

March 11, 2002

Graig L. Saxton
Water Resource Agent
Adjudication Bureau

RECEIVED

MAR 13 2002

WATER RESOURCES
WESTERN REGION

Re - Proof of water right ownership

I am enclosing documents
in my possession regarding my
water rights as we talked about
by phone March 8, 2002.

If there is anything else I
can furnish you, please notify
me.

Thank you for your help.

Larry J. Butkoff

P. S.
I have used
these water rights
since 1966.

7783 W. Buckskin Rd.
Pocatello, Idaho

83201

Phone 233-4589

RECEIVED

MAR 13 2002

WATER RESOURCES
WESTERN REGION

Hello I am Leonard Moon
And I came to Pocatello in
the year 1915 and have
lived where I am now since
And I farmed the property where
Mr. Wm Butterloper's property
is located now in the late forties
And I am very sure that
property has a water right
at least back to the year 1915
And probably back in the 1800
when the Indian people owned

And I thank you very much

Leonard W Moon
Pocatello Creek Rd.



BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protests Against)
)
Approval of Application for Permit)
)
No. 29-7507 in the Name of)
)
DR. JEFF ANDERSON)
)
)
)

NOTICE OF CONFERENCE
AND/OR HEARING

On August 13, 1979, Dr. Jeff Anderson filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On September 5, 1979, the Department received a protest against approval of said application from Larry J. and Sharon Butikofer, N. Eugene Crandall, and Monte Casper; on September 6, a protest was received from Henry F. and M. Joan Saunders; September 7, from William A. Williams, and on September 10, 1979, additional protests were received from Dwaine N. Anderson and Darth G. West.

The Department has set the matter of protest for conference and/or hearing for Thursday, November 1, 1979, at 11:00 a.m., in the Conference Room of the Pocatello Municipal Airport, Pocatello, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this _____ day of October, 1979.

RONALD D. CARLSON, Supervisor
Eastern Region

Notes from the meeting
of the Board
Aug 13, 1979 - application filed
by Dr. Anderson.

O.10 CFS - Apr. 1 - Nov 1

5 yrs - to complete project.

Lift pump and sprinkler system
South Fork Pocatello Creek.

(Granting of permit to use water does not establish
easement automatically)

W's note - State Reclamation Engineer
(Hopper + Janey rights) 1887-1890
Went District established & water
master appointed - salary paid
by people in district

If there is a decree there is no
need to file a claim or right.

Spring - agreement among individuals

Use right cannot be delivered by
a water master.

Water resources can set up a water district
including all on the decree of 1928

September 4, 1979

Director of the Idaho Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Dear Sir:

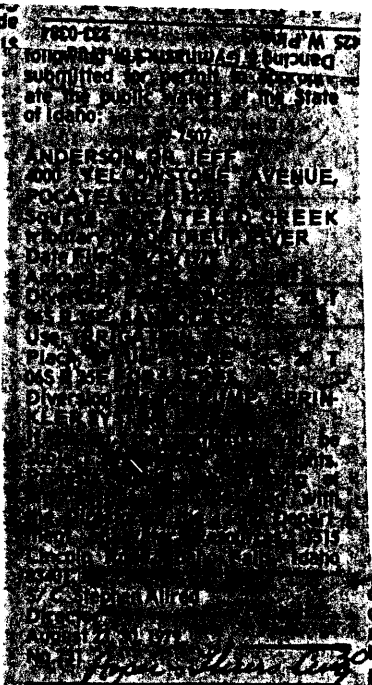
This letter is to protest the granting of permit for water right to Jeff Anderson, 4000 Yellowstone Avenue, Pocatello, Idaho, said water to be taken from Pocatello Creek (on Buckskin Road drainage known as the South Fork of Pocatello Creek). We have used said water for irrigation purposes for the 12 years we have lived at our location on Buckskin Road.

Larry J. Butikofer

Sharon A. Butikofer
Buckskin Road
Pocatello, Idaho 83201

00

Eastern Dist 523-7186



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN W. EVANS
Governor
C. STEPHEN ALLRED
Director

1515 Lincoln Road
Idaho Falls, ID 83401
(208) 523-7186

September 10, 1979

Larry J. Butikofer
Sharon A. Butikofer
Buckskin Road
Pocatello, Idaho 83201

RE: App/Permit 29-7507

Dear Mr. & Mrs. Butikofer:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculation?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearings. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC: dh

DEED RECORD

This instrument, made the 11th day of July in the year of our Lord one thousand nine hundred and seven, between Joseph H. Tolman, Sr. and Della Tolman, his wife of Pocatello County of Bannock State of Idaho the part 1st of the first part and H. S. Woodland of Pocatello County of Bannock State of Idaho the part 2nd of the second part,

WITNESSETH: That the said part 1st of the first part, for and in consideration of the sum of Three Thousand Dollars (\$3,000.00) lawful money of the United States of America, to them in hand paid by the said part 2nd of the second part, the receipt of which is hereby acknowledged, by the presents grant, bargain, sell and convey and confirm unto said part 2nd of the second part and to his heirs and assigns forever: All those certain lots, pieces or parcels of land, situate, being and lying in the County of Bannock, and State of Idaho, bounded and more particularly described as follows to wit:

The south half (1/2) of the southeast quarter (1/4) of Section twenty (20) the northeast quarter (1/4) of the northeast quarter (1/4) Section twenty-nine (29) and the northwest quarter (1/4) of the northwest quarter (1/4) of Section twenty-eight (28) in Township six (6) South, of Range thirty-five (35) E.B.M., containing one hundred and sixty (160) acres, according to the original plat thereof.

Subject to taxes for the year 1907.

This conveyance is given and accepted subject to a certain mortgage for \$2500.00 recorded April 21, 1906, in Book "10" of Mortgages at page 406, of the records of Bannock County, Idaho.

Together with all ditches and water rights and water privileges thereunto incident or belonging.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, unto and singular, the said part 2nd of the second part, together with the appurtenances and privileges thereunto incident, unto the said part 2nd of the second part, and to his heirs and assigns forever. And the said part 1st of the first part, and their heirs and assigns, shall and lawfully shall possess and enjoy the said part 2nd of the second part, his heirs and assigns against the said part 1st of the first part, and their heirs and assigns, and all and every person or persons who may ever lawfully claim the same, and with warrant, and without any further defense.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of
 Earle C. White } Joseph H. Tolman, Sr.
 Della Tolman

STATE OF IDAHO,
 County of Bannock }
 In the year 1907, before me, Earle C. White On this 5th day of July, 1907,
 personally appeared Joseph H. Tolman, Sr. and Della Tolman, his wife, a notary public in and for said County,
 known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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.

My commission expires May 13, 1910.
 Recorded at the request of H. S. Woodland, at 4:08 P.M., Mar. 2nd 1910.
 By Harry J. Fox, Deputy. Fee \$1.40 G. K. Fox

DISTRICT OF IDAHO, EASTERN DIVISION.

PATRICK S. TANEY and MARY TANEY,
his wife,

Plaintiffs,

vs

H. S. WOODLAND and LOUISE J. WOODLAND,
his wife, GRACE M. PERRY, POCATELLO
REALTY COMPANY, a corporation, C. W.
GRAY INVESTMENT COMPANY, a corporation,
THOMAS HOPPER and VERNIE HOPPER, his
wife, ROBERT CRUM and KATIE CRUM,
his wife,

Defendants.

No. 428

DECREE

This cause having heretofore come regularly on to be heard in open court, P. C. O'Malley and J. Downing appearing as attorneys for the plaintiffs, A. L. Merrill and R. D. Merrill as attorneys for defendants, H. S. Woodland and Louise J. Woodland, his wife, Anderson and Jeffery attorneys for defendants Thomas Hopper and Vernie Hopper, his wife, and Robert Crum and Katie Crum, his wife, and Peterson and Coffin attorneys for the defendants Grace M. Perry, Pocatello Realty Company, a corporation, and C. W. Gray Investment Company, a corporation, and these last three defendants having, by written stipulation of all parties and consent of the Court, adopted as their answer the answer (as amended) of the defendants H. S. and Louise J. Woodland, and evidence having been introduced upon behalf of each of the parties, and after argument the cause having been submitted for decision; now upon consideration.

IT IS ORDERED ADJUDGED AND DECREED that said parties are the owners of the rights to use and are entitled to divert and use at all times when they have need for irrigation, stock and domestic purposes, the waters of Pocatello Creek, (a small stream flowing in a westerly direction, a short distance northerly from the City of Pocatello in Bannock County, Idaho, the same being a tributary of Portneuf River) in amounts as follows: the dignity of said several rights depending upon and being in the order of the dates hereinafter named, priority of date importing superiority of right:

The plaintiffs, PATRICK S. TANEY and MARY TANEY his wife, TWO (2) CUBIC FEET PER SECOND, dating from JUNE 1, 1887, and TWO-TENTHS (.2) OF A CUBIC FOOT PER SECOND, dating from JUNE 1, 1890, for such uses on and in connection with the Southeast quarter of the Northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Nineteen (19), the South half of the Northwest quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and Southwest quarter of the Northeast quarter of Section Twenty (20), Township Six (6) South, Range Thirty-five (35) East Boise Meridian; and West half of the Southeast quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$), East Half of the Southwest quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Fourteen (14), and Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-three (23), Township Six (6) South, Range Thirty-four (34) East Boise Meridian.

The defendants GRACE M. PERRY, POCATELLO REALTY COMPANY, a corporation, and C. W. GRAY INVESTMENT COMPANY, a corporation, (with rights among themselves in proportion to and dependent upon such interests as they have in land in this paragraph described), EIGHT-TENTHS (.8) OF A CUBIC FOOT PER SECOND, dated from APRIL 25, 1904, for such uses on and in connection with the Northeast quarter of the Southeast (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-three (23), Township Six (6), South, Range Thirty-four (34) East Boise Meridian.

The defendants THOMAS HOPPER and VERNIE HOPPER, his wife, ONE AND FOUR TENTHS (1.4) CUBIC FEET PER SECOND, dating from SEPTEMBER 9, 1904, for such uses on and in connection with the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$), and the South half of the Southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Thirteen (13), Township Six (6) South, Range Thirty-four (34) East Boise Meridian; and the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) (that is, Lot 4) Section Eighteen (18), Township Six (6) South, Range Thirty-five East Boise Meridian.

The defendants ROBERT CRUM and KATIE CRUM, his wife, ONE (1) CUBIC FOOT PER SECOND, dating from SEPTEMBER 14, 1904, for such uses on and in connection with the North half of the Southwest quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) and the North half of the Southeast quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Thirteen (13), Township Six (6) South, Range Thirty-four (34) East Boise Meridian.

The defendants H. S. WOODLAND and LOUISE J. WOODLAND, his wife, FIVE-TENTHS (.5) OF A CUBIC FOOT PER SECOND of the waters of the South Fork of said Pocatello Creek, to be diverted only from said South Fork, dating from February 23, 1907, for use on and in connection with the South half of the Southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty (20), the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-nine (29), and the Northwest quarter of the Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-eight (28), Township Six (6) South, Range Thirty-five (35) East Boise Meridian. Also THREE-TENTHS (.3) OF A CUBIC FOOT PER SECOND of the WATERS OF THE SPRING arising on said land and flowing into said South Fork, with right to said amount SUPERIOR TO THE RIGHTS OF ALL OTHER PARTIES, for such uses on and in connection with said lands.

Said waters are to be diverted from the natural Channel of the stream at or near the points where they have heretofore been and are now diverted by the several parties and are to be measured over standard weirs or other devises approved by the State Reclamation Department, such weirs or other devises to be installed and maintained at the expense of the several owners of water rights, as near as may be practicable to the heads of the diverting ditches.

It is further Ordered, Adjudged and Decreed that if and when during the flood-water season, there is a SURPLUS of water over and above the aggregate of the rights hereinbefore defined, the parties shall have the right to divert and use the same in the following proportions:

Plaintiffs Ten Twenty-thirds (10/23).
Perry and the two
defendant corporations Two Twenty-thirds (2/23).
Hoppers Four Twenty-thirds (4/23).
Crums Four Twenty-thirds (4/23).
Woodlands (from South Fork)-Three Twenty-thirds (3/23).

That all of the parties to whom the right to the use of said waters are herein decreed, by mutual consent or agreement, shall have the right to pool or unit the waters herein decreed to them respectively, with the waters of any other party or parties receiving water by this decree, and may thereby use said waters jointly or alternately in such manner as to obtain the most benefits therefrom, so that the use thereof so combined or used alternately does not exceed the amount of water to which the parties entering into such agreement may be entitled in the aggregate under this decree, and so that the pooling of said water and uniting the same as aforesaid, does not interfere with the rights or priorities of other parties not entering into such agreement.

That each of the parties to whom is decreed the right to the use of the waters of saidocatello creek, its tributaries and the springs adjacent thereto, and their agents, servants, attorneys, successors and assigns, be and they are hereby and forever perpetually restrained and enjoined from in any wise using the said waters except as herein decreed, and from in any wise molesting or interfering with the rights of any other party or parties, to whom water is hereby decreed and from in any wise molesting or interfering with any of the dams, ditches or other works used for the diversion and conveyance of said waters belonging to any other party or parties to whom rights in said waters are hereby decreed.

That each of the parties to this action shall pay the costs incurred by him or it respectively, and execution may issue therefor.

Done at Boise, Idaho, this first day of April, 1925.

FRANK S. DIETRICH, Judge.

Entered, Filed, Apr. 1, 1925.

W. D. McReynolds, Clerk,

Verna Thayer, Deputy.

United States of America,)
District of Idaho) ss:

I, W. D. McREYNOLDS, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of Memorandum Decision and Decree in case # 428, Eastern Division, Civil, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 19th day of December, 1925

W. D. McReynolds

Clerk

By Verna Thayer

Deputy.

(SEAL)

INSTRUMENT NO. 122556

RECORDED CLERK, AUDITOR & RECORDER BANNOCK COUNTY, IDAHO MAR 16 1926 1 10 PM
in Book 8 of Judgments page 210 Records of Bannock County State of Idaho at the
request of P. C. O'Malley