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Attorneys for Defendants-Appellants
Ray Gordon and Mary Jean Gordon

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TETON

STEVEN M. CROW and CYNTHIA CROW,)
husband and wife,)

Plaintiffs-Respondents,)

vs.)

RONALD CARLSON, Watermaster of)
Water District No. 1 of the)
State of Idaho,)

Defendant-Respondent,)

and)

RAY GORDON and MARY JEAN GORDON,)
husband and wife, and any other)
unknown parties who claim any)
interest in water rights which)
would be adverse to a grant of)
120 inches of Fox Creek with a)
priority date of 1890 for use in)
the SW 1/4 of Section 27,)
Township 4 North, Range 45 East,)
Boise Meridian,)

Defendants-Appellants.)
-----)

Case No. 1856
(Supreme Court No. 14946)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
JUDGMENT AND DECREE
QUIETING TITLE TO
WATER RIGHTS

DATE OF HEARING: 1985
COUNTY OF TETON

WHEREFORE, CERTIFY that the above and foregoing is a true, first and correct copy of the original entered on file in my office.

WITNESSED my hand and seal this 19th day of

By: W. J. [Signature]
Ex-Officio Auditor & Recorder
Clerk of the District Court

Deputy Clerk

1985

FILED

AT 30 MINUTES TO 2 P.
OCT 16, 1985
By: Wayne Schmitt
W. J. Hill
DEPUTY

This cause came on for hearing this 9th day of May, 1985, in chambers of the above-entitled court, at Rexburg, Idaho, before the Honorable Grant L. Young, District Judge.

Lynn Hossner of St. Anthony, Idaho, appeared on behalf of the Plaintiffs, Steven M. Crow and Cynthia Crow, husband and wife. Ray W. Rigby of Rigby, Thatcher, Andrus, Rigby & Perkes, Chartered, of Rexburg, Idaho, appeared in behalf of the Defendants Ray Gordon and Mary Jean Gordon, husband and wife.

Motion was made by Mr. Hossner for a continuance of the hearing on this matter, which was denied by the court. Oral arguments having been given by the respective attorneys, and the court having examined and being familiar with the documents on file in this matter, and being fully informed, now finds, concludes, adjudges and decrees as follows:

FINDINGS OF FACT

The court finds as follows:

1. That this matter was tried before this court in Teton County, Idaho, with Honorable Willard C. Burton, District Judge, presiding, and a decision rendered in favor of the Plaintiffs, with neither the District Watermaster nor the State Department of Water Resources participating therein, having advised the court that they recognized the existence of the water right and would be bound by the decree of the court as to the ownership thereof.

2. That said decision was appealed to the Supreme Court of the State of Idaho by the Defendants Ray Gordon and Mary Jean Gordon.

3. That the Supreme Court of the State of Idaho announced its opinion and filed same in this cause on October 31, 1984, which opinion has now become final.

4. That the Supreme Court held that "the trial court made no factual finding or legal conclusion as to what proportions of the Byrne land described in the 1910 decree are now owned by each of the parties to this litigation. Hence, we remand to the trial court for apportionment of the water right decreed in the 1910 Rexburg decree. The trial court is instructed to divide the water between the Crow and Gordon properties, in proportion to the share that each represents of the property described as belonging to Byrne in the Rexburg decree." The case was, therefore, reversed and remanded, with costs to Appellants.

5. On November 6, 1984, the Defendants Ray Gordon and Mary Jean Gordon, through their attorney, filed with the Supreme Court a "Memorandum of Costs and Disbursements" for the sum of \$1,247.85, and no objections were filed thereto.

6. On November 23, 1984, the Supreme Court of the State of Idaho, by its clerk, Frederick C. Lyon, issued its "Remittitur" in the above-entitled matter, wherein the Supreme Court ordered "that the District Court shall forthwith comply with the directive of the opinion. . .," and ordered "that

costs in the amount of \$1,247.85 be allowed to Appellants. No attorney fees on appeal."

7. Pursuant to said Remittitur, and said opinion of the Supreme Court, this court further finds:

(a) That Plaintiffs, Steven M. Crow and Cynthia Crow, husband and wife, were, at the time of filing the complaint herein, and are the owners and entitled to possession of the following described property located in Teton County, Idaho, to-wit:

The Southwest Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian.

(b) That the Defendants, Ray Gordon and Mary Jean Gordon, husband and wife, were, at the time of filing the complaint herein, and are the owners and entitled to possession of the following described property located in Teton County, Idaho, to-wit:

The South Half Southwest Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, and also the South Half Southeast Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian.

(c) That the court, in the case of Rexburg Irrigation Company, et al. versus Teton Irrigation Company, et al., by decree dated December 16, 1910, decreed to the said Michael Byrne 120 inches of the waters of Fox Creek, with a priority date of June 1, 1890, for use upon the Southwest Quarter of Section 27 and the South Half Southwest Quarter of Section 26, all in Township 4 North, Range 45 East, Boise Meridian, containing 240 acres.

(d) That the point of diversion for said 120 inches of Fox Creek water is located at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(e) That the source of said water is Fox Creek, a tributary of Teton River.

(f) That the nature of the use of said water is for irrigation.

(g) That the place of use of said water is 80 inches thereof for said Southwest Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho, and 40 inches thereof for the said South Half Southwest Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, and which has also been used by the Defendants Ray Gordon and Mary Jean Gordon upon the South Half Southeast Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

CONCLUSIONS OF LAW

As Conclusions of Law, the court concludes that:

(a) The following water rights should be quieted in the Plaintiffs Steven M. Crow and Cynthia Crow, husband and wife:

(i) Priority date: June 1, 1890

(ii) Source: Fox Creek, a tributary of Teton River, in Teton County, Idaho.

(iii) Amount: 80 miners inches

(iv) Point of Diversion: On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(v) Place of Use: The Southwest Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(vi) Nature of Use: Irrigation.

(b) That the following water rights should be quieted in Defendants Ray Gordon and Mary Jean Gordon, husband and wife:

(i) Priority date: June 1, 1890

(ii) Source: Fox Creek, a tributary of Teton River, in Teton County, Idaho.

(iii) Amount: 40 miners inches

(iv) Point of Diversion: On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(v) Place of Use: The South Half Southwest Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, and also upon the South Half Southeast Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, all in Teton County, Idaho.

(vi) Nature of Use: Irrigation.

(c) That the court should enter its decree decreeing said water rights in accordance with the conclusions of law stated above and award judgment against Plaintiffs Steven M. Crow and Cynthia Crow, husband and wife, to Defendants Ray Gordon and Mary Jean Gordon for their costs in this matter in the sum of \$1,247.85.

(d) That a certified copy of said decree be recorded in the records of Teton County, Idaho, and another certified copy of said decree be forwarded to the State of Idaho Department of Water Resources for filing within that Department's records.

JUDGMENT AND DECREE

By reason of the facts found by the court, and the Conclusions of Law based upon said facts, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

(a) The following water rights are hereby quieted in the Plaintiffs Steven M. Crow and Cynthia Crow, husband and wife:

(i) Priority date: June 1, 1890

(ii) Source: Fox Creek, a tributary of Teton^{sp} River, in Teton County, Idaho.

(iii) Amount: 80 miners inches

(iv) Point of Diversion: On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Sec-

tion 26, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(v) Place of Use: The Southwest Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(vi) Nature of Use: Irrigation.

(b) That the following water rights are hereby quieted in Defendants Ray Gordon and Mary Jean Gordon, husband and wife:

(i) Priority date: June 1, 1890

(ii) Source: Fox Creek, a tributary of Teton River, in Teton County, Idaho.

(iii) Amount: 40 miners inches

(iv) Point of Diversion: On Fox Creek, at a point approximately 800 feet East and 50 feet South of the Northwest corner of the Southeast Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, in Teton County, Idaho.

(v) Place of Use: The South Half Southwest Quarter of Section 26, Township 4 North, Range 45 East, Boise Meridian, and also upon the South Half Southeast Quarter of Section 27, Township 4 North, Range 45 East, Boise Meridian, all in Teton County, Idaho.

(vi) Nature of Use: Irrigation.

(c) The Defendants Ray Gordon and Mary Jean Gordon be, and they are hereby awarded judgment in the sum of

FINDINGS OF FACT, CONCLUSION OF LAW, JUDGMENT AND DECREE

\$1,247.85 against the Plaintiffs, Steven M. Crow and Cynthia Crow, husband and wife.

(d) That a certified copy of said decree be recorded in the records of Teton County, Idaho, and another certified copy of said decree be forwarded to the State of Idaho Department of Water Resources for filing within that Department's records.

DATED This 9th day of May, 1985.

Grant L. Young
Grant L. Young
District Judge

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8
9

10 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
11 STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

12 STEVEN M. CROW and CYNTHIA CROW,)
13 Husband and Wife,)

14 Plaintiffs,)

15 vs.)

16 RAY GORDON and MARY JEAN GORDON,)
17 Husband and Wife, and RONALD)
18 CARLSON, Watermaster of Water)
19 District No. 1 of the State of)
20 Idaho, et al,)

21 Defendants.)
22 -----
23

Case No. 1856

ACKNOWLEDGMENT OF SERVICE

24 I, RONALD CARLSON, Watermaster of District No. 1 of the State of
25 Idaho, the Defendants named in the action of RAY GORDON and MARY JEAN GORDON,
26 Husband and Wife, and RONALD CARLSON, do hereby admit to service of summons
27 in said action, and I hereby accept of such service, of summons in said action.
28 I acknowledge receipt of copies of said summons and complaint, all in the
29 above entitled case.

30 DATED this 9th day of October, 1980.

31 *Ronald D. Carlson*
32 Watermaster of Water District
No. 1 of the State of Idaho

SUBSCRIBED and SWORN to before me this 9th day of October, 1980.

33 *Callen A. Hays*
NOTARY PUBLIC for Idaho
Residing at:
Comm. Expires:

ACKNOWLEDGMENT OF SERVICE

RECEIVED

OCT 8 1980

Department of Water Resources
Eastern District Office

*Re: Hastings
Steven M. Crow and
Cynthia Crow
vs.
Ronald Carlson, Water
Master of Water District No. 1
of the State of Idaho, and Ray
Gordon and Mary Jean
Gordon, husband and wife,
and any unknown parties who
claim any interest in water rights
which would be adverse to a
grant of 120 inches of Fox Creek
with a priority date of 1890 for
use on the SW 1/4 of Section 27,
Township 4 North, Range 45
East, Boise Meridian.*

At a certain time that said
attention was given to the
publication of a newspaper
in the county of Teton, Idaho,
and that said
newspaper was published at
Driggs, Idaho, having a
general circulation in said county,
and that a newspaper has been
published in said county for more
than five consecutive weeks prior to
the date of the attachment of
the present complaint to public
notice in the county of Teton,
Idaho.

*Steven M. Crow
Cynthia Crow*

At a certain time that said
attention was given to the
publication of a newspaper
in the county of Teton, Idaho,
and that said
newspaper was published at
Driggs, Idaho, having a
general circulation in said county,
and that a newspaper has been
published in said county for more
than five consecutive weeks prior to
the date of the attachment of
the present complaint to public
notice in the county of Teton,
Idaho.

And the court further says that at
the time herein mentioned said
newspaper was made up of at least
eight pages of at least five columns
each, printed from type matter of
date of publication of the present
complaint to public notice in the
county of Teton, Idaho.

*Steven M. Crow
Cynthia Crow*

Subscribed in my presence and
signature before me this 11th day of
October, 1980.
(SEAL) Notary Public for the state
of Idaho, residence and postoffice
addressed

*Steven M. Crow
Cynthia Crow*

LYNN HOSSNER

Attorney at Law

Courthouse

St. Anthony, Idaho 89445

Telephone: (208) 624-3782

ANOTHER SUMMONS

in the district court of the seventh
judicial district of the state of
Idaho, in and for the county of
Teton

CASE NO.

ANOTHER SUMMONS

STEVEN M. CROW, and
CYNTHIA CROW,
husband and wife,

Plaintiffs,

vs.

RONALD CARLSON, Water-
master of Water District No. 1
of the State of Idaho, and RAY
GORDON and MARY JEAN
GORDON, husband and wife,
and any unknown parties who
claim any interest in water rights
which would be adverse to a
grant of 120 inches of Fox Creek
with a priority date of 1890 for
use on the SW 1/4 of Section 27,
Township 4 North, Range 45
East, Boise Meridian.

Defendants.

THE STATE OF IDAHO
SENDS GREETINGS TO: The a-
bove named Defendants:

You are hereby notified that a
Complaint has been filed against
you in the District Court of the
Seventh Judicial District of the
State of Idaho, in and for the
County of Teton, by the above

named Plaintiffs, and you are
hereby directed to appear and
plead to the said Complaint within
twenty (20) days of the service of
this Summons.

THIS IS AN ACTION TO
QUIET TITLE TO WATER
AND YOU ARE FURTHER
NOTIFIED that unless you so
appear and plead to said Com-
plaint within the time herein
specified, the Plaintiffs will take
judgement against you as prayed

for in said Complaint.

WITNESS my hand and the seal
of said District Court.

Dwight C. Stone
Clerk of the District Court
By: Bonnie Reece
Deputy Clerk

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1980.

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7 DON A. OLOWINSKI
8 Deputy Attorney General
9 Chief, Natural Resources Division

10 JOSEPHINE P. BEEMAN
11 Deputy Attorney General
12 Department of Water Resources
13 Statehouse
14 Boise, Idaho 83720
15 Telephone: (208) 334-4448

16 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF

17 THE STATE OF IDAHO IN AND FOR THE COUNTY OF TETON

18 STEVEN M. CROW and CYNTHIA CROW,)
19 husband and wife,)
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32)

Case No. _____

Plaintiffs,

vs.

NOTICE OF APPEARANCE

RONALD CARLSON, Watermaster of
Water District No. 1 of the
State of Idaho, and RAY GORDON
and MARY JEAN GORDON, husband
and wife, and any unknown parties
who claim any interest in water
rights which would be adverse to
a grant of 120 inches of Fox Creek
with a priority date of 1890 for
use on the SW 1/4 of Section 27,
Township 4 North, Range 45 East,
Boise Meridian,

Defendants.

TO: CLERK OF THE ABOVE-ENTITLED COURT; AND TO LYNN HOSSNER,
 Attorney for Plaintiffs

YOU ARE HEREBY NOTIFIED that JOSEPHINE P. BEEMAN, Deputy
Attorney General for the State of Idaho, hereby enters an
appearance as attorney of record for and on behalf of RONALD
CARLSON, Watermaster of Water District No. 1 in the above-
captioned action.

DATED this 10th day of October, 1980.

Josephine P. Beeman
JOSEPHINE P. BEEMAN
Deputy Attorney General
Department of Water Resources