

RECEIVED
APR 22 2011
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 20 2011	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA

Case No. 39576

) Water Right claims: 29-496 & 29-497B
)
) ORDER CONDITIONALLY GRANTING
) LATE NOTICES OF CLAIM
)
)
)
)

On January 13, 2011, the City of Downey, by and through its counsel of record Steven R. Fuller, filed a *Motion to File Late Notice of Claim* for each of the above-captioned water rights. A hearing on the *Motions* was held on April 19, 2011. No party appeared in opposition to the *Motion*. However, at the hearing neither the City nor the Idaho Department of Water Resources could identify whether sufficient unclaimed water exists to satisfy the late claims under the *Coffin, et al. v. Criddle, et al., Decree* ("*Coffin Decree*") – i.e., the *Decree* under which the City asserts the basis for its late claims. Determining whether sufficient unclaimed water exists under the *Coffin Decree* to satisfy the late claims is a significant factor in the Court's determination of whether other parties to the Adjudication will be prejudiced by the granting of the instant *Motions to File Late Notice of Claim*. Therefore, the Court finds that good cause exists for granting the instant *Motions*, provided that it is established that sufficient unclaimed water is available under the *Coffin Decree* to satisfy the late claims.

THEREFORE, IT IS HEREBY ORDERED that the *Motions to File a Late Notice of Claim* for the above-captioned water rights are **conditionally granted** provided that it is established that sufficient unclaimed water is available under the *Coffin Decree* to satisfy the late claims.

Dated April 20, 2011.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER CONDITIONAL GRANTING LATE NOTICES OF CLAIM was mailed on April 20, 2011, with sufficient first-class postage to the following:

CITY OF DOWNEY

Represented by:

STEVEN R. FULLER

PO BOX 191

PRESTON, ID 83263

Phone: 208-852-2680

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".

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

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

CIVIL CASE NUMBER: 39576

Ident. Number 29-496
Date Received: 1/10/2008
Receipt No: 009 29 30
Received By: SR7 \$300-

4/22/2011

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF DOWNEY Phone: (208)897-5342

PO BOX 204
DOWNEY ID USA 83234-0204

2. Date of Priority: 06/01/1877

3. Source: NINEMILE CREEK Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
11S	38E	8	NW SE	BANNOCK	

5. Description of diverting works:

Perforated pipe to a collection box and then runs through a series of pipelines to the City of Downey for municipal use.

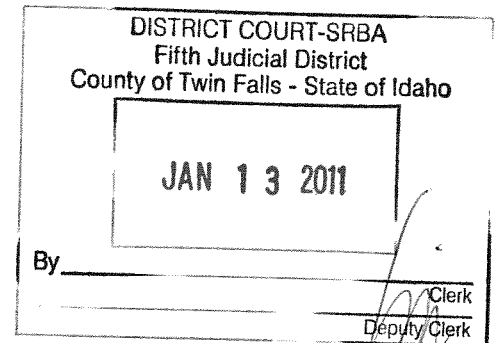
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	03/01	07/01	2.5	
MUNICIPAL	07/02	02/28	2	

7. Total Quantity Appropriated is:
2.5 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:



10. Place of use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
11S	37E	27	SW	NE		MUNICIPAL	
			SW	NW		MUNICIPAL	
			SE	NW		MUNICIPAL	
			NE	SW		MUNICIPAL	
			NW	SW		MUNICIPAL	
			SW	SW		MUNICIPAL	
			SE	SW		MUNICIPAL	
			NW	SE		MUNICIPAL	
			SW	SE		MUNICIPAL	
11S	37E	28	NE	SE		MUNICIPAL	
			SE	SE		MUNICIPAL	
11S	37E	34	NW	NE		MUNICIPAL	
			SW	NE		MUNICIPAL	
			SE	NE		MUNICIPAL	
			NE	NW		MUNICIPAL	
			NW	NW		MUNICIPAL	
			SW	NW		MUNICIPAL	
			SE	NW		MUNICIPAL	
			NE	SW		MUNICIPAL	
			NW	SW		MUNICIPAL	
						NE	SE
			NW	SE		MUNICIPAL	

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:

14. Remarks:

AMT. DIVERTED DECREASES AFTER JULY 1.
TOTAL DIVERSION DOES NOT EXCEED 2.50 CFS.
AS PER TRANS. 928.

Place of use is within the service area of the City of Downey municipal water supply system as provided for under Idaho Law.

15. Basis of Claim: Decreed

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: 1

For Organizations:

I do solemnly swear or affirm that I am _____ Mayor _____ of
Title

City of Downey, that I have signed the foregoing
Organization

document in the space below as _____ Mayor _____ of
Title

City of Downey and that the statements contained in the
Organization

foregoing document are true and correct. Dennis J. Phillips
Signature of Authorized Agent

Mayor, City of Downey
Title and Organization

1-17-08
Date

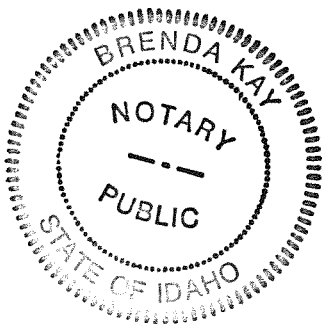
State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 17th day
of January 2008

Brenda Kay
Notary Public

Residing at Swan Lake, Idaho

My commission Expires 1-14-2014



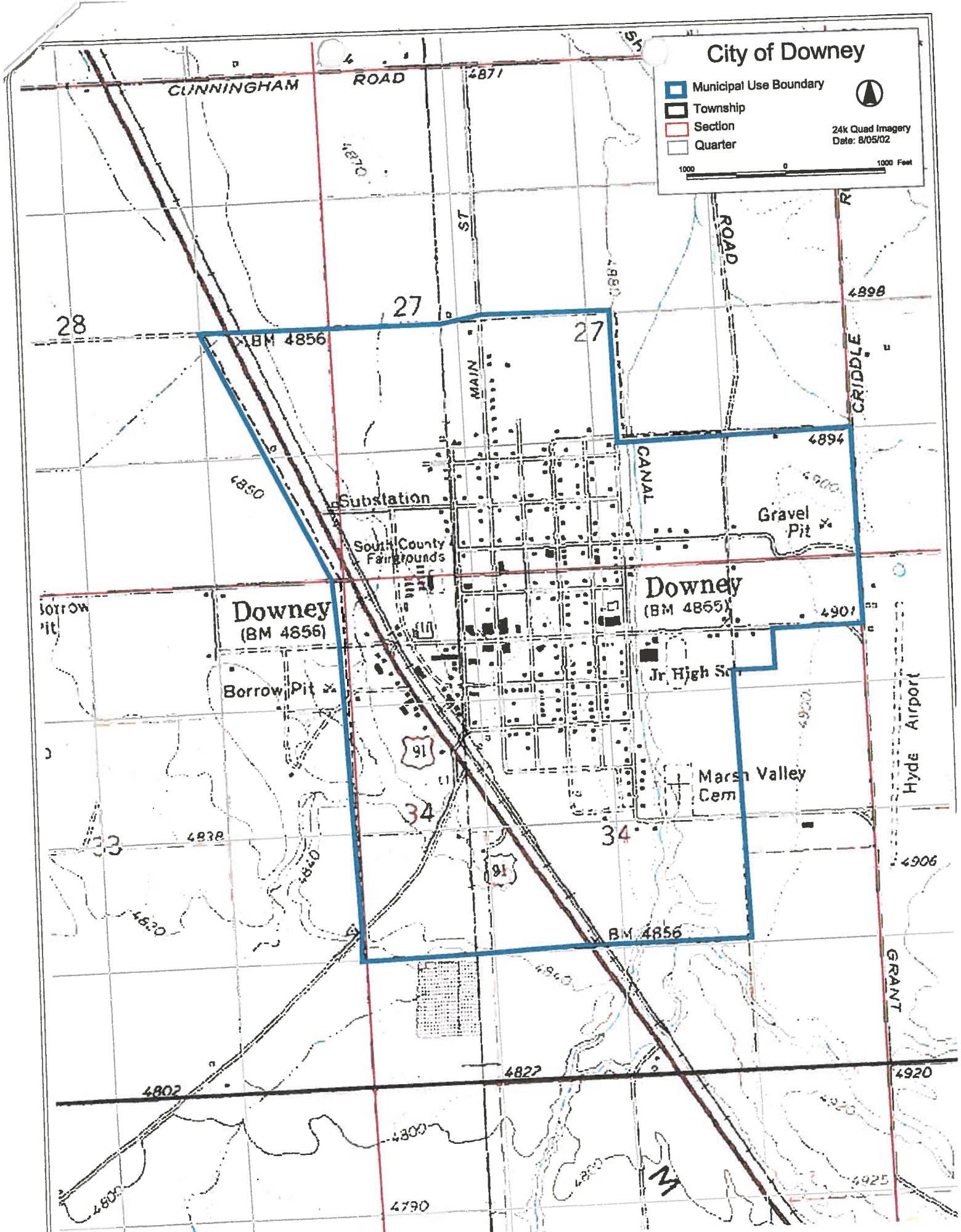
City of Downey

-  Municipal Use Boundary
-  Township
-  Section
-  Quarter



24k Quad Imagery
Date: 8/05/02

1000 0 1000 Feet



In The District Court of the Fifth Judicial District in and for Bannock County
State of Idaho

Sophronia Coffin and William
Bybee, Plaintiffs

Judgment.

Recorded: Book 2 Idms. 34. *deli*

vs

John Griddle, Dave Day, Robert
Pollock, Reubin Kendall and Royal
Kendall, Defendants.

Cause came on regularly to be heard on Feb. 10, 1900.....

Wherefore by reason of the law, and the findings aforesaid it is ordered, adjudged and decreed that the plaintiff Sophronia Coffin is entitled to the flow of 125 inches of the waters of the said Nine Mile Creek, through her said ditch under a four inch pressure, from the 1st day of March in each and every year, and to the flow of 100 inches of the said waters thereafter under a four inch pressure.

That the plaintiff William Bybee is entitled to the flow of the waters of the said Nine Mile Creek through the ditch of plaintiffs to the amount of five inches under a four inch pressure for the whole of each and every year.

That the said water shall be measured by a box to be placed at or near the head of the said ditch of plaintiffs and to be 8½ feet long and to have a fall of ½ inch to the rod and the water to be measured at the head of the said box and the said box to be not less than 18 inches wide.

That the defendants nor either of them have any interest in or to any of the waters of the said stream known as Nine Mile Creek.

That the defendants and each of them is hereby perpetually restrained and enjoined from in any manner interfering with the rights of the plaintiffs and each of them in the undisturbed use and enjoyment of the said waters as above decreed, and that each party to this action pay his own costs.

Joseph C. Rich, Dist. Judge.

DEED

Sophronia Coffin, widow

to

George T. Hyde and John S. Hyde.

Dated: May 1, 1907.

Filed: May 1, 1907 at 1:02 PM.

Recorded: Book 15 Deeds 632.

Cons. \$5,000.

Real Property and

Also the following water right for said premises, to wit: 125 inches of water under a four inch pressure of the water of Nine Mile Creek from the 1st day of March in each and every year up to the 1st day of July of each year and to the flow of 100 inches of the said water thereafter under a four inch pressure.

Sophronia Coffin

Acknowledged in Bannock County, State of Idaho, May 1, 1907, by Sophronia Coffin, before William Laurensen, a Notary Public in and for said County. (Seal).

Sheet # 1

WARRANTY DEED

George T. Hyde and Emma
Hyde, his wife

Dated: Sept. 5, 1908.

to

Filed: Jan. 11, 1909 at 10:31 AM.

The Downey Townsite and Development
Company, Limited.

Recorded: Book 18 Deeds 626.

Description:

Real Estate and

Together with 125 inches of water, measured under a four inch pressure of the waters of nine Mile Creek from the 1st day of March in each and every year, up to the 1st day of July in each year, and to the flow of 100 inches of the waters of said stream measured under a four inch pressure, from the 1st day of July of each year to the 1st day of March of each following year;

Also other real estate; provided that should there remain any over flow from the springs which are the source of the water right herein conveyed after said corporation has used or is using said water right, the said overflow may be used by the said George T. Hyde for irrigation or other purposes.

George T. Hyde
Emma Hyde

Acknowledged in Bannock County, State of Idaho, Dec. 28, 1908, by George T. Hyde and Emma Hyde, his wife, before William Laurensen, a Notary Public in and for said County. (Seal).

5
QUIT CLAIM DEED

John S. Hyde and Josephine
Hyde, his wife

Dated: Mar. 17, 1911.

Filed: Mar. 20, 1911 at 10:09 AM.

to

Recorded: Book 21 of Deeds 188.

The Downey Townsite and
Development Company, Limited,
a corporation.

Description:

An undivided one half interest in and to 125 inches of water under a four inch pressure of the waters of Nine Mile Creek from the first day of March in each and every year up to the first day of July of each year, and to the flow of 100 inches of the said water thereafter under a four inch pressure.

John S. Hyde
Josephine Hyde

Acknowledged in Bannock County, State of Idaho, Mar. 17, 1911, by John S. Hyde and Josephine Hyde, his wife, before Swen F. Johnson, a Notary Public in and for said County. (Seal).

Sheet # 6

DEED

The Downey Townsite & Development
Company, Limited, a corporation

to

W. Rodman Peabody.

Dated: June 21, 1911.

Filed: June 27, 1911 at 4:29 PM.

Recorded: Book 21 Deeds 266.

Cons. \$1.00. Filing #20550.

Real Estate and,

Together with 125 inches of water, measured under a four inch pressure of the waters of Nine Mile Creek, from the 1st day of March in each and every year, up to the 1st day of July in each year, and to the flow of 100 inches of waters of said stream measured under a four inch pressure from the 1st day of July of each year to the 1st day of March of each following year.

Downey Townsite & Development Company, Limited

By George T. Hyde, President.

John Ware Secretary. (Seal).

Acknowledged in Bannock County, State of Idaho, June 21, 1911, by George T. Hyde and John Ware, President and Secretary of the corporation that executed the foregoing instrument, who acknowledged that such corporation executed the same before Thos F. Terrell, a Notary Public in and for said County. (Seal).

WARRANTY DEED

W.Rodman Peabody and
Katherine P. Peabody

Dated: Aug. 9, 1911.

Filed: Sept. 9, 1911 at 11:04 AM.

to

Recorded: Book 21 Deeds 323.

Downey Water Company.

Description:

Real Estate and

Also the right to the use of 125 inches of water measured under a four inch pressure of the waters of Nine Mile Creek, in Bannock County, Idaho, from the 1st day of March in each and every year to the 1st day of July in each year and to the flow of 100 inches of the waters of said stream measured under a four inch pressure, from the 1st day of July of each year to the 1st day of March of each following year, together with the right to convey said waters elsewhere than at the present place of use and to use the same for domestic and municipal purposes.

W.Rodman Peabody
Katherine P. Peabody

Acknowledged in Suffolk County, State of Mass., Aug. 10, 1911, by W. Rodman Peabody and Katherine P. Peabody, his wife, before Fred J. Moffatt, a Notary Public in and for said County and State. (Seal).

DEED

C. W. Hancock and
Martha Hancock, his wife

to

Downey Water Company, a corporation.

Dated: Oct. 25, 1911.

Filed: Feb. 28, 1912 at 11:02 AM.

Recorded: Book 21 Deeds 470.

Filing #23234. Cons. \$1.00.

Description:

Real Property and

First parties further remise, release and foreverquit claim to second party, its successors and assigns, all rights to the use of the waters of Nine Mile Creek and its tributaries, sources and adjacent springs, whether for irrigation, domestic or other use.

In Consideration of the foregoing grants, the party of the second part covenants and agrees that it will install in the pipe line for which right of way is granted, at such practicable point along said right of way as may be designated by first parties, a tap for the taking of water therefrom for the use of the first parties; and further agrees to install at such tap, a water meter for the proper and accurate measuring of the water used by first parties; it be understood and agreed that the meter aforesaid shall be read monthly by party of the second part, and for the amount of water used by first party as registered by said meter, first parties agree to pay second party at the rate of twenty five cents per thousand gallons

C. W. Hancock
Martha Hancock

Acknowledged in Bannock County, State of Idaho, Oct. 25, 1911, by C. W. Hancock and Martha Hancock, his wife, before Swen F. Johnson, a Notary Public in and for said County and State. (Seal).

48 9

DEED

A.C.Anderson and Louise
Anderson, his wife

to

Downey Water Company, a corporation.

Dated:Oct.25,1911.

Filed:Feb.28,1912 at 11:03 AM.

Recorded:Book 21 Deeds 471.

Filing #23235. Cons.\$1.00.

Description:

Real Property, And first parties further remise, releases and forever quit claims unto second party, its successors and assigns all rights to the use of the waters of Nine Mile Creek and its tributaries, sources and adjacent springs, whether for irrigation, domestic or other use.

The party of the second part further remises, releases and forever quit claims unto the parties of the first part, their heirs and assigns forever, all right to the waters of a certain spring arising at or near the line dividing the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec.8, Twp. 11 S.R.38 E.B.M., providing there shall be any waters arising from such spring after the diversion by second party of the waters of Nine Mile Creek and its tributaries through the pipe line constructed by the said second party.

In consideration of the foregoing grants, the party of the second part covenants and agrees that it will install in the pipe line for which right of way is granted, at such practicable points along said right of way as may be designated by first parties, two taps for the taking of water therefrom for the use of first parties, and further agrees to install at such taps, water meters for the proper and accurate measuring of the water used by first parties and second party hereby grants and conveys to the first parties the right to the use for domestic and culinary purposes and for the watering of stock at the said taps, 12,000 gallons per month of such water as measured by the meters herein referred to, it being understood and agreed that the meters aforesaid shall be read monthly by party of the second part, and no charge shall be made for the use by first parties of the said amount of water.

It is further covenanted and agreed that any additional quantity of water used at said taps above the 12,000 gallons per month, shall be paid for monthly by first parties at the rate of twenty five cents per thousand gallons.

A.C.Anderson
Louise Anderson

Acknowledged in Bannock County, State of Idaho, Oct.25,1911, by A.C. Anderson and Louise Anderson, his wife, before Swen P.Johnson, a Notary Public in and for said County and State.(Seal).

DEED

Reuben N. Kendall and Delinia
J. Kendall, his wife

to

Downey Water Company.

Dated: Apr. 5, 1912.

Filed: May 22, 1912 at 9:02 AM.

Recorded: Book 21 Deeds 538.

Filing #24192. Cons. \$1.00.

Real Property and

First parties further remise, release and forever quitclaim to said second party, its successors and assigns, all rights to the use of the waters of Nine Mile Creek, in Bannock County Idaho, and its tributaries, sources and adjacent springs, whether for irrigation, domestic or other use.

The party of the second part, in addition to the cash consideration herein recited, and as a further consideration for the conveyance by first parties to it of the property herein described, agrees to install, at such point in said pipe line as may be designated by first parties along the course of the said pipe through the lands above described, a tap or other device, whereby said first parties may be supplied with water therefrom, and further agrees to install a meter or proper construction for accurately measuring the said water and agrees to furnish to first parties 10,000 gallons of water per month, with charge, for irrigation and domestic use. It is covenanted and agreed between the parties that any additional water over the said 10,000 gallons per month used by first parties shall be paid for by them monthly at the rate of 25 cents per thousand gallons.

Reuben N. Kendall
Delinia J. Kendall

Acknowledged in Bannock County, State of Idaho, May 20, 1912 by Reuben N. Kendall and Delinia J. Kendall, his wife, before Geo. R. Crockett, a Notary Public in and for said County and State. (Seal).

DEED

Downey Water Company, a
corporation

Dated: Aug. 3, 1915.

Filed: Nov. 15, 1915 at 3:15 PM.

Recorded: Book 29 Deeds 517.

Cons. \$22,500.00. Filing #42409.

to
Village of Downey, a
Municipality.

A certain tract of land beginning at a point south 72°26' West 987 feet from the quarter corner between sections 23 and 24, Twp. 11 South, Range 37 E.B.M. thence North 200 feet; thence East 200 feet; thence South 200 feet; thence West 200 feet to the point of beginning, containing 0.92 acres more or less, Also a 12 foot strip of land as a right of way for a buried pipe line for the conveyance of water across the following land.....

Also all of the pipe lines, manholes, valves, gates, crossovers, tees, elbows, meters, hydrants and other fixtures now installed in place and constituting the fixed plant of the water works system owned by the party of the first part and used for the supply of the village of Downey, Idaho.

Also all rights of way for pipe lines held by virtue of occupancy or permit from any and all authorities, national, state, county or municipal, in and along public lands, public roads and streets.

Also all rights now owned by the company to the use of the waters of nine mile creek in Bannock County, Idaho, more particularly described as follows: 125 inches of water, measured under a four inch pressure, of the waters of Nine Mile Creek, in Bannock County, Idaho, from the 1st day of March in each year to the 1st day of July in each year and to the flow of 100 inches of the waters of said stream measured under a four inch pressure, from the 1st day of July in each year to the 1st day of March of each following year, together with the right to convey said waters elsewhere than at the present place of use and to use the same for domestic and municipal purposes.

Four inches of the waters of Nine Mile Creek, in Bannock County, Idaho, under a four inch pressure, together with all and singular the means of use of the same.

All of the property herein enumerated subject, however to the following grants heretofore made by the party of the first part or its predecessors in interest.

To A.C. Anderson, all right to the waters of a certain spring rising at or near the line dividing the SE 1/4 SW 1/4 and the SW 1/4 SW 1/4 of Sec. 8, T 11 S. R. 38 E.B.M. providing there shall be any waters arising from such spring after the diversion by second party of the waters of Nine Mile Creek and its tributaries through the pipe line constructed by party of the first part.

To A.C. Anderson the free use of 12,000 gallons of water per month from the pipe line at two taps as measured by meters, also that any additional water used at said taps in excess of 12,000 gallons shall be paid for monthly at the rate of 25 cents per 1,000 gallons.

To C.W.Hancock, to install a tap and meter and to furnish water for the said C.W.Hancock at the rate of 25 cents per 1,000 gallons.

To Hiram and Ida Bowman to install a tap and meter and furnish for domestic, culinary and stock water 9,000 gallons per month free of charge from said pipe line. If amounts in excess of 9,000 gallons per month are used the said Bowman agrees to pay for the same at the rate of 15 cents per 1000 gallons.

To R.N. and D.J.Mendall, to install a tap and meter and to furnish 10,000 gallons of water per month free of charge. If amounts in excess of 10,000 gallons per month are used they are to be paid for at the rate of 25 cents per 1000 gallons.

To W.J. and Eliza Bybee, to deliver from the pipe line, free of charge to the said Bybee the decreed water to which he is entitled.

To George T.Hyde, by reservation in his deed of Sept.5,1908, "Provided, that should there remain any overflow from the springs which are the source of the water right herein conveyed after said corporation has used or is using said water right, the said overflow may be used by the said George T.Hyde for irrigation or other purposes."

Clifford M.Brewer, Assistant
Secretary. (Corp.Seal).

The Downey Water Company
By Charles S.Davis, President

Acknowledged in City and County of San Francisco, State of Calif., Aug.3 1915, by Charles S.Davis, President of the corporation that executed the foregoing instrument, who acknowledged that such corporation executed the same, before Nettie.Hamilton, a Notary Public in and for said County and State.(Seal).

Acknowledged in Bannock County, State of Idaho, Aug.5,1915, by Clifford M.Brewer, Assistant Secretary of the corporation that executed the foregoing instrument, who acknowledged that such corporation executed the same, before Swen F. Johnson, a Notary Public in and for said County and State.(Seal).

State of Idaho
County of Bannock, ss.

We hereby certify that the foregoing pages Numbered from One to Thirteen
th inclusive, embrace an Abstract of Instruments affecting the Water Right
described in the caption hereof, as shown by the Records of the County Recorder's
Office of Bannock County, Idaho.

Dated at Pocatello, Idaho, this 25th day of February 1937.

Abstract and Title Guaranty Company

By

Secy