

DEPARTMENT OF
WATER RESOURCES

COPY

14 Idaho 450, 94 P. 761 (1908) containing testimony of witnesses for Franklin.

3. I certify that the attached, as Exhibit 2, is true and correct photocopies of pertinent portions of the Transcript on Appeal, Volume II from the Supreme Court of the State of Idaho in the appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County in the matter of *Farmers' Coop. Ditch Co. v. Riverside Irrigating Dist. et al.*, aff'd, 14 Idaho 450, 94 P. 761 (1908) containing testimony of witnesses for Pioneer Irrigation District.

4. I certify that the attached, as Exhibit 3, is true and correct photocopies of pertinent portions of the Transcript on Appeal, Volume I from the Supreme Court of the State of Idaho in the appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County in the matter of *Farmers' Coop. Ditch Co. v. Riverside Irrigating Dist. et al.*, aff'd, 14 Idaho 450, 94 P. 761 (1908) containing the complaint, findings of fact, conclusions of law and the decree.

5. I certify that the attached, as Exhibit 4, is a true and correct photocopy of the Notice of Claim to Water Right for water right no. 63-166, submitted by Franklin in 1990 that I obtained from the Idaho Department of Water Resources.

6. I certify that the attached, as Exhibit 5, is a true and correct photocopy of the Notice of Claim to Water Right for water right no. 63-167, submitted by Franklin that I that I obtained from the Idaho Department of Water Resources.

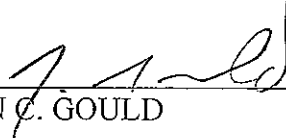
7. I certify that the attached, as Exhibit 6, is a true and correct photocopy of IDWR's recommendation for water right no. 63-166 in the name of Franklin Ditch Co that I obtained from the Snake River Basin Adjudication website.

8. I certify that the attached, as Exhibit 7, is a true and correct photocopy of IDWR's

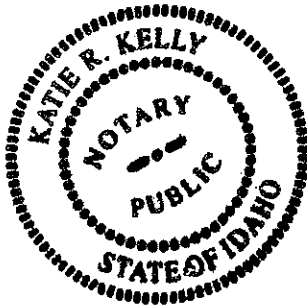
recommendation for water right no. 63-167 in the name of Franklin.

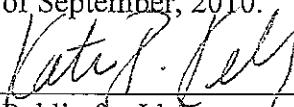
DATED this 14th day of September, 2010.

RINGERT LAW CHARTERED

By 
JON C. GOULD

Sworn to and subscribed before me this 14 day of September, 2010.




Notary Public for Idaho
Residing in Oasis, Idaho
My Commission Expires: 2/20/14

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2010, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

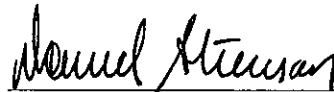
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Daniel V. Steenson

Exhibit 1

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

November Term, 1908

—
Farmers' Co-operative Ditch Company
(a corporation)
Plaintiff and Respondent
vs.

Riverside Irrigation District, Ltd., et al
Defendants and Respondents.
Nampa & Meridian Irrigation District,
Pioneer Irrigation District, Riverside Irrigation District, Ltd., and New York Canal Company, Ltd.,
Defendants and Appellants.

Transcript on Appeal
VOL. II

—
Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon.

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W. E. BORAH.

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E. J. FRAWLEY,
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Attorneys for Respondents.

621- 622 2037-2039
 624- 627 2044-2051
 377-1382 4414-4429

139-1140 3676-3679
 135-1138 3664-3672
 138-1139 3673-3675

itch.
 318-1319 4235-4237
 313-1314 4219-4223
 314-1317 4224-4230
 317-1318 4231-4234
 ch.

072-1074 3467-3473
 075-1076 3474-3477

itch.

078-1079 3484-3486
 076-1078 3478-3483

company.

581- 682 2224-2224
 682- 683 2225-2227
 681- 681 2221-2223
 675- 676 2203-2206

677- 679 2212-2216

683- 683 2228-2230
 679- 681 2217-2221

company No. 1.

959- 961 3111-3116
 962- 963 3122-3122
 946- 949 3172-3179
 953- 957 3093-3103
 957- 959 3104-3110
 961- 962 3117-3121
 963- 965 3123-3129
 952- 953 3088-3092
 949- 952 3080-3087
 410-1429 4518-4577
 965-965 3130-3131
 377-1382 4414-4429
 382-1591 4430-4460

For Defendant Farmers Union Ditch Co.

Camp, J. G. 1097-1104 3545-3567
 McIntyre, G. H. 1104-1108 3568-3577
 McIntyre, G. H. (rec.) 1339-1339 4299-4299
 Stephenson, D. O. (reb.) 1377-1382 4414-4429
 Young, W. A. 1108-1109 3578-3580

For Defendant The Franklin Ditch Company.

Allen, H. E. 915- 920 2975-2989
 Cook, L. F. 906- 909 2948-2957
 Dadd, D. P. 894- 901 2910-2930
 Madden, C. F. 909- 912 2958-2965
 Milliner, George 920- 921 2990-2994
 Schindler, Adam 901- 906 2931-2947
 Stephenson, D. O. (reb.) 1377-1382 4414-4429
 Thomas, John 912- 915 2966-2971

For Defendant James L. Graham.

Barber, Thomas 1342-1343 4310-4312
 Bingham, Jacob 1342-1342 4307-4309
 Catlin, T. C. 1340-1341 4301-4304
 Stearn, J. M. 1341-1342 4305-4309

For Defendant Silas S. Gray.

Gray, S. S. 816- 820 2653-2664

For Defendant Flanning Ditch.

Catlin, T. C. 984- 987 3190-3197
 Flanning, W. J. 988- 989 3202-3204
 Hart, E. N. 1013-1013 3281-3282
 Stephenson, D. O. 987-988 3198-3201

For Defendant Hart and Davis Ditch.

Catlin, T. C. 981- 982 3179-3182
 Catlin, T. C. (rec.) 984-984 3189-3189
 Davis, Claude 975- 979 3163-3172
 Hart, E. N. 982- 984 3183-3188
 Stephenson, D. O. 979- 980 3173-3178

For Defendant Jacob Ditch.

Davis, Thomas 1079-1083 3487-3499
 Hibbard, Charlie 1083-1084 3500-3502
 Nick, L. L. 1092-1097 3530-3544
 Olden, B. F. 1084-1092 3503-3521
 Vance, S. E. 1350-1352 4333-4337

For Defendant William P. Kennedy.

Morris, Thomas 1439-1440 4611-4613
 Stearn, J. M. 1442-1443 4619-4621
 Swalley, B. F. 1440-1441 4614-4618

NW quarter and the lots constituting the N half of the SW quarter, section 8, township 4, N. R. 2 W., are owned by me; there is 148 1-2 acres I should judge, that I irrigate, 8 or 10 acres is wash from the river and I don't have to irrigate that; the other I am irrigating about, 140 acres; this 22 acres that is indicated there as not irrigated is irrigated: there is 6 1-2 acres that is not shown there, there is only 142 2908 acres shown on these lists, it would be 142 1-2 acres; that has been irrigated ever since I have been on the place from this ditch.

CROSS-EXAMINATION BY MR. JACKSON

I own 148 1-2 acres the river has cut in there lately about; I have 148 1-2 acres of irrigable land; all of it is irrigated; I have been irrigating all of it 18 years, ever since I have been there; there is a slough there and I sub irrigate from sloughs, but I flood nearly all of that; I flood anyway 130 acres of it. I never 2909 measured the land I have been flooding, I can't say just how much I have been flooding but I can tell pretty near, I don't know exactly.

The Canyon County Water Company rests its case with the permission of the Court to introduce further testimony at Boise, upon adjournment to that place.

TESTIMONY IN RELATION TO THE FRANKLIN DITCH COMPANY

D. P. Dodd, a witness for the Franklin Ditch Company, testifies.

2910 DIRECT EXAMINATION BY MR. HORAH

I reside about six miles above Caldwell on the

1 south side of the river in Canyon county, Idaho, and am 68 years of age. I first located on what is known as the Shindler place in 1866. I got the ranch from a man by the name of Boyd. There was a crop growing on the land at the time that I purchased it—there was perhaps 60 acres in grain. I continued to irrigate that land during the season of 1866. I irrigated over 100 acres, hay and all. There was about
 2911 60 acres in grain, besides the hay land. The balance I irrigated was grass land in wild hay. I diverted water from the Boise river for that ranch. I tapped it on the ranch above owned by Mr. Young. The point of diversion was the same place exactly as the present point of diversion of the Franklin or Caldwell ditch. I irrigated that land four or five years, when I sold out to a man named Wilson. I had perhaps over 100 acres, making in all 115 to 120 acres. Wilson sold to Adams Schindler.

2912 The ditch from which I originally diverted water for this ranch was called the Stapleton ditch, because Stapleton helped to take it out. A man named Boyd and another man helped. Boyd was the man from whom I purchased. Stapleton irrigated from that ditch when I was there. He had perhaps 50 acres under cultivation. He sold to Thomas Wheatley. Mr. Allen owns that ranch now. I know of my own knowledge that the water has been used upon what was known as the Dodd or Schindler ranch from this
 2913 source every year since 1866. There was no person irrigating there in 1866 except those I mentioned. There was irrigation further down the slough. Nearly everybody was irrigating from that slough. I couldn't say who it was, but all those farms were irrigated

from that slough. Robert White was irrigating when I first went there. Mr. Madden resided on the next ranch below White. He was there the first year I went there. Hemenway irrigated afterwards. After I sold to Wilson I purchased a ranch from a man
 2914 named Holland. The ranch on which I now reside is a portion of it. I have resided there ever since. I get water to irrigate that ranch out of that slough and out of the Caldwell ditch, or Pioneer Irrigating ditch it is now.

The point of diversion for the water I now use is the same place as for the first ranch I had. I irrigated maybe 70 acres the first year I went on this ranch. I took possession the same year my deed became
 2915 date. I increased the acreage perhaps 30 acres afterwards. I irrigate at the present time the whole ranch about 205 acres. I helped form the Franklin Ditch Company and was acquainted with the original shareholders of the company. J. H. Carter, Robert White, Thomas Wheatley, A. J. Reagan, John Thomas, Hamilton Davis, G. W. Wooten, A. Cook, J. M. Joh and R. N. Potts were the original shareholders.

We all had more or less difficulty in getting water from the small ditches we had and we thought it best to form a large company and build a larger
 2916 ditch. We started from the river at this same point as the Stapleton or Boyd ditch was taken from and took it across to the outside slough, and the object was to increase our water supply for after the water went down, with our small ditches it was difficult to get the water through and we thought by combining together it would be easier. The people who had been using water on this slough got together and took the

water out of the river and threw it into this slough. We used the same point of diversion but the ditch
 2917 did not quite have the same course. We took it straight across the field, dumped our water into the slough perhaps 30 yards above, after the formation of the Franklin ditch. Each of these parties I have named were irrigating at that time from this slough. By making a rough estimate I think there was about 2,200 acres under irrigation at the time of the formation of the Franklin Ditch Company, by the different original shareholders of that company. The company was formed October 24th, 1880. We continued to divert water from this canal until we sold out to the
 2918 Caldwell Ditch Company or the Strahorn, a couple of years afterwards. The sale was made to the Idaho and Oregon Land and Improvement Company. It was popularly known as the Strahorn or Caldwell ditch. The point of diversion of this ditch from the river was the same as the Franklin ditch.

When we first organized the Franklin Ditch Company we built a new ditch entirely. I don't know of my own knowledge the size of the headgate. The
 2919 parties I have named as the incorporators continued to use the water for irrigating all of their land which they had under cultivation up to the time they sold to the Strahorn people.

We then entered into an agreement for the extension of the ditch. Within two months after that time we commenced working on it and continued the work until it was completed. It was completed in May or June following. The Strahorn people did not enlarge the ditch at the point of diversion. The
 2920 ditch continued to be the size it was when the Frank-

lin people bought it until the Pioneer people bought it, at the head of the river. The Caldwell people extended it as far as Indian creek, sufficient to convey water to the town of Caldwell.

BY MR. BORAH

We offer in evidence the agreement made by the Franklin Ditch Company, and the Idaho and Oregon Land and Improvement Company for the transfer of their right. Agreement dated October 2nd, 1883.

2921 The same is admitted in evidence.

The witness continues.

I have made an estimate of the acreage actually under cultivation at the present time under the Franklin Ditch Company proper, by the shareholders. I have a knowledge of the amount of land actually occupied and what waste land there is. I am well acquainted with each and every man's acreage, that is, so much as a man has without asking actual questions; I know the number of acres they own, and that 2922 is the way I form my estimate; of course, it is not correct at all.

Virtually every acre I have I use water on now. I have 205 acres. I have had no experience so far as measuring water is concerned. I was never limited to inches, we always took what we needed, and have always done so since the ditch was built, we were never confined to a certain number of inches. The acreage under the Franklin ditch under cultivation is larger than at the time the ditch company was formed. There 2923 has been an increase in acreage from the formation of that company up to the present time.

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CROSS EXAMINATION BY FREMONT
WOOD

All the lands originally represented in the Franklin Ditch Company now receive water for their irrigation from this same ditch, delivered under this contract originally made with the Stralhorn company, 2,400 or 2,500 inches of water was reserved for the owners of those lands. That water has been used
2924 continually since that conveyance was made. I don't know how much the ditch carried in addition to the 2,400 inches after it was extended by the Oregon Land and Improvement Company. It carried four or five times as much as before it was enlarged. That additional amount of water was carried through this ditch ever since last winter, and was distributed around the country on the sage brush land and let it run to waste. We simply took what we needed on the bottom lands. There was two or three years we scarcely
2925 got any water—there was no water in the river. There was no water to be had was the reason of it. I lost two or three crops. For two years I lost the alfalfa crop entirely because I could not get the water out of the river, that was the last two or three years it was in the afterpart of the season. One season this company gave it up entirely. They sent men up there and they couldn't get water for our own use—there was no water in the river. They cleaned the ditch out every spring and I suppose kept it as near
2926 as it was originally in the first place as they could and I know it was ten feet wide on the bottom when it was finished.

The Franklin Ditch Company usually turned out at

the Mason creek crossing, very little, to supply two or three men. There is a large headgate where the water is diverted from the river. I suppose it is calculated to be on a level with the bottom of the river.

- We built a tight dam across the river every year.
- 2927 We never made a dam to bedrock to gather the supply going through the gravel. The first water failure under that ditch was about three or four years ago. I guess, of course, every dry season there is a failure. Last year we had plenty of water all the time. Two years or three years before that the water was completely dried up—I think three years ago this coming summer it was dried up entirely and we couldn't get any water in the ditch. There are two channels in the river opposite our headgate. We have to depend for
- 2928 water on the south channel. The last year or two we had to build a dam in the north channel to turn the water into the south channel. The low water period in the years we were short of water began perhaps after the 1st of August. We had water enough for the first crop of alfalfa. Some years we did not have enough for the second, and not any for the third—that was two years ago and three years ago. We irrigate in ditches in some cases, and in other cases we put dams in the sloughs to sub irrigate, but mostly
- 2929 by ditches. There is only one main slough, I suppose it is 60 feet wide on the top. There is some timber and brush along this slough; there is some timber land; part of this land is timber land. Since the Franklin ditch was constructed the river in some cases has washed out as high as 80 acres, and in some cases there is no hurt at all. Some of these lands re-

ceive the seepage water from the bench above. Now one thousandth part of the lands receive seepage. The water rises right under the hill. There is always draws between the hill and the slough that takes off the water. I am not injured on my place over an acre or two. This sub flow is not worth mentioning.

Adam Schindler, a witness for said defendant, testifies as follows:

DIRECT EXAMINATION BY MR. BORAH

I am 72 years of age. I have resided in this vicinity some 23 or 24 years. I first went on the ranch where I now reside in 1888 or 1887. I resided there at the time of the formation of the Franklin Ditch Company. The Franklin Ditch Company was formed in 1880. I had resided there three or four years prior to that time.

I got title from Todd Wilson. I went upon the ranch shortly afterward.

(Defendant here offered in evidence certified copy of deed from C. T. Wilson to Adam Schindler, dated October 7, 1887, the same being marked exhibit B.)

Witness continues.

I have resided there ever since. My deed bears date October 7, 1877. Before coming there I lived about one year on the Huston Frost ranch. About the time I moved there Robert White was irrigating land under what is known as the Franklin ditch. The Hemingway place was being irrigated when I first knew the country. Mr. Dodd originally owned the place I purchased. The first year I was there there was about 200 acres irrigated. I occasionally in-

creased this acreage—I couldn't tell just how much—
 2933 I have about 300 acres under cultivation now. I was one of the parties who joined to form the Franklin Ditch Company—I was one of the office holders of that company.

At the time we formed that company water was conveyed from the river into this first slough by what was called the Stapleton ditch. The Franklin Ditch Company built the ditch larger. We built it ten feet on the bottom and three feet in depth—the grade was about one-fourth inch to the rod. I built the most
 2934 of it myself, or managed it. The Franklin ditch as I constructed it in 1880 was of the same size as when we sold it to the Idaho and Oregon Land and Improvement Company. It remained the same size up to the time the Pioneer people bought it. The Strahera people simply extended it. The ditch was the same size. J. H. Chandler was one of the original incorporators of the Franklin ditch. He had something like 80 acres under cultivation about the time of the formation of the Franklin Ditch Company. I should
 2935 judge Mr. Keagan had about 50 acres under cultivation at that time. Mr. Wooten irrigated 200 acres or more. Mr. Joh irrigated considerable land, I don't know how much. Mr. Potts irrigated probably 100 acres or more.

The people who constituted the original Franklin Ditch Company got the water from the river, which they had been using prior to the time we constructed the Franklin ditch and they all consolidated and put it into this ditch. They took it out of the slough.
 2936 They all changed the point of diversion to the Franklin ditch and took it into the slough at one point.

Prior to that they had been using it from the slough at different points. All of these parties were irrigating land at the same time we formed this company. I have been upon that ranch since I purchased it and irrigated it. In my judgment I suppose in the low time of water it would take an inch and a half to two inches per acre to irrigate that land. The land requires less water during a part of the season. The land is
 2937 sand and gravel. I have about 300 acres under cultivation at the present time. This ditch was operated as the Franklin ditch until we sold out to the Strahorn people. All of the original users continued to use out of the ditch until it was sold. At the time I sold out and entered into this agreement to sell to the Strahorn people we were to have 1,350 inches of water carried through the canal proper, and 800 inches delivered into a certain slough—that slough is the first
 2938 Slough." There was 350 inches to be delivered on the south part of my ranch right next to the hill where the Strahorn ditch takes out. On the map the slough is marked "B," and the river proper is marked "A." The second delivery of 350 inches is the slough marked "C." The 1,350 inches is water delivered from the canal proper after leaving these two sloughs.

That makes in all, at the present time claimed by the Franklin ditch owners about 2,500 inches of water. The Caldwell or Strahorn people commenced work
 2939 under this contract about 6 weeks or 2 months after the execution of the contract. They continued working until it was completed. It was extended to the city of Caldwell; I suppose they delivered water at Caldwell about May or June of the next year contract

since it was made. We have kept up the organization. At the time I went there Mr. Regan, Mr. Potts and Mr. Job were also there. Mr. Hemingway had sold out to someone. Hamilton Davis owned his ranch when I went there.

2940 CROSS EXAMINATION BY MR. WOOD

I own about three hundred and some odd acres under the Strahorn ditch. I own 445 acres, and I think I irrigate about three hundred and some odd acres out of the Strahorn ditch. Eight hundred inches of water was delivered into the Strahorn slough as shown on the state engineer's map. Three hundred and fifty inches was to be delivered here—it is called the Waste slough on this map; 1,350 inches was to be delivered in the ditch down as far as Mason creek, 2941 out of the main canal, between the head of the main ditch and Mason creek. I took out somewhere about 200 inches at times, and at other times I did not, for my land, out of that 1,350 inches of water—it depends on whether I needed it. I own three shares in the Franklin Ditch Company. Every shareholder took so much water and we kept our company up, and we had to divide this water into shares, after we got the 1,350 inches in the canal. I own three shares and the rest own a share apiece. I own this land in the 2942 northwest quarter of section 24, and the northeast quarter of section 23, particularly here upon the south side of the Caldwell canal. That land is above the Caldwell canal. That land I do not irrigate—I do not count. I simply irrigate between the Caldwell canal and the river. This land on the state engineer's map being the quarter sections where the ditch heads, was

irrigated mostly from the Eureka ditch. The 800 inches is turned into the north slough for all the parties interested in the ditch; that is the old original stockholders in the Franklin ditch. I could not tell how much land is irrigated from that 800 inches. It is used by every man who belongs to the Franklin ditch. I raise wheat and oats, potatoes once in a while. I cultivate 125 to 130 acres in grain crop, the rest is in meadow and pasture land; I don't know how much is in meadow, about 100 acres; it is wild grass part of it, and the other part is alfalfa. This was all tame grass but it went back into wild grass.

If the river is well filled with water the ground subs so that you don't have to irrigate much. I irrigate mostly by ditches. I have made no investigation to determine the amount of water I require. I have never made any tests to determine the smallest amount I could get along with, because we generally had plenty of water in the river. I mean by my opinion that it would take from one and a half to two inches to irrigate this land, that I think it would take that because there is no bottom like in the sage brush land. The soil in some places is one foot and in some places ten feet deep, and in some places we have a good top soil, and in some places it is rocks clear to the top. We irrigate the most of it. We have a little soil of course. I don't know in the ordinary irrigating season, how much of the time we have to keep the water on that soil in order to produce ordinary crops—whenver we think it is necessary. I don't know as I can tell hardly what proportion of the time we have to keep water on a given 100 acres of our land in

order to produce an ordinary crop, but I should judge
2946 about half the time.

REDIRECT EXAMINATION BY MR. BORAH

All these people principally took their water from this slough before the construction of the Franklin ditch. They first turned it from the river into this Strahorn slough and afterwards conveyed it from the Strahorn slough into the Waste slough.

The people who organized the Franklin Ditch Company had been irrigating and when they organized the Franklin Ditch Company, they conveyed it through
2947 one ditch from the river to this slough.

CROSS EXAMINATION BY MR. RICE

When we constructed the Franklin ditch the lower end was right near my house. The Franklin Ditch Company extended from what is called the "Headgate on this map to the blue line on the West slough (indicating) and from the West slough on was what the Strahorn people built.

L. F. Cook, a witness for said defendant, testified as follows:

2948 DIRECT EXAMINATION BY MR. BORAH

I reside about three miles east of Caldwell and have resided there since 1879. I was one of the original incorporators of the Franklin Ditch Company, and got my ranch from Marion D. Mason.

When I got the land there was about 50 acres that had been plowed and cultivated. I commenced to irrigate as soon as I went there in April, 1879. I irrigated the biggest part of the ranch in hay and grain.

I bought something near 320 acres. There must
 2949 have been 200 acres that I irrigated with water. I
 have resided there ever since and have continued to
 irrigate that land ever since. I think I have put 50
 acres more under irrigation; I have under cultivation
 I should say 250 acres. I have irrigated that 250
 acres pretty nearly ever since I have been there. I
 increased the acreage to that extent shortly after I
 went there, and irrigated it ever since. I got water,
 most of it, from the Franklin ditch. Prior to the
 formation of the Franklin Ditch Company I got it
 2951 from that slough and some through sloughs a little be-
 low there. We just plowed and scraped it out; that
 was to where the water come out and that water came
 in. We didn't do anything, just threw up a little dam,
 to transfer the water from the river into the sloughs.
 Mr. Carter irrigated in 1879 nearly all of his land. I
 would have to guess at the amount, I think 320 acres
 or a little more, but the biggest part of it was under
 the Franklin ditch. He was irrigating a good por-
 tion of it, but I couldn't say how much he had in
 2951 cultivation. I think Robert White had 100 acres
 irrigated. The Hemingway or Hamilton Davis place
 was being irrigated at the time I went there. The
 Potts' place was under irrigation and the Job ranch
 also. All these parties secured water from the river
 the same way I did before we organized the Franklin
 Ditch Company. In 1880 the water got short and
 we organized the Franklin Ditch Company.
 We were all using water from the
 same slough. At the time the Franklin ditch was con-
 2952 structed I think the headgate put in was 11 feet wide at
 first—the canal was the same width on the bottom as

the headgate, either ten or eleven feet, and it was three or four feet deep. There was about 17 of us used water from the Franklin ditch after the organization of that company. The names are the same parties mentioned in the first meeting. The Franklin ditch measured the same size at the construction that it was when the Pioneer people purchased it.

- I could hardly say how much water it would take
 2953 per acre to irrigate that land. There was places where it was pretty close to the river, and at a low stage when the river was low I don't know whether two inches to the acre will irrigate it or not. I think I have some land on my place pretty close to the river, and I have been trying to irrigate alfalfa on it, and I don't think that two inches of water to the acre will irrigate that. One acre with another generally through there, in my opinion, would require probably an inch to an inch and a half to the acre.
 2954 . The point of diversion of the Franklin ditch is right at the same point as the old Stapleton ditch was.

CROSS EXAMINATION BY MR. RICE

- A portion of this 250 acres is irrigated from the Mason Creek Ditch Company. It has been since the Franklin Ditch Company was formed from the Mason creek slough. That is a separate ditch from the Franklin. All of my land is under the Mason creek but about 80 acres. I don't hardly know how much is irrigated from the Mason creek ditch. The water all
 2955 comes in together from the Franklin ditch to the Mason creek ditch and I use it that way and couldn't hardly say how much I use from each one.

CROSS EXAMINATION BY MR. WOOD

I own one share in the Franklin Ditch Company and have owned that ever since the company was organized, and I irrigate my land with the water represented by that one share. I have one share in the Mason creek ditch; I have forgotten how much one share there represents. I believe we thought something like 5,000 was first recorded there.

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CROSS EXAMINATION BY MR. RICE

I think there are ten shares in the Mason Creek Ditch Company.

BY MR. WOOD

There is only about 20 acres of my land on the first bench back from the river bottom that is watered, that is under the Franklin ditch. I don't know much about measuring, nor how much water it would take or how big a ditch to carry it, or how much land could be irrigated with 100 inches of water continuously used with the land properly prepared. These are big sloughs that this water is turned into; they must be 25 or 30 feet wide. A good many of them are grown up with brush and timber. There is nothing done to clean them out except where there is a small slough that is used for a ditch, say two feet deep, that is generally cleaned out. I don't know anything about what loss there is by waste and evaporation through the big sloughs down to where I take water out.

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C. F. Maddin, a witness for said defendant, testifies as follows:

DIRECT EXAMINATION BY MR. BORAH

I am 75 years old and reside five and a half miles east of Caldwell in Canyon county, Idaho, under the Caldwell or Pioneer ditch. I have lived there about 15 or 16 years. Prior to that I resided just a half mile north of there. I went to reside on that ranch in February, 1865. My daughter now owns that ranch. I irrigated some of that land in 1866, I think about 2059 30 acres that was in grain. I irrigated the next year. I continued to live on that place and irrigate the land until about 15 years ago, and then moved onto the present place. I am one of the original incorporators of the Franklin ditch. I got water from the Boise river to irrigate this land in 1866. I took it out of the slough that the Franklin ditch was afterwards built from. Late in the season I had to cut the bar out and let the water in, and then I dammed the other sloughs off. I continued to irrigate in the 2160 same way as just described until the Franklin ditch was organized. Over 200 acres was irrigated at the time that the Franklin ditch was incorporated in 1880. That same land has been irrigated from the same source ever since 1866. At the time the Franklin ditch was organized the ditch was enlarged and all the parties who had been diverting from the different points along this slough took the water from the river at one point. A man named McKane owned the ranch. I now own prior to the time I acquired title to it. At 2061 the present time I have practically all of it, 160 acres, in cultivation and secure water through the Franklin ditch as a shareholder. I recorded 2,000 inches of water in that slough prior to the time we made the

deal with the Caldwell people. There was quite a number irrigated from that slough in 1866. Robert White and James McKane were there and irrigating. James McKane was living on what is known as the Carter ranch and irrigating practically all of his place. I think. He sold out to Carter, and Carter was one
 2962 of the original incorporators. John Stapleton owned the land that Mr. Allen now owns. Mr. Hemingway was irrigating from this slough at that time, I think about 160 acres. At that time every man who was there owned 160 acres. Some had a good deal more fenced in, but they all claimed 160. Hemingway sold to Mott, and Mott sold to Baker and Baker to Davis.

Mr. Potts was there irrigating from this slough when I went there. I think Mr. Hesse owns the ranch he owned at that time. I reside at the present time
 2963 in sections sixteen and twenty-two, and the land I originally located was on the south half of the SW quarter of section 16, and the north half of the northwest quarter of section 21, and I put the water into the slough through the land of John Stapleton and from there I conveyed it from what is known as the Waste slough to my ranch.

CROSS EXAMINATION BY MR. WOOD

I have one share in the Franklin ditch, I have had one share from the commencement of its incorporation.
 2964 There was 160 acres in the tract I first owned and which is owned by my daughter now. There is 160 acres in the tract I own now. That represents my entire holding, past and present, under this ditch. I water now with the water derived from the one share in the Franklin ditch, most of that land on the south

ranch, the ranch where I now live. I use a part of it on the other ranch. My daughter's ranch is irrigated from a ditch from Ten Mile creek, which takes up the seepage water, and a slough.

2965 CROSS EXAMINATION BY MR. RICE

George Wooten was on the land afterwards owned by Mr. McIntyre, now owned by Milliner. He got one share in the Franklin ditch.

REDIRECT EXAMINATION BY MR. BORAH

We had to irrigate this timber claim.

John Thomas, recalled as a witness for said defendant.

DIRECT EXAMINATION BY MR. BORAH

2966 I am pretty near 70 years old and have resided at Caldwell for the last four months. When ranching I resided about four miles and a half east of Caldwell on the river; I resided there pretty nearly 40 years. I came there in 1866. I began to irrigate the land that I located on, in 1867. I purchased it from Bowden. I got there in the fall—there was land on that ranch irrigated before I went there. I think I irrigated 60 acres in grain in 1867, that was all at that time. In succeeding years I irrigated more land. I resided there ever since except one year I lived in Boise City until I
2967 come to Caldwell. The land I irrigated in 1866 has been irrigated every year since that time. I own that land now. I use all that land for farming at the present time. There is on one place 150 acres and in the other 107, a part of it has washed off.

I was one of the original incorporators of the Franklin ditch. The first years we got water out of the same slough that threw the water into the Strahorn slough and transferred the water into this Waste slough. I irrigate from what is known as the first
 2968 slough next to the river. I first settled on the lower tract of the two tracts of land marked on the map "John Thomas;" that was in 1866.

That tract has been irrigated since 1866 from this slough or through ditches since constructed. After the Franklin ditch was constructed water was conveyed from the ditch and taken out by different means; about the same point where the Franklin ditch heads.

The amount of water it takes to irrigate per acre depends considerably on what kind of ground it is. I
 2969 think about one inch to the acre is sufficient if you get it regularly.

I have got about 150 acres under cultivation on them two places, outside of the timber; we don't use water on the timber if the river is high; if it isn't we have to water to a certain extent.

CROSS EXAMINATION BY MR. RICE

I have got another place that is watered out of the Mason creek ditch, that is below. I irrigate a portion of this 156 acres that I spoke of irrigating now from
 2970 the Mason creek ditch. There are places I couldn't get the water over from the Strahorn ditch. I have no interest in the Mason Creek Ditch Company. I bought this place from Mr. Plowhead. They claim he has an interest in it. I didn't buy it from Plowhead, but through a son of mine who bought it from Plow-

head. That place isn't shown on the map. It joins on Mr. Whitney on the north side.

REDIRECT EXAMINATION BY MR. BORAH

2971 Mr. Hemingway and Mr. Madden were my neighbors when I went there in 1866; they were irrigating their lands from the same slough. I think Mr. Hemingway had 120 acres under cultivation in 1866, and he sold to Baker and Baker sold to Mott and Mott sold it to Hamilton Davis. I don't recollect any others in 1866. The land in that vicinity was all irrigated from the same slough clear down to the end.

CROSS EXAMINATION BY MR. WOOD

2972 The river washed away about 40 acres of my land and on the lower place as near as I can recollect, eight or ten acres; I never measured it. It was pretty close to 50 acres. Right here (indicating on map) is where the river cut off about 40 acres. I couldn't tell when it was. It washed the eight or ten acres off the lower place about the same time; a little every year, but the other 40 acres went at one time. Since I settled on this land the river has encroached all along the south side there considerably—some land, more. Mr. Boyd and I lost the most; I don't think the others lost so much. I had one share in the Franklin ditch; I had 2973 that ever since it was built. I have irrigated the land with the water represented by this one share, these two pieces. I had to take the water for the upper place out of this slough where the land washed off, and I had an extra ditch there from the same slough.

CROSS EXAMINATION BY MR. RICE

This piece I spoke of being irrigated from the Mason creek ditch is north of Whitney's. We consider the Mason creek slough the same water as the Franklin, the sloughs all come together and we consider it the same water.

REDIRECT EXAMINATION BY MR. BORAH

The Mason creek water and the Franklin creek water all come into the same slough. There is not any practical way to tell what amount I take from one and what from the other. I have been irrigating this land from this slough since 1866 and I own one share in the Franklin Ditch Company and have owned it since its organization.

H. E. Allen, a witness for said defendant, testifies as follows:

DIRECT EXAMINATION BY MR. BORAH

I reside eight miles east of Caldwell and own the Thomas Wheatley ranch. I got it from George Buckmiller, who got it from Wheatley. I am irrigating 73 acres at the present time. I have resided there three years on the 17th of March. In my opinion that land requires one inch per acre of water. I am secretary of the Franklin Ditch Company and have charge of the records of the company.

This book contains the minutes of the Franklin Ditch Company since its organization. The minutes of the organization of the company are found on page 1, and are continued on pages 2 and 3.

(Defendant offers in evidence pages 1, 2 and 3 of the

minute book of the Franklin Ditch Company, as exhibit C, and the same is attached hereto as defendant's exhibit C.)

Witness continues.

2977 Pages 4 and 5 show the minutes of the second meeting of the organization of the ditch company, bearing date October 6, 1880.

(Defendant offers in evidence pages 4 and 5 of the minute book exhibit C, giving the names of the shareholders or incorporators and the same is admitted in evidence, and is attached hereto as a part of said exhibit C.)

Witness continues.

2978 This page 5 contains the names of the original incorporators, the original shareholders of the Franklin Ditch Company. I have a record of the transfers of the original shareholders so as to show who are the present shareholders. Mr. Milliner is a present shareholder, 125 acres; Well, Painter & Cooper are the shareholders for the Job ranch, 125 acres; Hesse is the present owner of the Potts ranch, shareholder, 125 acres; his predecessor I believe was Potts. Williams is a present shareholder, 100 acres, it is a part of the Carter holdings; next the Davis ranch, it is now held by the heirs and the administrator, John Daly, is one of 2979 the heirs—there are 150 acres. Click is a present shareholder, 100 acres; I am a shareholder for the Wheatley ranch. Mr. Carter has interests there, 80 acres under way.

The list I have just given, together with the witnesses who have been on the stand, constitute the present shareholders.

Under this agreement between the Franklin Ditch

Company and the Idaho and Oregon Land and Improvement Company there is 800 inches to be delivered
 2980 into the north slough, which is the slough next to the river—it is called the Strahorn slough.

The 350 inches was to be delivered in the south slough or Waste slough. The 1,350 inches are delivered from the headgate of the Caldwell canal to Mason creek. As I understand it, 800 inches is turned into the Strahorn slough, 350 inches to the Waste slough and the other 1,350 inches goes from the different points on the Caldwell canal.

CROSS EXAMINATION BY MR. WOOD

2981 There are 17 shares. There are eight in the list of names I have just given. The balance are owned by Mr. Schindler, three shares; Mr. Cook one share, Mr. Thomas owns one share, Mr. Madden one share and Mr. Dodd one share. As to the other two perhaps I have omitted to give some who were on the witness stand. I certainly did because there are that many shares. Mr. Milliner has under cultivation and watered from this canal 125 acres. Mr. Milliner's share represents 79 inches out of the 1,350 inches, besides
 2982 his interest in the slough. We determine that by dividing 1,350 inches with 17 shares. We do that because each are partners. We divide the amount of water carried through the Strahorn ditch by the number of shares and that gives 79. I don't know why we didn't divide the 2,500 inches by that amount—the contract calls for that amount of inches. We don't consider that our rights are limited to that 1,350 inches in the Caldwell canal, besides that are the 800 inches which goes into the north slough parallel to the

2983 river and which goes into the slough before it goes into the headgate in the Caldwell canal; this irrigates quite a large portion of this country which it would be impossible to irrigate from the Caldwell canal. The Caldwell canal throws out this 800 inches for us. It goes above their canal, this ditch does, about 20 or 30 feet above the headgate. It flows parallel to the river nearly to the canyon. This water never goes into the Caldwell canal. The 350 inches is taken out of the south slough and it runs into the Caldwell canal about a half a mile, I should judge. This 800 inches is taken through sloughs without running into the Caldwell canal at all. According to our contract the Pioneer Irrigation District agreed to deliver this water; they put dams in the river so it will run into these canals. And then 1,700 inches are run through the Caldwell ditch. Our company has a deed for it from the Caldwell ditch.

By Mr. Wood: That deed calls for 1,350 inches. I determined the acreage under this canal by consulting 2985 the parties and my own personal knowledge. Four of the ranchers I consulted personally and from my own knowledge I obtained three of the places, from my own individual knowledge. Four places, Williams, Click, Allen and Carter are from my own knowledge. Carter owns 80 acres under the Franklin ditch and it is all under cultivation, there is no waste land on it, there is also one slough. I should say an acre is used for buildings or corrals. His deed calls for 125 acres and I have taken out his waste land. This 80 acres is 2986 actually watered from the Caldwell canal. I have measured my own and his land is larger than mine, but to be safe I put it at 80 acres, but possibly it is 90.

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2986

I have 75 acres—I own 138 acres and 14 acres is under the Phyllis. I measured this a year ago and I measured it again this spring. I irrigate about 10 acres from my own share in the Franklin ditch company coming out south of the farm. I irrigate about 20 acres from a tap above that owned by Mr. Schindler and the balance I irrigate from this back slough, it is impossible to irrigate from the front. I say that I use enough to irrigate ten acres. I didn't say I use 79 inches. That is where I use that share.

BY MR. RICE

I refer to the original contract made between the Franklin Ditch Company and the Oregon Land and Improvement Company. This 800 inches that is turned into this first slough is thrown in there by the Pioneer Irrigation people, but they don't carry it through their ditch. It is taken in the slough above under the con- tract and the Pioneer Irrigation District keeps up the headgate; the original owners kept it up before them. This 1,350 inches from the canal proper and 350 inches and 800 inches was all used by the original owners under the Franklin ditch to irrigate this land I have been talking about.

RECROSS EXAMINATION BY MR. WOOD

Nelson C. Click owned one share of stock, he has 100 acres under cultivation. I determine that from the size of my farm. Mr. Carter measured mine and I know his extended further than mine and I put it in rather short to be safe. I have been all over it. I was over it last year. His land was cultivated last year to alfalfa and the rest of it was in pasture and timber. I couldn't state

what part was in alfalfa. About half way through the farm from each line. The north part was in timber.

George Milliner a witness for said defendant testifies as follows:

DIRECT EXAMINATION BY MR. BORAH

I am a shareholder in the Franklin Ditch Company.
2990 I suppose I irrigate between 100 and 125 acres from that ditch. I have been irrigating that land for three years. Mr. McIntyre was my predecessor in interest. His predecessor in interest was a man by the name of Horton, George Horton. I think he was one of the original incorporators. I think it will require fifty an inch to the acre to irrigate the land I own.

CROSS EXAMINATION BY MR. WOOD

I get the water for that land from the Caldwell canal and the slough. I took it out of the canal above
2991 Mason creek. I own altogether 320 acres. I irrigate the south part of it from this ditch, that part of it that lies south of the Mason creek slough, and some from the slough. I don't irrigate a great deal north of the slough. I try to use the quantity of water and I know more about that than I do of the acreage on the land. For the rest of my land I get water from different sources. I think I have 100 acres south of the slough.

I have never measured it. I irrigate the most on
2992 the land north of the slough from Mason's slough.

BY MR. BORAH

I desire to introduce as exhibit D deed from Dadd and wife to Wilson for the purpose of fixing the date.

and I will say that the original appropriation of Mr. Dodd was with the original incorporator, Adam Schindler.

We desire also to have the record show that the articles of incorporation of the Franklin Ditch Company were filed October 29, 1880.

2993 We further wish to have the record show that we introduce in evidence the deed or copy of the deed from the Franklin Ditch Company to the Idaho and Oregon Land and Improvement Company, under date of June 24, 1884. I have to introduce this record in order to get in this resolution. They deed all of it and then deeded back this 1,350 inches.

When the deed from the Oregon Land and Improvement Company covering this 1,350 inches under date of December 4, 1884, we will have to supply copies from
2994 the record, I have an abstract here.

The Franklin Ditch Company rests.

Testimony in relation to the Mason Creek Ditch Company.

C. L. Madden, called as a witness by said defendant, testified as follows:

DIRECT EXAMINATION BY MR. GRIFFITH

I have known the Mason slough since 1865; it has been used for irrigating purposes all the way down from Mr. Schindler's to the canyon. We always
2995 termed it the "outside slough." There is water run into that slough near my place for irrigating purposes. The water has been turned in there for irrigation since the fall of 1866. I dammed the slough off; it was a large slough coming out of the river. The next year—probably a year or two after that, the people

Exhibit 2

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

November Term, 1908

Farmers' Co-operative Ditch Company
(a corporation)
Plaintiff and Respondent

vs.

Riverside Irrigation District, Ltd., et al
Defendants and Respondents.

Nampa & Meridian Irrigation District,
Pioneer Irrigation District, Riverside Irrigation District, Ltd., and New York Canal Company, Ltd.,
Defendants and Appellants.

Transcript on Appeal
VOL. II

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon.

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W. E. BORAH,

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... 1264-1267 4065-4074
 ... 1252-1253 4028-4030
 ... 1255-1260 4035-4050
 ... 1263-1264 4062-4064
 ... 1276-1282 4104-4120
 ... 1410-1428 4518-4577
 ... 1309-1311 4236-4242
 ... 1364-1366 4374-4378
 ... 1273-1276 4092-4103
 ... 1282-1293 4121-4151
 ... 1243-1250 3938-4003
 ... 1443-1447 4625-4630
 ...
 ... 1152-1153 3713-3716
 ... 1430-1435 4583-4596
 ... 1150-1161 3737-3741
 ... 1163-1164 3747-3749
 ... 1153-1157 3717-3730
 ... 1161-1163 3743-3746
 ... 1157-1159 3731-3734
 ...
 ... 1007-1008 3263-3265
 ... 1008-1008 3265-3265
 ... 1006-1007 3260-3262
 ... 907-1001 3230-3241
 ... 1000-1010 3268-3272
 ... 1010-1112 3273-3275
 ... 1003-1005 3240-3253
 ... 1001-1003 3245-3248
 ... 1008-1009 3266-3266
 ... 1005-1006 3255-3259
 ...
 ... 708-710 2308-2312
 ... 692-694 2257-2263
 ... 686-692 2230-2250
 ... 720-721 2345-2349
 ... 694-695 2264-2266
 ... 701-708 2285-2307
 ... 695-701 2207-2281
 ... 684-686 2231-2233
 ... 1377-1382 4414-4420
 ... 710-712 2313-2317
 ... 1382-1391 4439-4460

For Defendant The Pioneer Irrigation District,

Blomfield, J. D. 1118-1120 3609-3614
 Hodges, H. M. 1115-1118 3601-3608
 Hedden, Ed. 1132-1134 3654-3659
 Irwin, C. H. 1120-1121 3615-3616
 McGee, J. A. 1121-1125 3620-3630
 Russ, D. W. 1410-1420 4518-4577
 Stephenson, D. O. (rec.) ... 1377-1382 4414-4420
 Strohecker, E. R. 1129-1131 3644-3650
 Wiley, A. J. 1125-1129 3631-3643

For Defendant Ridenbaugh & Rossi Mill Ditch,

Hard, Warle P. 1186-1188 3820-3823
 Ridenbaugh, W. H. 1186-1186 3815-3819
 Rossi, A. 1182-1184 3806-3814

For Defendant Riverside Irrigation District Company, Ltd.

Paris, R. W. 1012-1013 3279-3280
 Hill, Sylvester 585- 588 1925-1931
 Imbler, Henry 645- 646 2110-2112
 Kirkpatrick, R. M. 579- 585 1905-1924
 Lowell, J. H. 576- 579 1894-1904
 Peck, L. W. 588- 590 1932-1939
 Russ, D. W. (rec.) 1410-1420 4518-4577
 Vaughn, Z. B. 1382-1391 4430-4460
 Wright, J. R. 579- 576 1877-1893

For Defendant C. B. Ross,

Johnson, T. T. 595- 595 1955-1959
 Ross, C. B. 590- 592 1940-1945
 Ross, J. M. 592- 594 1946-1950
 Ross, William 594- 594 1951-1951
 Ross, C. B. (rec.) 594- 595 1952-1954

For Defendant Seibenberg Co-operative Ditch Co., Ltd.

Reeson, W. N. 741- 742 2413-2414
 Reeson, W. N. (rec.) 747-748 2431-2433
 Bennett, George 742- 744 2415-2419
 Hewitt, A. J. 745- 747 2425-2430
 Jenkins, C. E. 744- 745 2420-2424
 Plowhead, Jacob 739- 733 2377-2387
 Seibenberg, William 734- 736 2390-2397
 Stafford, L. V. 737- 741 2398-2412
 Thomas, John 733- 734 2388-2389

For Defendant Settlers Canal Co.

Green, R. E. (rec.) 1374-1376 4406-4413
 Gibard, W. H. 1352-1356 4338-4351

DIRECT EXAMINATION BY MR. BORAH

We diverted from the river on the Rhodes place. We used to have a wing dam, some years, we did not have to have a wing dam only when the water is low.

3599 We changed the point of diversion about two miles up the river about 1886 or 1887, it may be later, it may be 1888 or 1889. This was particularly because the river changed and made it difficult to get at the water, and another reason was the two ditches were taking water at the same point in conjunction; each was to pay a proportion of the expenses and some dispute arose, so we withdrew and got a headgate of our own.

Frank Martin, a witness for said defendant, testified as follows:

3600 DIRECT EXAMINATION BY MR. BORAH

I am familiar with the ditch known as the Dry Creek canal; it was constructed in 1879 from the river down as far as Dry Creek. I first saw the ditch some time in May, they were working on it at that time. And during the summer I saw the water flowing there, possibly in July or August.

TESTIMONY IN RELATION TO THE PIONEER IRRIGATION DISTRICT

By Mr. Borah: We offer in evidence an abstract of 3601 the Caldwell ditch as Exhibit B, of the Pioneer Irrigation District. The same is admitted in evidence.

H. M. Hedges, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

I reside at Caldwell; I am secretary, superintendent and engineer of the Pioneer Irrigation District. I am an engineer by profession. I have been familiar with the holdings of the Pioneer Irrigation District as to their ditches and water rights, since about October,

3602 1904. The district owns the Phyllis and Caldwell canals. The present capacity of the Phyllis proper is about 290 cubic feet per second. I ascertained this by the grade per mile, the width and depth of the water. I made this investigation myself. The present capacity of the Caldwell or Strahorn ditch is about 154 cubic feet per second. The Pioneer Irrigation District took hold of these ditches first in the season of 1902. During that season 6,150 acres were irrigated from these ditches, and 513 town lots in the towns of Naupaka and

3603 Caldwell. I have not included in this acreage what is called the Franklin owners. This is separate from the acreage of the Franklin ditch. During the season of 1903 there were 8,080 acres, and 733 town lots irrigated from these canals. This acreage has been irrigated since that time. At the present time the cultivated land, as I measured it, as I measured it in March was 2,655 acres under the Caldwell canal, and 12,817 acres under the Phyllis canal, making a total of 15,472 acres.

3604 In the distribution of water I calculated on one second foot of water, or 50 inches to 60 acres of land. That has been the portion I have endeavored to limit the users of water to. In addition to this amount of water we carried the amount of water which the Franklin ditch people claim, that is aside from our acreage.

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This ditch has been enlarged since the Pioneer Irriga-
 tion District purchased it. For the purpose of secur-
 ing the acreage in 1905, I went over the district and
 went over the irrigated lands in the district, and I es-
 3605 timated it by measuring where the fields were regular
 and where the fields were irregular, I stepped it off
 as to the small portions of land that were not culti-
 vated.

CROSS EXAMINATION BY MR. WOOD

What I term the high line canal comes out at practi-
 cally the same place as the old Strahorn ditch, and
 follows down across the old Caldwell canal, and goes
 through the cut on the hill about Five Mile creek and
 bears further east on higher ground than before the
 3606 enlargement. It is an enlargement of the old Cald-
 well canal on a higher level. The whole of the Cald-
 well canal is being used for laterals, and is carrying
 water now.

The new canal, or high line, for the first four or five
 miles, keeps practically the bed of the old Caldwell
 canal until we get on top of the hill and after we get
 through the cut it leaves the old Caldwell canal. I
 think that section of the old canal now used as a lateral
 has been enlarged. It carries merely what waste
 3607 water there is now. I should say, merely as a guess,
 that it would carry about 2,750 inches. The only sec-
 tion of the old canal that is used at the present
 time is carrying water for about three or four hundred
 acres of land. This section begins where the old Cald-
 well canal crosses Mason creek, on the southwest quart-
 er of the southeast quarter of section 29, township 4
 north, of range 2 west, then to a point in section 25,

4-3, and the southeast quarter of the southwest quarter of section 25 3-2, that is the old section of the old
 36 8 canal in use. The high line was constructed in the fall of 1903 and the winter of 1903 and 4, after the surveys were made by the state engineer. In delivering water on the basis of five-sixths of an inch to the acre we made the delivery at the headgate of the Farmers' laterals.

REDIRECT EXAMINATION BY MR. BORAH

The city lots in Caldwell now irrigated from this system were irrigated from this high line canal, they were formerly irrigated from the old Caldwell ditch.

3609 John D. Bloomfield, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

I am cashier of the Citizens State bank at Nampa, Idaho. I was superintendent and manager of the Phyllis canal from April 18, 1895, to the spring of 1902. W. C. Bralbury of Denver, Colo., was the owner at that time. He had secured title by foreclosure of a lien and a sheriff's sale for work done for the Idaho Mining and Irrigation Company. It was part of
 3610 my duty as superintendent to ascertain the capacity of the ditch and the acreage in cultivation.

In 1895 there was about 1,261 acres in cultivation, lots in Nampa and Caldwell. There was about 65 in addition to that there was water furnished for town Nampa. In Caldwell most of this time this water was furnished by the cubic foot, about one cubic foot per second was furnished for the irrigation of lots during

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this time in Caldwell, that was in 1895. The acreage under the Phyllis in 1896 was 1,716. In 1897 the
3611 acreage was 2,393 acres; in 1898 the acreage was 4,735.5 acres and the amount of water for town lots was the same as before. In 1899, 3,058.5 acres was under cultivation; in 1900 there was 3,737 acres under cultivation; in 1901 there was 4,695 acres in cultivation. This was the Phyllis canal proper before the canal was joined in ownership by the Pioneer Irrigation District. The Pioneer Irrigation District succeeded to the management of this canal; I remained with the canal until Bradbury's ownership ceased.

3612 We had to deliver in most cases each year as much as a cubic foot for each 40 acres, on account of the land being scattered and in small tracts. These different pieces of land were separated by land that was uncultivated and unirrigated. All along the Phyllis canal from the head to the extreme lower end, in 1901, the canal carried in the neighborhood of 110 cubic feet per second.

The actual measurement at the head was 96.2 cubic feet per second. There was a little waste water coming in from the Lemp canal amounting to two or three
3613 cubic feet per second making some where in the neighborhood of 98 at the time it was actually gauged.

The canal was not enlarged at any time after its original construction until after it was taken over by the Pioneer Irrigation District. The original size of the canal was 14 feet on the bottom and to carry five feet of water, wherever the canal was in prime condition. It went through cuts of hardpan that did not wash, and it showed that that had been the original size. The
3614 Phyllis ditch taps the Boise river over nearly at the

lower end of Eagle island, about two-thirds of the way down the Eagle island. There's two or three channels of the river there and it was necessary to maintain crib dams across these different channels.

C. H. Irwin, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

I first became acquainted with the New York canal system of ditches in 1890. Work was commenced on
 3615 what is the New York canal long before I came, a good many years. As I understand the New York canal system it included both the Phyllis and the New York canal. Bradbury and Company made their contract to work on the New York canal and Phyllis canal in the early part of 1890, they commenced work probably in February. Work was carried on until the New York company failed. From 1890 to their failure they expended on the Phyllis branch for labor \$112,692.49 in Idaho and in Oregon \$6,668.20. This was
 3616 on the Phyllis canal proper, that is simply for labor on the canal. The work was actually commenced by the New York Canal Company on the Phyllis in 1882.

CROSS EXAMINATION BY MR. WOOD

My statements as to when the work was commenced on the Phyllis canal is not from my own knowledge, but from information that I have derived from the records. I did not come to this country until the Phyllis was completed. I took charge of Bradbury's business in June, 1890. The Phyllis canal was originally
 3617 inally constructed to be 16 feet, with slopes one to

one, and five feet of water. I operated this canal a little over a year. The water was turned into the canal as far as Nampa in 1890.

The water was as far as Nampa when I came to the state. In 1893 there was 626 acres irrigated from this canal. In 1894 there was 834 acres. There were some town lots in addition to that irrigated in Nampa. The only figure I could give you, or the only conclusion as to the amount of water furnished per acre was 2.2 feet deep over the whole surface, and some places less. I have no recollection how many inches of water the ditch carried the two years that I had charge of it. The capacity of the ditch was calculated for 30,000 acres when it was first constructed. During 1901 and 1902, the water was used for mining purposes on Snake river. I think the New York Canal Company ceased to operate this ditch in 1891 in April. They operated the Phyllis canal some during the year. I determined that in the operation of the canal 2.2 acre feet was sufficient, that is equivalent to one cubic foot to 80 acres, that is 50 inches to 80 acres for about 120 days. This canal was originally used for mining purposes. A large proportion of the construction expenses were intended for mining purposes.

J. A. McGee, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

My name is James A. McGee, I reside at Nampa. I was interested in what was called the Phyllis Canal Company. I acted as secretary and treasurer a portion of the time. The company was incorporated November 6, 1885. The object and purpose of that com-

pany was the building of what is now known as the Phyllis canal. There were water rights located on the Boise river, I am not certain whether they were first located by the canal company, or by other parties who turned them over to the canal company. It was for them in any case. These water rights were turned over to the company. I think there was work done upon the
 3621 canal for the year 1886. I have here an estimate of work done by H. Grimming certified to by A. R. Rynearson, engineer. This work was done prior to May 10, 1886; the work that this has reference to had been completed at the time that the paper bears date; Mr. Rynearson was assistant engineer of the Phyllis Canal Company.

(Paper admitted in evidence).

That work was done between Ten Mile and Nampa. Southwest of Ten Mile there was clearing of brush for
 3622 a number of miles in connection with this work I have mentioned. This grading was done at that point, but the clearing was done at different points. This is the line of our survey that work was done on, but I think the other canal made some changes in that. This paper (paper handed witness) is the account of Rynearson for work done on this Phyllis canal. This Phyllis Canal Company transferred its interests to what is known as the New York Ditch Company, the I. M. I. Co., we sold it to them. I think this bill
 3623 here for recording of deeds, water rights, etc, was for recording deeds, water rights referred to in the abstract, constituting the water rights of the Phyllis canal. This is a bill to the Phyllis canal made for recording 20 deeds at \$1.00 each. I understand that these deeds are for water rights, and rights of way, etc.

According to the date of this letter here, negotiations for the transfer took place prior to October 14, 1888. At that date I was notified of the close of the deal.

Mr. Borah: I would like to have the record show 3624 that the date of this letter is October 14, 1888.

(Paper handed witness). This receipt dated August 24, 1888 was on account of an indebtedness against the Phyllis company, that was paid off by the purchasers through Wood & Wilson, their attorneys. This was paid off by the I. M. & I. Co., for work that had been performed for the Phyllis company. The receipt of W. A. Coughanour was for something furnished the Phyllis company by Coughanour.

The New York Canal Company took up these old 3625 debts that had been contracted in performing work on the Phyllis canal. The work was commenced on this canal shortly after the sale to the New York Canal Company, perhaps within a year. After the sale to the New York Canal Company, they took up the work of building the canal.

CROSS EXAMINATION BY MR. WOOD

The Phyllis Canal Company was organized November 6, 1885. Mr. J. M. Stewart and myself were the promoters, at the same time that we were promoting the Nampa townsite. While we were promoting both of these enterprises we were also promoting the construction of what is now the Settlers' Canal Company ditch and were figuring on taking that over. We made some surveys; a small portion of our expenses and surveys were involved in that enterprise. The bill of Meacham was on the Phyllis canal, he was engineering and assisting in the work. They made 3626

the surveys and did the work referred to by Mr. Grumley, secured right of way and everything necessary going along promoting. These bills represent a small proportion of the expenses in promoting these propositions. This work performed by Grumbling, this construction was southwest of Ten Mile. We organized in the fall of 1885, and sold on the 26th day of May, 1888. We turned the matter over to you people about October 24, 1888. That is practically about three years from the time we started in on the Phyllis. The clearing of that sage brush, and the clearing Grumbling did was all the clearing done aside from the engineer's work, making the surveys and securing the rights of way, promoting the proposition, etc. The expenses for three years' work outside of the engineer's work was \$7,375.00 as certified by Ry nearson. I think a portion of that work was not used afterwards. Where the ditch crosses the upper end of it they cut across and made a short cut there. I think the record will show that whatever locations were followed, were followed by different individuals, and then turned over to the company. Perhaps Mr. Wilson filed on the water. We transferred all the rights we had of every kind to the company. I don't remember Mr. Wilson making a filing for the Phyllis Canal Company. I don't remember who the company conveyed to, whether it was the New York Canal Company or Mr. Wilson.

As I remember the deed that the Phyllis Company made recited the consideration it received. I have looked up that consideration and I think it was \$1,400. That is the amount expressed as the consideration in

3630 the deed of June 10, 1888 from the Phyllis Canal Co.,
to Edgar Wilson.

REDIRECT EXAMINATION BY MR. BORAH

Whatever the consideration was for this deed, it covered all the water rights and rights of way, etc., that the company had acquired.

A. J. Wiley, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

3631 I reside at Boise, Idaho; I am a civil engineer; that
has been my business for a number of years. I am
acquainted with what is known as the New York canal,
or the New York canal system. I became personally
acquainted with the work in 1883, in December 1883.
I believe that about a year previous the New York
canal had made surveys and a number of men had
been at work in the canyon on the survey. After that
time, to the best of my knowledge, the work was car-
ried on continuously until Mr. Bradbury came. I
was away a part of the time, but it was carried on dur-
3632 ing my absence; the work was carried on continuously
from 1883 until Mr. Bradbury took the contract for
this work. I should say that there was certainly over
fifty thousand dollars, it might be 100,000 spent before
Mr. Bradbury came, mainly in surveys. The real
name of the New York Canal Company was the
Idaho Mining and Irrigation Company. It became
the owners of the Phyllis canal about 1888; that was
then incorporated into the Idaho Mining and Irrigation
system.

- 3633 They went to work immediately on this canal after they acquired it. They had made some surveys previous to buying it, and they made some after that. I should say that in the neighborhood of ten thousand dollars was probably spent on the Phyllis canal after it was purchased by the company and before Bradbury took his contract. Work was carried on continuously on both canals by the company after the organization of the Phyllis work was carried on continuously after the time that Mr. Bradbury came. He took his contract early in 1890, on February 22. From 1883 to 1890 work was carried on upon this system either upon the main canal or the Phyllis and about ten thousand dollars was spent on the Phyllis canal after its organization, and previous to Mr. Bradbury's contract, and Mr. Bradbury began work about the 10th of March, 1890. He completed the Phyllis work sometime in the same year, and then transferred the work to the New York canal and continued on that. The work was carried on continuously after he took charge until
- 3635 it was completed. It was completed by the fall of 1890; about \$125,000.00 was expended by Bradbury, or by the company under Bradbury in the building of the Phyllis.

From my recollection the total expenditure on the Phyllis was about \$135,000.00. The water was first turned into the Phyllis canal in August or September, 1890; during 1891 the water was used for mining purposes and I believe for irrigation. The country was very sparsely settled at that time. The Phyllis

3636 was built largely through the unsettled sage brush country, it was about 55 miles long; the first 12 miles of the Phyllis was 12 feet wide on the bottom, banks

six feet high and one and a half to one grade. The grade was about 25 inches to the mile. The capacity of the ditch at that time was very close to 200 second feet. I have known the Phyllis ever since that time. Water has been carried through it every year for the first 30 miles. This property passed into the hands of Mr. Bradbury through the foreclosure of a lien.

3637 The work was carried on on the New York canal system, upon some portion of it, from 1883 until the completion of the Phyllis canal, and during that time probably 250,000 dollars was expended upon the entire system.

CROSS EXAMINATION BY MR. WOOD

3638 It was first proposed to make the Phyllis a part of the New York canal system in the spring of 1888. The New York canal is 22 miles above the headgate of the Phyllis. It was a matter of common report and a matter of my knowledge on account of being conversant with the affairs of the company that it was to be operated by the same system. I never heard that the real object of the Phyllis was to make a canal line to reach the placer at the head of the line. Three fourths of the \$10,000 expended on the Phyllis prior to the time the contract was let to Bradbury was expended in the contract with a man named Morehouse, who built about two miles at the upper end of the Phyllis and the balance was expended in surveys and engineers' expenses.

3639 Morehouse commenced work early in September, 1888. I presume it was after Bradbury acquired the property. Assuming that Mr. Foote did not acquire the property until September, then I would say that

Morehouse commenced the work in December. There was a small amount of work done on the line near the headgate prior to the time that Morehouse commenced work. I suppose a small portion of the canal was done near the headgate some years prior to that time. It
 3640 looked like abandoned work. No portion of the excavation towards Nampa that had been performed was utilized, it was too high. It was too high for this diversion works. I should think fifty thousand dollars was expended from 1882 until Bradbury commenced work; I should think two-thirds of it was expended on surveys. The construction force consisted of from two to ten men, perhaps more than that. They were engaged in blasting rocks off of the roadbed, and in building a small section of the canal. They did not
 3641 complete any portion of it during that eight year. There was no dam constructed.

The work was intended to irrigate all the land on the south side of the Boise river to Snake river, and to wash out all the gold on the Snake river bars. I think the records of the old New York Canal Company, showing these expenditures, were turned over to Bradbury. I believe a portion of them are in New York in the possession of A. H. Thompson.

The actual construction work under the contract
 3642 with Bradbury began in the summer of 1890, it was followed up until sometime in 1891, I think until March or April, I don't think anything was done for several years then, except the Phyllis was operated by Bradbury. Nothing further was done with the New York canal proper by the New York Canal Company. Bradbury had constructed about six miles of completed canal on the main New York canal, to within

about three miles from Boise. I think under the estimates the New York canal was to cost about one million dollars.

E. R. Strohecker, a witness for said defendant, testified as follows:

DIRECT EXAMINATION BY MR. BORAH

I reside at Caldwell, Idaho, have resided in that vicinity for—ever since 1883. I first became acquainted with what is known as the Caldwell canal in the fall of 1883.

By Mr. Borah: I would like the record to show that the evidence taken in connection with the Franklin ditch, so far as it shows the construction of the Caldwell ditch is to be constructed as applying to this ditch.

(Witness continues.) The construction of the Caldwell canal was commenced late in the fall of 1883, I think November, and they took it to about Five Miles, and from Five Miles to Indian creek, they finished that the summer of 1884, and I think it was taken up that summer and carried down to Dixie slough about the fall of 1886, or the spring of 1887.

I had the general supervision of that canal from the time it was commenced until it was completed down to Dixie slough, and until about the first of July, 1888. Water was diverted through the canal from the time it was completed until I left in 1888; it has been used for irrigation since. Water was diverted through its first point of diversion to Indian Creek.

The Franklin ditch people carried water through this canal all the time. During the entire time that I knew the canal from 1883 the water the Franklin people

3646 were entitled to use was delivered to them through this canal. Besides the water delivered to the Franklin ditch owners we delivered water in 1885 to about 55 acres and about 100 lots, that was in addition to the Franklin water. In 1886 the acreage had increased to about 85 acres, and the lots to 250. There was a desert entry proved up for Mrs. Strahorn, I think it was almost a full section if I remember right, in the fall of 1886 and water was supplied from this ditch. In 1887 there were about 170 acres irrigated from this ditch, and about 350 lots, besides the desert entry and another
3647 desert entry they proved up on in the fall of 1887. I couldn't give the exact acreage in 1888.

I made an estimate about the time I left, about the first of July, and it was in the neighborhood of 274 acres, besides the two desert entries, and pretty near 500 lots in the town of Caldwell. The ditch was built with the intention when it was started of carrying enough water to prove up on about six desert claims, besides furnishing the water for the rest of the people under it. The owners of this canal furnished that
3648 amount of water, and about 2,500 inches or thereabout to the Franklin people, during the time they were irrigating these other portions that I speak of. The water has been used through the canal every year since I left in 1886. I don't know when the "High Line" canal was built.

CROSS EXAMINATION BY MR. WOOD

I don't remember how large the section of this canal was where it crosses Indian creek; it was in the neighborhood of six feet on the bottom. I think it was
3649 five or six feet. The flume I had there was about two

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feet deep if I remember right. I made it out of two
inch stuff, and the board was 12 inches wide, and I
think two feet high. While I had charge of the canal
I would estimate that about 200 acres was put into
cultivation between the land of the Franklin ditch and
Indian creek. These desert entries were located on the
other side of Indian creek. One entry was made by
Mrs. Strahorn and the other was by Robert A. Stra-
horn. I think this last entry was pretty nearly a full
3650 section. I don't know how much land was in cultiva-
tion on those entries; I couldn't say how much has been
cultivated on them since. I think the greater part of it
is in cultivation now. As long as I was with the
canal, unless the season was very dry they had a good
stream of water in the canal.

TESTIMONY IN RELATION TO THE NEW DRY CREEK DITCH, (Continued)

H. D. Smith a witness for said defendant, testified
as follows

3651 DIRECT EXAMINATION BY MR. BORALL

The New Dry creek ditch was built in 1879; I work-
ed on the ditch; as near as I can recollect it was six
feet on the bottom, where I worked two miles below
the head of it. In 1879 I think the lowest land owner
under this ditch was Everett Martin, and then John
Jones Smith, and then Dor Smith, I think. Doc
Smith is a brother of mine. Then I think come Joe
Woods, James Willis, Thomas Mann, Gabriel New-
man, Mr. Maxon and Mr. Patterson. There were some
3652 more above there but I don't recollect their names. I
used water from the canal that year on the Doc Smith

ranch, I irrigated 80 acres that year. I would say that between 550 and 600 acres were irrigated from that ditch in 1879, the acreage was increased the next year.

I lived under the ditch five or six years. I think there was something like 1,000 acres in cultivation when I left. I think it took about an inch to the acre under that ditch when I was there to irrigate that.

3653 Of course, new land the first year takes a little more than when it was run in grass only.

CROSS EXAMINATION BY MR. THOMPSON

Some of this land was proved up at that time and some of it was being homesteaded at the time the ditch was there. So far as I know they all made proof.

TESTIMONY IN RELATION TO THE PIONEER IRRIGATION DISTRICT (Continued)

Edward Hedden, a witness for said defendant, testified as follows:

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DIRECT EXAMINATION BY MR. BORAH

I am an engineer and reside at Caldwell, Idaho; I am acquainted with what is known as the Caldwell canal and the Phyllis canal; I first became acquainted with the Caldwell canal in 1891; I was superintendent of the enlargement of the Caldwell ditch, and the building of the "High Line." The Phyllis canal proper was also enlarged. They commenced enlarging the Phyllis in the fall of 1902, and they completed it about the first of April 1904. After the enlargement the Phyllis was 27 feet on the bottom and 40 and one-half feet on

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1001 and four and a half feet deep. The grade at the upper end is three one-hundredths of a foot to 100 feet in length. The carrying capacity of the ditch in second feet was 363 second feet. The "High Line" was commenced in the fall of 1903. The "High Line" was 25 feet on the bottom, and 35 feet on top, and four feet deep and a grade of four one-hundredths. The carrying capacity was 278 second feet. The "High Line" 3656 uses the first two miles of the old Caldwell ditch. The point of diversion is the same as the Caldwell ditch and it leaves the old Caldwell about three miles down. In building this "High Line," we enlarged that portion of the old Caldwell ditch which it now occupies. The carrying capacity of the Caldwell ditch before it was enlarged was 75 second feet.

CROSS EXAMINATION BY MR. WOOD

Its carrying capacity was 75 second feet along the hillside, probably a mile and a half below the head; all 3657 I know about the capacity of the original ditch was the capacity along the hillside and through the big cut. It was from near the river practically to Ten Mile creek. I never made any measurements from there down.

The enlargement of the Phyllis was started in the fall of 1902 and came down four miles, and then water started through it during the season of 1903, and then they started again that fall and completed it before April, 1904. That enlargement in 1903 was to 3658 its present capacity.

Three hundred and sixty-three second feet is the actual capacity of the ditch when it carries four and a half feet of water and is in perfect condition. I have

not tested it more than to measure the depth of the water to determine the actual flow. I am simply giving figures based on what it should carry. I have fixed the capacity of the high line to the Caldwell ditch in the same way, on the same basis. I have never made any tests or measurements to know how much
 3659 water that Caldwell "High Line" has carried.

TESTIMONY IN RELATION TO THE SEEBREE DITCH
 (Rebuttal)

E. Hedden, recalled, testified as follows.

DIRECT EXAMINATION BY MR. WYMAN

I did the engineering part in the construction of the 1894 enlargement of the Seebree canal; the work was done by contract and I did not have anything to do with it. This enlargement commenced in the fall of
 3660 1894 after the irrigating season. It began at the lower end of the canal; they worked up that fall and winter as far as Sand gulch, about 11 miles, below the head. During the irrigating season of 1895 the flume across the gulch went out while they were irrigating, either the last of May or the first of June, and I ran a line around the gulch for about two miles in length and then cross sectioned it, and they built enough during the irrigating season to carry the water around there during the year 1895. I don't think I did any more
 3661 work for them after 1895. I did not cross section the upper end of the canal for them until after the enlarging of it from the grade of the old ditch. They were some two or three years finishing it before they came to the upper end.

CROSS-EXAMINATION BY JUDGE QUARLES.

D. O. Stevenson recalled in rebuttal on behalf of the Ridenbaugh canal and testified as follows:

DIRECT EXAMINATION BY MR. WOOD.

I have been over nearly all of the canals and irrigation works along the river bottom of the Boise River. 4414 I have done work on all of them. I made an examination of them a week ago today and continued through Monday, Tuesday and Wednesday. Mr. Vaughn was with me. We examined the Eureka and Phyllis, I mean by the Phyllis, the portion of it that supplies water to the Franklin people. I did not go over the Thurman slough country above the Eureka but I am familiar with it. They irrigate there by seepage, sub-irrigation and flooding. In some places they flood and 4415 in other places they just fill the sloughs but they use both kinds of irrigation, both the flooding and the seepage. That has been their methods ever since I have been in the country. The method under the Eureka ditch is principally sub-irrigation. The sloughs are all filled with water and there are some ditches run out from these sloughs by which they irrigate some of the high portions of the land. On the lower end of the Eureka ditch they use the method of flooding more 4416 than the sub-irrigation. On the Eureka there is some sagebrush land on the gravel bars. We did not make an estimate of the amount of non-irrigable land or waste land. It was a small proportion. Towards the lower end there is considerable slough land. There is some little of it wasted away in places. There is a very heavy sub-flow from the canal above the Phyllis

and others. On William Simpson's place out until you get to the first slough there is considerable logs and the water stands on the surface of the ground. It is not so bad on the Hill Lewis place. It does not cover so
 4417 much ground but the upper end of his place is pretty bad. You will find seepage all along the Strayhorn place, some from the Phyllis and Strayhorn too. It will not take any water to irrigate this land. It is getting too much water now. All the land on the south side is more or less cut up by sloughs. The rotation on crops along the river bottoms varies with different farmers. They generally keep it in meadow a good many years before it is turned over, some of them keep it in grain continually. For the last few years there
 4418 has been more hay than grain, but in former years they raised more grain than hay. A portion of it has been in grain all the time. On the upper end of the Franklin ditch and Mason slough they irrigate principally by sub-irrigation, on some of the high ground they run a ditch onto it. On the other end it is principally flooding, up next to the bluff. Towards the river it is by sub-irrigation. The people would have to clear up and level the land before they could build ditches along the higher points and confine the water.
 4419 They would have to do a great deal more than in ordinary sagebrush land. You can clear ten acres of sagebrush land before you clear an acre of slough. There are willows all along the bottom along the sloughs that carry the irrigating water. That is the condition along the Mason slough. I never saw one of these sloughs channel cut. There is some sagebrush land in this vicinity after you begin to get out on the bench.

Probably one-third of the land at the lower end of the Mason slough is sagebrush land.

4420 The Pioneer Dixie ditch, the American ditch and the Center Point fill the sloughs in the same manner that they do above and irrigate a great deal of sub-irrigation. On some of the higher points they run ditches in the same manner by flooding. They let the water flow over the ground and back into the slough and the sloughs hold it. They have dams across the sloughs. I should think that three-fourths of that section of country west of Caldwell between the Dixie slough and the river was sagebrush or alkali soil covered with grease wood and sagebrush. What I call

4421 real bottom land is sandy loam, growing willows, and rose bushes, and growing but little sagebrush. Under the ditches named on the left hand road going down, on the left hand side, it is mostly pasture until you get to the Doc Wright ranch. Most of it is pasture land. Then in towards the river they begin farming again, more than at the upper end of these ditches. I have known the condition on the north side from the canyon up to Boise for a great many years. Under the Middleton ditches they mostly flood. Alex Blessinger and

4422 some others water from that ditch and flood. Some of that heavy black land they flood in places and also use the sloughs when the water is high enough. The back part of Blessinger's ranch doesn't need irrigation at all. It is substantially sub-irrigation. That is down towards the land of Lemps'. He floods to a great extent. The general character of the land covered by the Middleton ditch and the Middleton Water Company is sagebrush.

4423 Under the valley ditch west of the Farmers' Union

in the valley, surveyed for a drain ditch on Mr. Frazier's place and Dr. Bettis' place, known as the Ballantyne place. I surveyed for one on that place to redeem the land. Between the hill and the first slough the water comes out the same on Frazier's place and the C. W. Moore place and some on the A. V. Linder place and the old Hesse Wilson place. He irrigates out of the Ballantyne ditch. I surveyed a ditch on Mr. Frazier's and Dr. Bettis' place to redeem that; it has
 4424 been very beneficial and the only way that they can redeem it. All of the land under the Farmers' Union adjacent to the bluff was overflowed with the seepage water. After you pass the first slough you don't find that difficulty. The Caswell place and the John Cary place is in the same condition. A small part of these places had too much water before the Farmers' Union was completed. The draws just west of the old Aiken place is pasture that they had rented. There is a big
 4425 acreage there grown up to tulies but it was that way before the construction of the Farmers' Union. Taking the Cary ranch and the Caswell place, I should say that seventy-five per cent of those two places need drainage to reclaim them. I don't know what canal they irrigate from

CROSS-EXAMINATION BY JUDGE QUARLES.

The Poor Farm is in the same condition as some of the others, a portion of it needs drainage.

CROSS-EXAMINATION BY MR. JACKSON.

With the exception of the land that is injured with
 4426 too much water, the trees looked thrifty in most places. Below Parma in the river bottom there are some dead

trees, but in the upper part of the valley close to Caldwell or above, you don't see any. In some places the water is ruining the orchards.

CROSS-EXAMINATION BY JUDGE QUARLES.

4427 The orchards are sometimes killed from getting too much water. I don't know whether it affects any more in the winter than in the summer. Filling the sloughs that are very wide is a slovenly method of irrigation but whether it is a waste or not I could not say. There is a great loss from evaporation by spreading out the water in that way.

CROSS-EXAMINATION BY MR. WYMAN.

4428 The lands that I have been speaking of that are irrigated from the Farmers' Union are on the bluff. There is none on the bottom. The lands that have marshes on them are not a part of the Farmers' Union. I own a place on the bluff and before the Farmers' Union was built I had to go down forty-five feet to water. First I went through one stratum of gravel and got water below it, but after the Farmers' Union has been built I get water from the first stratum of gravel. This is the seepage water that comes from the Farmers' Union and that I consider goes into the ranches under the bluff. It goes down towards the river.

CROSS-EXAMINATION BY MR. RICE.

4429 There is water running back from the Middleton canal into the river. There has been some irrigation in the sagebrush by damming up the sloughs and sub-irrigating. They hold the water under the surface to irri-

gate where the land is sandy, in some places. I don't know the comparative merit in the two methods. I never measured so as to know the amount of water they put in where the sloughs are and the amount going away. The reason I call it slovenly is because there is a great amount of rubbish and they always cover up a lot of weeds and I don't think it can produce any crops.

Witness excused.

4430 Z. B. Vaughn recalled as a witness in rebuttal and testified as follows:

DIRECT EXAMINATION BY JUDGE QUARLES

I have testified in this case before. I visited the headgate of the Farmers' Co-operative ditch, called the Solree canal, about the first of August, 1911, in company with George Ball, Mr. Annett and Mr. Fifer. At that time the river was low, there was very little water running then either in the river or in the ditch. At that time there was a dam put across the river, composed of loose rocks and some bedding or straw and other materials of that nature, put in for the purpose of obstructing the flow of the water, and a considerable collection of sand and gravel near the point of erosion, where the flow of the water was naturally checked there was a deposit of silt above the headgate of the canal. The headgate of the canal was set in the ordinary way. There was very little water running into the canal at that time. There was a difference in the elevation of about two feet, or 1.94 feet in exact figure in what would be the actual water level at the headgate, and that was naturally due to the sand and loose gravel. The relative level or height of the bottom of

der the Ridenbaugh canal. I don't know to what extent or whether there were any.

Witness excused.

D. W. Ross called as a witness in rebuttal on behalf of the plaintiff and after being first duly sworn, testified as follows:

DIRECT EXAMINATION BY JUDGE RICHARDS

4518 I am in charge of the reclamation work for the Government in Idaho. I have been engaged in that work for a little more than two years. I have had charge of the measurements which have been made regularly by the geological survey. I was formerly state engineer, had that position four years. I have tabulation of the maximum amount of water and the mean discharge during the irrigation months from 1895 to 1902, inclusive. These tables appear on page 115 of the bi-ennial report of the state engineer for the years 1901 and 1902.

4519 Judge Richards offer this table as Exhibit J for the plaintiff and there being no objection the same is admitted in evidence.

These figures represent the discharge measured at the station at the mouth of the Boise river canyon. They are what we call cubic feet per second. I estimate that there are fifty miners inches of water in a cubic foot per second. I have had occasion at some engineer and as representative of the reclamation service to make an investigation of the diverting capacity of the different ditches between the Boise canyon and Snake river. I have the measurements of the bench canals with me. These measurements were

made during the month of June, 1904. The amounts actually diverted at that time are:

The New York Canal was diverting 173 second feet, the Ridenbaugh 454 second feet, the Settlers ditch 148 second feet, the Phyllis 156 second feet, the Caldwell 81 second feet, the Riverside 144 second feet, and the Sebree 243 second feet. They were diverting practically the full capacity at that time. These figures would be substantially the capacity of the canal at these points with the exception of the Phyllis. The Phyllis was newly constructed and its capacity as constructed was about 420 feet. That covers about the extent of my investigations as to the amount diverted and the capacity of these various canals. During the time while I was state engineer I made investigation of the duty of water for Professor Meed of the Department of Agriculture and pursued these investigations under the canals of the Boise Valley and the Payette Valley. I can give you the results of those investigations as summarized on a table found at page 141 of the Biennial Report of the State Engineer for the years 1901 and 1902. I can supply a copy of it.

Pages offered in evidence as Exhibit X for the Farmers' Co-operative Ditch Company. There being no objection the same is admitted in evidence.

This is a result of the observations for 1902. A portion of the territory served by the Ridenbaugh canal was selected south of Nampa under a lateral system from which the users were taking water by rotation. The area irrigated under this system was 215 acres and the average amount used per acre was about three and three-tenths feet in depth. I have not noted here the number of days during which it was used,

but assuming it was used for a period of one hundred days it would be equivalent to about an average of one-half inch to the acre. The crops there were full
 4524 and good. The advantages of rotating is, in the first place, a great saving in the quantity of water used. It would be difficult to give exactly in what percentage because it depends upon the condition of the land and the manner in which it is leveled and drained and all of those things which enter into each individual case. I can give a comparison of the amounts used under the rotation system and the continuous flow system. I have here observations of the use of water on 1461 acres under a continuous flow
 4525 system where the quantity used was 518 feet in depth, for a period of one hundred and fifty days, and I think they used it about that length of time, that would amount to one inch to the acre. Let me correct my first statement. The length of time for the other run under the rotation system was one hundred and fifty days, and that is about one-half inch per acre or fifty five hundredths, and this about one inch to the acre. The results as to the crop average about the same. The condition of the land being the same, we got the
 4526 same result with about one-half the water under the rotation system as under the continuous flow system. In fact, I think if the drainage of the land should be neglected, that under a continuous flow system the results would not compare so favorably as under the rotation system. There is not one hundred thousand acres receiving water during the low season of the water. There is a large percentage of that land that is not being irrigated at that time, sowed to grain. I would say that about thirty per cent is sown to grain.

1527 and is not receiving water from about the middle of July. That land is not getting an inch to the acre continuous flow during the entire season, and has not during the past three or four years. Careful measurements of the seepage water have been made for several years, and the seepage flow of Boise river on the average amounted during the last three years to a little over three hundred second feet.

BY MR. WOOD

That was about the years 1898, 1899 and 1900. 1528 That is when the mean discharge of the Boise river is seven hundred feet. There is actually diverted and used about one thousand second feet between the two canyons, the Caldwell canyon and the Boise canyon.

BY JUDGE RICHARDS

That is accounted for by the water seeping back from the irrigated lands and being used over again. I have investigated the quantity that is called the bottom lands on the river or the river lands in this valley. The investigation shows that of the one hundred and 1529 one thousand acres now under cultivation, about thirty-four thousand acres should be classed as bottom land. A large proportion of the first river bottom is cut up by high water channels and depressions which at present have no outlet, and the major portion of the land has been put under cultivation without being levelled and prepared properly for irrigation. Over a large portion of this land sub-irrigation is practiced, that is, the sloughs are dammed up and the water is forced to the surface of the ground and irrigated that 1530 way. I think a much larger portion of the water or a

much larger amount of water is required for that system of irrigation. That has been my observation here and also in the Snake river valley, where it is practiced extensively and systematically. More is required because there is a large amount of waste. In practicing that system of irrigation, an effort is made to force the water to the top of the knolls and the result is that the lower portions are converted into swamps and ponds, and it takes considerable of the water to supply the evaporation. I would estimate that about
 4531 fifteen per cent of this land is not susceptible to cultivation from the fact that the water stands on it. I have no exact figures of the amount of land on this bottom land that is tillable today and in position to be cultivated economically. I think that the system could be greatly improved by investing a small amount in leveling up the surface and draining the sloughs. By constructing ditches and draining these sloughs and irrigating more on the system used on the bench land,
 4532 a large amount of water that is wasted by this system could be saved. A large amount of waste, in my opinion, is due to evaporation, and when I state that the evaporation in the irrigating season will amount to nearly four feet, you can get some idea of the importance of it. This waste is due to lack of care used in the method of irrigation and lack of proper drainage system. The valley has as sufficient call for a good drainage system and the water could be drained from the sloughs in the upper part and conducted to the
 4533 the lands lower down and used for irrigation. As it is now done, this water is lost by evaporation and seepage. I don't think these bottom lands have been receiving one inch to the acre in years past. I have

for that system here it is practice is required

In practice made to force result is that swamps and water to supply that about able to cultivate on it. I land on this position to be system could amount in sloughs. By sloughs and bench lands,

this system in my opinion ate that the amount to of the improvement used in drainage

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had occasion to examine a good many points of diversion of the lower bottom canals and I find the provision for diverting water is cheap temporarily constructed dams as a rule are destroyed by high water, and a great deal of shortage in years past has evidently been caused by the destruction of these dams. A good

4534 many of the canals have been dry when there was plenty of water in the river and they could not divert it. The heads were not low enough. The crops on these bottom lands in the years past have grain and alfalfa, thirty to forty per cent of the land in grain. This land would not require water during the low water season by reason of the grain having been harvested previous to the shortage of water. The bench ditches as a rule are provided with better facilities for diverting the water and they

4535 have been actually diverting it during the low water season. I don't see how these lands would have received the quantity of water that has been testified to, one inch and sometimes two inches to the acre. The average flow of the river during the month of August is about seven hundred feet, that is thirty-five thousand inches and on the basis of thirty-four thousand acres which are irrigated on the bottom, practically all of that water would have been used in bottom lands, whereas, there is sixty-seven thousand acres of land

4536 under cultivation on the benches, and perhaps seventy per cent of these lands have been receiving water during the latter part of the season. The greatest duty of water would be secure under a system of rotation between the smaller canals. I believe that a great many of the headings of the first bottom lands should be abandoned entirely and their water turned over to

a large feeder canal, that is during the low water stage of the river, and only such headings maintained at the lower part of the valley as will divert the seepage
 4537 water.

CROSS EXAMINATION BY MR. WOOD

A great saving could be made upon the bottom lands if they would improve their lands and put them in better shape for cultivation and irrigation. A large percent of the bottom land is good soil, deep sandy loam. That land could be irrigated with an economical use of water, if the land was to be put in proper shape to irrigate, the same as the bench lands are or should be. The systems that irrigate the bottom lands are comparatively short systems, and the loss by evaporation while being conducted to the lands should be less than
 4538 on the longer bench systems. These short systems are owned as community ditches. I think there is no reason why they could not adopt the rotation system and obtain a much higher duty of water. The system of using by rotation seems to have been adopted by the management of the Kidenbough and adopted by the water users over the lower portion of the system, and in that section of the country there is quite a
 4539 marked increase in the duty of water. I don't know why that system has not been enforced upon the entire canal.

I know that in establishing the rates a good many years back, the County Commissioner, under the statute making them the judge of the duty of water and the times of use, have been fixing the basis on the continuous flow system, and that a large number of the water users demand their water on the continuous flow

system. I believe that by the application of a large
 4540 amount of water during the high period they could get
 along with a less amount during the low period. I be-
 lieve that we will be obliged to meet the conditions, and
 with the conditions surrounding the water supply, I
 don't see how there is any escape from it in this valley.
 There is a wide difference in the full discharge and the
 discharge during the low water period. The low water
 flow comes with great regularity and I don't believe
 we will be able to regulate the discharge to any great
 extent by storage on the high waters of the river, so
 4541 that we will be forced to consider something especi-
 ally for the higher lands that will give a greater duty
 of water and I believe that system will encourage
 a greater duty of water during the flood season
 and restrict the use of the water during the
 latter part of the season. The mean discharge
 of the river during the month of July a good
 many years back has been considerably in excess
 of one thousand second feet at the canyon. And
 at the present time to get a return flow of three hun-
 4542 dred second feet or fifteen thousand inches, with im-
 proved methods for the economical use of water and
 with a liberal use of water in the month of July, it
 would be possible to make a less quantity of water ir-
 rigate this same land during the month of August.
 If two inches of water is used to the acre on this bot-
 tom land during the entire irrigating season, it would
 make a depth of water over these lands of over twelve
 feet. If we lived in a country where the rainfall was
 twelve feet we would be interested in a drainage sys-
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 where the water stands in places you can get some

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idea of the waste by evaporation. The loss from evaporation is greatest in August. But in my opinion that amount of water has not been used because it was not in the river at that time to divert and has not been in the river during the years past. Mr. Darlington explained to me the methods by which the measurements of the capacity of the various canals has been made by the state engineer's force. The elevations were taken at different points in the bottom of the canal or of the water levels on the sides and from these elevations the grade was computed. It is my understanding that these measurements were not made on the actual amount of water flowing in the canals. Measurements were made of the cross sections at points in the vicinity, and from this data the discharge or carry capacity was computed. If the section were uniform and the grade uniform and the instrumental work done with precision, the computed discharge should compare closely with the meter measurement, that would compare very closely in the case of well constructed canals, but it would scarcely apply in the measurements of sloughs, and channels. With irregular cross sections, I don't know whether they took more than one cross-section or not. If enough checks are taken, the result will be very close.

EXAMINATION BY JUDGE QUARLES

The Phyllis canal was newly constructed in June, 1904, that is, it had been enlarged the year before. They were working on it in 1902 and 1903. I don't know the extent of the enlargement. Its full carrying capacity was not used in 1904. I don't remember the carrying capacity of the Phyllis prior to the enlarge-

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ment in 1903; I haven't the record with me. I am fam-
iliar with the bottom lands along the Boise river, have
been over them frequently. About fifteen per cent of
the growth is willows, tulies and other swamp grasses
that have no practical advantage as forage grasses.
These growths would consume considerable water, but
4547 they generally grow where the water is standing. The
greatest loss by this water is by evaporation. Practi-
cally one-third of the entire area of the bottom lands
is in cultivation. I estimate about thirty per cent of the
bottom land and from fifteen to twenty per cent of the
land is cultivated to grain. I have not traveled
over much of the bench lands this season. I could not
say whether a large increase of acreage has been sown
to grain during the present season, but I think the last
two years there has been a large increase of land sown
4548 to grain on the benches. I think a large percentage
of these lands could be put in excellent condition by
leveling with a comparatively small expense, and that
would permit the use of the check system. Under such
a system, by rotting the water, I think a fairly high
duty could be obtained and the waste water on these
lands almost entirely prevented.

CROSS EXAMINATION BY MR. RICE

Under this system of the one-half inch of water per
acre, under the rotation system and the inch of water
4549 per acre under the continuous flow system of irrigation,
the one-half inch per acre is for one hundred and fifty
days and not the entire season. The one-half inch per
acre flow for one hundred and fifty days would equal
the amount of water they use. The same is true of the

other. The number of days were taken upon a trial with a view to reduce to an average. The amount of evaporation is about four feet. There would probably be a considerable amount of seepage also in these sloughs along the river bottom. It is my opinion that
 4550 during the low season of the water, the ditches taking out water near the canyon have taken all the water they could get, not with reference to the crops irrigated, but simply with reference to their location on the river.

CROSS EXAMINATION BY JUDGE QUARLES

I stated on direct examination that the return flow by seepage to Boise river has been determined to be about three hundred second feet. That result is reached by a careful measurement of the amount diverted and the discharge of the river at the Boise canyon and also at the Caldwell canyon and a careful measurement of the amount returned in visible flow. The
 4551 seepage flow is the amount that cannot be seen at all. That is the seepage between the Boise canyon and the Caldwell canyon. This takes into consideration the amount of water diverted and returned after being used for power purposes, as by the Ridenbaugh mill. The water returned by that ditch is not a part of the three hundred feet. We don't call that seepage water, it is waste water. It doesn't include water returned after
 4552 having been used by the Goodwin mill and the Ridenbaugh mill and others.

CROSS EXAMINATION BY MR. WOOD

These investigations as to the amount of return flow of the river have extended over a number of years, since 1895. This return flow has been gradually in

upon a trial, the amount of would probably also in these y opinion that ditches taking the water they irrigated, but the river.

QUARLES

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creasing from year to year since my first investigations, and increasing as the lands further up the river have been placed under cultivation. The result of observa-
 1553 tion in other valleys is that as the lands are increased and more water placed on them, that the return flow would be increased, and we expect that the same will occur here.

CROSS EXAMINATION BY MR. GRIFFITHS

I don't believe the bottom lands will require any more for irrigation than the bench lands when they are put in good condition to receive water. As a rule the bench lands are put in fair condition previous to irrigation. A great deal of the land is already very level as compared with the bottom lands. As a rule, I think it
 1554 would cost more to level the bottom lands than the bench lands. I have not gone into the matter in detail, but I have observed large tracts of bottom lands that would require very little expense, and then there were other tracts that were cut up by old channels that would cost considerable to level, perhaps twice as much as any of the bench lands. I would say that fifty per cent of the bottom lands could be levelled at the same cost as the bench lands and fifty per cent would cost twice as much down by the river and some of it three times as
 4555 much. These lands need drainage more than anything. I think the drainage is more essential than the levelling, as a means of economizing the use of water. These canals I have mentioned as carrying water to the bench lands, I have always classified as bench lands. Some of the bottom canals might reach a small strip of what might be called bench lands, but it is comparatively small acreage.

CROSS EXAMINATION BY MR. BARBER

There is very little difference between the bench soil
4556 and the bottom soil along the north edge of the north
bottom of the Boise river. A good deal of that soil
has been washed down from the foothills and it is
practically the same as bench lands. As a general thing
the bench lands are not underlaid with hardpan near the
surface. There is quite a large area of that formation.
The bottom lands are generally underlaid with a depo-
sit of gravel and coarse sand at varying depths. Water
percolates through that formation when it reaches it.
In portions of the valley there is a stratum through
4557 which the water percolates out through the sand and
gravel to the river. They have that about at water
level. This water which percolates through the gravel
and sand in the bottoms goes back to the river through
that channel. This amount is gradually increasing at
a certain ratio to the amount of water used. It was
about three hundred second feet. At that time there
was fourteen hundred second feet in the river. That is
not enough to furnish abundance of water for every
one. The banks of the Boise river along the bottoms
4558 are very low. At high water state the water in the riv-
er is very near the top of the bank in places, in most
places. I think it is not true that these sloughs and
other channels complained of are necessary at the time
of high water in order to carry the water in the river
and prevent an overflow of the banks. I think that if
these sloughs were all filled up and a consequent reduc-
tion of the lands about them in order to fill them, that
there would not be an overflow of that country at high
water state in the restricted channel of the river. I

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559 think the cause of most of the overflow down the valley
is caused by these temporary dams. As a rule those
dams are not there in low water, they are usually
washed out in high water. I have done a little of the
shovel work and I have been obliged to observe these
matters for a good many years. I have farmed in this
country unfortunately. I was farming on upland, in
some respects unfortunately. I have never farmed on
the bottom. I don't know from actual experience
whether that land requires more water or less water for
4560 irrigation than the bench lands do.

CROSS EXAMINATION BY MR. WOOD

I am not acquainted with the system of drainage
canals that have been constructed on the Linder ranch
to make it susceptible to cultivation. It would cost
more on the average to level the bottom lands so as to
be properly irrigated than the bench lands. There
would be an increase in the expense over the bench
lands in preparing for irrigation, but the cost of con-
veying ditches for these bottom lands would be much
4561 less than the bench lands. I think the total cost of irri-
gation would be less than the bench lands.

BY THE COURT

There is in the Boise river between the Boise canyon
and the Caldwell canyon at low water time about fifty
thousand inches. That would be the available supply
in August nearly every year. I think under the con-
ditions that an inch to the acre continuous flow would be
sufficient to economically irrigate these bottom lands.
And I think seven-tenths of an inch to the acre at the

4562 point of diversion would provide sufficient water to economically irrigate the bench lands.

CROSS EXAMINATION BY MR. WOOD

I think that these bottom lands could be properly irrigated during the month of August with less than one inch to the acre if they were properly put in condition for irrigation, by economical use of water.

REDIRECT EXAMINATION BY JUDGE RICHARDS.

I think the results would be very satisfactory if for 1563 the bottom lands there was one inch to the acre to the first of July and the upland seven tenths of an inch to the acre, and after the first of July the bottom land would receive one-half of that one inch to the acre and the upland receive one-half of the seven-tenths of an inch to the acre. I think the result would be a profitable cultivation of the soil in bringing out its best products.

CROSS EXAMINATION BY MR. GRIFFITHS

I think that would give the highest benefit to the entire valley. I do not see how it can be reached any 4564 other way.

CROSS EXAMINATION BY MR. WOOD

I have not made any definite investigation as to the amount of loss by evaporation on the bench canals in conveying water to the lands. The evaporation throughout the Ridenbaugh canal for eighteen and one-half miles, the average distance that water is conveyed by that canal before it is delivered to the farmers' later

als, could be easily computed. In that canal the evaporation would be more than is the bottom canals where they convey the water but a short distance.

Q. Take for instance the Eurelm Canal No. 1 on the south side of the river between here and Boise. If I remember correctly that ditch diverts water nearly at the head of the lands it commences to irrigate. Say that they have eighteen hundred acres of land in cultivation. If those lands were properly levelled would it not be possible during the month of August by a proper system of rotation, to irrigate these lands with less than one inch to the acre?

A. I think it would if the lands were properly prepared. One inch to the acre, continuous flow, during the month of August, would place a depth of one and two-tenths feet of water on those lands. It would depend on the crop whether the land would have to be irrigated more than one-fourth of the time during the month of August. For ordinary hay crops I think the water should be applied at least one-third of the time during August. Then at that rate those lands would be irrigated with two-thirds of an inch on the average during the month. I have some records here of the use of water during the month of August, by rotation, under the Ridenbaugh canal. This table is based on supplying the bench lands. These bench lands have a deeper soil than the bench lands in the vicinity of Boise, and I think there is an entire absence of hardpan, and there is more gravelly subsoil. It is the land in the vicinity of Nampa west and south of the Short Line Railroad. As the soil is deeper you get a much higher duty of water. A much higher duty of water can be secured on that end of the canal than on the upper end.

REDIRECT EXAMINATION BY JUDGE RICHARDS

I cannot give the dimension of the Phyllis canal relative to its carrying capacity.

CROSS EXAMINATION BY MR. BARBER

I think that if they could get two-thirds of seven-tenths of an inch of water on the uplands during the month of August, that it would produce satisfactory results.

4569 CROSS EXAMINATION BY MR. RICE

I have pretty accurate knowledge of the amount of acreage in cultivation in this valley.

Q. If a decree is entered based on the amount of acres cultivated and allowing seven-tenths of an inch to the acre for the bench land and one inch to the acre for the bottom lands there would be a considerable amount of lands in August that would not have any water at all? That is, there is enough land in cultivation so that it would leave quite a little land without water part of the season.

A. The bottom lands receive about 25,000 inches of water and deducting thirty per cent of that would be sown to grain, that would be about 25,000 inches of water. There would be available then for the upland about the same amount. The amount required for the bench lands on that basis would be about 37,000 inches.

If any part of the land should be restricted as to their supply of water during the low water season, I think it would require more water for those lands to get its best results than seven-tenths of an inch during

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flood season. I don't think any restrictions should be applied on the flood water except such restriction as would follow from the capacity of the canal. If the entire acreage that can be irrigated from the Boise river was put into cultivation, it would utilize the flood flow. There would be a surplus in any case.

BY THE COURT

I think we could approximate very closely when that would happen every year. The surplus discharge will
4572 be through a certain time between the 10th of May and the 20th of June. That is my observation extending from 1895 to 1904, inclusive. It begins on the 10th day of May and will end on the 25th of June, about the average on the 20th of June.

CROSS EXAMINATION BY MR. RICE

That is the surplus over the amount necessary or possible to irrigate in this valley. The shortage will occur about the first of July. Some years it will begin about two weeks before that. The middle of June
4573 would be an absolutely safe estimate. Basing it on the present canal capacity, the surplus would disappear about the 10th of July, but if we base it on the actual amount diverted, it will disappear about the last week in July, or the 25th of July. I doubt if a farmer would require an inch to the acre during the flood season. He might on some soils, but I don't think the bench lands require that amount. Generally in making plans for the irrigation systems in this valley, we are planning the canal capacity of one second foot for each sixty
4574 acres which would require a high duty of one inch to the acre.

REDIRECT BY RICHARDS

That is the plans of the reclamation service. The Pioneer District has planned its works of one second foot to sixty-three acres, and it runs about that way for large works.

CROSS EXAMINATION BY JUDGE QUARLES

That is the capacity of the works. The amount actually used would be the amount diverted less the
 4575 amount lost by evaporation before it is applied to the lands.

CROSS EXAMINATION BY MR. RICE

Moving up the shortage of water period from the last of July to the last of June would have a marked effect on the lands as to its value for certain purposes. It would depend mainly on the purpose for which the land was used. If it was used for anything but grain crops, it would render the land less valuable. I have endeavored to compile information relating to the periods
 4576 for cutting alfalfa and timothy and clover and harvesting grain in this valley, and it appears that the last irrigation of grain occurs during the latter part of June and the early part of July, and the harvesting period begins about the middle of July and runs into August. Grain is the only short season crop.

CROSS EXAMINATION BY MR. WOOD

I did not compute the acreage of everything, waste land and all. I computed on the basis of 30 per cent on the bottom lands would be sown to grain, and 20 per
 4577 cent of the bench lands.

Witness excused.

R. W. Purdum re-called as a witness in rebuttal on behalf of the Ridenbaugh canal and testified as follows:

DIRECT EXAMINATION BY MR. WOOD

I was connected with the Settlers' ditch at one time. The construction of it was commenced in the fall of the year, 1884. We started to work either the latter part of October or the early part of November, 1884, and organized the Settlers' ditch company and filed on the water in that month. When it was organized I was elected manager, and we started to work to get the ditch out. I rounded the farmers up on the Five Mile country. They said they had no money but plenty of work and they agreed to do the work if I procured the grain. So I purchased one thousand dollars worth of hay and grain and then they came and worked awhile on the ditch and fed up all the hay and grain, and then they went down to Five Mile schoolhouse and got up a religious revival and they never came back. That was in the winter. Afterwards I rounded them up a dozen times, and they all promised to come, but they never did. I took John Lemp down through that country in 1887, and showed him what a beautiful country it was and he said the ditch had to go and he raised the money to put it through and started the Settlers' ditch in 1887 again.

CROSS EXAMINATION BY MR. QUARLES

Mr. Smith, one of the original promoters of the Settlers' canal, was a Methodist at that time, I think, and the Seventh Day Adventist craze came along two or

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QUARLES

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Exhibit 3

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

November Term, 1908

Farmers' Co-operative Ditch Company
(a corporation)
Plaintiff and Respondent.
vs.

Riverside Irrigation District, Ltd., et al
Defendants and Respondents
Nampa & Meridian Irrigation District,
Pioneer Irrigation District, Riverside Irrigation District, Ltd., and New York Canal Company, Ltd.,
Defendants and Appellants.

Transcript on Appeal
VOL. I

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon.

HUGH E. McELROY, RICE & THOMPSON,
W. E. HORAH, E. J. FRAWLEY,
 Attorneys for Appellants.

Richards and Haga	W. A. Stone
J. J. Plowhead	H. E. Wallace
Edna W. Moody	Geo. B. Barber
Davidson and Stoutenmyer	Hawley, Puckett & Hawley
J. J. Bluke	Frank Martin
E. H. Johnson	O. E. Jackson
T. H. Chisalan	Ralph P. Quarles
J. L. Niday	Wood and Wilson
S. H. Hays	C. C. Chynoweth
Wyman and Wyman	N. M. Rulek
Griffiths and Griffiths	Hugh E. McElroy
Rice & Thompson	

Attorneys for Respondents.

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¹ IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF
CANYON.

Farmers' Co-operative Ditch Com-
pany (a corporation), *Plaintiff*,

vs.

Riverside Irrigating District, limited
(a corporation), The Siebenberg Co-
operative Ditch Company, limited (a
² corporation), Frank Gilbert, T. W.
Boone, Prior Burnett, Thomas An-
⁴ drews, H. Ray Boudinot, I. N. Tuck-
er, C. F. J. Peterson, William Mc-
Nett, Fred J. Kiesel, Neil McCar-
ron, Michael Gilbride, Lower Boise
Ditch Company (a corporation), R.
H. Stockton, H. F. Vanderpool, D.
D. Campbell, William Ross, Smith
Stockton, John Atkins, Ben Ross,
³ John Ross, D. K. McConnel, John
Lemp, John Mannon, Bird Bow-
man, D. Mumford, T. T. Johnston,
H. Carlyle, Charles Allen, J. Bow-
man, Robert McGuire, Frederick
Ode, Eureka Ditch Company (a
corporation), J. Roland, Lillian Pot-
ter, administratrix of the estate of L.
D. Potter, deceased; Susan E. Pot-
ter, Thad S. Potter, Elisha Potter,
⁴ Lillian Potter, Ida Potter, James
Baker, C. W. Cooper, Pioneer Dixie
Ditch Company (a corporation),

- William C. Young, Lizzie Young, Estella C. Young, E. M. Kirkpatrick, S. H. Mitchell, L. F. Cook, Triphenia Jobe, administratrix of the estate of J. H. Jobe, deceased; Triphenia Jobe, Charlotte Coonrod and — Coonrod her husband, Minta Lund and Frank Lund her husband, William Jobe and Alice Jobe, Edith Jobe and Corima Jobe, minors, A. Holcomb, George Milner, George Hess, John Thomas, H. N. Whitney, Emma S. Lee, Edwin Curtist, Eureka Water Company (a corporation), William Simpson, William Lewis, Huston Frost, Elijah Frost, George Goodrich, R. M. Braman, William Frost, Adam Schindler, Pioneer Irrigation District (a corporation), Franklin Ditch Company (a corporation), Canyon County Water Company (an association), Francis A. Phelps and Frances Phelps husband and wife, John D. Rutledge, James Hartley, Joseph Wilson, Daniel Masterson, Perry Stoffle, H. McGill, S. S. Foote, J. B. Smith, John Lemp,
- 7 M. F. Fowler, Thomas Norris, James Harvey, Jacob Alchenberger, Peter Watkins, A. J. Breshears, C. G. Myers, John Langford, F. M. Ryals, Frank Hart, Mrs. A. Moudy, A. Blessinger, Dan Shuee, S. H.

Amended
Complaint

- Mitchell, T. Cheneworth, W. F. Foster, Mrs. Perkel, Milt McIntyre, Perry Shafer, Hiram Payne, John Steele, J. C. Baldwin, B. F. Swalling,
- 8 S. McDowell, J. W. Dickson, Amos Prosser, Thomas Martin, T. A. Thornton, Mrs. E. J. McDowell, Joseph Weeks, James Stewart, P. H. Everett, W. A. Fowler, Charles Palmer, Middleton Mill Ditch Company (a corporation), Middleton Canal Company (a corporation), Middleton Water Company (a corporation), Levi Smith, Charlotte
- 9 Calhoun and David Calhoun her husband, Mrs. E. J. Linder and A. V. Linder her husband, Lizzie Everett and P. H. Everett her husband, Jesse Wilson, Union Ditch Company (a corporation), Dry Creek Ditch Company (a corporation), Farmers' Union Ditch Company (a corporation), Boise Valley Irrigating Ditch Company (a corporation), John Ut-
- 10 ter, Stephen Utter, J. H. Gallagher, Charles Ryan, William Bubb, I. N. Coston, The Boise City Irrigation and Land Company (a corporation), Settlers Canal Company, limited (a corporation), New York Canal Company, Ltd. (a corporation), A. Rossi, W. H. Ridenbaugh, R. Z. Johnson, Kate Perrault and Joseph Per-

II rault her husband, Boise City Canal Company (a corporation), Boise Rapid Transit Company (a corporation), The Canyon County Irrigation Company, limited (a corporation), Denver and Idaho Land Company (a corporation), *Defendants.*

Plaintiff complains and for cause of action against defendants alleges:

I.

12 That it is a corporation organized and existing under the laws of the State of Idaho and has its principal place of business at Parma, County of Canyon, State of Idaho.

II.

That the defendant, the Siebenberg Co-operative Ditch Company, limited, is a corporation organized and existing under the laws of the State of Idaho, and as such, is doing business in Canyon county, Idaho.

III.

13 That the defendant, the Lower Boise Ditch Company is a corporation organized and existing under the laws of the State of Idaho, and as such, is doing business in Canyon county, Idaho.

IV.

That the defendant, the Fureka Ditch Company, is a corporation organized and existing under the laws of the State of Idaho, and as such, is doing business in Canyon county, Idaho.

V.

That L. D. Potter died intestate in Canyon county,

- 14 Idaho, on the 11th day of January, 1900; that on the 27th day of January, 1900, by order of the Probate court of the County of Canyon, State of Idaho, the defendant Lillian Potter was duly and regularly appointed administratrix of the estate of L. D. Potter, deceased. That ever since said date she has been and now is the duly qualified and acting administratrix of the said estate.

VI.

- 15 That the defendant, the Pioneer Dixie Ditch Company is a corporation organized and existing under the laws of the State of Idaho, and as such is doing business in Canyon county, Idaho.

VII.

That the defendant, the Riverside Irrigating District, Limited, is a corporation organized and existing under the laws of the State of Idaho, and as such, is now doing business in Canyon county, Idaho.

VIII.

- 16 That J. H. Jobe died intestate on or about the 17th day of July, 1899, at the County of Canyon, State of Idaho, that on the 9th day of October, 1899, the defendant, Triphenia Jobe, was duly appointed administratrix of the estate of J. H. Jobe, deceased, and ever since said date she has been and now is the duly and regularly appointed, qualified and acting administratrix of said estate.

IX.

- 17 That the defendants, Charlotte Coonrod, and — Coonrod are husband and wife and that the said — Coonrod is made a party to this action for that reason.

X.

That the defendants, Minta Lund and Frank Lund are husband and wife, and the said Frank Lund is made a party to this action for that reason.

XI.

That the defendants, Alice Jobe, Edith Jobe and Corrinna Jobe, are minor heirs of J. H. Jobe, deceased, and have no guardian appointed of their respective estates.

18

XII.

That the defendant, the Eureka Water Company is a corporation, organized and existing under the laws of the State of Idaho, and as such is doing business in Ada county, Idaho.

XIII.

That the defendant, the Pioneer Irrigation District is a corporation, organized and existing under the laws of the State of Idaho, and as such, is doing business in Canyon county, Idaho.

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XIV.

That the defendant, the Franklin Ditch Company, is a corporation organized and existing under the laws of the State of Idaho, and as such is doing business in Canyon county, Idaho.

XV.

That the defendant, the Middleton Mill Ditch Company, is a corporation organized and existing under the laws of the State of Idaho, and as such, is doing business in Ada county, Idaho.

20

XVI.

That the defendant, the Middleton Canal Company,

Farmers' Co-operative Ditch Co. vs. Riverside Irrigation Dist., Ltd.

IN THE DISTRICT COURT OF THE SEVENTH
JUDICIAL DISTRICT OF THE STATE OF
IDAHO IN AND FOR THE COUNTY OF
CANYON.

1078

Farmers' Co-Operative Ditch Com-
pany (a corporation), *Plaintiff*.

vs.

1079

Riverside Irrigation District, Limited
(a corporation), the Siebenberg Co-
Operative Ditch Company, Limited
(a corporation), Frank Gilbert, T.
W. Boone, Prior Burnett, Thomas
Andrews, H. Ray Bondinot, L. N.
Tucker, C. E. J. Peterson, William
McKnett, Fred J. Kiesel, Neil Mc-
Carron, Michael Gilbride, Lower
Boise Ditch Company (a corpora-
tion), R. H. Stockton, H. E. Van-
derpool, D. D. Campbell, William
Ross, Smith Stockton, John Atkins,
Ben Ross, John Ross, D. K. Mc-
Connell, John Lemp, John Mammion,
Bird Bowman (substituted for M. B.
Bowman, Jr.), D. Mumford, T. T.
Johnson, M. Carlyle, Charles Allen,
J. Bowman, Robert McCaire, Fred-
erick Ode, Eureka Ditch Company
(a corporation), J. Roland, Thomas
J. Palmer and Noah W. Palmer
(substituted for Lillian Potter, ad-
ministratrix of the estate of L. D.
Potter, deceased, Susan E. Potter,
Thad. S. Potter, Elsie Potter, Lil-
lian Potter, Ida Potter, James

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Baker), C. W. Cooper, Pioneer
Dixie Ditch Company (a corpora-
tion), William C. Young, Lizzie
Young, Estella C. Young, R. M.
Kirkpatrick, S. H. Mitchell, L. F.
Cook, Triphenia Jobe, administratrix
of the estate of J. H. Jobe, deceased,
Triphenia Jobe, Charlotte Coonrod,

- Coonrod, her husband, Min-
ta Land and Frank Land, her hus-
band, William Jobe and Alice Jobe,
Edith Jobe and Corrima Jobe,
minors, A. Holcomb, George Mil-
ler, George Hess, John Thomas, H.
N. Whitney, Emma S. Lee, Edwin
Curtis, Eureka Water Company, (a
corporation), William Simpson,
William Lewis, Huston Frost, Eli-
jah Frost, George Goodrich, H. M.
Braman, William Frost, Adam
Schindler, Pioneer Irrigation Dis-
trict (a corporation), Franklin Ditch
Company (a corporation), Canyon
County Water Company (an associ-
ation), Francis A. Phelps and Fran-
ces Phelps, husband and wife, John
D. Rutledge, James Hartley, Joseph
Wilson, Daniel Masterson, Perry
Stoffle, H. McGill, S. S. Roote, J.
B. Smith, John Lemp, M. F. Row-
ler, Thomas Norris, James Harvey,
Jacob Alchenberger, Peter Watkins,
A. J. Breshears, C. G. Myers, John
Langford, R. M. Ryals, Frank Hart,

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- 1085 Mrs. A. Moudy, A. Blessinger, Dan Shuce, S. H. Mitchell, T. Chene-
worth, W. F. Foster, Mrs. Perkel,
Milt McIntyre, Perry Shafer, Hiram
Payne, Jacob Fowler (substituted
for John Steele), J. C. Bahlwin,
Charles Palmer, H. F. Swalley, S.
McDowell, Mrs. E. J. McDowell, J.
W. Dickson, Amos Prosser, William
Smealgrass (substituted for Thomas
B. Martin), D. D. Shaw (substi-
tuted for A. T. Thornton), Frank
Hart (substituted for Joseph E.
Weeks), James M. Stewart, Eliza
Everett (substituted for Phelps Ev-
erett), W. A. Fowler, State of Ida-
ho, Snyder & McDowell, William
Spichuan, T. C. Creason, Ed. Bul-
lock, J. H. McGrath, Middleton Mill
Ditch Company (a corporation),
Middleton Canal Company (a cor-
poration), Middleton Water Com-
pany (a corporation), Levi Smith,
Charlotte Calhoun and David Cal-
houn her husband, Lizzie Everett
and P. H. Everett her husband, Mrs.
1087 E. J. Linder and A. V. Linder her
husband, Jesse Wilson, New Union
Ditch Company (a corporation),
New Dry Creek Ditch Company (a
corporation), Farmers' Union Ditch
Company (a corporation), Boise
Valley Irrigation Ditch Company (a
corporation), John Utter, Stephen

Findings

- 1088 Utter, Josephine R. Gallagher, administratrix of the estate of J. H. Gallagher (substituted for J. H. Gallagher), Charles Rein, William Bubb, Barber Lumber Company (substituted for I. N. Coston), The Nampa & Meridian Irrigation District (substituted for The Boise City Irrigation and Land Company), Settlers' Canal Company, Limited (a corporation), New York Canal Company, Limited (a corporation),
- 1089 A. Rossi, W. H. Ridenbaugh, R. Z. Johnson, Kate Perrault and Joseph Perrault her husband, Boise City Canal Company (a corporation), Jacobs Canal Company, Limited (a corporation), (substituted for Boise Rapid Transit Company), The Canyon County Irrigation Company, Limited (a corporation),
- 1090 Idaho Land Company (a corporation), Thomas Davis, T. C. Catlin, Polette Mace, C. C. Havird, Draper & Wells, James L. Graham, Frank N. Graham, William Gilbert, Martha Bowman, G. W. Gess, Allen V. Webster, William P. Kennedy, Frank L. Leonard, Edna F. Leonard, J. S. D. Manville, Estate of Albert Sherwin, Martha E. McCarthy,
- 1091 H. D. Goodman and Dora Goodman, C. B. Ross, C. H. Allen, Edgar Dilley, W. H. Ross, Isaac Bedel,

- 1092 Julia Mammou, Mason Creek Ditch Company (a corporation), W. J. Hamming, Peter Meeves, Mary G. Davis, Edward N. Hart, S. S. Gray, heirs of Edward and Mary Clark, John Cecil, Thomas H. Aikens, W. H. Conway, Isham Joplin, Sonora Joplin, Andrew J. Joplin, Francis M. Joplin, Joseph Goble, Susie Campbell, J. T. Barber (substituted for James Barber), S. W. Hutchinson, — — — Johnson, W. A. Black (substituted for Ira R. Arney), American Ditch Association (a corporation), Charles H. Miller, L. F. Graham, M. S. Cobb, O. F. Short, Louis L. Hoseley, C. B. Taylor,
- 1093 South Boise Mutual Irrigation Company (substituted for William Bubb, Alexander McPherson and L. Carrie McPherson), Annie H. Fogarty, (substituted for Gardner Adams and Mildred Adams), Grace Call, Samuel H. Canfield, Charles Rein and Jane Keoh, Matthew Casey, Jacob Bingham, Canyon Ditch Company (a corporation), (substituted for D. D. Campbell and Fred Smulman), J. F. Varyan, *Defendants*.
- 1094

(Title of Court and Cause.)

FINDINGS OF FACT.

The above entitled action came regularly on for trial on the 24th day of April, 1905, and having been tried

tural lands lying under their canal system, and there used the same in the irrigation of said lands, and that ever since said date said defendants and its predecessors in interest have continued to so use said quantity of water on said lands.

FRANKLIN DITCH COMPANY (34, 77).

1178 That the grantors and predecessors in interest of the defendant the Franklin Ditch Company did actually divert and appropriate to a beneficial use 770 inches of the waters of Boise river on the 3rd day of July, 1866, diverting the same at a point on the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, to and upon the agricultural lands lying under their canal system, and there used the same in the irrigation of said lands.

1179 That said defendant the Franklin Ditch Company did, prior to the 29th day of October, 1880, enlarge their said canal, and did further divert and apply to a beneficial use 1380 inches of said waters on said 29th day of October, 1880, to and upon the agricultural lands lying under their canal system, and there used the same in the irrigation of said lands.

That ever since said dates said defendant company and its predecessors in interest have continued to use said quantities of water respectively on said lands.

CANYON COUNTY WATER COMPANY, a Corporation (35).

1180 That the grantors and predecessors in interest of the defendant the Canyon County Water Company did actually divert and apply to a beneficial use 3790 inches of the waters of Boise river on the 1st day of June, 1867, at a point on the north bank of said river near where the east line of Canyon county inter-

1267 actually divert and apply to a beneficial use 1085 inches of the waters of Boise river on the 9th day of November, 1883, diverting the same from a point on said river on the south bank thereof near the southeast corner of section 12, township 4 north, range 4 west, Boise Meridian, to and upon the agricultural lands lying under its canal system, and there used said quantity of water in the irrigation of said lands, and that ever since said date said defendant company and its predecessors in interest have continued to so use said quantity of water on said lands.

1268 PIONEER IRRIGATION DISTRICT (90, 117, 135).

1269 That the grantors and predecessors in interest of the defendant the Pioneer Irrigation District did actually divert and apply to a beneficial use 2655 inches of the waters of Boise river on the 1st day of June, 1884, diverting the same from said river at a point on the farm known as the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, about seven miles above the town of Middleton, through what is known as the Caldwell canal, to and upon the agricultural lands lying under said canal, and there used said quantity of water in the irrigation of said lands, and that ever since said date said defendant and its predecessors in interest have continued to so use said quantity of water upon said lands.

1270 That the grantors and predecessors in interest of said defendant did further actually divert and apply to a beneficial use 10,000 inches of the waters of Boise river on the 1st day of September, 1890, diverting the same at a point on the south bank of said river opposite the lower part of Eagle Island in section 24, town-

ship 4 north, range 1 west Boise Meridian, through what is known as the Phyllis canal, to and upon the agricultural lands lying under said canal, and there used said quantity of water in the irrigation of said lands, and that ever since said date said defendant and its predecessors in interest have continued to so use said quantity of water on said lands.

That said defendant, its grantors and predecessors in interest, did further actually divert and apply to a
 1271 beneficial use 2817 inches of the waters of said river on the 1st day of April, 1904, by enlargement of the said Phyllis canal prior to said 1st day of April, 1904, and applied said quantity of water upon the agricultural lands lying under said canal, and that ever since said date said defendant and its predecessors in interest have continued to so use said quantity of water on said lands.

That in the posting and recording of the notices of water location, alleged in the cross-complaint of said
 1272 defendant the Pioneer Irrigation District to have been made by its grantors and predecessors in interest, and in the prosecution of work thereunder, the statute in relation thereto was not complied with, and said defendant has not made an appropriation under the provisions of said statute.

That the grantors and predecessors in interest of said defendant the Pioneer Irrigation District, did not, nor either of them, actually divert or apply to a beneficial use the waters of Boise river, or of its tributaries
 1273 Indian Creek or Mason Creek, as alleged in paragraph No. 7 of said defendant's cross-complaint herein.

the rights to the use of such waters herein allotted to said New York Canal Company, Limited.

CONCLUSIONS OF LAW.

1333 As conclusions of law from the foregoing facts the Court finds:

1. That none of the parties to this action have acquired any rights to the use of the waters of Boise river through estoppel or prescription.

2. That each and every party hereto, their agents, attorneys, employees and privies and their successors in interest, be enjoined and restrained from interfering in any manner with the waters of said stream, except as provided in the decree herein.

1334 3. That the costs and disbursements of each party herein should be paid by the party by whom such costs and disbursements were incurred, and that the costs of the State Engineer's examination, to-wit, the sum of \$10,804.60, should be apportioned to the several parties in the same proportion as water is herein allotted to them, that is to say, \$0.06709 for each inch so allotted, and that execution issue for said State Engineer's costs.

1335 4. That the expense incurred in preparing findings and decree herein and in filing and recording the same, to-wit, the sum of \$468.66, should be apportioned to the several parties in the same proportion as water is herein allotted to them, that is to say, \$0.00291 for each inch so allotted.

1336 5. That each of the parties to this action is entitled to a judgment and decree of this Court, adjudicating, determining and settling his right to the use of the waters of Boise river, in the quantity and of the date of each appropriation, as stated in the findings herein, to-wit:

east, Boise Meridian; an irregular tract in the north half and the southeast quarter of section 9, township 1379 3 north, range 1 east, Boise Meridian, in the following amount and from the following date:

175 inches, from June 1, 1866.

BOISE CITY CANAL COMPANY, a Corporation.

31st. That the defendant the Boise City Canal Company is entitled to the use of the waters of Boise river, diverted from a point on said river above the city of Boise, for use upon the agricultural lands lying under its canal system, in the following amount and from the following date:

1380 1903 inches, from June 1, 1866.

FRANKLIN DITCH COMPANY, a Corporation.

32nd. That the defendant the Franklin Ditch Company is entitled to the use of the waters of Boise river, diverted from a point on the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, for use upon the lands lying under their canal system, in the following amounts and from the following dates:

770 inches, from July 3, 1866.

1381 1380 inches, from October 29, 1880.

CANYON COUNTY WATER COMPANY, a Corporation.

33rd. That the defendant the Canyon County Water Company, is entitled to the use of the waters of Boise river, diverted at a point on the north bank of said river near where the east line of Canyon county intersects the north bank, for use upon the agricultural lands lying under their canal system, in the following amount, from the following date:

1382 3790 inches, from June 1, 1867.

verted from a point on the south bank of said river near the southeast corner of section 12, township 4 north, range 4 west, Boise Meridian, for use upon the agricultural lands lying under its canal system, in the following amount, from the following date:

1085 inches, from November 9, 1883.

PIONEER IRRIGATION DISTRICT.

76th. That the defendant the Pioneer Irrigation District is entitled to the use of the waters of Boise river, diverted from said river at a point on the farm known as the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, through what is known as the Caldwell canal, for use upon the agricultural lands lying under its canal system, in the following amount, from the following date:

2655 inches, from June 1, 1884.

That said defendant the Pioneer Irrigation District is further entitled to the use of said waters, diverted at a point on the south bank of said river opposite the lower part of Eagle Island, in section 24, township 4 north, range 1 west, Boise Meridian, through what is known as the Phyllis Canal, for use upon the agricultural lands lying under its canal system, in the following dates:

10,000 inches, from Sept. 1, 1890.

2817 inches, from April 1, 1904.

That said defendant the Pioneer Irrigation Company acquired no rights to the use of the waters of Boise river through notices of water location alleged to have been posted, nor through the alleged diversion or use of such waters, or the waters of Mason Creek or Indian Creek, tributaries of said river, as de-

scribed in paragraph 7 of said defendant's cross-complaint.

RIVERSIDE IRRIGATION DISTRICT, a Corporation.

77th. That the defendant the Riverside Irrigation District is entitled to the use of the waters of Boise river, diverted at a point on the south bank of said river near the center line of section 20, township 4 north, range 3 west, Boise Meridian, for use upon the agricultural lands lying under its canal system, in the following amounts from the following dates:

1000 inches, from June 1, 1884.

4000 inches, from May 1, 1893.

1000 inches, from October 1, 1899.

3500 inches, from June 1, 1901.

That said defendant the Riverside Irrigation District acquired no rights to the use of the waters of Boise river through notices of water location alleged to have been posted.

THE SETTLERS' CANAL COMPANY, Limited.

78th. That the defendant the Settlers' Canal Company, Limited, is entitled to the use of the waters of Boise river, diverted at a point on the south side of said river at the head of the Government Hay Reservation, in section 9, township 3 north, range 2 east, Boise Meridian, for use upon the agricultural lands lying under its canal system, in the following amounts from the following dates:

4953 inches, from October 17, 1884.

3672 inches, from June 1, 1897.

WILLIAM C. YOUNG, LIZZIE YOUNG and ESTELLA YOUNG.

79th. That the defendants William C. Young,

277 inches, from Oct. 25, 1901.

1471 ADA COUNTY FARMERS' IRRIGATION COMPANY, A. H. EAGLESON & SONS, Limited, and ESTHER HALE.

1472 rooth. That the defendants, the Ada County Farmers' Irrigation Company, A. H. Eagleson & Sons, Limited, and Esther Hale, and neither of them acquired any rights to the use of the waters of Boise river separate or apart from the appropriation thereof by the New York Canal Company as found and decreed herein, and that the rights of the said defendants and each of them, as found herein, are included in and constitute a part of the right to the use of the said waters herein allotted to the said New York Canal Company, Limited.

Let judgment be entered accordingly.

Dated January 18, 1906.

(Signed) GEO. H. STEWART,

Judge.

(Title of Court and Cause.)

DECREE.

1473 In the above entitled cause the default of the non-answering defendants having been duly entered, to-wit:

1474 Frank Gilbert, William McKnett, Neil McCarron, Michael Gilbride, Lower Boise Ditch Company, H. F. Vanderpool, John Atkins, Ben Ross, John Ross, D. K. McConnel, H. Carlyle, J. Bowman, E. M. Kirkpatrick, S. H. Mitchell, L. F. Cook, Triphenia Jobe, administratrix of the estate of J. H. Jobe; William Jobe, Alice Jobe, Edith Jobe and Corrinna Jobe (minors); A. Holcomb, George Milner, George Hess, John Thomas, H. N. Whitney, Edwin Curtis, Kate

Perrault, Henry Ott and John Doe et al., L. F. Graham, M. S. Cobb and O. F. Short; and said cause having been regularly tried and submitted to the Court for its decision, and the Court having considered the evidence and being fully advised in the premises, makes and files its findings of fact and conclusions of law and directs judgment to be entered in accordance therewith.

1475 Whereupon it is ordered, adjudged and decreed as follows:

1. That each and every of the tracts of land described in the complaint, answers and cross complaints in this action as belonging to the several parties, or tributary to the canals of certain parties plaintiff and defendant herein, are arid in character and require the artificial application of water to render them valuable for agricultural purposes.

1476 2. That the quantity of water required for the successful irrigation and cultivation of said lands, measured at the intake of the respective ditches under a four-inch pressure, is one inch per acre for bench lands, and one and one-tenth inch per acre for bottom lands.

3. That the quantity of water to which each of the parties to this action is entitled under this decree, shall be measured at the point or points of diversion thereof.

1477 4. It is further ordered, adjudged and decreed that none of the parties hereto, or their successors in interest, shall have a right to the use of the waters of Boise river herein awarded, except for a beneficial purpose; and that whenever the beneficial use has ceased, such party or parties shall cease to divert and have no right to divert the said waters; that each and every of

the parties hereto, their servants, attorneys, employees, privies and successors in interest, are hereby enjoined and restrained from any and all interference with or diversion or use of the waters of said Boise river, except as provided in this decree, whenever such interference, diversion or use would in any manner interfere with the quantity of water awarded by this decree to any of the other parties to this action.

5. It is further ordered, adjudged and decreed that the complaint, answers and cross-complaints and all pleadings filed in this cause be and the same are hereby amended to conform to the facts as found by the Court herein.

6. That each of the parties to this action or their predecessors in interest, whose rights are adjudicated by this action, did respectively appropriate and divert from the Boise river the quantities of water hereinafter stated, and on the dates respectively as hereinafter stated, such water being estimated and measured under a four-inch pressure and did respectively appropriate and divert such quantities of water for a beneficial use, and that ever since said dates of the several appropriations such water has been by said parties and their grantors and predecessors in interest so diverted and used.

7. That the following named parties, parties to this action, are entitled to the use of the waters of Boise river upon the lands mentioned and described in the complaint and cross-complaints and answers herein, in the following amounts and from the following dates, to-wit:

That the defendant Thomas Davis be and is hereby awarded the use of the waters of Boise river, diverted from a point on the north bank of said river about

1481 one mile east of the east line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon lands lying in sections 10 and 11, township 3 north, range 2 east, Boise Meridian, in the following amount from the following date:

110 inches, from June 1, 1864; and hereby designated as Right No. 1.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from a point 1482 on the south side of said river in northwest quarter of northwest quarter of section 9, township 3 north, range 2 east, Boise Meridian, through what is known as the Davis Canal, for use upon lands in sections 5, 6, 31 and 32, township 3 north, range 2 east, Boise Meridian, in the following amount from the following date:

670 inches, from June 1, 1886; and hereby designated as Right No. 94.

That the defendant Thomas Davis be and is hereby 1483 awarded the use of said waters diverted from said river at a point in northwest quarter of section 9, township 3 north, range 2 east, Boise Meridian, through what is known as the Davis private ditch, for use upon southeast quarter of section 5 and southeast quarter of sections 8 and 9, all in township 3 north, range 2 east, Boise Meridian, in the following amount from the following date:

27 inches, from June 1, 1891; and hereby designated as Right No. 119.

1484 And adjudged to pay \$56 49 costs, in addition to the costs incurred by him.

XXXI.

That the defendant, the Boise City Canal Company,
1533 a corporation, be, and it is hereby awarded the use of
the waters of Boise river, diverted at a point on said
river above the city of Boise for use on the lands lying
under its canal system, in the following amount from
the following date:

1903 inches, from June 1, 1866; and hereby design-
ated as Right No. 33.

And be adjudged to pay \$133.21 costs in addition
to the costs incurred by it.

XXXII.

1534 That the defendant, the Franklin Ditch Company, a
corporation, be and it is hereby awarded the use of
the waters of Boise river, diverted at a point on the
William Frost farm in section 18, township 4 north,
range 1 west, Boise Meridian, for use upon the lands
lying under its canal system, in the following amounts
from the following dates:

770 inches, from July 3, 1866; and hereby design-
ated as Right No. 34.

1380 inches, from October 29, 1880; and hereby
1535 designated as Right No. 77.

And be adjudged to pay \$150.50 costs in addition
to the costs incurred by it.

XXXIII.

That the defendant the Canyon County Water Com-
pany, a corporation, be, and it is hereby awarded the
use of the waters of Boise river, diverted at a point on
the north bank of said river near where the east line of
Canyon county intersects said north bank, for use upon
the lands lying under its canal system, in the following
1536 amount from the following date:

1085 inches, from Nov. 9, 1883; and hereby designated as Right No. 89.

And be adjudged to pay \$75.95 costs in addition to
1605 the costs incurred by it.

LXXVI.

That the defendant the Pioneer Irrigation District, a corporation be, and it is hereby awarded the use of the waters of Boise river, diverted from said river at a point on the farm known as the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, through what is known as the Caldwell canal, for use upon the lands lying under its canal system, in the following amount and from the following date:
1606

2655 inches, from June 1, 1884; and hereby designated as Right No. 90.

Also, diverted at a point on the south bank of said river opposite the lower part of Eagle Island, in section 24, township 4 north, range 1 west, Boise Meridian, through what is known as the Phyllis canal, for use upon the lands lying under its canal system, in the following amounts, from the following dates:

10,000 inches, from Sept. 1, 1890; and hereby
1607 designated as Right No. 117.

2817 inches, from April 1, 1904; and hereby designated as Right No. 135.

And be adjudged to pay \$1083.04 costs in addition to the costs incurred by it.

LXXVII.

That the defendant the Riverside Irrigation District, a corporation, be, and it is hereby awarded the use of the waters of Boise river, diverted at a point

Exhibit 4

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

RENUMBERED TO: A63-00166 B
Ident. Number: A63-00166
Date Received: 2-20-90
Receipt No: CO14809
Received By: CA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: FRANKLIN DITCH CO. 208-466-1983
Address: C/O FLOYD ROSDAHL
RT. 3
CALDWELL, ID 83605

2. Date of Priority: JUL 03, 1866

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02W	24	NE	NE	NE		ADA

5. Description of diverting works:
DIVERSION DAM W/HEADGATE, DITCH, MAINTAINED BY PIONEER IRR. DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	15.400		

7. Total Quantity Appropriated is:
15.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 8813.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCK WATER FROM DITCHES DURING THE IRRIGATION SEASON

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02W	13	SW	SW		IRR	40.0
			SE	SW		IRR	25.0

Section Acres 65.0

A63-00166

Page 1

Date: 02/20/90

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OCT 02 1990

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres	
04N	02W	14	SW	SW		IRR	25.0	
			SW	SE		IRR	20.0	
			SE	SE		IRR	40.0	
			Section Acres					85.0
		15	SW	SW		IRR	40.0	
			SE	SW		IRR	40.0	
			SW	SE		IRR	40.0	
			SE	SE		IRR	20.0	
			Section Acres					140.0
		16	SW	NW		IRR	30.0	
			SE	NW		IRR	10.0	
			NE	SW		IRR	40.0	
			NW	SW		IRR	40.0	
			SW	SW		IRR	40.0	
			SE	SW		IRR	40.0	
			NE	SE		IRR	20.0	
			NW	SE		IRR	20.0	
			SW	SE		IRR	40.0	
			SE	SE		IRR	40.0	
			Section Acres					320.0
		17	SE	NE		IRR	40.0	
			NE	SE		IRR	40.0	
			Section Acres					80.0
		18	NE	SW		IRR	40.0	
			SE	SW		IRR	40.0	
			NW	SE		IRR	40.0	
			SW	SE		IRR	40.0	
			SE	SE		IRR	40.0	
			Section Acres					200.0
		20	NE	NE		IRR	40.0	
			NW	NE		IRR	40.0	
			SE	NE		IRR	40.0	
			Section Acres					120.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04N	02W	21	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			SW		NE		IRR	25.0
			SE		NE		IRR	30.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			NW		SE		IRR	40.0
							Section Acres	415.0
		22	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			SW		NE		IRR	35.0
			SE		NE		IRR	35.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	35.0
			SE		NW		IRR	40.0
							Section Acres	305.0
		23	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			SW		NE		IRR	20.0
			SE		NE		IRR	20.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	30.0
			SE		NW		IRR	20.0
							Section Acres	250.0
		24	NW		NE		IRR	20.0
			SW		NE		IRR	20.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	20.0
			SE		NW		IRR	20.0
							Section Acres	160.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04N	03W	11	SW		SE		IRR	18.0
			SE		SE		IRR	18.0
			Section Acres					36.0
		13	NW		NE		IRR	14.0
			SW		NE		IRR	14.0
			NE		NW		IRR	14.0
			NW		NW		IRR	14.0
			SW		NW		IRR	14.0
			SE		NW		IRR	14.0
			NE		SW		IRR	14.0
			NW		SW		IRR	14.0
			SE		SW		IRR	14.0
			NW		SE		IRR	14.0
			SW		SE		IRR	14.0
			Section Acres					154.0
		14	NE		NE		IRR	18.0
			NW		NE		IRR	18.0
			SW		NE		IRR	18.0
			SE		NE		IRR	18.0
			NE		SE		IRR	18.0
			NW		SE		IRR	18.0
			SW		SE		IRR	40.0
			SE		SE		IRR	40.0
			Section Acres					188.0
		24	NE		NE		IRR	20.0
			Section Acres					20.0
			Total Acres					2538.0

11. Place of use in counties: CANYON

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
63-00167, 63-05239

14. Remarks:

ALL LANDS ARE WITHIN THE SERVICE AREA OF THE FRANKLIN DITCH CO.

A63-00166

Page

4

Date: 02/20/90

MICROFILMED

OCT 02 1998

14. Remarks: Continued

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

FARMERS CO-OP DITCH CO.

Decree Plaintiff

vs

RIVERSIDE IRR. DIST.

Decree Defendant

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: -4-

For Organizations:

I do solemnly swear or affirm that I am Secretary of
Franklin Ditch, that I have signed the foregoing
Organization Title
document in the space below as Secretary of
Franklin Ditch Co and that the statements contained in the
Organization Title
foregoing document are true and correct.

Floyd J Rosdahl
Signature of Authorized Agent
Sec. Franklin Ditch
Title and Organization
20 Feb 1990
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 20th day

of February 19 90

Seal

Carter Fritschle
Notary Public

Residing at Carter Fritschle, Notary Public
Residing at Eagle, Idaho
My Commission Expires March 21, 1994
My Commission Expires _____

Exhibit 5

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

#CHANGE TO: A63-00167B
Ident. Number: A63-00167
Date Received: 2-20-90
Receipt No: C014809
Received By: CA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: FRANKLIN DITCH CO. 208-466-1983
Address: C/O FLOYD ROSDAHL
RT. 3
CALDWELL, ID 83605

2. Date of Priority: OCT 29, 1880

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02W	24	NE	NE	NE		ADA

5. Description of diverting works:
DIVERSION DAM W/HEADGATE, DITCH, MAINTAINED BY PIONEER IRR. DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	27.600		

7. Total Quantity Appropriated is:
27.600 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 8813.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCK WATER FROM DITCHES DURING THE IRRIGATION SEASON

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02W	13	SW	SW		IRR	40.0
			SE	SW		IRR	25.0

Section Acres 65.0

A63-00167

Page 1

Date: 02/20/90

MICROFILMED

JUL 22 1994

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02W	14	SW	SW		IRR	25.0
			SW	SE		IRR	20.0
			SE	SE		IRR	40.0
			Section Acres				85.0
		15	SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	20.0
			Section Acres				140.0
		16	SW	NW		IRR	30.0
			SE	NW		IRR	10.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	20.0
			NW	SE		IRR	20.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				320.0
		17	SE	NE		IRR	40.0
			NE	SE		IRR	40.0
			Section Acres				80.0
		18	NE	SW		IRR	40.0
			SE	SW		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				200.0
		20	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SE	NE		IRR	40.0
			Section Acres				120.0

10. Place of Use: Continued

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
04N	02W	21	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	25.0
			SE	NE		IRR	30.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NW	SE		IRR	40.0
							Section Acres 415.0
		22	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	35.0
			SE	NE		IRR	35.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	35.0
			SE	NW		IRR	40.0
							Section Acres 305.0
		23	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	20.0
			SE	NE		IRR	20.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	30.0
			SE	NW		IRR	20.0
							Section Acres 250.0
		24	NW	NE		IRR	20.0
			SW	NE		IRR	20.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	20.0
			SE	NW		IRR	20.0
							Section Acres 160.0

MICROFILMED
JUL 22 1994

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	03W	11	SW	SE		IRR	18.0
			SE	SE		IRR	18.0
			Section Acres				36.0
		13	NW	NE		IRR	14.0
			SW	NE		IRR	14.0
			NE	NW		IRR	14.0
			NW	NW		IRR	14.0
			SW	NW		IRR	14.0
			SE	NW		IRR	14.0
			NE	SW		IRR	14.0
			NW	SW		IRR	14.0
			SE	SW		IRR	14.0
			NW	SE		IRR	14.0
			SW	SE		IRR	14.0
			Section Acres				154.0
		14	NE	NE		IRR	18.0
			NW	NE		IRR	18.0
			SW	NE		IRR	18.0
			SE	NE		IRR	18.0
			NE	SE		IRR	18.0
			NW	SE		IRR	18.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				188.0
		24	NE	NE		IRR	20.0
			Section Acres				20.0
			Total Acres				2538.0

11. Place of use in counties: CANYON

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
63-00166, 63-05239

14. Remarks:
ALL LANDS ARE WITHIN THE SERVICE AREA OF THE FRANKLIN DITCH CO.

14. Remarks: Continued

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

FARMERS CO-OP DITCH CO.

Decree Plaintiff

vs

RIVERSIDE IRR. DIST.

Decree Defendant

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: -4-

For Organizations:

I do solemnly swear or affirm that I am Secretary of

Franklin Ditch Co., that I have signed the foregoing
Organization

document in the space below as Secretary of

Franklin Ditch and that the statements contained in the
Organization

foregoing document are true and correct.

Floyd J. Rosdahl
Signature of Authorized Agent

Sec. of Franklin Ditch
Title and Organization

20 Feb 1990
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 20th day
of February 19 90

Carter Fritschle
Notary Public

Seal

Residing at Carter Fritschle, Notary Public
Residing at Eagle, Idaho
My Commission Expires March 21, 1994

Exhibit 6

SRBA

DIRECTORS REPORT 63-00166B

[Return to SRBA Home Page](#)

IWT072

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

Right Number: 63-00166B

Name and Address: FRANKLIN DITCH CO
C/O HELEN I LARSON
8500 JOPLIN RD
CALDWELL, ID 83605

Source: BOISE RIVER Tributary: SNAKE RIVER

Quantity: 15.40 CFS

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

Priority Date: 07-03-1866

Diversion Point: T04N R02W S24 NENE Within Ada County

Purpose and

Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	03-15 TO 11-15	15.40 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion

described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Place of Use: See remarks

Place of Use: Irrigation
Same as Other Use

This right when combined with Right Nos. 63-167B and 63-5239 can be used to irrigate up to 2056 present and future acres within the boundary of the Franklin Ditch Company.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

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

This right is designated as No. 34 in the Stewart Decree and the Boise Water Distribution Report.

Explanatory Material: Basis of Claim - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

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Exhibit 7

SRBA

DIRECTORS REPORT 63-00167B

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IWT072

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

Right Number: 63-00167B

Name and Address: FRANKLIN DITCH CO
C/O HELEN I LARSON
8500 JOPLIN RD
CALDWELL, ID 83605

Source: BOISE RIVER Tributary: SNAKE RIVER

Quantity: 27.60 CFS

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

Priority Date: 10-29-1880

Diversion Point: T04N R02W S24 NENE Within Ada County

Purpose and

Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	03-15 TO 11-15	27.60 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion

described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Place of Use: See remarks

Place of Use: Irrigation
Same as Other Use

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary. This right when combined with Right Nos. 63-166B and 63-5239 can be used to irrigate up to 2056 acres within the boundary of the Franklin Ditch Company.

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

This right is designated as No. 77 in the Stewart Decree and the Boise Water Distribution Report.

Explanatory Material: Basis of Claim - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

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