

RECEIVED

OCT 02 2006

DEPARTMENT OF
WATER RESOURCES

Sept. 26, 2006

Idaho Department of Water Resources,

Enclosed is proof that James M. Shoup purchased our land through "An act making further provision for the sale of public lands" of 1820.

Through the Desert Land Act (Certificate #339) he was required to irrigate that land.

Also enclosed are affidavits from Boise H. Ellis and Burl Hamilton proving that this land was irrigated.

Instrument 29995 proving Shoup ought this land.

We are requesting a priority date of 4/1/ 1898.

Michael A. Noonan

Betty J. Noonan

Michael A. Noonan
Betty J. Noonan

There are six water users on this ditch:

David R. & Jeanne Ellis

73-4089 & ~~73-4090~~

Michael A. & Betty J. Noonan

73-4040

Patricia Mc Caffrey

73-11972 & 73-4012

Preston Dixon

73-11971

Robert & Virginia Chewning

73-4080

Bowles

73-81

08/31/2006

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: September 29, 2006

Water right number: 73-4040

BETTY J NOONAN
7 BURSTEDT LN
ELLIS ID 83235
Telephone Number: (208) 876-4073

MICHAEL A NOONAN
7 BURSTEDT LN
ELLIS ID 83235

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Priority date, CFS

2. Describe the changes you wish to make in the proposed recommendation:

*1898 priority date
2" per acre*

3. Give a brief explanation as to why you disagree with these portions:

*Affidavits from Burl Hammetton & Boise Ellis
Instrument 29995 Desert Lands Cert. # 339,1830
These documents support our request for an
1898 priority date.*

____ I AGREE with this proposed recommendation: no changes need to be made.

DATE: _____

SIGNATURE: _____

Please print your name: _____

Betty Noonan, Michael A. Noonan

Betty J. Noonan, Michael A. Noonan

IDWR Regional Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

*We are requesting a reply to this
notice of error.*

STATE OF IDAHO)
) ss.
County of Custer)

152-50
AFFIDAVIT RE: WATER RIGHTS PRIORITY

BOISE N. ELLIS, being first duly sworn, on his oath does depose and say:

That I am 89 years old, having been born October 30, 1888, on the old Ellis Ranch in the Pahsimeroi Valley, Custer County, where I reside at this time:

That my father, George A. Ellis, Sr., owned the North 1/2, approximately, known as the "Ellis Ranch" and owned in partnership with James M. Shoupe (Jim Shoupe) the remainder or South 1/2, approximately, known as the "Jim Shoupe Ranch" of the ranch property described in the attached Exhibit A which is a part of this Affidavit.

That the described ranch property was occupied by Jim Shoupe and my father sometime after 1863, the year my father came to Salmon, Idaho as a 6 year old boy but several years before Government Patents were issued for the property: that I recall my father stating the lands were occupied before he was old enough to file an entry with the government and that it was after occupying these lands for production of cattle and horse feed that he married my mother whose name was Mary Ellis, after marriage; that he also stated to me he had to give a man named Dan Hyer, a squatter on the Ellis Ranch before Patent was issued, a few head of stock to move his horses and camp off the land because he was interfering with the irrigation, raising of crops and pasturing of cattle and horses; and that it was the hard winter of 1889 when he lost over 1000 head of cattle;

UNOFFICIAL
DEC 14 1992

That as a boy under six years old, I saw tall, heavy willows growing along the old Weller-Shoupe-Ellis ditch and other lower ditches as a result of irrigation water flowing each season for delivery to the ranches from the Pahsimeroi river; that these willows were tall enough to completely conceal a rider named Lee Watson as I watched him riding a half-broken horse up the ditch bottom;

That based on my own observations and the conversations had over a period of many years with my father, George A. Ellis, Sr., I state as a fact that large amounts of water were diverted from the Pahsimeroi River through the Weller-Shoupe-Ellis ditch and other ditches headed below to irrigate the Ellis and Jim Shoupe ranches herein described; and, that such waters were used with never a shortage from the late 1870's, without interruption, to this date; and

That large amounts of water are necessary in order to grow wild grass pasture and grass hay for the Ellis and Jim Shoupe ranches for the reason that they are bottom-type ground which requires large amounts of water on a regular basis to keep from burning.

Dated this 4th day of April, 1977.



George A. Ellis, Sr.
George A. Ellis, Sr.

SUBSCRIBED and SWORN to before me this 4th day of April, 1977.

[Signature]
Notary Public for Idaho
Residing at Challis, therein.
My commission expires:

OFFICIAL
DEC 14 1992

September 25, 2006

I, Burl L. Hamilton, of Challis, Idaho, 208-879-2291, do now state that having been born on March 14, 1931 in the Pahsimeroi Valley, Idaho and having spent many years in that valley until my family sold our ranch in 1975 and are now and have been a resident of Challis, Idaho since that time.

That as a child up to the age of 7 years old and before the purchase of our ranch my father and mother rented a ranch now owned by Mr. Giorgi. We lived in a house in the same spot as Mr. Giorgi's house. On the premises of this ranch is located the head of the ditch known now as the Burns ditch (P-6 fish and game fish screen).

This ditch is used to convey irrigation water to the properties on the east side of the Pahsimeroi River to the south and north of Burstedt Lane. These properties were known to me as a child as part of the Ellis ranch which was located on both sides of the Pahsimeroi all the way down to the Salmon River.

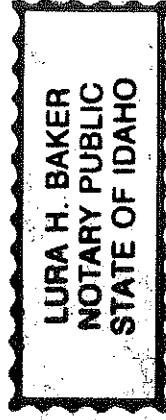
I recall that as a child approximately 6 years old crossing the above named ditch on a foot bridge and being knocked off the bridge by a dog and falling into the water and being rescued by my father. I also recall my uncles coming to visit my father and mother and visiting about the "old timers" constructing this ditch before the turn of the century using teams, plows and slips and what a difficult task this was to complete.

September 25, 2006

Burl L. Hamilton

Burl L. Hamilton

Sworn before me Laura H. Baker a Notary Public. Residing at
Challis, Idaho. My commission expires 12-12-09.
Challis Dated September 25, 2006.



United State Code

TITLE 43 - PUBLIC LANDS

CHAPTER 9 - DESERT-LAND ENTRIES

U.S. Code as of: 01/26/1998

Sec. 321. Entry right generally; extent of right to appropriate waters

It shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such," and upon payment of 25 cents per acre - to file a declaration under oath with the officer designated by the Secretary of the Interior of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of three years thereafter: provided, however, that the right to the use of water by the person so conducting the same, on or to any tract of desert land of three hundred and twenty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said one-half section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the officer designated by the Secretary of the Interior of the reclamation of said tract of land in the manner aforesaid, and upon the payment to such officer of the additional sum of \$1 per acre for a tract of land not exceeding three hundred and twenty acres to any one person, a patent for the same shall be issued to him. Except as provided in section 3 of the Act of June 16, 1955, as amended, no person may make more than one entry under sections 321 to 323, 325, and 327 to 329 of this title. However, in that entry one or more tracts may be included, and the tracts so entered need not be contiguous. The aggregate acreage of desert land which may be entered by any one person under this section shall not exceed three hundred and twenty acres, and all the tracts entered by one person shall be sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior.

Source

(Mar. 3, 1877, ch. 107, Sec. 1, 19 Stat. 377; Aug. 30, 1890, ch. 837, Sec. 1, 26 Stat. 391; Mar. 3, 1891, ch. 561, Sec. 2, 26 Stat. 1096; Oct. 28, 1921, ch. 114, Sec. 1, 42 Stat. 208; Mar. 3, 1925, ch. 462, 43 Stat. 1145; 1946 Reorg. Plan No. 3, Sec. 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Pub. L. 85-641, Sec. 1, Aug. 14, 1958, 72 Stat. 596.)

REFERENCES IN TEXT

Section 3 of the Act of June 16, 1955, referred to in text, is section 3 of act June 16, 1955, ch. 145, 69 Stat. 138, as amended, which is set out as an Additional Desert-Land Entry note under section 83 of Title 30, Mineral Lands and Mining.

CODIFICATION

The original text provided for the sale of 640 acres. The aggregate quantity which any person could acquire under all the land laws was limited, however, to 320 acres by act Aug. 30, 1890 (set out as section 212 of this title) except in the case of mineral lands.

AMENDMENTS

1958 - Pub. L. 85-641 permitted entry on one or more tracts, not contiguous, but sufficiently close to each other to be managed satisfactorily as an economic unit.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, Sec. 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out under section 1451 of this title.

"Officer designated by the Secretary of the Interior" and "such officer" substituted for "register" on authority of section 403 of Reorg. Plan No. 3 of 1946, which abolished all registers of district land offices and transferred functions of district land offices to Secretary of the Interior. See section 403 of Reorg. Plan No. 3 of 1946, set out as a note under section 1 of this title.

Previously, references to register and receiver changed to register by acts Mar. 3, 1925 and Oct. 28, 1921, which consolidated offices of register and receiver and provided for a single officer to be known as register.

ARIZONA ENTRIES DEPENDENT UPON PERCOLATING WATERS

Act Aug. 4, 1955, ch. 548, 69 Stat. 491, provided: "The requirement of section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377) (this section), that the right to the use of water by a desert land entryman 'shall depend upon bona fide prior appropriation' shall be waived in the case of all desert land entries which have heretofore been allowed and are subsisting on the effective date of this Act (Aug. 4, 1955) which are dependent upon percolating waters for their reclamation, and which are situated in the State of Arizona under the laws of which the percolating waters upon which the entries are dependent are not subject to the doctrine of prior appropriation but are usable under State law for irrigation and reclamation purposes."

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

CROSS REFERENCES

Final proofs at any time within 4 years, see section 329 of this title.

No person to hold by assignment or otherwise prior to issue of patent more than 320 acres of arid or desert land, see section 329 of this title.

Unsurveyed lands not subject to entry, see section 326 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 321, 322, 323, 324, 326, 327, 328, 329, 333, 641, 1303 of this title; title 16 section 460111-2.

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Statutes at Large, 16th Congress, 1st Session

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STATUTE I.

April 24, 1820.

Act of March 9, 1819, ch. 62.

Act of March 24, 1821, ch. 12.

Act of March 3, 1822, ch. 57.

Public sale of lands in half

quarter sections, after 1st

July, 1820.

At private sale, in entire, half, quarter, or

half quarter, sections.

Act of Feb. 11, 1820, ch. 14.

Fractional sections, less

than 100 acres, to be sold en-

tire.

Provide.

Provide.

No credit on

sales of public

lands, after 1st

July, 1820.

Purchasers of

private sale to

produce a re-

ceipt for the

money before

entry.

Enacted.

SIXTEENTH CONGRESS. SEN. I. OL. 51. 1820.

CHAP. XL.—An act making further provision for the sale of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the first day of July next, all the public lands of the United States, the sale of which is, or may be authorized by law, shall, when offered at public sale, to the highest bidder, be offered in half quarter sections; and when offered at private sale, may be purchased, at the option of the purchaser; either in entire sections, half sections, quarter sections, or half quarter sections; and in every case of the division of a quarter section, the line for the division thereof shall run north and south, and the corners and contents of half quarter sections which may thereafter be sold, shall be ascertained in the manner, and on the principles directed and prescribed by the second section of an act entitled, "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing one hundred and sixty acres, or upwards, shall, in like manner, as nearly as practicable, be subdivided into half quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections, containing less than one hundred and sixty acres, shall not be divided, but shall be sold entire: *Provided,* That this section shall not be construed to alter any special provision made by law for the sale of land in town lots.

SEC. 2. *And be it further enacted,* That credit shall not be allowed for the purchase money on the sale of any of the public lands which shall be sold after the first day of July next, but every purchaser of land sold at public sale thereafter, shall, on the day of purchase, make complete payment therefor; and the purchaser at private sale shall produce, to the register of the land office, a receipt from the treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase money on any tract, before he shall enter the same at the land office; and if any person, being the highest bidder, at public sale, for a tract of land, shall fail to make payment therefor, on the day on which the same was purchased, the tract shall be again offered at public sale, on the next day of sale, and such person shall not be capable of becoming the purchaser of that or any other tract offered at such public sales.

SEN. 2. *And be it further enacted* That from and after the first day

Five dollars
1 dollar 25 cts.
per acre after
1st July, 1890.

No sales for
less than 1 dol-
lar 25 cts. per
acre.

Lands offered
at public sales,
and unsold, sub-
ject to private
sale, at 1 dollar
25 cts. per acre.
Exceptions.

Lands rever-
ed, &c. to be
offered at pub-
lic, before pri-
vate sales.

Sale of lands

July next, the price at which the public lands shall be offered for sale, shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who shall make payment as aforesaid, shall be the purchaser; but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which shall have been offered at public sale before the first day of July next, and which shall then remain unsold, as well as the lands that shall thereafter be offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry as aforesaid; with the exception, however, of the lands which may have reverted to the United States, for failure in payment, and of the heretofore reserved sections for the future disposal of Congress, in the states of Ohio and Indiana, which shall be offered at public sale, as hereinafter directed.

SEC. 4. And be it further enacted, That no lands which have reverted, or which shall hereafter revert, and become forfeited to the United States for failure in any manner to make payment, shall, after the first day of July next, be subject to entry at private sale, nor until the same shall have been first offered to the highest bidder at public sale; and all such

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SIXTEENTH CONGRESS. Sess. I. Ch. 52. 1820.

lands which shall have reverted before the said first day of July next, and which shall then belong to the United States, together with the sections, and parts of sections, heretofore reserved for the future disposal of Congress, which shall, at the time aforesaid, remain unsold, shall be offered at public sale to the highest bidder, who shall make payment therefor, in half quarter sections, at the land office for the respective districts, on such day or days as shall, by proclamation of the President of the United States, be designated for that purpose; and all lands which shall revert and become forfeited for failure of payment after the said first day of July next, shall be offered in like manner at public sale, at such time, or times, as the President shall by his proclamation designate for the purpose: *Provided*, That no such lands shall be sold at any public sales hereby authorized, for a less price than one dollar and twenty-five cents an acre, nor on any other terms than that of cash payment; and all the lands offered at such public sales, and which shall remain unsold at the close thereof, shall be subject to entry at private sale, in the same manner, and at the same price with the other lands sold at private sale, at the respective land offices.

SEC. 5. *And be it further enacted*, That the several public sales authorized by this act, shall, respectively, be kept open for two weeks, and no longer; and the registers of the land office and the receivers of public money shall, each, respectively, be entitled to five dollars for each day's attendance thereon.

SEC. 6. *And be it further enacted*, That, in every case hereafter, where two or more persons shall apply for the purchase, at private sale, of the same tract, at the same time, the register shall determine the preference, by forthwith offering the tract to the highest bidder.

APPROVED, April 24, 1820.

reverted,
before the
July, 1820
reserved
tions.

Sale of
reverting,
after 1st
1820.

All land
sold at p
may be en
at private

Public
for two w

Preferen
be given t
highest bi

STATUTE

Acres of Lands } The United States of America
 Certificate No. 339 } To all whom these presents shall come, Greeting:

Whereas James M. Strong, of Lemhi County, Idaho has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Naylor, Idaho, whereby it appears that full payment has been made by the said James M. Strong according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto for the South East quarter of the North West quarter; the North East quarter of the South West quarter; the South half of the North East quarter and the South East quarter of Section thirty-six in Township sixteen North, and the Lots numbered one and two of Section one in Township fifteen North of Range twenty East and the Lots numbered three and four of Section six in Township fifteen North, and the Lots numbered two of Section thirty-one in Township sixteen North, of Range twenty-one East of Boise Meridian in Idaho, containing five hundred and eleven acres, and twenty-hundredths of an acre, - according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said James M. Strong

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James M. Strong and to his heirs, the said 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