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AUG 08 2005

Department of Water Resources
Adjudication Bureau

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 75-4433

WATER RIGHT NUMBER: 75-4433

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOSEPH A PROKSCH 823 UNION AVE SALMON, ID 83467 (208)756-2252
Current Owner	HALLIE H PROKSCH 823 UNION AVE SALMON, ID 83467 (208)756-2252

Priority Date: 05/10/1881

Basis: Statutory Claim

Status: Active

<u>Source</u>	<u>Tributary</u>
WARM SPRINGS	SALMON RIVER
WASTE WATER	SALMON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	4/01	to 12/31	0.020 CFS	
IRRIGATION	4/01	to 11/01	2.680 CFS	
	<u>Total Diversion:</u>		2.700 CFS	

Location of Point(s) of Diversion

WARM SPRINGS	SE1/4NE1/4	Sec. 7,	Twp 21N,	Rge 22E, B.M.
LEMHI County				
WASTE WATER	SE1/4NE1/4	Sec. 7,	Twp 21N,	Rge 22E, B.M.
LEMHI County				

Place of UseIRRIGATION Within LEMHI County

T21N R22E S07	NENE	1.0	T21N R22E S07	NWNE	2.0
T21N R22E S07	SWNE	23.0	T21N R22E S07	SENE	40.0
T21N R22E S08	SWNW	1.0			

Total Acres: 67

STOCKWATER same as IRRIGATIONConditions of Approval:

1. S/50 COWS

Remarks:

July 26, 2005

Joseph A. Proksch
823 Union Ave.
Salmon, Idaho 83467
Phone 208-756-2252

Idaho Department of Water Resources,

Subject: Evidence of Priority and beneficial use

WATER RIGHT NUMBER: 75-4433

Dear Sir or Madam:

I am enclosing some information that I feel will help to establish a priority date of beneficial use of water for #75-4433. Please review the exhibits for supporting facts:

Exhibit #1 Metsker Map – Show Sec., Township, and Range of Property
And property marked in Purple

Exhibit #2 Affidavit – Joseph A. Proksch, irrigated since 3-21-1942

Exhibit #3 Abstract of Title –

YELLOW shows most of our property deeded to Pattison in 1893

BLUE shows a small part deeded to McCain 1893

RED shows a small part deeded to Bryan in 1892.

PURPLE shows a Quick Claim deed from Dudley to Martin
transferring the land (which is 95% of our farm) and references
water Book A page 221 and all water rights and ditches.

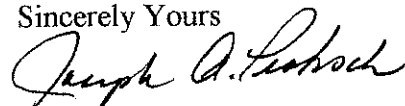
Exhibit #4 Pope Ditch Instrument # 27863 – shows waste water emptying
into Warm Springs

Exhibit #5 Kane-Ramey Ditch – After water leaves the Infanger's it runs
North to the Proksch farm for irrigation - Isaac Buckley Filed
Book A Page 315 May 18, 1887

Exhibit #6 Page 221 out of Book A gives notice that George W. Dudley
Claims all the surplus water in Warm Springs and files on it
May 10, 1881.

I believe that beneficial use of water, would be recognized as of May 10, 1881.

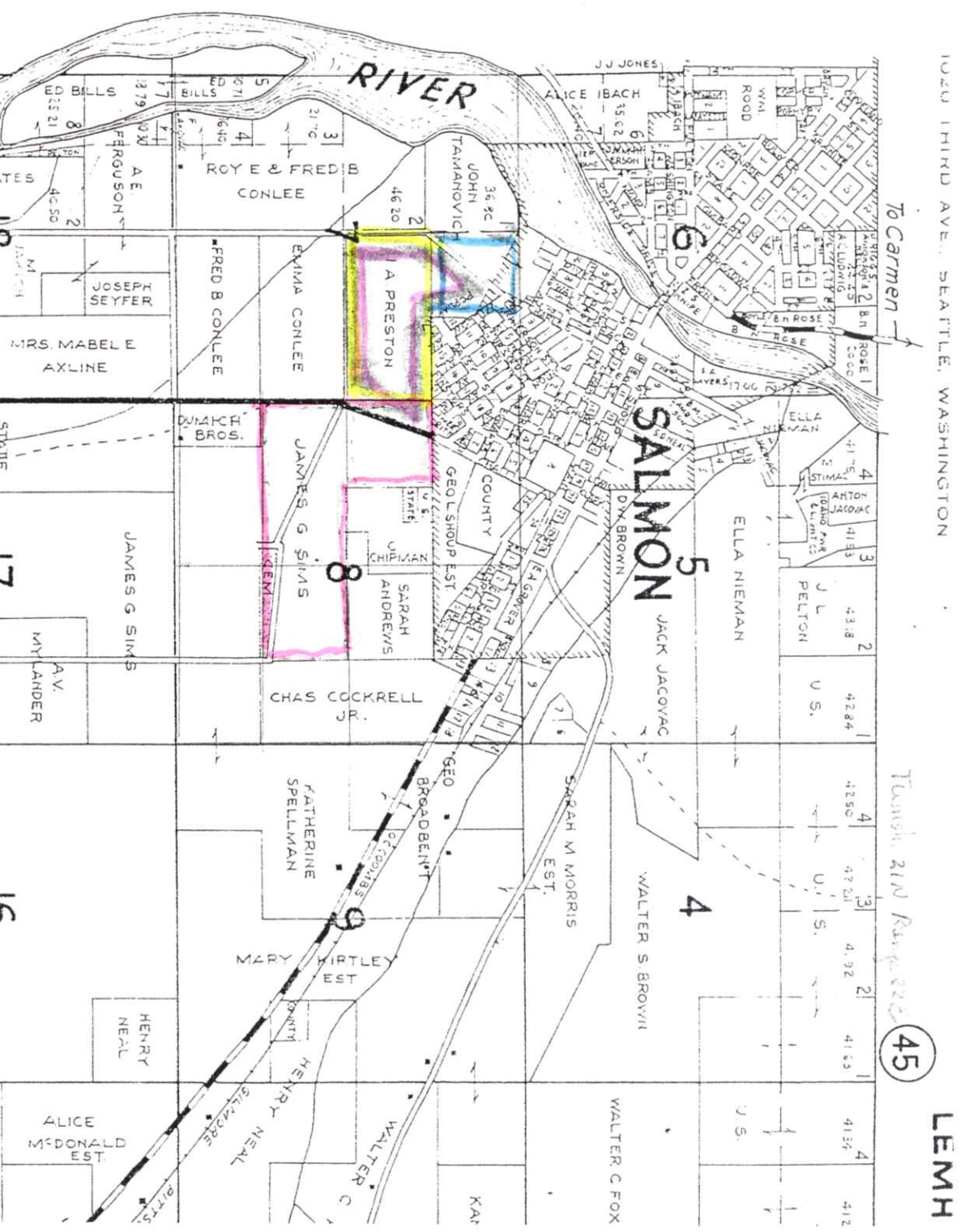
Sincerely Yours



Joseph A. Proksch

5 1/2 of NE 1/4 of Sec 7 N15. cont to Robert Patterson Feb 28, 1893 (Re 4-3-1893 (Re Book F page 179)
 NW 1/4 of NE 1/4 of Sec 7 N15 cont to Sylvester McEann May 5, 1893 (Re 4-10-1895 (Re Book G Page 786)
 SW 1/4 of NW 1/4 of NE 1/2 of SW 1/4 of NW 1/4 of SE 1/4 N15 to William J. Bryan June 30, 1892 (Re 6-30-1892 (Re Book K - page 521)
 May 1896

Exhibit (1)



ABSTRACT of Title

1

United States)
to)
Willwood T. Beatty,)
Probate Judge of)
Tombi County, in trust.)

PATENT

Dated June 20th 1883

Recorded July 20th 1883

Book C Page 227

For the NW¹/₄ of the NW¹/₄ of Section 8 Township 21 North
Range 22 East of the Boise Meridian(and other property)
In trust for the several use and benefit of the occupants
of the Salmon City Townsite.

2

United States)
to)
Robert R. Pattison)
Recorded April 3rd 1893
Book F page 779

PATENT

Dated February 28th 1893

Recorded April 3rd 1893

Book F page 779

For the S¹/₂ of the NE¹/₄ of Section 7 Township 21 North
Range 22 East of the Boise Meridian, containing 80 acres.

3

United States)
to)
Sylvester McCain)
Recorded April 10th 1895
Book G page 786

PATENT

Dated May 5th 1893

Recorded April 10th 1895

Book G page 786

For the NW¹/₄ of the NE¹/₄ of Section 7 Township 21 North
Range 22 East of the Boise Meridian, containing 40 acres.

4

United States)
to)
William J. Bryan)
Recorded June 28th 1902
Book K page 521

PATENT

Dated June 30th 1892

Recorded June 28th 1902

Book K page 521

For the SW¹/₄ of the NW¹/₄ and the N¹/₂ of the SW¹/₄ and the
NW¹/₄ of the SE¹/₄ of Section 8 township 21 North Range 22 East
of the Boise Meridian, containing 160 acres.

5

George A. Dudley)
to)
Charles E. Martin)
Acknowledged July 26th 1887
Recorded July 26th 1887
Book E page 241: Consideration \$500.00

Quit Claim Deed

Dated July 26th 1887

Acknowledged July 26th 1887

Recorded July 26th 1887

Book E page 241: Consideration \$500.00

Conveys the W¹/₂ of the NE¹/₄ and the SE¹/₄ of the NE¹/₄ of
Section 7 Township 21 North Range 22 East of the Boise Meridian,
containing 120 acres. Also water Book A at page 221 and all
water rights and ditches. George A. Dudley signs by mark.
Witness Thos. Elder and E.H. Jeanjaquet.

Exhibit (3)

July 26, 2005

Joseph A. Proksch
823 Union Ave.
Salmon, Idaho 83467
Phone 208-756-2252

Idaho Department of Water Resources,

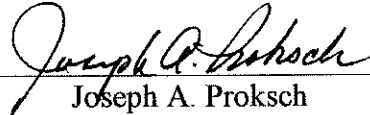
Subject: Evidence of Priority for beneficial use

WATER RIGHT NUMBER: 75-4433

AFFIDAVIT:

Albert and Annie Proksch purchased the property irrigated under water right #75-4433 on March 21, 1942 from Allen C. Merritt and Inez Merritt. I, Joseph A. Proksch, grew up on the farm and remember irrigating the land from existing ditches, putting up hay, and pasturing cows on the property. The waste water used to irrigated, came from Warm Springs, Pope, and the Kane Ramey Ditches. Sometimes when we tried to hay everyone was doing the same and we had so much water it was hard to keep the land dry so we could hay. I purchased the farm from my parents December 30, 1975 and the farm has been continually irrigate from March 21, 1942 to the present.

Be it known that the undersigned, being duly sworn, deposes and says that the matters and facts described in the above statement are true to the best of the affiant's knowledge.


Joseph A. Proksch

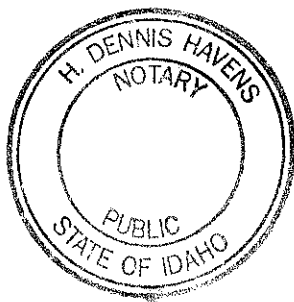
State of Idaho)
County of Lemhi) ss.

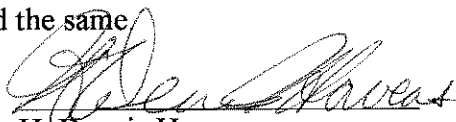
I, H. Dennis Havens, a notary public, do hereby certify that on this 27th day of

July, of 2005, before me personally appeared JOSEPH A. PROKSCH

known to me to be the person (s) whose name is subscribed to the within instrument, and

acknowledged to me that he (they) executed the same




H. Dennis Havens

Notary Public for Idaho

Residing at Salmon, Lemhi Co, Id.

My Commission expires Nov. 28, 2006

Exhibit (2)

THIS INDENTURE, Made the 4th day of December, 1922, by and between THOMAS KANE, a widower, WILLIAM A. WARNER and JENNIE WARNER, his wife, JOSEPHINE V. RIGGS, an unmarried woman, FRANK H. McCracken and MINNIE McCracken, his wife, HARRY L. SUMMERS and BESSIE L. SUMMERS, his wife, MURRAY A. CROOK and LYDIA CROOK, his wife, JAMES W. BOWMAN, a widower, JOHN F. LAMBETH, an unmarried man, LAURA ELIZABETH PECK and W. H. PECK, her husband, GRANVELL LAMBETH, an unmarried man, REBECCA LAMBETH, a minor, represented by JOHN F. LAMBETH, guardian of her estate, DWIGHT T. FOX, RALPH W. FOX, KENNETH FOX, unmarried men, BESSIE L. FOX and WALTER P. FOX, her husband, W I T N E S S E T H:

WHEREAS, The parties aforesaid who are residents of Lemhi County, Idaho, are the owners of real estate situated in Sections 19, 20, 29, 30, 31 and 32 in Township 21 North, Range 22 East of the Boise Meridian, and Section 5 in Township 20 North, Range 22 East of said meridian, in said county, that is to say:

Said THOMAS KANE is the owner of the Southeast Quarter ($SE\frac{1}{4}$) of Section Nineteen (19);

Said WILLIAM A. WARNER and JENNIE WARNER are the owners of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty (20);

Said JOSEPHINE V. RIGGS is the owner of the Southwest Quarter ($SW\frac{1}{4}$), and the West Half ($W\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of said Section Twenty (20);

Said FRANK H. McCracken and MINNIE McCracken are the owners of the North Half ($N\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$), and the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-nine (29);

Said JAMES W. BOWMAN, JOHN F. LAMBETH, LAURA ELIZABETH PECK, GRANVELL LAMBETH and REBECCA LAMBETH are the owners of the West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$), the Northeast Quarter ($NE\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$), the Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-nine (29);

Said HARRY L. SUMMERS and BESSIE L. SUMMERS, MURRAY A. CROOK and LYDIA CROOK are the owners of the West Half ($W\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty-nine (29);

Said BESSIE L. FOX and WALTER P. FOX are the owners of Lots Three (3) and Four (4) in Section Thirty-one (31);

Said DWIGHT T. FOX, RALPH W. FOX and KENNETH M. FOX are the owners of the West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) and the West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-one (21) North, Range Twenty-two (22) East of said meridian; and

Said EDGAR S. EDWARDS and SUSAN EDWARDS are the owners of Lot Four (4) and the Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Five (5) in Township Twenty (20), North of Range Twenty-two (22) East of said meridian; and

WHEREAS, There is an irrigation ditch extending northerly from a point on Section Seven (7) Township Twenty (20) North, Range Twenty-two (22) East of the Boise Meridian over and across Sections Six (6) and Seven (7) in said township, and over and across Sections Thirty-two (32), Twenty-nine (29) and Twenty (20) in said Township Twenty-one (21) North, Range Twenty-two (22) East of said meridian, with many laterals extending therefrom, which ditch conveys water from Salmon River for the irrigation of the lands hereinbefore described, and which is known as the "P O P E D I T C H" and

WHEREAS, The several owners of the aforesaid land have appropriated water from said river by diverting the same from the channel thereof into the head of said ditch, and by means thereof and of the lateral ditches connected therewith have caused the water so diverted to flow in said ditch and laterals to their said several parcels of land, and have used the same for a considerable time for the irrigation of their said land and for domestic purposes, and in that manner, and by means of the premises they have become water users of the neighborhood and have formed a water district, each person claiming a common right to the waters of said ditch for irrigation and domestic purposes, and

WHEREAS, The waters so claimed and used have not been allotted to the individual users thereof, and by reason thereof the several parties hereto claim rights, in part, under and by virtue of the provisions of Section 5626 of the Compiled Statutes of Idaho, and

WHEREAS, Divers disputes and differences have arisen, and are still subsisting, between the said parties relative to the use of said ditch and the waters therein, and to the improvement and maintenance thereof.

NOW THEREFORE, For the purpose of a more systematic use of said ditch and laterals and the waters therein, and for better control and greater economy in the expense of improvement, repair and maintenance thereof, as well as control of the use of said water, it is hereby covenanted and agreed by and between the parties hereto as follows:

1. That said ditch shall be maintained; and the expense of maintenance and improvement of the same, from the intake thereof at said river to a point at the Northeast Corner of the West Half of the Northeast Quarter of said Section Twenty-nine (29), when necessary to divert the requisite amount of water for the purpose of irrigating said several parcels of land, shall be borne and paid by each owner

be constructed, a measuring device for measuring the flow of water each user is entitled to have for the purpose of irrigating his, or her, said land, and shall maintain the same in suitable condition for use, and in such form that the same may be regulated by a lock; and in case of failure or neglect of the water user to establish such device upon his or her land, the Water Master appointed for the distribution of the waters of said ditch may construct such device upon the land of the owner using said water, and the expense thereof shall be placed in his bill of expenditures presented to the County Commissioners.

3. That on the first Monday of March of each year a meeting of the users of the water from said ditch shall be held at some place to be designated, at which meeting there shall be chosen, by a majority vote, a committee of three, who shall be users of said water and who shall advise and direct relative to the work necessary to be done upon said main ditch during the then current year. Said Committee shall appoint a Secretary who shall keep a record of all decisions of the meeting and all things done by the Committee during the year relating to the repair, improvement and use of said ditch during said year, also an itemized expense account. At said meeting there shall be elected, by a majority vote, a Water Master, who may be one of said users, who shall have general supervision of the work advised by said Committee to be done upon said ditch during the time he is employed as such Water Master. If for any reason a meeting of said water users is not held on the first Monday of March, a special meeting may be called by one or more of said users of said water, upon five (5) days' notice, to be held at some designated time and place before the 15th day of March, when the business aforesaid shall be transacted; and in case any such meeting is not held during said month, any one or more of said users of said water may petition the Judge of the District Court of the County of Lemhi for the appointment of a Water Master for said district under the provisions of Section 5626 of the Compiled Statutes of Idaho.

4. Said Committee shall have charge of all work done or to be done upon said ditch during the year of their appointment, and may employ any of said water users, or any other person or persons to perform work necessary to be done upon said main ditch during the season. The person or persons performing work upon said main ditch under the direction of said committee, shall have credit therefor and the same shall be applied as a credit upon the charge against him, her or their proportion of the cost of improvement, repair and maintenance.

5. The Water Master so appointed shall perform all duties required of Water Masters by the provisions of the Statutes of Idaho, and the additional duty of caring for said ditch and the water therein during the time he is employed, and including in his report to the County Commissioners such amounts as are reported to him by said Committee, which amounts he shall apportion and charge in said report to the several users of said water.

6. That said users of water shall, during the time from April 15 to October 1 of each year, if necessary, keep a flow of water in said ditch sufficient for the requirements of such persons as are properly entitled to use the waters therefrom, and if such amount of water is not so provided, any one of said water users who, after June 15th of each year, is in need of the use of the amount of water necessary for the irrigation of his or her ranch, may call the Water Master appointed as aforesaid to distribute the waters of said ditch.

7. That such Water Master shall be entitled to such compensation as shall be fixed at the time of his appointment, not exceeding the sum of Four Dollars (\$4.00) for each day he shall be employed in the duties of his office, which compensation, and the expense of maintenance and improvement of said ditch shall be charged against the land of the users to which water was delivered.

8. Said Water Master is hereby required to file with the County Recorder of Lemhi County, prior to the meeting of the Board of County Commissioners of Lemhi County, for the month of October in the year of his appointment, a bill or statement showing the proper apportionment of all expenditures relating to said ditch and chargeable to the various users of water therefrom, which expense shall be charged against the land of each owner in the amount apportioned to the same by the bill of said Water Master, and be added to the taxes of said land and collected with other taxes assessed against said land.

9. It is estimated that said main ditch, at the date hereof, will convey an amount of water sufficient to supply each of said water users one and one-half inches of water per acre; it is therefore agreed that each of the users of the water in said main ditch shall receive therefrom one and one-half inches of water per acre for use upon his or her land, and in case any one or more of said users of water from said ditch desires more than one and one-half inches per acre, he or she shall, at his or her expense, enlarge said ditch to such size that it will convey said extra amount of water to the premises of said party.

10. Waste water from said ditch shall be wasted into Warm Springs Creek at the Northeast Corner of the West Half of the Northeast Quarter of Section Twenty-nine (29) in Township Twenty-one (21) North, Range Twenty-two (22) East of the Boise Meridian.

11. The main ditch herein mentioned shall be deemed to extend from its intake at Salmon River to said Northeast Corner of the West Half of the Northeast Quarter of said Section Twenty-nine (29); a dam at said river is deemed to be a part of said intake.

12. There being privity of estate between the parties hereto, and it appearing that the covenants herein will permanently affect the mode of use and enjoyment of said ditch and water therein, and the nature and value of said property, and that the same should be binding upon the grantees of any of the aforesaid parties, as they should in good con-

Exhibit (4)

FOR VERA INFANGER

DESCRIPTION:

Kane-Ramey Ditch -

ORDER NO. _____

STRUMENT	BOOK	PAGE	GRANTOR	GRANTEE	DATE	
pp. 738	E	455	(Receivers Receipt (Homestead) U.S.	Isaac Buckley	7-6-88	E 2 NE 4 + S 2 SE 4 Sect. 18 21 N 22 E - 160 acres
	H	299	Buckley, Isaac	Solicitors Loan & Trust By Sheriff	5-18-1887	Claim to water Book A - Page 35
	K	438	Philadelphia Securities	Walter Davis & Clinton Williams	12-20-1894	160 acres with water rights
	L	227	Walter Davis & Clinton Williams	Edgar S. Edwards	11-23-01	with water rights
	S	187	Edgar S. Edwards	G.A. Axline	3-22-08	1/2 int of Kane Ramey NE 4 NE 4 Sect. 18-21-22 SE 4 NE 4 "
pp. 738	27	254 158	Mabel Axline widow	H.N. Benham		
	39	421	H.N. Benham	James Franklin Stoddard	8-15-46	NE NE 4 Sect. 18, 21 N 22 E
	40	202	H.N. Benham	James Franklin Stoddard	4-29-47	NE NE 4 NE 4 Sect. 18, 21 N 22 E
claim deed	43	446	James Franklin Stoddard & Jean	W.H. & Catherine Stoddard	12-13-51	NE 4 NE 4 + NE 4 SE 4 NE 4 18-21-22
	44	325	W.H. Stoddard	Catherine Stoddard	"	" "
13305			Catherine Stoddard	Ray & Vera Infanger	11-29-60	S 2 SW 4 NE 4 NE 4 18-21-22
13306			"	"	"	N 2 SW 4 NE 4 NE 4 18-21-22
13307			"	"	"	S 2 NW 4 NE 4 NE 4 18-21-22
04197			"	"	"	S 2 NE 4 NE 4 NE 4 18-21-22
04198			"	"	"	N 2 NE 4 NE 4 NE 4 18-21-22
04199			"	"	"	N 2 SE 4 NE 4 NE 4 18-21-22

Exhibit (5)

75-4433

Book A page 221

221

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Cain and
Jordan
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point at
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Cabin,
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at 30.34
Water Right

Recorded

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and
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Kew out
ods below
by ditch

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Pl. at
Water

Notice is hereby given that I the undersigned
has this day located and claimed all the surplus water
running in the Warm Spring Creek, to be taken out
at a certain point below George Payens line fence and
to be conveyed by ditch to my Ranch for irrigation
and other purposes said location is situated about
two miles South of Salmon City in Lemhi County
Idaho Territory
Salmon City
May 10th 1881
Geo W. Dudley

Filed for record in this Office this 10th day of May A.D.
1881, at 9 A.M. and recorded in Record of Water Rights Book,
John H. Hagan,
Les. Recorder,

Salmon City Idaho Territory

May 24th 1881

I J. P. Vancian and Thomas Ogatto, claim
all the Water of what is known as Elder Canon
situated 2 miles below what is called John Bush's
Saw Mill about 3 hundred inches, also three
hundred inches from what is known Mill Creek
the same stream that John Bush's mill is on
the water to be taken out about three hundred
yards below Saw Mill, and conveyed by ditch 12x24 to
Elder Canon, thence by ditch 12x24 to our { J. P. Vancian,
Ranch for irrigation purposes, } Thomas Ogatto.
Filed for record May 24th A.D. 1881, at 20 minutes
past 3 O'clock P.M. and duly recorded in Record
of Water Rights Book, A. page 221,
John Hagan
Les. Recorder

Notice is hereby given that I the undersigned citizen of the
State of Idaho do hereby certify that the foregoing is a true and correct
copy of the original as the same appears in the files of the
EXHIBIT (6)