

AMERICAN LAND TITLE COMPANY

312 WEST CENTER
P.O. BOX 1176
Phone 232-6163
POCATELLO, IDAHO
ZIP CODE 83204

PRELIMINARY REPORT

DECEMBER 30, 1981

No Liability is assumed hereunder until
full Policy Premium has been paid.

Order No. 1-38662-S

DUANE J. WILLIAMS
1156 BOOTH
POCATELLO, IDAHO

COPY TO - JERRY WRAY AT IDAHO FIRST NATIONAL BANK

Gentlemen:

We are prepared to issue title insurance (LAWYERS TITLE INSURANCE CORPORATION, RICHMOND, VIRGINIA) in the ALTA Form, insuring the title to the land hereinafter described.

Dated as of: DECEMBER 24, 1981 AT 2:44 PM

AMERICAN LAND TITLE COMPANY

By *Heath R. Tush*

Vestee: DUANE J. WILLIAMS AND CHERYL WILLIAMS, HUSBAND AND WIFE, WILLIAM H. WOODLAND AND MICHELLE H. WOODLAND, HUSBAND AND WIFE AND ALAN G. PHILLIPS AND RHONDA PHILLIPS, HUSBAND AND WIFE

Description: PARCEL OF LAND IN THE NE $\frac{1}{4}$ OF SECTION 29 AND THE SE $\frac{1}{4}$ OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 35 E.B.M., BANNOCK COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/16TH CORNER ON THE MERIDIONAL CENTER LINE OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 35 E.B.M.; THENCE NORTH 89°37'06" EAST ALONG THE NORTH 1/16TH LINE OF SAID SECTION 29, A DISTANCE OF 245.30 FEET TO THE TRUE POINT OF BEGINNING. THENCE NORTH 10°28'58" EAST, 1633.40 FEET; THENCE NORTH 37°19'27" EAST, 97.35 FEET; THENCE SOUTH 68°33'08" EAST, 237.74 FEET; THENCE NORTH 15°33'36" EAST, 34.12 FEET; THENCE SOUTH 74°26'24" EAST, 261.08 FEET; THENCE SOUTH 42°13'04" EAST, 71.87 FEET; THENCE SOUTH 42°02'37" EAST, 182.99 FEET; THENCE SOUTH 06°42'56" EAST, 80.00 FEET; THENCE SOUTH 06°49'57" EAST, 98.81 FEET; THENCE SOUTH 47°58'15" EAST, 197.94 FEET; THENCE SOUTH 42°30'35" WEST, 430.00 FEET; THENCE SOUTH 89°37'06" WEST, 569.00 FEET; THENCE SOUTH 00°25'30" WEST, 737.43 FEET TO THE NORTH 1/16TH LINE OF SAID SECTION 29: THENCE SOUTH 89°37'06" WEST ALON

SAID NORTH 1/16TH LINE A DISTANCE OF 312.13 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH A 20 FOOT EASEMENT FOR INGRESS AND EGRESS THROUGH ADJOINING LANDS 10.00 FEET EITHER SIDE OF THE CENTER LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF BUCKSKIN ROAD, SAID POINT BEING NORTH 29°07'15" EAST AND 1329.49 FEET DISTANT FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 35 E.B.M, THENCE SOUTH 03°27'00" WEST, 773.76 FEET TO A POINT...

SUBJECT TO THE FOLLOWING EXCEPTIONS:

1. TAXES FOR THE YEAR 1982 AND SUBSEQUENT YEARS.
TAXES FOR THE YEAR 1981 WERE \$52.46 LEDGERS R 3851013402, AND R 3851027200
2. EASEMENT TO IDAHO POWER COMPANY, RECORDED DECEMBER 23, 1981, IN BOOK 376, NO. 680772, RECORDS OF BANNOCK COUNTY, IDAHO. SAID EASEMENT BEING FOR UNDERGROUND POWER LINES.
3. EASEMENT TO IDAHO POWER COMPANY, RECORDED MARCH 2, 1950, IN BOOK 108, NO. 121, RECORDS OF BANNOCK COUNTY, IDAHO. SAID EASEMENT BEING FOR POWER LINES.
4. EASEMENT TO IDAHO POWER COMPANY, RECORDED JANUARY 29, 1971, IN BOOK 238, NO. 476671, RECORDS OF BANNOCK COUNTY, IDAHO. SAID EASEMENT BEING FOR POWER LINES.
5. RESTRICTIONS AND RESERVATIONS CONTAINED IN THE UNITED STATES PATENT TO SAID LAND.
6. MORTGAGE FROM WILLIAM A. WILLIAMS AND JOANN WILLIAMS, HUSBAND AND WIFE TO GENEVIEVE MERRILL, DATED JUNE 6, 1979, RECORDED JUNE 8, 1979, IN BOOK 337, NO. 626135, RECORDS OF BANNOCK COUNTY, IDAHO. TO SECURE: \$62,000.00.
7. THE EFFECT OF CONDITIONS CONTAINED IN WARRANTY DEED, RECORDED NOVEMBER 6, 1980, IN BOOK 360, NO. 657481, AS FOLLOWS: TOGETHER WITH AN EASEMENT DESCRIBED IN THE NORTH HALF OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 35 E.B.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

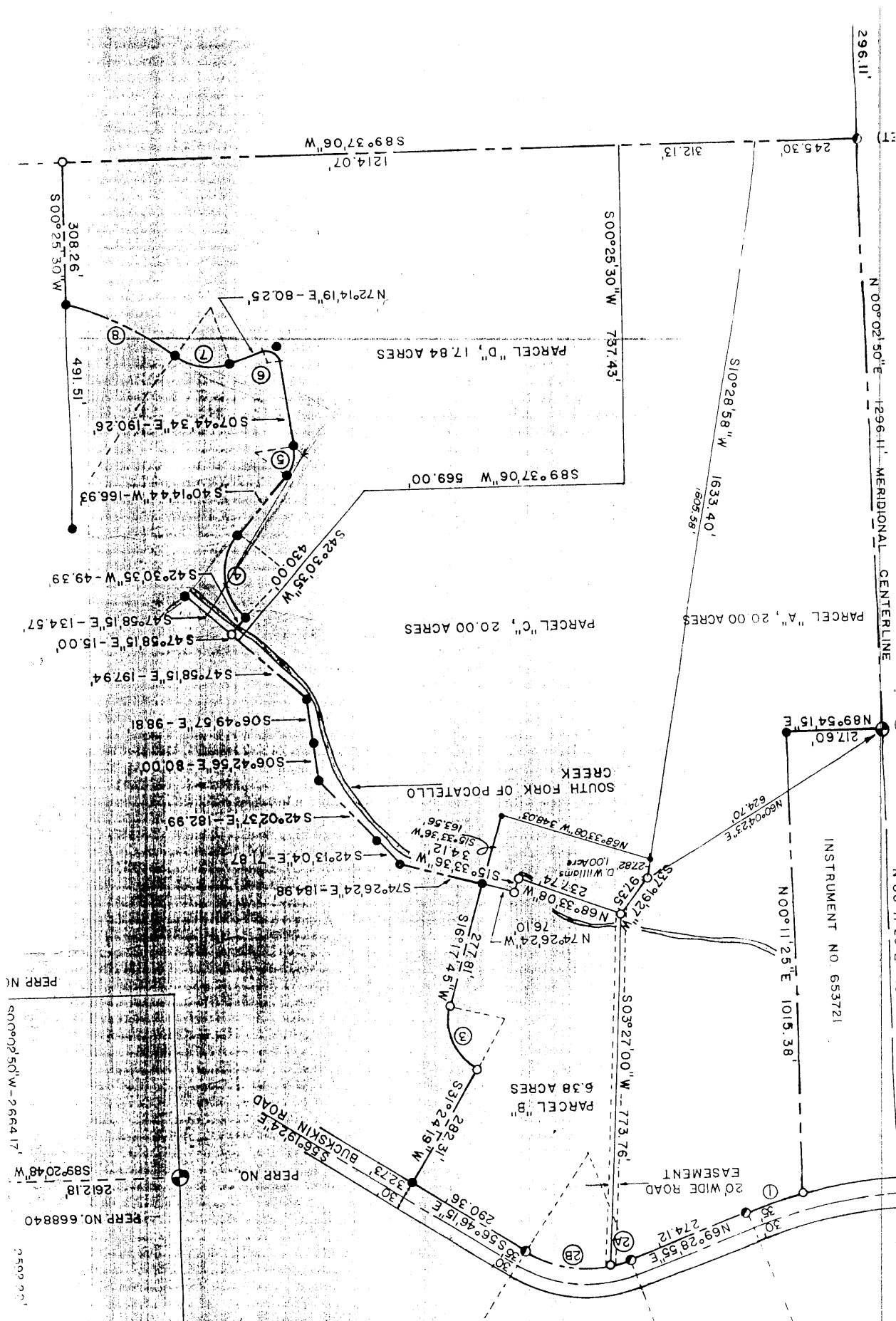
A 50 FOOT ROAD EASEMENT 25.00 FEET EITHER SIDE OF THE CENTER LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH 1/16 CORNER ON THE SECTION LINE BETWEEN SECTIONS 29 AND 28; THENCE NORTH 00°12'30" WEST, 709.20 FEET ALONG SAID SECTION LINE; THENCE NORTH 69°56'49" WEST, 261.75 FEET; THENCE SOUTH 20°03'11" WEST, 80.14 FEET TO A P.C. THENCE ON A CURVE TO THE RIGHT 180.14 FEET (RADIUS 166.66 FEET, CHORD BEARING SOUTH 51°01'05" WEST, CHORD LENGTH OF 171.50 FEET) TO A P.T. THENCE SOUTH 81°59' WEST, 300.27 FEET TO A P.C.; THENCE ON A CURVE TO THE RIGHT 137.93 FEET (RADIUS 328.06 FEET, CHORD BEARING NORTH 85°58'18" WEST, CHORD LENGTH OF 136.92 FEET) TO A P.T. THENCE NORTH 73°55'36" WEST, 2.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 73°55'36" WEST, 267.32 FEET TO A P.C. THENCE ON A CURVE TO THE RIGHT 137.96 FEET (RADIUS 330.20 FEET, CHORD BEARING NORTH 61°57'27" WEST,

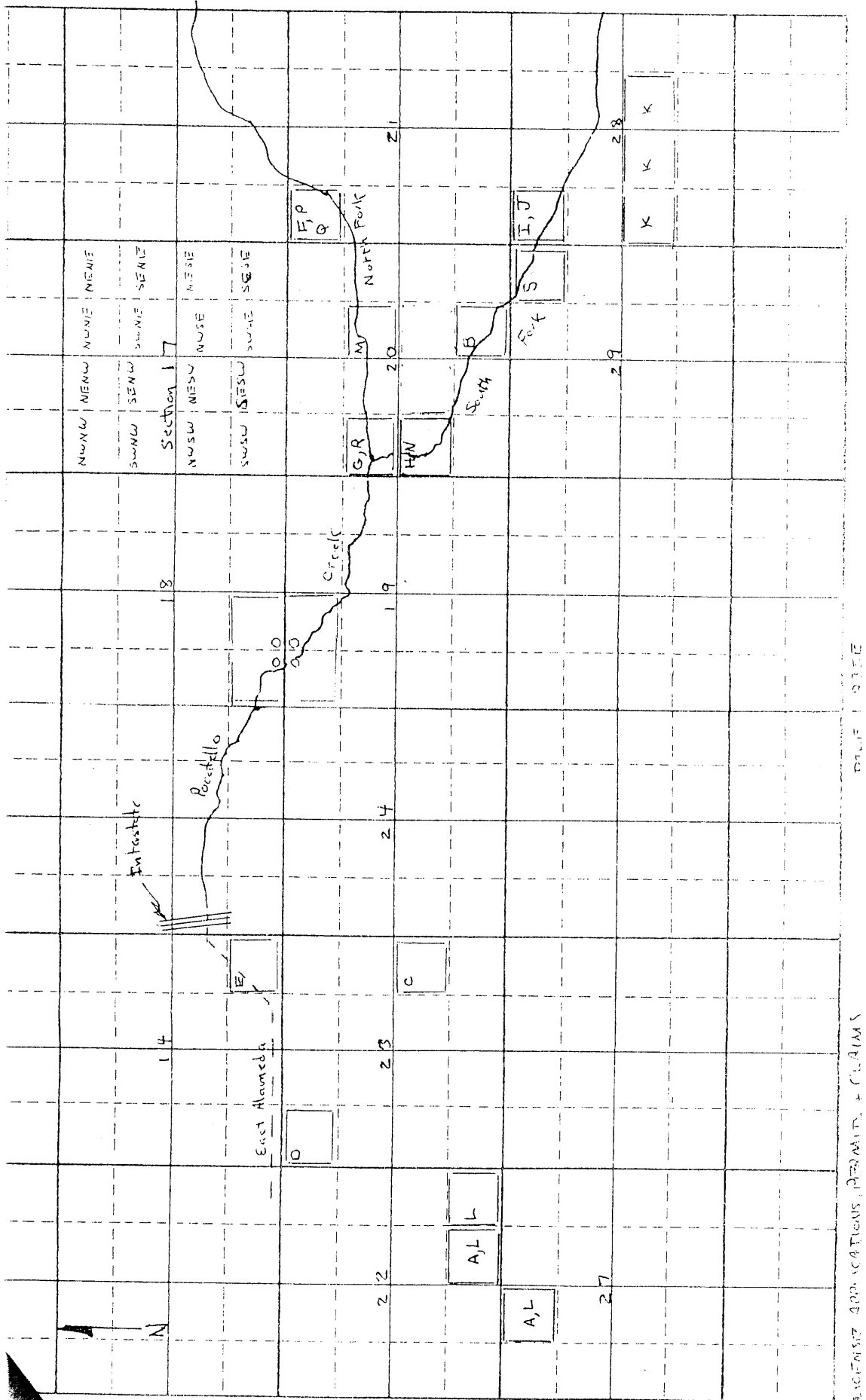
CHORD LENGTH OF 136.96 TO A P.T. THENCE NORTH 49°59'18" WEST, 50.21 FEET. THIS EASEMENT IS FOR THE BENEFIT OF THE ADJOINING LAND TO INSURE INGRESS AND EGRESS.

8. REAL ESTATE MORTGAGE FROM DUANE J. WILLIAMS AND CHERYL WILLIAMS, HUSBAND AND WIFE, WILLIAM H. WOODLAND AND MICHELLE H. WOODLAND, HUSBAND AND WIFE, AND ALAN G. PHILLIPS AND RHONDA PHILLIPS, HUSBAND AND WIFE TO WILLIAM A. WILLIAMS AND JOANN WILLIAMS, HUSBAND AND WIFE, RECORDED NOVEMBER 6, 1980, IN BOOK 360, NO. 657482, RECORDS OF BANNOC COUNTY, IDAHO. TO SECURE: \$110,000.00.

"NOTE: THIS PRELIMINARY REPORT IS SUBJECT TO THE INSURING PROVISIONS AND THE CONDITIONS AND STIPULATIONS AND THE EXCLUSIONS FROM COVERAGE OF THE COMPANY'S POLICY FORM 82 A SPECIMEN COPY OF WHICH WILL BE FURNISHED UPON REQUEST."

7-MM





(Include distance from pump to measuring device, if applicable.)

SCHEMATIC DIAGRAM OF SYSTEM

[illegible]

From the testimony it is to be inferred that at times, during extreme high water, there may be in the stream an amount in excess of the aggregate of the several rights decreed, and it is to be further inferred that this surplus has been used from time to time, as they have had need therefor, by all of the parties without regard to the limitations of the decree. To avoid controversy in the future, the decree herein will provide for a ratable distribution of all such surplus, if any, to all users.

Endorsed, filed, April 1, 1925,
W. D. McReynolds, Clerk,
By Verna Thayer, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE
DISTRICT OF IDAHO, EASTERN DIVISION.

PATRICK S. TANEY and MARY TANEY,
his wife,

Plaintiffs,

vs

No. 428

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.

D E C R E E

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 (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 Southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) 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.

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 each of the parties to whom is decreed the right to the use of the waters of said Locatello 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.

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

Endorsed, Filed, Apr. 1, 1925.

By Verna Thayer, Deputy.

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.

W. D. McReynolds Clerk
By Verna Thayer Deputy.

INSTRUMENT NO. 122556
RECORDED CLERK, AUDITOR & RECORDER BANNOCK COUNTY, IDAHO MAR 16 1926 P. 10 P.
in Book 8 of Judgments page 210 records of Bannock County State of Idaho at the
request of P. C. O'Malley
R. C. Earley, Recorder Fee \$4.60 By Anna Keefe, Deputy

DIETRICH, DISTRICT JUDGE:

It is important that we first determine the status and effect of the decree of June 4, 1907, in the State Court, by which the waters of the stream here in question were adjudicated. Admittedly the suit in which that decree was entered embraced the subject matter of the present suit, and all parties hereto, or their privies, were parties thereto. With one possible exception, hereinafter referred to, there would seem to be no reason why the decrees should not be held binding touching all the lands and water rights then held by the parties other than Indians. As to the Indians, not only were they personally incompetent, but their lands and such water rights as under the law and the facts they were entitled to, were held in trust for them severally by the United States. They held only trust patents, with no power to alienate, and neither by voluntary conveyance nor by judicial decree could they be divested of either the lands or the water rights without the consent of the Government; to any suit affecting their property rights the United States, as their guardian and trustee, was an indispensable party.

But in view of one or both of two considerations I am inclined to think the defect is not here available to the plaintiff. The present suit was commenced February 11, 1924, nearly seventeen years after the decree was entered. During all of this time the Indian allottees, and their successors in interest, including the plaintiff himself, abided by and insisted that the other parties, and their successors in interest, abide by the decree. I do not intimate that while they were incompetent the allottees would be subject to the doctrine of estoppel, or that while the United States held the title in trust its rights could be prejudiced or impaired by their acts or inactivity. But Raphael Lavatta, one of the predecessors in interest of the plaintiff, apparently an intelligent and self-reliant man, the husband of Effie and the father of Isabel and Margaret, the other three Indians, was, by the Secretary of the Interior, given a certificate July 20, 1916, declaring him to be competent and investing him with power to alienate his allotment. While the record does not disclose the precise dates, plaintiff pleads that similar certificates were issued to Effie, Margaret and Isabel. It appears that such title as plaintiff possesses was acquired from the two last named allottees in the spring of 1920, and from the first two in 1923. It further appears that the plaintiff held one of the tracts in question, the "Land Forty", which was purchased by him from certain of the plaintiffs in the suit in the State Court during the pendency of that suit, for seventeen years prior to the commencement of this action, and received water therefor pursuant to the decree. For a time also he was watermaster and as such officer distributed water under the decree to his lands and to the other lands covered thereby. I am therefore, inclined to think that he, and his predecessor in interest after they became competent, must be deemed to have adopted the decree and to have become bound by the terms thereof, and that by reason of their conduct and by reason of the facts and circumstances he is now estopped to question its validity.

In the second place if, because of the absence of proof touching the date of the certificate of competency to Effie Lavatta, and the fact that her transfer to plaintiff was made only a short time before the commencement of the action, there is doubt touching the application of the principle, we have the further consideration that the deeds from her and Raphael Lavatta both expressly refer to the decree and convey to the plaintiff only the rights thereby defined, so that whatever may have been their original contingent rights manifestly plaintiff cannot now claim in excess of that which they transferred to him. So, also, the Isabel Lavatta deed conveys only the amount of water decreed to her.

It may be added that upon consideration of the evidence touching the Margaret and Isabel tracts, I doubt whether, if the decree were ignored, substantially greater rights than those defined therein could be awarded. Theoretically, almost any land is irrigable. That is, putting aside the question of expense, it is possible, either by a gravity system or a pumping plant, to get water on almost any land, provided the expense is put out of consideration. But economical feasibility is quite a different question, and in no view of the law could the allottees or their grantees claim water for lands the irrigation of which would be economically impracticable. Apparently these tracts lie along a comparatively narrow canyon or valley, from which the ground rises precipitously on either side. So far as appears, the engineer who testified as to the additional irrigable acreage made no estimate of the expense of carrying the water to the higher lands, and considered only the physical possibility. As indirectly throwing light upon the question of economical feasibility, it is to be noted that during an occupancy of over forty years seemingly no attempt has been made to irrigate these highest areas. As to the lower areas, the testimony of the two engineers is somewhat conflicting, and it is to be doubted whether either one of them made any deduction from the gross area represented as being irrigable, on account of the land necessarily wasted by the channel and the banks of the stream and embraced in roads and passage ways.

For the Indian lands, I am therefore, of the opinion that the plaintiff has no valid claim to water in excess of the amount awarded by the former decree.

As to the Land Forty it is true there was no showing that notice of its pendency was filed in the suit in the State court, and the plaintiff purchased from some of the plaintiffs in that suit on April 10, 1907, about two months before the entry of the decree; the deed to him was not recorded till July 7, 1907. Under all the circumstances it is hardly credible that he was ignorant of the pendency of the suit when he acquired the land, but however that may be, as we have already seen, for nearly seventeen years thereafter without question he accepted water under the decree and apparently recognized it as binding upon all, and as watermaster for at least one season he enforced it as against all other users. After the lapse of so great a period of time, and his acquiescence in the adverse use by others, who undoubtedly acted upon the assumption that the decree was valid, he cannot now be heard to claim a larger right.

Inasmuch as defendants concede the validity of the decree, and acknowledge themselves bound thereby, it is unnecessary to discuss other issues. They will be recognized as owners of such water rights as were decreed to them and to their predecessors.

Defendants. }

This cause having come on for trial before me, the undersigned, one of the Judges of the above entitled Court, the Plaintiffs appearing by and through their counsel, Stevens & Downing, Esquires, of Pocatello, Idaho, and none of the defendants appearing either in person or by counsel, at which time after due proceedings had, it was proven to the satisfaction of the Court, that due and legal notice had been given the defendants, and all of them, in accordance with the Law and Orders of the Court, and that the defendants and all of them have failed to answer, demur or otherwise plead to the complaint of the plaintiffs on file in this action, and the default of the defendants and all of them, having been heretofore entered by the Clerk of the above entitled Court, and the Court being fully satisfied that the plaintiffs are entitled to the relief prayed for in the complaint on file in this action;

NOW THEREFORE, on motion of plaintiffs' attorneys, it is hereby ordered, adjudged, and decreed that the plaintiffs have judgment as prayed for in their complaint herein, against the defendants and each and all of them; that all adverse claims of the defendants and each of them and all persons claiming or to claim said premises or any part thereof, through said defendants or any or either or all of them, are hereby adjudged and decreed to be invalid and groundless; and that the plaintiffs be and they are hereby declared and adjudged to be the true and lawful, legal and equitable owners in fee simple, of the land described in the complaint which is hereinafter described and each and every part and parcel thereof and that said plaintiffs' title thereto is adjudged to be quieted against all claims, demands, or pretensions of the defendants or any or either or all of them, who are hereby perpetually estopped and enjoined from setting up any claim or claims thereto, or any part thereof;

Said premises are described, as follows, to-wit:

Lots 11, 12 and 13, in Block 462, Townsite of Pocatello, according to the Survey returned to the General Land Office by the Surveyor General thereof.

DATED, At Pocatello, Bannock County, Idaho, this 20th day of March, 1926.

Robert M. Terrell.
DISTRICT JUDGE.

FILED
R. C. Farley,
CLERK AUDITOR & RECORDER,
BANNOCK COUNTY, IDAHO,
L. Spongberg-Dep
MAR 20, 1926, 11 25 A M.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE
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

MEMORANDUM DECISION

April 1, 1925.

P. C. O'Malley and J. Downing, Attorneys for Plaintiffs.

A. L. Merrill and R. D. Merrill, Attorneys for Defendants H. S. Woodland and Louise J. Woodland.

Anderson & Jeffery, Attorneys for Thomas Hopper and Vernie Hopper, his wife, and Robert Crum and Katie Crum, his wife.

Peterson & Coffin, Attorneys for Defendants Grace M. Perry, Pocatello Realty Company and C. W. Gray Investment Company.

DEED OF TRUST

THIS DEED OF TRUST is made this 10th day of JUNE 1983, among the Grantor, DUANE J. WILLIAMS AND CHERYL WILLIAMS, Husband and Wife, AMERICAN LAND TITLE COMPANY, IDAHO FIRST NATIONAL BANK, POCA TELLO OFFICE, and the Beneficiary, existing under the laws of the State of Idaho, whose address is P.O. Box 1709, Pocatello, Idaho 83201.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Bannock, State of Idaho:

A tract of land in a portion of the SE¼ section of 20, Township 6 South, Range 35 E.B.M. Bannock County, Idaho, and more particularly described as follows:

Commencing at the Bannock County Monument Marking the South Quarter corner of section 20, Township 6 South, Range 35 E.B.M. thence North 60°04'23" East 624/70 feet to a ½ inch iron pin, said pin being the true point of beginning; thence North 37°19'27" East, 97.35 feet; thence South 68°33'08" East, 237.74 feet; thence 15°33'36" East, 34.12 feet; thence South 74°26'24" East, 76.10 feet; thence South 15°33'36" West, 163.56 feet; thence North 68°33'08" West, 348.03 feet; thence North 10°28'58" East, 27.82 feet to the true point of beginning. Together with a 20 foot easement for ingress and egress through adjoining lands 10.00 feet either side of the center line described as follows: Beginning at a point on the Southerly Right of Way line of Buckskin Road, said point being North 29°07'15" East and 1329.49 feet distant from the North Quarter corner of section 29, Township 6 South, Range 35 E.B.M; thence South 03°27'00" West, 773.76 feet to a point.

which has the address of Buckskin Rd. Pocatello Idaho 83201 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

To SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note dated June 10, 1983, in the principal sum of ONE HUNDRED FIFTEEN THOUSAND AND NO/100 Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on July 1, 2003; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

22. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

23. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. Area and Location of Property. Either the Property is not more than twenty acres in area or the Property is located within an incorporated city or village.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

[Signature: Duane J. Williams]
.....
DUANE J. WILLIAMS —Borrower

[Signature: Cheryl Williams]
.....
CHERYL WILLIAMS —Borrower

STATE OF IDAHO, ...BannockCounty ss:

On this...10thday of.....June....., 19.83..
before me,...the undersigned....., a Notary Public in and for said county and
state, personally appeared Duane J. Williams and Cheryl Williams
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged to me that
they 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.

.....
Notary Public residing at: **Pocatello, Idaho**

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date:

..... (Space Below This Line Reserved For Lender and Recorder)

Dept of Water Resources
1301 No. Orchard St.
Boise, ID 83705

March 23, 2003

Dear Craig L. Saxton,

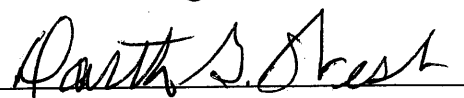
Claim to water right:
Basin 29
Water Right No. 29-00448H
Section 20 irrigation acres 2
Section 29 irrigation acres 3

Purpose: To return water amounts of 0.02 cfs to original water right of 0.1.

Explanations: The property of Darth West occupied since 1974 has been flood irrigated and sprinkled years before and since Sam Jordan, William Woodland, William McNabb, and Duane Williams built their homes and occupied them. The property of William Woodland and William McNabb was never irrigated out of the creek until recent years, when William Woodland began using the creek. There was a spring and pond on Woodlands property that was used to irrigate Woodlands and McNabb's property, then owned and sprinkled by Bisline in the 50's. West and Jordan's property was flood irrigated from the creek by diverting water above the Monte Casper property in the early 1960's. There was never any irrigation on the Williams property until recent years when they began sprinkling out of the creek. McNabb has not sprinkled his property since occupying the property. 1987 photos of Darth West's property showing little vegetation was because horses kept vegetation down. The 2002 photo-grass has been cut and bailed by neighbor Doc Farrens.

Sign: 
Monte Casper
8107 W. Buckskin Rd.
Pocatello, ID 83201
Phone 208-232-8976

Monte Casper farmed and irrigated this valley in the early 60's until 1974. In recent low water years there has been very little water, so none of us have done much watering, however, I do not want to loose my water rights.

Sign: 
Darth G. West



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 5, 2002

Claimants of Decreed Right 29-00448 (split portions: A/B/D/E/F/G)

Re: Request for proof of water right ownership

Dear Claimant:

In reference to the above described water right there have been several claims to portions thereof. At this point the water right for use of Pocatello Creek water for irrigation purposes is over-claimed. To conduct an investigation and recommendation of the portions claimed, proof of water right ownership is required.

Please provide a copy of your deed or conveyance instrument to this office by March 22, 2002. **If such proof is not presented a disallowed recommendation could result.**

Thank you for your attention in this important matter. I look forward to your timely response. Please feel free to contact me at the above address/phone number.

Respectfully submitted,

Craig L. Saxton
Water Resource Agent
Adjudication Bureau

Cc; LARRY AND SHARON BUTIKOFER 29-00448A
7783 W BUCKSKIN RD
POCATELLO ID 83201

EUGENE AND RANAE CRANDALL 29-00448B
8007 W BUCKSKIN RD
POCATELLO ID 83201

MONTE AND VERDA CASPER 29-00448D
8107 W BUCKSKIN
POCATELLO ID 83201

DUANE AND CHERYL WILLIAMS 29-00448E
8403 W BUCKSKIN RD
POCATELLO ID 83201

WILLIAM MC NABB 29-00448F
8401 W BUCKSKIN RD
POCATELLO ID 83201

RECEIVED

MAR 11 2002

WATER RESOURCES
WESTERN REGION

SCANNED

MAR 18 2005