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DEPARTMENT OF
WATER RESOURCES

Name of Party Filing Document:
Norman Smyer and Delores Smyer

Attorney Name & Address:
Michael P. Tribe, ISB No. 6816
LING, ROBINSON & WALKER
615 H Street, P. O. Box 396
Rupert, Idaho 83350

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 No. 45-12906
	)	
Case No. 39576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	☐ LATE NOTICE OF CLAIM
	)	☒ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended October 16, 1997), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended October 16, 1997).

My name is

My address is

My phone number is: Work:

Home:

I am an attorney representing Norman L. Smyer and Delores J. Smyer

My name is Michael P. Tribe

My address is P. O. Box 396
Rupert, Idaho 83350

My phone number is (208) 436-4717

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☐ I did not file a Notice of Claim to the use of water in the SRBA because:

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☐ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

I have attached:

- ☐ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. §42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert date and time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☒ I must amend my Notice of Claim to the use of water in the SRBA because:

The priority date of 1910 is incorrect; the priority date should be August 31, 1874. Such priority date is based upon the decree of *R. L. Wood, et al. v. William Stokes, et al.*, (March 21, 1892) and subsequent transfer of the water in Transfer Right No. 1029 of May 25, 1964. In addition, the claimant has attached written consent by both Chris Bromley of IDWR and the objector's attorney of record, Shelley Davis.

☒ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

1. Copy of Certificate of Decree Water Right Transferred Right No. 1029, dated May 25, 1964
2. Copy of Wood v. Stokes Decree
3. Copy of SRBA Director's Report
4. Copy of written consent to amendment.

I have attached:

- ☒ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be Completed)

State of Idaho

County of Minidoka

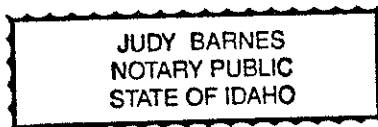
Michael P. Tribe, duly sworn, upon oath, deposes and says:
(Name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. § 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

Michael P. Tribe
Attorney signing in representative capacity

SUBSCRIBED AND SWORN TO before me on November 3, 2006.



Judy Barnes
Notary Public for State of Idaho
Residing at: Rupert, Idaho
My Commission expires: 02-12-2011

INSTRUCTION FOR MAILING

You must mail the motion, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I hereby certify that on November 3, 2006, I mailed the original and copies of this motion, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

Christopher M. Bromley
Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 033
Boise, Idaho 83734

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

Shelley Davis
Barker, Rosholt & Simpson
P. O. Box 2139
Boise, Idaho 83701



Signature of person or attorney mailing the form

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number: 45-12906

Date Received: _____

Receipt No.: _____

**AMENDED
NOTICE OF CLAIM
TO A
WATER RIGHT**

ACQUIRED UNDER STATE LAW

1. Name of Claimant(s): Norman L. Smyer Phone: (208) 654-2310
Delores J. Smyer

Mailing Address: 76 South Hwy 77, Declo, Idaho Zip: 83323

2. Date of Priority (Only one (1) per claim): August 31, 1874

3. Source of water supply (a): Spring Creek which is tributary to (b): Howell Creek
and (a): Unnamed Stream which is tributary to (b): Summit Creek

4. a. Location of existing point of diversion is: Township Range Section

____ 1/4 of ____ 1/4 of ____ 1/4, Govt. Lot, _____ B.M., County of _____

Additional points of diversion if any:

b. If instream flow, beginning point of claimed instream flow is: TWP12S, RNG 25E, SEC16

NE1/4 of SE1/4 of SW1/4, Govt. Lot, _____ B.M., County of Cassia

SW1/4 of NW1/4 of SE1/4, Govt. Lot, _____ B.M., County of Cassia

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc.); including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. _____

Ditches from streams to place of use

Last Name Smyer Ident.No. 45-12906

6. Water is claimed for the following purposes:
 (both dates are inclusive) (cfs) (acre feet)
- For irrigation purposes from 4/1 to 10/31 amount 0.14 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed: (a) 0.14 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre-feet per annum.
9. Non-irrigation uses – Describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) _____

10. Description of place of use:
- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
12S	25E	16													4.6				4.6

Total number of acres irrigated: 4.6

11. In which county(ies) are lands listed above as place of use located? Cassia
12. Do you own the property listed above as place of use? Yes ☒ No ☐
 If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above.
 _____ or None ()
14. Remarks: _____

Last Name Smyer Ident.No. 45-12906

15. Basis of Claim (check one): Beneficial Use ____ Posted Notice ____ License ____ Permit ____
Decree ☒

If applicable, provide IDWR Water Right Number.: 45-12906

Court 4th Judicial District Case No. _____ Decree Date March 21, 1892

Plaintiff vs. Defendant: R. L. Wood, et al v William Stokes, et al

16. Signature(s):

(a) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b) I/We do ____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) Norman L. Smyer Date 10-2-06

Norman L. Smyer

Delores J. Smyer

Date 10-02-06

Delores J. Smyer

For Organizations: I do solemnly swear or affirm that I am _____ of _____, that I have signed the foregoing document in the space below as _____ of _____ and that the statements contained in the foregoing document are true and correct.

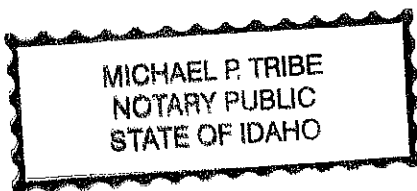
Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho)
) ss.
County of Minidoka)

SUBSCRIBED AND SWORN (or affirmed) before me this 2 day of October, 2006.

[SEAL]



Michael P. Tribe

Notary Public, State of Idaho

Residing at: Rupert, Idaho

My Commission expires: 4/15/2011

17. Notice of Appearance:

Notice is hereby given that I, Michael P. Tribe, will be acting as attorney at law on behalf of the claimants signing the above, and that all notices required by law to be mailed by the director to the claimants signing above should be mailed to me at the address listed below.

Signature Michael P. Tribe

Michael P. Tribe

Ling, Robinson & Walker

Address P. O. Box 396, Rupert, Idaho 83350-0396

Date November 2, 2006

Last Name Smyer Ident.No. 45-12906

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE OF DECREED WATER RIGHT
TRANSFERRED RIGHT NO. 1029

THIS IS TO CERTIFY, That Richard Storey Anderson of Box 126, Albion, Idaho, is the owner of and using a certain water right of 1.7 cubic feet per second, bearing date of priority as follows:
August 31, 1874, for 0.2 cubic feet per second of the waters of Spring Creek; April 1, 1875, for 1.5 cubic feet per second of the waters of Howell Creek, County of Cassia, State of Idaho, decreed to William Stokes by decree of Judge C. O. Stockslager of the 4th Judicial District of the State of Idaho, in and for the County of Cassia, in the case of

R. L. WOOD, et al

Plaintiffs

vs.

WILLIAM STOKES, et al

Defendants

said decree bearing date of March 21, 1892, and being appurtenant to the following described lands, to-wit:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Section 16; NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$,
Section 21, Township 12 South,
Range 25 E.B.M., (by Transfer
No. 775)

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho in Volume 1 of Decrees at Page 607 thereof;

That said Richard Storey Anderson has become the owner of said water right by purchase;

And that now, upon the application of Richard Storey Anderson, for the transfer of 1.7 cubic feet per second of the waters of Howell and Spring Creeks, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of 1.7 cubic feet per second of the waters of Howell and Spring Creeks upon the above described land is hereby abandoned, and the land under such right and to which the water right HEREBY CONFIRMED, shall become appurtenant by this Certificate for irrigation purposes, is described as follows, to-wit:

SW $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
Section 16;
NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21, Town-
ship 12 South, Range 25 E.B.M.,

← N Smyer property
included in this
80 Acres

That the said water is to be limited at any given time to an amount actually needed and beneficially used for such purpose, and shall not exceed the following amount, to-wit:

0.2 cubic feet per second
of the waters of Spring Creek,
with priority of August 31, 1874;

1.5 cubic feet per second of the
waters of Howell Creek, with
priority of April 1, 1875;

That the water right hereby transferred has heretofore been conducted from said streams to the first above described lands through private ditch with points of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16; NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 12 South, Range 25 E.B.M.,

That the water right hereby transferred will hereafter be conducted to the last above described lands through private ditch with points of diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 16; NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, of Section 21, all in Township 12 South, Range 25 E. B. M.,

That the right to the use of the waters aforesaid, hereby confirmed, is restricted to the lands last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 25th day of May, 1964,

(SEAL)

s/ CARL E. TAPPAN

CARL E. TAPPAN
State Reclamation Engineer

In the District Court of the Fourth Judicial District of Idaho in and
for Cassia County.

R. L. Wood et al

Plaintiffs

vs.

Wm. Stokes et al

Defendants

This cause having been heretofore tried by the court without a jury
and the court having made its findings and conclusions of law

It is now ordered adjudged and decreed that the following persons
parties to this action are entitled to divert from Marsh Creek and its
tributary streams situate in Cassia County Idaho the amount of water
hereinafter indicated, the amount of each party to date from the time
hereinafter stated and set opposite his or their name, to wit,-

(Hardy Sears one hundred (100) inches from Land Creek (tributary to
No 1(
(Marsh Creek) March 1st. 1875.

(Hardy Sears Thirty inches from Rose Creek (tributary to Marsh Creek)
(
(March 1st. 1875

(M. A. Harroun Seventy inches (70) from Howell Creek (tributary to
2(
(Marsh Creek) March 31st 1876.

3. (Josiah Bridger Fifty inches (50) from Marsh Creek March 31st. 1882.

4. (John Bridger Sixty inches from Marsh Creek November 30-1879.

5. J. W. Lamoresux Sixty inches from Marsh Creek April 16th 1881.

5. J. W. Lamoresux Sixty inches from Marsh Creek July 21st 1884.

5. J. W. Lamoresux Four hundred and eighty (480) inches from Marsh
Creek from January 1st. to July of each year when not in use by
prior appropriators.

6. T. A. Starrh Sixty inches from Land Creek (tributary to Marsh
Creek June 15-1875.

7. S. R. Guin Fifty inches from Marsh Creek June 5th 1875.

7. S. R. Guin one hundred and thirty three and $1/3$ inches from Marsh
Creek May 30-1879

- 9 John and Jonas Chatburn Twenty five (25) inches from Marsh Creek
March 31-1880.
- 9 John and Jonas Chatburn thirty five (35) inches from warm creek (tributary
to Marsh Creek) April 30-1881.
- 9 John and Jonas Chatburn Twenty five (25) inches from springs
March 31-1881.
- 10 S. J. Nutt Seventy inches from Howell Creek (tributary to Marsh
Creek) March 31-1876.
- 11 E. A. Nutt fifteen inches from Howell Creek (a tributary of Marsh
Creek) March 31-1876.
- 12 Louis Camp twelve (12) inches from springs on the Stokes land Nov-
ember 1st 1883 and 15- ^{decreased to SE 1/4 SEC. 16} inches of the waste water from Stokes ranch
April 30 -1885. (See File 348 for amendment).
- 13 S. P. Westherman eighty five (85) inches from Land Creek (a tribut-
ary to Marsh Creek) May 31st 1876.
- 14 T. M. Gray Sixty inches from Land Creek (a tributary to Marsh Creek
May 31-1877 and fifteen (15) inches from Brim Creek (a tributary to
Marsh Creek) May 31-1880.
- 15 D. C. Loveland Fifty inches from Land Creek a (tributary of Marsh
Creek) June 30, 1879 and Five inches from spring on his land June 30 - 1879.
- 16 Joseph Holbrook twenty (20) inches from Howell Creek a (tributary
of Marsh Creek) June 1st 1882- and eight (8) inches from Cows gulch
June 1st. 1881.

17

The defendants Louis Garner and William Morris Seventy (70) inches
of the waters of Howell Creek (a tributary of Marsh Creek) from the 30th
day of April 1881.

18

The plaintiff R. L. Wood 160 inches of the waters of Marsh Creek
from the 30th day of April 1873 and 45 inches of the waters of Marsh
Creek from the 31st day of March 1878.

Mary R. Norton one hundred (100) inches of the waters of Marsh Creek from the 30th day of April 1874.

D. I. Stark one hundred (100) inches of the waters of Land Creek (a tributary of Marsh Creek, from the 1st day of March 1875; and thirty (30) inches of the waters of Rose Creek, (a tributary of Marsh Creek,) from 1st day of March 1875; and 30- inches of the waters of Marsh Creek from the 1st day of April 1876.

William Stokes 134 inches of the waters of Howell Creek, a tributary of Marsh Creek, from the 1st day of April 1875; and twenty (20) inches of the waters of Spring Creek (a tributary of Marsh Creek, from the 31st day of August 1874,- and ninety five (95) inches of the waters of Rose Creek, (a tributary of Marsh Creek from the 1st day of April 1876; and .2. inches of water from Springs (tributary of Marsh Creek) from the 1st day of April 1878.

William Stokes for the heirs of George Stokes, Fifteen inches of the waters of Howell Creek, (a tributary of Marsh Creek) from the 1st day of April 1878.

E. J. Stokes Eighty (80) inches of the waters of Howell Creek, tributary of Marsh Creek, from the 1st day of September 1880.

William Stokes (Potter Claims) Seventy inches of the waters of Rose Creek (a tributary of Marsh Creek from the 5th day of June 1875.

C. M. Gray one hundred and twenty five (125) inches of the waters of Land Creek, (a tributary of Marsh Creek), from the 3d day of November 1875.

A. B. Williams Forty inches of the waters of Land Creek (a tributary of Marsh Creek) from June 30th 1881.

B. F. Mahoney Forty inches (40) of the waters of Howell Creek, a tributary of Marsh Creek, from the 31st day of May 1881.

Margaret A. Mahoney twenty five (25) inches of the waters of Howell Creek (a tributary of Marsh Creek, from the first day of May 1884.

B. F. Mahoney twelve (12 inches of the waters of Howell Creek a tributary of Marsh Creek, from the 31st day of March 1881.

Dora A. Quinn Twenty five (25) inches of the waters of Howell Creek, a tributary of Marsh Creek, from the 1st day of March 1882.

George Giles and Andrew Park as administrator of the estate of John Park, deceased; (240) Two hundred Forty inches from Cleveland Lake from the 31st day of March 1888 said George Giles to have Seventy Five (75) inches of said water, and the said Andrew Park as the Administrator of the Estate of the John Park, deceased, to have one hundred and fifty (150) inches thereof at the point of diversion, from Marsh Creek, when said Giles shall have turned in Eighty (80) inches into said Creek from said Lake, and said Park shall have turned in one hundred sixty (160) inches into said Creek from said Lake; said two hundred and forty (240) inches of water to be measured at the point where it enters said Marsh Creek under a four inch pressure, and at the head of said ditches when taken upon said described land as the same are described in the findings herein.

Thomas Walton twenty (20) inches of the waters of Howell Creek, a tributary of Marsh Creek, from the 31st day of March 1883.

Thomas E. Harper Fifty inches of the waters of Land Creek a tributary of Marsh Creek, from the 31st of March 1877.

J. H. Brim Fifty Five (55) inches of the waters of Grays Canyon and

Spring Creek, tributaries of Marsh Creek from July 31st 1876.

36

N. Levitt Forty inches of the waters of Marsh Creek from the 1st day of April 1881.

37

George Gordon Twenty Five (25) inches of the waters of Howell Creek a tributary of Marsh Creek from the 31st day of March 1882.

38

Ed McCoy twenty inches of the waters of Howell Creek a tributary of Marsh Creek from the 31st day of March 1882.

39

N. A. Dickey Six inches of the waters of Rose Creek tributary of Marsh Creek from the 31st day of July 1886 and Six inches of the waters of Howell Creek, tributary of Marsh Creek from July 31st 1886.

40

Martha L. Snodgrass Forty (40) inches of the waters of Marsh Creek from the 31st day of March 1882.

41

Julia A. Weatherman Forty inches of the waters of Land Creek tributary of Marsh Creek, from the 31st day of December 1877.

42

James A. Lewis Six (6) inches of the waters of Brim Creek, tributary of Marsh Creek, from the 30th day of June 1878- and one hundred and fifty inches of the waters of Land Creek a tributary of Marsh Creek, from the 1st day of June 1877.

43

M. G. Robinson Thirty inches of the waters of Land Creek, tributary of Marsh Creek, from the 31st day of July 1880.

44

William Heller Ten (10) inches of the waters of Rose Creek, tributary of Marsh Creek and thirty inches (30) of the waters of Land Creek, tributary of Marsh Creek, from the 31st day of May 1878.

It is further ordered adjudged and decreed that the following parties are entitled to divert from Marsh Creek the amount of water herein

indicated and the right of each party dates from the time hereinafter stated and set opposite each name, to wit,- A. Burstrom Charles Cobb, H. Tremayn, M. G. Robinson and the parties whom A. Burstrom represents in this action the same being numerous, one hundred and Sixty inches (160) April 1st. 1873, F. Cobb Eighty (80) inches March 1st 1875. T. A. Starrh, (100) one hundred inches August 8th 1875; C. L. Albertson 160 inches April 1st 1876:-George Cook 160- inches April 1st 1876- Ira C. Park Sr. 160 inches July 1st 1876:- William B. Trenner 160 inches August 1st 1878- John A. Lewis 160- inches May 1st 1879:- George Giles 160- inches, April 1st 1880- Thos Horssly 120 inches May 5th 1880- John Park 160- inches August 1st 1881- this said right being owned by Andrew H. Park, Administrator of the estate of the sforesnamed John Park, F. Cobb, 160 inches April 1st 1885.

It is further ordered adjudged and decreed that the following parties are entitled to divert from Howell Creek a tributary of Marsh Creek, the amount of water herein indicated, and the right of each party herein, dates from the time hereinafter stated and set opposite each name, to wit,-

George V. Brim 100- inches from May 1st 1877- W. F. Brim 100- inches from May 1st 1877- W. F. Brim as the successor of Joseph H. Phippen 100- inches May 1st 1877- William R. Holmes 160- inches March 1st 1878- Issack S. Potter 160- inches, October 13th 1878- George H. Weldon 160 inches, October 13-1878, Jonas Chethurn 160 inches July 1st 1879; Mahala Wright (100 inches December 1st 1880- James Mahoney and N. P. Williams Jointly, 150 inches 1st day of March 1881 James W. Snodgrass 160- inches March 10th - 1881.

It is ordered adjudged and decreed that the several quantities of water herein decreed shall be the quantities hereinbefore named, measured at the point of diversion under a 4-inch pressure and that the first appropriator in point of time is first in right, and all appropriators of equal or of the same date are of equal right.

It is further ordered adjudged and decreed that G. V. Brim and W. F. Brim are entitled to the use of the waters of the spring arising on their lands and known as the Brim Springs or Brim Creek, being about

Five inches in amount.

It is further ordered adjudged and decreed that in case of insufficiency of water to supply all parties, the entire volume is to be devoted to, and used by the appropriators who are first in point of time.

It is further ordered adjudged and decreed that all water diverted from said streams by any party hereto shall be diverted through a box or flume so arranged and constructed as to permit of the water so diverted being measured under a four inch pressure.

It is further ordered adjudged and decreed that the amount of water herein decreed to the several parties aforesaid shall be measured as follows: The owner or owners of each ditch shall construct a box or flume of two inch plank sixteen and one half feet long and of sufficient width and height to carry the amount of water herein awarded to such parties, in a substantial manner and place the same at the head gate of such ditch upon permanent and substantial supports the lower end of said flume to be $\frac{3}{8}$ of an inch lower than the upper end, the water to run through said box without any obstruction, the water in said box not to be at any time a greater depth than nine inches at the head gate in said box or flume, and that no person or persons shall receive or divert any of the waters of said Marsh Creek or its tributaries except through said box or flume, the amount in inches under a four inch pressure to which each party is entitled, to be indicated by the number of square inches in the cross section of the water measured Eight and one Quarter feet below the head-gate in said flume.

It is further ordered adjudged and decreed that each and every party to this action and his successors and assigns is hereby perpetually enjoined from diverting or interfering with any of the waters of said Marsh Creek or any of its tributaries except in the quantity and in the order and in the manner in which they and each of them are herein decreed to be entitled thereto.

Dated March 21st 1892.

C. O. Stocksleger

Dist. Judge

Entered herein April 11th 1892.

M. T. Brown

Clerk

By Geo. Chapin

State of Idaho)
)ss.
County of Cassia.)

I. Joseph Y. Haight, Clerk of the District Court of the Fourth Judicial District of Idaho in and for Cassia County do hereby certify that the foregoing 8 sheets of typewritten matter is a full, true and correct copy of the decree in an action entitled R. S. Wood et al, plaintiff vs. Wm. Stokes et. al., defendants, the original of which is now on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Court, at Albion, Idaho this 27th day of April, 1903.

JOS. Y. HAIGHT.

(SEAL)

Clerk of the District Court of
the Fourth Judicial District of Idaho,
in and for Cassia County.

SRBA

DIRECTORS REPORT 45-12906

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 45-12906

*
* THIS DIRECTORS REPORT HAS BEEN AMENDED SINCE *
* IT WAS 1ST FILED. *
*

Name and Address: DELORES J SMYER
NORMAN L SMYER
76 S HWY 77
DECLO, ID 83323

Source: SPRING CREEK Tributary: HOWELL CREEK
UNNAMED STREAM Tributary: SUMMIT CREEK

Quantity: .14 CFS

Priority Date: 03-18-1910

Diversion Point: T12S R25E S16 NESESW Within Cassia County
SWNWSE

Purpose and			
Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-01 TO 10-31	.14 CFS

The use of water for irrigation under this right may begin as early as March 15 provided other elements of the right are not exceeded. The use of water before April 1 under this remark is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than the date a partial decree is entered for this right.

Place of Use: Irrigation Within Cassia County
T12S R25E S16 NWSE 4.6
4.6 Acres Total

Other Provisions Necessary for Definition / Administration of this Water Right:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the

entry of a final unified decree. Section 42-1412(6), Idaho Code.

Explanatory Material: Basis of Claim - Beneficial Use

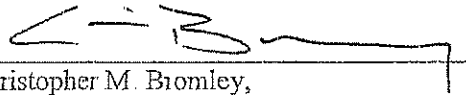
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Written Consent is hereby given by Christopher M. Bromley of the Idaho Department of Water Resources and the objector Earl Warthen, by and through his attorney of record, Shelley M. Davis, to file Norman and Dolores Smyer's (hereinafter "claimants") *Motion to File an Amended Notice of Claim*.

Written consent is given because sufficient documentation has come before Field Agent Kelly Christensen of the Idaho Department of Water Resources to recommend that the priority date for the claimants' Water Right No. 45-12906 should be recommended for August 31, 1874, rather than March 18, 1910. That such priority date is based upon the judicial decree of *R.L. Wood et al v William Stokes, et al* (1892). That such documentation and written consent by IDWR and the objector is sufficient for the Presiding Judge or Special Master Dolan to allow the claimants leave to amend their claim to Water Right No. 45-12906.

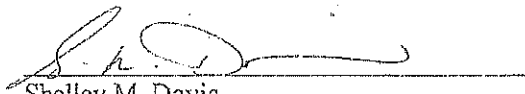
Notwithstanding the foregoing, Norman and Dolores Smyer, Earl Warthen, and the Idaho Department of Water Resources agree and represent that the water usage described in the decree for water right number 45-12906 will be governed by the Water Rights Settlement Agreement entered into by the parties on ^{November}~~October~~ 2, 2006 and recorded in Cassia County as instrument number 311858.

DATED this 6th day of October 2006.



Christopher M. Bromley,
Idaho Department of Water Resources

DATED this 6th day of October 2006.



Shelley M. Davis,
Attorney for Objector, Earl Warthen