

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO.(S))

AFFIDAVIT

A 67-04057)
A 67-04063)

State of Idaho)
County of _____)

Margaret Westfall being first duly sworn,
deposes and says: _____

I am 91 years of age. My sister married
Bud Buhl. They farmed both of the Mrs. Buhl
places. My sister had a daughter, Floy, who was
about my age.

I remember that when we would go to visit
the Buhl family the ditch at the House (which is
at the east end of the western ranch and the west
end of the eastern ranch and where it goes under
the road) was full of water. I am sure I can
remember this at the age of 12 if not before.

Margaret Westfall
(Signature)

Subscribed and sworn to before me this
day _____ of _____, 19____.

SEAL

(Notary Public)

Residing at _____.

My Commission Expires _____.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON.

John T. Muir and Wm. H. Muir, Partners,	:	
doing business under the firm name	:	
of Muir Brothers,	:	ANSWER AND CROSS COM-
	:	PLAINT of NELSON
Plaintiffs,	:	BUHL.
vs	:	
	:	(COPY)
William Allison, et als,	:	
	:	
Defendants,	:	

Now comes the defendant, Nelson Buhl, and answering the complaint of the plaintiffs herein, admits, denies and alleges, as follows, to-wit:

I.

Admits all of the allegations contained in the paragraphs I to VII inclusive, of the complaint.

II.

Denies each and every of the allegations contained in the remaining paragraphs of said complaint.

CROSS-COMPLAINT.

And for a cross-complaint herein this defendant alleges:

I.

That the plaintiffs are doing business in Washington County, Idaho, under the firm name and style of Muir Brothers.

II.

That the defendant, Weiser Irrigation District, is a municipal corporation, organized and existing under and by virtue of the laws of the State of Idaho; that the defendant, Village of Cambridge, is a municipal corporation organized and existing under and by virtue of the laws of the State of Idaho; that the defendants, Butterfield Live Stock Company, Limited, Galloway Live Stock Company, Idaho State Life Insurance Company, Jonathan Orchard Company,

& Jenkins; that the defendants _____ Philbrick and _____ Greenwood, the first name of each of said persons being to cross-complainant unknown, are a partnership doing business under the firm name of Philbrick and Greenwood; That _____ Wiles and _____ Osborne, the first name of each of said persons being to cross-complainant unknown, are a partnership doing business under the firm name and style of Wiles and Osborne; that the defendants, _____ Nichols and _____ Horton, the first or given name of each being unknown to cross-complainant, are partners doing business under the firm name and style of Nichols and Horton; that the defendants, Fred J. Rieger, F. J. Keisel, T. J. Nelson and R. L. Lindley, are co-partners doing business under the firm name and style of Rieger & Lindley; that Robert Coulter, A. H. Kellar and George Waters, are co-partners doing business under the firm name of Coulter, Kellar & Waters; that F. O. Johnston and C. F. Brent, are co-partners doing business under the firm name and style of Johnston & Brent; that A. H. Kellar and J. R. Numbers are co-partners doing business under the firm name of Kellar & Numbers; that B. S. Shaw and Louis B. Shaw are co-partners doing business under the firm name of Shaw Brothers; that _____ Picket and _____ Picket, whose first and given names are each unknown to this cross-complainant, are partners doing business under the firm name of Picket Brothers; that the first and given names of the defendants, _____ Veeson, _____ Fisk, Mrs. _____ Gray, _____ Johnson, _____ Kruck, _____ McCammon, Mrs. _____ Shaw, _____ Young, and _____ Spangler and of each and every of them, is unknown to cross-complainant; that each of said defendants claim some interest or right in and to the waters and the use thereof, of the Weiser River and its tributaries, and are proper and necessary parties to this suit, and cross-complainant prays that such first or given names when ascertained, be inserted in this cross-complaint

V.

That Pine Creek is a tributary of the Weiser River, each of which are public streams of the State of Idaho, the waters of which

said streams, and each of them, are subject to application and use by citizens of the State of Idaho, under the laws of the State of Idaho.

VI.

That this cross-complainant is a citizen of the United States of America and is the owner in fee and in the possession of the following described land situate in Washington County, State of Idaho, to-wit:

The South Half of the South West quarter ($S\frac{1}{2}$ SW $\frac{1}{4}$) of Section 3, the North Half of the North West quarter ($N\frac{1}{2}$ NW $\frac{1}{4}$) of Section 10, the East Half of the South East quarter, ($E\frac{1}{2}$ SE $\frac{1}{4}$), except a tract of land in the South West corner of the South East quarter of the South East quarter heretofore deeded to Angus McDonald, and described as follows, to-wit:

Beginning at a point thirteen hundred twenty-one and eight-tenths (1321.8) feet West of the South East corner of Section four (4) in Township Fourteen (14) North of Range Three (3) West of the Boise Meridian, thence North four hundred thirty-five (435) feet on a true line between the East and West Halves of the South East quarter of said Section Four thence in an easterly direction at an angle of sixty nine degrees twenty-five minutes ($69^{\circ}25'$) a distance of five hundred thirty-four (534) feet; thence in a southerly direction at an angle of one hundred ten degrees and forty-two minutes ($110^{\circ}42'$) a distance of two hundred sixty two (262) feet, to the Section line on the South side of Section 4; thence West along said Section line a distance of five hundred (500) feet, to the point and place of beginning, embracing a tract of four acres;

Also the North West quarter of the South East quarter ($NW\frac{1}{4}$ SE $\frac{1}{4}$), and the North East quarter of the South West quarter ($NE\frac{1}{4}$ SW $\frac{1}{4}$) and four acres in the North East corner of the South West quarter of the South East quarter ($SW\frac{1}{4}$ SE $\frac{1}{4}$) in Section 4, all in Township 14 North of Range 3 West of the Boise Meridian, described as follows, to-wit: Beginning at the center of the Southeast quarter of Section 4 in Township 14 North of Range Three West of the Boise Meridian, thence West on a true line between the North and South Halves of said Southeast quarter of Section Four, a distance of Two Hundred Seventy-four (274) feet; thence in a Southwesterly direction at an angle of One Hundred and four degrees and Twenty-five minutes ($104^{\circ}25'$) a distance of Four hundred thirty-two (432) feet; thence in a Southeasterly direction on an angle of One Hundred One degrees and Thirty minutes ($101^{\circ}30'$) a distance of Four Hundred Twenty-six (426) feet to the true line between the East and West halves of the said Southeast quarter of Section Four; thence North on said true line between the East and West halves of said southeast quarter of Section Four a distance of six Hundred four (604) feet to the point and place of beginning embracing a tract of Four acres, more or less;

All in Township 14 North of Range 3 West of the Boise Meridian, containing an area of three hundred twenty acres more or less, according to the United States Government Survey, all of which said land is arid in nature and without the artificial application of water thereon, will not produce profitable crops and is of little value, and with the artificial application of water thereon produces profitable crops and is very valuable.

VII.

That in the month of _____ in 1875, one Olson, a predecessor in interest of this defendant, constructed a ditch leading from Pine Creek to and upon the above described land from a point on said Pine Creek about three quarters of a mile from the northerly boundary thereof; which said Olson was, as cross-complainant is informed and believes, a citizen of the United States of America; that thereafter and in the month of May 1883, this defendant with John Grab and others constructed a ditch leading from a point on the east or right bank of Pine Creek a distance of one mile from said lands to and upon the above described lands of this cross-complainant, which said ditch was of sufficient carrying capacity to carry throughout its entire length 320 inches, miners measurement, measured under a four inch pressure, of the waters of said Pine Creek, and that thereby the said cross-complainant appropriated and applied to a beneficial use upon said land, 320 inches of water, miners measurement measured under a four inch pressure, of the waters of said Pine Creek, which said appropriation was prior and superior to any appropriation and use of the waters of the Weiser River and its tributaries by the plaintiffs or other defendants, herein, or any, or either of them; that the water so appropriated in the month of May 1883, and in 1875 by the predecessors in interest of this cross-complainant, was conveyed to and upon the lands herein before described, and belonging to this cross-complainant, and thereby employed in raising valuable crops on said land, thereby putting said water to a beneficial use, and ever since the month of _____ 1875, this cross-complainant and his predecessors in interest, have during each irrigating season, continued to appropriate and use the waters so appropriated in the irrigation and cultivation of said land, except when unlawfully deprived thereof by other defendants herein; that from said year to the present time this cross-complainant and his predecessors in interest have actually cultivated and irrigated of said lands, 320 acres thereof and said land in said amount, is under actual cultivation and

irrigation, and said amount of water is necessary for the proper and successful irrigation and cultivation thereof, and there is no other source of water supply available for the irrigation of said land except waters of said Pine Creek.

VIII.

That thereafter, to-wit, on the 27th day of August 1883, this cross-complainant, for the purpose of acquiring a record title to said water right and water for the irrigation of said lands and for domestic use thereon, made a notice of water right under and by virtue of the laws of the then Territory of Idaho, and posted a notice on said day at a point on the right bank of Pine Creek about one mile from the said lands, claiming under and by virtue of said notice, 500 inches, miners measurement, measured under a four inch pressure, of the waters of said Pine Creek, to be, and carried through a ditch leading from said point to and upon the lands herein above described, and owned by this cross-complainant, and on said day caused a copy of said notice so posted as aforesaid, to be recorded in the office of the County Recorder of Washington County, Idaho, in Book ____ of Water Right at page ____, a copy of which said notice is hereto attached marked "Cross-complainant's Exhibit A" and made a part hereof; that the construction of said ditch and use of water thereunder, was prosecuted with due diligence and the ditch so constructed was of sufficient capacity to carry throughout its entire length 320 inches of water miners measurement, measured under a four inch pressure.

IX.

That thereafter and on the 5th day of June 1884 this defendant, J. H. Phillips, S. M. Percifield and J. I. Darnell constructed a ditch having a carrying capacity of 1000 inches of water, measured under a four inch pressure, throughout its entire length and on or about the 11th day of November 1887, posted a notice claiming under and by virtue of said notice, 1000 inches, miners measurement, measured under a four inch pressure, of the waters of said Pine Creek to be carried through the said ditch, constructed on the 5th day of June 1884, and leading

from Pine Creek to and upon the lands described in said notice, and the lands belonging to this cross-complainant herein, and upon the lands owned by the said co-locators, and on said day, caused a copy of said notice so posted, as aforesaid, to be recorded in the records of Water Rights in the office of the County Recorder of Washington County, Idaho, a copy of which said notice is hereto attached marked "Cross-complainant's Exhibit B" and made a part hereof.

That said ditches commenced in the month of May 1883 and in June 1884 by this cross-complainant and others, were so constructed, and of sufficient depth and width as to enable them to carry throughout their entire length, and ^{they} ~~it~~ did so carry throughout ~~their~~ ^{they} entire, during the irrigating season of 1884, substantially 1000 miners inches of water measured under a four inch pressure, to and upon the lands of said persons as aforesaid. That this cross-complainant and his predecessors in interest have since the month of May 1883, and long prior thereto, at all times during the irrigating season of each year, and continuously during said seasons, used 320 inches of water measured under a four inch pressure in and upon his said lands, that from said year to the present time this cross-complainant and his predecessors in interest, have actually cultivated and irrigated said lands to the amount of 320 acres thereof; and said land in said amount is under actual cultivation and irrigation, and said amount of water is necessary for the proper and successful irrigation and cultivation of said lands and that there is no other source of water supply available for the irrigation of said lands and for domestic use thereon, except the waters of said Pine Creek.

X.

That this cross-complainant is a prior appropriator of the waters of said Pine Creek, a tributary of Weiser River, and is entitled to a priority of use of the waters of said Pine Creek over the plaintiffs and each and every of the other defendants herein in the amount and to the extent of 320 inches thereof, miners measurement measured under a four inch pressure. That the plaintiffs and other defendants claim some right to the use of the waters of said river and its tributaries

and to the waters and the flow of said River and its tributaries, but if any right, they, or either of them, have, such right is inferior in time and subordinate to the rights of this cross-complainant.

WHEREFORE, this answering defendant and cross-complainant, pray

1. That the court determine the rights and priorities of all the parties to this action in and to the waters and the flow of the water of the Weiser River and its tributaries, and to the use thereof;
2. That the court adjudge and decree that the appropriations, rights and titles of this answering defendant and cross-complainant, date from the _____ day of _____, 1875;
3. That the defendants have judgment for their costs and disbursements incurred herein;
4. And for such other and further relief in the premises as to equity and good conscience belong.

Residing at Weiser, Idaho.
Attorney for defendant and
cross-complainant, Nelson
Buhl.

EXHIBIT "B".

Notice is hereby given that we the undersigned, have this day located and claim one thousand inches of the waters of Pine Creek measured under a four inch pressure, said water was diverted and conveyed by ditch and flume to place or places of intended use, on the fifth day of June 1884, said water being diverted from said Pine Creek about one half mile West from the West line of Section No. 4, in Tp. 14, N. R. 3 West of B.M. and about 300 ~~yards~~ South from the North line of said Township and we claim said 1000 inches of water for irrigating and other purposes, to be used to irrigate lands in Sections 3-4 & 10 in said Township 14, said water is diverted from the channel of Creek, by ditch, (3) three feet wide on the bottom and (4) four feet wide on the top, and two and one half (2½) feet deep, and conveyed through said ditch and flume in a South Easterly direction, and on the North side of said Pine Creek in Washington County, Idaho.

follows, witness our hands this 11th day of Nov. 1887.

Admits all
to VII inclusive

Nelson Buhl
J. H. Phillips
S. M. Percifield
J. I. Darnell

1 Nov. 11th, 1887 at 30 min. past 11 A. M.

J. E. Haworth
Recorder.

by virtue of the laws of the State of Idaho; that the defendants, Butterfield Live Stock Company, Limited, Galloway Live Stock Company, Idaho State Life Insurance Company, Jonathan Orchard Company,