



Big Flat Ditch Company
% Katie Slavin
PO Box 255
Carmen, ID 83462
208-756-6309

July 25, 2005

Roxanne Brown
Sr. Water Resource Agent
Dept. of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: claim #'s — 75-04150; 75-04150A; 75-04150B; 75-10340

Dear Ms Brown,

yes

In response to your request for "Evidence of Priority," I have enclosed an "Article of Agreement" dated June, 1900 which describes the agreement to build the Big Flat Ditch, along with the lands to be irrigated by the ditch.

I have tons more documentation and information if this isn't sufficient for your needs. I can be contacted at the above phone number or at work at 208-756-6322.

Sincerely,

Katie Slavin
Secretary



RECEIVED

JUL 28 2005



DEPARTMENT OF
WATER RESOURCES

ARTICLE OF AGREEMENT made and entered into by and between Ernest

R. Benedict, A.C. Mather, Eliza Mather, Ora L. Igou, William M. Igou,

Elwood D. Clark, Theodore Batson, Thomas Palmer, John Palmer,

Hillard H. Dahle, Henry Lund, Mary Lund, Montraville White, John

Dimmock, Albert J. Mathews, John Daniels, Wallace W. Slavin, Frank

P. McCracken, William Smith, and Robert Martin, all of Lemhi County,

Idaho, parties of the one part, hereinafter designated as the "Carman

and J.W. Birdseye her husband

Creek People" and David McNutt, Mary J. Birdseye, Anna B. Davis, Henry

Griener, Neil Sweeney, George L. Shoup, by M.M. McPherson his attorn-

ey in fact, Murdock M. McPherson, A.J. Macnab, William H. Shoup, and

Peter McKinney, all of said county and state, parties of the other

part, hereinafter designated as the "Big Flat People": WITNESSETH:

THAT WHEREAS, The Big Flat People and the Carman Creek People are

interested in the appropriation and use of the waters of Carman

Creek in the aforesaid County for the irrigation of their several

ranches: AND WHEREAS, water for irrigating the ranches of ^{the} Carman

Creek People is obtainable only from said Carman Creek, and there

is barely sufficient in said creek for that purpose; Therefore said

Carman Creek People are desirous of purchasing all the waters of

said creek heretofore appropriated and used by said Big Flat People:

Now therefore, to that end the parties aforesaid agree as follows:

1. For the purpose of furnishing water to said Big Flat People in

exchange for the water of Carman Creek heretofore appropriated and

used by them, said Carman Creek People agree to construct a good and

sufficient ditch from Salmon River to a point on the Big Flat where

the same will intersect the Carman Creek ditch now owned by ~~the~~ ^{McNutt}

^{Birdseye and Davis}

~~the~~ people; such point to be at a place where water will be deliv-

ered to cover the highest land now irrigated by the Big Flat people.

Said ditch to be six feet wide at the bottom, ten feet wide at the

top except at the head thereof and a short distance below where it

shall be ^{seven} / 0 feet wide on top, two feet deep, and on an ~~angled~~ grade of ~~four~~ and five feet to the mile and low enough at the head to admit water two feet in depth at low water season. Said ditch to have a suitable head gate.

2. In consideration of the construction of said ditch from Salmon river, in the manner aforesaid, and after the construction thereof said Big Flat people and each of them, his and her heirs and assigns agree to convey to said Carman Creek people or to such of them as shall participate in the construction of said ditch, his, her, or their heirs and assigns, by proper deeds of conveyance all of their joint and several right, title and interest in and to the aforesaid waters of Carman Creek heretofore appropriated by them or either of them.

3. It ^{is} agreed to refer the following matters and subjects with reference to said ditch and conveyance of water to the award and determination of James H. Heckingsmith, William Peterson, and Thomas Pyeatt, and said arbitrators may, by their award, order and determine the following:

- A. To determine whether the river ditch is completed according to the above named specifications, and whether low enough to admit at the head thereof two feet of water at low water season.
- b. To decide and determine by whom said ditch shall be maintained.
- c. If it is determined that the Carman Creek people shall maintain said ditch, then to decide and determine how long they shall so maintain it.
- d. To determine how many inches of the waters of Carman Creek each of said Big Flat people heretofore appropriated and used, and are entitled to convey.

e. To decide and determine when said Big Flat people shall convey these aforesaid right, title and interest in and to said waters of Carman Creek, to said Carman Creek people.

4. Said Arbitrators shall be at liberty to examine the parties, either of them, and their witnesses in the reference, and the parties respectively shall produce before said Arbitrators all documents, papers, maps and writings in their custody or control relating to the matters referred, which said Arbitrators may require. Said award and decision shall be in writing under the hands of said arbitrators and be delivered to the parties; One copy to the Big Flat people and another to the Carman Creek people.

5. It is mutually agreed and covenanted by and between all parties hereto, for themselves, their heirs and assigns, that the award and decision of said arbitrators upon the aforesaid subjects shall be conclusive and binding upon all parties hereto, their heirs and assigns, and we do each of us agree to abide by, perform and carry out such award and decision.

6. It is further agreed that this agreement and the covenants herein, on the part of the Big Flat people, his and her heirs and assigns, and the award and determination of said arbitrators, relative to the conveyance of his or her or their right, title and interest in and to the waters of said Carman Creek to said Carman Creek people, shall run with and bind the aforesaid water and be connected with the title thereto, and conveyance thereof may be enforced by action in a proper Court against the Big Flat people or either of them or his or her heirs and assigns.

7. It is mutually agreed and understood that if any of said Carman Creek people fail or neglect to pay in money, his or her share or portion of the costs of constructing said ditch, or within *thirty* days thereafter he or her shall not be entitled to any portion of

the waters of Carman Creek so to be conveyed by said Big Flat people. In such case the share or portion such person would ~~not~~ be entitled to had he or she participated in the construction of said ditch and paid therefor, shall be conveyed to those who do participate in such construction and pay for same. The Arbitrators aforesaid shall consider this subject and be governed thereby in determining which of the Carman Creek people are entitled to a conveyance of said water under the covenants and agreements herein.

4. It is further agreed that the cost of maintenance of said Salmon River ditch shall be a legal charge against all persons who are the cost of maintaining said Salmon River ditch is and shall be a legal charge against all persons who are liable to maintain the same under the law and decision of said arbitrators and if said cost is advance either in labor or money by other or others of the Carman Creek people, he or she or they shall have and are hereby given the right to use such delinquent persons share of the waters refusing to pay his or her share of such maintenance. of Carman Creek obtained from said Big Flat people under this agreement, until such delinquent person pays or tenders the amount so expended.

and expenses until said ditch is completed and water runs through the same, said Big Flat people shall have the right to use water from Carman Creek in the amount and manner specified in the judgement and decree entered in the District Court of the Fifth & Judicial District of the State of Idaho, in and for Lemhi County in an action wherein the Big Flat people are plaintiff and said Carman Creek people are defendants. Said judgement and decree being known as the Standard decree. Robert Martin is hereby appointed water master to regulate the flow of water from Carman Creek between the parties hereto until said river ditch is completed and sufficient water runs through the same.

10. It is further agreed that ^{it} at any time during the period fixed by said arbitrators for said Carman Creek people to maintain said

the waters of Carman Creek so to be conveyed by said Big Flat people. In such case the share or portion such person would get be entitled to had he or she participated in the construction of said ditch and paid therefor, shall be conveyed to those who do participate in such construction and pay for same. The Arbitrators aforesaid shall consider this subject and be governed thereby in determining which of the Carman Creek people are entitled to a conveyance of said water under the covenants and agreements herein.

8. It is further agreed that the cost of maintenance of said Salmon River ditch shall be a legal charge against all persons who are liable to maintain it under the award and decision of said Arbitrators, and if said cost is advanced by other or others of the parties interested, he or she or they shall have and are hereby given a right of action for the same against the person neglecting or refusing to pay his or her share of such maintenance.

9. It is further agreed that said Carman Creek people will complete said ditch on or before December 1st, 1900, at their own cost and expense; and until said ditch is completed and water runs through the same, said Big Flat people shall have the right to use water from Carman Creek in the amount and manner specified in the judgement and decree entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for Lemhi County in an action wherein the Big Flat people are plaintiff and said Carman Creek people are defendants. Said judgement and decree being known as the Standard decree. Robert Martin is hereby appointed water master to regulate the flow of water from Carman Creek between the parties hereto until said river ditch is completed and sufficient water runs through the same.

10. It is further agreed that, at any time during the period fixed by said arbitrators for said Carman Creek people to maintain said

ditch, the same shall be broken or insufficient to carry a proper amount of water to said point of intersection for the irrigation of the lands belonging to said Big Flat people, their heirs or assigns, then, and so long as said ditch is so broken or insufficient to carry such water, said Big Flat people or any of them desiring water for irrigating purposes as aforesaid, shall have the right to use water from Carman Creek belonging to said Carman Creek people, not exceeding the amount designated in the aforesaid "Standard decree".

11. It is further mutually agreed that all costs connected with this matter of arbitration shall be borne by all parties hereto.

All and every of the covenants, agreements, and conditions herein contained shall extend to and bind the several heirs, executors, administrators, and assigns of the parties hereto.

It is understood and agreed that from the time of completion of said river ditch to the time of conveyance of said water by said Big Flat people, said Carman Creek people shall have the use of the waters of Carman Creek so to be conveyed by said Big Flat people, except at the intervals when said river ditch is broken etc. as hereinbefore stated.

In witness whereof the parties hereto have set their hands

and seals this 20th day of June A.D. 1900.

J. M. e. Smith seal.

May J. Bidsup seal.

By J. Bidsup for May J. Bidsup seal.

J. Bidsup seal.

_____ seal.

Peter McHann seal.

Hecory G. Bidsup seal.

W. J. Bidsup seal.

Thomas Palmer seal.

R. M. Mather seal.

H. Mather seal.

Mary Bidsup seal.

W. Mather seal.

Chas. Mather seal.

O. L. Bidsup seal.

John Palmer seal.

John Bidsup seal.

W. J. Bidsup seal.

W. Bidsup seal.

Geo. J. Thorpe seal.
Mundach M. Thompson seal.
Mundach M. Thompson seal.
A. J. Macmah seal.
William M. Thompson seal.
Anna B. Davis seal.
Edward J. Clark seal.

Theodore Babson seal.
Wallace W. Shuman seal.
John P. Smith seal.
A. J. Mathews seal.
J. H. Allard seal.
_____ seal.
_____ seal.

State of Idaho,)
County of Lemhi.) ss.

On this _____ day of _____ A.D. 1900, before

me

a Notary Public in and for said

County, personally appeared

known to me to be the persons whose names are subscribed to the
within instrument, and acknowledged to me that they executed the

same. And at the same time and place, before me, the office above
described, personally appeared Mary J. ~~Max~~ Birdseye, known to
me to be the person whose name is subscribed to the within instru-
ment, described as a married woman; and upon an examination, without
the hearing of her husband, I made her acquainted with the contents
of the instrument, and thereupon she acknowledged to me that she exe-
cuted the same, and that she does not wish to retract such execution

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

SECOND REPORT OF THE UNDERSIGNED ARBITRATORS.

To decide and determine when said ditch shall be constructed.

WHEREAS, by a certain agreement, in writing, bearing date the 20th day of June, 1900, made and entered into by and between Ernest R.

Benedict, A.C. Mather, Eliza Mather, Crag J. Igon, William Igon, William Igon, Clark, Theodore Batson, Thomas Palmer, John Palmer, Hilliard H. Pahle, Henry Lund, Mary Lund, Montravelle Waite, John Dimock, Albert J. Mathews, John Daniels, Wallace W. Slavin, Frank P. McCracken, William Smith and Robert Martin, parties of the first part, designated as the Carman Creek people, and David McNutt, Mary J. Birdseye, and J.W. Birdseye, her husband, Anna B. Davis, Henry Griebner, Neil Sweeney, George L. Shoup, by M.M. McPherson, his Attorney in fact, Murdock E. McPherson, J. J. Macnab, William H. Shoup and Peter McKinney, parties of the second part, designated as the "Big Flat people", providing for the construction of an irrigating ditch from Salmon River in Lemhi County, Idaho, to a point intersecting a ditch known as "the CARMAN CREEK ditch" owned by McNutt, Birdseye and Davis, in consideration for the conveyance of certain rights in the waters of Carman Creek, it was agreed to refer the following matters and subjects, with reference to said ditch and conveyance of water, to the award and determination of the undersigned, to wit: to award, order and determine the following:

a. To determine whether the river ditch is completed according to the above named specifications, and whether low enough to admit at the head thereof, two feet of water at low water season. To decide and determine by whom said ditch shall be maintained.

c. If it is determined that the Carman Creek people shall maintain said ditch, then to decide and determine how long they shall so maintain it.

d. To determine how many inches of the waters of Carman Creek each of said Big Flat people heretofore appropriated and used, and are entitled to convey.

e. To decide and determine when said ditch shall be constructed.

said ditch, by said persons, who constructed the same, for a period of five years. To decide and determine when said Big Flat people shall

convey their aforesaid right, title and interest in and to said waters of Carmen Creek, to said Carmen Creek people.

and to determine who of the Carmen Creek people are entitled to a conveyance from the Big Flat people of their interests in the waters of Carmen Creek, after completing said river ditch.

Now, we the said Arbitrators, or Referees, having taken upon ourselves, the burden of said reference, and having examined the premises,

and heard and duly considered all the allegations and evidence of the said parties, of, and concerning the said matters of difference and subjects so referred as aforesaid, do make and publish this our decision in writing of and concerning said matters, as follows:

I. That E.R. Benedict, Theodore Hanson, Clifford D. Clark, Hilliard H. Dahle, John Dimock, John Daniels, Ora L. Igou, William Igou, Albert J. Mathews, Robert Martin, Peter McKinney, K.C. Mather, Thomas Palmer, John Palmer, Wallace Slavin and William Smith, engaged in the work of constructing a ditch from Salmon River in Lemhi County, to a point on the Big Flat, where the same will intersect the Carmen Creek ditch, now owned by McNutt, Birdseye and Davis, and completed a ditch from said Salmon River, to said point on the Carmen Creek ditch aforesaid, strictly according to the terms of said contract, to wit: said ditch terminates at the point intended by said contract: is six feet wide on the bottom: ten feet wide on top: two feet deep, and on an even grade of five feet to the mile, and low enough at the head, to admit water, two feet in depth at low water season, and has a suitable head gate.

2. We decide and determine, that the aforesaid "Carmen Creek

people", to wit: those who engaged in the construction of said ditch, shall maintain said ditch, in its present form, for a period of one year from this date, and at the expiration of one year from this date, said ditch shall belong to, and be the property of said "Big Flat people" to be maintained thereafter, at their own expense, except as to Mary J. Birdseye

and Anna B. Davis, who shall be relieved from the expense of maintaining

said ditch, by said persons, who constructed the same, for a period of five years, according to the terms of a contract, existing between them

3. We decide and determine, that the Big Flat people appropriated and used 620 inches of the waters of Carman Creek, as follows: David McNutt, 200 inches, appropriated May 1st 1875, contract, entered into Mary J. Birdseye, 100 inches, appropriated May 1st 1875.

Anna B. Davis, and her children, 100 inches, appropriated May 1st 1875; Henry Griever, 70 inches, appropriated May 1st 1882; Neil Sweeney, 35 inches, appropriated May 1st, 1882; and the said-

George L. Shoup, who are in error in the payment of their money or portion

M. M. McPherson, who constructed said river ditch, to the amount of 55 inches, appropriated May 1st 1882

James Macnab, and

William H. Shoup

210.00

Peter McKinney, 60 inches, appropriated May 1st 1882; and

and they are entitled to convey the same to the aforesaid individuals who constructed said River ditch, according to the terms of said contract.

4. That said David McNutt, Henry Griever, Neil Sweeney, George L. Shoup, M. M. McPherson, A. J. Macnab, William H. Shoup, Peter McKinney, shall, at the expiration of one year from this date, convey to the aforesaid persons, who constructed said River ditch, the following number of inches of the waters of Carman Creek, heretofore used by them, to wit:

David McNutt, 200 inches

1.00

Henry Griever, 70 inches

20.00

Neil Sweeney, 35 inches

10.00

Peter McKinney, 60 inches

.00

George L. Shoup, M. M. McPherson

55 inches

James Macnab, and William H. Shoup, 100 inches, 100.00

Provided that said river ditch is kept in repair as herein provided. And that Mary J. Birdseye and Anna B. Davis, their heirs or assigns, shall at the expiration of five years from this date, convey to said persons who constructed said river ditch, the following number of inches of the waters of Carman Creek, heretofore used by them, to wit:

Mary J. Birdseye, 100 inches

Anna B. Davis, 100 inches

Provided that said river ditch is kept in such repair, for five years from this date, that it will deliver 200 inches of water from Salmon River, to the point where said river ditch intersects said Carman Creek ditch, - in accordance with the terms of the private contract, entered into between said parties, of date June 20, 1900.

5. We hereby find and determine that the following named persons have paid their full share, or portion of the cost of construction of said river ditch, to wit: E.R. Benedict and Wallace W. Slavin, and that the following named persons are in arrear in the payment of their share or portion of the cost of construction of said river ditch, to the amounts set opposite their respective names, to wit:

Theodore Batson	\$10.31
Elwood D. Clark	30.92

Hilliard H. Dahle

18.56

John Dimock

32.00

John Daniels

286.22

Ora L. and William Igou

8.54

Albert J. Mathews

18.56

Robert Martin

1.92

Peter McKinney

.51

A.C. Mather

1.09

Thomas Palmer

28.53

John Palmer

18.55

William Smith

.51

6. That said E.R. Benedict, Wallace W. Slavin, Theodore Batson, Elwood D. Clark, Hilliard H. Dahle, John Dimock, John Daniels, Ora L. and William Igou, Albert J. Mathews, Robert Martin, Peter McKinney, A.C. Mather,

Thomas Palmer, John Palmer and William Smith, are entitled to a conveyance of the waters of said Carman Creek, so appropriated and owned by said Big Flat people" provided that all of said persons, except said Benedict and Slavin, pay the aforesaid sums, so due and owing by them, within the

thirty days, fixed by the contract, first herein referred to.

7. That the persons, named in paragraph 6 of this report, are each entitled to a conveyance from said David McNutt, Mary J. Birdseye, Anna B. Davis, Henry B. Griebner, Neil Sweeney, Peter McKinney, George L. Shoup, M. M. McPherson, A. J. Macnab, and William H. Shoup, of the 620 inches of the waters of Carman Creek, in accordance with the terms of said contract the right to the use of said water, dating from the times above stated, to wit: the date of the original appropriation.

8. We also find and determine that the benefit to the William Smith ranch, derived from the construction of said river ditch, is so much greater than the trifling amount of damage inflicted, that we award no damage to the owner thereof.

All of which is respectfully awarded and reported.

Dated October 7th 1901.

J. H. Hockenrath
Thomas Pyeatt
William Peterson

Referees.

Our charges for services:

<i>Janner H. Hockenrath</i>	<i>12 days at \$3.00</i>	<i>\$36</i>
<i>Thomas Pyeatt</i>	<i>12 days at \$3.00</i>	<i>\$36</i>
<i>William Peterson</i>	<i>12 days at \$3.00</i>	<i>\$36</i>