

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 22-180B
(Insert water right number)

Case 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 on 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 I, Rules of Procedure* (amended Sept. 30, 1996), 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 Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing _____

My name is _____

My address is _____

My phone number is _____

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:

See attached

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

Testimony of H.C. Bowles from Rexburg decree;
1899 map of T4N R45E; documentation of current
ownership; other sworn statements in support

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 Teton

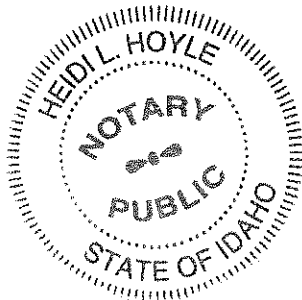
Craig Kunz, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

Craig Kunz
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on September 24, 2007
(Insert Date)



Heidi Hoyle
Notary Public for Idaho
Residing at: Teton, Idaho
My Commission expires: 3-9-2012

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA 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 certify that on September 24, 2007, I mailed the original and copies of this form, 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
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

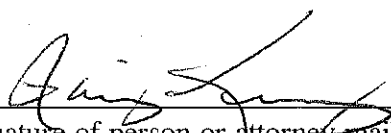
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

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.

(Insert Names/address of parties)



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 22-180B

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Duane Kunz / Craig Kunz Phone (206) 354 8865

Mailing Address _____ ZIP _____

2. Date of Priority (Only one (1) per claim) 6/01 ^{Street or Box} 1889 ^{City} State
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other ☒ (a) Unnamed creek / Unnamed Spring
which is tributary to (b) Trail Creek, Teton River

4. a. Location of Point of Diversion is: Township 4N, Range 4SE, Section 32,
SE, 1/4 of NE, 1/4 of _____, 1/4 Govt. Lot _____, BM., County of Teton

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4 of

_____, 1/4 Govt. Lot _____, BM., County of _____

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. The spring is dammed to divert water into the ditch which carries water west and north to the place of use. Water is diverted into lateral canals and flowe
place of use.

Last Name _____ Ident No. _____

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For irrigation purposes from 3/01 to 12/01 amount 2.5 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.5 cfs (cfs) and/or (b) _____ (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) _____

9. 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.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	45E	32		X															40
4N	45E	29															X		40
4N	45E	29												X					20
4N	45E	32			X														15

Total number of acres irrigated 115

10. In which county (ies) are lands listed above as place of use located? Teton

11. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None ()

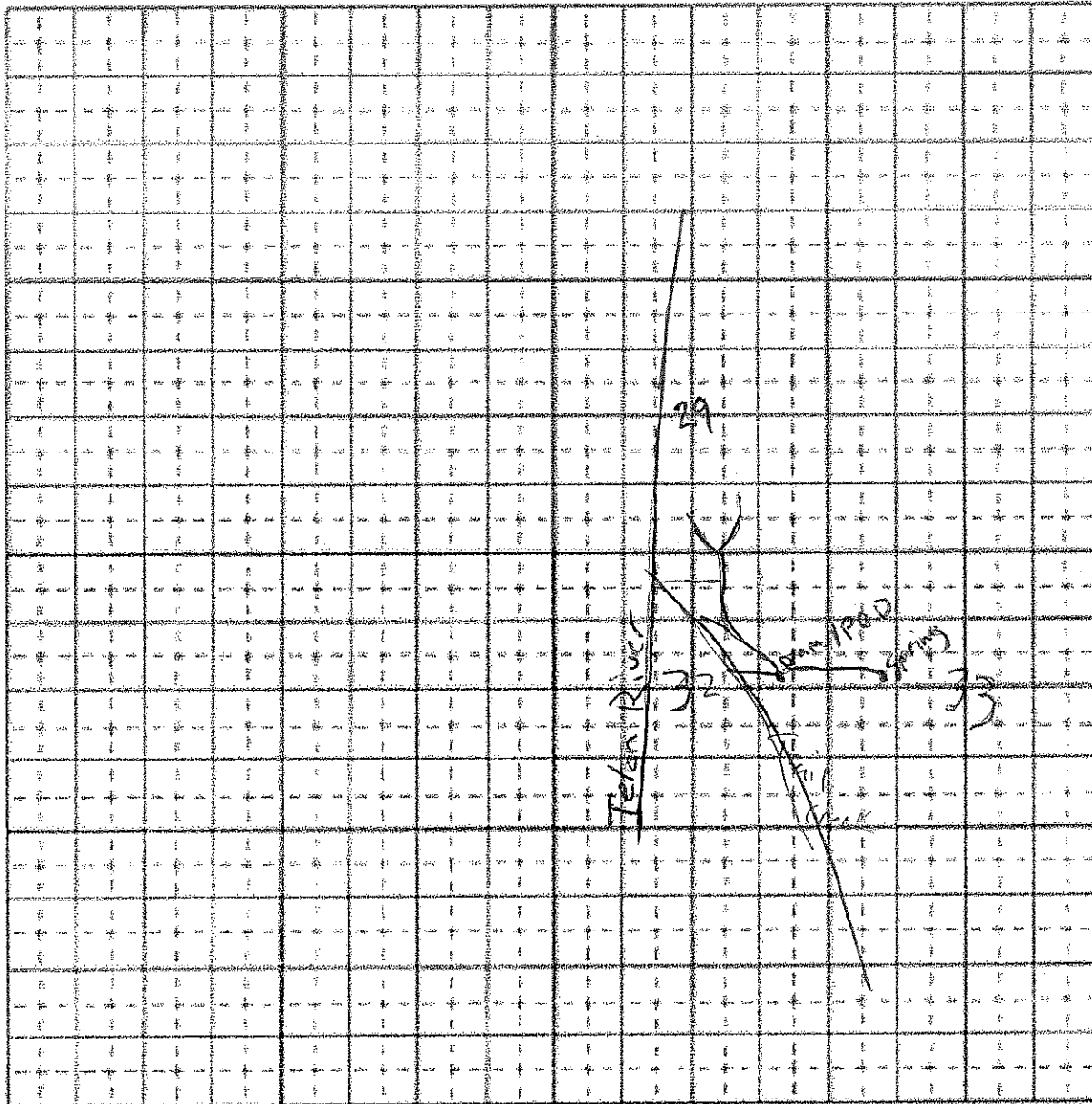
13. Remarks: see attached

Last Name _____ Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 Inches equals 1 mile

T 4N R 45E Sections 32, 33, 29



Last Name _____ Ident No. _____

14. Basis of Claim (Check One) Beneficial Use _____ Posted Notice _____ License _____ Permit _____ Decree X

Court _____ Decree Date 12/16/1910 Plaintiff v. Defendant Rexburg vs Teton Irrigation

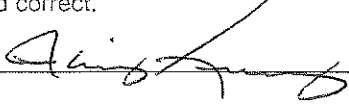
If applicable provide IDWR Water Right Number 22-180 (The Rexburg decree)

15. 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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 6

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s)  Date: 9.24.07

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____
Title Organization

that I have signed the foregoing document in the space below as

_____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

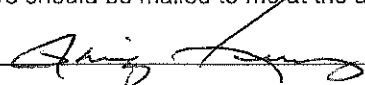
Signature of Authorized Agent _____ Date _____

Title and Organization _____

Please Print Name

16. Notice of Appearance:

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

Signature 

Address 480 W. 575 S. Victor Id. 83455

Date 9.24.07

Last Name _____ Ident No. _____

September 18, 2007

To whom it may concern:

Earlier this year, Craig Kunz and I were talking about the SRBA process when he told me that a right he uses on the east side of the Teton River, which we call the Bowles right, had been claimed on Paradise Springs instead of the correct point of diversion on the other side of the Teton River. I told him I was aware of this mistake, and told him that I had recently acquired testimony from the Rexburg decree which would prove that Henry Bowles never used water from Paradise Springs. Craig went on to tell me that the researchers at IDWR did not believe him and instead believed the Bowles right to be associated with Paradise Springs and Paradise Creek.

I told him that I would go to Idaho Falls with him and meet with Mr. Trent Galbraith to discuss this matter. After I presented some of the testimony to Mr. Galbraith, he explained that the decree itself described land which could not be irrigated from the east side of the river. After carefully examining the decreed place of use, I suggested that the decree also included lands which were too high in elevation (up a large hill) to have been irrigated from Paradise Springs. At that point, the decree obviously being indeterminate, Mr. Galbraith encouraged us to file protests against the persons who claimed Bowles water came from Paradise Springs as well as a protest against Craigs' recommended claim. After discussing this further with Craig after the meeting, I encouraged him to file a protest against the rights of Ryan (Merle) Kunz which originate and are used in the same area. At this point neither Craig nor I was aware that there are 2 Bowles rights: one for H C Bowles, and one for Sarah Bowles. After filing the protests, we were informed by the court that the protest against Ryan (Merle) Kunz's right was not processable because that right was not on the computer. In fact, it was later found and the protest is active. However, the protest is incorrect in that we suggested that the quantity of water should be 1.2 cfs of the HC Bowles right. In fact, Merle Kunz, and heirs, own the Sarah Bowles right (2.0 cfs) and 0.3 cfs of the H C Bowles right.

The original claim made by Duane Kunz on the H C Bowles right shows it split between he and his brother, Merle Kunz: 1.6 cfs apiece. This half split reflects that Duane and Merle thought of the Bowles right as one right, not 2 distinct rights, and they split the one right they thought they owned equally in the original claims. From the outset, Craig told me that he believed that he was using more than 1.6 cfs and he believed that Ryan Kunz also was using more than 1.6 cfs.

About July 27th, 2007, I became aware that there were 2 Bowles water decrees and at that time everything we are in court to discuss fit together like a puzzle. When Craig took me to look at the point of diversions and places of use, H C Bowles testimony came alive. The spring creek that irrigates the Sarah Bowles place was diverted on to the land now owned by John Block and the heirs of Merle Kunz, and there was another spring that was diverted into a ditch to irrigate the land belonging to the Duane and Jean Kunz trust. I estimated that that ditch which was flowing onto the Duane and Jean Kunz trust land at approximately 2.5 cfs based on a basic water speed/volume equation. The ditch carrying water to the Sarah Bowles place appeared to be flowing at about the same rate although no specific test was done.

There is one forty on the original H C Bowles homestead that could not be and was not watered out of the Spring, it would have been watered from the Sarah Bowles spring creek—this is the NE of the NE of section 32, T4N R45E. This land belongs to Neil Kunz. Neil Kunz should have the remaining 0.3 cfs of the H C Bowles right applied to

his land, and the excess Sarah Bowles water should be equally distributed between the other Sarah Bowles claimants.

There are 15 acres irrigated outside of HC Bowles homestead. The way the ditches are set up, I believe this land was irrigated by H C Bowles when he was irrigating the rest of his place more or less by accident; however, the water use to this land is beneficial and continues to this day and should be considered an accomplished transfer.

In general, the amount of water needed to irrigate 115 acres would be 2.3 cfs; however, the seepage from the canals in this specific area is extremely high. It takes weeks for the canals to fill all the way down to the lower fields because of this extreme seepage, and over the course of the almost 3/4 mile ditch it is certain that more than the extra 0.2 cfs claimed is lost to seepage on the way to the lower fields. Since the spring ditch is very close to 2.5 cfs, we assume HC Bowles knew it took a little more water to get the lower fields irrigated and he designed the canals to be as they are because of this.

I certify that the above statements are true.


Michael L Reid

To Whom It May Concern:

I have tried for several years to get the IDWR to look at the H.C Bowles water right that they had assigned to Paradise Springs. On more than one occasion, I invited staff out to the sight so that they could observe the demographics of the issues of my disagreement with their interpretations of the H.C Bowels rights. After many futile trips to Idaho Falls, I had almost given up on the issue. Then earlier this year I was discussing my frustration about the issue with my neighbor Mike Reid, he told me he had been doing research on Paradise Springs from the Fremont County court records and that he had come across evidence that clarifies the H.C Bowels right and that Mr. Bowels had never lived in the area of Paradise Springs and clearly had filed for the water that I had been trying help the IDWR understand was decreed to the Duane Kunz Family Trust, and the land that the water has been being used on for the past one hundred years.

By the time I could set up a meeting with Trent Galbraith to present the information there were only three weeks prior to the protest deadline, so I have needed additional time to collect all of the information that is pertinent to resolving this mistake.

As I have further investigated this matter the picture has become very clear that there was not just one Bowels right but two, the second right was filed in behalf of Henry's wife Sara. I have always known that there were two different sources that my Father Duane and his brother Merle got there water from to irrigate the property, after looking at the evidence it's clear that there is a Sara Bowels right and a H.C. Bowels right that come from two different spring sources in the section of the original Bowels property.

The two families of Merle and Duane have used the water with canal systems that flood out over the land that H.C. Bowels originally owned.

There is one forty that borders the Bowels property that was not in the decreed land originally that was later purchased by Duane Kunz, (twn4n-rng45e-sec32) but Bowels irrigated approximately

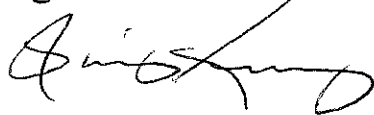
fifteen acres of that forty where the canal crosses through the property to reach the balance of his ground. The original claim was for 2.8 cubic feet for HC.Bowels, they (Merle and Duane) thought that there was only the one right so they split it 1.6 for each of them, but we now have evidence that they were two separate claims.

It requires at least 2.5 cubic feet to water the acres of the Duane Kunz property with as much leeching that occurs on this land, most of it eventually flows back into the river, it is clear from the Henry Bowels testimony that he new it took all of that amount to adequately irrigate the property. I believe that Neil Kunz is entitled to the other .03cfs of the original 2.8cfs for the portion that the canal irrigates into his field.

This has long been a complex frustrating issue not only for us but also for the IDWR, in more than one meeting when I have said I'm here to talk about Paradise Springs I was shuttled off into a corner and no one really had any answers. It should be satisfying to all to finally have clear concise evidence and answers for all involved. My intentions are not hurt anyone with administration of this matter but to finally clarify and make right the misunderstandings of this issue are important. I have presented as much factual evidence as is available at this time, please review it carefully and thoroughly.

I certify that the above statements are true, to the best of my knowledge.

Sincerely Craig Kunz Exce. Duane Kunz Family Trust

A handwritten signature in black ink, appearing to read "Craig Kunz", written over the typed name.

his own child, testified as follows:-

EXHIBIT EXAMINATION BY HAYLEY.

- Q. Now, Bowles you are a defendant in this action?
Mr. Bowles you are a defendant in this action?
- A. Yes sir.
- Q. Are you the owner of the land described in your cross-complaint?
Are you the owner of the land described in your cross-complaint as being the Southeast quarter of the Southwest quarter and other subdivisions of section thirty, township four?
- A. Yes sir.
- Q. How long have you been acquainted with that land, Mr. Bowles?
- A. Ever since 1889.
- Q. Who occupied the land in 1889? A. A man by the name of Heneger.
Who occupied the land in 1889? A. A man by the name of Heneger.
bought Green out, hekey sold to Green and Green sold to Heneger.
In 1889 I bought him out.
- Q. Had you known the land until 1889? A. Not until the spring of 1889.
- Q. At the time you bought in the spring of 1889, had the land been irrigated before that? A. No sir.
- Q. Had not been irrigated by any one before that?
- A. It was got out that summer, Heneger got the water out in 1889.
- Q. Where was the water taken out from? A. Out of Spring Creek--
Jones Spring Creek.
- Q. That is a tributary of Teton River? A. Tributary of Trail Creek.
- Q. Which is a tributary? A. Yes sir.
- Q. How much of the land was covered by this ditch taken from Jones Spring Creek? A. All with the exception of part of one forty.
- Q. About how many acres? A. Something over 100 acres.
- Q. You say it is sufficient to carry the carrying capacity of that ditch is sufficient to irrigate this 100 acres, or over a hundred acres under the ditch? A. Yes sir.
- Q. How much of that land has actually been irrigated from that ditch? A. Well, there has been a hundred acres or more.
- Q. Is there any water for the balance of that land? A. Yes sir.

411 Q. From what source do you get water for the other sixty acres?
From what source do you get water for the other sixty acres?

A. There is a part of one forty that comes in out of Spring
Creek, another creek called Spring Creek.

Q. Is the land actually irrigated now? A. Yes sir.
Is the land actually irrigated now? A. Yes sir.

Q. How much of it altogether is irrigated, all of it?
How much of it altogether is irrigated, all of it?

A. Yes sir.
Yes sir.

A. There is about—it is all irrigated with the exception of
There is about—it is all irrigated with the exception of
the part across the river, I guess about twenty acres across
the part across the river, I guess about twenty acres across
there, or twenty-five.

Q. Then there is about one hundred and forty acres irrigated at
Then there is about one hundred and forty acres irrigated at
the present time? A. Yes sir.

Q. You have gradually irrigated that land from 1889 up to the
You have gradually irrigated that land from 1889 up to the
present time until all but about twenty acres have now
present time until all but about twenty acres have now
been irrigated? A. Yes sir.

Q. Is there any one else interested in this ditch? A. No sir.
Is there anyone else interested in this ditch? A. No sir.

Q. Just yourself? A. Just myself.
Just yourself? A. Just myself.

Q. Is there any other water supply outside of these creeks
Is there any other water supply outside of these creeks
you have named? Available for use on this land?

A. No sir.
No sir.

Q. Is that land desert land? A. Yes sir.
Is that land desert land? A. Yes sir.

Q. How much does it require to the acre to successfully irrigate
How much does it require to the acre to successfully irrigate
and cultivate it? A. About an inch I would suppose.
and cultivate it? A. About an inch I should suppose.

Q. About like the rest of the land in the country? A. Yes sir.
About like the rest of the land in the country? A. Yes sir.

Q. You think an inch down there would be enough for it?
You think an inch down there would be enough for it?

A. Yes sir.
Yes sir.

Q. That is, a continuous flow—and this ditch is of sufficient
That is, a continuous flow—and this ditch is of sufficient
carrying capacity to irrigate all of the land in it?

A. Yes sir, I have had it widened since it was first made, you
Yes sir, I have had it widened since it was first made, you
know.

Barley—Is there any dispute in regard to this, gentlemen?
Is there any dispute in regard to this, gentlemen?

That is all, Mr. Bowles. I want to call your attention to the
that is all Mr. Bowles. I want to call your attention to the
Sarah Bowles claim now.

Q. Do you know the defendant Sarah Bowles? A. Yes sir.

Do you know the defendant Sarah Bowles? A. Yes sir.

- Q. Who is your wife in that? A. Yes sir.
She is your wife is she? A. Yes sir.
- Q. Do you know the tract of land described in your cross-complaint and being the Southeast quarter of the Northeast quarter of Section 32, and other lands therein described? A. Yes sir.
- Q. That land belongs to her? A. Yes sir.
That land belongs to her? A. Yes sir.
- Q. How long has she been the owner of that land?
How long has she been the owner of that land?
- A. I could not say until I had the papers—
I could not say until I had the papers—
- Q. You may look at the papers? A. First of August, 1900, is it not.
You may look at the papers? A. First of August, 1900, is it not.
- Q. Fourteenth of August that is? A. Yes sir.
Fourteenth of August that is? A. Yes sir.
- Q. It is located under the desert act? A. Yes sir.
(She) located under the desert act? A. Yes sir.
- Q. Where did she procure water for use on the land?
Where did she procure water for use on the land?
- A. Called Spring Creek.
Called Spring Creek.
- Q. When did she first put the water on the land?
When did she first put the water on the land?
- A. The next spring after this.
The next spring after this.
- Q. That is August, 1900? A. Yes sir, the next spring.
That is August, 1900? A. Yes sir, the next spring.
- Q. Spring of 1891? A. Yes sir.
Spring of 1891? A. Yes sir.
- Q. What time in the spring? A. About May.
What time in the spring? A. About May.
- Q. About the first of May? A. Yes sir, not the first, either,
About the first of May? A. Yes sir, not the first, either,
along about the last.
- Q. How much of that land of hers was covered by the ditch you took out then? A. One forty.
How much of that land of hers was covered by the ditch you took out then? A. One forty.
- Q. Only one forty that could be irrigated from it or been irrigated since? A. I don't know what was irrigated.
Only one forty that could be irrigated from it or been irrigated since? A. I don't know what was irrigated.
- Q. I want to know how much could have been irrigated from that canal that you took out in 1901?
I want to know how much could have been irrigated from that canal that you took out in 1901?
- A. There could have been close on to two fortys.
There could have been close on to two fortys.
- Q. Did that ditch have a sufficient carrying capacity to irrigate the two fortys? A. Yes sir.
Did that ditch have a sufficient carrying capacity to irrigate the two fortys? A. Yes sir.
- Q. Any water taken out on the land since then from other sources?
Any water taken out on the land since then from other sources?
- A. No sir.
No sir.
- Q. About eighty acres can be irrigated? A. All can be.
About eighty acres can be irrigated? A. All can be.
- Q. From these ditches? A. Yes sir, from these ditches, it all has been irrigated.
From these ditches? A. Yes sir, from these ditches, it all has been irrigated.
- Q. Please pay attention—I asked you specifically how much of
Please pay attention—I asked you specifically how much of

that land could be irrigated from these ditches?
that land could be irrigated from these ditches?

A. I thought you meant the first spring.

I thought you meant the first spring.

Q. Can all of it be irrigated? A. Yes sir.

Can all of it be irrigated? Yes sir.

Q. How much of it? A. All but a very little. Just maybe ten or

How much of it? A. All but a very little. Just maybe ten or

fifteen acres ten or fifteen.

fifteen acres ten or fifteen.

Q. All of it can be? A. Yes sir.

All of it can be? Yes sir.

Q. The first season the was forty or fifty acres irrigated?

The first season the was forty or fifty acres irrigated?

A. Yes sir.

Yes sir.

Q. How much water to the acre does that land require?

How much water to the acre does that land require?

A. I should judge about an inch.

I should judge about an inch.

Q. About an inch? A. Yes sir.

About an inch? Yes sir.

Barley--That is all--any questions, gentlemen--any dispute

on this claim? All Mr. Fred J. Drake.

FRED J. DRAKE, being first duly sworn, testified as

follows:-

DIRECT EXAMINATION BY HADLEY.

Q. I will first ask you Mr. Drake a question in regard to Mr.

Barley's land. Do you know when the water was first taken

on the claim owned by Mr. Barley? A. I don't know positively,

but I know that he was in there and at his place in the year

1889.

Q. 1889? A. Yes sir.

Q. Do you know how much--whether the land had been cultivated
prior to that time?

A. I don't know, but was the first year I was in there.

Q. You know he did have the place at that time?

A. I know he had watered it ever since.

Q. It is all practically under irrigation now? A. Yes sir.

Q. I will now ask you in regard to the claim of Fred J. Drake.

You are one of the defendants in this action? A. Yes sir.

Q. And the piece of land being the last half of the southeast

quarter of section seven, and other pieces of land?

A. Yes sir.

Q. That is your land is it? A. Yes sir. Section 7 and 8 my land is

Q. Now about Mr. Kuntz?

A. It varies from ten to three feet long.

Q. Good. Now? A. Yes sir.

Q. Is that ditch sometimes or generally known as the Deep Creek Ditch? A. No.

Q. This is known as the Canyon Ditch? A. That is known as the Canyon ditch.

Q. This was the ditch you have testified to as having been enlarged by the riparian? A. Yes sir.

Q. Would it carry sufficient water for the irrigation of your land and the others having interest therein? A. I think so.

Q. When did you get this ditch constructed after making this water location? A. It was started, the construction was started before that notice was recorded in the spring of 1905--1906.

Q. And finished when? A. It was finished I believe within two years.

Q. You used reasonable diligence? A. Yes sir.

Q. How much of your land is now owned by Mr. Platner and was covered by the ditch? A. 100 acres, but about fifty acres under cultivation.

Q. That is under cultivation? A. Yes sir.

Q. But it all can be cultivated? A. Yes sir.

Q. And it was your intention to bring it all under cultivation? A. Yes sir.

Q. That is Mr. Platner's intention now, if you understand it in it now? A. Yes sir.

Q. Is there any other water supply for this land? A. No sir.

Q. About how much per acre is needed? A. As much as the water.

Hawley--That is all. Call Mr. Kuntz on the stand of Caroline Withrich.

Caroline Withrich.

Q. Now Mr. Kuntz, being first duly sworn, on behalf of the Sam Koontz, being first duly sworn, on behalf of the above claim, testified as follows:-

Direct examination by Hawley

Q. What is your name sir? A. Sam Koontz.

What is your name sir? A. Sam Koontz.

Q. Do you know the land described in the cross-complaint of the Do you know the land described in the cross-complaint of the

- defendant Caroline Withrich? A. Yes sir.
- Q. You were in 1895? A. Yes sir.
- Q. You know this land do you Mr. Koontz? A. Yes sir.
- Q. When was it, or how long have you known this land?
- A. For the last ten years.
- Q. Who was settled on it when you first knew it?
- A. Mrs. Withrich.
- Q. Exactly what year was it when she went on there?
- A. She went on there ten years ago. Only filed seven years ago.
- Q. When did she go on, settle on that land? A. 10 years ago.
- Q. 1895? A. Yes sir, 1895.
- Q. She afterwards identified herself with the government title to the land, did she not? A. Yes sir.
- Q. Located it under the desert act? A. Under the homestead act.
- Q. And is now holding it under the homestead act? A. Yes sir.
- Q. Did she continue to live there after taking possession before she entered it? A. Yes sir.
- Q. That, if anything, did she do towards procuring water, and settling on that land Mr. Koontz?
- A. In connection with Mr. Geo. Walton, and J. J. Miller helped build a dam.
- Q. In what creek?
- A. Known as Paradise or Anderson Spring. Raised the dam, the dam is now about eighteen feet high.
- Q. Is it a creek that you spoke of as Paradise Springs?
- A. It is a spring that comes out of the hill on the J. J. Miller homestead.
- Q. How much water is furnished by these springs?
- A. Well, they have got a headgate 25 by 16 inches and under a four inch pressure it never, the water is never over six inches deep and twenty-six inches wide.
- Q. How much of this water was owned by Mrs. Withrich?
- A. One-fourth.
- Q. When was this water put on her land first?
- A. Well, the ditch, the first water she could use, it could be raised in the dam—the dam broke once, and it was reconstructed raised in the dam—the dam broke once, and it was reconstructed

again, and last season she used the first water and raised the first crops.

Q. What was it that the ditch was constructed so as to put the water upon the land? A. Mr. Walton had a ditch there long before I came into the Basin. He had not been used by Mrs. Withrich until last season.

Q. That was 1903? A. 1904.

Q. Has she irrigated any of the land prior to 1904? A. No, she could not, the ditch was too low.

Q. How high or that low or how is covered by this water? A. Of the homestead? Yes sir.

Q. I think about 100 acres can be irrigated. A. Yes sir.

Q. About 100 acres? A. Yes sir.

Q. Is there any other water supply except this water supply from Paradise Springs? A. Not from, only from Paradise Springs.

Q. Has Mrs. Withrich another piece of land besides this land that has been mentioned? A. Yes, got an eighty acre tract under desert entry.

Q. This eighty acre tract is the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter, section thirty, township four, north of range forty-five east.

Q. How long has she had that land? A. About two years.

Q. Did she locate it first? A. Yes sir.

Q. And where does she procure water for use on that land? A. From Paradise Springs.

Q. From the same springs? A. Yes sir.

Q. Has she a sufficient supply of water to irrigate both of these tracts from these springs? A. Well, last season the water has commenced raising in the ground and showing up, and I think by a proper use she will have enough.

Q. You think she will? A. Yes sir.

Q. When did she first put it on this last piece of ground? A. Has not put it there yet. Got to raise the dam yet, about four feet.

Q. She is intending to put it there, and claims a water right? A. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. As quick as possible.

Q. That was all right? A. Yes sir.

For this piece? A. Yes sir.

Q. That is the only water supply for this piece of land? A. Yes.

That is the only water supply for this piece of land? Yes.

Q. It is necessary for the successful cultivation of this

It is necessary for the successful cultivation of this

land and the other piece? A. Yes sir.

land and the other piece? A. Yes sir.

Q. Are you an old resident here Mr. Koontz?

Are you an old resident here Mr. Koontz?

A. Been here in the basin ten years.

Been here in the basin ten years.

Q. Have you noticed the effect of the use of water for irrigation

Have you noticed the effect of the use of water for irrigation

purposes as far as extending the water supply is concerned?

purposes as far as extending the water supply is concerned?

A. My son Joseph has got a homestead, and he has--if he wants

My son Joseph has got a homestead, and he has--if he wants

to get any hay at all, he has got to cut it in June for it

to get any hay at all, he has got to cut it in June for it

will flood over on the lands in July and August.

will flood over on the lands in July and August.

Q. How long has this state of affairs existed?

How long has this state of affairs existed?

A. When we first came to the basin he could cut it nearly every

When we first came to the basin he could cut it nearly every

year, and now lately, last year, did not cut but fifteen ton.

year, and now lately, last year, did not cut but fifteen ton.

Q. Where is his land situated with reference to the creek?

Where is his land situated with reference to the creek?

A. It is just north and east of Mr. Walton on the Teton River.

It is just north and east of Mr. Walton on the Teton River.

Q. You are satisfied that it is the increase in the use of the

You are satisfied that it is the increase in the use of the

water that has caused this increase in the wetness of the

water that has caused this increase in the wetness of the

land? A. Absolutely.

land? A. Absolutely.

Q. Could not be attributed to any other source could it?

land? A. Absolutely.

A. Could not be attributed to any other source could it? As a

Could not be attributed to any other source could it? As a

man of experience in irrigating, what is your opinion as to

man of experience in irrigating, what is your opinion as to

the use of water in Teton Basin, does it interfere with the

the use of water in Teton Basin, does it interfere with the

water supply in the low water season with the people below

water supply in the low water season with the people below

or increase it?

or increase it?

A. I don't know it. I don't know Mrs. Withrich's land, for instance,

Increases it. (Last) year Mrs. Withrich's land, for instance,

in sage brush land, the biggest part of it, and last season

in sage brush land, the biggest part of it, and last season

there was over a dozen of springs sprung up right in among

there was over a dozen of springs sprung up right in among

the sage brush.

the sage brush.

Q. I will ask you--I will ask you in regard to the claim of

I will ask you--I will ask you in regard to the claim of

J. J. Miller--you know him? A. Yes sir.

J. J. Miller--you know him? A. Yes sir.

Q. You know the land he claims, described in his cross-complaint

You know the land he claims, described in his cross-complaint

do you? A. Yes sir.

do you? A. Yes sir.

Q. When did Mr. Miller settle on that land?

When did Mr. Miller settle on that land?

A. About four years ago.

About four years ago.

Q. Mr. Miller is one of the parties that claims water from

Mr. Miller is one of the parties that claims water from

Mr. Miller is one of the parties that claims water from

Mr. Miller is one of the parties that claims water from

Paradise Springs? A. Yes sir.
Paradise Springs? A. Yes sir.

Q. When did he first take the water from Paradise Springs?

When did he first take the water from Paradise Springs upon this land of his? A. This last season.

Q. 1904? A. Yes sir.
1904? A. Yes sir.

Q. How did he bring it by means of a ditch?

How did he bring it by the (means) of a ditch?

A. By means of a ditch.

By means of a ditch.

Q. How much of that land of his is covered by this water, can be irrigated from it? A. In the neighborhood of 100 acres, I think.

Q. Is there any other water supply except this water from Paradise Springs? A. No sir.

Paradise Springs? A. No sir.

Q. It is necessary to use the water on his land to raise crops on it? A. Yes sir.

on it? A. Yes sir.

Q. How much of it has he actually watered up to this time?

How much of it has he actually watered up to this time?

A. About nine acres.

About nine acres.

Q. About nine acres--is it his intention to increase the amount?

About nine acres--is it his intention to increase the amount?

A. Yes sir.

Yes sir.

Nowy--the district gentleman, I believe, on this claim.

Are you inadvertently informed Mr. Koontz to testify in regard

to the claim of Edward Koontz, Jr? You are hardly in a position

to do so--we will have him here in the morning.

Q. Mr. Geo. Walton was one of the owners in this Paradise Springs?

A. Yes sir.

Nowy--That is all Mr. Koontz. Call George Walton.

This is on the claim of George Walton.

GEORGE WALTON, being first duly sworn, on behalf of his George Walton, being first duly sworn, on behalf of his own claim, testified as follows:

DIRECT EXAMINATION BY NOWY.

Q. You are the defendant mentioned in the cross-complaint here?

You are the defendant mentioned in the cross-complaint here?

A. Yes sir.

Yes sir.

Q. Where do you reside? A. Teton Basin, Bates Postoffice.

Where do you reside? A. Teton Basin, Bates post office.

Q. Are you the owner of that certain land described in the cross-

complaint being the Southeast quarter of the Southwest quarter and other parts of section twenty-nine and section thirty, and other parts of section twenty-nine and section thirty,

township four north of range forty-five east? A. Yes sir.

township four north of range forty-five east? A. Yes sir.

Q. How long have you lived upon that land?

How long have you lived on that land?

A. I took possession of it in 1891.
I took possession of it in 1891.

Q. Who did you buy it from Mr. Walton? A. Mr. Hodgins.
Who did you buy it from Mr. Walton? Mr. Hodgins.

Q. How long had Mr. Hodgins lived upon that land before you went there? A. I could not say, was not personally acquainted with him.
How long had Mr. Hodgins lived upon that land before you went there? A. I could not say, was not personally acquainted with him.

Q. Had Mr. Hodgins, when you bought it, any water upon the land?
Had Mr. Hodgins, when you bought it, any water upon the land?

A. I purchased his water right and his improvements.
I purchased his water right and his improvements.

Q. Where had he taken the water from? A. Paradise Springs.
Where had he taken the water from? Paradise Springs.

Q. That is the springs mentioned by Mr. Koontz in giving his testimony? A. Yes sir.
That is the springs mentioned by Mr. Koontz in giving his testimony? A. Yes sir.

Q. How much of this 180 was covered by the waters of Paradise Springs? A. About twenty acres.
How much of this 180 was covered by the waters of Paradise Springs? A. About twenty acres.

Q. And do you mean that that had been watered from it or could be? A. Had not been up until 1892. I enlarged the ditch and irrigated about twenty acres in 1892.
And do you mean that that had been watered from it or could be? A. Had not been up until 1892. I enlarged the ditch and irrigated about twenty acres in 1892.

Q. You mean 1902? A. 1892, yes sir, 1892.
You mean 1902? A. 1892, yes sir, 1892.

Q. How long did Mr. Hodgins live upon that land?
How long did Mr. Hodgins live upon that land?

A. I could not say, I just got here in the spring and I was working for Mr. Pratt.
I could not say, I just got here in the spring and I was working for Mr. Pratt.

Q. Did you buy it by bill of sale or deed or simply take possession? A. I got a deed of the water and of the
Did you buy it by bill of sale or deed or simply take possession? A. I got a deed of the water and of the

improvements. But I have not now—they are lost.
improvements. But I have not now—they are lost.

Q. You have had them? A. I have had them.
You have had them? A. I have had them.

Q. Is there any one here that can testify to Mr. Hodgins?
Is there any one here that can testify to Mr. Hodgins?

A. Mr. Ray Kimball, I think he is here.
Mr. Ray Kimball, I think he is here.

Q. After you went on you increased the size of the ditch did you?
After you went on you increased the size of the ditch did you?

A. Yes sir.
Yes sir.

Q. How much—what carrying capacity did you give it?
How much—what carrying capacity did you give it?

A. I finished the ditch sufficiently large to irrigate the land in 1892 about twenty acres, and the land lies this way and in 1892 about twenty acres, and the land lies this way and this way and the creek comes down, it is very low, consequently this way and the creek comes down, it is very low, consequently he to build a large dam, to dam it to the south end, and we had to build a large dam, to dam it to the south end, and we have not got it completed.
I finished the ditch sufficiently large to irrigate the land in 1892 about twenty acres, and the land lies this way and in 1892 about twenty acres, and the land lies this way and this way and the creek comes down, it is very low, consequently this way and the creek comes down, it is very low, consequently he to build a large dam, to dam it to the south end, and we had to build a large dam, to dam it to the south end, and we have not got it completed.

Q. How much of that land can be irrigated from that ditch?
How much of that land can be irrigated from that ditch?

A. When the ditch is all completed on the place, about 120 acres.
When the ditch is all completed on the place, about 120 acres.

Q. These Paradise Springs, how much water flows from it? these Paradise Springs, how much water flows from it?

A. I don't know--I don't understand measuring water. I don't know--I don't understand measuring water.

Q. Is there enough to irrigate all of the lands you claim, and is there enough to irrigate all of the lands you claim, and for the other lands besides? A. I believe there will be water--for the other lands besides? A. I believe there will be water--there will be sufficient, to irrigate the claims of Miller there will be sufficient, to irrigate the claims of Miller and Koontz and myself.

Q. That is all that claim from it? A. Yes sir. That is all that claim from it? A. Yes sir.

Q. You think there is sufficient water there for it? You think there is sufficient water there for it?

A. I think there would be, yes. I think there would be, yes.

Q. How much water do you need per acre on your land? How much water do you need per acre on your land?

A. In an irrigating stream, an inch to the acre would be sufficient. In an irrigating stream, an inch to the acre would be sufficient.

Q. It is necessary to have water there for this, and this is the only available water supply? A. Yes sir. It is necessary to have water there for this, and this is the only available water supply? A. Yes sir.

Hawley--That is all--is Mr. Ray Kimball here. Mr. Breckenridge.

E. BRECKENRIDGE, being recalled, on behalf of the above claim, testified as follows:-

Q. Do you know the Geo. Walton claim? A. No sir.

Q. When did Hodgins settle up there, what year?

A. I could not say that, 1888 or 1889, somewhere along there. He farmed up there, and left.

Q. You have just rode by there.

THOMAS RATES, being recalled, on behalf of the above claim, testified as follows:-

DIRECT EXAMINATION BY HAWLEY.

Q. Mr. Rates when did Mr. Hodgins go on this land?

A. I believe it was about 1881 or 1882.

Q. 1881? A. Somewhere about that time.

Hawley--That is all--that will do. Call Mr. B. O. Walton.

B. O. WALTON, being first duly sworn, on behalf of the above claim, testified as follows:-

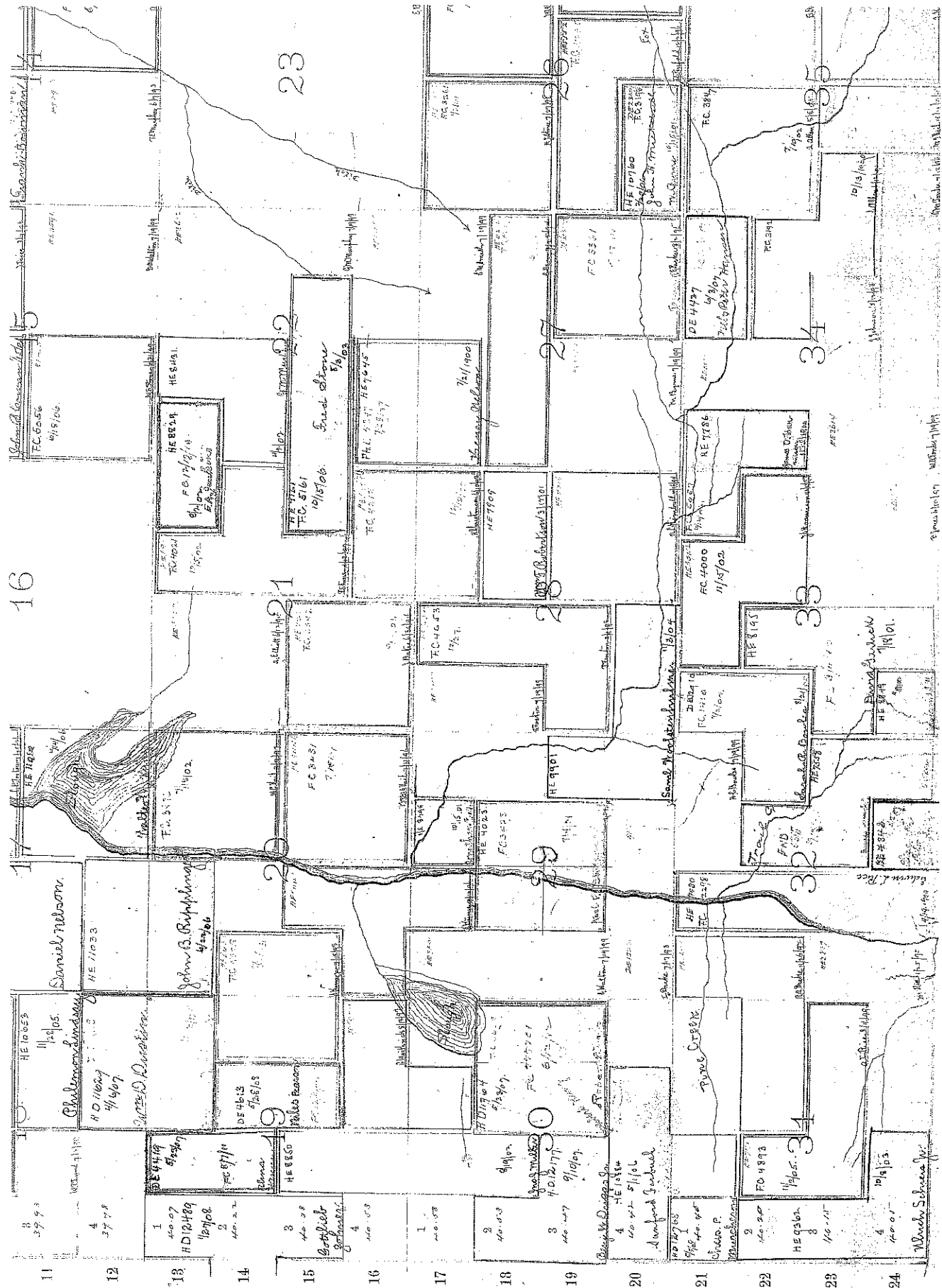
DIRECT EXAMINATION BY HAWLEY.

Hawley--First I will ask you Mr. Kimball, when Mr. Hodgins first settled on the land now owned by George Walton, 1881?

A. Yes, 1881, the summer of 1881.

Q. The summer of 1881? A. Yes sir.

Q. Used the water for the first time in 1881? A. Yes sir.



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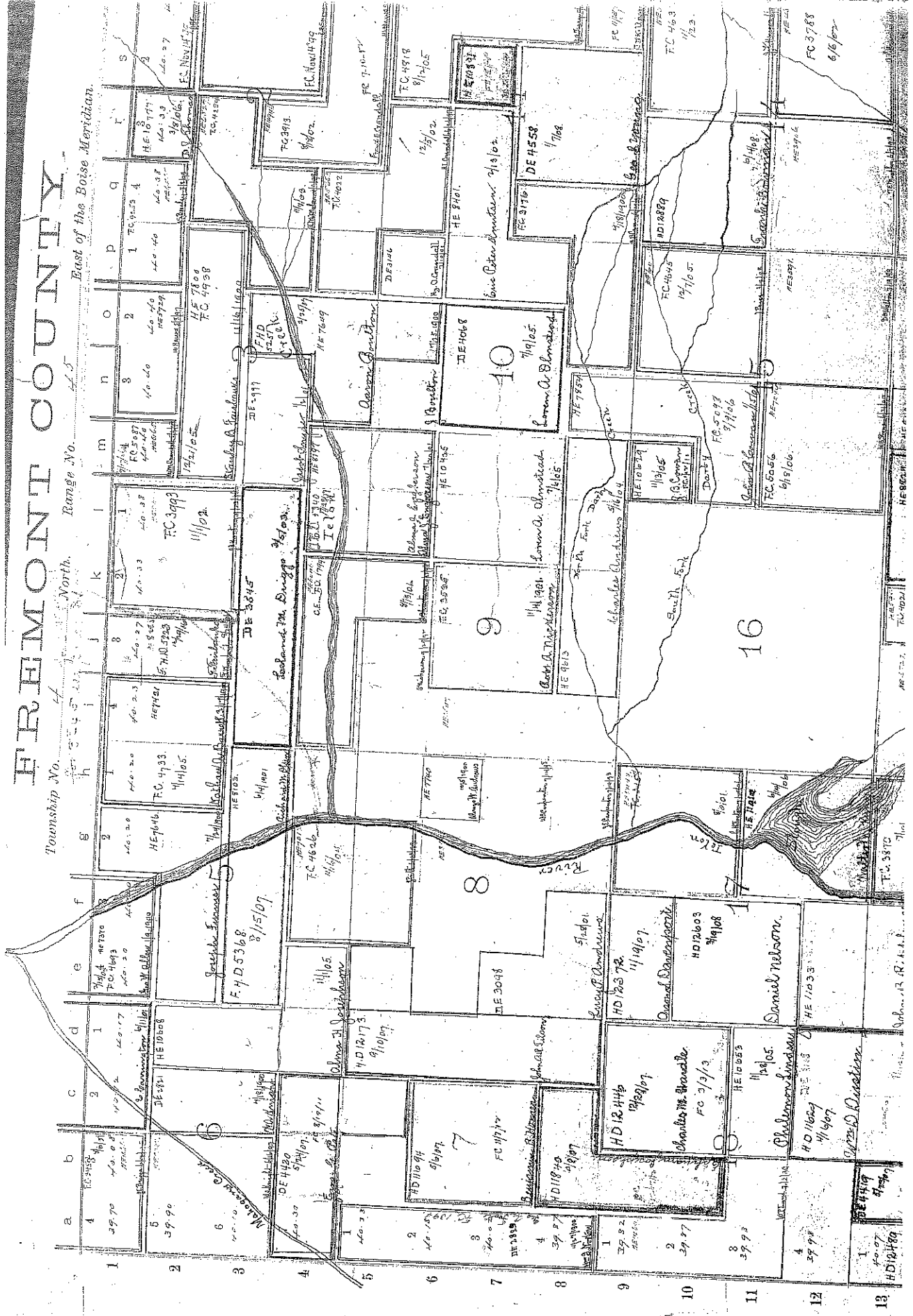
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FREMONT COUNTY

Township No. 4 North. Range No. 45 East of the Boise Meridian.



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