

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

In Re SRBA)

Case No. 39576)
_____)

A. Subcase 69-4104B

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Harold A. and Evea H. Powers

Address: 7680 Appaloosa Ln.

Emmett, ID 83617

Daytime Phone: 208-365-3776

Name & Address of Attorney, if any:

William G. Myers III

Holland & Hart LLP

P.O. Box 2527, Boise, ID 83701

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Douglas M. and Charleta A. Scism

Address: P.O. Box 44

Council, ID 83612

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: March 22, 1979 except the NENW of S.14, T18N,
R03W which should have a priority date of
May 23, 1983.
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
- 10 ☐ **I object because:**
☐ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** See attached supplement.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Ada)

William G. Myers III, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

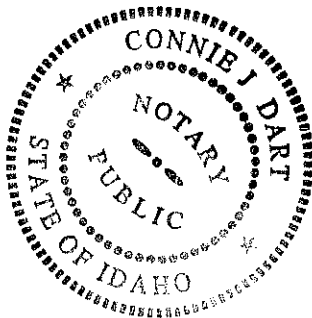
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

William G. Myers III
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: May 25, 2006

Connie J. Dart
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 7-20-2010



INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on May 26, 2006, I ^{had} ~~mailed~~ ^{hand-delivered} the original and [^] ~~copies~~ ^{mailed} of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Douglas M. and Charleta A. Scism

Address: P.O. Box 44
Council, ID 83612

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

William G. Myers III (ISB No. 5598)
HOLLAND & HART LLP
Suite 1400, U.S. Bank Plaza
101 South Capitol Boulevard
P.O. Box 2527
Boise, Idaho 83701-2527
Telephone: (208) 342-5000
Facsimile: (208) 343-8869
wmyers@hollandhart.com

Attorneys for Harold A. and Evea H. Powers

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

In Re: SRBA	)	Subcase 69-4104B
	)	
Case No. 39576	)	SUPPLEMENT TO STANDARD
	)	FORM 1 OBJECTION

Harold A. and Evea H. Powers offer this supplemental information supporting their objections in Subcase 69-4104B regarding the priority date. The Director's Report for Basin 69 recommends that Water Right 69-4104B in the name of Charleta A. Scism and Douglas M. Scism be given a priority date of April 3, 1888. For reasons set forth below, the Powers believe this date to be inaccurate. In no circumstance can the priority date precede the 1950s. It appears from the best available evidence that the priority date is March 22, 1979 except for one quarter quarter section of the place of use where the priority date should be May 23, 1983.

This water right is located on land surrounded by the Payette National Forest. A vicinity map is attached as Exhibit 1. The place of use is generally within northwest

quarter of Section 14 except for one acre in northeast quarter of Section 14, T18N, R03W, within Adams County, Idaho. The actual place of use is limited to sixty-seven acres.¹

Prior to May 20, 1971, surface water rights could be established by diverting the water and applying it to beneficial use. The priority date for the water right was established by a first putting the water to a beneficial use. Prior to 1903, Idaho had a “posted notice” statute which provided for posting of a notice at the point of diversion and recording the notice in the county recorder’s office followed by actual diversion and beneficial use. The priority date for posted notice water rights is the date of the posting of the notice.

The place of use for this water right came into private ownership through two methods. The west half of the northwest quarter of Section 14, totaling 80 acres, were homesteaded by Mike Newman at the beginning of the 20th Century, together with 80 contiguous acres in Section 15.² The northeast quarter of the northwest quarter of Section 14 remained in the public domain until it was patented to Verna and Clara Harrington on July 15, 1965 following an exchange of lands between the Harringtons and the Forest Service. Consequently, the place of use recognized by the Director’s

¹ 69-4103B and 69-4104B are limited to the irrigation of a combined total of ninety-seven acres in a single irrigation season.

² This Supplement will only refer to the 80 acres in Section 14 since Section 15 is not within the place of use of 69-4104B.

Report actually has two separate priority dates in concert with their ownership histories. Each will be discussed below.

The Mike Newman Parcel (W1/2NW1/4, Section 14)

Mike Newman applied for homestead entry to his 80 acres in Section 14 on May 20, 1901. *See* Exhibit 2. According to the testimony of Mike Newman in support of his Homestead Application, he began building his house on the property on September 20, 1901 and finished construction and established his residence in early November 1901. *See* Exhibit 3, answer to question 4. In 1902, he had cultivated one-half acre and by 1906 he had ten and one-half acres under cultivation. Beginning in 1902, he cut between fifteen to twenty acres of “wild hay” in addition to the land he had cultivated. *Id.* at answer to question 7. There is no indication in this testimony that he was irrigating any portion of his acreage, nor is there any known Notice of Water Right filed or posted during this time. The United States Department of Agriculture, Forest Service Report, on Agricultural Settlement, Exhibit 4, was written following an examination of the parcel by the Forest Officer. As part of that examination, the Forest Officer indicated that “none” of the 160-acre parcel was “under ditch” as of November 22, 1906. *Id.* at ¶ 7.

Mike Newman deeded his parcel to John Clifton on February 15, 1907. *See* Exhibit 5.³ There is no mention of water rights in this deed. On May 14, 1917, John and Sarah Clifton, husband and wife, deeded the tract together with lands in Section 11 to J.M. Lyon. *See* Exhibit 6.

The legal description of the property in the 1917 deed is, at first blush, confusing. It describes the two parcels totaling 320 acres:

together with first and prior water rights for 3-3/8 cubic feet per second from Crooked River, and 1-1/4 cubic feet per second from Moonas Creek,⁴ ditches having been constructed from point of diversions in 1888 and used continuously for domestic and irrigation purposes since that date; together with all ditches and ditch right-of-ways thereunder belonging.

Upon closer examination, it is apparent that the 1888 water rights were appurtenant only to the 160 acres in Section 11 that now belong to the Powers and not appurtenant to the 80 acres in Section 14 that now belong to the Scisms. The description of the water rights in the 1917 deed precisely match the Notice of Location of Water Right filed by John Clifton for water rights appurtenant only to Section 11. *See* Exhibits 7 and 8. Those Section 11 water rights are downstream from the 80 acres in Section 14. In order for Clifton to have used those water rights on Section 14, he

³ Oddly, the deed, Exhibit 5, says that the tract of land was not filed upon as a homestead and did not serve as a residence by the grantor, contrary to the homestead testimony of Mike Newman, Exhibit 3. The patent issued to Newman on June 15, 1907, after he had sold the parcel to Clifton.

⁴ Later known as Moonshine Creek.

would have had to enlarge the place of use. There is no indication of enlargement in the history of the parcels or the records available to the Powers.

Through a series of subsequent real property transfers, no mention is made of irrigation water for Section 14 until Clara Harrington filed Water Right Claim 69-04016 dated March 22, 1979. *See* Exhibit 9. In that claim, she described the source as floodwater from Moonshine (Moonas) Creek with a priority date April 1, 1888. This priority date unnecessarily perpetuated the confusion in the Clifton-to-Lyon deed from 1917. By her claim, Clara Harrington was taking water rights appurtenant only to Section 11 and purporting to place them for use on Section 14. As such, she was enlarging the Section 11 water right to a use on Section 14. Under Idaho law, the priority date for an enlargement of a water right is the date of completion of the enlargement—no earlier than March 22, 1979.⁵

The Water Right and Adjudication files of IDWR contain a notarized statement of Richard Harrington signed September 29, 2005, and submitted on behalf of the Scisms. *See* Exhibit 10. Richard Harrington states that the parcels owned by the Scisms came to him as an intermediate owner through his family and that he remembered “hearing my grandparents [Verna and Clara Harrington] say that it had been irrigated in the late 1800s.” *Id.* This affidavit is contradicted by the affidavit of Richard Harrington’s aunt, Evea Powers, one of the objectors in this subcase.

⁵ *See* I.C. § 42-1426(2).

Mrs. Powers' affidavit is attached as Exhibit 11, dated May 25, 2006. Her parents, Richard Harrington's grandparents, bought the land in Section 11 that now is owned by Mr. and Mrs. Powers and the 80 acres in Section 14 now owned by the Scisms. *Id.* at ¶ 3. Mrs. Powers states that based on frequent discussions it was understood in her family and by her that the water rights were attendant to Section 11 only and that Section 14 was first irrigated by her father using floodwater from the Crooked River in the 1950s when he rented the 80 acres to his brothers. *Id.* at ¶ 4. She also notes that her father was born in 1896 and her mother was born in 1901 and, therefore, neither one of them could have had firsthand knowledge of any water rights dating from 1888. *Id.* at ¶ 6.

Thus, it appears that the earliest possible priority date for Section 14 is sometime in the 1950s when Verna Harrington first diverted floodwater from Crooked River for use on these lands. The best evidence, however, of the priority date is the enlargement of the use of the water from Section 11 by Clara Harrington pursuant to her claim, Exhibit 9, on March 22, 1979.

The Forty Acre Parcel (NE1/4NW1/4, Section 14)

The Scisms currently own the forty acre parcel that is the Northeast Quarter of the Northwest Quarter of Section 14. This parcel is included in the Director's Report and also has an assigned priority date of April 3, 1888. This land was part of the Forest Service until, pursuant to acts of Congress, the Forest Service entered into a land

exchange with Verna and Clara Harrington by which the Harringtons became the owners by patent dated July 15, 1965. *See* Exhibit 12.

Clara Harrington filed another claim to a water right for this forty acre parcel pursuant to Claim No. 69-4103 dated May 23, 1983. *See* Exhibit 13. As before, Clara Harrington attempted to use the water right appurtenant to Section 11 and by this claim enlarge its use to include the forty-acre tract in Section 14. This is the first evidence of any claim or water right for this forty-acre tract. In so doing, Clara Harrington enlarged the water right associated with Section 11 to cover this parcel in Section 14.⁶ The priority date is the date of completion of the enlargement—at the earliest May 23, 1983.

3560058_1.DOC

⁶ *See* footnote 2.

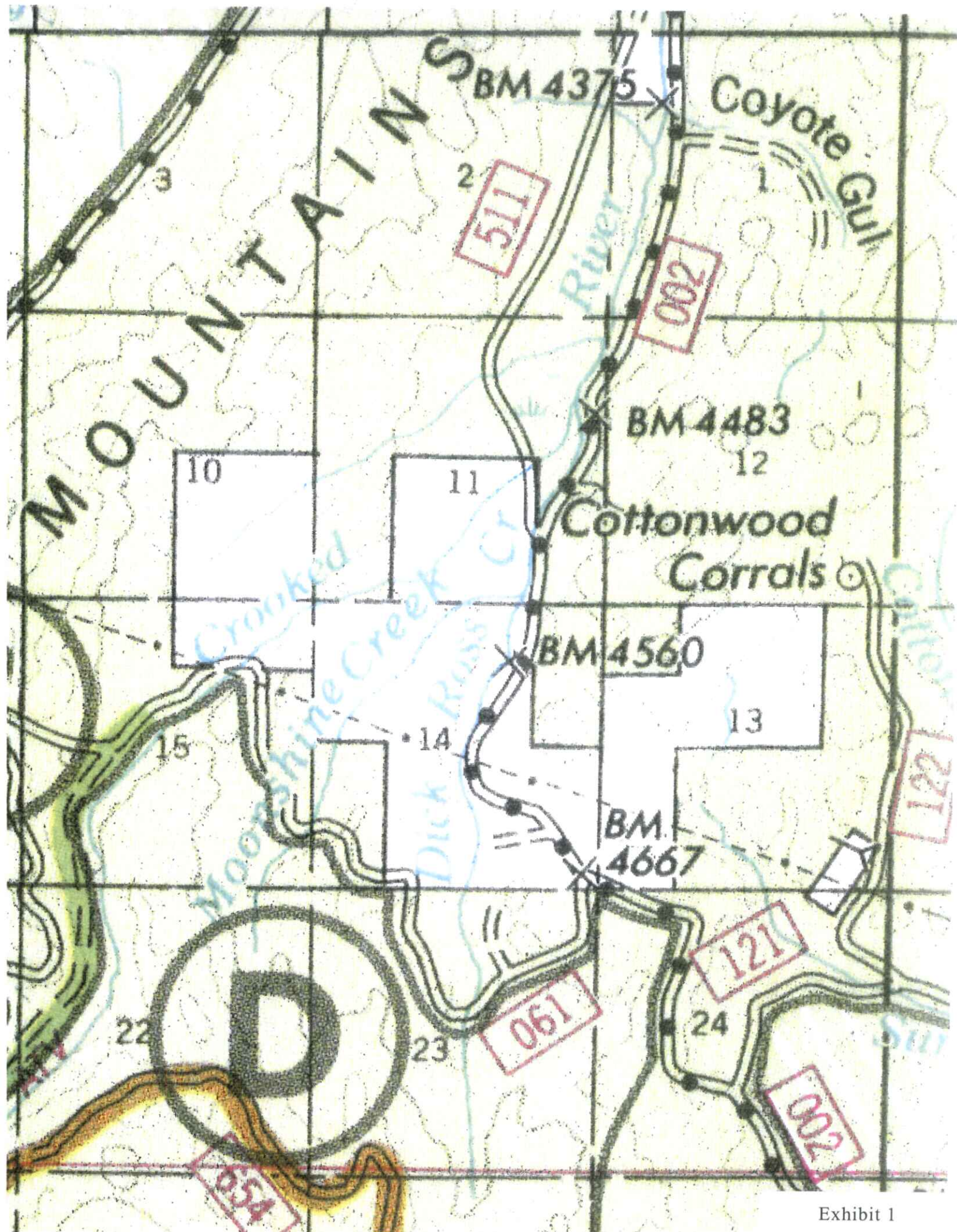


Exhibit 1

HOMESTEAD.

APPLICATION }

No. 5218 }

Land Office at Boise Idaho

May 20 1901

I, Mike Newman, of Dale Idaho

do hereby apply to enter, under Section 2289, Revised
Statutes of the United States, the $W \frac{1}{2}$ NW $\frac{1}{4}$ of Section 14, and
N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, in Township 18 north of
Range 3 West, containing 100 acres.

Mike Newman

Land Office at Boise Idaho

May 20 1901

I, James King, Register of the Land Office,
do hereby certify that the above application is for Surveyed Lands of the class which the
applicant is legally entitled to enter under Section 2289, Revised Statutes of the United
States, and that there is no prior valid adverse right to the same.

James King
Register.

HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

Mike Newman, being called as a witness in his own behalf in support of homestead entry, No. 5218, for W² NW⁴ of Sec 14, and N² NE⁴ of Sec 15, T. 18 N. R. 3 West of Boise Meridian, testifies as follows:

Ques. 1.—What is your name as you wish it to appear in your patent, age, and post-office address?

Ans. Mike Newman, age 35 years, Dal, Washington Co. Idaho

Ques. 2.—Are you a native born citizen of the United States, and if so, in what State or Territory were you born?*

Ans. I am not

Ques. 3.—Are you the identical person who made homestead entry, No. 5218, at the

Boise, Idaho land office on the Twentieth day of

May, 1901, and what is the true description of the land now claimed by you?

Ans. I am. The W² NW⁴ of Sec 14 and N² NE⁴ of Sec 15, T. 18 N. R. 3 West of Boise Meridian.

Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. House built in Sept. 20, 1901 and finished and established my residence about Nov. 10th or 15th 1901. House, stable, hay barn, well, fence around house & garden, 80 acres fenced, 10 1/2 acres cultivated, chicken house, 1000 ft. across creek 4 or 5 ft. deep, value \$500 or \$600.

Ques. 5.—Of whom does your family consist, and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. A wife and three children. Yes except for one period of four or five months.

Ques. 6.—For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have been there all of the time except for short periods when I was out working to help support my family. The family was there all of the time except for a visit of four or five months in 1904 with relatives.

Ques. 7.—How much of the land have you cultivated each season and for how many seasons have you raised crops thereon? If used for grazing only, describe fencing, state number and kind of stock grazed and by whom owned.

Ans. 1901 none, 1902 about 1/2 acre broke fence, 1903-1 1/2 acres, 1904-2 1/2 acres, 1905-5 1/2 acres, 1906-10 1/2 acres, and raised crops for the last five seasons since 1902 for every season I have cut 15 to 20 acres of wild hay in addition to the amount cultivated as stated above.

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. It is not

Ques. 9.—What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable.

Ans. It is farming land, with some trees, heavy soil, and most valuable for agricultural purposes.

Ques. 10.—Are there any indications of coal, salines, or minerals, of any kind, on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. There are none. More valuable for agricultural purposes.

Ques. 11.—Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have not

Ques. 12.—Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not

Ques. 13.—Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. I have none except some money

Ques. 14.—Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. I never made any. (This testimony taken separately and apart from witnesses and I do not know how this should testify)

(Sign plainly with full christian name.)

Mike Newman

* (In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

I HEREBY CERTIFY that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 23 day of Nov, 1906, at my office at Cambridge, Washington County, Idaho.
[SEE NOTE BELOW.] Rirt Ewileon
U.S. Comm

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained, that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX.—CRIMES.—Chapter 4.

Sec. 5392.—Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

(4-369.)

HOMESTEAD PROOF.

LAND OFFICE AT
BOISE, IDAHO

Original Application No. 5218

Final Certificate No. 2501

Approved: D. J. [Signature], Register.

[Signature], Receiver.

For sale by Henry N. Copp, Washington D. C.

12/18/06 Suspended until
this date for consultation with
Special Agent and investigator.

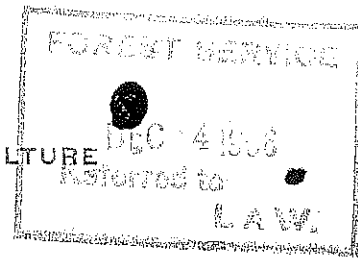
FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANTS.

SECTION _____ OF THE REVISED STATUTES OF THE UNITED STATES.

I, Mike Newman, having made a Homestead entry of the N² NW⁴ Sec. 14 and
W² NE⁴ of Section No. 15 in Township No. 18 North
of Range No. 3 West, subject to entry at Boise Land Office
under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto
by virtue of section No. 2291 of the Revised Statutes of the United States; and for that purpose do
solemnly swear that I, Mike Newman, am
a naturalized citizen of the United States; that I have made actual settlement
upon and have cultivated and resided upon said land since the 10th or 15th day of Nov. 1901,
to the present time; that no part of said land has been alienated, except as provided in section 2283 of the Revised
Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government
of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead
laws of the United States, except _____.

(Sign plainly with full christian name.) Mike Newman
I, Rirt Ewileon U.S. Comm
do hereby certify that the above affidavit was subscribed and sworn to before me this 23rd day of
Nov, 1906 at my office at Cambridge, in Washer County,
Idaho.
Rirt Ewileon
U.S. Comm

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE



REPORT ON AGRICULTURAL SETTLEMENT.

INDEXED

Weider

Forest Reserve, _____

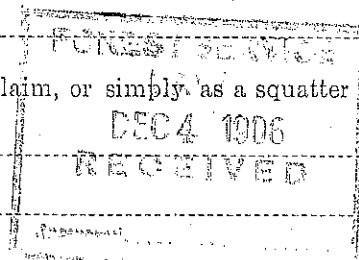
1. Location of settlement or farm: 7 1/2 Sec 14. Sec 15. W 1/2 N 1/4 Sec 14.
(If land is surveyed, describe it by subdivisions; if unsurveyed, describe by streams or other natural landmarks, distances, and directions. Add a sketch map, if necessary.)
T. 18. N. R. 3. W.

2. Name of present claimant or owner: Mike Newman

Address of present claimant or owner: Idaho

3. If claimant has a family, of what members does it consist? wife and three children
(Is their only home on this claim?)

4. Is the land patented or held as a homestead or other entry, mining claim, or simply as a squatter location? Give number of entry: Homestead



5. Improvements:

Description of house by size and materials of which built, and number of rooms: log house
18x20 ft. two rooms, well finished
sufficient furniture for comfort.

6. Description of barn and other outbuildings by size and materials: log barn 20x30
ft. well finished, hay barn 16x20 ft full of hay.

7. Land:

How much of the land is suited to tilling? 150 acres when cleared.

Acres of land under plow: 10 Acres of land under fence: 160

Acres of land under ditch: none

THIS INDENTURE Made this 15th day of February 1907, by and between Mike Newman of Washington County, Idaho, the party of the first part, and John Clifton of Dale, Washington, County, Idaho, the party of the second part,

WITNESSETH That the said party of the first part for and in consideration of the sum of One Thousand Dollars, lawful money of the United States to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents Grant, Bargain, Sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all and singular the following described real estate situate in the County of Washington, State of Idaho, and described as follows, to-wit:

The West half of the North west quarter of Section fourteen and the North half of the North east quarter of Section Fifteen all in Twp Eighteen N R 3 West B M containing one hundred and sixty acres.

The above tract of land is not filed upon as a homestead under the laws of the State of Idaho, nor is any part thereof used as a residence by the said grantor or his family.

TO HAVE AND TO HOLD the same, unto the said party of the second part, and to his heirs and assigns forever, together with all appurtenances thereunto belonging or in anywise appertaining, And the said party of the first part does hereby covenant to and with the said party of the second part, that the said and above described real estate is free from all incumbrances, and that he will and his heirs and assigns warrant and defend the said sale against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal this 15th day of February, 1907

Mike Newman

Seal

STATE OF IDAHO }
County of Washington } ss

This certifies that on this 15th day of February, 1907, before me, L L Burtenshaw, a Notary Public in and for said County and State, personally appeared Mike Newman, personally known to me to be the identical person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal this 15th day of February, 1907

(Notarial Seal)

L L Burtenshaw, Notary Public.

THIS INDENTURE, Made this 14th day of May in the year of our Lord, one thousand nine hundred and seventeen, between JOHN H. CLIFFTON and SARAH F. CLIFFTON, husband and wife, of Council, County of Adams, State of Idaho, the parties of the first part, and J. M. LYON of Austin, County of Wilkes, State of North Carolina, the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Forty Nine Hundred Dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate, situated in Adams County, State of Idaho, to-wit:

W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 11, all in Twp. 18 North, Range 3 West, B. M., containing 160 acres; also W $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 14; and N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 15, all in Twp. 18 North, Range 3 West, B. M., containing 160 acres, together with first and prior water rights for 3-3/8 cubic feet per second from Crooked River, and 1-1/4 cubic feet per second from Moonas Creek, ditches having been constructed from point of diversions in 1888 and used continuously for domestic and irrigation purposes since that date; together with all ditches and ditch right-of-ways thereunto belonging. First parties are also as a part of this consideration to assign, transfer and set over all leases and range rights in and to the Weiser National Forest Reserve now held by the first parties. Second party assumes and agrees to pay one certain mortgage #1404, given to the State of Idaho, for the sum of \$1600.00. First parties are to give second party immediate possession of premises.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and 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 equity of the said parties of the first part;

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever; And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

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

John H. Clifton (Seal)

Sarah F. Clifton (Seal)

NOTICE OF LOCATION OF WATER RIGHT.

TO ALL CONCERNED NOTICE IS HEREBY GIVEN:-

First. That the undersigned John Clifton hereby claims the water of Moonas Creek in Washington County, State of Idaho, to the extent of one and one fourth cubic feet per second.

That the point of intended diversion of the said water is at or near the South West corner of the South East quarter of the South West quarter of Section 11, in Township 18 North of Range Three West B M where a copy of this notice is posted. That a ditch was constructed from said point of diversion to the land hereinafter described in the year 1888 and has been used continuously since that date.

That said water is used for irrigating purposes. That said water is to be converted and conducted by a ditch from said point of diversion in an Easterly direction to be used to irrigate the South West quarter of the South East quarter of Section 11 in Township 18 North of Range 5 West B M, now owned and possessed by locator.

That said water was appropriated and ditch constructed therefor in and during the year 1888, and the same and the water flowing therein have been continuously to irrigate the said described premises by the locator since that date and this location is now made for the purpose of more definitely defining his rights therein, and to comply with the laws as they are now, and in so doing none of the rights in and to said water and ditch heretofore had and enjoyed are waived but all such rights are fully claimed and to relate back to the original appropriation.

Dated and posted this 10th day of October A D 1901

John H Clifton

Locator

Filed at request of John H Clifton at 9 o'clock A M this 18th day of October A D 1901

I F Smith Ex-Officio Recorder

By Frank Smith, Deputy

Fees \$1.00

(Water Rights-2-123-)

State of Idaho } ss
County of Adams

I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office and in my custody.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal on this 1st day of April 19 01

MICHAEL FISK
Clerk of the District Court
and County Recorder

Deputy

176

NOTICE OF LOCATION OF WATER RIGHT.

TO ALL CONCERNED NOTICE IS HEREBY GIVEN:-

First: That the undersigned John Clifton, hereby claims the water flowing and to flow in Crooked River in Washington County, State of Idaho, to the extent of three and three eights cubic feet per second.

That the point of intended diversion of said water is on the Southerly side of said creek and about one hundred yards North of West of the point of the hill that lies between Moonas Creek and Crooked River and where a copy of this notice is posted, that a ditch was constructed from said point of diversion to the land hereinafter described in the year 1888 and has been used continually since that date.

That said water is to be used for irrigating purposes. That said water is to be diverted and conducted by a ditch from said point of diversion in an Easterly direction a distance of one mile and a quarter to be used to irrigate the East half of the South West quarter and the West half of the South East quarter of Section Eleven in Township 18 North of Range Three West Boise Meridian, now owned and possessed by the locator.

That said water was appropriated and ditch constructed therefor in and during the year 1888 and the same and the water flowing therein have been used continuously to irrigate the said described premises, by the locator since that date and this location is now made for the purpose of more definitely defining the rights therein and to comply with the laws as they now are, and in so doing none of the rights in and to said water, and ditch heretofore, had and enjoyed are waived but all such rights are fully claimed and to relate back to the original appropriation.

Dated and posted this 10th day of October A D 1901

John H Clifton Locator

Filed for record at request of John H Clifton at 9 o'clock A M this 18th day of October
A D 1901

I F Smith, Ex-Officio Recorder

Fees \$1.00

By Frank Smith, Deputy

(Water Rights-2-124-)

State of Idaho }
County of Adams } ss

I, the undersigned Recorder and Clerk of the District Court of Adams County, State of Idaho, do hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office and in my custody.
IN WITNESS WHEREOF, I have set my hand and af-

fixed my official seal on this 4th day of Sept
1901

Michael Fisk
Clerk of the District Court
and County Recorder
Frank Smith
Deputy

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 20 1983

CLAIM TO A WATER RIGHT

Department of Water Resources

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Clara Harrington

(Name of Claimant)

Hornet Creek Route, Council, Idaho 83612

(Mailing Address)

(Zip Code)

Telephone No. 253-4896

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use)
- April 1, 1888

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Moonshine (Moonas) Cr. Floodwater tributary to Crooked River

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs, gpd, AFA)	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive) (Mo., Day)	
Quantity	<u>3.46 cfs</u>	Use <u>irrigation</u>	Period of Use From <u>4/1</u>	To <u>8/1</u>
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

- (4)
- 3.46 cfs
- TOTAL QUANTITY USED.

(cfs, gpd, AFA)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

SW 1/4 NW 1/4, Sec. 14 Twp. 18N Rge. 3W B.M. County of Adams

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. diversion dams and ditches

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
18N	3W	14		10	3		15		15	40	30			40					153
		11															20		20

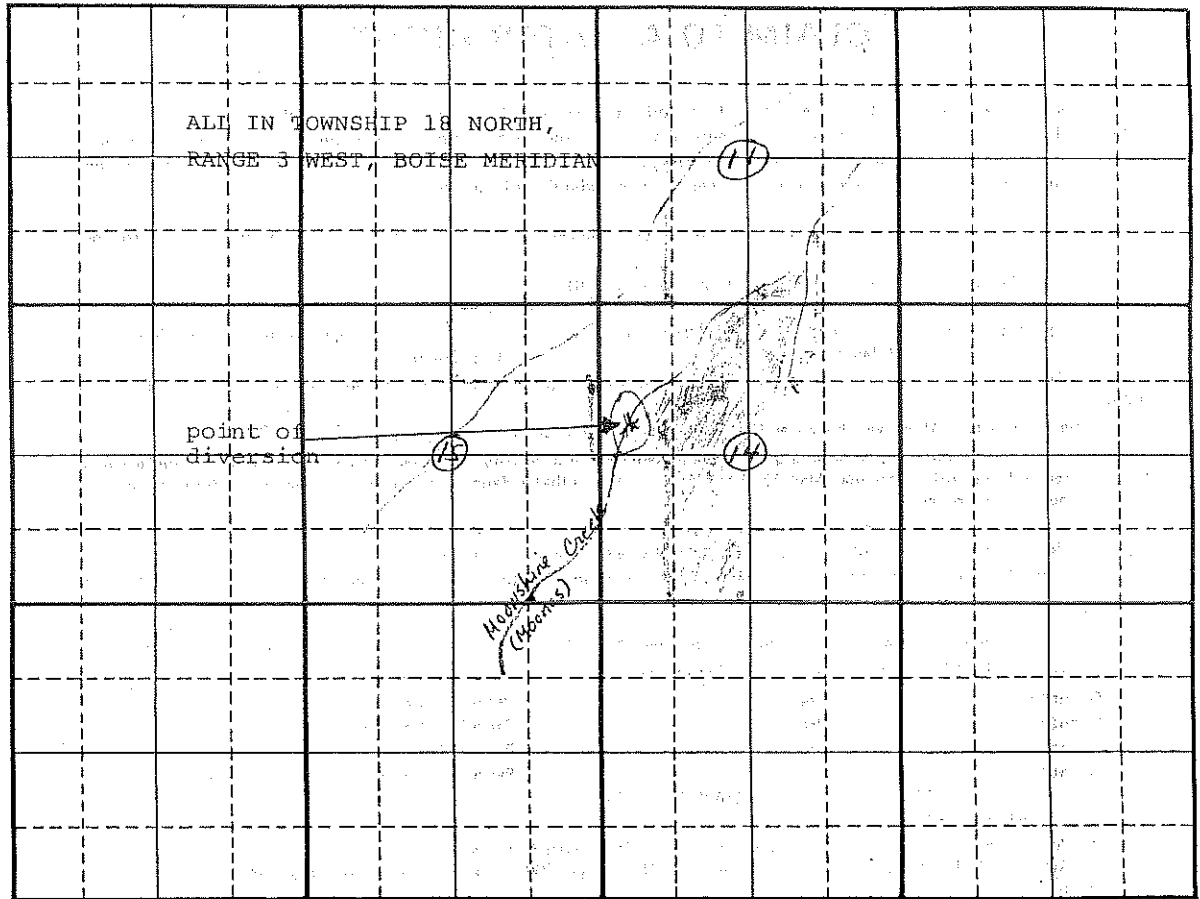
No. of acres 173

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered:

- (7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks _____



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)

County of Adams) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 22 day of March

Charles T. Harrington
(Claimant)

Notary Public
Residing at Indian Valley, Idaho

My commission expires 8/80

FOR DEPARTMENT USE ONLY

Received by KK Date 3/23/79 Exception filed by: _____ Date _____
Prelim. check by LLS Date 3/29/79 \$20.00 fee received by 20.00 Date 4/30/79
Published in _____ Adams County Leader
Dates 4/12 & 4/19/79

Forwarded to claimant by: KK Date 5/2/79

RECEIVED

OCT 26 2005

Department of Water Resources

9-16-5

Dear Sirs

Enclosed is a legal description of
the property at Crooked River
Water right #'s are 69,09103 crooked
river - 4-1-1888

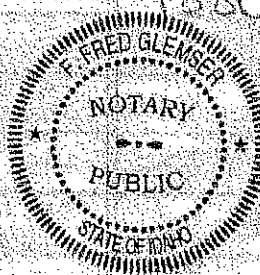
69-09105 Crooked River Flood

69-09104, 4-1-1888 Moonshine

69-04016 - 4-1-1888 Moonshine Flood

This ground came to me
through my family. I remember
hearing my grandparents say that
it had been irrigated in the late

1880's



9/29/2005
Fred Glemser

Yours truly,
V. Richard Harrington
V. Richard Harrington
9/29/05

AFFIDAVIT OF EVEA HARRINGTON POWERS

STATE OF IDAHO)

: ss.

County of Ada)

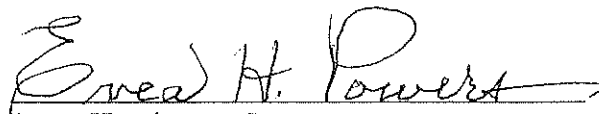
EVEA HARRINGTON POWERS, being first duly sworn upon oath, deposes and says:

1. I am the only daughter of Verna Robert Harrington and Clara Canaan Harrington, his wife.
2. I was born in 1922 to Verna R. and Clara Harrington and shared a home with them until 1947, when I was 25 years old.
3. On November 10, 1946 my father, Verna R. Harrington, and mother, Clara Harrington, bought the Clifton place (E1/2SW1/4 and West 1/2 SE1/4, Section 11, T18 N. R. 3 W) and the Newman place (W1/2N1/4 Section 14 and N1/2NE1/4 Section 15, T18 N. R. 3 W) along with all water rights.
4. We often had discussions of the property and the water rights which revolved around the understanding that the first water right on Crooked River belonged to the Section 11 property where the access lane crosses the property and to the west and north of the small building on the property (160 acres). I understood the Water Right belonged to Section 11. My father started using floodwater from Crooked River on Sections 14 and 15 when he rented the property to his brothers, Kenneth and Johnnie Harrington. First he rented to Kenneth, in early 1950, and later to Johnnie. My father believed he could use the floodwater from Crooked River on Sections 14 and 15 since he owned both places. This would date the use of water on Sections 14 and 15 in the 1950s.

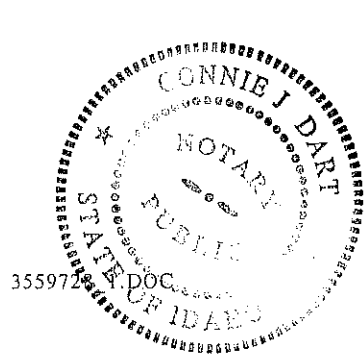
5. Years later we discovered the Clifton water right recording in the Adams County Courthouse indicating the first irrigation of water from Crooked River was on Section 11 dating from 1888.

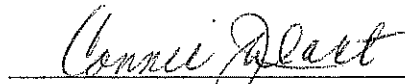
6. My father was born in 1896 and my mother was born in 1901. It would not be possible for either of them to personally have known anything about the use of water on Sections 14 or 15 until about 1912 or later.

Further your Affiant sayeth not.


Evea Harrington Powers

Subscribed and sworn to before me this 25th day of May 2006.




Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 7/30/2010

Idaho 015449

12-8-65
73

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, Verna R. Harrington and Clara T. Harrington, being the owners of a certain tract of land situated and included within the limits of the Payette National Forest, Idaho, have, under the provisions of the Act approved March 20, 1922 (42 Stat. 465), entitled "An Act to consolidate national forest lands", as amended by the Act of February 28, 1925 (43 Stat. 1090), as supplemented by the Act of June 11, 1960 (74 Stat. 205), reconveyed and relinquished the said tract to the United States and have, under the provisions of said Act, selected in lieu thereof the following described tract of land:

Boise Meridian, Idaho.

T. 18 N., R. 3 W.,

Sec. 14, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 40 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Verna R. Harrington and Clara T. Harrington, and to their heirs, the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Verna R. Harrington and Clara T. Harrington, and to their heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in Boise, Idaho
the FIFTEENTH day of JULY in the
year of our Lord one thousand nine hundred and SIXTY-
FIVE and of the Independence of the United States the
one hundred and NINETEENTH.

By

Orval H. Halley
Manager, Idaho Land Office

Patent Number 11-66-0004

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

Notice is hereby given that Clara Harrington

(Name of Claimant)

Hornet Creek Star Route, Council, Idaho 83612

(Mailing Address)

(Zip Code)

Telephone No. 253-4896

(1) Date of priority: (When was the water first applied to a beneficial use) April 1, 1888

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Crooked River _____ tributary to Snake River

(cfs, af) 3.38
3.4

{Domestic, Irrigation, Stock, Etc.}

(Both dates inclusive)
(Mo., Day) , (Mo., Day)

Quantity 3 3/8 cfs Use Irrigation Period of Use From 04-01 To 10-01

Quantity _____ Use _____ Period of Use From _____ To _____

Quantity	Use	Period of Use From	To

Quantity _____	Use _____	Period of Use From _____ To _____
Quantity _____	Use _____	Period of Use From _____ To _____

Quantity 2 3/8 Use TOTAL QUANTITY USED Period of Use From To

(4) 3 3/8 TOTAL QUANTITY USED.

(cfs, af)

(5) A) Point of diversion: (Location of point where water is diverted from its source)

SW ¼ SE ¼, Sec. 10 Twp. 18N Rge. 3W B.M., County of Adams

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.

Diversion dams and ditches

[illegible]

No. of acres 200

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

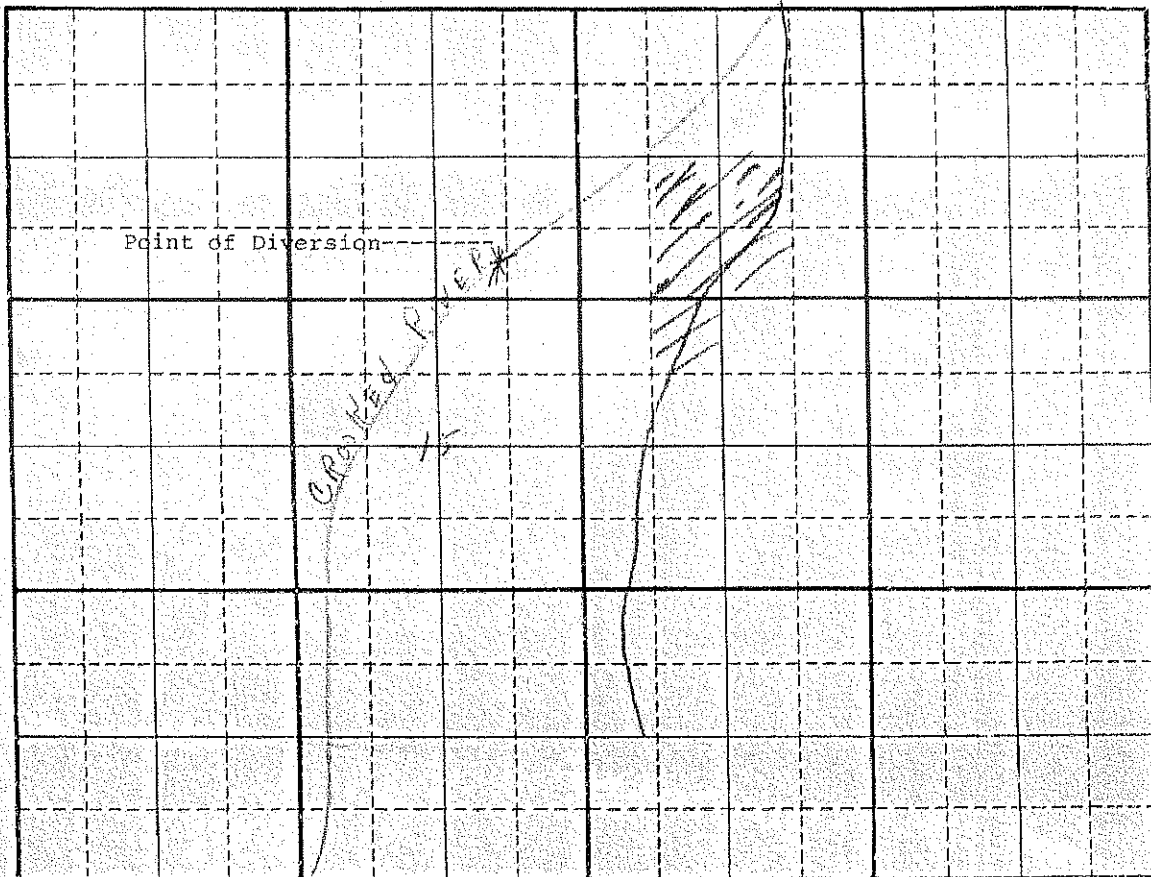
NA

NOTE: Include here the type and number of stock watered:

(7) If you are claiming water as a member of an organization, list name of organization: NA

SECRET

(8) Remarks



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of ADAMS) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 23 day of MAY, 1983.

Charles T. Harrington
(Claimant)

Notary Public
Residing at Indian Valley, ID

My commission expires perpetual

FOR DEPARTMENT USE ONLY

Received by <u>AP</u>	Date <u>5/27/83</u>	Exception filed by:	Forwarded to
Prelim. check by <u>CKS</u>	Date <u>6/2/83</u>		claimant by:
\$30.00 fee received by <u>AP</u>	Date <u>5/27/83 22901</u>		
Published in <u>Shoshone County Record</u>			
Dates <u>W. 30 & 7/7/83</u>			