL DECREE**
)
) **For Water Right 31-11700**
)

On September 13, 2002, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 31-11700 is hereby decreed as set forth in the attached *Partial Decree* Pursuant to I.R.C.P. 54(b).

DATED November 6, 2002



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

2002 NOV 06 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 31-11700

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 31-11700 was mailed
on November 06, 2002, with sufficient first-class postage prepaid
to the following:

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

MARGARET HAGENBARTH
Represented by:
BLOOMQUIST, JOHN E.
DONEY, CROWLEY, BLOOMQUIST
108 S WASHINGTON
PO BOX 1418
DILLON, MT 59725
Phone: 406-683-8795

MARGARET HAGENBARTH
Represented by:
MICHAEL C. CREAMER
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

CERTIFICATE OF MAILING

PAGE 1
11/06/02

NICK R HILLMAN
RANDY J HILLMAN
RON R HILLMAN
Represented by:
RAY W. RIGBY
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

ROBBIN HALL
Chief Deputy Clerk

Ruberry, Allen

From: McHugh, Candice
Sent: Friday, August 23, 2002 11:52 AM
To: Adjudication Attorneys
Cc: Ruberry, Allen; Tuthill, Dave; Carlsen, Ernie
Subject: Orders on SJ

SM Bilyeu denied Hagenbarth's motions for summary judgment in the Hillman and the Singleton cases. The issue in both cases concerned what water rights were required to be filed in the prior adjudications of the water source. In both cases, the Department recommended water rights with priority dates that pre-dated the prior decrees based on the Department's conclusion that 1) the source was not included in the prior decree for the Hillman case and 2) that the prior decree did not require or decree diverted stockwater rights in the Singleton case.

In Hillman she determined that the scope of the rights to be included in the prior decrees was ambiguous and that although Bear Creek is tributary to Camas Creek, no rights to Bear Creek were decreed in the prior decrees. Thus, a genuine issue of fact remains regarding the scope of the rights to be included in the prior decrees.

In Singleton she determined that the term "use" as it relates to stockwater use is ambiguous and it is unclear whether the *Sauve v. Abbott* decree required all stockwater uses to be filed. Thus, a genuine issue of fact remains regarding what claims were required. However, she noted that the claimant, if he can prove the prior decree does not prevent him from claiming a priority date prior to the decree that he may have the burden of proving the priority date because the Director's Report presumption "bubble" has burst.

Also, in her decisions, SM Bilyeu states that the rules of evidence do not allow an expert to give legal conclusions and that such opinions are inadmissible. However, she called me and said that she does not believe we need to exclude such conclusions from our affidavits if in fact that was part of our basis but that she will not adopt those findings and that such conclusions could be struck depending on what occurs at trial. In the affidavits on these cases that I submitted, I tried to relay the information in as fact specific manner as possible. However, much of the basis was based on legal conclusions of what the prior decrees did or did not preclude.



31-11440 ORD.tif 31-11700 ORD.tif

Candice

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank You

05/04/2001

~~2002 SEP 12 AM 11:40~~

44-38861-578A
 TWIN FALLS CO., IDAHO
 FILED

COPY

TRIBUTARY: WEST CAMAS CREEK

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 7.74 CFS. COMBINED RIGHT NOS. 31-82, 31-83, 31-84, 31-85, 31-86, 31-11700, 31-11701. *R-2A*

Sept. 1, 1900

T13N R38E S22 NWNENW Within CLARK County

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	05/01 10/31	4.000 CFS
STOCKWATER	05/01 10/31	0.200 CFS

T13n R38e S22	SENE	12.0	T13n R38e S23	SWNE	1.0
T13n R38e S23	SWNW	29.0	T13n R38e S23	SENW	13.0
T13n R38e S23	NESW	32.0	T13n R38e S23	NWSW	8.0
T13n R38e S23	SESW	2.0	T13n R38e S23	NESE	13.0
T13n R38e S23	NWSE	34.0	T13n R38e S23	SWSE	30.0
T13n R38e S23	SESE	39.0	T13n R38e S25	NENW	39.0
T13n R38e S25	NWNW	38.0	T13n R38e S25	SWNW	34.0
T13n R38e S25	SENW	40.0	T13n R38e S26	NENE	21.0
T13n R38e S26	NWNE	1.0	T13n R38e S26	SENE	1.0

387 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 200 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 387 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-82, 31-83, 31-84, 31-85, 31-86, 31-11700, 31-117001.

Claimant

Ray w. Legby

Objector

James P. Fitzgerald

Attorney for
Hagenbachs

1708

John M. Allen

~~Harmon Vick~~ ^{Sept 12/02} ~~Harmon Vick~~ ^{9/12/02} IOWR: Candice Mayhew

SF5

05/04/2001

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE. RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
STOCKWATER; 1200 CATTLE.

Figure 1

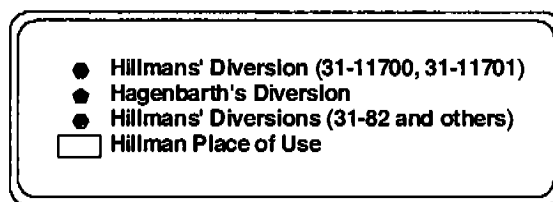
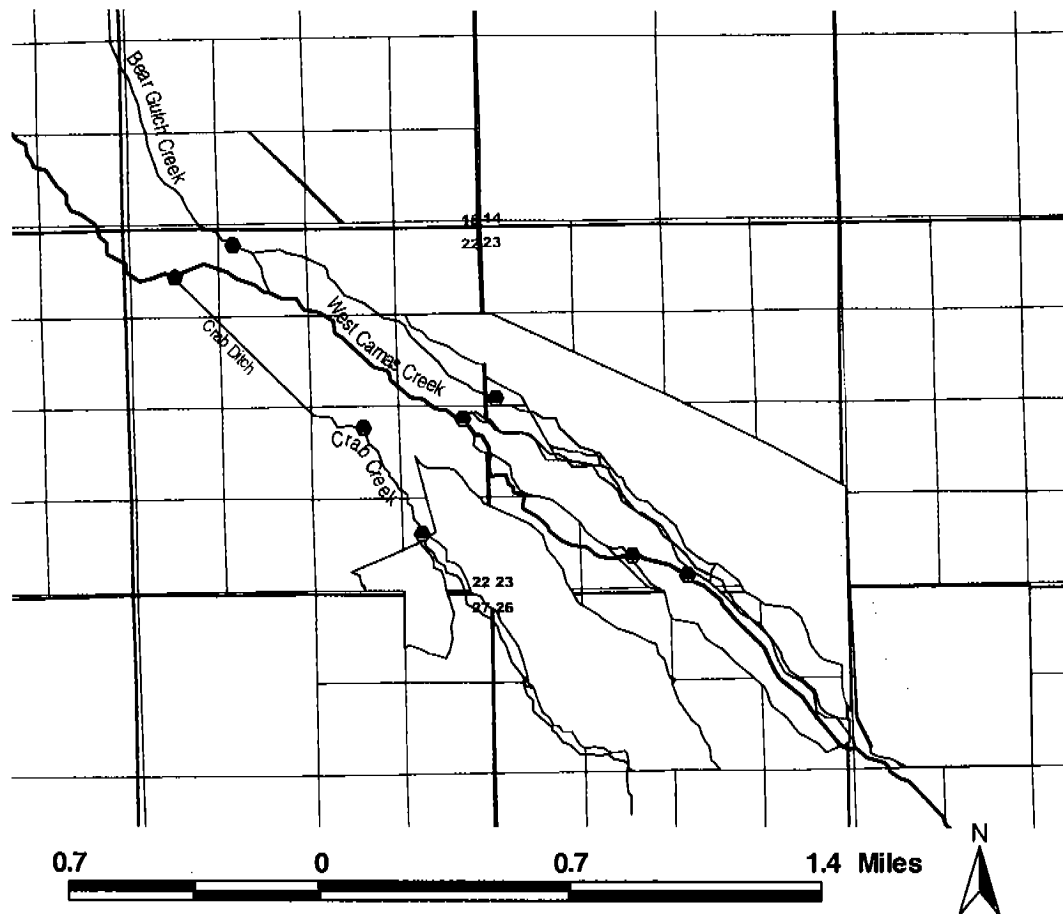
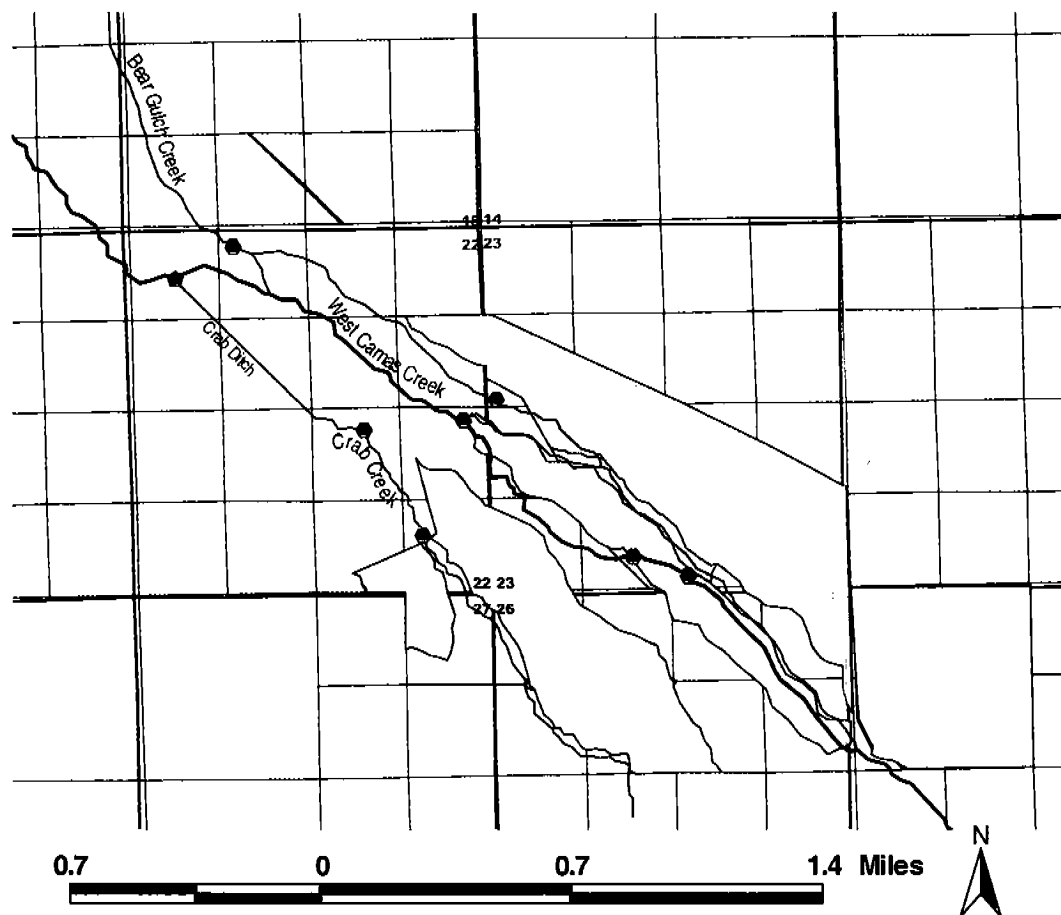


Figure 1



- Hillmans' Diversion (31-11700, 31-11701)
- Hagenbarth's Diversion
- Hillmans' Diversions (31-82 and others)
- Hillman Place of Use

Figure 1

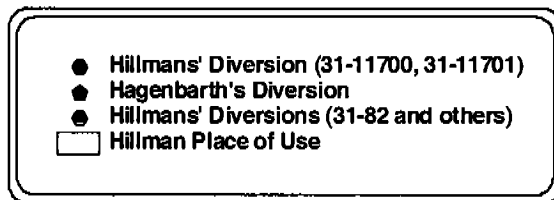
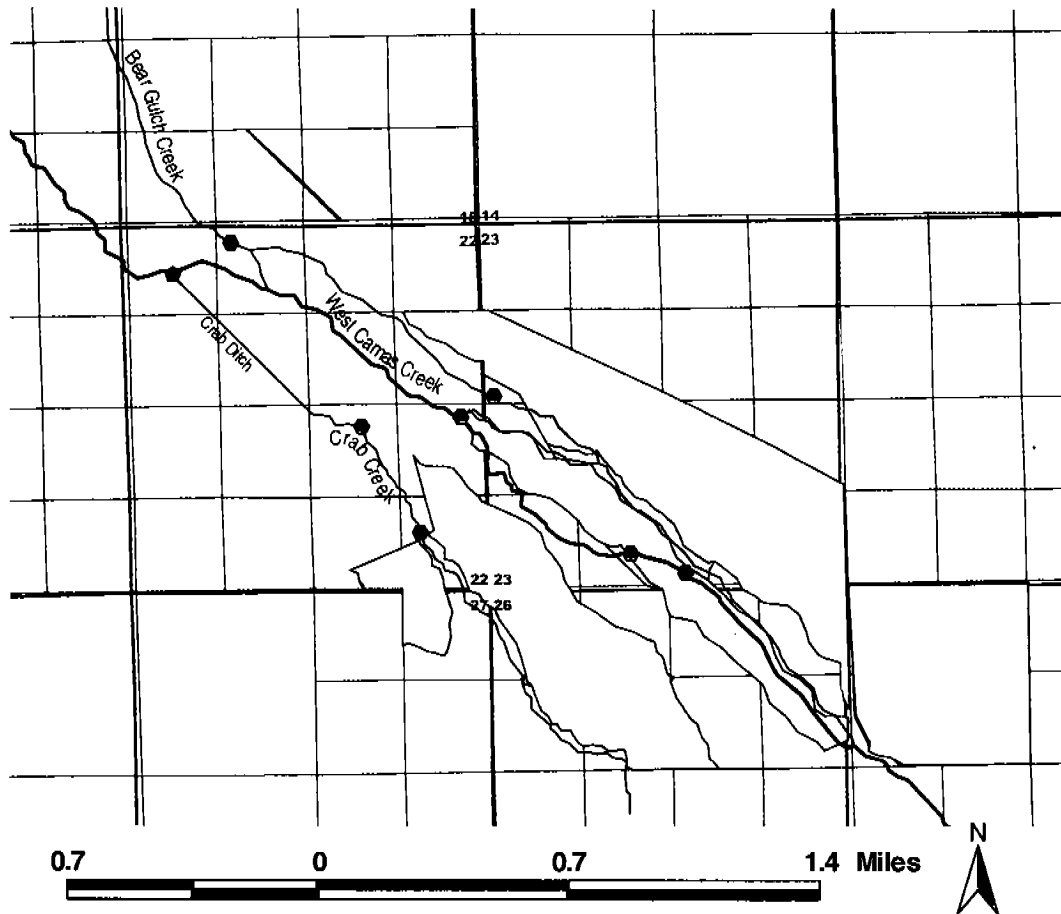
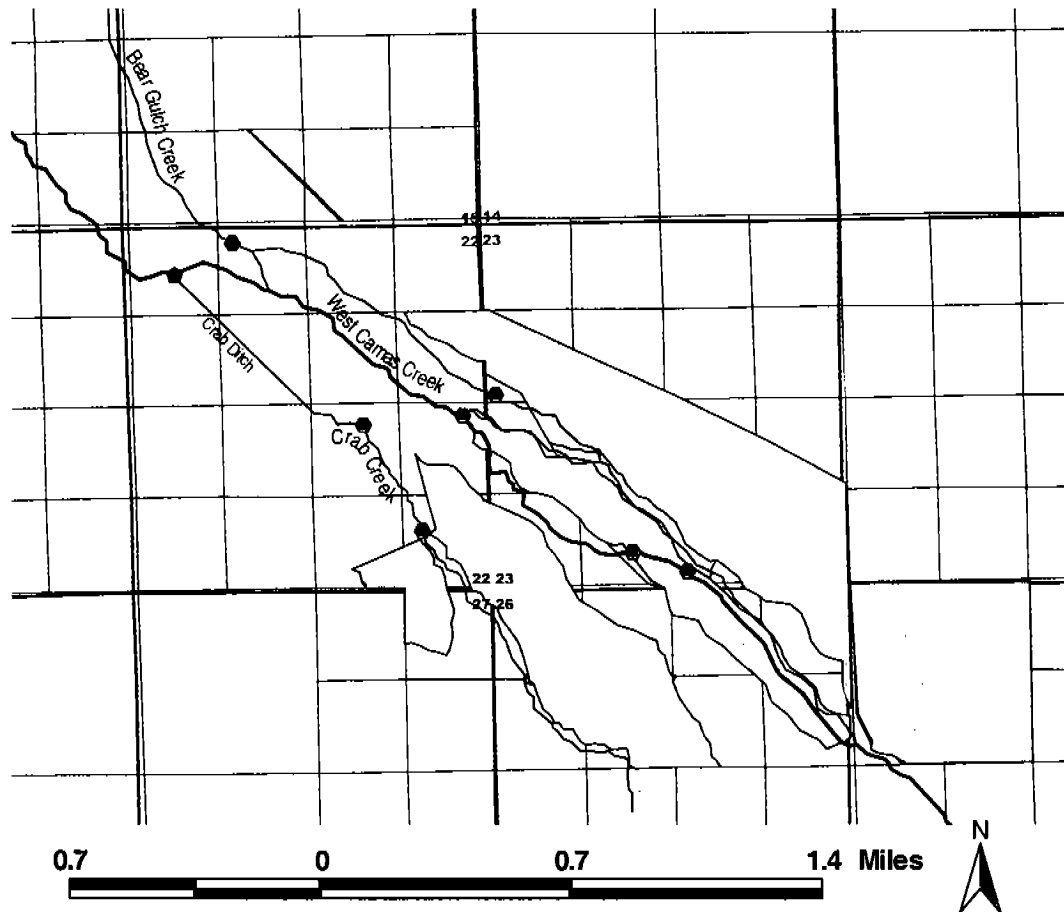


Figure 1



- Hillmans' Diversion (31-11700, 31-11701)
- Hagenbarth's Diversion
- Hillmans' Diversions (31-82 and others)
- Hillman Place of Use

Ruberry, Allen

From: McHugh, Candice
Sent: Friday, August 23, 2002 11:52 AM
To: Adjudication Attorneys
Cc: Ruberry, Allen; Tuthill, Dave; Carlsen, Ernie
Subject: Orders on SJ

SM Bilyeu denied Hagenbarth's motions for summary judgment in the Hillman and the Singleton cases. The issue in both cases concerned what water rights were required to be filed in the prior adjudications of the water source. In both cases, the Department recommended water rights with priority dates that pre-dated the prior decrees based on the Department's conclusion that 1) the source was not included in the prior decree for the Hillman case and 2) that the prior decree did not require or decree diverted stockwater rights in the Singleton case.

In Hillman she determined that the scope of the rights to be included in the prior decrees was not clear. ~~Because~~ Bear Creek is tributary to Camas Creek, no rights to Bear Creek were decreed in the prior decrees. ~~Therefore~~ a question remains regarding the scope of the rights to be included in the prior decrees.

In Singleton she determined that the term "use" as it relates to stockwater use is ambiguous and it is unclear whether the Sauve v. Abbott decree required all stockwater uses to be filed. Thus, a genuine issue of fact remains regarding what claims were required. However, she noted that the claimant, if he can prove the prior decree does not prevent him from claiming a priority date prior to the decree that he may have the burden of proving the priority date because the Director's Report presumption "bubble" has burst.

Also, in her decisions, SM Bilyeu states that the rules of evidence do not allow an expert to give legal conclusions and that such opinions are inadmissible. However, she called me and said that she does not believe we need to exclude such conclusions from our affidavits if in fact that was part of our basis but that she will not adopt those findings and that such conclusions could be struck depending on what occurs at trial. In the affidavits on these cases that I submitted, I tried to relay the information in as fact specific manner as possible. However, much of the basis was based on legal conclusions of what the prior decrees did or did not preclude.



31-11440 ORD.tif 31-11700 ORD.tif

Candice

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank You

9/10/02 Meet Candice @ 4:30-5:00 PM at Dinner @ 6 PM Hotel Lobby

AUG 23 2002

2002 AUG 22 PM 4: 37

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

In Re SRBA

ORDER ON SUMMARY JUDGMENT

Case No. 39576

SUBCASE NOS. 31-11700 AND 31-11701

Nick, Ron, and Randy Hillman filed claims for these water rights April 9, 2001. The claims state that the basis for these rights is beneficial use:

This claim is based on a Notice of water right from the Fremont County Records. Frank Serfas, 19 October 1897. Not enjoined to the Suave Decree, 1930. Stockwater place of use same as irrigation. Permissible place of use with other rights; 31-82, 31-83, 31-84, 31-85, 31-86. This right is limited to 200 acres.

See, Notice of Claim to a Water Right Acquired Under State Law. IDWR recommended these rights essentially as claimed.

Objections were filed by Margaret, David and James Hagenbarth. The *Objections* assert that 31-11700 and 31-11701 are duplicate filings of 31-82.¹ Hagenbarths also assert that 31-11700 and 31-11701 were not decreed in prior adjudications that were intended to decree all water rights in West Camas Creek and its tributaries. *Cartier v. Buck* (Idaho, Fifth Jud. Dist. (June 20, 1902)); *Suave v. Abbott* No. 635 (U.S. D. Idaho E. Div. (Nov. 1, 1930)).

Objectors James, David and Margaret Hagenbarth filed a *Motion for Summary Judgment* asserting that these two water rights should not exist or that these two water rights should have priority dates no earlier than November 2, 1930. The *Motion for Summary Judgment* relies on a legal theory that water rights 31-11700 and 31-11701 were not decreed by earlier adjudications

1 Water right 31-82 was decreed by the SRBA District Court on May 1, 2002.
ORDER ON SUMMARY JUDGMENT
G:/31 ORDERS/11700.ctal.ORDR.S.J.MOTN
8/22/02

Page 1

that were intended to decree all water rights in West Camas Creek and its tributaries. Hagenbarths argue that the doctrine of *res judicata* establishes as a matter of law that these water rights cannot exist with a priority date of October 19, 1897. Hagenbarths filed the *Affidavit of Attorney Patti Rowland* with attachments including portions of the *Complaint*, *Affidavit of Service*, *Order Directing the Bringing in of other Parties*, *Frank Serfas Demur to the Cross Complaint*, *Answer and Cross Complaint*, *Decision*, *Findings of Fact and Conclusions of Law* and *Decree in Cartier v. Buck and Counterclaim*, *Statement of Claim of Clients*, *Memorandum Opinion*, *Findings of Fact and Conclusions of Law* and *Decree in Suave v. Abbott*. Hillmans did not file any affidavits. This Special Master requested that IDWR submit an affidavit explaining the basis of its recommendation. IDWR submitted the *Affidavit of Allen Ruberry*. The *Motion for Summary Judgment* was argued July 31, 2002.

II. STANDARD OF REVIEW

A. General Standard for Summary Judgment

I.R.C.P. 56(c) provides for summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Courts look to "the pleadings, depositions, and admissions on file, together with the affidavits, if any. . ." to determine whether the moving party is entitled to summary judgment. I.R.C.P. 56(c). The facts are usually liberally construed in favor of the nonmoving party who is to be given the benefit of all favorable inferences which might reasonably be drawn from the evidence. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P.2d 851 (1991). The burden of proving the absence of genuine issues of material fact rests on the moving party. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). If the moving party properly supports the motion for summary judgment, the nonmoving party must then present opposing evidence.

The opposing party's case must consist of more than speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact. *G & M Farms v. Funk Irrigation*, 119 Idaho at 517. The burden of proving the absence of material facts rests upon the moving party.

B. Effect of Presumption on Summary Judgment

In the SRBA, *Director's Reports* have *prima facie* weight. Giving *Director's Reports* *prima facie* weight confers a presumption that sufficient proof has been made to prevail on each element of a water right. In the context of a summary judgment motion, presumptions can operate

for either a moving or opposing party. For example, in *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990), the Supreme Court upheld a summary judgment order where the nonmoving party failed to rebut the presumption of a product's useful safe life. In *Olsen*, I.C. § 6-1403 established a rebuttable presumption that the "useful safe life" of a product was ten years. The Supreme Court held that plaintiff failed to rebut the presumption with opposing affidavits. "[T]he record is completely devoid of any evidence to rebut the statutory presumption that the product's useful safe life had expired." 117 Idaho at 714. Thus, summary judgment was proper for defendants.

If affidavits are presented which rebut the presumption afforded *Director's Reports*, the presumption ceases to exist. If no affidavits are presented, however, the *Director's Report* remains unrebutted.

C. *Res Judicata*

The doctrine of *res judicata* precludes parties, and their privies, in a final litigation from relitigating in a second suit against the same parties, not only the same claim or demand, but also all claims arising out of the transaction which was the subject matter of the litigation and which could have been made in the first action. *Diamond v. Farmers Group*, 119 Idaho 146, 804 P.2d 319 (1990).

III. RECORD ON SUMMARY JUDGMENT

The record submitted for this *Motion for Summary Judgment* includes the *Affidavit of Allen Ruberry*, the *Affidavit of Attorney Patti Rowland*, the claims, the *Objections*, and the *Director's Reports*.

IV. FACTS OF RECORD

A. Prior Decrees

The plaintiff in *Cartier v. Buck* filed a complaint seeking to determine the water rights on Camas Creek and its tributaries. *Affidavit of Attorney Patti Rowland* Ex. 2. Frank Serfas was named as a defendant in the complaint and was served on November 22, 1901. *Id.* Ex. 3. Frank Serfas filed an *Answer & Cross Complaint* asserting his rights to Bear Creek. *Id.* Ex. 5. In 1902, the *Cartier v. Buck* court considered "claimed portions of the waters of Camas Creek and its tributaries." *Id.* Ex. 7.

A later court adjudicated water rights on Camas Creek and its tributaries in *Suave v.*

Abbott. *Id.* Ex. 10, 11, 12 & 13. M. Hillman claimed water rights located on West Camas Creek, Bartlett Spring and Goudy Springs all tributary to Camas Creek. *Id.* Ex. 10. M. Hillman was decreed rights in West Camas Creek, Goudy Springs and Bartlett Springs. *Id.* Ex. 11, 12 & 13. M. Hillman was the predecessor in interest to the claimants for some water rights. *Cartier v. Buck* and *Suave v. Abbott* are both final decrees.

B. Findings not Based on Affidavit

Several conclusions contained in this decision parallel opinions asserted in the *Affidavit of Allen Ruberry*. The court did not, however, rely on the opinions contained in the affidavit in reaching its conclusions, but made its own determinations of law.

Assertions of opinions of law by witnesses or affiants are generally inadmissible. Although witnesses are not prohibited from testifying on the "ultimate issue" to be reached in a case, I.R.E. 704 was not intended to allow experts to give legal conclusions. "If the expert's opinion is purely legal conclusion or concerns the law of the case, it is inadmissible. Decisions on the law are not decisions that the jury, the factfinder makes. They are for the judge to make in his capacity as legal officer." COMMENTS TO THE IDAHO RULES OF EVIDENCE (1985), Comment to Rule 704, p.2 (citations omitted).

V. ANALYSIS

A. Analysis Under Doctrine of *Res Judicata*

Under the doctrine of *res judicata*, or "claim preclusion," a final adjudication on a claim or demand precludes the parties to the first action, and their privies, from later relitigating against the same parties not only the same claim or demand, but in addition all claims arising out of the transaction which was the subject matter of the litigation and which could have been made in the first action. *Diamond v. Farmers Group*, 119 Idaho 146, 804 P.2d 319 (1990); *Aldape v. Akins*, 105 Idaho 254, 668 P.2d 130 (Ct. App. 1983). Under the facts alleged in this case, *res judicata* does not bar Hillmans from asserting a priority date earlier than November 2, 1930.

B. Prior Decrees

There is no dispute that the *Cartier v. Buck* and *Suave v. Abbott* decrees are final adjudications. The dispositive issue is whether these water rights were a "claim arising out of the same transaction" which was the subject matter of the *Cartier v. Buck* and *Suave v. Abbott* litigation and which should have been made in these prior actions. In other words, were

Hillmans' predecessors required to claim these water rights in *Cartier v. Buck* or *Suave v. Abbott*? The record from the *Cartier v. Buck* decree contains several relevant documents. The *Decision* states that the parties are entitled to various amounts of water, but merely sets forth the name of the parties, the priority and the quantity. *Affidavit of Attorney Patti Rowland* Ex. 6. Frank Serfas asserted at one point, rights on Bear Creek. *Id.* Ex. 5.

The *Decree* states that "a large number of persons not named in the original Complaint claimed portions of the waters of Camas Creek and its tributaries [and] an order was duly made that said parties be brought in" Ex. 8. Frank Serfas was decreed a water right for 80 inches May 1, 1898. *Id.* Ex. 8.

The record from the *Suave v. Abbott* decree contains several relevant documents. The *Counterclaim of Defendant M. Hillman* asserts that *Cartier v. Buck* adjudicated "the rights to the use of the water of Camas Creek and its tributaries. . ." *Id.* Ex. 9. The *Statement of Claims of Clients of F. A. Miller and B. H. Miller* asserts three water rights for M. Hillman including one on West Camas Creek, one on Goudy Springs and one on Bartlett Springs. *Id.* Ex. 10. The *Suave v. Abbott Memorandum Opinion* states that "this suit involves the adjudication of the use of the waters of Mud Lake and its tributaries. . ." *Id.* Ex. 11. The *Decree* in *Suave v. Abbott* lists the three rights of M. Hillman on West Camas Creek, Goudy Springs and Bartlett Springs. *Id.* Ex. 13. No rights to Bear Creek were adjudicated in either decree.

VI. CONCLUSION

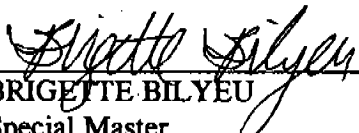
Hagenbarths argue that *Cartier v. Buck* and *Suave v. Abbott* were intended to adjudicate all water rights to Camas Creek and its tributaries. Hillmans dispute that conclusion, arguing that no rights to Bear Creek were intended to be adjudicated since none were included. The SRBA has considered the impact of prior decrees on the elements of current water rights. Unlike the SRBA, many decrees such as *Cartier v. Buck* and *Suave v. Abbott* were private decrees, and it is often difficult to determine the intended scope of these prior decrees.

For example, in the *Master's Report and Recommendation* for water right 34-10167, this Special Master considered a similar issue regarding whether a water right not included in the *Utah Construction* decree, adjudicating rights to the Big Lost River, should have been claimed during that prior litigation. The claimant in 34-10167 argued that his right on Thousand Springs was not required to be brought in the *Utah Construction* litigation because it was not known at the time of

the prior decree that Thousand Springs was tributary to the Big Lost River. The claimant in that case presented evidence regarding how claims were made in *Utah Construction* that ultimately persuaded the Court that the *U.C. Decree* did not bar his claim with a priority date before *Utah Construction. Masters Report and Recommendation* (Subcase No. 34-10164 (Oct. 8, 1996))

This Special Master concludes that the scope of water rights intended to be included in *Cartier v. Buck* and *Suave v. Abbott* is ambiguous. Although Bear Creek is apparently tributary to Camas Creek, no rights to Bear Creek were previously decreed in *Cartier v. Buck* or *Suave v. Abbott*. Therefore, genuine issues of material fact remain as to the scope of the rights intended to be included in *Cartier v. Buck* and *Suave v. Abbott*. Accordingly, the *Motion for Summary Judgment* is **denied**.²

DATED August 22, 2002.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

² This Special Master notes that the issues remaining for trial are quite narrow. The claimants may face the prospect of a *Director's Report* where the "bubble has burst" as to the presumption on priority. The Claimants may be required to put on facts at trial regarding the *Cartier v. Buck* and *Suave v. Abbott* decrees. If the Claimants prove that the *Cartier v. Buck* and *Suave v. Abbott* courts did not consider Bear Creek tributary to Camas Creek, or that those courts did not intend to include the rights on Bear Creek, they may then have the burden of proving the priority date.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON SUMMARY JUDGMENT was mailed on August 22, 2002, with sufficient first-class postage to the following:

MARGARET HAGENBARTH

Represented by:
BLOOMQUIST, JOHN E.
DONEY, CROWLEY, BLOOMQUIST
108 S WASHINGTON
PO BOX 1418
DILLON, MT 59725
Phone: 406-683-8795

MARGARET HAGENBARTH

Represented by:
MICHAEL C. CREAMER
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Phone: 208-388-1200

NICK R HILLMAN

RANDY J HILLMAN
RON R HILLMAN

Represented by:
RAY W. RIGBY
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098



DEPARTMENT OF WATER RESOURCES

1381 North Orchard Street, P.O. Box 83728, Boise, Idaho 83728-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIVA H. LAMPTON
COVERED

KARL A. DUNLAP
DIRECTOR

FAX Transmittal Cover Sheet

Number of pages including this one: 13

Date: 9-10-02

To: AI Puberry

Fax No.: _____

From: V. MUSIC

Fax No.: _____

Phone No.: 327-7928

Subject: Hillman aff Jav. +

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JUN 18 2002

Department of Water Resources

ALAN G. LANCE
Attorney General

CANDICE M. MCHUGH
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P.O. Box 83720
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ISB # 5908

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

In Re SRBA

)
)
)
)
)
)

Subcase No. 31-11700 and 31-11701

Case No. 39576

AFFIDAVIT OF ALLEN RUBERRY

State of Idaho)

) ss.

County of Ada)

Allen Ruberry, being first duly sworn, deposes and states as follows:

1. My name is Allen Ruberry. I am a Senior Water Resources Agent with the Adjudication Bureau of the Idaho Department of Water Resources ("IDWR" or the "Department"). This affidavit is based upon my own personal knowledge.

2. My work address is Idaho Department of Water Resources, 900 North Skyline Drive, Suite A, Idaho Falls, Idaho 83402. I reside in Idaho Falls, Idaho.

SCANNED

JUN 18 2002

3. My educational background is as follows: BS Geology, Boise State Univ. 1980; Assoc. Degree, Civil Engineering, Idaho State Univ., 1979; Cert. Drafting and Design, 1968.

4. My Department of Water Resources work experience includes the following: 1975 to 1977, IDWR, Hydrologic Aid, Adjudication Bureau; 1979 to 1980, IDWR, Water Resource Agent, Dam Safety; 1993 to Present IDWR, Sr. Water Resource Agent, Adjudication Bureau.

5. As part of my duties as Senior Water Resources Agent, I conduct field investigations for water right claims filed in the Snake River Basin Adjudication.

6. I understand that on May 16th the Court held a scheduling conference on subcase nos. 31-11700 and 31-11701. The parties involved in these subcases are: Claimants, Nick R. Hillman, Randy J. Hillman and Ron R. Hillman (Hillmans) and objectors, Margaret Hagenbarth, David J. Hagenbarth and James F. Hagenbarth (Hagenbarths). At that scheduling conference the Court requested an affidavit from the Department addressing whether or not the Department considered these two water rights to be duplicate claims of claim no. 31-82. This affidavit responds to that request.

7. I have attached a diagram as Figure 1 that provides an overview of the water rights discussed in this report as well as a visual perspective of their relationship to the Hagenbarths' water rights. The diagram shows West Camas Creek, Bear Gulch Creek and Crab Creek. The area around West Camas Creek and Crab Creek below the confluence of Bear Gulch Creek and West Camas Creek has ^{smaller & deeper} many springs that contribute water to the main channel of West Camas Creek and Crab Creek. Bear Gulch Creek does not contribute significant amounts of water to West Camas Creek. The Hillmans water right nos. 31-11700 and 31-11701 are the only water ^{claims} rights from Bear Gulch Creek. As the diagram shows, the confluence of Bear Gulch Creek and West Camas Creek is downstream from the diversion used by objector, Hagenbarths. Water

claim
right nos. 31-11700 and 31-11701 with the source as Bear Gulch Creek do not affect water users upstream from the Bear Gulch Creek confluence with West Camas Creek.

8. The following information sets forth the basis of my recommendation of Hillmans' water right^(A) nos. 31-82, 31-11700 and 31-11701. On April 9, 2001, I met with Nick Hillman concerning his water rights, which, include for purposes of this report, water right nos. 31-82, 31-11700 and 31-11701.¹ I did not consider 31-11700 and 31-11701 as duplicates of 31-82 for the following reasons:

⇒ 1898 May 1 1.6 cfs
9. The claim for 31-82 was from the source West Camas Creek based on a prior decreed right from the *Sauve v. Abbott* decree. *Sauve v. Abbott*, Case No. 635, Decree (Dist. Idaho Nov. 1, 1930). Both claim nos. 31-11700 and 31-11701 claim Bear Gulch Creek tributary to West Camas Creek as their source.

- a. In addition to having different sources than 31-82, claim nos. 31-11700 and 31-11701 also have a different basis. According to a Mortgage document I received from Nick Hillman, (a copy of which is attached hereto as Attachment A) claim no. 31-11700 is based on a posted notice dated October 19, 1897 and is referenced in the second single-spaced indented paragraph in the Mortgage document. Claim no. 31-11701 has a priority date of one year later, May, 1898, and is discussed in the third single-spaced indented paragraph in the Mortgage document which states that there is a water right based on a decreed right in a case titled *Cartier v. Buck*.²
- ⇒ Mortgage Doc.
⇒ 80 inches .40 cfs

¹ Hillmans have several other water rights from West Camas Creek that are not discussed in this report because they are not relevant. Those water right numbers include 31-83, 31-84, 31-85, 31-86.

² According to the Mortgage, this decree was entered by the District Court of Fremont County, Idaho on June 20, 1902, recorded in Book "A" of Judgments, page 570 in the Office of the Clerk of the District Court in Fremont County, Idaho.

b. The claimed (and recommended) points of diversions between 31-82 and 31-11700 and 11701 are also different. The point of diversion for 31-82 from the *Sauve v. Abbott* decree states that the point of diversion is "[o]ne-fourth mile up stream from the land to be irrigated (land located in Township 13 North, Range 38 East, Section 25, NW quarter)." However, the posted notice upon which claim no. 31-11700 is based discusses a point of diversion "[a]bout two miles West" of the land in the NW quarter of Section 25 Township 13 North, Range 38 East. Claim no. 31-11701 is mentioned in the Mortgage following reference to the Posted Notice for water from Bear Gulch Creek so I concluded that it too was a water right from Bear Gulch Creek.

Diff Priority Date
Diff Sources
Same POU.

c. The following chart provides a comparison of the three claims.

Claim No.	Source Claimed	Point of Diversion Claimed	Priority Date Claimed	Basis of Claim
31-82	West Camas Creek	13N 38E S22 NWSENE 13N R38E S23 SWSWSE	5/1/1898	Decreed <i>Sauve v. Abbott</i>
31-11700	Bear Gulch Creek	13N 38E S22 NWNENW	10/19/1897	Beneficial Use
31-11701	Bear Gulch Creek	13N 38E S22 NWNENW	5/1/1898	Beneficial Use

Given the above information, I did not consider 31-11700 and 31-11701 as duplicates of 31-82. *OR ANY OTHER RIGHT BELONGING TO HIMMATHIS*

10. The objector Hagenbarths allege that the *Cartier v. Buck* decree was superseded by the *Sauve v. Abbott* decree and that water right nos. 31-11700 and 31-11701 are duplicates of water right no. 31-82 which was decreed in *Cartier v. Buck*. I have made a brief review of that decree since Hagenbarths have provided a copy. The *Cartier v. Buck* decree apparently sets

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JUN 18 2002

forth water rights from Camas Creek and its tributaries and has priority dates that range from April 1, 1883 to May 1, 1901. The *Cartier v. Buck* decree does not set out for each water right decreed, the source of that right or the place of use. A brief comparison between the *Sauve v. Abbott* decree and the *Cartier v. Buck* decree demonstrates that other water rights from tributaries to Camas Creek and Camas Creek itself existed in addition to the rights decreed in *Cartier v. Buck*. In other words, the *Cartier v. Buck* decree does not appear to decree all the water rights from Camas Creek and its sources. For example, water right 31-53 (decreed in *Sauve v. Abbot* as water right no. 29) is for 0.4 cfs (20 inches) from Camas Creek with a priority date of May 1, 1896. This water right is not decreed in *Cartier v. Buck* even though it is from Camas Creek with a priority date similar to the water rights decreed in *Cartier v. Buck*. Similarly, water rights 31-85 and 31-86 (decreed in *Sauve v. Abbott* as water right no. 41) are both for 4.0 cfs (200 inches) with a priority date of August 18, 1899 and August 17, 1899 respectively. The source for these two water rights is West Camas Creek a tributary to Camas Creek. However, water rights with these priority dates and amounts of water were not decreed in the *Cartier v. Buck* decree. Thus, although Hillman's predecessor, Frank Serfas, was decreed a water right in *Cartier v. Buck*, this does not necessarily mean that the one water right decreed to Mr. Serfas was the only water right he owned. As the above examples show, other water rights existed besides the ones decreed in *Cartier v. Buck*.

200 cfs / Hamilton
Actually E. Camas Cr.

11. I recommended claim nos. 31-11700 and 31-11701 with a priority date that predated the *Sauve v. Abbott* decree because Bear Gulch Creek as a source was not specifically decreed in the *Sauve v. Abbott* decree. Thus, I recommend beneficial use irrigation rights from Bear Gulch Creek with priority dates that pre-dated the *Sauve v. Abbott* decree. However, if the source was specifically decreed in the *Sauve v. Abbott* decree, I recommended the irrigation water right with a priority date one day after the decree. For example, Hagenbarths claimed a

beneficial use irrigation water right from Dry Creek with a November 10, 1893 priority date.

However, since Dry Creek was decreed in *Sauve v. Abbott*, I recommended Hagenbarths' claim no. 31-10740 with a November 2, 1930 priority date (one day after the *Sauve v. Abbott* decree).

Hagenbarths have objected to this recommendation wanting the 1893 priority date.

12. The information that I was provided for claim nos. 31-11700 and 31-11701, including the Posted Notice and the Mortgage, demonstrated that these water rights were valid historical beneficial use rights so I recommended them accordingly.

Further, your affiant sayeth naught.

DATED this 14 day of June, 2002.


ALLEN RUBERRY
Senior Water Resources Agent, IDWR

ne this 14 day of June, 2002.

*NOTE HERE REGARDING SOURCES
AND PRIORITY DATES:*

*Hagenbarth HAS A RIGHT
from CRAB CROOK - 31-374, DECREE
AS 2.44cb from CRAB CROOK A TRIB
TO Camas Cr; Priority Nov. 22, 1909.
CLAIMED AND RECOMMENDED w/ A
CO2 remark => Change in Sources. ^{to Camas} _{CR}
∴ This ACCOMPLISHED CHANGE OF
SOURCES SHOULD CAUSE MORE
OF AN IMPACT TO WEST CAMAS
CROOK USERS THAN THE BOON CR
RT BECAUSE THE WATERS OF
CRAB CROOK ARE STILL HERE
ADDING TO CHANGING WATERS WHAT
HAGENBARTH ^{RE-} DIVERTS TO Crooked Cr.*

Jennifer Crabtree
Notary Public for Idaho
Residing at Boise Idaho Falls, Idaho
My Commission Expires: 9/23/03

SCANNED
JUN 18 2002

AND my FIELD BOOK

CERTIFICATE OF MAILING

I certify that on June 14, 2002, I mailed and/or delivered the original and copies of this form, including all attachments, to the following interested parties, by placing them in sealed envelopes, addressed as follows:

1. Original to:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Chief, Natural Resource Division
Office of the Attorney General
Box 83720
Boise, ID 83720-0010

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Ray Rigby
Attorney for Nick, Randy & Ron Hillman
P.O. Box 250
Rexburg, ID 83440-0250

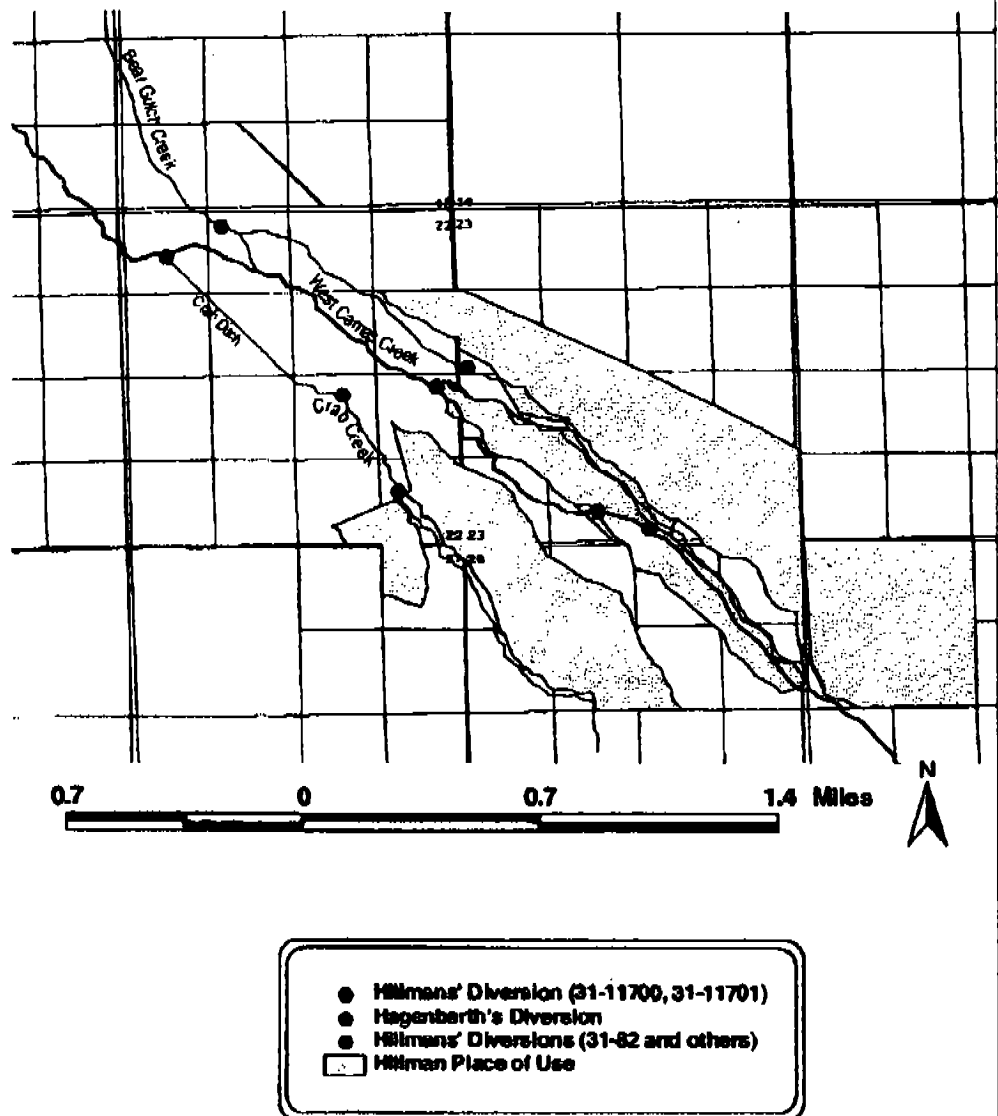
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

Michael Creamer
Attorney for Margaret Hagenbarth
P.O. Box 2720
Boise, ID 83701-1200

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Jennifer Crabtree
Signature of person delivering form

Figure 1



SCANNED
JUN 18 2002

MORTGAGE.

ATTACHMENT A

THIS INSTRUMENT, made the 10th day of September, in the year of our Lord, one thousand nine hundred and sixteen, between E. Hillman, and Elizabeth Hillman, his wife, of Madison, County, State of Idaho, parties of the first part, and Chas. P. Bartlett, of Pocatello, Bannock County, State of Idaho, party of the second part,

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Fourteen Thousand Five Hundred Dollars, (\$14,500.00) do by these presents, Grant, Bargain, Sell and Convey unto the said party of the second part, and to his heirs and assigns forever, all that certain real property situated in the County of Fremont, and State of Idaho, and bounded and particularly described as follows, to-wit:

The Northwest quarter of Section 21; the North Half of Section 22; the South Half of the Southeast quarter, and the Southwest quarter of Section 23; the Northeast quarter of the Northeast quarter of Section 24; The Southeast quarter, the South Half of the Northeast quarter, the Northwest quarter of the Northeast quarter, and the East Half of the Northeast quarter of Section 25; all in Township 13, North Range 26, East of the Boise Meridian in Fremont County, Idaho, containing 1120 acres, more or less, according to the Official plat of the survey of the said lands returned to the General Land Office by the Surveyor General.

Also all of our right, title and interest in and to any and all water appertaining to the said land, and more particularly all our right, title and interest in and to 4 cubic feet of water per second of time of the waters of ~~Bear Creek~~ and its tributaries in Fremont County, Idaho, as the same is shown and recorded in Book "A" of Notice of Water Rights, at page 74, in the Office of the County Recorder of Fremont County, Idaho, which said waters have since October 19, 1927, been used upon the northeast quarter of Section 25.

Also 80 miners inches of water flowing from the 1st day of May, 1898, and used at all times since for the irrigation of the northeast quarter of Section 21, as shown in a decree of the District Court of Fremont County, Idaho, in the case of Levi Cartier vs. E. M. Shaw, et al., said decree being entered by said Court June 20, 1902, and said decree being recorded in Book "A" of Judgments, page 270, in the Office of the Clerk of the District Court in Fremont County, Idaho.

SCANNED

JUN 18 2002

31-11700

1.664

31-11701

Source?

Also all our right, title and interest in and to that certain water right to 4.8 second feet of the waters of Bartlett Springs, referred to in Permit #910, Certificate of Completion of Works, issued out of the State Engineer's Office August 21, 1907, recorded in Book "4" of Permits, page 910, in the office of the State Engineer.

Also that certain water right to 12 second feet of the waters of Goudy Spring, referred to in Permit #911, Certificate of Completion of Works, issued out of the State Engineer's Office, August 21, 1907, recorded in Book "4" of Permits, page 911, in the office of the State Engineer.

Also all our right, title and interest in and to the filings on high waters out of the West Fork of Camas Creek in said Fremont County, according to the records of Fremont County.

This mortgage is given subject to a certain subsisting mortgage on said property made by Chas. P. Bartlett and H. Bertha Bartlett, his wife, in the sum of \$2800.00, dated March 10, 1914, and recorded in Fremont County, Idaho,

This mortgage is given subject to a certain lease made by Chas. P. Bartlett, and H. Bertha Bartlett, his wife, to C. A. Colishaw, dated about May 1st, 1914, which said lease is for a period of five years and expires about May 1st, 1919.

This mortgage is given as a part of the purchase price of the land herein conveyed by Chas. P. Bartlett and H. Bertha Bartlett, his wife, this date, to the grantor herein.

Together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

And the said parties of the first part hereby agreed to keep the buildings on said premises fully insured against loss by fire in some reliable fire insurance company, with loss, if any, payable to the party of the second part, as mortgagee, as his interest may appear.

THIS GRANT is intended as a mortgage to secure the payment of one certain promissory note of even date herewith, executed

SCANNED

JUN 8 2002

-3-

and delivered by said parties of the first part to the party of the second part, of which the following is a copy:

"\$14,500.00 (copy)

Pocatello, Idaho,
September 20, 1910.

1910

Five Years after date, without grace, for value received, we, or either of us, promise to pay to the order of Chas. P. Bartlett, Fourteen Thousand Five Hundred Dollars, negotiable and payable at the office of FLETCHER R. BURRUS & COMPANY, #240 North Main Street, Pocatello, Idaho, without defalcation or discount, with interest at the rate of seven per cent. per annum, from date until paid. And if suit be instituted for the collection of this note, we agree to pay a reasonable attorney's fee.

Right is reserved of paying \$100.00 or more on this note on any interest paying date.

Interest payable annually.

(Signed) H. Hillman.

(Signed) *E. J. Hillman* Hillman. "

And these presents shall be void if such payment be made. But in case default shall be made in the payment of said principal sum of money or any part thereof as provided in the said note, or if the interest be not paid as therein specified, then it shall be optional with the said party of the second part, his executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second party, his heirs, executors, with the interest on the same, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators, or assigns.

SCANNED

JUN 18 2002

-4-

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and delivered in the presence of:

James R. Wright
M. Hillman
Elizabeth Hillman

STATE OF IDAHO,)
(ss.
County of Madison.)

On this 26th day of September, 1916, before me.

James R. Wright a Notary Public in and for said County and State, personally appeared M. Hillman and, *Elizabeth*

Hillman, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

James R. Wright
Notary Public
Residing at Rensburg, Madison County, Idaho,
My Commission Expires February 5th, 1920.

SCANNED

JUN - 9 2002

Levi Cartier,

Plaintiff,

vs.

W. W. Buck, Ben McDonald, John Ching,
Charles Lanthaler, W. C. Gaudy,
M. Flaherty, Christen P. Jensen,
N. P. Christensen, John Anderson,
William McGovern, Eliza Ann Stoddard,
Alonzo Stoddard, Sorren Kelson,
H. E. Martin, P. E. Bartlett,
Antone Edinger, H. J. Hoffman,
W. Shepherd, Buck Kendrick,
William Swan and James Swan as Swan
Bros., Good Rasmussen, W. H. Dye,
W. H. Bennett, M. Smith, Mayfield
and Phillips, Sorren Kjildsen,
August Spong, Gustav Spong,
Anders O. Spong, James H. Bramwell,
James H. Cochran, Thomas Turton,
Delbert Hudson, Neils Toulson,
Neils Poulsen, Gustav Brauer,
Frederick Nielsen, Joseph Kroger,
Joseph K. Smape, W. C. Collins,
Frederick Vadnais, Napoleon Vadnais,
Charles Kroger, Frederick Frederick-
sen, James Kelson, Neils Jensen,
Frederick Jensen, Peter Christensen,
George Mortensen, P. Mortensen,
P. A. Mortensen, Chris W. Pettys,
Charles Pettys, William McCullough,
W. E. Martin, George I. Martin,
Charles Underwood, David S. Thomas,
E. Z. Carbine and W. H. Carbine as
Carbine Bros., D. S. Taylor,
Purnell J. Owen, James H. Campbell,
Charles J. Shaller, Fred Shaller,
Peter P. Jensen, Hiram Spurlin, William
Swan, Henry Hancock, Peter
Taylor, Harry Taylor, Charles H.
Smith, Mrs. E. Smith, Mina E. Smith,
C. Martin, Marlborough Smith,
Chet Smith, Frank Serfas, George E.
Allen, Ralph Bartlett, Charles P. Bart-
lett, J. A. Godfrey, Neil W.
McMillan, Eugene Hibbert, Joseph Grapo,
John Grapo, George Grapo, James Allen,
William J. Underwood, ... Deviny,
H. Christensen, John Andrews, E. E. Ran-
dolph, T. B. Wall, Christopher Morley,
John Doe, Richard Roe, and Benj. C.
Hibbert, Christen Neilsen, A. A.
Harmon, Peter P. Jensen, John A. Petersen,
F. B. Neilsen, G. P. Shaller, and Camas
Reservoir Company, Limited, a corpor-
ation,

Defendants.

Decree.

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 10-17
Conit S. Owen
Clerk of the District Court
Deputy Clerk
Rebecca

EXHIBIT

"G"

THE HON. JEROME CONNELLEY
In AND DIVISION OF THE DISTRICT COURT OF THE STATE OF IDAHO
This cause having been commenced, summons having been duly issued, and served, and thereafter certain defendants named in the original complaint having appeared, and it being made to appear to the Court that a large number of persons not named in the original complaint, claimed portions of the waters of Camas Creek and its tributaries, an order was duly made that said other parties be brought in; and thereupon due service of said order and a copy of the summons, and of the amended complaint, was made upon said new parties in compliance with said order, and pursuant to law, and service of said amended complaint was also made upon the other parties defendant.

Thereafter certain parties having appeared by their respective counsel, it was agreed by and upon behalf of all parties appearing that the amended complaint should be deemed and treated as unverified, and all cross-complaints should be deemed and treated as specifically and fully denied, without filing any answers thereto.

Thereafter, to wit, at the regular Fall Term of said Court held in November, 1901, said cause came regularly on for trial at St. Anthony, Idaho, upon the amended complaint and cross-complaints, P. Averitt, J. B. Millspaugh, and F. S. Dietrich, appearing as attorneys for the plaintiff; Caleb Jones and B. W. Standrod appearing as attorneys for the defendant, Antone Edinger; J. G. Gwinn, as attorney for the defendant, Frank Serras; Caleb Jones for the defendants and intervenors, Walter S. Shepard and his wife, Elizabeth M. Shepard; Thomas R. Hamer for the defendants John A. Petersen, Peter A. Mortensen, and Charles H. Smith, and the intervenors William H. Carbine, Oliver E. Robinson, Joseph R. Crapo, John B. Crapo, Matilda J. Carbine, Harriet M. Crapo, and George A. Crapo, and the Camas Reservoir Company, Limited, a corporation;

2.

STATE OF IDAHO
COUNTY OF CLARK SS

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

Date 10-17 1901

Conni S. Owen
Clerk of the District Court
Deputy Clerk

Rebecca Roden

and Messrs. Hawley & Puckett, for Duncan S. Taylor, H. W. McMillan, James Allen, successor to and substituted for William McGillough, Christian Wielaen, W. G. Collins, Frederick Fredericksen, Nells Jensen, Thomas Turton, Charles Pettys, P. J. Owen, James H. Cochran, P. B. Neilsen, G. F. Schaller, Charles J. Schaller, Hiram Spurlin, Christen P. Jensen, P. Jensen, Berren Kelson, John Anderson, W. H. Bennett, W. C. Goudy, John Ching, William Swan, James Swan, N. P. Christensen, William McGovern, Good Rasmussen, and H. B. Martin and Peter P. Jensen;

And the default of all the other defendants having been duly entered according to law, the Court proceeded to hear the evidence adduced upon behalf of said plaintiff and all other parties appearing as aforesaid, and after all parties had rested, upon agreement of all parties through their respective counsel in open court, and upon such agreement it was ordered that said cause be argued at Pocatello, Idaho, in January, 1902, and that the Court make, file, render and enter its decision and decree in vacation as of a day of said term of court:

And thereafter said cause having been argued as agreed upon, and the same having been submitted for decision, the Court now being fully advised in the premises, and having made and filed herein its Findings of Fact and Conclusions of Law:

IT IS THEREFORE, ordered, adjudged, and decreed that the waters of Camas Creek and its tributaries, all in Fremont County, Idaho, be and the same are hereby distributed and decreed to the several parties to this suit and hereinafter named, for beneficial uses and purposes, in amounts and of the dates, with priority of rights in the order of and according to said dates, as follows, to-wit:-

To Levi Cartier:

High Water.

300 inches dated April 1, 1883.
150 inches, dated April 1, 1887.

3.

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 10-17, 1901
Conni S. Owen
Clerk of the District Court
Rebecca Ward
Deputy Clerk

Wild Hay.

85 inches dated April 1, 1883.
85 inches dated April 1, 1884.
175 inches dated April 1, 1885.
60 inches dated April 1, 1887.
200 inches dated April 1, 1895.

Annual.

75 inches dated April 1, 1883.
75 inches dated April 1, 1884.
250 inches dated April 1, 1885.
100 inches dated April 1, 1886.
75 inches dated April 1, 1895.

To Antone Edinger:

Annual.

90 inches dated December 10, 1884.

Wild Hay.

15 inches dated April 1, 1885.

High Water.

25 inches dated April 1, 1885.

To Elizabeth M. Shepard and Walter S. Shepard, her husband:

Annual.

60 inches dated May 15, 1890.

To Peter A. Mortensen,	100 inches from June 1, 1898.
John A. Petersen,	100 inches from May 1, 1891.
Charles H. Smith,	100 inches from May 1, 1900.
Peter P. Jensen and	
Chris P. Jensen,	80 inches from May 1, 1896.
Peter P. Jensen and	
Chris P. Jensen,	90 inches from June 1, 1897.
Frank Seffas,	80 inches from May 1, 1898.
Sorren Kelson,	150 inches from June 1, 1890.
"	80 inches from May 1, 1899.
John Anderson,	80 inches from June 1, 1896.
W. H. Bennett,	90 inches from June 1, 1891.
"	75 inches from June 1, 1895.
John Ching,	150 inches from June 1, 1889.
Christen Nielsen,	160 inches from August 8, 1893.
William Swan,	140 inches from April 1, 1895.
James Swan,	140 inches from Sept. 1, 1894.
N. P. Christensen,	135 inches from June 1, 1895.
✓ William McGovern,	50 inches from June 1, 1895.
"	80 inches from June 1, 1897.
H. E. Martin,	125 inches from June 1, 1897.
Good Rasmussen,	250 inches from April 1, 1889.
W. G. Collins,	80 inches from May 1, 1897.
"	90 inches from July 1, 1900.
D. S. Taylor,	80 inches from June 1, 1899.
Frederick Frederick-	
sen.....	150 inches from May 1, 1896.
Charles Pettys,	180 inches from June 1, 1891.
P. J. Owen,	160 inches from May 15, 1888.
F. B. Nielsen,	80 inches from May 1, 1897.
"	80 inches from May 1, 1899.
James H. Cochran,	225 inches from May 1, 1898.

4.

STATE OF IDAHO
COUNTY OF CLARK SS

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

Date 10-17, 1901
Conni S. Owen
Clerk of the District Court
Rebecca Anderson
Deputy Clerk

To The Court
from June 1st 1900 to May 1st 1901 1500 inches from May 1st 1900 to May 1st 1901 1500 inches

To G. F. Schaller,	110 inches from May 1, 1899.
Niels Jensen,	300 inches from June 1, 1899.
G. J. Schaller,	140 inches from May 1, 1899.
N. W. McMillan,	100 inches from Oct. 1, 1899.
Hiram Spurlin,	125 inches from May 1, 1901.
James Allen,	140 inches from May 1, 1900.
Thomas Turton,	40 inches from Oct. 1, 1900.

Said rights of Levi Cartier and of Antone Edinger, designated as "High Water" shall be good only during the spring high water season. The right of said Cartier and said Edinger designated "Wild Hay" shall be good only from the commencement of the irrigation season up to the first day of July in each year. All other rights of said Cartier and Edinger and all other parties are to be good for the whole year.

That of the several amounts of water so decreed, that belonging to Levi Cartier, Antone Edinger and Elizabeth M. Shepard and Walter B. Shepard, her husband, shall be measured at and distributed from the Channel of Camas Creek, and that of each of the other parties shall be measured at and distributed from that particular tributary of Camas Creek, from which said party has heretofore diverted his said water.

That the said ~~waters~~ waters be measured under the ~~air~~ System in cubic feet per second of time; fifty inches of water as herein decreed being equivalent to one cubic foot of water per second of time, or one second-foot.

That all of said parties entitled to use water under this decree, construct and maintain at their own expense, at or near their several points of diversion, respectively, substantial and uniform boxes, head gates, and weirs for the proper measurement of their said several amounts of water.

That each and every of the parties herein awarded rights, their agents, attorneys and successors in interest, are hereby restrained and perpetually enjoined from in any manner interfering with the waters of said Camas Creek and the tributaries thereof, herein decreed, or exercising any other or greater rights with reference thereto than as herein decreed to the said several parties respectively; and all other parties hereto have no interest in

STATE OF IDAHO :SS
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 10-17, 1901

Conni S. Owen
Clerk of the District Court
Rebecca Shadron

or right to any of the said waters of said Camas Creek or its tributaries and they and each of them are perpetually enjoined from in any manner interfering therewith.

That each party hereto pay his own costs, except the clerk's fee, and the expenses of serving process, which are distributed and to be paid as follows:.....

One-half by Plaintiff, and One-half by
Defendants. Per. rata per capita.....

Done at Chambers, at Montpelier, Idaho, this 20th day of June, 1902.

.....*Joseph C. Rich*.....
District Judge.

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 *10-17*

10-17
Conni S. Owen
Clerk of the District Court
Rebecca Jordan
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO,
IN AND FOR FREEMONT COUNTY.

Levi Gattier,

Plaintiff,

vs.

W. W. Buck, Ben McDonald, John Ching,
Charles Lammaler, W. C. Coudy,
M. Flaherty, Christen P. Jensen,
W. P. Christensen, John Anderson,
William McGovern, Miss Ann Stoddard,
Alonso Stoddard, Warren Nelson,
H. H. Martin, H. W. Bartlett,
Antone Edinger, H. J. Hoffman,
W. Shepherd, Buck Kendrick,
William Swan and James Swan as Swan
Bros., Good Rammeren, W. H. Eys,
W. H. Bennett, M. Smith, Mayfield
and Phillips, Warren Kjeldsen,
August Spang, Gustav Spang,
Anders O. Spang, James H. Brackwell,
James H. Cochran, Thomas Terton,
Halbert Hansen, Neils Toulson,
Neils Paulsen, Gustav Branger,
Frederick Nielsen, Joseph Kroker,
Joseph K. Shupe, W. G. Collins,
Frederick Vadnais, Napoleon Vadnais,
Charles Kroker, Frederick Fredrickson,
James Nelson, Neils Jensen,
Frederick Jensen, Peter Christensen,
George Mortensen, P. Mortensen,
P. A. Mortensen, Chris W. Pettys,
Charles Pettys, William McDullough,
W. B. Martin, George I. Martin,
Charles Underwood, David S. Thomas,
H. E. Carbine and W. H. Carbine as
Carbine Bros., B. S. Taylor,
Purnell J. Owen, James H. Campbell,
Charles J. Shaller, Fred Shaller,
Peter P. Jensen, Hiram Spurlin,
William Swan, Henry Hancock, Peter
Taylor, Harry Taylor, Charles H.
Smith, Mrs. E. Smith, Edna E. Smith,
O. Martin, Marlborough Smith,
Chet Smith, Frank Serfus, George E.
Allen, Ralph Bartlett, Charles P.
Bartlett, J. A. Gaffrey, Neil W.
McMillan, Eugene Hibbert, Joseph
Grape, John Grape, George Grape,
James Allen, William J. Underwood,
..... Deviny, H. Christensen,
John Andrews, E. E. Hanespher,
T. B. Wall, Christopher Marley,
John Doe, Richard Roe, and Benj. O.
Hibbert, Christen Neilson, A. A.
Harmon, Peter P. Jensen,

Findings of Fact
and Conclusions of Law.

STATE OF IDAHO
COUNTY OF CLARK SS

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

Date 10-17, 1901

Conni S. Owen
Clerk of the District Court
Rebecca Hodges
Deputy Clerk

and for domestic and stock purposes.

VII.

That ever since May 15th, 1890, the intervenors Elizabeth M. Shepard and Walter S. Shepard, now husband, and their predecessors in interest have been and they now are the owners of in possession and entitled to the possession of the lands described in their complaint in intervention, the same being situate in Fremont County, Idaho, and adjacent and riparian to said Camas Creek, some distance above the lands of said Antone Edinger.

That said lands are in their natural condition arid and unproductive and require the artificial use of water thereon for the purpose of raising crops in paying quantities, and excepting the waters of Camas Creek there are no waters available for use thereon.

That on the 15th day of May, 1890, said intervenors and their predecessors in interest for the purpose of irrigating said lands and for stock and domestic uses, appropriated eighty (80) inches of the waters flowing in said Camas Creek, and by means of dams and ditches of sufficient size and capacity diverted said amount of water from said stream, and conducted the same to and upon said lands during the irrigating season of each and every year thereafter, and said intervenors have used said amount of water in cultivating said lands and in raising crops thereon, and for domestic and stock purposes, and said amount of water is reasonably necessary therefor.

VIII.

That the cross-complainants, Peter A. Mortensen, John A. Petersen, Charles H. Smith, Frank Serfat, Peter P. Jensen and Chris P. Jensen, partners, Boren Nelson, John Anderson, W. H. Bennett, John Ching, Christen Neilson, William Swan, James Swan, N. P. Christensen, William McGovern, H. E. Martin,

Good Easmen, W. S. Collins, D. M. Taylor, Frederick Frederick-
ickson, Charles Pettys, P. J. Owen, P. B. Nelson, James H.
Oechran, C. F. Schaller, Neils Jensen, C. J. Schaller, N. W.
McMillan, Hiram Spurlin, James Allen, Thomas Farten, severally
are and ever since the respective dates of their appropriations
of water as hereinafter found and set out, and their grantors
and predecessors in interest have been severally the owners,
in possession and entitled to the possession of the several
tracts of land particularly described in their respective
cross-complaints, all of said lands being situate in Fremont
County, Idaho, adjacent and riparian to the tributaries of said
Camas Creek. That substantially all of said lands are arid
in character and will not produce crops in paying quantities
without artificial irrigation. That excepting the waters
of the tributaries of said Camas Creek, there is no water avail-
able for the irrigation of said lands.

II.
That said cross-complainants and their grantors and
predecessors in interest, for the purpose of irrigating said
lands and the several parcels thereof and for domestic and
stock purposes, appropriated of the waters of the several
tributaries of said Camas Creek the amounts of water and upon
the several dates as hereinafter in this paragraph particularly
stated, and upon said several dates, said appropriators respec-
tively did by means of dams and ditches of sufficient size and
capacity divert said several amounts of water from said several
tributaries, and conducted the same to and upon their several
tracts of land respectively and during the irrigating seasons
in which said appropriations were made, and during the irrigating
seasons of every year thereafter, said cross-complainants,
their grantors and predecessors in interest, except when in-
terfered with by others, have used said several amounts of
water, so long as and to the extent that said tributaries

supplied said amounts of water, in the irrigation and cultivation of said several tracts, and for domestic and stock purposes. And the court finds that the names of said cross-complainants and the amounts of their several appropriations together with the date thereof are as follows, to-wit:-

Peter A. Mortensen,	100 inches,	from June 1, 1898.
John A. Petersen,	100 inches,	from May 28, 1891.
Charles H. Smith,	100 inches,	from May 1, 1900.
Frank Series,	50 inches,	from May 1, 1898.
Peter P. Jensen, and		
Chris. P. Jensen, partners	50 inches,	from May 1, 1896.
Peter P. Jensen and Chris P. Jensen, partners,		
	50 inches,	from June 1, 1897.
Sarren Kelson,	150 inches,	from June 1, 1899.
Sarren Kelson,	50 inches,	from May 1, 1899.
John Anderson,	50 inches,	from June 1, 1896.
W. H. Bennett,	50 inches,	from June 1, 1891.
W. H. Bennett,	75 inches,	from June 1, 1895.
John Ching,	150 inches,	from June 1, 1899.
Christen Nielsen,	100 inches,	from August 8, 1893.
William Swan,	140 inches,	from April 1, 1895.
James Swan,	140 inches,	from Sept. 1, 1894.
E. T. Christensen,	135 inches,	from June 1, 1895.
William McGovern,	50 inches,	from June 1, 1895.
H. E. Martin,	125 inches,	from June 1, 1897.
Good Rasmussen,	250 inches,	from April 1, 1898.
T. C. Collins,	50 inches,	from May 1, 1897.
W. C. Collins,	50 inches,	from July 1, 1900.
D. S. Taylor,	50 inches,	from June 1, 1899.
Frederick Frederickson,		
Charles Potts,	150 inches,	from May 1, 1898.
P. J. Owen,	150 inches,	from June 1, 1891.
F. B. Nielsen,	50 inches,	from May 1, 1897.
F. B. Nielsen,	50 inches,	from May 1, 1899.
James H. Cochran,	255 inches,	from May 1, 1898.
G. F. Schaller,	210 inches,	from May 1, 1899.
Niel Jensen,	300 inches,	from June 1, 1895.
G. J. Schaller,	140 inches,	from May 1, 1899.
N. W. McMillan,	100 inches,	from Oct. 1, 1898.
Hiram Spurlin,	155 inches,	from May 1, 1901.
James Allen,	140 inches,	from May 1, 1900.
Thomas Barton,	50 inches,	from Oct. 1, 1899.
William McGovern,	50	June 1, 1897.

And the court finds that said several amounts of water were and are reasonably necessary for said purposes. That substantially all the crops raised by said cross-complainants are wild hay and timothy and said crops when irrigated are paying crops, and the same need irrigation in the vicinity of said cross-complainants' lands up to but not later than July 15th, of each year.

XI.

That excepting the cross-complainants and intervenors hereinbefore expressly named as being the owners of land and the appropriators of water, no other defendants or intervenors ^{are} was or were at the commencement of this action, the owners of any lands or the appropriators or owners or users of any water of said Camas Creek or its tributaries.

XII.

And the court further finds that the use of water for irrigation at the head of said Camas Creek and along said tributaries does not increase but materially decreases the flow of water during the irrigating season, at the lower end of said Camas Creek and at the points where the plaintiff and said Edinger and said Shepard divert waters from said Camas Creek.

CONCLUSIONS OF LAW.

And from the foregoing findings of fact the Court concludes as a matter of law that the plaintiff and all of the cross-complainants and intervenors named in said findings of fact are entitled to a decree establishing the dates and amounts of their several appropriations as therein found with priority of rights in the order of and according to said dates, all of said rights to cover the whole of the irrigating season, except those designated as "high water" and "wild hay" rights of the plaintiff and of the defendant Antone Edinger, the former of which said rights to be good only during the period of high water, and the latter of which, that is, the "wild hay" rights, to be good only up to July first, of each year, said decree to be in the usual form, enjoining each party from interfering with all other rights as hereinbefore found, providing for a proper and uniform measurement and confining every right except those of the plaintiff, and of the defendant Edinger,

and of the intervenor, Shepard, to a diversion from that particular tributary of Camas Creek from which said water has heretofore been appropriated and diverted; and further adjudging that all other parties to this suit have no interest in or right to any of the waters of said Camas Creek or to its tributaries and enjoining them from in any manner interfering therewith.

Done at Montpelier, Idaho, this 20th day of June, 1902.

Joseph C. Reich

Dist. Judge.

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 10-17, 1901

Conni S. Owen
Clerk of the District Court
Rebecca Anderson
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF FREMONT.

Levi Cartier, Plaintiff,
Vs
W. W. Buck, et. al,
Defendants.

DECISION.

(original)

The following named plaintiff and defendants are entitled to various amounts of water set ~~out~~ opposite their names ~~and~~ from and to the respective dates mentioned, viz:-

Levi Cartier. WILD HAY RIGHTS ENDING JULY 1st, Each year.
" J. H. Adams claim, from April 1st, 1884, 85 inches.
" Victor Schmidt claim, from April 1st, 1887, 60 inches.
" M. H. Adams, claim, from April 1st, 1883, 85 inches.
" Twomey claim, from April 1st, 1895, 200 inches.
" Charles Lineman claim, from April 1st, 1885, 250 inches.
" Charles Schmidt claim, from April 1st, 1885, 150 inches.
" Charles Schmidt claim (pre-emption) from April 1st, 1885, 75 inches.
" ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Antoine Edinger, from April 1st, 1885, 15 inches.

HIGH WATER RIGHTS ONLY.

Levi Cartier,, A. C. & O. T. Adams, from April 1st, 1883, 300 inches.
" Victor Schmidt, from April 1st, 1887, 150 inches.
Antoine Edinger, from April 1st, 1885, 25 inches.

ANNUAL RIGHTS.

Levi Cartier, M. H. Adams claim, from April 1st, 1883, 75 inches.
" J. H. Adams claim, from April 1st, 1884, 75 inches.
" Charles Schmidt claim, from April 1st, 1885, 75 inches.
" Frank Lunthaler claim, from April 1st 1886, 100 inches.
" John Bahn claim, from April 1st, 1885, 100 inches.
" E. D. Ray claim, from April 1st, 1886, 100 inches.
" Charles Lineman claim, from April 1st, 1885, 75 inches.
" Twomey claim, from April 1st, 1895, 75 inches.

Antoine Edinger, from Dec. 10th, 1884, 90 inches.
Elizabeth M. Sheppard, from May 15th, 1890, 80 inches.
Peter A. Mortensen, " June 1st, 1898, 100 inches.
John A. Petersen, " May 28th, 1891, 100 inches.
Charles S. Smith, " May 1st, 1900, 100 inches.
Frank Serfus, " May 1st, 1896, 1898, 80 inches.
Peter P. Jensen & Chris P. Jensen, partners, from May 1st, 1896, 50 inches.

Peter P. Jensen & Chris P. Jensen, partners, from June 1st, 1897, 90 inches.
Seren Kelson, From June 1st, 1890, 150 inches.
Seren Kelson, From May 1st, 1899, 60 inches.
John Anderson, From June 1st, 1896, 80 inches.
W. H. Bennett, From June 1st, 1891, 90 inches.
W. H. Bennett, From June 1st, 1895, 75 inches.
John Ching, From June 1st, 1889, 150 inches.
Christian Nielsen, From August 8th, 1893, 160 inches.
William Swan, From April 1st, 1895, 140 inches.
James Swan, From Sept. 1st, 1894, 140 inches.
N. Peter Christensen, From June 1st, 1895, 135 inches.
William McGovern, From June 1st, 1895, 50 inches.
" " " " 1897, 80 "

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 10-17-01

Conni S. Owen
Clerk of the District Court
Deputy Clerk

EXHIBIT

"E"

E. Martin,	From June 1st, 1897,	125 inches.
Ed Rasmussen,	From April 1st, 1889,	250 inches.
G. Collins,	From May 1st, 1897,	60 inches.
G. Collins,	From July 1st, 1900,	90 inches.
S. Tayler,	From June 1st, 1899,	80 inches.
Frederick Fredericksen,	From June 1st, 1891,	150 inches.
Charles Pettus,	From June 1st, 1891,	160 inches.
J. Owen,	From May 15th, 1888,	160 inches.
B. Nielsen,	From May 1st, 1897,	80 inches.
B. Nielsen,	From May 1st, 1899,	80 inches.
James H. Cochran,	From May 1st, 1898,	225 inches.
F. Schaller,	From May 1st, 1899,	110 inches.
W. S. Jensen,	From June 1st, 1895,	300 inches.
J. Schaller,	From May 1st, 1899,	140 inches.
W. S. McMillan,	From Oct. 1st, 1898,	100 inches.
W. S. Spurlin,	From May 1st, 1901,	125 inches.
James Allen,	From May 1st, 1900,	140 inches.
Thomas Turton,	From Oct. 1st, 1900,	40 inches.
Idaho Reservoir Company, a corporation (Limited)		
From May 23rd, 1900,		1500 inches.
Idaho Reservoir Company, a corporation (Limited)		
From June 22nd, 1900,		1800 inches.

Findings of fact & conclusions of law may be drawn accordingly.

dated at Pocatello, Idaho, June 18th, 1902.

Joseph C. Rich
District Judge.

STATE OF IDAHO :SS
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

10-17

1901

Conni S. Owen
Clerk of the District Court
Deputy Clerk

Rebecca Anderson

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 Bohnay, R. T. Boatman, Mary Nicholas Boyd, Frank Boe, Charles E. Brosic, E. L. Brown, Adna E. Bramwell, Afton Bradshaw, Theresa Brinkmann, Lottie Burcham, G. F. Burcham, Katharine 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, partnership, consisting of John H. Burnside and Don R. Burnside; 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; Kadiak 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 Flueckiger, Mattie Forbes, Charles Foe, Hans E. Fredrickson, of Fred C. Fredrickson, Fredrick Fredrickson, Christine Fredrickson, John Chas. Fuller, 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 Go, Marietta Green, Geo. Green, Edgbert C. Griffin, Virgil Greene, John Hansen, Nettie Hale, Marie Hartwell, Alice F. Hanuy, 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 corporation,

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 McKevitt, 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. Thomas, 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

certain additional defendants made parties pendente lite, to-wit:

G. B. Adams (see right of Clarence O. McGill & G. B. Adams); Gus E. Brauer (also described as Gustave E. Brauer), individually; William Broadhurst; Nicholas Burggraft; Arthur and John Burnside, as co-partners; James Burnside; James and John Burnside, as co-partners; R. P. Cope, as Administrator of the Estate of William Barnes, Deceased; R. P. Cope, individually; Margaret Craig Curran; William P. Ellis (also described as William B. Ellis); Preston B. Ellsworth (successor in interest of E. V. Hoffman); Ira Harmon; Wiley M. Harmon; Earle Jackson, as Administrator of the Estate of Thos. A. Jackson, who died pendente lite; Henry Jemmett; Mary Jemmett (substituted for Fred Jemmett, Administrator); C. W. Leonardson; Mrs. Flossie McGarry (also described as Mrs. Pete McGarry); Miller & Viele, a corporation, successor in interest of Lee Charles Miller; William H. Miller, as Administrator of the Estate of Adolph Miller, who died pendente lite; George E. Monroe; New World Life Insurance Company, a corporation; Bertha I. Neilson, as Executrix (or administratrix) of the Estate of Anders Neilson, who died pendente lite); Charles E. Pope; Al Richens (successor in interest of Paul A. King); S. E. Schaller; Martin D. Schlagel; Fred L. Spalding (successor in interest of Eric E. Palmgren); William P. Tascher (also described as William B. Tascher), successor in interest of George Allen; U. W. Taylor; W. E. Talent; Dan Thomas and H. Thomas, as co-partners; H. Thomas; John H. Walker and William F. Woodard, a co-partnership; Thomas J. Williams; Wood Livestock Company, a corporation, as Trustee for the Town and Community of Spencer, Idaho,

DEFENDANTS.

31-00082 M. Hillman

1898 - May 1

1.6 c.f.s.

31-11700/11700 OBSOCTIONS

*OBSOCTION ASSORTS Duplication
of 31-00082.*

*However, POD FOR 82 IS
DEFINED AS 1/4 mi upstream FROM
POU, ON W. Camas CK. There is
AN ACTIVE POD THERE.*

*However, Boardman CK is
some 2 mi upstream But
to same POU.*

31-00083 1904 - October 29

4.8 c.f.s.

*Gaudy Springs - NWS 1/4 Sec. 22
13N/38E.*

*No Springs Found - CLAIMED/
DELIVERED AND RECOMMENDED
A W. Camas CK Rt.*

31-00084 1904 - October 29

3.8 c.f.s.

*BARTLETT SPRING - 1/4 OF NW 1/4
SEC. 23, 13N/38E.*

*No Spring found - CLAIMED/
DELIVERED AND RECOMMENDED
AS W. Camas CK Rt.*

*the Southeast Quarter, the North-
east Quarter of the Southwest Quar-
ter, and the Northwest Quarter of
the Southwest Quarter, Section 23;
the Northwest Quarter of the North-
east Quarter and the Southeast Quar-
ter of the Northeast Quarter of
Section 22, Township 13 North,
Range 38 East, B. M.*

M. Hillman

(continued)

1899 - August 16

4.0 c.f.s.

Source: West Camas Creek, a tributary of Mud Lake.

Point of Diversion: On the east side of West Camas Creek, at or near the Northwest corner of the Northwest Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The East Half of the Northwest Quarter, the West Half of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the North Half of the Southeast Quarter, the Southwest Quarter of the Southeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

1899 - August 17

4.0 c.f.s.

Source: West Camas Creek.

Point of Diversion: On the south side of West Camas Creek, at or near the Southeast corner of the Northeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The North Half of Section 26, the South Half of Section 23, the Southeast Quarter of the Southeast Quarter of Section 22, the Northeast Quarter of the Northeast Quarter of Section 27, all in township 13 North, Range 38 East, B.M.

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

"H"

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
Harwood Brothers Company, Limited, The,
a corporation

Hays, John W.

Hays, John W., Jr.

Hays, Olive M.

Henninger, Elvin W.

Henninger, Dolly M.

Hervey, William Rhodes, as trustee

Hillman, M.

Hirchi, David, Sr., (also spelled Hirschi)

Hirchi, David, Jr., (also spelled Hirschi)

Hjort, Charles A.

Hoffman, E. V.

Holley, William C.

Holley Water Users Association, The, a
corporation

Hoops, Jonathan N.

Hutchinson, William H.

Hyland, John J.

Bennett

Bennett

Holden

Holden

Holden

Miller & Miller

Miller & Miller

Peterson *McLveny, Fuller & Myer*

Miller & Miller

Miller & Miller

Miller & Miller

Peterson

Holden

Johannesen

Holden

McCutcheon

McCutcheon

Jackett, Frank S.

Jackett, H. R.

Jackson, Thos. A.

Jacoby, Elizabeth

Jacoby, Joseph P.

Jefferson Irrigation Company, Limited, a
corporation

Jefferson Irrigation District, a public
corporation

Jemmett, Fred G., Administrator of the
Estate of William Jemmett,
Deceased

Jensen, Alma

Jensen, Emil

Jensen, H. P.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Johnson, Oscar Julius

Glennon

Glennon

Bennett

Holden

Holden

Johannesen

Johannesen

McCutcheon

McCutcheon

Holden

Miller & Miller

Johannesen

Kearney, Arvilla

Kelson, Neils

Kendrick, Sarah Ann

King, Paul A.

Knotwell, Thomas

Kroker, Elsbeth Marie Adolphine (see
Reber)

Kroker, Elsbeth Marie Adolphine, as
Executrix of the Estate of
Joseph Kroker, Deceased

L. Ivan Jensen

Miller & Miller

Holden

Holden

Miller & Miller

Miller & Miller

Miller & Miller

trix (or Administratrix) of his estate.

XVI

That the facts set forth in the bill of complaint as amended are true, except as herein otherwise found, and except as to the water right of 160 inches which plaintiff claims to have appropriated on April 1, 1911, for the irrigation of the Northeast Quarter of Section 7, Township 6 North, Range 34 East, B.M., as to which right plaintiff submitted no proof, and which right was separate and distinct from the stipulated right of plaintiff hereinafter set forth.

XVII

That the following rights have been fully agreed upon by stipulation of all counsel in this cause, as appears in the transcript, and therefore the Court finds that it has been stipulated that the ^{plaintiff and the} defendants hereinafter named are the owners of, and are entitled to have decreed to them, respectively, the water rights with dates of priority as indicated in connection with their several names in the following schedule, to be diverted from the source or sources and at the point or points, and to be used upon the respective lands, as in said schedule set forth, to-wit:

M. Hillman

1898 - May 1

1.6 c.f.s.

Source: West Camas Creek, a tributary of Mud Lake.

Point of Diversion: One-fourth mile up stream from the land to be irrigated, and hereinafter described.

For use on the following described land, to-wit: The Northwest Quarter of Section 25, Township 13 North, Range 38 East, B.M.

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;

M. Hillman

1904 - October 29

4.8 c.f.s.

Source: Goudy Springs, a tributary of Camas Creek.

Point of Diversion: In the Northwest Quarter of the Southeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The West Half of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of Section 22; the Northeast Quarter of the Northeast Quarter of Section 27; the North Half of the Northeast Quarter of Section 26; all in Township 13 North, Range 38 East, B.M.

1904 - October 29

3.8 c.f.s.

Source: Bartlett Spring, a tributary of Camas Creek.

Point of Diversion: Near the center of the Northwest Quarter of Section 23, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The South Half of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, and the Northwest Quarter of the Southwest Quarter, Section 23; the Northwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

(continued)

M. Hillman

1899 - August 16 4.0 c.f.s. Source: West Camas Creek, a tributary of Mud Lake.

Point of Diversion: On the east side of West Camas Creek, at or near the Northwest corner of the Northwest Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The East Half of the Northwest Quarter, the West Half of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the North Half of the Southeast Quarter, the Southwest Quarter of the Southeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

1899 - August 17 4.0 c.f.s. Source: West Camas Creek.

Point of Diversion: On the south side of West Camas Creek, at or near the Southeast corner of the Northeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The North Half of Section 26, the South Half of Section 23, the Southeast Quarter of the Southeast Quarter of Section 22, the Northeast Quarter of the Northeast Quarter of Section 27, all in township 13 North, Range 38 East, B.M.

No. _____

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:

M. Hillman

1898 - May 1

1.6 c.f.s.

Source: West Camas Creek, a tributary of Mud Lake.

Point of Diversion: One-fourth mile up stream from the land to be irrigated, and hereinafter described.

For use on the following described land, to-wit: The Northwest Quarter of Section 25, Township 13 North, Range 38 East, B.M.

No. _____

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:

M. Hillman

1904 - October 29

4.8 c.f.s.

Source: Goudy Springs, a tributary of Camas Creek.

Point of Diversion: In the Northwest Quarter of the Southeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The West Half of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of Section 22; the Northeast Quarter of the Northeast Quarter of Section 27; the North Half of the Northeast Quarter of Section 26; all in Township 13 North, Range 38 East, B.M.

1904 - October 29

3.8 c.f.s.

Source: Bartlett Spring, a tributary of Camas Creek.

Point of Diversion: Near the center of the Northwest Quarter of Section 23, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The South Half of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, and the Northwest Quarter of the Southwest Quarter, Section 23; the Northwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

No. _____

M. Hillman

(continued)

1899 - August 16 4.0 c.f.s. Source: West Camas Creek, a tributary of Mud Lake.

Point of Diversion: On the east side of West Camas Creek, at or near the Northwest corner of the Northwest Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The East Half of the Northwest Quarter, the West Half of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the North Half of the Southeast Quarter, the Southwest Quarter of the Southeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

1899 - August 17 4.0 c.f.s. Source: West Camas Creek.

Point of Diversion: On the south side of West Camas Creek, at or near the Southeast corner of the Northeast Quarter of Section 22, Township 13 North, Range 38 East, B.M.

For use on the following described land, to-wit: The North Half of Section 26, the South Half of Section 23, the Southeast Quarter of the Southeast Quarter of Section 22, the Northeast Quarter of the Northeast Quarter of Section 27, all in township 13 North, Range 38 East, B.M.

No. _____

Ruberry, Allen

From: McHugh, Candice
Sent: Wednesday, June 12, 2002 3:34 PM
To: Ruberry, Allen
Subject: Hillman paragraph

Can you verify the information in this paragraph? Do you agree with it?

9. I did not review the *Cartier v. Buck* decree prior to making my recommendations. However, I have made a brief review since being provided a copy by Hagenbarths. The *Cartier v. Buck* decree apparently sets forth water rights from Camas Creek and its tributaries and has priority dates that range from April 1, 1883 to May 1, 1901. The *Cartier v. Buck* decree does not set out for each water right decreed, the source of that right or the place of use. A brief comparison between the *Sauve v. Abbott* decree and the *Cartier v. Buck* decree demonstrates that other water rights from tributaries to Camas Creek and Camas Creek itself existed in addition to the rights decreed in *Cartier v. Buck*. In other words, the *Cartier v. Buck* decree does not appear to decree all the water rights from Camas Creek and its sources. For example, water right 31-53 (decreed in *Suave v. Abbot* as water right no. 29) is for 0.4 cfs (20 inches) from Camas Creek with a priority date of May 1, 1896. This water right is not decreed in *Cartier v. Buck* even though it is from Camas Creek with a priority date similar to the water rights decreed in *Cartier v. Buck*. Similarly, water rights 31-85 and 31-86 (decreed in *Sauve v. Abbott* as water right no. 41) are both for 4.0 cfs (200 inches) with a priority date of August 18, 1899 and August 17, 1899 respectively. The source for these two water rights is West Camas Creek a tributary to Camas Creek. However, water rights with these priority dates and amounts of water were not decreed in the *Cartier v. Buck* decree. Thus, although Hillman's predecessor, Frank Serfas, was decreed a water right in *Cartier v. Buck*, this does not mean that the one water right decreed to Mr. Serfas was the only water right he owned.

Candice

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank You



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

August 24, 2001

KARL J. DREHER
Director

NICK R HILLMAN
2300 N 2800 E
HAMER ID 83425

Re: Snake River Basin Adjudication (SRBA)
**Water Right Nos. #31-82, 31-83, 31-84, 31-85, 31-86,
31-7030B, 31-7031, 31-7032, 31-7183, 31-7184, 31-7185, 31-7188,
31-7225, 31-7230, 31-7232, 31-7233A, 31-7234, 31-7236, 31-7237,
31-7238, 31-7239, 31-7240, 31-7242, 31-7243, 31-10711, 31-11356,
31-11700 and 31-11701
and Decreed Water Right Nos. #21-12431, 31-10219, 31-10220,
31-10508, 31-10712 and 31-10713
Change of Ownership**

Dear Mr. Hillman:

I appreciated your help and that of your family last week regarding correct addresses for your water rights.

I have printed each water right for you and highlighted the Current Owner(s). Each of the Basin 31 rights has been recommended and shows you either as Current Owner or as Representative.

I have enclosed a Notice of Change in Water Right Ownership for your use. Even though you are Ralph Hillman's son and Representative, you will still need to enclose a legal document showing you as beneficiary of the land and water rights. Additionally, we require an aerial photograph of the properties affected (see Item 2c on the ownership change form).

Please refer to Item 8 on the form regarding fees to reflect you as owner on the six decreed water rights.

Nick R. Hillman
August 24, 2001
Page Two

Please call me toll-free at 1/800-451-4129 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally", written in dark ink.

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region
Enclosures:

Copy of Water Rights Referenced Above
Form 42-248/42-1409(6)

RECEIVED

SEP - 7 2001

COPY

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

A. Subcase 31-11700

In Re SRBA

Case No. 39576

OBJECTION FORM

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Margaret Hagenbarth, David J. Hagenbarth, James F. Hagenbarth

Address: P.O. Box 1128
Dillon, MT 59725
Daytime Phone: (406) 683-2163

Name and address of Attorney, if any:

Givens Pursley LLP
Michael C. Creamer
John M. Marshall
P.O. Box 2720
Boise, ID 83701
(208) 388-1200

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name:	Nick R. Hillman	Ron R. Hillman	Randy J. Hillman
Address:	2300 N. 2800 E. Hamer, ID 83425	3120 E. 2200 N. Hamer, ID 83425	5518 N. 4000 W. Rexburg, ID 83440

D. We object to all elements of this water right as recommended in the Director's Report. This water right should not exist. This water right appears to be a duplicate filing of the decreed water right claimed as the basis of water right claim 31-82.

E. REASONS SUPPORTING OBJECTIONS:

Hillman's predecessors in interest were Frank Serfas and M. Hillman. Frank Serfas was a party to the Cartier v. Buck decree in 1902 adjudicating the waters of Camas Creek and its tributaries, and M. Hillman was a party to the Sauve v. Abbott decree in 1930 again adjudicating the waters of Camas Creek and its tributaries. The basis of this water is a Notice of Water Right filed by Frank Serfas October 19, 1897, for water from Bear Gulch, a tributary of Camas Creek. There is a question as to whether this water right was in fact addressed or decreed by the Courts in the Cartier and Sauve decrees.

F.

VERIFICATION

State of Montana)
) ss.
County of Beaverhead)

James F. Hagenbarth, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection on behalf of Margaret Hagenbarth, David J. Hagenbarth and myself, as defined by I.C. § 42-1401A(1) and (6) and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

James F. Hagenbarth
James F. Hagenbarth

Subscribed and sworn to before me on: September 4, 2001

Patricia L. Trawland
Notary Public for Montana
Residing at: Dillon, Montana
My Commission Expires: 1/1/04

G.

CERTIFICATE OF MAILING

I certify that on September 4, 2001, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original (**Sent certified mail**) to:

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

2. One copy to the claimant of the water right at the following address:

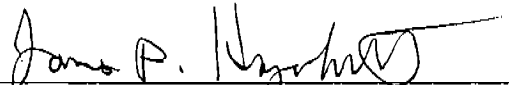
Name:	Nick R. Hillman	Ron R. Hillman	Randy J. Hillman
Address:	2300 N. 2800 E. Hamer, ID 83425	3120 E. 2200 N. Hamer, ID 83425	5518 N. 4000 W. Rexburg, ID 83440

3. Copies to:

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 and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


James F. Hagenbarth

31-11700/11701

BENEFICIAL USE CLAIMS

A.) 11700 ① BASED ON RECORDS NOTICE OF CLAIM, FILED 27 Oct 1897,
By Frank Sorfas. FREMONT CO. 27 Oct. 1897; AS RECORDED.

BEAR CREEK 4 cfs, 19 Oct 1897

PLACE OF USE: NW 1/4 SEC. 25 T13N R38E.

CONVOYANCES APPROXIMATES 2 MILES FROM SOURCE.

RE: 42-202 (6) IC Limiting DIVERSION RATE TO 0.02 cfs/ac.

151 ac @ 0.02 cfs/ac = 3.02 cfs AT POU. LEAVES 0.78 cfs

CONVY. LOSS (OVER TWO MILES) WHEN USED ON ORIGINAL POU.

POU RECOMMENDED IS ALL NORTH OF WEST CAMAS CK,

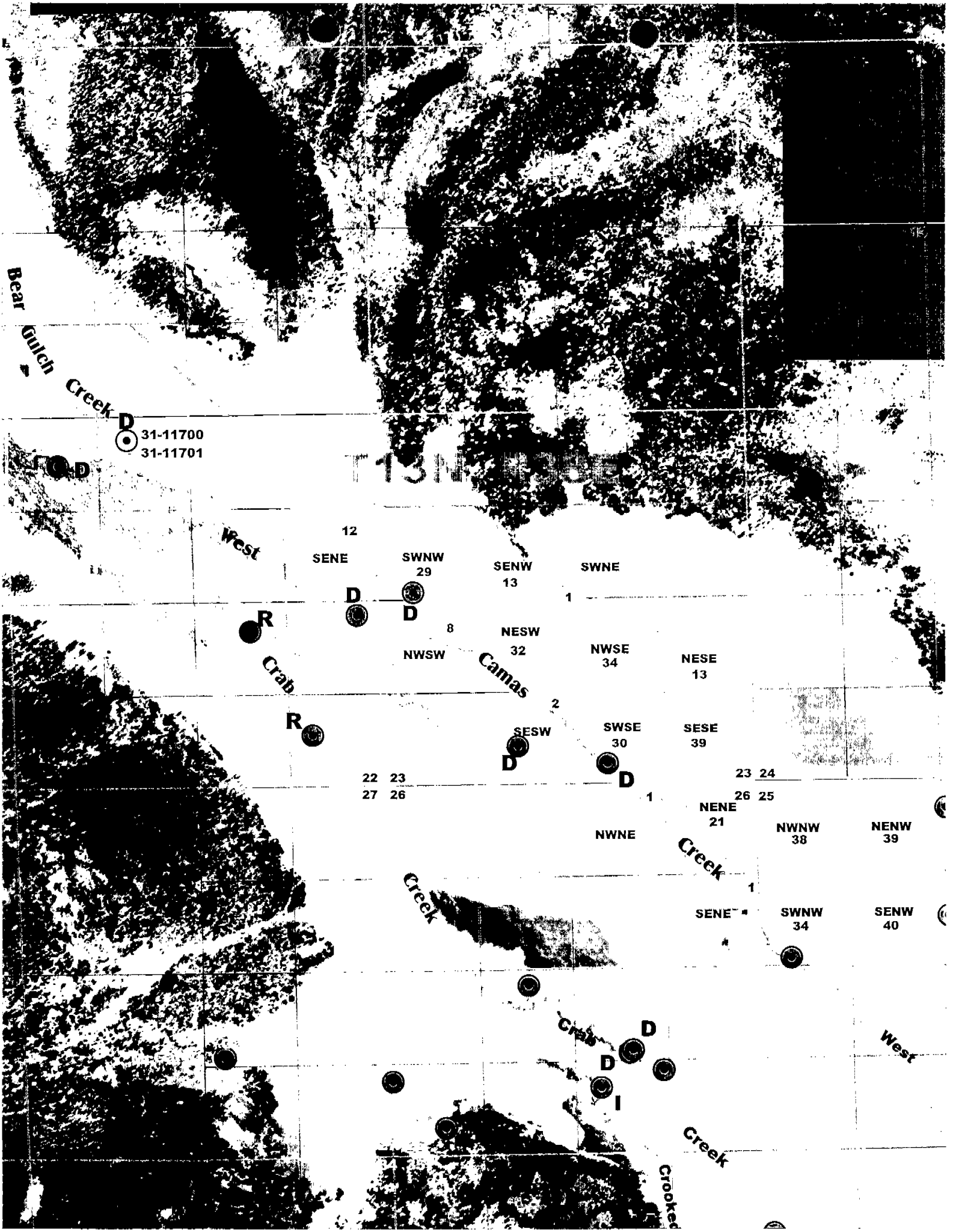
APPROXIMATING 386[±] ac (COMBINED USE WITH OTHER RIGHTS
ADDRESS BY SANDS DECREE (CIRCA) 1930.) ⇒ 205

② No WEST CAMAS CK EXCHANGE IS AUTHORIZED
DUE TO THE DESCRIBED RIGHTS BEING APPURTENANT TO
THE SAME POU (PLUS 280 ac, NOT) RECOMMENDED BY B.U.'S.

③ THESE WATER RIGHTS (CLAIMS) WERE NOT ENJOINED TO THE
1930 SANDS 12 AREA DECREE.

B.) 11701 ① BASED ON DDD REFERENCE FOLLOWING DESCRIPTION OF
11700. THEREFORE, SINCE NO OTHER SOURCE IS REFERENCED
THAT DESCRIBES THE ELEMENTS OF THE DDD IT IS THOUGHT
TO BE YET ANOTHER RIGHT FROM BEAR CREEK CR WITH
A 1 YR LATER PRIORITY DATE. DISCUSSES SAME POU AS
THAT OF NOW 31-11700.

② SAME (CLAIM SPECIFIC) LIMITATIONS AS 31-11700.



Bear Gulch Creek

D 31-11700
D 31-11701

West

12
SENE
SWNW 29
SENW 13
SWNE

R
Crab

8
NWSW
NESW 32
Camas

NWSE 34
NESE 13

R

2
SESW
SWSE 30
SESE 39
D

22 23
27 26

23 24
26 25

1
NENE 21
NWNE
NWNW 38
NENW 39

Creek

Creek

SENE
SWNW 34
SENW 40

Crab

D
D
I

West

Crooked Creek