

Book 8 page 523, records said county, being the farm lands now owned intended hereby and contiguous to and irrigated from said streams, all in Bannock County, Idaho.

29 0320 That plaintiff William W. Woodland be adjudged and decreed to have the use and benefit of the continuous and uninterrupted flow of one-fourth of all the waters of Dry Hollow and Maple Creeks and the use and benefit of the continuous and uninterrupted flow of one-fifth of all the waters of Station Creek, and the use and benefit of the continuous and uninterrupted flow of one-sixth of all the waters of Birch Creek flowing towards Marsh Valley. That said water is used upon and be appurtenant to Lot No. 3 of Section 30, Township 11 South, Range 37 East Boise Meridian, and N 1/2 of S.E.1/4 and N.E.1/4 of S.W.1/4 of Section 25, Township 11 South, Range 36 E. Boise Meridian, Bannock County, Idaho, containing 172.82/100 acres, less 14.75 acres deeded by said plaintiff to Estate of Ellen Woodland; also to 67.36 ac adjoining last tract deeded to plaintiff by estate of Ellen Woodland heretofore; also to 27.18 acres by deed from Henry Wakley, book 13 of deeds page 424, records of said Bannock County, it being intended hereby to cover all farming lands now owned by said plaintiff as irrigated from said streams.

29 0323 That the Estate of Ellen Woodland be adjudged and decreed to have the use and benefit of the continuous and uninterrupted flow of one-fourth of all the waters of Dry Hollow and Maple Creeks and the use and benefit of the continuous and uninterrupted flow of one-fifth of all the waters of Station Creek, and the use and benefit of the continuous and uninterrupted flow of one-sixth of all the waters of Birch Creek flowing towards Marsh Valley. That said water is used upon and appurtenant to Lot No. 4 of Section 30, Township 11 South, Range 37 E. Boise Meridian, and S.1/2 of S.E.1/4, and S.E.1/4 of S.W.1/4, Section 25, Township 11 South, Range 36 East B.M., containing 172.83 acres, less 127 acres conveyed to W. W. Woodland, Henry Wakley and J.J.Wakley under decree of the Probate Court, Bannock County, Idaho; also to 46 acres deeded to said estate by W. W. Woodland, John J. Wakley and Henry Wakley; also to the tract of land known as the Ellen Woodland Desert Entry situated on said Birch Creek, containing 160 acres, all of said lands being in said Bannock County, it being intended hereby to cover all lands now owned by said estate as irrigated from said streams.

That defendant George Wakley be adjudged and decreed to have the use and benefit

Claim No.	Claimant	Fract.	Q by Rec	Acres	Stream	Remarks
<u>Phillips vs Edwards Decree, 1924..... Rowley Creek</u>						
29-11242	Wm Phillips	1/2	1.50	75.0	Rowley Ck	
29-12020	P Fergus	1/4	2.02	100.8	Rowley Ck	
29-13469	K Williams	1/4	2.52	126.0	Rowley Ck	
Claimed in-full						
<u>Wakley vs Wakley, 1904..... Station Creek</u>						
29-00321	Vaughan, et al	1/5	3.91		Station Ck	
29-00326	F Winward	1/5	1.92	96.0	Station Ck	
29-10461	Lazy VZ Trust	2/5	3.08		Station Ck	
29-11699	P Adams	1/5	5.64	282.2	Station Ck	
Decreed right(s) claimed in-full						
29-13476	TJL Properties		0.065		Station Ck	Recommended as BU, Priority 6/10/1904
<u>Wakley vs Wakley, 1904..... Dry Hollow (Big Ck) and Maple Ck (Mines Canyon)</u>						
29-00317A	Vaughan, et al	4/4 0/0	3.91		Big Ck/Maple Ck	DISALLOWED-ownership not proven
29-00320	Vaughan, et al	1/4	3.91		Big Ck/Maple Ck	
29-10462	Lazy VZ Trust	4/4 1/2	1.23		Big Ck/Maple Ck	Recommended as 1/2 flow **
29-11698	P Adams	1/4	5.64	282.2	Big Ck/Maple Ck	
Claimed in-full						
29-11700	P Adams	XX	0.36	282.2	Unnamed Strm	Beneficial Use
29-10407	TJL Properties	XX	0.07		Big Ck/Maple Ck	Recommended as BU, Priority 6/10/1904
<u>Daniels vs Woodland, 1878..... Birch Creek</u>						
29-13103	Malad Valley Irr	3/4	6.20	Lg POU	Birch Ck	
Marsh Creek side (B29) users got 1/4 of the flow of Birch Creek as shown below.						
<u>Wakley vs Wakley, 1904..... Birch Creek</u>						
29-00322	Vaughan, et al	4/24	3.91	195.3	Birch Ck	
29-00327	Marler/Gardner	2/24	2.54	128.0	Birch Ck	
29-00328A	K Williams	1/24	2.52	126.0	Birch Ck	
29-00328B	P Fergus	5/24	2.02	100.8	Birch Ck	
29-00328C	F Winward	2/24	1.92	96.0	Birch Ck	
29-00329	F Winward	2/24	0.80	40.0	Birch Ck	
29-11241	Wm Phillips	2/24	1.50	75.0	Birch Ck	
29-11650	TJL Properties	2/24	1.76	88.0	Birch Ck	
29-11697	P Adams	4/24	5.64	282.2	Birch Ck	
Claimed in-full						

Notes:

** Re; 29-10462 see Transfer #3032 Claim combines 29-317 and 29-330C (which recombines A & B)
The Decree of Davis vs Treasure only involves Birch Creek water.

BASIN 29; BIRCH CREEK WATER RIGHTS

Mapping: USGS Quad, CC-91, recognizes a perennial stream flowing East from Section 28, T12S, R36E, named Mill Creek. Flowing into NWSW of Section 27 this same stream is called Mill Creek. Then, at a small dam located in the center of the NWSW of Section 27 the same stream trace continues on to the East, but, in NWSW of Section 26 (T12S,R36E) the name changes to Birch Creek and continues on, as such, into Basin 29. Points of diversion and points of injection are in Oneida County.

Brief History: On October 10, 1878, a Decree in Equity (Daniels vs Woodland) was issued. Thereby, allocating $\frac{3}{4}$ of "... all the waters of Birch Creek,..." (no quantitative analysis of flow is mentioned) to Daniels, et al. This $\frac{3}{4}$ flow was (is) diverted, at two points, in NWSW Sec. 27 T12S, R36E and ditched to flow into Basin 15 and on into Devil Creek; ultimately being held for storage in Devil Creek Reservoir. This water right is claimed (SRBA) as 29-13103 and claims the 1878 priority date; held by Malad Valley Irrigation (MVI), in Oneida County.

The remaining $\frac{1}{4}$ of flow to, Woodland, et al, (again, no quantitative analysis of flow is recognized) is diverted at the same points of diversion, then injected (same legal description as the diversion, only a few yards downstream) back into the creek channel (Birch Creek) and carried on into Basin 29, Bannock County. Part of the flow of Birch Creek (after the split, as above), on the Basin 29 side, is then rediverted at SESENE Section 23, flows into a pipeline and under Interstate 15, then open flows into Birch Creek Canal system for distribution to several users. The remaining flow continues down the original stream channel to the valley floor and is used by other appropriators.

The Problem: The SRBA claims, from Birch Creek on the Basin 29 side, claim a priority date of June 9, 1904 (priority dates are not recognized by the decree so the decree date is used as the priority date), consistent with Wakley vs Wakley Decree (29-G1). However, Wakley vs Wakley allocates the flow (Basin 29 side) of Birch Creek to the many appropriators and fails to recognize the Daniels vs Woodland Decree setting the priority of Birch Creek waters. Wakley v Wakley also discusses the allocation and distribution of the waters of others streams on the Basin 29 side. And, again, does not recognize priority dates of those streams; therefore the priority date is the decree date of June 9, 1904, and is appropriate.

However, those claimants of Basin 29 having rights to the waters of Birch Creek ("... $\frac{1}{4}$ of the waters of said Birch Creek") and its Basin 29 tributaries, as address by Daniels vs Woodland, fail to claim the 1878 priority date.

In theory, under the Priority Doctrine, as mandated by the Constitution of the state of Idaho, "first in time is first in right" the appropriators (MVI) of the $\frac{3}{4}$ flow of Birch Creek, claiming some 6.2 cfs, could demand their right be filled in those times of short water years leaving Basin 29 appropriators without water due to their 1904 claimed priority date.

29-00317A
29-00320
29-00321
29-00322

ALL HAVING BEEN DECREED
JUNE 9, 1904 (W/O PRIORITY)
AND W/O QUANTITY OR FLOW
(ONLY TO SAY: $\frac{1}{4}$, $\frac{1}{5}$ OR $\frac{1}{6}$ OF
.... STREAM FLOW)

- I. CLAIMANT CLAIMS SOME 303[±] ACRES. BY GPS ONLY 195[±] ACRES IRRIGATED ARE IDENTIFIED. PURSUANT TO § 42-202 AND 42-220 IC MAXIMUM ALLOWABLE Q IS 0.02 cfs / AC. $\therefore 195 \times 0.02 \text{ cfs} = 3.90 \text{ cfs}$.
- II. ALTHOUGH WAKLEY VS WAKLEY (6/9/1904) DOES DEFINE CERTAIN ACREAGES, UNDER THE MANY VARIOUS RTS., DUE TO DECREE LANGUAGE IT IS (MOSTLY) UNCLEAR AS TO THE ACTUAL (ACCURACY) ACRES INTENDED. Δ IN POU IS APPROPRIATE $\Rightarrow$ CDS
- III. CLAIMANT CLAIMS 6.07 cfs FROM EACH RIGHT SHOWN ABOVE. HOWEVER, THIS Q IS REDUCED TO A TOTAL OF 3.9 FOR EACH RIGHT WITH REMARK LANGUAGE, OF EACH RIGHT, LIMITING TOTAL Q AT ANY ONE TIME, FROM ALL SOURCES, TO BE 3.90 cfs. COMBINED USE (OR SINGULAR USE) LIMITS DIVERSION
- REMARK $\rightarrow$ RATES TO 0.02 cfs PER AC. (§ 42-202, 42-220 IC)
- IV. SOURCES ARE MANY AND DUE TO LACK OF CLARITY OF WAKLEY VS WAKLEY IT IS NOT CLEAR IF ANY PARTICULAR RIGHT GOES TO CERTAIN POU. HOWEVER, SINCE 1904 SYSTEMS (STREAMS) HAVE BEEN JOINED TO A COMMON SYSTEM SHARED APPARENTLY ^{BY} ALL OR MOST USERS.
- V. DUE TO ALL RTS ADDRESSED BY WAKLEY VS WAKLEY HAVING NO SPECIFIC PRIORITY DATE THE DISBURSE DATE IS USED. AVAILABLE WATER IS PRO-RATA SHARED W/ USERS.