

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 45-10481
Date Received: 5/9/1989
Receipt No: S007062
Received By:

RECEIVED

SEP 02 2003

Department of Water Resources
Southern Region

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

AMENDED

1. Name of Claimant(s)

KEVIN SMYER Phone: (208)654-2310
PO BOX 482
ALBION ID USA 83311

2. Date of Priority: 03/18/1910

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
12S	25E	16	SW NW NE	CASSIA	

5. Description of diverting works:

SPRING DUG OUT TO DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	10/31	0.14	

7. Total Quantity Appropriated is:
0.14 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
12S	25E	16	NW NE	IRRIGATION	6.8
Section Acres					6.8
Total Acres					6.8

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks: This claim is being amended to identify a single source and the related place of use. The rate, acres, and priority date based upon a field visit and discussions with Kelly Christensen (IDWR water resource agent) on 7-29-03. The priority date represents a beneficial use right with a priority date one day after the Bridger vs Tremayne decree.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

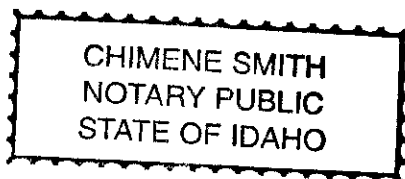
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Kevin Smyer Date: 8-28-03

Date: _____

State of Idaho)
County of Cassia) SS.

Subscribed and sworn (or affirmed) before me this 28th day of August, 2003
Chimene Smith



Notary Public
Residing at Mundaka
My commission Expires 1/30/07

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A45-10481
Date Received: 5/09/1989
Receipt No: S007062
Received By: tw

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KEVIN SMYER 208-654-2310
Address: P.O. BOX 482
ALBION, ID 83311

2. Date of Priority: MAR 31, 1881

3. Source: SEEP WATER Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
12S	25E	16	NE	SW	NE		CASSIA

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.100		

7. Total Quantity Appropriated is:
0.100 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	25E	16	NW	NE		IRR	10.0
			SW	NE		IRR	20.0
						Section Acres	30.0

Total Acres 30.0

12. Do you own the property listed above as place of use? YES

14. Remarks:

16. Signature(s)

Number of attachments:

Signature of Claimant(s): Kevin Smyer Date: 5/9/89
Date:

Subscribed and sworn (or affirmed) before me this 9 day
of May 19 89 Don White
Notary Public

Residing at AL
My Commission Expires 5/94

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MAR 10 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

25-Jan-1993

R. KEITH HIGGINSON
Director

A45-10481
KEVIN SMYER
P.O. BOX 482
ALBION

ID 88811

RE: Evidence of Priority

RESPONSE DEADLINE

APRIL 1, 1993

Dear Claimant:

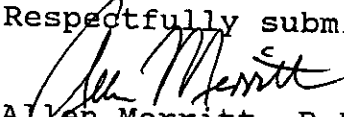
The Notice of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates your water usage is based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. The Department will at a later date conduct reviews &/or field exams for the claims in your area. Since the priority date of a beneficial use water right can not be confirmed by field examination, proof must be provided supporting the priority date you have claimed.

Please find enclosed a computer printout of your Notice and the pamphlet entitled "Evidence of Priority". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

SPECIAL NOTE: The Department will not recommend the Notice be decreed by the court as claimed if no evidence of a priority date is submitted. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement must be in the form of a notarized affidavit.

Please submit the required evidence supporting the priority date by April 1, 1993, referencing all documents with the corresponding Notice number. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Respectfully submitted,


Allen Merritt, P.E.
Water Rights Supervisor

Enclosures

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09/02/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 45-10481
NAME AND ADDRESS: KEVIN SMYER
PO BOX 482
ALBION ID 83311

SOURCE: SPRING

TRIBUTARY: SINKS

QUANTITY: 0.140 CFS

PRIORITY DATE: 03/18/1910

POINT OF DIVERSION:

VERIFIED BY KKC

T12S R25E S16 SWNWNE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/01 10/31

0.140 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County

T12S R25E S16 NWNE 6.8

6.8 ACRES TOTAL

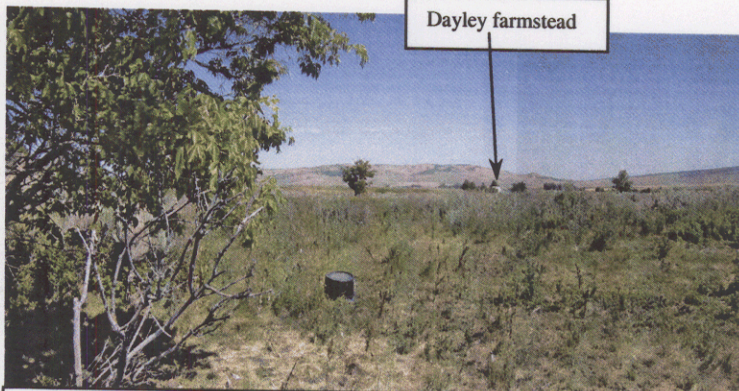
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: Beneficial Use

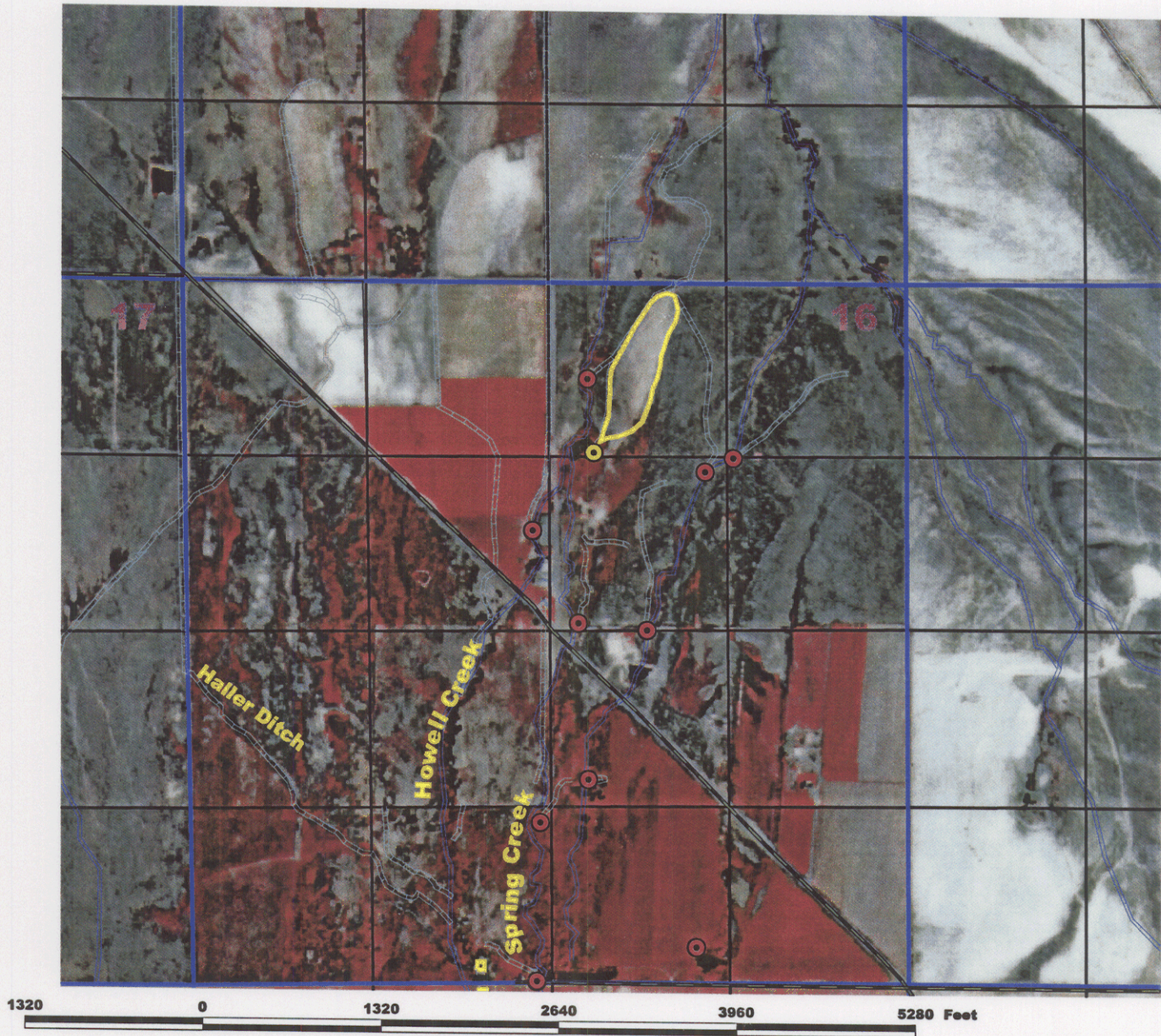
Photos taken on August 7-2003
By Kelly K Christensen

File: 45-10481 K Smyer p-d pictures



Spring location for 45-10481. You are looking north on the right to north northwest on the left. The GPS tag installed by Stoler is located on the trees on the left.

RECOMMENDED PLACE OF USE FOR 45-10481



PLACE OF USE
TWP 12S, RNG 25E, SEC 16
Data entry on September 2, 2003

- RECOMMENDED POINT OF DIVERSION
- RECOMMENDED PLACE OF USE
- SECTION LINES
- QUARTER/QUARTER LINES

GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY KELLY K CHRISTENSEN



CASSIA CO



Log for claim A45-10481

Spatial Dynamics AMH

6/1/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
12s25e	16	NWNE	10	38	Permissible place of use?
12s25e	16	SWNE	20	39	Permissible place of use?
Totals:			30	77	

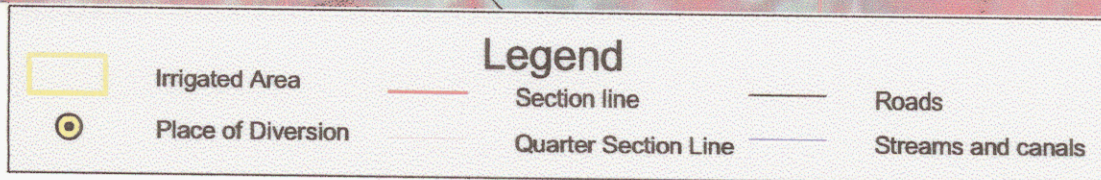
P/D

Claimed legal does not match claim map

3-30-73 letter describes two different locations

EJ Priority letter requests priority date to
be changed to

Township , 12S25E



200 0 200 400 Feet



March 23, 1993

State of Idaho Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

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MAR 30 1993

Allen Merritt P.E.
Water Rights Supervisor

Department of Water Resources
Southern Region Office

Reference to Claim # A45-10481

Please find enclosed attachments to this letter that support my claim to seep water that rises in the SE 1/4 of the SW 1/4 and the SW 1/4 of the SE 1/4 of Section 16, T12 South, R25 East. It then flows to the north east in two old historic channels to sinks in the SW 1/4 of the NE 1/4 of Section 16, T12 South, R25 East.

I will show that through the years this water has been diverted from the old channels where they enter the NE 1/4 Section 16, T12 South, R25 East into man made ditches and spread out on the land described above to promote native plant growth for pasture. for livestock, orchards, and gardens constituting beneficial use.

I purchased the property described as N.E. 1/4 Section 16, Township 12 South, Range 25 East from the estate of the late Kate Bridger on August 20, 1985. At the time I purchased the property, water was coming onto the property through two natural channels and existing irrigation ditches. I spread the water out on high ground for several days, providing irrigation to pasture land and an orchard. Water of unknown source put to beneficial use.

Investigation as to the source of the water revealed that approximately 2000 to 2300 feet to the south and west was a number of seeps in that general area. These seeps would co-mingle with a small unnamed spring in that area and flow north east to my property. On occasion this flow would be increased somewhat by the addition of waste water or flush water when Howell Creek would overflow its' banks. May, June and July 1986 sufficient quantities of water came onto the property and were used to irrigate 25 to 30 acres of pasture and the orchard.

In 1987 a good amount of water came down in April and May. It was diverted and used for irrigation but ran out in early June.

In 1988 a small amount of water came down the old channels during winter months but had ran out by May, so was utilized perhaps two to three weeks.

During 1989, 1990, 1991, and 1992 a little water came down during the irrigation season and was diverted and utilized, but it was

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OCT 27 1994

rare as we were now into a drought. But during the winter months water would come down the old channels and was beneficial in subbing the channels, promoting pasture and developing wet lands for wildlife and ground water recharge.

Support documents will be numbered numerically and followed by claim number.

SD 1 A45-10481: Copy of ownership document to NE 1/4, Section 16, T 125, R 25E.

Priority by Feb. date 1881
SD 2 A45-10481: Copy of early transfer document of above property making specific mention of priority date of February 1881. Please amend Claim number A45 - 10481 to indicate this priority date to replace March 31, 1881, which at the time of the filing of the Claim was an estimate.

SD 3 A45-10481: Copy of aerial photo map that will show source area of water, old channels that carry the water, point of diversion and place of beneficial use.

Priority date Claim of February 1881 of course precludes any eye witness affidavits of water diverted and put to beneficial use, but please consider the following affidavits from eye witness accounts of water being diverted and applied to the land on an ongoing basis for fifty years.

SD 4 A54-10481: Affidavit from Mr. Leo Bell. *Refused to sign*

SD 5 A45-10481: Affidavit from Mr. Glenn Clark. *Refused to sign*

SD 6 A45-10481: Affidavit from Mr. Bennie Smyer *No date given*

SD 7 A45-10481: Affidavit from Mr. Norman Smyer. *Refused 1943*

It is my contention that non decreed seep water by itself, and at times co-mingling with unnamed spring, flush water when Howell Creek overflows its' banks and on occasion waste water from lands being irrigated to the south has been diverted from old historic channels at or near the point where these channels enter the SW 1/4 of the NE 1/4 of Section 16, T125, R25E for the purpose of irrigation of pasture, garden and orchard. That this process began as early as February 1881 or perhaps earlier, that it has continued through the years on an on-going basis depending on the availability of water through 1992.

Kevin Smyer

Kevin Smyer

P.O. Box 100
Albion, Idaho 83311

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172518

MAR 30 1993

WARRANTY DEEDDepartment of Water Resources
Southern Region Office

THIS INDENTURE, made this 19 day of August, 1985,
between CLYDE L. GOODMAN, Personal Representative of the ESTATE
OF KATE N. BRIDGER, a/k/a KATE BRIDGER, hereinafter called the
"Grantor", and NORMAN SMYER and DeLORES SMYER, husband and wife,
and KEVIN SMYER, a single man, whose address is Route 1 - Box 2,
Declo, Idaho 83323, hereinafter called the "Grantee".

W I T N E S S E T H:

That the Grantor for and in consideration of the sum of
Ten Dollars (\$10.00), lawful money of the United States of America,
and other good and valuable consideration, to the Grantor in hand
paid by the Grantee, the receipt whereof is hereby acknowledged,
has granted, bargained and sold and by these presents does grant,
bargain and sell, convey and confirm unto the Grantee, and to the
heirs and assigns of Grantee, forever, all of the following
described real estate situated in the County of Cassia, State of
Idaho, to-wit:

TOWNSHIP 12 SOUTH, RANGE 25 EAST OF THE BOISE
MERIDIAN, CASSIA COUNTY IDAHO
Section 16: NE $\frac{1}{4}$.

SUBJECT TO:

Accruing taxes, levies and assessments.

TOGETHER with all and singular the tenements, heredita-
ments and appurtenances thereunto belonging or in anywise apper-
taining, the reversion and reversions, remainder and remainders,
rents, issues and profits thereof, and all estate, right, title
and interest in and to the said property as well in law as in

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Department of Water Resources
Southern Region Division

equity of the Grantor.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with appurtenances unto the Grantee and to the heirs and assigns of Grantee forever.

The Grantor shall and will warrant and by these presents will forever defend the said premises in the quiet and peaceable possession of the Grantee, and the heirs and assigns of the Grantee against all and every person and persons whomsoever lawfully claiming the same, except as aforesaid.

Letters Testamentary were recorded in the office of the County Recorder of the County of Cassia, State of Idaho, on the 7th day of May, 1985, as Instrument number 169203, on film 172, records of Cassia County, Idaho.

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written.

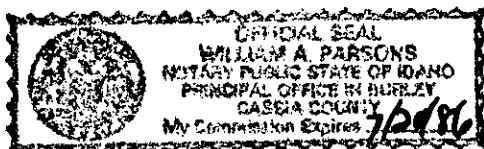
ESTATE OF KATE N. BRIDGER, a/k/a
KATE BRIDGER

BY Clyde L. Goodman
Clyde L. Goodman
Personal Representative

STATE OF IDAHO)
County of CASSIA) ss

On this 19 day of August, in the year of 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared CLYDE L. GOODMAN, known or identified to me to be the person whose name is subscribed to the within instrument as Personal Representative of Estate of Kate Bridger, and acknowledged to me that he executed the same as such Personal Representative.

William A. Parsons
Notary Public for Idaho
Residing at _____



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MAR 30 1893

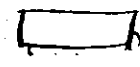
Department of Water Resources
Bureau of Reclamation

Deed John. Davis To Beg. F. Mahoney
 This Indenture, made the 2nd day of March in the
 Year of our Lord One Thousand Eight hundred and Eighty
 five Between, John Davis of Cassia County, L.T.
 party of the first part, and Beg. F. Mahoney of the same
 place and part of the second part Witnesseth that the
 said party of the first part for and in consideration
 of the sum of four hundred (400) Dollars Lawful
 Money of the United States of America to him in hand
 paid by the said party of the second part, the receipt where
 of is hereby acknowledged, does by these presents, demise
 release and forever Quitclaim, unto the said party of
 the second part, and to his heirs and assigns all that
 certain lot piece or parcel of Land situated in the
 said County of Cassia Territory of Idaho, and bounded
 and particularly Described as follows to wit:
 The North East quarter of Section No. 16 Township
 No. 12. S Range No 23; E - Boise Meridian Cas-
 sia County Idaho.

Together with all water rights
 ditches, dams or other means for the irrigation
 of said Land and duly appropriated by the said party
 of the first part on February 4th A.D. 1881 and filed in
 the Clerk's of Cassia County March 2nd A.D. 1885 and
 recorded in Book No. 2, page 239 of Water Claims
 further with all and singular the tenements hereditaments
 and appurtenances thereunto belonging or in any wise
 appertaining and the ~~re~~ version and reversions remainder
 and Remainders, rents issues and profits thereof
 To Have and To Hold, all and singular the said premises
 together with the appurtenances, unto said party of
 the second part, to his heirs and assigns forever.

first part has hereunto set his hand and seal
 the day and year first above written.

Deed and delivered in
 of J. E. Harroun
 O. B. Hale

John. Davis. 

Territory of Idaho } ss.
 County of Cassia }

On this 2nd
 day of March One Thousand Eight hundred and

being present before me L. E. Harroun a Deputy
Clerk in and for the said County of Cassia personally
appeared John Davis, known to me to be the same
person described in and whose name is subscribed
to the annexed Instrument and acknowledged to me
that he freely & voluntarily executed the same

In witness whereof I have hereunto set my
hand and affixed my official seal, this day, 1885
in this Certificate first above written

W. B. Davis

By L. E. Harroun

Deputy

Filed for Record at the request of of Reg. F.
Makover March 2. 1885 at 30 Minutes past
12. O'clock M. D. Recorded May 4th 1885. in Bk.
No. 2. of Deeds Pages. 173. and 74. Records of the
County of Cassia. }

W. L. Brown

Co Recorder

SD3A -10481

14

10

15

P 2928

P 2927

Area of fuse
Note visible
ditches.



Department of
Southern

Point of Diversion →

← Point of Diversion

2 old
Historic
Channels

Source Area
of Seeps

21 22

P 2940-1

To Whom it may concern

POOR ORIGINAL

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SD 4 245 1048

MAY 11 1993

Department of Water Resources
Southern Region Office

I own land in Section 16 -
Twp. 12S Range 25 E. B. 12. The
lands close to the NE $\frac{1}{4}$ of Section
16 owned by Norman & Kevin
Myers at this time.

This letter is to certify that
Kate Bridger who owned NE $\frac{1}{4}$
of Sec 16 for many years used
water that entered her property
near the S.W. corner of said property.
Water came from small springs &
seeps - also waste water from
Dick Andersons ranch to the South.
Kate Bridger used this water to
irrigate pasture whenever it reached
her property. She owned this property
from the early 1950's until her death.
Property was purchased from
her estate sale by Norman and
Kevin Myers.

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DEC 27 1994

OVER

They have used the water
whenever it reaches their property.

Signed

Lea Bell

Albion, Idaho

Betty Perry

Notary

Albion, Cassia County Idaho

Expires 4/28/94

POOR ORIGINAL

SD6 A45-10481

November 15, 1989

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Department of Water Resources
Southern Region Office

To Whom It May Concern:

I, Bennie Smyer, purchased the Robert BAiley Ranch in 1972. I have worked closely with Douglas Mahoney, the rancher who owned the adjoining property that is in question (the Kevin and Norman Smyer property). We would go onto the property and get the cattle before we turned out on the B.L.M. on May 1. Mrs. Bridger would have water spread out on all of the ridges and be irrigating this property by that date. In 1982, I purchased the adjoining property from Mr. Mahoney.

I know it was irrigated before the Smyer's purchased it and they have been irrigating it since they bought it, when the water was available, as I have purchased the pasture for several years and I feel I can testify that I know it has been irrigated. All of the ditches are still very visiable.

Signed this date

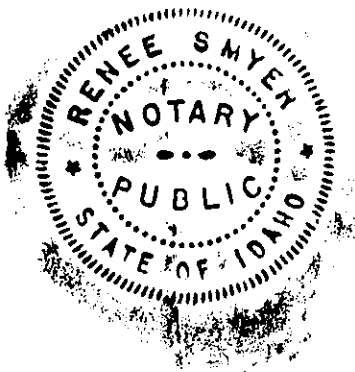
11-15-89

Bennie R. Smyer
Bennie R. Smyer

Witnessed by

Dawnie Goodman

Dated 11-15-89



STATE OF IDAHO
COUNTY OF CASSIA

On this 15th day of November, 1989,
before me a notary public in and for said State personally
appeared Bennie R. Smyer

known to me to be the
(person/persons) whose (name/names) (is/are) subscribed to
the within instrument and acknowledged to me that (he/she
they) executed the same.

Renee Smyer
Notary Public

Residing at Albion, Idaho

My Commission Expires 7-11-93

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OCT 27 1994

POOR ORIGINAL

Albin Idaho

March 11, 1993

MAR 30 1993

Department of Water Resources
Southern Region Office

To Whom it may Concern;

Let me introduce myself - My Name is Glenn Clark - my Grandparents arrived in the Albin Valley in 1875 - my parents lived their entire lives in the valley as I have - I am Seventy One now. This introduction is to verify that I should have some knowledge of what has happened in our valley over a period of several years.

Recently Norman Smyer asked me if I had any knowledge of irrigation water being used on a piece of property that he and his son Haven have purchased. My answer was yes - I remember the previous owners Kate Bridges and before that A.B. Clark, both deceased, irrigating ground from water that flowed down two draws that enter his property on the South side, this was in what we call normal years (the past five years of drought have changed a lot of irrigation practices). The ditches from the draws are evident and because they are soddied down indicates age.

STATE OF IDAHO
COUNTY OF CASSIA

On this 22nd day of March 1993
before me a notary public in and for said State, personally appeared Glenn Clark

known to me to be the (person) who (person) (person) subscribed to the within instrument and acknowledged to me that (he, she, they) executed the same.

Sue Ellen Steen
Notary Public

Residing at Albin, Idaho

My commission expires 4-9-93

Respectfully,
Glenn Clark
Albin, Idaho.

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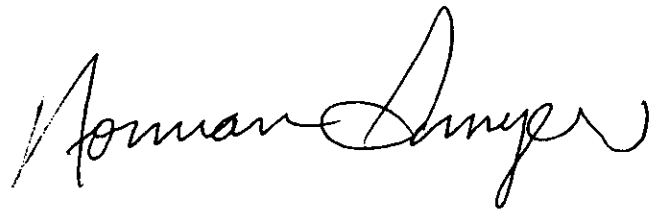
MAR 30 1993

Department of Water Resources
Southern Region Office

To Whom It May Concern:

I was born in April 1935, and grew up in the Albion Valley. From the time of my birth until leaving my parents home at the age of 18 my parents had a herd of milk cows and dry stock. From 1943 thru 1948 my father leased NE 1/4 Section 16, T125, R25E, from D.C. Harris for pasture for the milk cows. We kept the milk cows there during the summer months and milked them twice a day at that location.

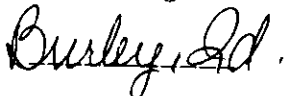
I personally observed water being diverted from two old channels in the southwest quarter into ditches, that were old and grassed in at that time, and applied to the land for irrigation by my father.



Subscribed and sworn to me this 26th day of March, 93.


Notary Public

Residing at



My Commission Expires

Oct. 20, 1997

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OCT 27 1993