

SD-0607-2		Basin: 29	Starting Water Right: 00333			STATE	
S			O				
E	Water	Name	W	Priority	STG/		Use
L	Right No.	Last, First	N	Date	STS	Source	Code Desc
-	-	-	-	-	-	-	-
-	29-00333	HENDERSON, JAMES	C	07/01/1879	D/	LOST CREEK	01 IRR
-		HENDERSON, BENJAMINE	C			BIRCH CREEK	
-		HENDERSON, JR., JAME	C				
-	29-00334	HENDERSON, MELVIN	C	07/01/1879	D/	BIRCH CREEK	01 IRR
-	29-00335	MARLEY, GWENLION	C	07/01/1879	D/	BIRCH CREEK	01 IRR
-	29-00336	DAVIS, MARY	C	04/01/1881	D/	BIRCH CREEK	01 IRR
-	29-00337	LAWRENCE, MARK R.	C	07/01/1888	D/	BIRCH CREEK	01 IRR
-	29-00338	MARLEY, THOMAS	C	07/01/1889	D/	BIRCH CREEK	01 IRR
-	29-00339			00/00/0000	/Z		
-	29-00339A	COFFIN, W. H.	C	05/01/1872	D/	BRUSH CREEK	01 IRR
-							43 DOMEST
-							04 STOCK
-	29-00339B	BLOXHAM, EST. OF JOH	C	05/01/1872	D/	BRUSH CREEK	01 IRR
-	29-00339C	ALDOUS, FRED	C	05/01/1872	D/	BRUSH CREEK	01 IRR
-	29-00340	BYBEE, WM. J.	C	06/09/1915	D/	SPRINGS	01 IRR
-		JOHNSON, MARK L.	C				43 DOMEST
(Enter=Continue)		(GOLD 7=This Query)				(Menu _____)	

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	JAMES HENDERSON	07/01/1879	IRRIGATION	00/00 00/00	1.100 CFS	
C	BENJAMINE W. HENDERSON					
C	JAMES HENDERSON, JR.				1.100 CFS	
TOTAL DIVERSION:					1.100 CFS	

Water Source: LOST CREEK

Tributary to: BIRCH CREEK

Stage: DECREED

BIRCH CREEK

MARSH CREEK

Pou County:

Remarks: GEN DIVERSION RATE 1.1CFS FROM BIRCH CREEK.

DIVERSION RATE "ALL THE WATER OF SAID LOST CREEK".

SOURCE LOCATION APPROX. T9S, R36E.

P/D & P/U INCOMPLETE.

Dates: App. Received: 07/01/1879

Proof Due Date: Priority Date:

Exam Made Date: Proof Made Date:

Licensed Date: Exam Sent to S.O.:

Misc: Water District Number: Field Exam Fee:

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

WR5809NP
No. 29-00334

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	MELVIN HENDERSON	07/01/1879	IRRIGATION	00/00	00/00	1.000 CFS	
TOTAL DIVERSION:						1.000 CFS	

Stage: DECREED

Tributary to: MARSH CREEK

Water Source: BIRCH CREEK

Pou County:

Remarks: GEN P/D & P/U INCOMPLETE.
SOURCE LOCATION APPROX. T9S, R36E.

Dates: App. Received: 07/01/1879
Proof Due Date: 07/01/1879
Exam Made Date: 07/01/1879
Licensed Date: 07/01/1879

Misc: Water District Number: Field Exam Fee:

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	GWENLION MARLEY	07/01/1879	IRRIGATION	00/00	00/00	0.400 CFS	
TOTAL DIVERSION:						0.400 CFS	

Water Source: BIRCH CREEK Tributary to: MARSH CREEK Stage: DECREED

Pou County:

Remarks: GEN P/D & P/U INCOMPLETE.
SOURCE LOCATION APPROX. T9S, R36E.

Dates: App. Received: 07/01/1879
Proof Due Date: 07/01/1879
Exam Made Date: 07/01/1879
Licensed Date: 07/01/1879

Misc: Water District Number: Field Exam Fee:

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	MARY DAVIS	04/01/1881	IRRIGATION	00/00	00/00	0.300 CFS	
TOTAL DIVERSION:						0.300 CFS	

Water Source: BIRCH CREEK Tributary to: MARSH CREEK Stage: DECREED

Pou County:

Remarks: GEN P/D & P/U INCOMPLETE.
SOURCE LOCATION APPROX. T9S, R36E.

Dates: App. Received: 04/01/1881
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: Field Exam Fee:

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	MARK R. LAWRENCE	07/01/1888	IRRIGATION	00/00	00/00	0.100 CFS	
TOTAL DIVERSION:						0.100 CFS	

Water Source: BIRCH CREEK Tributary to: MARSH CREEK Stage: DECREED

Pou County:

Remarks: GEN P/D & P/U INCOMPLETE.
SOURCE LOCATION APPROX. T9S, R36E.

Dates: App. Received: Priority Date: 07/01/1888
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: Field Exam Fee:

WR5809NP
No. 29-00338

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 09/26/01
PAGE: 6

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD		DIVERSION RATE	DIVERSION VOLUME
				FROM	TO		
C	THOMAS MARLEY	07/01/1889	IRRIGATION	00/00	00/00	0.300 CFS	
TOTAL DIVERSION:						0.300 CFS	

Water Source: BIRCH CREEK Tributary to: MARSH CREEK Stage: DECREED

Pou County:

Remarks: GEN P/D & P/U INCOMPLETE.
SOURCE LOCATION APPROX. T9S, R36E.

Dates: App. Received: Priority Date: 07/01/1889
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: Field Exam Fee:

In the District Court of the Fifth Judicial District of Idaho, in
and for the County of Bannock.

James Henderson, Benjaminine

Plaintiffs,

VS

Defendants,

And thereafter it was stipulated by the counsel for the respective parties that the cross complaints and the complaint in intervention should be deemed and treated as duly denied with the same force and effect as if verified answers thereto were duly filed.

FINDINGS OF FACT.

#2.

the owners and entitled to possession as against all the world except the United States of about two hundre (200) acres of land lying adjacent to that certain stream of water known as Birch Creek, both said creek and land being situate in Bannock County, Idaho, said land being bounded on the South by what is known as the Parley Cutler tract of land, on the West by the lands known as the Mary Davis and James Ellis tracts of land, and upon the North by the George Gittens tract, and upon the East by the lands of Thomas Jenkins. That such possession has been continuous and without objection upon the part of any person whatever.

Second. That said tract of land so possessed by the said plaintiffs is naturally arid in character, and requires the artificial use of water thereon to produce crops of any kind in paying quantities.

Third. That on the first day of July, 1879, the said plaintiffs and their predecessors in interest, by means of dams and ditches, diverted one and one-tenth cubic feet per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the said land, and ever since the said July 1st, 1879, they have continued to use the said amount of water in the irrigation of said lands and in raising agricultural crops thereon and for domestic purposes.

Fourth. That in the Spring of the said year 1879, the said plaintiffs, and their predecessors in interest, by means of dams and ditches, diverted and conveyed to the said land all of that certain stream near said lands known as Lost Creek, and ever since said Spring of 1879, they, the said plaintiffs, and their predecessors, in interest, have continuously used all of the water flowing in the said stream in irrigating the said land and in raising agricultural crops thereon. And in regard to the said stream, the court further finds that the water flows therein only during the Spring and early summer of each year, and that no other person has ever used any of the water thereof.

Fifth. That the whole of the water flowing in the said Lost Creek

#3.

and the amount of water so diverted and used from the said Birch Creek was, and is insufficient properly to irrigate all of the said lands of the said plaintiffs.

Sixth.

That ever since July first, 1879, the plaintiff, Melvin Henderson, and his predecessors in interest, have been in the actual possession and have been the owners and entitled to possession as against all the world except the United States of the eighty acres of land lying adjacent to that certain stream of water known as Birch Creek, both the said creek and land being situated in Bannock County, Idaho, the said land lying near the tract hereinbefore described as being in the possession of the said James Henderson & Sons, and being at the time of the commencement of this action, and at the time of the trial thereof in possession of the said plaintiff, Melvin Henderson; that such possession has been continuous and without objection on the part of any person whatever.

Seventh. That said tract of land so possessed by the said plaintiff, Melvin Henderson, is naturally arid in character and requires the artificial use of water thereon to produce crops of any kind in paying quantities.

Eighth. That on the said first day of July, 1879, the said plaintiff, Melvin Henderson, and his predecessors in interest, by means of dams and ditches, diverted one cubic foot per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the said land described as being in his possession, and ever since the said first of July, 1879, he, and his predecessors in interest, have continued to use the said amount of water in the irrigation of said land and in raising agricultural crops thereon and for domestic purposes.

Ninth.

That it requires at the rate of one foot (cubic) of water per second successfully to irrigate fifty acres of the lands hereinbefore described as being in possession of and belonging to the said plaintiffs, and each and all of them.

Tenth. That there is no source from which water could or can be

#4.

obtained with which to irrigate said lands, or any of them, other than the said Birch Creek and the said Lost creek?

Eleventh. That the use of the amounts of water hereinbefore mentioned has on the part of the said plaintiffs, and their predecessors in interest, always been open and notorious, and under the claim on the part of the plaintiffs and their predecessors in interest of a prior and exclusive right thereto.

Twelfth. That during the year 1900 the defendants interfered with the plaintiffs' rights in the said water, and with the plaintiffs' use thereof, and threatened to continue such interference.

Thirteenth. That at the time of the commencement of this action the plaintiffs, James Henderson, Benjamine W. Henderson, and James Henderson, Jr., were, and for a long time immediately prior thereto they had been, partners under the firm name of James Henderson & Sons.

Fourteenth. That at the time of the commencement of this action and at the time of the trial of the same the said plaintiffs, the said James Henderson & Sons, were the owners of and had the right to use one and one-tenths cubic feet per second of the waters of the said Birch Creek, and the said plaintiff, Melvin Henderson, of one cubic foot per second of the waters of the said Birch Creek, prior and superior to the rights of all other parties to this suit in the waters of said creek, excepting only the right of the intervenor, Gwenlion Marley, whose right, as hereinafter found, is of equal dignity therewith.

Fifteenth. That both of the said streams and also the lands of the plaintiffs, as well as all the lands of the defendants and of the intervenor, except the claim of the defendant William Stinger, are situate upon what is known as the Fort Hall reservation, but the possession of the said lands and the use of the said waters by the plaintiffs and their predecessors in interest have never been questioned or objected to by the Indians occupying the said reservation or by any officer or agent of the said Indians, or of the United States of America, but, upon the other hand, the said Indian Agent, gave to the plaintiffs express permission to occupy the said lands

#5.

and use the said waters and the said plaintiffs and their predecessors in interest during all the times herein mentioned have occupied and resided upon the said lands and have used them as homes and for the purpose of raising agricultural crops thereon.

Sixteenth. That the intervenor, Gwenlion Marley is the widow of John Marley, deceased, and is the duly qualified and acting administratrix of his estate.

Seventeenth. That ever since the first day of July, 1879, the said intervenor and her predecessors in interest have been in possession of certain unsurveyed lands situate upon the said Indian Reservation, as aforesaid, the same being approximately the South one-half of the southwest quarter of section thirty-three (33), the south one-half of the southeast quarter of section thirty-two (32), Township nine (9) South, Range thirty-six (36) East, B. M., County of Bannock, State of Idaho.

Eighteenth. That on the first day of July, 1879, the said intervenor and her predecessors in interest by means of dams and ditches diverted two-fifths of a cubic foot per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the said land and ever since the said July 1, 1879, they have continued to use the said amount of water in the irrigation of the said lands and in the raising of agricultural crops thereon, and for domestic purposes.

Nineteenth. That the said lands of the intervenor are arid in character and require the artificial use of water thereon to raise agricultural crops in paying quantities.

Twentieth. That it requires at the rate of one cubic foot of water per second to irrigate fifty acres of the said land, and there is no other source from which water to irrigate the same can be obtained.

Twenty-first That the plaintiffs have not interfered with the said intervenor in her use of the said amount of water, and have not so threatened so to do.

Twenty-second. And ever since April 1, 1881, the defendant, Mary

#6.

Davis, and her predecessors in interest, have been in possession of the tract of land situate upon the said Indian Reservation, in the County of Bannock, State of Idaho, bounded on the South by the said lands of Melvin Henderson, on the West by the lands of Mark R. Lawrence, on the North by the lands of James Ellis, and the East by the lands of George Glover, the same being adjacent to the said Birch Creek.

Twenty-third. That on the said first day of April, 1881, the said Mary Davis and her predecessors in interest by means of dams and ditches diverted three-tenths⁵ of a cubic foot per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the lands so possessed by them, and ever since the said April 1, 1881, they have continued to use the said amount of water in the irrigation of said lands and in the raising of agricultural crops thereon, and for domestic purposes; that the said diversion and appropriation was subsequent and subject to the diversions and appropriations made by the plaintiffs and the said intervenor, Gwenlion Marley and their predecessors in interest.

Twenty-fourth. That the fourth paragraph of the cross complaint of the said Mary Davis is not true, and no agreement was made by the parties hereto, or their predecessors in interest, or any of them, by which it was agreed that the water of Birch Creek should be owned or held jointly, or that each should have the alternate use thereof, nor was the said water ever used in such manner or under any such agreement.

Twenty-fifth. That there is no other water supply available for the irrigation of said land.

Twenty-sixth. That the said land is naturally arid in character and requires at the rate of one cubic foot per second of water for every fifty acres properly to irrigate the same.

Twenty-seventh. That the plaintiffs have never interfered with the said defendants in the rightful use of said water.

Twenty-eighth. That the said defendants use of the said water has not been adverse to the rights of the plaintiffs.

Twenty-ninth. That ever since July 1, 1888, the defendant, Mark

#7.

R. Lawrence, and his predecessors in interest, have been in the possession of that certain tract of land situate on the said Indian Reservation in Bannock County, Idaho, and described as being the unsurveyed East one-half of the Southeast one-fourth, and the Southeast one-fourth of the Northeast one-fourth of Section thirty-two (32), and the Southwest one-fourth of the Northwest one-fourth of Section thirty-three (33), Township nine (9), South, Range thirty-six (36) East B. M., containing one hundred sixty (160) acres, the said land being situate near the said Birch Creek.

Thirtieth. That on July 1, 1888, the said defendant, Mark R. Lawrence, and his predecessors in interest, by means of dams and ditches diverted one-tenth of a cubic foot of water per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the said land, and ever since the said July 1, 1888, they have continued to use the said amount of water in the irrigation of the said land and in the raising of agricultural crops thereon, and for domestic purposes.

Thirty-first. That the said land is arid in character, and requires the artificial use of water thereon, and there is needed for the successful irrigation thereof at the rate of one cubic foot per second of water for every fifty acres.

Thirty-second. That the said defendant's use of the said water has never been adverse to the use or rights of the plaintiffs.

Thirty-third. That the said diversion and appropriation were made subsequent to and are subject to the diversions and appropriations of the plaintiffs and of the said intervenor.

Thirty-fourth. That the said defendant and his predecessors in interest, did not make any appropriation or diversion of the waters of the said Birch Creek in 1880, as alleged.

Thirty-fifth. That there is no other available water supply for the said land.

Thirty-sixth. That the said defendant never had the actual, or open or exclusive use of more than one-tenth of a cubic foot per second of the waters of Birch Creek, for a period of five years, nor

#8.

has he ever had possession of or the use of any of the waters of the said Birch Creek adverse to or exclusive of the rights, use and possession of the plaintiffs in and to the waters of the said creek to the amount as hereinbefore found.

Thirty-seventh. That ever since July 1, 1889, the defendant Thomas Marley, and his predecessors in interest, have been in possession of the North one-half of the Southwest one-fourth of Section thirty-three (33), and the West one-half of the Southeast one-fourth of Section thirty-two, Township nine (9), south, Range thirty-six (36) East B. M., the same being situate on the said Indian Reservation in the County of Bannock, State of Idaho; that said lands, as all other lands herein referred to, are unsurveyed.

Thirty-eighth. That on the first day of July, 1889, the said Thomas Marley, and his predecessors in interest, by means of dams and ditches diverted ^{.3} three-tenths of a cubic foot per second of the water flowing in the said Birch Creek, and conveyed the same to and upon the said land, and ever since the said first of July 1889, they have continued to use the said amount of water in the irrigation of the said lands, and in raising agricultural crops, and for domestic purposes.

Thirty-ninth. That the said lands are arid in character, and require the artificial use of water thereon and water at the rate of one cubic foot per second for ever fifty acres thereof is necessary to properly irrigate the same.

Fortieth. That there is no water other than that of Birch Creek available for the irrigation of the said land.

Forth-first. That the said diversion and appropriation were made subsequent and are subject to the diversions and appropriations of the plaintiffs and of the intervenor and of the said other defendants.

Forth-second. That all the waters of the said Birch Creek had been diverted prior to any claim or attempt on the part of the defendant William Stinger to divert or appropriate any part thereof, and the said defendant William Stinger never made any appropriation or

#9.

diversion of any of the waters of said stream, and the said defendant William, Stinger, has no right to or any interest in any portion of the waters of the said stream.

Forth-third. That none of the parties hereto ever made any appropriation or use of any of the waters of the said Birch Creek or Lost Creek other than at the times and in the amounts hereinbefore expressly found.

Conclusions of Law.

And the court makes and files the following conclusions of law, to-wit:

That the plaintiff, James Henderson & Sons, is entitled to a decree for all of the water of Lost Creek, and for one and one-tenth cubic feet per second of the water of Birch Creek, dating from July 1, 1879.

That the plaintiff Melvin Henderson is entitled to a decree for one cubic foot of water per second of the waters of Birch Creek, dating from July 1, 1879.

That the intervenor Gwenlion Marley is entitled to two-fifths of a cubic foot per second of the water of Birch Creek, dating from July 1, 1879.

That Mary Davis is entitled to a decree for three-tenths of a cubic foot per second of the waters of Birch Creek, dating from April 1, 1881.

That the defendant Mark R. Lawrence is entitled to a decree for one-tenth of a cubic foot per second of the waters of Birch Creek, dating from July 1, 1888.

That the defendant Thomas Marley is entitled to a decree for three-tenths of a cubic foot of water per second of the waters of the said Birch Creek, dating from July 1, 1889.

That the defendant William Stinger is not entitled to a decree for any of the waters of the said Birch Creek/

And accordingly it is ordered that a decree be entered in the usual form, decreeing the said waters as hereinbefore specified and enjoining the parties thereto from interfering with each others rights, and providing a method for measuring the said water.

Dated this 13th day of March, 1902.

Joseph C. Rich,

District Judge

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

James Henderson, Benjamin W. Henderson,
and James Henderson Jr., partners under the firm
name and style of James Henderson & Sons, and
Melvin Henderson,

Plaintiffs

vs.

DECRETE.

Thomas Marley, Mark R. Lawrence, William
Stinger, Mary Davis, and Gwenlion Marley
(intervenor),

Defendants.

This case having been commenced on May 7th. 1901, and there after all the parties having duly entered their appearance, W. T. Reeves Esq., and F. S. Dietrich Esq., appearing for the plaintiffs. S. C. Winters Esq., appearing for Thomas Marley, William Stinger and the intervenor, Gwenlion Marley, and Messers Terrell and Gabeon appearing for the defendants-Mark R. Lawrence and Mary Davis.

And thereafter it was stipulated by the counsel for the respective parties that the cross complaints and the complaint in intervention should be deemed and treated as duly denied with the same force and effect as if verified answers thereto were duly filed.

And thereafter, the court having heard the evidence adduced by the several parties in support of their respective claims, and the counsel for the respective parties having made their arguments, and the court being fully advised in the premises and having made and filed herein its findings of fact and conclusions of law.

Now therefore in accordance with its findings and conclusions it is ordered, adjudged and decreed that the waters of Birch creek and of Lost Creek both of which said creeks are situate in Bannock county, State of Idaho, be, and the same are hereby,

ated and decreed to the several parties to this suit for beneficial purposes and in amounts and of the dates with priority of rights as follows, to wit

0333 To James Henderson, Benjamin W. Henderson and James Henderson Jr., partners under the firm name and style of James Henderson & Sons, all of the waters of said Lost creek, and one and one-tenth cubic foot per sec. of the water of Birch creek, dating from July 1st, 1879.

29 0334 To Melvin Henderson one cubic foot of water per second of the waters of Birch Creek dating from July 1 1879

29 0335 To the intervenor Gwennion Morley two fifths of a cubic foot per second of the water of Birch creek, dating from July 1 1879 0.40 cfs

29 0336 To Mary Davis three tenths of a cubic foot per second of the water of Birch creek dating from April 1 1881:

29 0337 To Mark H. Lawrence, one tenth of a cubic foot per second of the water of Birch Creek dating from July 1 1888

29 0338 To Thomas Morley three tenths of a cubic foot per second of the water of Birch creek dating from July 1, 1889

That William Stinger is not entitled to any of the waters of the said Birch Creek.

That the several amounts of water above decreed be measured and distributed to the said parties at their several points of diversion from the natural channel of the said Birch creek, excepting the right decreed in the said Lost creek.

That the said waters of Birch creek be measured under the weir system in cubic feet per second of time.

It is further ordered that each of the said parties to this suit construct and maintain at their several points of diversion respectively substantial and uniform boxes head gates and weirs for the measurement of their said water.

It is further ordered, adjudged and decreed, that each and every of the parties to this suit, their agents, attorneys, assignees, and grantees be and they are hereby restrained & perpetually enjoined from in any manner interfering with the waters of the said Birch creek and of the said Lost creek, or exercising any other or greater rights

erence to the said waters than is herein decreed to the said parties respectively.

It is further ordered that each party to this suit pay his own costs.

Dated this 13th day of March 1902

Joseph C. Rich

Judge of the District Court.

STATE OF IDAHO,)
 (SS.
County of Bannock.)

I, E. G. Gallet, Clerk of the District Court in and for said County and State, hereby certify the within and foregoing to be a full true and correct copy of the original decree as recorded at page 118 of Judgement Book No. 2 records of said County.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 11th day of May, A.D.1903.

E. G. Gallet,
Clerk of said Court

(SEAL)

By D.N.Campbell, Deputy.