

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LEMHI

JOHN T. BERNARD

Plaintiff,

vs.

S. F. HORN, MRS. S. F. HORN,
and EMMA MULKEY LITERAL and
IDAHO LIVE STOCK LANDS, INC.,

Defendants.

S T I P U L A T I O N.

IT IS HEREBY STIPULATED AND AGREED by and between Merle L. Drake, and E. W. Whitcomb, Attorneys for the plaintiff, and Chase A. Clark, Attorney for defendants and cross-complainants, S. F. Horn and Mrs. S. F. Horn, and Emma Mulkey Literal, and Jones, Pomeroy, and Jones, Attorneys for defendant and cross-complainant, Idaho Live Stock Lands Incorporated, that the proposed decree, copy of which is attached hereto, may be entered as the decree in the above entitled action.

DATED this 9th. day of July, 1937.

E. W. Whitcomb,
Attorney for Plaintiff,

Merle L. Drake
Attorney for Plaintiff,

Chase A. Clark
Attorney for Defendant and
Cross-Complainant, S. F. Horn,
Mrs. S. F. Horn, and Emma Mulkey
Literal.

Jones Pomeroy & Jones,
Attorneys for Defendant and
Cross-Complainant, Idaho
Livestock Lands Incorporated.

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY
OF LEMHI.

DORA E. BERNARD, Plaintiff,

vs.

S. F. HORN, MRS. S. F. HORN,
and EMMA MULKEY LITERAL and
IDAHO LIVE STOCK LANDS, INC.,

Defendants.

D E C R E E.

This cause came on regularly to be heard the 9th day of

July, 1937, before Honorable Guy Stevens, Judge of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, without a Jury, E. W. Whitcomb, Esq. and Merle L. Drake Esq. appearing as Attorneys for the plaintiff, Chase A. Clark, appearing as Attorney for Defendants, S. F. Horn, Mrs. S. F. Horn and Emma Mulkey Literal, and Jones, Pomeroy and Jones, appearing for defendant and cross-complainant, Idaho Livestock Lands Incorporated, and it appearing to the satisfaction of the Court that all of the above entitled parties are proper parties to this action and the parties having stipulated by their counsel in open court to the entry of this decree, and the parties having waived findings-of-fact and conclusions-of-law, and this matter having been fully considered by the Court, and the Court being fully advised in the premises,

WHEREFORE, by reason of the law and premises aforesaid, and the stipulation filed herein, it is ordered, adjudged and decreed as follows:

THAT each and every of the tracts of land described in the complaint and cross-complaints in this case belong to the several parties plaintiff and defendants herein; are arid in character and will not successfully raise any agricultural crops without the application of water thereon for the irrigation thereof, and that all of said lands are susceptible of irrigation from Potato Creek, Rose Springs, Big Springs, Group Springs and all other springs arising on the north

and east of what is known as the Bernard Ditch, located in Section 23, Sec. 24, Sec. 25, and Sec. 36 in Township 15 North, Range 21, E.B.M.

That the said Bernard Ditch is so constructed that all of the waters coming from the slopes above said ditch flow into, or can be diverted into said ditch from the numerous springs adjacent thereto and lying on the north and east side of said ditch through said sections;

That the owners of said respective tracts of lands are as alleged in said complaint or cross-complaints filed herein and that they are as hereinafter set forth;

That the amount of waters for each tract of land hereinafter set forth is necessary and ample for the proper irrigation of said lands;

That all of the waters of Potato Creek, Rose Springs, Group Springs, Big Springs and all other springs are to be diverted into said Bernard Ditch and it is adjudged that the Bernard Ditch above the point hereinafter specified as the diversion point of the waters of the defendants, S. F. Horn, Mrs. S. F. Horn and Emma Mulkey Literal, should be declared a natural channel and common source of supply and shall come, for the purpose of this decree, under the jurisdiction of the Watermaster of the district in which such ditch is located;

There is excepted from the waters to be so diverted and conveyed into said ditch the water now being diverted by Emma Mulkey Literal from certain springs for the irrigation of the Southeast Quarter of the Northwest quarter, and the North half of the Northeast quarter of the Southwest quarter of Section 25, Township 15 North, Range 21 E. B. M., which water from said springs and ditches is to be conveyed over the Bernard Ditch through flumes and no other parties to this decree is to have any right in and to such waters for the irrigation of said lands except the defendant Emma Mulkey Literal.

That there is also excepted from the waters to be diverted into the Bernard Ditch, the waters of Mayrick Creek and its tributaries, which waters, and all of the waters of Mayrick Creek, are hereby decreed to the defendant and cross-complainant, Idaho Livestock Lands Inc.,

provided, that said defendant and cross-complainant is to construct at its own expense, the necessary flumes, ditches, underpasses, and conduits, across or under what is known as the Bernard Ditch at a point where said Bernard Ditch crosses said Creek for the conveyance of the waters of Mayrick Creek to the lands of the defendant and cross-complainant, Idaho Livestock Lands Inc., hereinafter described as follows, to-wit: South half of the Southwest quarter of Section 25, Northwest quarter of the Southeast quarter, and the South half of the Southeast quarter of Section 26, and the Northeast quarter of the Northeast quarter of Section 35 Township 15 North, Range 21, E.B.M.,;

That the points of diversion of the waters of said Bernard Ditch herein decreed as a natural channel for the irrigation of the tracts of lands respectively are as hereinafter fixed by this decree: That the following named parties in this suit are entitled to the uninterrupted use of the flow of the waters of Bernard Ditch and its tributaries as hereinbefore described upon the lands mentioned and described in the complaint and cross-complaints on file herein in the following amounts and from the following dates, to-wit:

73-0251 DORA E. BERNARD: 4.4 cubic feet per second of the waters of Bernard Ditch, with date of priority, April 1st, 1915, to be measured at the point of diversion of said waters, which point of diversion is located approximately 300 feet east of the Northeast corner of the Southeast quarter of the Southeast quarter of Section 23, Township 15 North, Range 21, E.B.M., and appurtenant to the East half of the Southwest quarter, Southeast quarter of the Northwest Quarter, Southwest quarter of the Northeast quarter, and the Southeast quarter of Section 9, Township 15 North, Range 21 E.B.M.;

73-0252 S. F. HORN, and MRS. S. F. HORN, 1.8 cubic feet per second of the waters of said Bernard Ditch with date of priority, April 1st, 1890, with point of diversion just east of the point of diversion of the plaintiff herein and located approximately 600 feet east of the Northeast corner of the Southeast quarter of the Southeast quarter of Section 23, Township 15 North, Range 21 E.B.M., and appurtenant to the South half of the Southeast quarter of Section 23, Southeast quarter of the

Southwest quarter of Section 23, Northeast quarter of the Northwest quarter of Section 26, all in Township 15 North, Range 21 E.B.M.,

73-0253 EMMA MULKEY LITERAL: 1.8 cubic feet per second of the waters of Bernard Ditch, with date of priority April 1st, 1890, with point of diversion being the same point of diversion and through the same diversion with the defendants and cross-complainants S. F. Horn and Mrs. S. F. Horn, located about 600 feet east of the Northeast corner of the Southeast quarter of the Southeast quarter of Section 23, Township 15 North, Range 21, E.B.M., and appurtenant to the North half of the Northeast quarter, and the Southwest quarter of the Northeast quarter and the Southeast quarter of the Northwest quarter of Section 26, Township 15 North, Range 21, E. B. M.

73-0254 EMMA MULKEY LITERAL: All of the waters of springs arising in the Southeast quarter of the Northeast quarter, and the Southwest quarter of the Northeast quarter, and North half of the Northeast quarter of Southwest quarter, and North half of the Northwest quarter of Southeast quarter, Section 25, Township 15 North, Range 21, E.B.M., which waters are to be flumed over the Bernard Ditch at the cost and expense of the said Emma Mulkey Literal and shall be appurtenant to the Southeast quarter of the Northwest quarter, and the North half of the Northeast quarter of the Southwest quarter of Section 25, Township 15 North, Range 21, E.B.M.

73-0255 IDAHO LIVESTOCK LANDS INC., a corporation; 2 cubic feet per second of time of the waters of Mayrick Creek, with date of priority May 30th, 1899, with point of diversion at the point where Mayrick Creek proper intersects the Bernard Ditch, and shall be appurtenant to the Northwest quarter of the Southeast quarter, and the South half of the Southeast quarter of Section 26, and the Northeast quarter of the Northeast quarter of Section 35, and the South half of the Southwest quarter of Section 25, Township 15 North, Range 21, E.B.M. in Idaho.

73-0256 DORA E. BERNARD: 4 cubic feet per second of time of the waters of Bernard Ditch with date of priority, June 1st, 1916, with point of diversion 300 feet east of the Northeast corner of the

Quarter of Section 23, Township 15 North, Range 21 E.B.M., and appurtenant to the East half of the Southwest quarter, and the Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter and the Southeast quarter, all in Section 9, Township 15 North, Range 21, E.B.M.

73-0257 S. F. HORN, and MRS. S. F. HORN: 2 cubic feet per second of the waters of Bernard Ditch with date of priority June 1st, 1916, with point of diversion 600 feet east of the Northeast corner of the Southeast quarter of the Southeast quarter of Section 23, Township 15 North, Range 21, E.B.M., and appurtenant to the South half of the Southeast quarter, the Southeast quarter of the Southwest quarter of Section 23, the Northeast quarter of the Northwest quarter of Section 26, Township 15 North, Range 21 E.B.M.

73-0258 EMMA MULKEY LITERAL: 2 cubic feet per second of time of the waters of Bernard Ditch, with date of priority June 1st, 1916, with point of diversion 600 feet east of Northeast corner of the Southeast quarter of the Southeast quarter of Section 23, Township 15 North, Range 21, E.B.M., and appurtenant to $N\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, of Section 26, Township 15 North, Range 21, E.B.M.

That all of the waters herein decreed is to be measured at the respective points of diversion as herein specified:

That it is further ordered and decreed that that part of the Bernard Ditch, which is above the point of diversion of Dora E. Bernard, is to be maintained by the plaintiff Dora E. Bernard, and the defendants S. F. Horn and Mrs. S. F. Horn, and defendant Emma Mulkey Literal in proportion to the amount of their respective decrees:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall maintain proper headgates and measuring devices at their respective points of diversion and that such headgates and measuring devices are hereby placed under the jurisdiction of the Watermaster of the district in which said Bernard Ditch is located.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the parties to this action shall pay his, its, or her own costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and every party to this suit, their agents, servants, and attorneys and employees and each and every, and all parties acting in aid of or for any parties to this suit are hereby forever restrained and enjoined from in any manner interfering with, or diverting, or using the waters of said Springs, Creeks, or stream, or their tributaries, except in accordance with the terms and the conditions of this decree;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that headgates and weirs shall be installed by Dora E. Bernard, plaintiff, and defendants and cross-complainants, S. F. Horn and Mrs. S. F. Horn, and Emma Mulkey Literal, at their points of diversion as herein specified immediately, and not to be delayed over a period of twenty days from the date of this decree.

DATED this 9th day of July, 1937.

CUY STEVENS,
District Judge.

Filed & Entered July 10th, 1937.
Judgment Book D, pages 314, 315 & 316.

STATE OF IDAHO,)
 : ss.
COUNTY OF LEMHI.)

I, W. W. SIMMONDS, Clerk of the District Court in and for the County aforesaid, do hereby certify that the foregoing is a full, true and complete copy of the Stipulation and Decree in the above entitled action as the same appears on file in my office and of record in Judgment Book D, pages 314, 315 & 316.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 31st. day of July, 1937.

W. W. SIMMONDS,
Clerk of the District Court.

By Margaret Sherry
Deputy