

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO.(S))

AFFIDAVIT

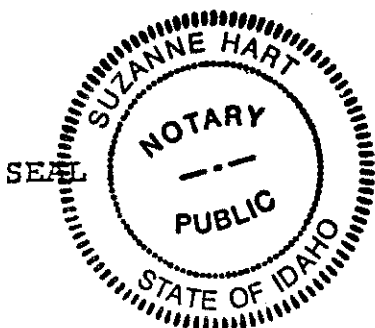
- 67-4470)

State of Idaho)
County of _____)

C. BRUCE KERNER being first duly sworn,
deposes and says: MILTON KERNER, MY FATHER, BEGAN
IRRIGATING THESE ACRES IN THE MID 1960'S.
HE PLACED A PTO DRIVEN PUMP INTO THE WEISER
RIVER TO RUN 1/4 MILE HANDLINES. I REMEMBER
AS A SMALL BOY, SIX OR SEVEN YEARS OLD,
TRYING TO HELP CHANGE THE PIPE EACH MORNING.
I AM NOW 46 YEARS OLD.

Bruce Kerner
(Signature)

Subscribed and sworn to before me this
day 30 of May, 19 2006.



Bruce Kerner Suzanne Hart
(Notary Public)

Residing at Weiser, ID.

My Commission Expires 8-1-06.

MILTON OR LOLA KERNER
1733 WEISER RIVER ROAD 208-549-2795
WEISER, ID 83672

3513

24-666/1230
44

Dec 10 19 96

PAY TO THE
ORDER OF

Weiser Irrigation Dist

\$ 24.00

twenty four dollars

DOLLARS

Security Features
are included.
Check on back.



Pacific One Bank

Weiser 44 (800) 815-7066
34 E. Main • Weiser, ID 83672

FOR

1996 water

Milton Kerner

MP

Clarke American

RECEIVED

MAY 31 2008

DEPARTMENT OF
WATER RESOURCES

310113127 12-09-96

0113

Pacific One Bank
Weiser, ID 83672
12306664
12306664

PAY TO THE ORDER OF
PACIFIC ONE BANK
WEISER, ID 83672
12306664<
FOR DEPOSIT ONLY
WEISER IRRIGATION DISTRICT
0008380252

AGREEMENT

THIS AGREEMENT made and entered into this 16th day of December, 1935, by and between WASHINGTON COUNTY IRRIGATION DISTRICT, a public corporation, first part, WEISER IRRIGATION DISTRICT, a public corporation, second party, L. F. EASTON and MARIE ESTELLE EASTON of LaGrosse, Wisconsin, third parties, and J. W. GALLOWAY and ETHEL B. GALLOWAY, his wife, parties of the fourth part,

WITNESSETH, Whereas, by an agreement in writing among themselves dated April 18, 1923, all the then owners of undivided interests in what is known as the Crane Creek Reservoir in Washington County, Idaho, defined their respective rights therein and provided a method for the operation of said reservoir and the control thereof and the basis upon which funds should be collected for the maintenance and repair thereof, and the distribution of water therefrom, and other matters, and

WHEREAS, since the date of said agreement Washington County Irrigation District, first party hereto, has succeeded to the rights of Sunnyside Irrigation District and Crane Creek Irrigation District, the first parties to said agreement dated April 18, 1923, and has also succeeded to other rights, therein,

WHEREAS, likewise since said date L. F. Easton and Marie Estelle Easton, his wife, third parties hereto, have succeeded to all the rights in said reservoir of Weiser Bench Irrigation Company, the fourth party of said agreement of April 18, 1923, and

WHEREAS, likewise since said date J. W. Galloway and Ethel B. Galloway, his wife, have succeeded to the rights in said reservoir then owned by Southern Idaho Land and Power Company, a corporation, who was the fifth party to said agreement.

So that now at the date hereof all rights, title, and interests in said reservoir belong to the parties hereto as follows, to-wit:

Washington County Irrigation District, first party hereto, "Primary Right",	33,000 acre feet,
Washington County Irrigation District, first party hereto, "Second Right",	3,600 acre feet,
Weiser Irrigation District, second party hereto, "Primary Right",	8,400 acre feet,
L. F. Easton and wife, third parties hereto, "Primary Right",	4,000 acre feet,
L. F. Easton and wife, third parties hereto, "Second Right",	2,700 acre feet,
J. W. Galloway and wife, fourth parties hereto, "Second Right",	300 acre feet,

J. W. Galloway and wife - all the rest and residue of said Crane Creek Reservoir and water rights over and above the capacity and annual storage of 52,000 acre feet, together with the right to develop electric power by means of water stored in said reservoir as set forth in paragraph 9 of said agreement, dated April 18, 1923,

AND WHEREAS, all the parties owning interests in said reservoir as aforesaid now deem it desirable and expedient that said agreement dated April 18, 1923 should in some respects be altered and amended,

NOW, THEREFORE, for a valuable consideration consisting of the mutual

benefits derived herefrom, it is hereby agreed by and among all the parties hereto that certain paragraphs of said agreement shall be and they are hereby amended as hereinafter stated:

1. Paragraph 3 of said agreement shall be and is hereby amended to read as follows:

"It is expressly understood and agreed between all the parties hereto that the Washington County Irrigation District as successor in interest of the Sunny-side Irrigation District and the Crane Creek Irrigation District, own and hold an undivided interest in said Crane Creek Reservoir and said water rights to the extent necessary to enable said Washington County Irrigation District to impound annually in said reservoir and use (subject to the conditions hereinafter set forth) 33,000 acre feet of water for irrigation, domestic and stock use."

2. The first part of paragraph 8 of said agreement, including subdivision (a) thereof, shall be and is hereby amended to read as follows:

"8. The grants and reservations herein contained are likewise made, accepted, and retained as the case may be, subject to the following express conditions to all of which the parties hereto severally covenant and agree to be and remain bound notwithstanding any provision to the contrary contained either in said agreement of February 20, 1921, or said agreement of April 4, 1922, between some of the parties and above referred to:

(a) To the extent of the first 6,600 acre feet capacity in said reservoir over and above the "Primary Right" of 45,400 acre feet as above defined and to the extent of the next 6,600 acre feet of the waters annually impounded in said reservoir over and above the water annually impounded to satisfy said "Primary Right" the parties hereto shall have rights known as "Second Rights" in the following proportions and of priority as follows:

Washington County Irrigation District	3,600 acre feet,
L. F. Easton and wife,	2,700 acre feet,
J. W. Galloway and wife,	300 acre feet.

Said last mentioned right of 300 acre feet shall have priority over the other said "Second Rights."

Said three rights in the amounts given and aggregating 6,600 acre feet shall be and constitute the "Second Right" in said reservoir and the water annually impounded therein. In any year when the amount of water stored in said

reservoir shall amount to 6,600 acre feet over and above said "Primary Right" of 45,400 acre feet above defined, the parties last above mentioned in proportion to their respective interests in said "Second Right" as above set forth, shall have the first and prior right to the use of all waters impounded in said reservoir in excess of that necessary to satisfy said "Primary Right" to the full extent of their respective "Second Rights" as above set forth. In any year when less than 6,600 acre feet of water is impounded in said reservoir over and above the amount necessary to satisfy said "Primary Rights" the said "Second Right" of J. W. Galloway and wife to the extent of 300 acre feet shall be entitled to be satisfied in full before the other "Second Rights" above set forth are supplied with water; and after said 300-acre-feet right is fully satisfied the said other parties owning "Second Rights" in said reservoir shall prorate only with each other and on the basis of their ownership in said "Second Right" in the ownership and use of all the waters impounded in said reservoir for said year over and above the amount necessary to satisfy in full said "Primary Rights," and said "Second Right" of 300 acre feet.

All other rights in said reservoir owned by said J. W. Galloway and wife save and except said "Second Right" of 300 acre feet shall be subject and subordinate to all "Primary Rights" and to all said "Second Rights."

It is expressly understood and agreed between the parties hereto that said second right of J. W. Galloway and wife shall be made inseparably appurtenant to certain lands and no others, which lands not exceeding 200 acres in area shall be designated by said J. W. Galloway and wife, or their successors in interest, in writing by filing the same with the Secretary of the Reservoir Board, it being also expressly understood and agreed that said J. W. Galloway and wife and their successors in interest shall have no right to divert, draw from said reservoir, or use said water until such designation shall have been filed, and in no event shall said water be sold or rented for distribution upon any other lands, the purpose of the above restriction being as follows:

The Washington County Irrigation District by reason of the destruction of a portion of its irrigation canal is not now able to use all its said water rights upon the land within its boundaries, and during certain seasons sells or rents a portion of its waters impounded in said reservoir. It is desired by the parties hereto that said 300-acre-foot right shall not come into competition with the sale or rental of water by said Washington County Irrigation District, and hence the use thereof is restricted to the specific land above described."

3. Subdivision (c) of paragraph 8 of said agreement dated April 18th, 1923 shall be, and it is hereby amended to read as follows:

"The operation of said reservoir and the control of its gates, the observations and computations of the measurements of the waters drawn from the said reservoir by the respective parties, all maintenance, supervision, repair, upkeep, collections, assessments, expenditures, and management of the said reservoir and the waters therein contained from year by year shall be under the control of a board of five persons to be known as the Crane Creek Reservoir Administration

Board, three members of which board shall be elected or appointed by the Washington County Irrigation District, one member of such board by Weiser Irrigation District, and one member of such board by L. F. Easton and wife, or their successor in interest to the "Primary Right" in said reservoir now owned by them.

Provided, however, that no water shall be turned out or diverted from said reservoir except by direction of said Crane Creek Reservoir Administration Board or such officer thereof as said Board shall designate, upon written orders of the parties entitled thereto, specifying the quantity of water and time for which such party desires the same; such order shall be filed with the Secretary of the Reservoir Board and shall be entered in a permanent book, showing the time of filing the order and the quantity of water ordered; and no party shall be charged with any water from said reservoir except as shown by such written orders, or the record thereof, and the water diverted pursuant thereto as measured by Weir No. 1 above mentioned.

Each of the parties interested in said reservoir shall have free access to all measuring devices and all records used and kept in the inflow and outflow of said water and said records shall be preserved in the office of said Board."

4. Subdivision (d) of paragraph 8 of said agreement dated April 18, 1923, shall be, and is hereby amended to read as follows:

"The expense of the maintenance, operation, repair and upkeep of said reservoir and the distribution of water therefrom and any rebuilding, betterment, or improvement of said reservoir determined upon by the parties in interest as necessary or expedient, the expense of keeping and reading measuring devices show the inflow and withdrawals of water and keeping records thereof, and all other incidental expenses incurred in the operation of said system of storage water shall be borne by the said parties to this contract owning interests in said reservoir and water rights each year in proportion to the "Primary Rights" and "Second Rights" in said reservoir and water rights owned by each party; that is to say, such expense shall be apportioned upon a present assumed practicable storage capacity of said reservoir of 52,000 acre feet.

Provided, however, that in case the reservoir dam should be hereafter raised so that the practicable capacity of said reservoir should be increased beyond 52,000 acre feet, then thereafter the additional water stored in said reservoir beyond said 52,000-acre-feet capacity shall bear its proportion of the expense of maintenance, operation and repair of said reservoir on the same basis as the primary and secondary rights therein; and moreover shall bear all special expense incurred in the operation of said reservoir occasioned by the impounding of water therein in excess of 52,000 acre feet.

None of the parties to this agreement shall be liable for its or his proportion of the expense of operation, maintenance and repair thereof after it shall have conveyed its or his interest in said reservoir and water rights to other parties,

Provided, the conveyance whereby such interest is transferred shall specify that thereafter the said successor is to assume its pro rate share of such expenses according to the interest so conveyed and shall be and remain bound by the terms of this agreement.

The Board selected to operate said reservoir and distribute the waters therefrom shall, on or before April 1st of each year, send to each of the parties owning interests in said waters so stored in said reservoir a statement showing a preliminary estimate of the expense of operating, maintaining, and repairing said reservoir for the ensuing year and season with a statement also of the pro rate amount which each party owning such interest is required to pay. Such pro rata amount so required to be paid by each said parties shall be due and payable on or before May 1st, thereafter, or otherwise in such installments during the ensuing season as said board may determine. No party who shall be in default for more than thirty (30) days in the payment of his pro rate share of the said preliminary estimate of the expense of the maintenance of said reservoir and the distribution of water therefrom, or any installment of such, shall be entitled to receive his water until such payment shall be made. On October 1st, each year a final apportionment of the expense of maintenance shall be made by said board between the parties, based upon the amount of practicable storage capacity as aforesaid, owned by each respective owner in said reservoir, and each party shall be charged or credited, as the case may be, with any excess or deficit in the amount it has paid for that season, based upon said preliminary estimate.

No expenditure in any one year in the excess of \$500.00, outside of the usual and ordinary expense of operation and maintenance of said reservoir shall be incurred by said board without consent of both the first party and the second party to this agreement."

Subdivision (e) of said paragraph 8 of said agreement dated April 18, 1923, shall be eliminated and in lieu thereof there shall be substituted as such subdivision (e) of said paragraph 8 the following:

"The said Crane Creek Reservoir Administration Board shall each season when such amount of water is available for storage cause to be stored in said reservoir not less than 52,000 acre feet of water so as to permit the filling of all primary and secondary rights up to the full extent thereof, except under the following conditions:

(1) Unless said board is prevented from so filling said reservoir by order or direction of a competent court or by the order of any state officer authorized by law to make such order.

(2) Unless the storage in any season is restricted to less than 52,000 acre feet upon the written request of Washington County Irrigation District filed with each owner of an interest in said reservoir not later than January 1st of the year in which water is to be stored and used; but in which event, Washington County Irrigation District shall supply out of its own rights in

said reservoir the full quantity of water to which the other co-owners would be entitled if said reservoir were filled to a capacity of 52,000 acre feet.

Except with the concurrence of a majority of the members of said Crane Creek Administration Board, and the consent of both the first and second parties hereto, the unused water remaining in said reservoir at the close of any irrigation season shall not be drained out of said reservoir but shall remain therein as a "carry-over" supply to insure the filling of said reservoir during the next season to the amount of 52,000 acre feet. Said "carry-over" water shall be distributed among the respective owners during the succeeding season the same as other waters impounded in the reservoir during each succeeding season."

On written demand of any member of said Crane Creek Reservoir Administration Board, filed with the secretary of said board, each member shall forthwith furnish and file with the secretary, a surety bond running to the owners of the reservoir in such sum, not exceeding \$3,000.00 as may be designated in said written demand; and after such written demand is so filed no member of said board shall be a qualified member thereof or entitled to vote at a meeting or participate in the proceedings until such bond is filed. Said bond shall be conditioned upon the faithful performance by the member furnishing the same of his duties as a member of said board. After bonds have been so furnished the board may by resolution adopted by its full membership (but not otherwise) remove the requirement and necessity of its members furnishing bonds until such time as another written demand for bonds is filed by some member of said board.

5. Except as hereby expressly modified, the said agreement dated April 18, 1923, shall be and remain in full force and effect and binding upon the parties thereto and their successors in interest; it is understood and agreed however, that some of the parties of said former agreement no longer have any interest in said reservoir or the waters thereof, and that the provisions thereof applicable to such original owners and their interests are now applicable to their successors in such interests.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written, each of the corporate parties acting by their respective officers thereunto duly authorized by their respective boards of directors.

ATTEST:

W. H. Muir
Secretary.

WASHINGTON COUNTY IRRIGATION DISTRICT

By E. D. Ford
President.

ATTEST:

Oliver J. Smith
Secretary.

WEISER IRRIGATION DISTRICT

By John J. McCrea
President.

L. F. Easton
Marie Estelle Easton

J. W. Galloway
Ethel B. Galloway

ACKNOWLEDGED: December 20th, 1935, by E. D. Ford, before Geo
Donart, Notary Public, Weiser, Idaho:

ACKNOWLEDGED: December 18th, 1935, by John J. McCrea, before
E. R. Coulter, Notary Public, Weiser, Idaho:

ACKNOWLEDGED: December 22nd, 1935, by J. W. Galloway and
Ethel B. Galloway, his wife, before E. B. Smith,
Notary Public, Boise, Idaho:

ACKNOWLEDGED: December 31st, 1935, by L. F. Easton and Marie
Estelle Easton, his wife, before H. K. Holley,
Notary Public, LaCrosse County, Wisconsin: