

LYNN HOSSNER
Attorney at Law
109 North Second West
St. Anthony, Idaho 83445
Telephone: (208) 624-3782

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,)

Case No. 1856

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-Respondents.)

NOTICE IS HEREBY GIVEN, that hearing on defendants Ray
Gordon and Mary Jean Gordon's affidavit and motion be heard
before this court on Monday, the 28th day of January, 1985, at
the hour of 10:00 a.m. at chambers of this court in Rexburg,
Madison County, Idaho.

Dated this 27th day of December, 1984.

Lynn Hossner
LYNN HOSSNER
Attorney for Plaintiffs-
Respondents

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of December, 1984,
I mailed a true and correct copy of the foregoing, postage
prepaid, addressed as follows:

Ray W. Rigby
Attorney at Law
P. O. Box 250
Rexburg, Idaho 83440

Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83401


Donna Carter
Secretary

LYNN HOSSNER
Attorney at Law
109 North Second West
St. Anthony, Idaho 83445
Telephone: (208) 624-3782

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,)

Case No. 1856

Plaintiffs-Respondents,)

STIPULATION FOR
CONTINUANCE OF
HEARING

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-Respondents.)

Come now Lynn Hossner, attorney for Steven M. Crow and
Cynthia Crow, and Ray Rigby, attorney for Ray Gordon and Mary
Jean Gordon, and hereby stipulate and agree that the hearing
heretofore scheduled for the 31st day of December, 1984 may be
continued to a later date to be determined by the court.

Dated this 27th day of December, 1984.

Ray Rigby
RAY RIGBY
Attorney for Defendant-
Appellants

Lynn Hossner
LYNN HOSSNER
Attorney for Plaintiffs-
Respondents

Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Defendants-Appellants
Ray Gordon and Mary Jean Gordon

RECEIVED

DEC 13 1984

Department of Water Resources
Eastern District Office

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)
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of Idaho,)

Defendant-Respondent,)

and)

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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 us 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)

MOTION FOR PROCEEDINGS
PURSUANT TO REMITTITUR
OF SUPREME COURT

The Supreme Court, having announced and filed its opinion in this cause on October 31, 1984, remanding the case to the District Court for further proceedings pursuant to the directive of the opinion, and the Defendants Ray Gordon and Mary Jean Gordon, through their attorney, Ray W. Rigby, having filed an affidavit herein, now move the court for proceedings consistent with the Remittitur of the Supreme Court dated November 23, 1984, to-wit:

To make findings of fact and legal conclusions as to what proportions of the Byrne land described in the 1910 decree are now owned by each of the parties to this litigation, and to apportion the water right decreed in the 1910 Rexburg decree in proportion to the share that each represents of the property described as belonging to Byrne in the said Rexburg decree, and for judgment against the Plaintiffs and in behalf of the Defendants Ray Gordon and Mary Jean Gordon for their costs in the sum of \$1,247.85.

DATED at Rexburg, Idaho, this 12th day of December, 1984.


Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES

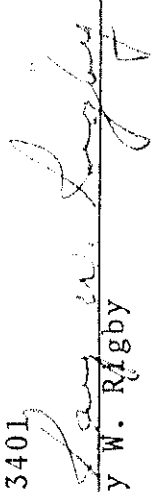
Attorneys for Defendants
Ray Gordon and Mary Jean Gordon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12th day of December, 1984, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Lynn Hossner
Attorney at Law
109 North Second West
St. Anthony, ID 83445

Idaho Department of Water Resources
150 Shoup Avenue - Suite 15
Idaho Falls, ID 83401


Ray W. Rigby

MOTION - Page 3

Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Defendants-Appellants
Ray Gordon and Mary Jean Gordon

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DEC 13 1984
Department of Water Resources
Eastern District Office

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

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husband and wife,)

Plaintiffs-Respondents,)

vs.)

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Water District No. 1 of the State)
of Idaho,)

Defendant-Respondent,)

and)

RAY GORDON and MARY JEAN GORDON,)
husband and wife, and any other)
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120 inches of Fox Creek with a)
priority date of 1890 for us 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)

AFFIDAVIT

STATE OF IDAHO,)
 ss.
County of Madison.)

RAY W. RIGBY, being first duly sworn, deposes and says:
1. That he is the attorney for the Defendants Ray Gordon and Mary Jean Gordon in the above-entitled matter.

2. 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.

3. 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.

4. On November 6, 1984, your affiant, in behalf of the Defendants Ray Gordon and Mary Jean Gordon, (Appellants in said matter), filed a "Memorandum of Costs and Disbursements" for the sum of \$1,247.85.

5. 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."

6. That the trial court should make the following "Findings of Fact":

(a) That Plaintiffs, Steven M. Crow and Cynthia Crow, husband and wife, were, at the time of filing the complaint herein, 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, 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.

7. That the court should make the following "Conclusions of Law":

(a) That 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 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 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.

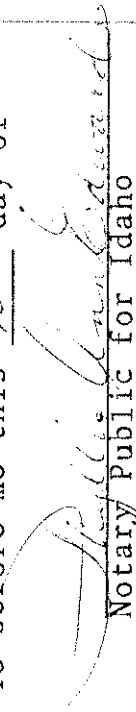
(vi) Nature of Use: Irrigation.

8. 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.

9. 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.


Ray W. Rigby

SUBSCRIBED AND SWORN To before me this 12th day of December, 1984.

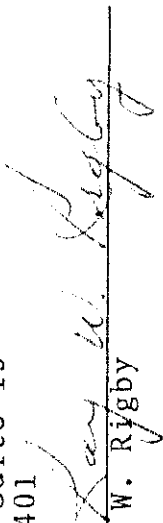

Notary Public for Idaho
Residing at: Rexburg, Idaho
My Commission is for Life

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12th day of December, 1984, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Lynn Hossner
Attorney at Law
109 North Second West
St. Anthony, ID 83445

Idaho Department of Water Resources
150 Shoup Avenue - Suite 15
Idaho Falls, ID 83401


Ray W. Rigby

Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Defendants-Appellants
Ray Gordon and Mary Jean Gordon

RECEIVED

DEC 13 1984

Department of Water Resources
Eastern District Office

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)
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Township 4 North, Range 45 East,)
Boise Meridian,)

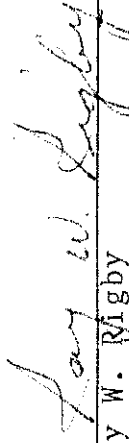
Defendants-Appellants.)

Case No. 1856
(Supreme Court No. 14946)

NOTICE OF HEARING ON
MOTION FOR PROCEEDINGS
PURSUANT TO REMITTITUR
OF SUPREME COURT

NOTICE IS HEREBY GIVEN, That hearing on Defendants Ray Gordon and Mary Jean Gordon's affidavit and motion be heard before this court on Monday, the 31st day of December, 1984, at the hour of 11:00 o'clock a.m., at chambers of this court in Rexburg, Madison County, Idaho.

DATED This 11th day of December, 1984.


Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & PERKES

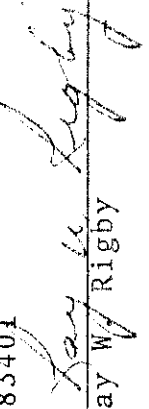
Attorneys for Defendants
Ray Gordon and Mary Jean Gordon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11th day of December, 1984, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Lynn Hossner
Attorney at Law
109 North Second West
St. Anthony, ID 83445

Idaho Department of Water Resources
150 Shoup Avenue - Suite 15
Idaho Falls, ID 83401


Ray W. Rigby

Ray W. Rigby
of RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Defendants
Ray Gordon and Mary Ann Gordon

FEB 7 1983

Department of Water Resources
Eastern District Office

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,)

vs.)

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 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 on the)
SW 1/4 of Section 27, Township)
4 North, Range 45 East, Boise)
Meridian,)

Defendants.)

Case No. 1856

NOTICE OF APPEAL

TO:

The above named Respondents Steven M. Crow and Cynthia
Crow, and their attorney, Lynn Hossner, 190 North
Second West, St. Anthony, Idaho 83445; and Ronald
Carlson, Watermaster of Water District No. 1, of the
State of Idaho, and The Attorney General of the State
of Idaho, Attorney for said Watermaster,

and

To the Clerk of the Above Entitled Court,

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants Ray Gordon and Mary
Jean Gordon appeal against the above named respondents, Steven
M. Crow and Cynthia Crow, and the Idaho Department of Water
Resources, from the quiet title judgment entered in the above
entitled action on the 27th day of December, 1982, Honorable
Willard C. Burton, District Judge, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2), I.A.R.

3. (a) Is a reporter's transcript requested? Yes

(b) The appellants request the preparation of the following portions of the reporter's transcript: The entire reporter's standard transcript as defined in Rule 25(a), including the transcript of any post-trial proceedings.

4. The appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 23, I.A.R.: All post-trial motion, all briefs of the parties, and the Memorandum Opinion of the District Court.

4. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

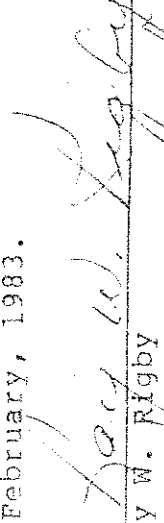
(b) That the reporter or the clerk of the district court has been paid the estimated fee for preparation of the transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho, pursuant to Section 67-1401(1), Idaho Code.

DATED This 3rd day of February, 1983.


Ray W. Rigby
OF RIGBY, THATCHER, ANDRUS
& BARTON, Chartered
Attorneys for Defendants
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

MAGISTRATES DIVISION

STEVEN M. CROW and CYNTHIA CROW,) CASE NO. 1856
)
Plaintiff,)
)
vs.) SUMMONS
Ray Gordon and Mary Jean Gordon, husband)
and wife, and Ronald Carlson, Watermaster)
of Water District No. 1 of the State of Idaho.)
Defendant.)

THE STATE OF IDAHO SENDS "GREETINGS" TO: RAY GORDON and MARY JEAN GORDON

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

AND, YOU ARE FURTHER NOTIFIED That unless you so appear and plead to said Complaint within the time herein specified, the Plaintiff will take judgment against you as prayed for in said Complaint.

WITNESS my hand and the seal of said District Court this 10th
day of September, 19 80.

Dwight C. Stone
CLERK

Bonnie Reese
DEPUTY

LYNN HOSSNER
ATTORNEY FOR Plaintiff
Residing at: Ashton, Idaho