

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

PETER SKOG PEARSON,

Plaintiff,

vs

T. M. EDWARDS,

Defendant.

D E C R E E .

This cause coming on regularly this 20th day of March, 1911, for trial, Geo. E. Gray, Esq., appearing as counsel for plaintiff, and Standrod & Terrell appearing as counsel for defendant.

It appearing to the Court by stipulation in writing filed in open Court and signed by plaintiff and defendant, in which said stipulation it is stipulated that said stipulation be treated and considered as the Court's findings of fact and conclusions of law, and all other findings of fact and conclusions of law are waived, and stipulating that judgment in the above entitled cause be entered up in accordance with such stipulation; and it appearing from said stipulation;

1st:- That the plaintiff and his predecessors in interest has at all times since the 17th day of June, 1902, and still is, the owner of and entitled to the possession of the following described premises, situated in Bannock County, Idaho, to-wit: The Northwest quarter of the Southeast Quarter and the West half of the Northeast quarter of Section Twenty-three (23); and the Southwest quarter of the Southeast Quarter of Section fourteen (14), all in Township eight (8), South, of Range thirty-six (36) E.B.M.

2nd:- That the defendant, T.M. Edwards, and his predecessors in interest have been at all times since the 17th day of June, 1902, and still is, the owner of and entitled to the possession of the following described real estate, situated in Bannock County, Idaho, to-wit: The southwest quarter of the southeast quarter of Section twenty-three (23) and the West half of the Northeast quarter of Section Twenty-six (26), and the Northwest quarter of the southeast quarter of Section twenty-six (26), all in Township eight (8) South, of Range thirty-six (36) E.B.M. and the Southeast quarter of the Southeast quarter of Section twenty-three (23) and the East Half of the Northeast quarter of Section twenty-six (26) and the Southwest quarter of the northwest quarter of section twenty-five (25), all in Township eight (8) South of Range thirty-six (36) E.B.M.

3rd:- That all of the land and premises hereinbefore described is arid in character, and requires one (1) inch of water per acre in order to raise and produce a profitable crop, and all said land is susceptible of irrigation from the waters of what is known as Robbers Roost Creek, in Bannock County, Idaho, and situated near the premises above described.

4th:- That the amount of waters in said Robbers Roost Creek varies from Two (2) Cubic feet of water per second of time during low water, to six (6) Cubic feet of water or eight

Southwest quarter of the northwest quarter of section twenty-five (25), all in Township eight (8) South of Range thirty-six (36) E.B.M.

3rd:- That all of the land and premises hereinbefore described is arid in character, and requires one (1) inch of water per acre in order to raise and produce a profitable crop, and all said land is susceptible of irrigation from the waters of what is known as Robbers Roost Creek, in Bannock County, Idaho, and situated near the premises above described.

4th:- That the amount of waters in said Robbers Roost Creek varies from Two (2) Cubic feet of water per second of time during low water, to six (6) Cubic feet of water or eight (8) Cubic feet of water per second of time during high water, and that it will require all of the waters of said Robbers Roost Creek during the whole of each and every irrigating season to successfully irrigate the above described lands.

5th:- That on the 17th day of June, 1902, the said plaintiff and the said defendant and their respective grantors and predecessors in interest, went upon the waters of said Robbers Roost Creek, and by means of ditches and same of sufficient capacity, diverted all of the waters of said stream and conveyed the same to and upon their respective lands hereinbefore described, and have during each and every irrigation season since said date, used all of the waters of said Robbers Roost Creek upon said lands for the purpose or irrigating the same and for domestic and stock purposes thereon.

6th:- That from and after the date of this stipulation, the said parties shall rotate or alternate in the use of the waters of said stream; that is to say, the plaintiff shall have the absolute and unrestricted right at all times to the use of the whole of the waters of said Robbers Roost Creek for a period of two and one-half consecutive days, and the said defendant shall have and absolute and unrestricted right at all times to the use of all the waters of said Robbers Roost Creek for a period of five consecutive days for the purpose aforesaid; And it shall be the duty of the plaintiff, after having used said waters for the period of two and one-half days as aforesaid, to cease the use thereof and permit the defendant to use the same for a period of five days consecutively, following the said use of the plaintiff, and like wise, it shall be the duty of the defendant, after having used said waters during the five days herein provided, to cease the use thereof and permit the plaintiff to again take and use said water for the period of time herein provided for his use of the same.

7th:- That the judgment entered by the court as hereinafter provided, shall adjudge that each of the parties hereto, and each of their agents, servants and employees, shall be forever and perpetually enjoined from in anywise using any of the waters of said creek, except as herein stipulated, and from in anywise molesting or interfering the one with the other in his use of said waters as herein stipulated.

8th:- That this stipulation shall become the findings of fact in said court and all other findings of fact and conclusions of law are hereby expressly waived.

9th:- And judgment may be entered by said court in accordance with this stipulation.

Wherefore, by reason of said stipulation and the law and the premises, it is hereby ordered, adjudged and decreed that plaintiff for domestic and culinary purposes and for the purpose of irrigating said land in Bannock County, Idaho, described as follows, to-wit:

The Northwest quarter of the northwest quarter of section twenty-five (25), all in Township

alternate in the use of the waters of said stream; that is to say, the plaintiff shall have the absolute and unrestricted right at all times to the use of the whole of the waters of said Robbers Roost Creek for a period of two and one-half consecutive days, and the said defendant shall have and absolute and unrestricted right at all times to the use of all the waters of said Robbers Roost Creek for a period of five consecutive days for the purpose aforesaid; And it shall be the duty of the plaintiff, after having used said waters for the period of two and one-half days as aforesaid, to cease the use thereof and permit the defendant to use the same for a period of five days consecutively, following the said use of the plaintiff, and like wise, it shall be the duty of the defendant, after having used said waters during the five days herein provided, to cease the use thereof and permit the plaintiff to again take and use said water for the period of time herein provided for his use of the same.

7th:- That the judgment entered by the court as hereinafter provided, shall adjudge that each of the parties hereto, and each of their agents, servants and employees, shall be forever and perpetually enjoined from in anywise using any of the waters of said creek, except as herein stipulated, and from in anywise molesting or interfering the one with the other in his use of said waters as herein stipulated.

8th:- That this stipulation shall become the findings of fact in said court and all other findings of fact and conclusions of law are hereby expressly waived.

9th:- And judgment may be entered by said court in accordance with this stipulation. Wherefore, by reason of said stipulation and the law and the premises, it is hereby ordered, adjudged and decreed that plaintiff for domestic and culinary purposes and for the purpose of irrigating said land in Bannock County, Idaho, described as follows, to-wit: The Northwest quarter of the Southeast quarter and the west half of the Northeast quarter of Section Twenty-three (23); and the Southwest quarter of the Southeast quarter of section fourteen (14), all in Township eight (8) South of Range Thirty-six (36) E.B.M., shall be entitled to the absolute and unrestricted right at all times to the use of all the waters of said Robbers Roost Creek for the period of two and one-half consecutive days; and the said defendant shall, for the purpose of irrigating his said land in Bannock County, Idaho, described as follows, to-wit: The Southwest quarter of the southeast quarter of Section Twenty-three (23) and the West half of the Northeast quarter of Section Twenty-six (26) and the northwest quarter of the southeast quarter of section twenty-six (26), all in Township Eight (8) South of Range Thirty-six (36) E.B.M. And the Southeast quarter of the Southeast quarter of Section twenty-three (23) and the East Half of the Northeast quarter of Section twenty-six (26) and the Southwest quarter of the Northwest quarter of Section Twenty-five (25) all in Township eight (8) South of Range thirty-six (36) E.B.M.,

NW 1/4 Sec. 23

W 1/2 NE 1/4

Sec. 23

23 0261

and for domestic and culinary purposes, have the absolute and unrestricted right at all times to the use of all of the waters of said Robbers Roost Creed for a period of five consecutive days, and the right of said parties to the use of said waters to date from the 17th day of June, 1902.

It shall be the duty of the plaintiff, after having used said waters as aforesaid for the period of two and one-half days, to cease the use thereof and permit the defendant to use the same for a period of five days consecutively, following the said use of the plaintiff, and like wise, it shall be the duty of the defendant after having used said waters during the five days herein provided, to cease the use thereof and permit the plaintiff to again take the use of said water for the period of time herein provided for his use of the same.

It is further ordered, adjudged and decreed herein that each of the parties hereto and each of their agents, servants and employees, shall be forever and perpetually enjoined from in anywise using any of the waters of said creek, except as herein decreed, and from in anywise molesting or interfering the one with the other in his use of said waters; and each party shall pay his own costs.

Done in open Court this 20th day of March, 1911.

Alfred Budge.

District Judge.

RECEIVED

AUG 10 1982

Department of Water Resources
Eastern District Office

CLERK
CLARENCE ANDERSON
CLERK OF DISTRICT COURT
SIXTH JUDICIAL DISTRICT
POCATELLO, IDAHO

AUG 5 8 11 AM '82

BY Clarence Anderson
CLERK

JONES and CHRISTENSEN, Chartered
P. O. BOX 967 - 405 WEST WHITMAN
POCATELLO, IDAHO 83201
TELEPHONE: (208) 232-5911

ATTORNEYS FOR Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

2 LAZY T. RANCH, a partnership,)
)
Plaintiff,)
)
vs)
)
FRANK H. HOUGH and MARY S.)
HOUGH, husband and wife,)
)
Defendants.)

Case No. 38021-C

STIPULATION FOR DISMISSAL
AND
ORDER

COMES NOW, attorneys of record for the respective parties above-named,
and stipulate and agree that the above-entitled cause may be dismissed upon the
grounds that the parties have compromised their dispute by written Agreement,
a copy of which is attached.

DATED this 30th day of July, 1982.

Lamont Jones
Lamont Jones, Attorney for Plaintiff

John B. Kugler
John B. Kugler, Attorney for Defendants

ORDER

Upon reading the foregoing Stipulation and good cause appearing,
IT IS HEREBY ORDERED that the above-entitled cause be dismissed with
each party to bear their own costs.

DATED this 4th day of August, 1982.

STIPULATION FOR DISMISSAL
AND ORDER

Clarence O. McCormick
DISTRICT JUDGE
STATE OF IDAHO

County of Bannock } 55

I hereby certify that the foregoing is a full, true, and
correct copy of an instrument which is now remains
on file and of record in my office.

Witness my hand and seal of office this

this 5th day of August, 1982
CLARENCE ANDERSON, CLERK OF DISTRICT COURT
BY OFFICE AUDITOR AND NOTARY

By Clarence O. McCormick

AGREEMENT

THIS AGREEMENT, entered into this 10th day of May, 1982,
between 2 LAZY T RANCH, a partnership, hereafter called First
Party, and FRANK H. HOUGH and MARY H. HOUGH, husband and wife,
hereafter called Second Parties;

WITNESSETH:

WHEREAS, First Party is the Plaintiff, and Second
Parties are the Defendants in litigation presently pending in
Case No. 38021C before the Sixth Judicial District Court, Bannock
County, Idaho; and

WHEREAS, the parties desire to settle their differences
amicably and without the aid of the Court;

NOW, THEREFORE, the parties mutually agree as follows:

1. That First Party is the owner of the following described
real property situate in Bannock County, Idaho:

NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, Township 8
South, Range 36 E.B.M., and a portion of the
SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 23, Township 8
South, Range 36 E.B.M., and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 26, Township 8 South, Range 36
E.B.M., Bannock County, Idaho, and a portion of
the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 8 South,
Range 36 E.B.M., more particularly described as
follows:

Commencing at the Southwest corner of the Southwest
quarter of the Northwest quarter of Section 25,
Township 8 South, Range 36 East, Boise Meridian;
thence North 89°57'35" West along the latitudinal
centerline of Section 26, 320.26 feet, more or less,
to the intersection of said latitudinal centerline
and the West right-of-way of Highway 30 North; thence
continuing North 89°57'35" West along said Latitudinal
centerline 153.88 feet to the True Point of Beginning;
thence continuing North 89°57'35" West along said
Latitudinal centerline, 832.47 feet, more or less,
to the Southwest corner of the Southeast Quarter of
the Northeast Quarter of said Section 26; thence
North 0°20'59" East along the East 1/16 line of said
Section, 2650.22 feet, more or less, to the Northwest
corner of the Northeast Quarter of the Northeast
Quarter of said Section 26; thence South 89°49'10"
West along the North line of said Section 1282.35
feet, more or less to the Southwest corner of the

Southwest Quarter of the Southeast Quarter of said Section 23; thence North 0°56'04" West along the meridional centerline of said Section 23, 968.38 feet; thence South 89°55'37" East, 60.00 feet; thence North 0°52'30" East, 340.00 feet; thence South 89°55'37" East parallel to the South 1/16 line of said Section 23, 1396.34 feet, more or less; thence South 23°56'50" East, 180.00 feet; thence South 89°55'37" East, 120.00 feet, more or less, to the West right of way of Highway 30 North; thence South 23°56'50" East along said West right of way, 95.36 feet; thence continuing along said West right of way Southeasterly along a curve concave to the right, said curve having a central angle of 16°05'20" a radius of 1806.12 feet, a long chord of 505.50 feet, for an arc length of 507.16 feet; thence continuing along said West Right of Way South 7°51'30" East, 605.50 feet, more or less, to and Idaho Highway Department Right of Way Monument stamped Station 1025+46.30; thence East 10.00 feet; thence continuing along said West right of way South 7°51'30" East 2367.79 feet, more or less; thence North 89°57'35" West, 154.03 feet; thence South 7°51'30" East, 285.91 feet, more or less, to the True Point of Beginning.

2. That Second Parties are the owners of the following described real property situate in Bannock County, Idaho:

The Northwest Quarter of the Southeast Quarter and the West Half of the Northeast Quarter of Section Twenty-three (23); and the Southwest Quarter of the Southeast Quarter of Section Fourteen (14), all in Township Eight (8), South of Range Thirty-six (36) E.B.M.

3. That the parties hereto are the owners of all the water of Robbers Roost Creek, Bannock County, Idaho, under the Decree (hereafter called "Budge Decree") entered on March 20, 1911, by the Honorable Alfred Budge, District Judge of the Fifth Judicial District Court, of the State of Idaho, in and for the County of Bannock, in the case of Peter Skog Pearson vs. T. M. Edwards, defendant; First Party being the successor in interest of T. M. Edwards and Second Party being the predecessors in interest of Peter Skog Pearson.

4. The parties agree that their decreed rights insofar as the rotation or alternate use of the waters of Robbers Roost Creek now commences after the first day of July, and consequently, the Schedule of Water Turns attached hereto as Exhibit "A" and by reference incorporated herein, shall be the schedule to be followed whenever the same is implemented as described hereafter.

5. So long as there is sufficient high water to fill the irrigation requirements of both parties, First Party shall have the right to the continuous use of two-thirds of the water of Robbers Roost Creek, and Second Parties shall have the right to the continuous use of one-third of said water. If either party determines that his share of the continuous flow of Robbers Roost Creek is not adequate to provide for the operation of his ditch and sprinkler distribution systems, as the same was used as of January 1, 1981, then such party shall notify the other party, at least twenty-four (24) hours before reverting to the rotation or alternate use of the water, as set forth in the attached Schedule of Water Turns. (Reference to the distribution system of the parties is not intended to restrict either party from improving or upgrading their respective systems to better utilize the quantity of waters which the respective systems used as of January 1, 1981). The party giving notice shall, on the date of his next scheduled water turn, have the absolute unrestricted right, at all times, to the use of so much of the waters of said Robbers Roost Creek during each of his water turns for the remainder of the regular irrigation season of the year in which the notice is give as is required to operate his respective sprinkler system. The Twenty-four (24) hour notice is intended

Schwans
1205 Attn: hoo
503 Dears
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to afford the adverse affected party an opportunity to fill his pipes in order to operate a portion of his sprinkler system on the stream flow, if any, not required to maintain the system of the party entitled to the stream waters on the rotation basis.

6. That, except as expressly modified herein, the parties covenant and agree that all the terms and conditions of the Budge Decree shall remain in full force and effect and shall not be further modified or amended, except by an instrument in writing, signed by both parties.

7. It is agreed that defendant's claim for damages may be held for naught and a judgment may be entered in accordance herewith, with each of the parties to pay his own costs.

8. This agreement is intended to establish a cooperative basis for taking their decreed waters of Robbers Roost Creek and shall be binding upon the parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, this Agreement is executed the day and year first above written.

2 LAZY T RANCH, a partnership

By

Eli Tayson
Eli Tayson

By

Wayne E. Tayson
Wayne E. Tayson

Frank H. Hough
Frank H. Hough

Mary H. Hough
Mary H. Hough

7-5

692318

STATE OF IDAHO)
) ss
County of Bannock)

On this 28th day of July, 1982, before me the undersigned notary public, personally appeared ELI TAYSOM and WAYNE E. TAYSOM, known to me to be the partners in the partnership of 2 LAZY T. RANCH, and the partners who subscribed said partnership name to the foregoing instrument and acknowledged to me that they executed the same in the partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Barbara Fugler
Notary Public for Idaho
Residing at Pocatello, Idaho

NOTARY SEAL

STATE OF IDAHO)
) ss
County of Bannock)

On this 20th day of July, 1982, before me the undersigned notary public, personally appeared FRANK H. HOUGH and MARY H. HOUGH, husband and 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.

John B. Fugler
Notary Public for Idaho
Residing at Pocatello, Idaho

NOTARY SEAL

7-6

692318

SCHEDULE OF WATER TURNS FOR WATERS
OF
ROBBERS ROOST CREEK, BANNOCK COUNTY, IDAHO

2 Lazy T	- June 30, beginning at 7 a.m. continuous until July 5 at 7 a.m.	= 5 days
Hough	- July 5, beginning at 7 a.m. continuous until July 7 at 7 p.m.	= 2.5 days
2 Lazy T	- July 7, beginning at 7 p.m. continuous until July 12 at 7 p.m.	= 5 days
Hough	- July 12, beginning at 7 p.m. continuous until July 15 at 7 a.m.	= 2.5 days
2 Lazy T	- July 15, beginning at 7 a.m. continuous until July 20 at 7 a.m.	= 5 days
Hough	- July 20, beginning at 7 a.m. continuous until July 22 at 7 p.m.	= 2.5 days
2 Lazy T	- July 22, beginning at 7 p.m. continuous until July 27 at 7 p.m.	= 5 days
Hough	- July 27, beginning at 7 p.m. continuous until July 30 at 7 a.m.	= 2.5 days
2 Lazy T	- July 30, beginning at 7 a.m. continuous until August 4 at 7 a.m.	= 5 days
Hough	- August 4, beginning at 7 a.m. continuous until August 6, at 7 p.m.	= 2.5 days
2 Lazy T	- August 6, beginning at 7 p.m. continuous until August 11 at 7 p.m.	= 5 days
Hough	- August 11, beginning at 7 p.m. continuous until August 14 at 7 a.m.	= 2.5 days
2 Lazy T	- August 14, beginning at 7 a.m. con- tinuous until August 19, at 7 a.m.	= 5 days
Hough	- August 19, beginning at 7 a.m. con- tinuous until August 21 at 7 p.m.	= 2.5 days
2 Lazy T	- August 21, beginning at 7 p.m. con- tinuous until August 26 at 7 p.m.	= 5 days
Hough	- August 26, beginning at 7 p.m. con- tinuous until August 29 at 7 a.m.	= 2.5 days
2 Lazy T	- August 29, beginning at 7 a.m. con- tinuous until Sept. 3 at 7 a.m.	= 5 days
Hough	- Sept. 3 beginning at 7 a.m. contin- uous until Sept. 5 at 7 p.m.	= 2.5 days
2 Lazy T	- Sept. 5, beginning at 7 p.m. con- tinuous until Sept. 10 at 7 p.m.	= 5 days

SCHEDULE "A"

Page 1 of 2

7-7

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Hough	- Sept. 10, beginning at 7 p.m. continuous until Sept. 13 at 7 a.m.	= 2.5 days
2 Lazy T	- Sept. 13, beginning at 7 a.m. continuous until Sept. 18 at 7 a.m.	= 5 days
Hough	- Sept. 18, beginning at 7 a.m. continuous until Sept. 20 at 7 p.m.	= 2.5 days
2 Lazy T	- Sept. 20, beginning at 7 p.m. continuous until Sept. 25, at 7 p.m.	= 5 days
Hough	- Sept. 25, beginning at 7 p.m. continuous until Sept. 28, at 7 a.m.	= 2.5 days

692318
NO. 692318
RECORDED AT REQUEST OF
American Land Title Co.
JUL 30 1 47 PM '82
OFFICIAL RECORD BOOK
SANDHURST COUNTY IDAHO
S NEIL ANDERSON RECORDER
FEE 14.00
384
14.00

SCHEDULE "A"

Page 2 of 2

Dear Al

RECEIVED

FEB 06 2002

Department of Water Resources
Eastern Region

- Enclosed find a copy of
Agreement between the two parties
concerning Roberts Road.

- still working on priority date
of well & pond.

Thank

Douglas Thomas