

12/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 78-4087

NAME AND ADDRESS: SHINGLE CREEK LLC
PO BOX 1160
RIGGINS ID 83549

SOURCE: MC GLIMMERE CREEK

TRIBUTARY: NORTH FORK SINGLE CREEK

QUANTITY: 2.740 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 04/01/1936

POINT OF DIVERSION:

T24N R01W S26 SESE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.080 CFS
IRRIGATION	04/01 10/31	2.660 CFS

PLACE OF USE: IRRIGATION in IDAHO County

T24N R01W S25	SESW	5.00	T24N R01W S25	SWSE	0.50
T24N R01W S36	NENE	6.50	T24N R01W S36	NWNE	8.00
T24N R01W S36	SWNE	38.00	T24N R01W S36	SENE	36.00
T24N R01W S36	NENW	23.00	T24N R01W S36	NWNW	1.00
T24N R01W S36	SWNW	1.00	T24N R01W S36	SENW	14.00

STOCKWATER in IDAHO County

T24N R01W S36 SENW

133 ACRES TOTAL

Right Numbers 78-4087 and 78-2033 are limited to the irrigation of a combined total of 133 acres in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

11/15/2006

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: December 8, 2006

Water right number: 78-4087

SHINGLE CREEK LLC

PO BOX 1160

RIGGINS ID 83549

Telephone Number: (208) 628-3462

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

source

2. Describe the changes you wish to make in the proposed recommendation:

*change source to Mc Glimmire Creek
tributary to N. Fork Shingle Creek*

3. Give a brief explanation as to why you disagree with these portions:

Source is not Papoose Creek!

☐ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/25/06

SIGNATURE: Shingle Creek LLC Willis D. DeVeny (mgr)

Please print your name: Willis D. DeVeny manager

IDWR State Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

11/18/2005

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 78-4087

NAME AND ADDRESS: SHINGLE CREEK LLC
PO BOX 1160
RIGGINS ID 83549

SOURCE: PAPOOSE CREEK

TRIBUTARY: SQUAW CREEK

QUANTITY: 2.740 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 04/01/1936

POINT OF DIVERSION:

T24N R01W S26 SESE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.080 CFS
IRRIGATION	04/01 10/31	2.660 CFS

PLACE OF USE: IRRIGATION Within IDAHO County

T24N R01W S25	SESW	5.0	T24N R01W S25	SWSE	0.5
T24N R01W S36	NENE	6.5	T24N R01W S36	NWNE	8.0
T24N R01W S36	SWNE	38.0	T24N R01W S36	SENE	36.0
T24N R01W S36	NENW	23.0	T24N R01W S36	NWNW	1.0
T24N R01W S36	SWNW	1.0	T24N R01W S36	SENW	14.0

STOCKWATER Within IDAHO County

T24N R01W S36 SENW

133 ACRES TOTAL

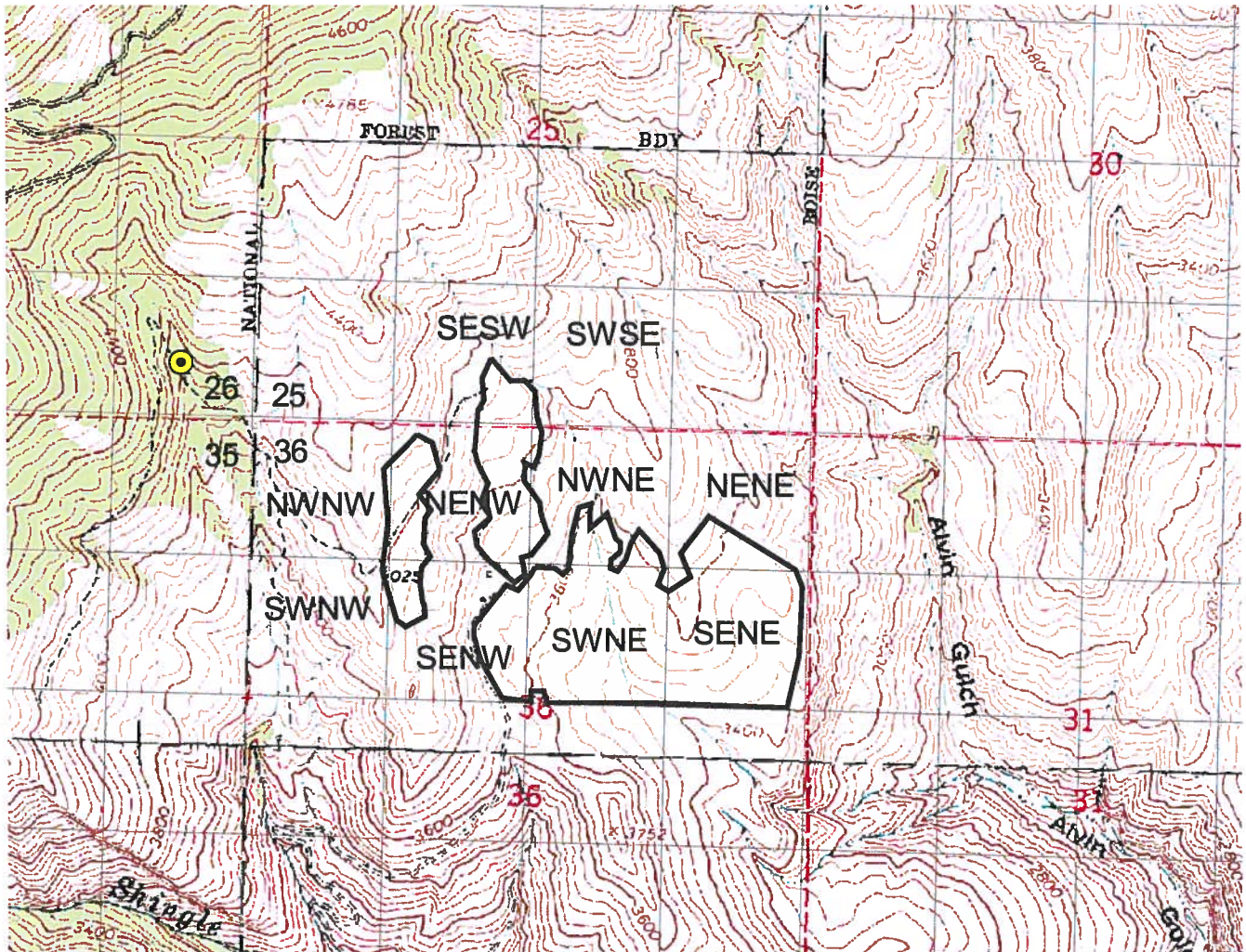
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

78-4087



0 1000 2000 Feet

Sections 25, 26 & 36
T24N R1W



● Point of Diversion

□ Place of Use

Map prepared on November 17, 2005
By Kenneth Knoblock
Idaho Department of Water Resources

Shingle Creek Ranch

P.O. Box 1160
Riggins, ID 83549

ph: (208) 628 3462
fax: (208) 628 3462

August 15, 2005

RECEIVED

AUG 18 2005

Department of Water Resources

Department of Water Resources
attn: Carter Fritschle
322 East Front Street, PO Box 83720
Boise, Idaho 83720-0098

Dear Mr. Fritschle:

As requested in your letter of June 6, 2005 (copy included) proof of beneficial use is being submitted for claim no. 78-4087. This is a record of the court case filed by two adjacent landowners. We now own most of the property that was the basis for the dispute involved in the enclosed court record. The McGlimmere Creek diversion is on private land we own thus eliminating the source of the conflict that resulted in the court case.

Mr. Zimmerman has completed the field examination of this water use. When this claim was filed we did not own the property. The claim was filed by the then owners. We changed it to our name when we bought the property, but did not change any information. In reviewing the claim with Mr. Zimmerman, we think there are several mistakes in locations.

Our proposal is to change the point of diversion to McGlimmere Creek which was just one point of diversion in the original claim. This proposal would eliminate Papoose Creek which would allay all concerns of those on Papoose Creek who have protested the claim in the past. It would also eliminate the need for a special use permit from the Forest Service for a portion of the ditch. All the the diversion and ditch would be on private land that we currently own.

The ditch is being reconstructed to a better grade. The old ditch had high and low spots which made water transmission inefficient. Currently there is a diversion in McGlimmere Creek and a small plastic pipe carrying water primarily for stock water.

Please feel free to contact us or advise us if additonal information is needed. Thank you.

Sincerely,



Betty G. DeVeney and
Willis D. DeVeney

enclosures - Court Record No. 4580

PROTEST TO CLAIM OF WATER RIGHT

STATE OF IDAHO)
County of IDAHO) ss.

JOHN W. BETZOLD, being first duly
sworn, deposes and says:

THAT affiant owns 15 acres in Section 24,
Township 24 North, Range 1, West of the Boise Meridian,
and resides at: REGINA, ID 83549.

THAT affiant does hereby protest and object to the
claim of IVAN J. CARLISLE and MAXINE G. CARLISLE, No. 78-4087,
for the following reasons:

1. THAT this affiant is informed by reliable source,
and so believes, that there has been no appropriation of
water, nor the application of such water, from Papoose
Creek special use permit to any beneficial use from about
1962 to the present time as claimed by said claimant
CARLISLE.

2. THAT at no time has claimant CARLISLE nor any pred-
ecessor in interest for the past 15 years in fact diverted
any water for diversion, agricultural or domestic use from
said Papoose Creek, and said Section 27, Township 24 North,
Range 1, West of the Boise Meridian, as it flows through
said section. That said Section 27 is Federal lands and
CARLISLE and predecessors have no special use permit to
divert.

3. THAT this affiant's right to downstream waters is
prior to applicant CARLISLE's claim, and affiant's water
permit number is No. 78-7011.

4. THAT affiant is informed and believes that the said
water originating in Section 27, Township 24 North, Range 1,
West, and as the same flows through said Section, is a source
of other springs, percolating waters, including downhill stream
and to the east of said point of diversion. That a claim of
5.0 cubic feet per minute is many times more water than in fact
flows at intended point of diversion at any time of the year.

FURTHER, the affiant sayeth not.

John W. Betzold
Affiant

Subscribed and sworn to before me this 13th day of
April, 1978.

Rene A. Allison
Notary Public for Idaho
Residing at Idaho

WILLIAM H. FOSTER
ATTORNEY
GRANDVILLE, IDAHO

FILED

 Plaintiff 1st description } Foxen
 Plaintiff 2nd description } Ranch

5/3/1938

4/1 10/1
 1.20 qts

2. 6 1/2 Shingle Creek
 Papoose Cr

60 inches 6/26/1924 unnamed gulch

2. 64 qts from Shingle & Papoose Creek
 Elmer Campbell 132 acres description

step 15 inches

75



PROTEST TO CLAIM OF WATER RIGHT

STATE OF Idaho)
County of Idaho) ss.

JAMES H. WOODS, being first duly
sworn, deposes and says:

THAT affiant owns 20 acres in Section 24,
Township 24 North, Range 1, West of the Boise Meridian,
and resides at: Riggins, IDAHO 83549.

THAT affiant does hereby protest and object to the
claim of IVAN J. CARLISLE and MAXINE G. CARLISLE, No. 78-4087,
for the following reasons:

1. THAT this affiant is informed by reliable source,
and so believes, that there has been no appropriation of
water, nor the application of such water, from Papoose
Creek special use permit to any beneficial use from about
1962 to the present time as claimed by said claimant
CARLISLE.

2. THAT at no time has claimant CARLISLE nor any pred-
ecessor in interest for the past 15 years in fact diverted
any water for diversion, agricultural or domestic use from
said Papoose Creek, and said Section 27, Township 24 North,
Range 1, West of the Boise Meridian, as it flows through
said section. That said Section 27 is Federal lands and
CARLISLE and predecessors have no special use permit to
divert.

3. THAT this affiant's right to downstream waters is
prior to applicant CARLISLE's claim, and affiant's water
permit number AM No. 78-7011, 78-7061 + 78-7062

4. THAT affiant is informed and believes that the said
water originating in Section 27, Township 24 North, Range 1,
West, and as the same flows through said Section, is a source
of other springs, percolating waters, including downhill stream
and to the east of said point of diversion. That a claim of
5.0 cubic feet per minute is many times more water than in fact
flows at intended point of diversion at any time of the year.

FURTHER, the affiant sayeth not.

James H. Woods
Affiant

Subscribed and sworn to before me this 13th day of
April, 1978.

Doris A. Allison
Notary Public for Idaho
Residing at Riggins

WM. H. POSTER
ATTORNEY
GRANGEVILLE, IDAHO

PROTEST TO CLAIM OF WATER RIGHT

STATE OF Idaho)
County of Idaho) ss.

Dale E. Astle, being first duly sworn, deposes and says:

THAT affiant owns 3.48 acres in Section 17, Township 24 North, Range 1, ^{East} West of the Boise Meridian, and resides at: Papoose Creek on same 348 acres.

THAT affiant does hereby protest and object to the claim of IVAN J. CARLISLE and MAXINE G. CARLISLE, No. 78-4087, for the following reasons:

1. THAT this affiant is informed by reliable source, and so believes, that there has been no appropriation of water, nor the application of such water, from Papoose Creek special use permit to any beneficial use from about 1962 to the present time as claimed by said claimant CARLISLE.

2. THAT at no time has claimant CARLISLE nor any predecessor in interest for the past 15 years in fact diverted any water for diversion, agricultural or domestic use from said Papoose Creek, and said Section 27, Township 24 North, Range 1, West of the Boise Meridian, as it flows through said section. That said Section 27 is Federal lands and CARLISLE and predecessors have no special use permit to divert.

3. THAT this affiant's right to downstream waters is prior to applicant CARLISLE's claim, and affiant's water permit number is No. 32478.

4. THAT affiant is informed and believes that the said water originating in Section 27, Township 24 North, Range 1, West, and as the same flows through said Section, is a source of other springs, percolating waters, including downhill stream and to the east of said point of diversion. That a claim of 5.0 cubic feet per minute is many times more water than in fact flows at intended point of diversion at any time of the year.

FURTHER, the affiant sayeth not.

Dale E. Astle
Affiant

Subscribed and sworn to before me this 17th day of April, 1978.

Barbara D. Dwyer
Notary Public for Idaho
Residing at Regina

PROTEST TO CLAIM OF WATER RIGHT

STATE OF Idaho)
County of Idaho) ss.

Paul Albert Campbell, being first duly sworn, deposes and says:

THAT affiant owns 3.77 acres in Section 19, Township 24 North, Range 1, West of the Boise Meridian, and resides at: Riggins, Idaho.

THAT affiant does hereby protest and object to the claim of IVAN J. CARLISLE and MAXINE G. CARLISLE, No. 78-4087, for the following reasons:

1. THAT this affiant is informed by reliable source, and so believes, that there has been no appropriation of water, nor the application of such water, from Papoose Creek special use permit to any beneficial use from about 1962 to the present time as claimed by said claimant CARLISLE.

2. THAT at no time has claimant CARLISLE nor any predecessor in interest for the past 15 years in fact diverted any water for diversion, agricultural or domestic use from said Papoose Creek, and said Section 27, Township 24 North, Range 1, West of the Boise Meridian, as it flows through said section. That said Section 27 is Federal lands and CARLISLE and predecessors have no special use permit to divert.

3. THAT this affiant's right to downstream waters is prior to applicant CARLISLE's claim, and affiant's water permit number is No. 32477.

4. THAT affiant is informed and believes that the said water originating in Section 27, Township 24 North, Range 1, West, and as the same flows through said Section, is a source of other springs, percolating waters, including downhill stream and to the east of said point of diversion. That a claim of 5.0 cubic feet per minute is many times more water than in fact flows at intended point of diversion at any time of the year.

FURTHER, the affiant sayeth not.

Paul Albert Campbell
Affiant

Subscribed and sworn to before me this 14th day of April, 1978.

David A. Allison
Notary Public for Riggins
Residing at Riggins, Idaho

WM. H. FOSTER
LAWYER
GRANGEVILLE, IDAHO

IN THE MATTER OF:)

Ivan J. Carlisle)

AFFIDAVIT

Claim to Water rights)
State of Idaho)
County of Idaho)

George Boodry being first duly sworn,
deposes and says: Regarding Property located in Sections 25, 26
& 36 Township 24 N R1W Idaho County, I have personal knowledge
that the above described property was under ditch irrigation
from 1936 to 1957 and all tillable land was
irrigated and crops raised during this period of time.
I owned and resided on This ranch and sold to Donald C.
Whiteman in 19 57

The source of the irrigation water being Paboose Creek with
water being transferred by ditch, flume and pipe.

x

George Boodry
(Signature)

Subscribed and sworn to before me this 13 day of Feb, 1978

Marcello L. Emery
(Notary Public)

Residing at Pauma, Idaho
My Commission Expires 3-25-80

NOT
FILMED

IN THE MATTER OF:)

Ivan J. Carlisle)

AFFIDAVIT

Claim to Water Right)

State of Idaho)

County of Idaho)

Eunice M. Manser being first duly sworn,

deposes and says: ~~Regarding Property located in Sections 25, 26,~~
~~& 36 Township 24 N R 1W Idaho County. I resided on this~~
~~Property from 1936 to 1957 and have~~
~~personal knowledge that during this period of time this~~
~~property was under ditch irrigation from Papoose Creek~~
~~and my former husband George Boodry had made application~~
~~for water rights in 1936.~~

Eunice M. Manser
(Signature)

Subscribed and sworn to before me this 14 day of Feb., 1978

Skilletta M. Headh
(Notary Public)

Residing at Riggins Idaho.
My Commission Expires 5-17-80

MICROFILMED

PROTEST TO CLAIM OF WATER RIGHT

STATE OF IDAHO;
County of IDAHO; ss.

JOHN W. BETZOLD, being first duly
sworn, deposes and says:

THAT affiant owns 5 acres in Section 24,
Township 24 North, Range 1, West of the Boise Meridian,
and resides at: REGGIM, ID 83549.

THAT affiant does hereby protest and object to the
claim of IVAN J. CARLISLE and MAXINE G. CARLISLE, No. 78-4087,
for the following reasons:

1. THAT this affiant is informed by reliable source,
and so believes, that there has been no appropriation of
water, nor the application of such water, from Papoose
Creek special use permit to any beneficial use from about
1962 to the present time as claimed by said claimant
CARLISLE.

2. THAT at no time has claimant CARLISLE nor any pred-
ecessor in interest for the past 15 years in fact diverted
any water for diversion, agricultural or domestic use from
said Papoose Creek, and said Section 27, Township 24 North,
Range 1, West of the Boise Meridian, as it flows through
said section. That said Section 27 is Federal lands and
CARLISLE and predecessors have no special use permit to
divert.

3. THAT this affiant's right to downstream waters is
prior to applicant CARLISLE's claim, and affiant's water
permit number is No. 78-7011.

4. THAT affiant is informed and believes that the said
water originating in Section 27, Township 24 North, Range 1,
West, and as the same flows through said Section, is a source
of other springs, percolating waters, including downhill stream
and to the east of said point of diversion. That a claim of
5.0 cubic feet per minute is many times more water than in fact
flows at intended point of diversion at any time of the year.

FURTHER, the affiant sayeth not.

John W. Betzold
Affiant

Subscribed and sworn to before me this 13th day of
April, 1978.

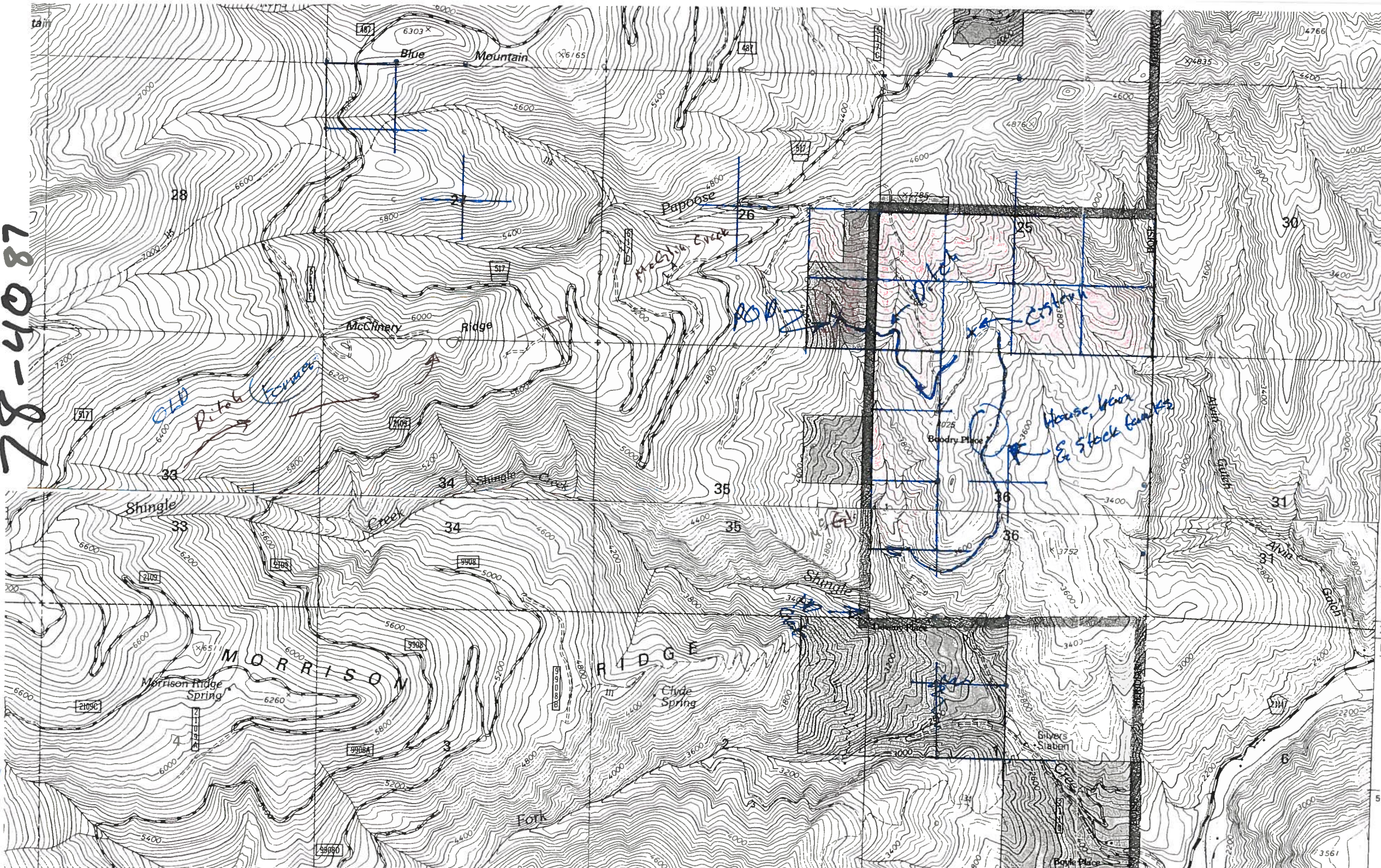
Doris A. Allison
Notary Public for Idaho
Residing at Idaho

W. H. FOSTER
ATTORNEY
GRANVILLE, IDAHO

(Kessler Creek 1995)
(Heaven's Gate 1995)

77-4087

78-4087





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 FAX: (208) 287-6700 www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 6, 2005

78-4087
SHINGLE CREEK LLC
PO BOX 1160
RIGGINS ID 83549

Re: Field Examination and Evidence of Priority Date

Dear Claimant:

The Notice of Claim to a Water Right (claim) identified with the number shown above your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed, and are termed beneficial use rights.

The elements of beneficial use rights need to be verified by an examiner for the Idaho Department of Water Resources (IDWR) before the claim can be recommended to the SRBA Court. The examination of claims in your area will take place during the summer of 2005. An examiner will be contacting you to schedule a time to visit your property to verify your use of the water right claimed.

Also, even though most of the elements of your claim can be verified by the field exam, the date of first use, or priority date can only be verified by documentation of the historic use. If you have not supplied documentation for the priority date and historical beneficial use of the water, please submit your evidence by August 31, 2005. Enclosed you will find a pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: IDWR will recommend the SRBA Court decree the claim disallowed if the priority date and the historic use cannot be documented. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

If you have questions not covered by this letter or the enclosed pamphlet, please contact this office. Our toll free number is 1-800-451-4129.

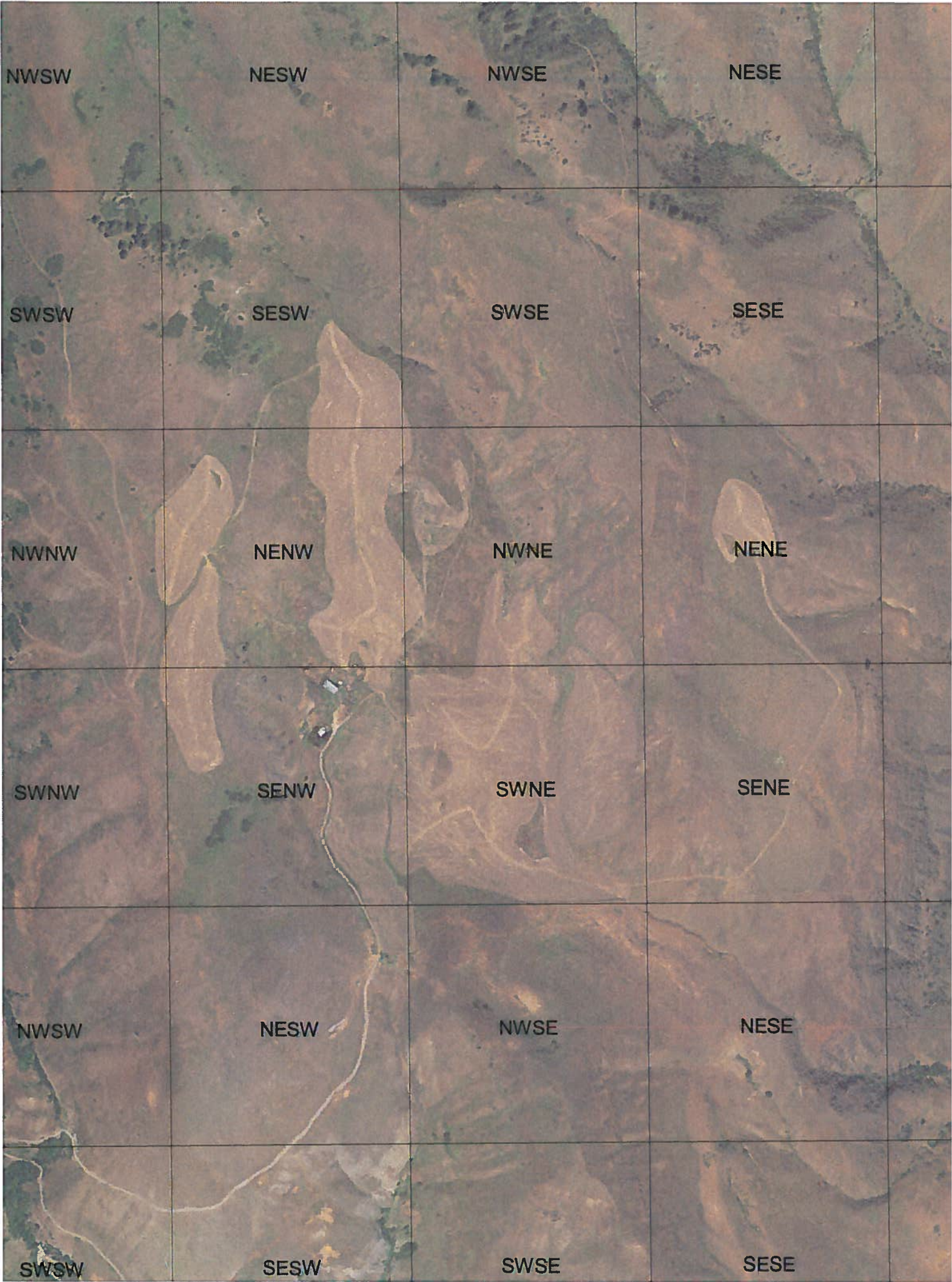
Sincerely,

Carter Fritschle
Water Rights Supervisor
Adjudication Bureau

Enclosure:

Evidence of Priority Date pamphlet

Additional claimant(s) and/or claim(s):



#4580

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

CLYDE E. SUMMERS and
ELMER ARMFIELD and AGNES
A. ARMFIELD, his wife,

Plaintiffs,)

- vs -

GEORGE BOODRY,

Defendant.

FILED
AT 1:30 O'CLOCK P.M.

MAY 3 1938

HENRY TELCHER
Clerk of District Court

By W. K. HAY Deputy

-----0-----

Plaintiffs complain of the defendant and for cause of
action against him, allege:

I

That the plaintiff Clyde E. Summers is the legal and
record owner of, and the plaintiffs, Elmer Armfield and Agnes A.
Armfield, his wife, are the owners of an equity in, under con-
tract of purchase from the plaintiff, Clyde E. Summers, the
following described lands and premises, situate in Idaho County,
Idaho, to-wit:

East Half of the Northwest Quarter; Southwest Quarter
of the Northwest Quarter and the South Half of the South-
west Quarter of Section 36, and the Southeast Quarter of
the Southwest Quarter of Section 25, all in Township 24
North, Range 1 West, Boise Meridian,

and further, that the plaintiff, Clyde E. Summers, is the equitable
owner of, under certificates 17090, 17091, 17092 and 17095, of
The State Board of Land Commissioners of the State of Idaho, and
plaintiffs Elmer Armfield and Agnes A. Armfield, his wife, have
interest therein under contract with the plaintiff Summers for
the purchase and assignment of such Certificates, the following

1
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3
4
5 described lands and premises, situate in Idaho County, State of
6 Idaho, to-wit:

7 The North Half of the Northeast Quarter; the South-
8 east Quarter of the Northeast Quarter and the Northeast
9 Quarter of the Southwest Quarter of Section 36, in Township
24 North, Range 1 West, Boise Meridian,

10 all of which before described premises are locally referred to,
11 and hereafter in this complaint will be referred to, as the
12 "Basin Ranch", and all of which said premises are now in the
13 possession of the plaintiffs Armfield and used by them for the
14 growing of crops of hay, grain, seeds and for pasturage and
15 other agricultural purposes.

16 II

17 That said lands are arid in character but are highly
18 fertile and when irrigated by means of water artificially applied,
19 are capable of producing and do produce highly valuable crops of
20 hay, grain, seed, and in addition, annually provide highly
21 valuable forage and pasturage following the harvest of crops of
22 hay, grain and seed crops.

23 III

24 That on or about June 26th. 1923, one C. M. Clay, who
25 is the same person as "Charles Clay", and who was then the owner
26 of the lands and premises hereinbefore described, and one of
27 the predecessors in interest of the plaintiffs, for the purpose
28 of providing a supply of irrigation water for beneficial use
29 upon said Basin Ranch, upon due and legal proceedings therefor
30 through the Department of Reclamation of the State of Idaho,
31 made application for and filings upon the waters of "Shingle
32 Creek", a tributary of the Rapid River which is a tributary of

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5 Little Salmon River, and upon the waters of "Papoose Creek", a
6 tributary of the Salmon River System, to the extent and amount
7 of 4.0 second feet, and thereafter and on July 15th. 1926,
8 Certificate of Completion of Works, No. 16844, was duly issued
9 by the Commissioner of Reclamation of the State of Idaho, by
10 which it was verified that all works to be constructed in
11 connection with such application for such water had been fully
12 completed; and thereafter, and on the 23rd day of August, 1929,
13 License and Certificate of Water Right, No. 15844, was duly
14 issued by the Department of Reclamation of the State of Idaho,
15 to the said C. M. Clay for 2.64 cubic feet per second of the
16 waters of Shingle Creek and Papoose Creek, for beneficial use
17 upon 132 acres of said Basin Ranch, as particularly described in
18 said License and Certificate, under a date of priority of June,
19 26th. 1924.

20
21 IV

22 That for the purpose of diverting the said waters of
23 Shingle Creek and Papoose Creek, and other waters, down to and
24 upon the said Basin Ranch, the said C. M. Clay did, between the
25 years 1923 and 1924, or thereabouts, construct a system of
26 ditches and canals, namely: a ditch of canal leading from Shingle
27 Creek in the Southeast Quarter of the Southeast Quarter of Sec-
28 tion 33, in Township 24 North, Range 1 West, across and into
29 Papoose Creek at or near the Northwest Quarter of the Northeast
30 Quarter of Section 27, in Township 24 North, Range 1 West, B. M.,
31 and, from Papoose Creek, immediately below the last named point,
32 and below the outlet of such canal from Shingle Creek, a ditch
or canal leading in a general easterly direction from Papoose

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4 Creek a distance of approximately $\frac{1}{2}$ mile to a divide one of
5 the ridges lying between Papoose Creek and said Basin Ranch, from
6 which point the said waters of Shingle Creek and Papoose Creek are
7 conveyed for a distance of approximately three-fourths mile down
8 the course and bed of an unnamed gulch to a point which is approx-
9 imately the Northwest corner of the Southeast Quarter of the South-
10 east Quarter of Section 26, in Township 24 North, Range 1 West,
11 Boise Meridian, from which last mentioned point a further canal
12 was constructed from such gulch and leading generally easterly over
13 and across a high ridge between said gulch and said Basin Ranch,
14 and down to and upon such Basin Ranch where said canal is divided
15 into laterals so as to convey the water therein where required for
16 the proper irrigation of said Basin Ranch.

17 V

18 That the said canal leading from the gulch last before men-
19 tioned, is of an average width of two (2) feet on bottom and not
20 less than three (3) feet on top, and of an average depth of eighteen
21 (18) inches and is so constructed, and has sufficient grade and
22 carrying capacity to enable up to 250 inches of water to be safely
23 conducted therein.

24 VI

25 That the said unnamed gulch before mentioned, is a natural
26 water course and at certain seasons of the year, particularly in
27 spring and early summer, has a certain natural flow of water in
28 and along the same, independent of the irrigating water conveyed
29 therein, which results from natural drainage and seepage from
30 adjacent, higher ground, and from percolating water and springs
31 along its course, and particularly, at a point immediately above
32 the point where said irrigation canal diverts therefrom, a large but

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5 variable flow of water comes to the surface of the bed of such
6 gulch, flowing out of and from under a large reef or dyke of
7 rock outcropping in the bed of such gulch, and which crosses or
8 blocks the bed of such gulch in such manner as to cause the
9 underground and percolating water to come to the surface in form
10 and manner so that it is generally referred to in the locality
11 thereof as a "spring"; and dependent upon the season of the year,
12 and dependent also upon the amount of irrigating water that is
13 being conveyed down such gulch, above said "spring," a variable
14 flow of water, estimated to be from 35 to 60 inches of water,
15 miners' measure occurs in the bed of said gulch at said point.

16 VII

17 That by reason of the fact that the diversion point of
18 said canal leading from such gulch to the Basin Ranch is immed-
19 iately below the point in said gulch where such seepage, perco-
20 lating or spring water (as stated in paragraph VI) comes to the
21 surface, the whole of the flow thereof, and including the waters
22 so diverted therein from Shinge Creek and Papoose Creek, at all
23 times since the completion of such canal system, has been, and
24 now is, diverted into said canal and conducted down to and upon
25 said Basin Ranch where the same is now used, and since about
26 June, 1924, has been beneficially used and applied for irrigation
27 of domestic crops.

28 VIII

29 That the ditch and canal system hereinbefore described
30 is several miles in length and is constructed through rough,
31 mountain country and across and along high, rocky ridges, and
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4 at a cost in excess of \$3,000.00, as plaintiffs are advised and
5 believe, and so allege; and such ditch system, and the water
6 thereby conveyed and beneficially used upon the lands of plain-
7 tiffs, has a value of not less than \$10,000.00.

8 IX

9 That the duty of water for irrigation purposes, in the
10 vicinity where said water is used, as aforesaid, is not greater
11 than One and One-Half ($1\frac{1}{2}$) inches per acre: that plaintiffs have
12 in actual cultivation, and under irrigation, on said Basin Ranch,
13 not less than 132 acres of land, and not less than 3.96 second
14 feet, or 198 miners inches, measured at the point of diversion of
15 plaintiffs' ditch in said unnamed gulch, is required for the
16 proper and adequate irrigation of their said lands, and that the
17 flow of water in said gulch at such diversion point, including
18 the 2.64 second feet diverted therein from Shingle Creek and
19 Papoose Creek, does not exceed 3.96 second feet at any time during
20 the usual and ordinary irrigating season of April 1st to October
21 1st. of each year, and during the greater portion of each irrigating
22 season, such flow at such point does not exceed $2\frac{1}{2}$ to 3 second
23 feet.

24 X

25 That said ditch and canal system was fully completed by
26 the predecessors in interest of plaintiffs, and the water so
27 appropriated, as hereinbefore stated, applied to a beneficial use
28 upon said Basin Ranch, and the said ditch, canal and water made
29 appurtenant to the same by actual, beneficial use on June 26th.
30 1924, and ever since said date, and during the full and entire
31 irrigation season of each and every consecutive year thereafter,
32 (excepting only when prevented by the wrongful and unlawful acts of

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5 defendant, as is hereinafter specifically stated) the plaintiffs,
6 and their predecessors in interest in the ownership of said ditch,
7 canal, water right and Basin Ranch, have used said ditch and canal
8 system for conveying to said Basin Ranch lands the said water of
9 Shingle Creek and Papoose Creek, and all of the water flowing in
10 said unnamed gulch at the diversion point of plaintiff's canal
11 therefrom; and have owned, and now own such ditch and canal
12 system, and such water rights, and at all times since June, 1924,
13 have continuously, openly, notoriously, adversely and under color
14 of title and right, owned, held, managed and exclusively used and
15 possessed the same, both as to defendant and his predecessors in
16 interest, and against all the world.

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XI

That defendant has no right, title, interest or ownership whatever in or to said system of ditches and canals before described, and as plaintiffs are advised, informed and believe, and upon information and belief allege, defendant has no water, or any water rights whatever to any part of the waters of Shingle Creek and Papoose Creek, so conveyed through plaintiffs' ditches and through such unnamed gulch; or, to any part of the water flow of such unnamed gulch above the point of the diversion of plaintiffs' canal therefrom, whether such waters result from seepage, drainage, percolation, spring flow, or as a result of irrigating water conveyed through the same, and any claim or right or ownership by him therein or thereto is wholly groundless and without right, whatsoever.

XII

That notwithstanding the fact that the plaintiffs are the sole owners of said ditch and canal system, and notwithstanding the fact that plaintiffs have actually appropriated and used all of the water hereinbefore described since the year 1932, and plaintiffs and their predecessors in interest have so used the same since June 26th., 1924, for beneficial purposes upon said Basin Ranch, the defendant, wrongfully, and in violation of law, and without regard for the property and property rights of plaintiffs, on some five or six occasions during the year 1937, commencing about the month of May, 1937, cut the banks of plaintiffs' canal at its diversion point from said unnamed gulch, thereby diverting all the water therefrom, including both the waters of Shingle Creek and Papoose Creek, so held by License and Permit from the State of Idaho, and the flow of water in such gulch, so that the same ceased to flow in plaintiffs' canal and did flow on down said unnamed gulch to the lands of defendant: that on each of said occasions before referred to the plaintiffs, as soon as they discovered the acts of defendant, repaired said canal and diverted such water back to their lands: that during the irrigation season of 1937, plaintiffs remonstrated with defendant each time he cut the banks of said ditch, and during the later part of the irrigation season he ceased to bother and molest said ditch: but, beginning with the irrigation season of 1938 said defendant again cut the banks of plaintiffs' canal and diverted the flow of water therefrom, and although the plaintiffs have requested defendant to refrain from further molesting said ditch and said flow of water, he has persisted, and now persists, in diverting the water therefrom and in cutting and destroying the embankments of said canal, and has stated to plaintiffs that he will continue so to do

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5 and, further, defendant has threatened one of the members of the
6 family of the plaintiffs Armfield with great bodily harm and
7 injury if they attempt to restrain defendant from his unlawful
8 acts and practices. Plaintiffs further state that said defen-
9 dant has recently constructed a certain ditch, leading out of the
10 said unnamed gulch, at a point above the head of plaintiffs'
11 ditch therein, and at a point above the point where the seeping,
12 percolating or spring water of such gulch comes to the surface, as
13 hereinbefore described, and dug the same around such point so that
14 it will discharge into plaintiffs' present canal at a point some
15 distance below its present point of diversion, and defendant
16 threatens to and states he intends to divert the water belonging
17 to plaintiffs through such new ditch, thereby wholly depriving
18 them of all of the waters of such gulch which arise at the head
19 of their present canal, all without authority or permission of
20 plaintiffs, or of any of them, and with the intent and purpose to
21 deprive plaintiffs of 35 to 60 inches of water which plaintiffs
22 and their predecessors in interest have appropriated and benefi-
23 cially used upon their said lands since the year 1924.

24 XIII

25 That plaintiffs have no other source of water for the
26 said Basin Ranch premises: that all of the waters herein mentioned
27 are actually required and necessary for the proper irrigation of
28 said lands: that said lands are now planted in crops of hay and
29 grains and require immediate and continuous irrigation throughout
30 the remainder of the season of 1938, and unless they are so
31 irrigated, from this time henceforth, they will dry up and be of
32 little or no value, and the said Basin Ranch lands will become

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4 arid and of little value for the production of crops and will
5 be irreparably injured and damaged for further use as farm lands,
6 and plaintiffs believe, and upon their belief allege the fact to
7 be that unless said defendant is immediately enjoined and re-
8 strained from his wrongful and unlawful acts and practices, he
9 will continue the same throughout the year 1938, to the great and
10 irreparable injury, loss and damage to these plaintiffs, and for
11 all of which they have no plain, speedy or adequate remedy at law
12

13 WHEREFORE, Plaintiffs pray Judgment and Decree of this
14 Court as follows:

15
16 That it be adjudged and decreed by the Court that plain-
17 tiffs are the owners of and entitled to a water right from the
18 waters and flow of waters of the said unnamed gulch, at the point
19 of the diversion of the irrigation canal leading from said gulch
20 to the Basin Ranch, by reason of the actual diversion, appropria-
21 tion and application to beneficial use of such waters, to the
22 extent and in the amount of SIXTY (60) INCHES, miner's measure, or
23 One and 20/100 (1.20) cubic second feet, with a priority therefor
24 of June 26th. 1924, for the full and entire irrigation season of
25 each and every year; and that it be adjudged and decreed that the
26 plaintiffs' right to the use of such Sixty (60) inches of water
27 of such unnamed gulch during the full and entire irrigation season
28 of each and every year, is prior in time and superior in right to
29 any right, title, interest, claim or pretense of said defendant in
30 or to the same, or to any part or portion thereof:

31 That it be further adjudged and decreed that plaintiffs
32 are the sole owners of the ditch and canal system in this complaint

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4 hereinbefore described and are entitled to the exclusive use,
5 management and control thereof and that said defendant is without
6 right, title or interest therein or thereto:

7 That it be further found, determined, ordered, adjudged
8 and decreed by the Court that plaintiffs, and their predecessors
9 in interest have owned, managed and exclusively controlled said
10 ditch or canal, leading out of said unnamed gulch to and upon the
11 said Basin Ranch, for a period of more than five (5) years, to-
12 wit, since about June, 1924, in its present location and with the
13 same point of diversion from said unnamed gulch, and that defendant,
14 and his servants, employees, agents and successors are without
15 any right or authority of law, whatever, to change the location of
16 such canal, or of any portion thereof, or to change its point of
17 diversion from such gulch, or to cut the banks of such canal, or
18 to divert the flow of the water therefrom, or to in anywise ob-
19 struct or prevent the flow of water of such unnamed gulch, at the
20 point of diversion of such ditch, from entering into and flowing
21 down plaintiffs' said ditch:

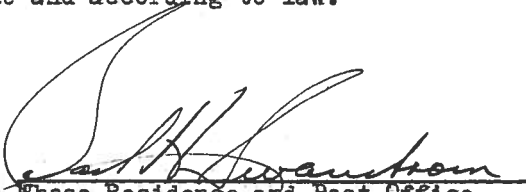
22 That it be further ordered, adjudged and decreed by the
23 Court that plaintiffs are the owners of, and entitled to a water
24 right, and to the use of water for beneficial purposes, to the
25 extent and amount of Two and 64/100 (2.64) cubic feet per second
26 from the waters of Shingle Creek and Papoose Creek, in Idaho
27 County, Idaho, and under priority date of June 26th. 1924, for
28 use upon the Basin Ranch, as hereinbefore described, and that
29 plaintiffs are entitled, by law, to conduct said waters through
30 their system of ditches and canals, including the right to con-
31 duct the same down and along the course of said unnamed gulch to
32 the diversion point of their said canal leading therefrom, and to

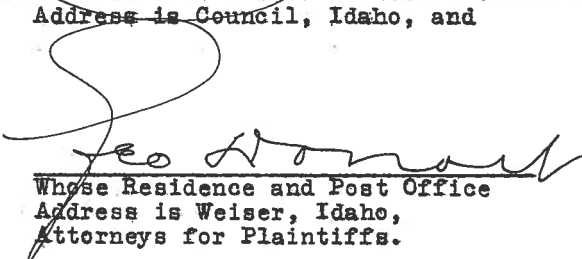
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4 That upon the final hearing of this action, a perpetual
5 injunction be issued forever debarring and restraining the defen-
6 dant, and each if his agents, servants, employees and successors
7 in interest, from in anywise interfering with the right of plain-
8 tiffs to the use of said Sixty (60) inches of water from the flow
9 of said unnamed gulch on their said lands as described in this
10 complaint, or from in anywise interfering with the right of plain-
11 tiffs to the right and use of Two and 64/100 (2.64) cubic second
12 feet of the waters of Shingle Creek and Papoose Creek, flowing
13 down and through said unnamed gulch to the diversion point of
14 plaintiffs' ditch therefrom, or from in anywise diverting, or
15 attempting to divert any part of the flow of any of said waters
16 from plaintiffs' ditch, or from cutting or molesting the banks of
17 said ditch, or any diversion works in the channel of said unnamed
18 gulch whereby the waters thereof are diverted to plaintiffs'
19 ditch, and particularly, that defendant be enjoined and restrained
20 from changing and altering, or attempting to change or alter any
21 part or portion of plaintiff's said ditches and canals, or from
22 changing or attempting to change the point of diversion of plain-
23 tiffs' canal from said unnamed gulch, and from the doing of any
24 other act or thing that will damage, or tend to damage, said system
25 of ditches and canals, or interfere or tend to interfere with the
26 flow of water therein:

27 That upon the filing of this Complaint, a temporary injunc-
28 tion or restraining order be forthwith issued out of this Court
29 in this action, debarring, enjoining and restraining defendant and
30 each of his agents, servants and employees, from in anywise cutting,
31 opening or destroying the banks of plaintiffs' canal, or from
32 removing any diversion works placed by plaintiffs in said gulch at

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4 the head of their said canal; or from diverting any of the waters
5 flowing in said gulch at the head of such ditch, whether the same
6 be a part of the waters of Shingle Creek, or Papoose Creek, or of
7 the natural flow of such unnamed gulch, and from changing or
8 attempting to change any portion of plaintiffs' canal, or its
9 point of diversion from said unnamed gulch, and upon the final
10 hearing and determination of this action, such injunction be made
11 permanent:

12 That plaintiffs have judgment for their costs and dis-
13 bursements herein incurred and expended, and for such other and
14 further order, judgment or relief in the premises as to the
15 Court may seem just, equitable and according to law.
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Whose Residence and Post Office
Address is Council, Idaho, and

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Whose Residence and Post Office
Address is Weiser, Idaho,
Attorneys for Plaintiffs.
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6 STATE OF IDAHO
7 COUNTY OF IDAHO).SS.

8 ELMER ARMFIELD, Being first duly sworn on oath, says:

9 He is one of the plaintiffs named in the before entitled
10 complaint, and as such, makes this verification in behalf of him-
11 self and his co-plaintiffs:

12 That he has read the foregoing complaint, knows the con-
13 tents thereof, and except as to the matters and things therein
14 alleged upon information and belief, the same is true, and as to
15 all matters and things therein alleged upon information and
16 belief, affiant verily believes the same to be true.
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19 Elmer Armfield

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21 Subscribed and sworn to before me this 3rd day of
22 May, 1938.

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24 Carl H. Swannstrom
25 Notary Public for Idaho residing at
26 Council, Idaho.
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#A580

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

CLYDE E. SUMMERS and
EIMER ARMFIELD and AGNES
ARMFIELD, his wife,

Plaintiffs,

-vs-

GEORGE BOODRY,

Defendant.

FILED

AT 1:30 O'CLOCK P. M.

MAY 3 - 1938

MOTION

HENRY TELCHER

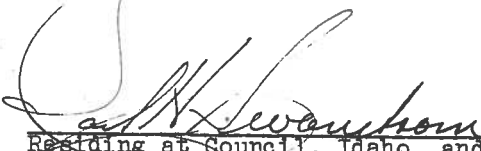
Clerk of District Court

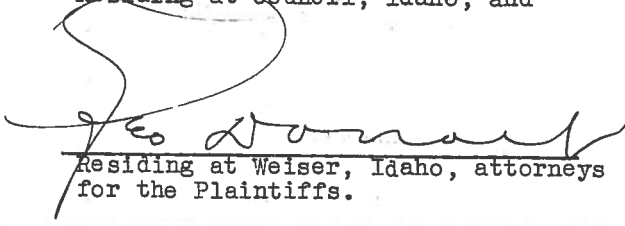
By W. H. K. K. K. Deputy

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Come now the above named plaintiffs, by Carl H. Swanstrom and George Donart, their attorneys herein, and respectfully move this Court for an order directing that the above named defendant to forthwith appear in the District Court of the Tenth Judicial District of the State of Idaho, in and for the County of Idaho, or at the chambers of a Judge thereof, and show cause he should not be enjoined and restrained from in anywise cutting or injuring the irrigating canal of plaintiffs, as described in their said complaint, or from removing any of the diversion works therefrom, or from diverting any of the water from said canal, or from in anywise changing and altering the location of such canal, or its point of diversion from a certain unnamed gulch, situate in Idaho County, Idaho, and in plaintiffs' complaint particularly mentioned and described, or from otherwise interfering with the water and water rights of the plaintiffs, as in their complaint on file herein specifically described, and further, that said defendant be enjoined and restrained from the commission of any of such acts pending the hearing and determination of this motion.

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5 This motion is based upon and supported by the verified
6 complaint of plaintiffs, now on file in the above entitled
7 Court, and is further particularly supported by the affidavits
8 of Elmer Armfield, one of the plaintiffs herein, the affidavits
9 of Albert Armfield, John Kimbrough, and others, all of which are
10 hereto attached and by this reference made a part hereof.
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15 Residing at Council, Idaho, and
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19 Residing at Weiser, Idaho, attorneys
20 for the Plaintiffs.
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4 STATE OF IDAHO

5) .SS.
6 COUNTY OF IDAHO

7 ELMER ARMFIELD, Being first duly sworn on oath,
8 according to law, deposes and says:

9 That he is one of the parties plaintiff in the motion
10 set forth and entitled in the attached and foregoing motion
11 and is the person who has verified plaintiffs' complaint in
12 this action and affiant hereby refers to such verified complaint
13 and by this reference makes the same a part of this affidavit
14 as though set forth in full herein:

15 That affiant is the equitable owner of the premises,
16 ditches, canals, water and water rights described in plaintiffs'
17 complaint under contract of purchase therefor from the plaintiff,
18 Clyde E. Summers, and affiant is now in possession of said
19 premises and has been in possession thereof and has actually
20 farmed, managed and operated the same since about October 15th,
21 1934, and has personal knowledge of the operations of said
22 premises and of the use of irrigation water thereon during the
23 seasons of 1935, 1936, and 1937, and down to the present date:

24 That affiant is familiar with the system of ditches
25 and canals leading from Shingle Creek into Papoose Creek and
26 from Papoose Creek into a certain unnamed gulch, as described
27 in plaintiffs' complaint, and from said gulch into and upon
28 the premises known as the Basin Ranch, and with the water
29 rights appurtenant to said premises and the water conducted
30 through such system of ditches and canals to such ranch premises:

31 That the said Basin Ranch contains not less than
32 one hundred thirty two (132) acres of irrigated farm land, all
33 of which is supplied with water from the sources mentioned in
34 plaintiffs' complaint and that said premises require all of such
35 water for the practical and successful irrigation thereof,
36 and that said crops do now require the immediate application
37 of all of the irrigating water that is available therefor, and
38 unless the same is made available immediately the crops on said
39 premises will be irreparable injured and damaged, and the premises
40 themselves irreparably injured and damaged for lack of
41 irrigation water:

42 That during the years 1935, 1936 and 1937 all of the
43 waters from Shingle Creek and Papoose Creek and from the natural
44 flow in said unnamed gulch were actually diverted to and used
45 upon said Basin Ranch for beneficial purposes for irrigation;
46 that at no time during the years 1935, -1936 did the defendant,
47 George Boodry, use or attempt to use any of the irrigating water
48 described in plaintiffs' complaint and did not, in any manner,
49 interfere with the plaintiffs' system of ditches and canals

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3 or of the diversion works at the head of the canal in said un-
4 named gulch; that on some five or six occasions during the
5 year 1937, and beginning about May, 1937, the defendant opened
6 plaintiffs' ditch at the diversion point thereof in said unnamed
7 gulch, thereby diverting the waters before described away from
8 said ditch, but on each such occasion the ditch and diversion
9 works were repaired by plaintiffs immediately following the
10 discovery of the fact that the ditch had been so opened and
11 the water diverted therefrom, and affiant believes at no time
12 did said defendant during the year 1937 continue in the use of
13 such irrigating water for any period in excess of twenty four
14 hours, and after said ditch had been so repaired and the
15 defendant warned and advised by the plaintiffs to desist from
16 further molesting it he did not again molest said ditch or
17 divert the water therefrom for the remainder of the irrigation
18 season of 1937:

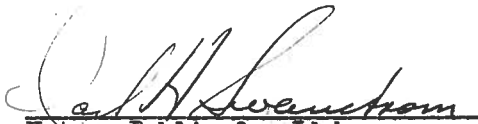
19 That sometime during the month of April, 1938, said
20 defendant again opened plaintiffs' ditch and removed the diversion
21 works from the head of said ditch, thereby causing the waters
22 flowing in said unnamed gulch to go on down the same, but other
23 than the specific instances hereinbefore mentioned affiant does
24 not know of any other or further use of any of such irrigation
25 waters by the said defendant, George Boodry:

26 That the irrigation season for said Basin Ranch lands
27 is now at hand; that the annual runoff from Shingle Creek and
28 Papoose Creek has not yet commenced in any appreciable value
29 and at this time the said Basin Ranch premises are largely
30 dependent for irrigation water upon the supply of water flowing
31 in said unnamed gulch at a point immediately above the head of
32 plaintiffs' diversion canal therefrom and unless such flow of
33 water therein is immediately made available to plaintiffs' land
34 the plaintiffs will suffer irreparable damage and injury:

35 That affiant believes, and upon his information and
36 belief alleges, that the defendant, George Boodry, intends
37 to continue with his wrongful and unlawful acts and practices
38 in cutting the banks of plaintiffs' canal and in removing the
39 works of diversion that are placed at the head of said canal
40 by plaintiffs and will continue in his attempt to wrongfully
41 and unlawfully divert irrigation water which is appurtenant to
42 plaintiffs' premises throughout the remainder of the irrigation
43 season of 1938; that plaintiffs have no plain, speedy or
44 adequate remedy at law against said defendant and his unlawful
45 acts and practices and if he be permitted to continue in the
46 same until plaintiffs' action is finally determined by this court
47 the plaintiffs will be greatly and irreparably injured and
48 damaged by reason of the loss of such irrigation water during
49 the season of 1938, for which reason said affiant, as one of
50 the plaintiffs herein, prays that said defendant may be
51 immediately enjoined and restrained by this court from in any
52 manner interfering with plaintiffs' ditches or from diverting
53 any of the waters therefrom which are appurtenant to plaintiffs' premises.

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Subscribed and sworn to before me this 3rd day
of May, 1938.


Notary Public for Idaho,
Residing at Council, Idaho.

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5 STATE OF IDAHO
6) .SS.
COUNTY OF IDAHO

7 JOHN KIMBROUGH, Being first duly sworn on oath,
8 deposes and says:

9 That he is a citizen of the United States and of the
10 State of Idaho, and is upward of 61 years of age, and since
about 1910 he has resided in the vicinity of Riggins, Idaho:

11 That since about the year 1910 affiant has been familiar
with the lands now owned by Clyde E. Summers and Elmer Armfield,
12 being lands situated on Shingle Creek, a tributary of the Rapid
River, and the so called Basin Ranch, which is situated in
13 Sections 25 and 36 in Township 24 North, Range 1 West, B. M. in
Idaho County, Idaho:

14 That prior to the year 1923 said lands forming the
15 so called Basin Ranch were owned by Charles Clay and were farmed
and operated by him:

16 That prior to the year 1923 affiant accompanied the
17 said Charles Clay on a trip to examine a proposed ditch route
from Shingle Creek and Papoose Creeks, in Idaho County, Idaho,
18 leading down to and upon the so called Basin Ranch, then owned
by Charles Clay: that said trip was made about the month of
19 August and the parties went, among other places, to the exact
spot where the Basin Ranch ditch leads off from an unnamed
20 gulch, (which is now used as part of the ditch system) and at
that time there was very little flow in such gulch, and particularly
21 from what is now termed or called a "spring" at the extreme head
of the ditch leading out from such gulch:

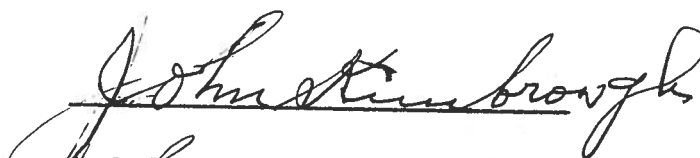
22 That, after the year 1923, and every since the com-
23 pletion of such ditch system, affiant has been familiar with
the ditch, and with the use of water therein and the lands
24 irrigated thereby, and affiant knows that said ditch system
has been continuously used for the irrigation of the Basin Ranch
25 during the irrigation season of each and every year since the
year 1924:

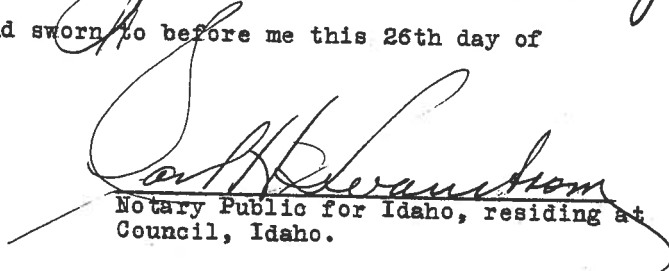
26 Affiant further states that the before mentioned ditch
27 when constructed, and at all times since within the knowledge of
affiant, has diverted all of the water from the said unnamed
28 gulch, which forms a part of the ditch system, and during all
of the time since the construction of such ditch system, so
29 far as known to affiant, no water has been permitted in irrigating
seasons, to run past the diversion works of the Basin Ranch
30 ditch in said unnamed gulch:

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5 Affiant further states that within his own personal
6 knowledge, the said Basin Ranch ditch was completed, and used
7 for conducting the waters of Papoose Creek and Shingle Creek, and
8 the flow, seepage and spring water from said unnamed gulch, of
9 which said ditch system is a part, for a period of about nine (9)
10 full years before the defendant George Boodry, ever owned the
lands on which he now resides, and upon which he is attempting to
divert water from the Basin Ranch ditch system, and said ditch was
so used during the full irrigating season of each of said nine
years:

11 That affiant owned the so called Basin Ranch, now owned by
12 plaintiffs, about the year 1933, and for more than 30 years he has
13 had an interest therein, by reason of mortgages thereon, and
interests in livestock grazed and fed thereon, for which reason he
visited such ranch premises frequently and investigated its
water, source of water and the ditches serving such lands:

14 Affiant further states that the water right of plaintiffs,
15 obtained from Papoose Creek and Shingle Creek, and from the
16 seepage, drainage, subage and springs in and along the gulch used
as a part of the ditch system, is all the water they have for use
17 on the said Basin Ranch, and that the entire flow thereof is
required, for beneficial use, in the irrigation of such ranch
18 premises and if any water is diverted therefrom, the said premises
would be irreparably injured and damaged.

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22 Subscribed and sworn to before me this 26th day of
23 April, 1938

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26 Notary Public for Idaho, residing at
27 Council, Idaho.

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3 STATE OF IDAHO
4) .SS.
COUNTY OF ADA

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6 CLYDE E. SUMMERS, Being first duly sworn on oath,
7 according to law, deposes and says:

8 That he is one of the parties plaintiff in the action
set forth and entitled in the attached and foregoing "Motion":

9 That he is the legal and record owner of the lands and
10 premises situate in Idaho County, Idaho, particularly described in
11 plaintiffs' complaint and therein referred to as the Basin Ranch,
and has been such owner thereof since the month of *November*
1934:

12 That during the years 1932, 1933 and 1934, affiant
13 owned and operated the said Basin Ranch, as a general stock and
hay ranch, and is familiar with the said ranch premises by
14 reason of his ownership and operation thereof, and has been
familiar with the same at all times since the the year 1932:

15 That affiant is familiar with the system of ditches that
16 serve said Basin Ranch with irrigating water, and particularly,
with the portion of the ditch and canal system leading from the
17 Basin Ranch over and into a certain unnamed gulch, through which,
for approximately three-fourths mile, waters of Shingle Creek and
18 Papoose Creek, appurtenant to said ranch premises, are conveyed,
and is familiar with the point of diversion of such canal from such
19 gulch:

20 That immediately above the point where such ditch diverts
from said gulch there is a certain flow of water in the gulch,
21 arising in part from seepage, drainage, percolation and spring
flow, and in part, as affiant believes and so alleges, from the
22 waters of Shingle Creek and Papoose Creek which are conveyed
through such gulch and above such point before mentioned:

23 That the said ditch or canal before mentioned is so
24 constructed as to divert from said gulch immediately below the
point where the flow of water last before mentioned occurs, and is
25 so constructed as to intercept and divert the whole thereof into
plaintiffs' ditch, from which point it is conveyed to the Basin
26 Ranch and there beneficially used for irrigation:

27 That during all of the time that affiant operated said
Basin Ranch, as aforesaid, the whole of such flow of water, ie,
28 both the water of Shingle Creek and Papoose Creek which is conveyed
through such gulch, and all of the natural flow of water in such
29 gulch at or above the diversion point of plaintiffs' ditch, was
actually diverted into plaintiffs' ditch and beneficially used upon
30 the Basin Ranch, and that during none of said years was any of
said water at said point permitted or allowed to flow past the
31 diversion point of said canal, or to be used by defendant, George
Boodry, or by any other person, to the knowledge of affiant:

32 That all of the water before mentioned and described is

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4 actually required and necessary for the practical irrigation of the
5 said Basin Ranch: That there is an area of at least 132 acres
6 on said Basin Ranch actually planted to crops of hay and grain and
7 under actual irrigation, and has been so cultivated and irrigated
8 with the waters aforesaid since about the year 1924: that a large
9 tonnage of hay, grain and other crops, including forage and pasture
10 crops are annually produced on said ranch, and without such supply
11 of irrigating water, production of crops thereon would be largely
12 impossible: that said crops and said ranch would be irreparable
13 injured and damaged if the flow of water thereto is further
14 delayed:

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16 That the actual irrigation season on said Basin Ranch is
17 from April 1st to October 1st of each year: that by reason of the
18 fact that the headwaters of both Shingle Creek and Papoose Creek
19 are in the high mountains, the substantial flow thereof is not
20 reached until late in May and in June, and during the period of
21 April 1st until late May or June, the flow of water in said
22 unnamed gulch, and hereinbefore described, constitutes a large part
23 of the supply of irrigation water for said Basin Ranch, and without
24 such flow of early water, the production on said ranch would be
25 greatly lessened, and the value thereof greatly diminished:

26
27 That defendant George Boodry has no right, title or
28 interest in or to the system of ditches and canals serving plaintiffs'
29 Basin Ranch and has never been given any permission to cut the banks
30 of said canals, or to divert any water therefrom, and as affiant
31 is informed and believes, and so alleges, defendant George Boodry
32 has no water, or water rights from either Shingle Creek or Papoose
33 Creek, or from any part of the said unnamed gulch above the point
34 of diversion of plaintiffs' canal, and has not used the water
35 therefrom any any time, except for some five or six occasions, of
36 about one day each, during the early summer of 1937, at which time
37 he wrongfully opened plaintiffs' ditch and diverted water therefrom:

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39 That unless defendant is immediately restrained and enjoined fr
40 from molesting plaintiffs' ditch and water, plaintiffs will suffer
41 great and irreparable loss, injury and damage:

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Subscribed and sworn to before me this 30, day of
April, 1938.

Notary Public for Idaho residing
at Boise, Idaho.

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4 STATE OF IDAHO
5) .SS.
6 COUNTY OF IDAHO

7 ALBERT ARMFIELD, Being first duly sworn on oath
8 according to law, deposes and says:

9 That he is a citizen of the United States and of Idaho
10 County, Idaho, and is over the age of thirty three years;
11 that he is a son of the plaintiff, Elmer Armfield, and at all
12 times since 1934 he has actually resided upon those certain ranch
13 premises described in plaintiffs' complaint and locally referred
14 to as the "Basin Ranch", and affiant has read the verified
15 complaint of plaintiffs and knows all the contents thereof and
16 verily believes such complaint to be true, and by this reference
17 he adopts such complaint and makes the same a part of this
18 affidavit as though set forth in full herein:

19 That at all times since about October, 1934, affiant
20 has resided on the said Basin Ranch and to a large degree has had
21 the actual management, control and operation of said premises,
22 and by reason thereof he is familiar with the irrigation system
23 supplying said ranch with irrigating water and with all of the
24 ditches and canals which convey the same to said ranch and with
25 the source of supply of such irrigation water and during the
26 years 1935, 1936, 1937 and down to the present date in 1938 affiant
27 has been in personal charge of such irrigation system and has
28 personally maintained the ditches and canals and attended to the
29 diversion of water therein and to its use upon such farm premises:

30 That during the entire irrigation seasons of 1935 and
31 1936 the defendant, George Boodry, made no claim, demand or
32 pretense whatever to any of the waters flowing in the unnamed
33 gulch, which is particularly described in plaintiffs' complaint,
34 and he did not take or attempt to take any of such water and did
35 not molest or attempt to molest any of the plaintiffs' ditches,
36 diversion works or irrigation system and at no time prior to
37 about May, 1937, did said defendant ever claim or represent to
38 affiant that he had or claimed any of the flow of waters in said
39 unnamed gulch before referred to:

40 That about May 1937 defendant removed certain of the
41 embankments at the head of the plaintiffs' canal in said unnamed
42 gulch and thereby diverted the flow of waters therein away from
43 plaintiffs' ditch and on down said gulch; that affiant immediately
44 caused said ditch to be repaired when he discovered its opening
45 and thereafter on some four or five other occasions the defendant
46 likewise diverted or caused the waters to be diverted out of the
47 head of plaintiffs' ditch, but each time affiant immediately
48 repaired such ditch and affiant believes that at no time did any
49 such use of water by said defendant continue for more than twenty-
50 four hours, and that thereafter defendant did not molest said
51 ditch or water during the remainder of the season of 1937:

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4 That sometime during the month of April, 1938, defendant
5 again diverted the water in said gulch flowing at the head of
6 plaintiffs' ditch away from said ditch and has stated to this
7 affiant that he, the said defendant, intended to continue in
8 his practice of diverting the water from the head of plaintiffs'
9 ditch, and about April 20th. said defendant threatened this
10 affiant with great bodily injury if affiant, or any of the
11 plaintiffs, made any further attempts to restrain said defendant
12 from the further diversion of such irrigation water, and affiant
13 verily believes that said defendant does intend to continue in
14 his wrongful and unlawful practices and will do so unless restrained
15 by the order of this court:

16 That said defendant without permission from this affiant,
17 or from any of the plaintiffs, has commenced upon the construction
18 of a section of ditch or canal leading out of said unnamed gulch
19 at a point above the point of diversion of plaintiffs' canal
20 therefrom and above the point where the seepage, drainage,
21 percolating and spring water in said gulch comes to the surface,
22 with the intent and purpose to change the location and point of
23 diversion of plaintiffs' canal so that plaintiffs will be deprived
24 of all of the waters naturally flowing in said gulch and so that
25 they will be dependent upon only the waters of Shingle Creek and
26 Papoose Creek which are conveyed down said gulch, and if said
27 defendant is permitted to so change the location of said ditch
28 and its point of diversion the plaintiffs will be forever deprived
29 of a natural flow of water from said gulch to the extent and
30 amount of thirty five to sixty inches, miner's measure, depending
31 upon the season of the year and the amount of irrigation water
32 flowing through said gulch above the point of diversion of
33 plaintiff's canal:

34 That the waters of Shingle Creek and Papoose Creek,
35 held by plaintiffs under license of the Department of Reclamation
36 of the State of Idaho, and appurtenant to the Basin Ranch, are
37 conveyed down said unnamed gulch for a distance of approximately
38 three-fourths of a mile; that the course of said gulch towards
39 the head of plaintiffs' ditch is through a heavy over burden of
40 silt, soil, slough, boulders, limestone, and other porous material
41 so that much of the water flowing down through said gulch flows
42 or percolates under ground and does not come to the surface
43 except at a point immediately above the head of plaintiffs' ditch
44 where the same comes to the surface on or through a large dyke
45 of greenstone which causes such water to rise to the surface
46 in the form of a strong natural flow, varying from 30 to 60
47 inches, and which is sometimes locally referred to as a "spring"
48 and that plaintiffs' ditch diverts all of such water and has
49 diverted it at such point since the construction of the same and
50 particularly has diverted all of it, except as hereinbefore noted,
51 during the years 1935, 1936 and 1937:

52 That the plaintiffs have a water right from Shingle Creek
53 and Papoose Creek to the extent of 2.64 cubic second feet, all
54 of which is conveyed down and through said unnamed gulch before

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3 referred to, but Shingle Creek and Papoose Creek have their
4 headwaters and drainage in the high regions of the Seven Devils
5 Mountains, for which reason the annual spring runoff does not
6 commence in appreciable volume until late May or June of each
year and until that time said streams do not afford sufficient
flowing water to supply the aforesaid right of plaintiffs:

7 That the irrigation season on said Basin Ranch commences
8 about April 1st of each year and it requires constant irrigation
9 following that date and from April 1st until late May of each
10 year said premises are largely dependent for irrigation water
11 from the flow of the so called "spring" in the unnamed gulch at
12 the head of plaintiffs' ditch, being near the Northwest corner
13 of the Southeast Quarter of the Southeast Quarter of Section
14 26, Township 24 North, Range 1 West, B. M., so that notwith-
standing the right of plaintiffs to waters of Shingle Creek
and Papoose Creek plaintiffs' premises would be largely deprived
of irrigation water until May of each year if the said defendant
be permitted either to molest the embankments and diversion
works at the head of plaintiffs' canal or, if he be permitted
to change the point of diversion of such ditch to a point further
upstream as hereinbefore stated:

15 That said Basin Ranch premises consist of at least
16 132 acres of irrigated land; that it produces annually an average
17 crop of three Hundred (300) tons of hay, together with crops
18 of grain and grass seed, and affords valuable forage and pasture
19 following the harvest of hay and grain crops each year, and if
20 said premises are deprived of their supply of irrigation water
21 not more than half the tonnage of hay could be produced thereon
22 and said crops and pasture of grain and grass seed would be
23 largely impossible to produce and affiant states that unless
24 the injunction prayed for in plaintiffs' complaint is forthwith
25 granted by the court in this action the plaintiffs will suffer
26 great and irreparable loss, injury and damage.

27
28 Albert Armfield,

29 Subscribed and sworn to before me this 3rd day
30 of May, 1938.

31
32 Carl H. Swanson
Notary Public for Idaho, residing
at Council, Idaho

1
2 STATE OF IDAHO
3) .SS.
4 COUNTY OF IDAHO

5 C. N. HALL, Being first duly sworn on oath according to
6 law, deposes and says that he is a citizen of the United States
7 and of the State of Idaho; that he resides on the Little Salmon
8 River near Riggins, Idaho; that is of the age of 50 years and
9 is not related to either of the plaintiffs and is not interested
10 in any manner in the action set forth in the attached motion
11 and that he has resided in the vicinity of the ranches of
12 plaintiffs and defendant at all times since about 1919:

13 That affiant, during the years 1919 to 1928 was either
14 an employee of one C. M. Clay, or was associated with him as a
15 partner in the livestock business; that during all of the
16 time before mentioned affiant worked upon and was thoroughly
17 familiar with the so called "Basin Ranch" now owned by the
18 plaintiffs, and which was during the years 1919 to about 1931,
19 owned by the said C. M. Clay, and was likewise familiar with
20 the premises now owned by George Boodry, sometimes called the
21 "McGlimmery Ranch":

22 That affiant was working for or associated with the said
23 C. M. Clay during the years that he constructed the system of
24 irrigating ditches for irrigating the Basin Ranch; that affiant
25 has herded sheep and tended camp, during irrigation seasons, at
26 or near the point where the ditch from the Basin Ranch inter-
27 sects the unnamed gulch, above defendant's Boodry ranch, and
28 saw the water in such ditch and knows that such ditch took all of
29 of the water flowing in said gulch at the head of such ditch and
30 none of that water in such gulch at that point was permitted to
31 go on down the gulch to the Boodry Ranch:

32 That C. M. Clay, during the time he owned the Basin Ranch,
33 had what is now the George Boodry place under lease for a period
34 of approximately five years, and for one year after he disposed
35 of the Basin Ranch to John Kimbrough, and affiant knows that
36 during all of the time said C. M. Clay had such Boodry place
37 under lease, he, the said C. M. Clay did not irrigate or farm
38 the same, but used the whole thereof for sheep range and pasture,
39 and particularly, did not let any water go down from the head of
40 the Basin Ranch ditch for use upon such Boodry premises.

41 C N Hall

42 Subscribed and sworn to before me this 3rd day of May,
43 1938.

44 Carl H. Swanson
45 Notary Public for Idaho residing at
46 Council, Idaho.

1
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4 STATE OF IDAHO
5)SS.
6 COUNTY OF IDAHO

7 W. H. Lamont, being first duly sworn on his oath
8 according to law, deposes and says:

9 That he is a citizen of the United States and of the
10 State and County of Idaho: that he is not related to either
11 of the plaintiffs named in the before entitled action and is in
12 no wise interested in such litigation:

13 That from the year 1904 until the year 1928 affiant
14 resided upon and owned what is usually called the Lamont Ranch
15 being situate upon Rapid River and Shingle Creek, in Idaho
16 County, Idaho, and included in such property was the ranch
17 premises now owned by the defendant George Boodry, and in times
18 past called the "McGlimmery" ranch:

19 That affiant is well acquainted with one C. M. Clay
20 and is personally familiar with those certain premises known
21 locally as the "Basin Ranch" and now owned by the plaintiffs in
22 this action:

23 That about the years 1924 to 1925 or 1926, the said
24 C. H. Clay constructed a system of ditches from Shingle Creek and
25 Papoose Creeks for the purpose of irrigating such Basin Ranch,
26 and such ditch system makes use of a section of natural gulch,
27 Westerly from the Basin ranch, through which said waters were
28 conducted for a distance of approximately three-fourths mile:
29 that part of such ditch system crossed lands then owned by this
30 affiant; that affiant has been on and along the ditch leading
31 from the Basin Ranch to the before mentioned gulch, many times
32 and he has seen the use made of such ditch and the water
33 diverted therein:

34 That the said C. M. Clay diverted all of the water
35 flowing in said gulch, at the head of said ditch therein, and
36 conveyed the same down to and upon the Basin Ranch and that
37 such use continued during all of the time that C. M. Clay
38 continued to own and operate the Basin Ranch, and particularly,
39 affiant knows that such use continued without interruption
40 until after the year 1928, for the reason that up until that
41 time affiant owned the premises now owned by George Boodry and
42 for that reason knows of his own knowledge what use was made
43 of all water in the gulch from which the Basin Ranch ditch is
44 diverted.

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Subscribed and sworn to before me this 3rd day of
May, 1938.

Notary Public for Idaho residing
at Council, Idaho.

#4580
THE DISTRICT COURT OF THE TENTH
JUDICIAL DISTRICT, OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO)
COUNTY OF IDAHO) SS.

I, Walter Altman, Sheriff of Idaho County, Idaho, do hereby certify and RETURN that I received the hereunto attached Summons on the 4th day of May, 1938, and I served the same as follows:

On the 7th day of May, 1938, in the County and State of Idaho, I personally handed to and left with the defendant, George Boodry, a full, true and complete copy of said summons, to which there was attached a copy of the complaint therein referred to:

I further certify and return that at the same time and place I personally served a full, true and complete copy of the hereunto attached copy of "ORDER TO SHOW CAUSE and TEMPORARY RESTRAINING ORDER" on the defendant George Boodry, by then and there handing to and leaving with said George Boodry, a full, true and complete copy thereof, to which copy there were attached copies of the following instruments, to-wit: "MOTION" and copies of the affidavits of Elmer Armfield, John Kimbrough, Clyde E. Summers, Albert Armfield, W. H. Lamont and C. N. Hall.

Dated this 7th day of May, 1938.

Sheriff's Fees

30 Miles @ 20¢...	\$ 6.00
Service of Summons and Order,.....	1.00
Return,.....	.40
Total,.....	7.40

Walter Altman

Sheriff

By

Joe L. Roberts

Deputy

FILED

MAY 9 - 1938

HENRY TELCHER

Clerk of District Court

By W. R. May Deputy

COPY

4580

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

CLYDE E. SUMMERS and
ELMER ARMFIELD and
AGNES A. ARMFIELD,
his wife,

Plaintiffs,

-vs-

GEORGE BOODRY,

Defendant.

ORDER TO SHOW CAUSE

and

TEMPORARY RESTRAINING

ORDER

RECEIVED

MAY 4 1938 A.M.



SHERIFF'S OFFICE,
IDAHO COUNTY, IDAHO

Upon reading and filing the verified complaint of the
plaintiffs in this action, and the affidavits of the plaintiff,
Elmer Armfield, and of John Kimbrough, Albert Armfield, and
others, and on motion of Carl H. Swanstrom and George Donart,
attorneys for plaintiffs,

It is ORDERED that the defendant, George Boodry, show
cause before me at the chambers of said court in the county
courthouse of Idaho County, in the City of Grangeville, State
of Idaho, on Monday, the 16th day of May, 1938, at the hour of
1:30 o'clock, P. M. of said day, why a temporary injunction should
not be granted restraining said defendant from in anywise
cutting or injuring a certain irrigating canal of plaintiffs,
situate in Idaho County, Idaho, used in connection with and
appurtenant to certain lands of the plaintiffs, all as par-
ticularly described in plaintiffs' complaint on file herein,
or from removing any of the diversion works therefrom, or from
diverting any of the waters therefrom, or from in anywise
changing or altering any part of plaintiffs' canal or in anywise
changing or attempting to change the point of diversion of
plaintiffs' canal, from its present location and present point
of diversion, in a certain unnamed gulch, in plaintiffs'

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4 complaint described as being at or near the Northwest corner
5 of the Southeast Quarter of the Southeast Quarter of Section 26,
6 in Township 24 North, Range 1 West, Boise Meridian, in Idaho
7 County, State of Idaho.

8 And, it is further ORDERED that until the hearing of said
9 motion and order therein, the said defendant do absolutely desist
10 and refrain from doing, or causing to be done or committed, any of
11 the acts and things with respect to said irrigating canal and to
12 said irrigating water hereinbefore mentioned.

13 And let a copy of this order, with copies of all moving
14 papers and affidavits therein referred to, and of plaintiffs'
15 complaint, be served on said defendant at least five days before
16 the time fixed for hearing said motion as aforesaid.

17 It is further ordered that the plaintiffs shall execute a
18 statutory bond in the sum of One Thousand Dollars, conditioned to
19 indemnify defendant against any loss or damage he may sustain by
20 reason of the improper issuance of said injunction.

21 Dated this 3rd day of May, 1938.

22 (sg) MILES S. JOHNSON

23 District Judge

24
25 **FILED**
26 AT O'CLOCK M.

27 MAY 4- 1938

28 HENRY TELCHER

Clerk of District Court

29 By W.N. KNOX Deputy
30
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32

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4 IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF
5 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO.

6
7 CLYDE E. SUMMERS and)
8 ELMER ARMFIELD and AGNES)
9 A. ARMFIELD, his wife,)

10 Plaintiffs,)

11 - vs -)

12 GEORGE BOODRY,)

13 ----- Defendant.)

RECEIVED

MAY 4 1938 A.M.



SHERIFF'S OFFICE,
IDAHO COUNTY, IDAHO

S U M M O N S

14 The State of Idaho sends greetings to the above named defendant:

15 You are hereby notified that a complaint has been filed
16 against you in the District Court of the Tenth Judicial District
17 of the State of Idaho, in and for the County of Idaho, by the
18 above named plaintiffs, and you are hereby directed to appear and
19 plead to said complaint within 20 days of the service of this
20 summons, and you are further notified that unless you so appear
21 and plead to said complaint within the time herein specified,
22 the plaintiff will take judgment against you as prayed in said
23 complaint.

24 WITNESS My hand and the seal of said District Court
25 this 3rd day of May, 1938.

26
27 Henry Telcher
Clerk

28 By Carl H. Swanstrom
Deputy

29 CARL H. SWANSTROM
30 Whose Residence and Post
31 Office Address is Council, Idaho;
32 and GEORGE DONART,
Whose Residence and Post
Office address is Weiser, Idaho;
Attorneys for the Plaintiffs.

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

CLYDE E. SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)
Plaintiffs,)

vs.)

GEORGE BOODRY,)
Defendant,)

No. 4580
FILED
AT 4:30 O'CLOCK P.M.
DEMURRER
MAY 25 1938

HENRY TELCHER
Clerk of District Court
By W. H. K. K. K. Deputy

Comes now the above named defendant and demurs to the plain-
tiffs' complaint herein on the following grounds:

1.

That the said complaint does not state facts sufficient to
state a cause of action as against this defendant.

2.

That the said complaint is uncertain for the reason that it
does not appear therefrom how much water, if any, runs in the said
unnamed gulch or the upper spring, nor does it appear how much
water runs in the ditch from Shingle Creek and Papoose Creek nor in
the said creeks, nor that there is not sufficient water from such
sources for the proper irrigation of said Basin Ranch; nor that it
does not appear that the water from said so-called spring has not
been used upon the said lands of the defendant since the building
of said ditch leading to the Basin Ranch, nor that the same has
ceased to be appurtenant thereto.

W. S. Shaw
Attorney for defendant,
Residing at Grangeville, Idaho

4580

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR IDAHO COUNTY

OLYDE E. SUMMERS, Elmer Armfield,)
and Agnes A. Armfield,)
Plaintiffs,)
vs.)
GEORGE BOODRY,)
Defendant.)

FILED

~~AT~~ ~~10~~ O'CLOCK ~~M~~

MAY 16 1938

STIPULATION.
HENRY TELCHER
Clerk of District Court
By W. H. Knorr Deputy

WHEREAS on the 3rd day of May, 1938. there was issued an order to show cause, and a temporary restraining order herein, and this being the time and place for hearing on said order to show cause and said temporary restraining order, the parties being in court and represented by counsel, to wit, Mr. A. S. Hardy appearing on behalf of defendant and ^{Coyl H.} Charles Swanstrom and J. M. Lampert appearing on behalf of plaintiffs;

IT IS HEREBY STIPULATED that the orders heretofore issued may be modified so that out of ditches, gulches and springs mentioned in the pleadings and affidavits shall be delivered to the defendant fifteen (15) inches of water for the irrigation season of 1938, said delivery to be made by delivering through such measuring device as will actually deliver fifteen miner's inches of the waters of said gulches, ditches or springs into the gulch toward the south from said Basin Ditch, the measuring device to be installed approximately 75 to 100 feet below the head of said so called Basin Ditch where it takes out of said so called gulch, at the point where the defendant contends there previously existed a headgate.

It is especially understood and agreed by and between the parties that this modification of the injunctive and other orders heretofore issued shall in nowise prejudice their rights or in anywise affect or determine their respective rights.

It is agreed that said measuring device shall be installed under the direction of the plaintiffs, so as to carry out the intent of this stipulation.

This stipulation is intended to operate only until the final determination of this action, but in no event beyond the irrigating season of 1938. And it is intended that the said amount of water shall be delivered through the said measuring device from whatever source the water may be running into said ditch.

Dated at Grangeville, Idaho, this 16th day of May, 1938.

Attorneys for Plaintiffs,

Attorney for Defendant.

On the stipulation of the parties hereto in open court, and the Court being fully advised, the Court hereby approves the above stipulation and modification, and orders the modification of the original injunctive order in accordance therewith, and orders that neither the plaintiffs nor the defendant shall perform any act that will interfere with the respective rights hereby granted by the Court.

Dated May 16, 1938.

District Judge.

4580

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

CLYDE E. SUMMERS and	)	ORDER TO SHOW CAUSE
EIMER ARMFIELD and	)	
AGNES A. ARMFIELD,	)	and
his wife,	)	
	Plaintiffs,)	
-vs-		TEMPORARY RESTRAINING
GEORGE BOODRY,	)	ORDER
	)	
-----	Defendant.)	
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Upon reading and filing the verified complaint of the plaintiffs in this action, and the affidavits of the plaintiff, Elmer Armfield, and of John Kimbrough, Albert Armfield, and others, and on motion of Carl H. Swanstrom and George Donart, attorneys for plaintiffs,

It is ORDERED that the defendant, George Boodry, show cause before me at the chambers of said court in the county courthouse of Idaho County, in the City of Grangeville, State of Idaho, on Monday, the 16th day of May, 1938, at the hour of 1:30 o'clock, P.M. of said day, why a temporary injunction should not be granted restraining said defendant from in anywise cutting or injuring a certain irrigating canal of plaintiffs, situate in Idaho County, Idaho, used in connection with andaappurtenant to certain lands of the plaintiffs, all as particularly described in plaintiffs' complaint on file herein, or from removing any of the diversion works therefrom, or from diverting any of the water therefrom, or from in anywise changing or altering any part of plaintiffs' canal,

CARL H. SWANSTROM
ATTORNEY AT LAW
COUNCIL, IDAHO

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4
5 or in anywise changing or attempting to change the point of
6 diversion of plaintiffs' canal, from its present location and
7 present point of diversion, in a certain unnamed gulch, in
8 plaintiffs' complaint described as being at or near the Northwest
9 corner of the Southeast Quarter of the Southeast Quarter of Section
10 26, in Township 24 North, Range 1 West, Boise Meridian, in Idaho
11 County, State of Idaho.

12
13 And, it is further ORDERED that until the hearing of said
14 motion and order therein, the said defendant do absolutely desist
15 and refrain from doing, or causing to be done or committed, any of
16 the acts and things with respect to said irrigating canal and to
17 said irrigating water hereinbefore mentioned.

18 And let a copy of this order, with copies of all moving papers
19 and affidavits therein referred to, and of plaintiffs' complaint, be
20 served on said defendant at least five days before the time fixed
21 for hearing said motion as aforesaid.

22 It is further ordered that the plaintiffs shall execute a
23 statutory bond in the sum of One Thousand dollars, conditioned to in-
24 demnify the defendant against any loss or damage he may sustain by
25 reason of the improper issuance of said injunction.

26 Dated this 3rd day of May, 1938.

27 *Wm. E. Johnson*
28 District Judge.

29 **FILED**
30 **AT 10 O'CLOCK**

31 **MAY 4- 1938**

32 **HENRY TELCHER**
Clerk of District Court

By *W. H. Kelley* Deputy

#4580

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

CLYDE E. SUMMERS, ELMER ARMFIELD	)	
and AGNES A. ARMFIELD,	)	
	)	
Plaintiffs,	)	REPLY TO ORDER TO
	)	
vs.	)	SHOW CAUSE.
	)	
GEORGE BOODRY,	)	
Defendant,	)	

Comes now the defendant herein and opposes the motion for temporary injunction and restraining order herein, and moves that the restraining order heretofore issued herein be dissolved.

This motion is based upon the records and files and the annexed affidavits, and any other evidence which may be adduced herein.



Attorney for Defendant,
Residing at Grangeville, Idaho

FILED
AT Idaho O'ROCK Id

MAY 16 1938

HENRY TELCHER
Clerk of District Court
By H. H. Hays Deputy

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

CLYDE E. SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)
 Plaintiffs,)
vs.)
GEORGE BOODRY,)
 Defendant,)

A F F I D A V I T

STATE OF IDAHO)
)
County of Idaho) ss.

R. L. IRWIN, being first duly sworn, says he resides on Salmon River and is of the age of seventy years;

That in the year 1925 he became acquainted with what is known as the Maglemre place, involved in this action, and also with the Bridge place; that the same were then leased by C. M. Clay, for whom affiant worked;

That they were commencing a ditch from what is known as the Basin Ranch and ^{he} assisted in building the same to a point just above what is known as the upper spring in a gully, sometimes called Maglemre creek, which spring comes out under a small lime reed or cliff; that the ditch above mentioned was built from the Basin Ranch toward the gully without any particular object to reach the spring, but came out only a few feet above the spring as it was finally completed; that thereupon a dam was put in the gulch across the creek below the above mentioned spring, so that, if desired, the water could be raised from the spring into the ditch;

That in that fall and in the next year 1926, he assisted in building ditches from Papoose Creek and Shingle Creek to bring water to connect up with the ditch from the Basin Ranch, and this water was dumped into the gully above the above mentioned spring and came down over the spring and into the ditch leading to Basin Ranch;

That at the time he commenced to build the ditch from the Basin Ranch in 1925 the water from the above mentioned spring and from another spring further down the gulch was being used by Clay on the Maglemre ranch; that after the ditch was built the water was still continued to be used on the Maglemre ranch in irrigating a field of about eight acres, which had been a meadow, and also in irrigating about an acre of orchard, and affiant believes that the water from the orchard also ran down over a small field of pasture below the orchard;

That affiant recalls that during the years he was there working for C. M. Clay, which were the years 1925, 1926, 1927 and part of 1928, that he was engaged at different times in running the water from the above mentioned gulch and springs on to the above field and orchard on the Maglemre place; that he kept a shovel, he recalls, where the ditches ran that he could use in turning the water from one part of the field to another whenever he passed;

That at the time affiant was engaged working as above stated the ditches leading the water from Shingle Creek and Papoose Creek were not sufficient to take nearly all the water running in said creeks during the flood water season, nor until about August 1st in ordinary years, and that during all the years affiant was engaged there there was more than ample water running in Shingle Creek and Papoose Creek to irrigate the entire portion ~~of~~ of the Basin Ranch that was irrigated without regard to the comparatively small amount of water running from the above spring; in fact, there was water enough from Shingle Creek and Papoose Creek in most years to irrigate twice the amount of land that was irrigated on the Basin Ranch, except perhaps during the latter part of the irrigating season;

That at no time was the water from the said spring considered as appropriated or used on the Basin Ranch, but continued to be used on the Maglemre ranch, as above stated, except when it might temporarily be mingled with the other water for convenience;

That the amount of water running in the said springs or in the said unnamed gulch, so called, is a very small amount of water, only amounting to a few inches, and after the irrigating season has progressed and warm weather set in there is insufficient water there to irrigate the lands which were irrigated upon the said Maglemre ranch and Bridge place in the years when affiant knew the places, that is, the number of acres heretofore related, and that the lands so irrigated on the said places for alfalfa, hay, orchard and garden required much more water than would be running ⁱⁿ the said springs after about the month of July;

That at one time affiant attempted to turn the water from the said upper spring through the ditch to the Basin Ranch while the water from the Papoose Creek and Shingle Creek was ~~was~~ not running and found there was insufficient water to go around through the ditch, (which was about three-quarters of a mile long), and to be of ~~no~~ benefit when it got there; that in the hot weather it would not even reach there and that such ^{upper} spring, if attempted to be used on the Basin Ranch would be of practically no benefit to it whatever and that the water would be so wasted and lost that it would not do duty which water should do;

That there is ample water running in Papoose Creek and Shingle Creek at the present season of the year and until August to irrigate the said Basin Ranch and all of the ground irrigated thereon amounting, as claimed, to 132 acres, with much water to spare if the ditches from the said creeks were kept in repair;

That when affiant was there working for C. M. Clay, as above stated, he had repaired the ditches in the fall and then ran the water from Papoose Creek through the ditch so made from such creek

more than half the distance to the saddle and then turned it through a headgate before it went through a metal flume; that in that way the water ran ~~was~~ all winter and kept the snow melted so that in the spring, by starting the water through the remaining distance of the ditch, less than a quarter of a mile, and making a little track in the snow the water opened the remainder of the ditch early in the spring, to-wit, about April 1st; whereas, if that is not done and the ditches ^{not} kept in repair the water will not run through the ditch until late in the spring when the snow is all melted; that affiant explained this to the plaintiff Armfield, to-wit, Elmer Armfield, and affiant is advised that the said Armfield has made no attempt so to secure the said water which he might have done, and is also advised that the ditches have been in bad repair, which has deprived plaintiffs of the water which they otherwise would have ample for their uses without the water from said spring.

R. L. Irwin

Subscribed and sworn to before me this May 9th, 1938.

A. S. Handy

Notary Public for Idaho, residing
at Grangeville, Idaho

{Seal}

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

CLYDE E. SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)

Plaintiffs,)

vs.)

A F F I D A V I T

GEORGE BOODRY,)

Defendant,)

STATE OF IDAHO)
County of Idaho) ss.

LOUIS REEVES, being first duly sworn, says he resides on Squaw Creek near Higgins, Idaho, and is of the age of 67 years and is engaged in the stock raising business and has been for more than forty years;

That he has known the place now owned by the defendant George Boodry, and which was formerly known as the Maglemre homestead and also the land known as the Bridge homestead during all of the time ever since about 1892; that at that time all the said land was unsurveyed and unpatented and public domain of the United States;

That during all of the years since he has known this land water from a gulch and springs arising on a part of what afterwards was the Jack Bridge homestead, which springs arise in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, Township 24 N. R. 1, W. B. M., was taken out of a gulch by ditches and used by Maglemre and his successors in irrigating on the said place known as the Maglemre place, and which Maglemre place is described as follows: NW $\frac{1}{4}$ of SW $\frac{1}{4}$, N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 36; SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, Township 24 N.R.1, W.B.M.;

That the said Maglemre lived on the said place prior to survey and after the land was surveyed he entered it in the United States land office and about 1905 proved up, as it is called, and secured patent therefor and continued to own and use the land until about

September 1907, when he sold the land to M. E. Gage and Chas. W. Gage, the latter afterwards selling to M. E. Gage, who retained the land until October 1917, when he conveyed to W. H. Lamont and John Bridge, and that the latter afterwards in April 1924 conveyed to the Salmon River State Bank the same land, and which afterwards in May 1926, conveyed the same land to Leo Freidenrich;

That commencing about 1924 the said land was leased by the Salmon River State Bank to Chas. M. Clay, who held afterwards under a lease or under some sort of arrangement, until about the year 1931; that during all of the times while the land was owned by any of the above parties and while the land was in the possession and occupation of said Chas. M. Clay ^{there} ~~it~~ was irrigated from the said water taken from the said gulch or from said springs feeding the said gulch a tract of about eight acres lying on the creek bottom and above the house, which was in alfalfa, hay or pasture during all of that time and was irrigated, as well as a further tract of about one acre of orchard and a tract of about four acres just below the orchard, which was used for raising hay and pasture; that such irrigation was continued each year from the time affiant first knew the land while Maglemre was a mere squatter, as above stated, until the same was in the possession of said Chas. M. Clay in 1931;

That in the spring of 1932 the defendant, George Boodry, acquired this land and went into possession of it, and affiant knows he continued to use the water in the same way and on the same tracts of land, above stated, during each of the years 1932, 1933, 1934 and 1935; that in the year 1935, affiant is advised, that someone of the plaintiffs, or some one acting for the plaintiffs, put a charge of dynamite into the upper of said springs, which comes out below a small lime reef, and blew the same up;

That after that time there was some controversy about the water, but that continuing in 1935 and 1936 the said Boodry continued to apply the water to irrigation of his lands on the same tracts as above stated;

That affiant resides about four miles from the defendant Boodry, but that he ranges his stock adjoining the Boodry place and has occasion to cross the Boodry place on numerous occasions each season; that the trail or road which he uses in going to the Boodry house crosses through the above field above referred to as the eight acre field; that each year he has crossed such field and crossed the said lands and has seen the water being used by the defendant Boodry in irrigating as above stated;

That in the year 1937 affiant recalls being at the Boodry place during the irrigation season and saw the water being used by the said Boodry on the said lands. On one of said occasions it was just before Boodry started to hay and there was some conversation about some neighbor wanting a job in haying, and at that time the water was still being used on the place;

That the said water was also used by the said Jack Bridge on the said SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, Township 24 N.R.1, W.B.M., commencing with the year about 1915 to irrigate an orchard and garden of approximately three acres, and he continued to use the same until he disposed of his said place to said Salmon River State Bank, together with the said Maglemre place in 1924;

That thereafter the said Chas. M. Clay continued to use the said water upon the said orchard during the time he held possession of the land, as aforesaid, until 1931;

That in the fall of 1932 the said defendant Boodry acquired the said Bridge place, including the said SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, Township 24 N.R.1, W.B.M., and that the said Boodry has continued to

irrigate the orchard located thereon, as had been done by the said Chas. M. Clay and prior to that by the said Bridge;

That at no time has there been any year when the water from the said springs and gulch have not been applied upon the said lands known as the Maglemre place and Bridge place and now owned by the said defendant Boodry; that such water has been taken out from the said gulch or creek by ditches diverting the water therefrom and applying it to said uses; that the said uses are beneficial uses and necessary for the production of crops of hay, pasture, garden and other matters aforesaid;

That affiant further states that he knows of the building of a ditch by Chas. M. Clay leading from just above the upper spring, mentioned before, easterly to the lands now owned by the plaintiffs and which was referred to as Basin Ranch; that the said ditch so constructed by the said Clay to the said Basin Ranch also covered a portion of the forty acres described as the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 25, Township 24 N. R. 1, W. B. M., which is now owned by the said defendant Boodry and which he purchased and has occupied since the fall of 1932;

That after the said ditch was built the said Clay had a lease upon the last mentioned forty acres and used water from the said ditch to irrigate thereon to the extent of two acres of alfalfa, using the water which came from Papoose Creek and Shingle Creek through the newly constructed ditch;

That after the said defendant Boodry secured the said land in 1932 the water was continued to be used in irrigating the said two acres of alfalfa, but that there was a constant dispute between the parties as to who owned that land; that affiant has seen the water from the said ditch being used for irrigation on the said last mentioned two acres of land at the time said Chas. M. Clay had

possession of it, and at other times.

That affiant has seen the ditches leading from Papoose Creek and Shingle Creek within the last year, and in fact every year since they were built; that during the last few years the ditches have been allowed to get out of repair and have not been cleaned out, and in fact the ditches give no evidence of having been cleaned or repaired for many years; that the said ditches are constructed through a country where cattle run at large and through a country where there is timber; that in the fall of 1937 he was unable to even get along the ditches on account of the debris, logs, brush and other accumulations in the ditches; that cattle had trampled the ditches until they were practically gone in places and would not flow water, except a small amount, even if there were attempts to get water through; that in October water was running into the ditches but was not getting through on account of the fact that the ditches were in bad repair;

That if the said ditches were cleaned out in the fall, as was done when said C. M. Clay used the ditches, and water allowed to run as was then done, to a waste gate just above the metal flume, which is at least three-quarters of the length of the ditch from the creek to the saddle, the water will run all winter and keep the snow melted and out of the ditches and be ready to run early in the spring; that by going along the rest of the ditch, which is less than a quarter of a mile, and making a ~~bridge~~ track in the snow the water, if then turned into the ditch instead of through the waste gate, above mentioned, will follow along the snow and melt out the snow and run through the ditch early in the spring; whereas, if the water is not allowed to run through the upper part of the ditch the same will freeze up and fill with ice and it will be impossible to get water through until late in the spring; that in order that the water may be

secured to run through the ditch early in the season for irrigating it is necessary also that the ditches should be kept in repair, and that the ditches should be repaired in the fall, none of which has been done by the said plaintiffs;

That the reason the plaintiffs do not have water is that they have failed to keep their system of ditches in repair; that ~~at~~ at the present season of the year there is three or four times as much water running in Papoose Creek and Shingle Creek as could possibly be carried through the ditch to the Basin Ranch, and that the only reason the plaintiffs do not have the water is that they have failed to keep their ditches in repair, as above explained;

That there is no occasion whatever for plaintiffs to interfere with the water right of defendant; that the amount of water which defendant's springs run is insignificant as compared with the uses which plaintiffs require and which they would be able to secure from the water of the above named creeks;

That the amount of water running in the said springs is very small and amounts to only a few inches, unless it is for a short time in the flood season of the year, when there is plenty of water in the other creeks; that during most of the irrigating season, if the water from the upper spring, so-called, in the said unnamed gulch were turned into the plaintiffs' Basin Ranch ditch alone it would largely disappear before it ~~reached~~ reached the ranch and be of practically no use to the plaintiffs, and if attempted now to be used with^{out} the other water it would do them practically no good, and that by July there would not be sufficient water runningⁱⁿ the said springs in the said unnamed gulch to irrigate the land irrigated on the said Maglemre ranch and Bridge ranch, as hereinbefore detailed, and

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

CLYDE E. SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)
 Plaintiffs,)
)
vs)
)
GEORGE BOODRY,)
 Defendant)

A F F I D A V I T

STATE OF IDAHO)
County of Idaho) ss.

W. H. LAMONT, being first duly sworn, says he has re-read the affidavit made by him in the above entitled cause on May 3, 1938; that he is a man eighty-six years old and is unable to see well and is very hard of hearing; that some statements in that affidavit are mistaken and erroneous and were not understood by him when he signed it; that on further consideration he states he sold the ranch known as the Maglemre ranch, and now owned by defendant boodry, in the spring of the year 1924 and did not reside thereon after that time and was not about the ranch very much, if at all;

That he stated to the defendant, however, that he knew the water from the upper spring, as well as the lower spring, had been used on such ranch during the time that C. M. Clay was there, and that that is the fact, and that any statement in the above mentioned affidavit of May 3rd to the contrary is error.

Belle M. Lamont

W. H. Lamont

Subscribed and sworn to before me this 12 day of May, 1938.

(seal)

John H. Clay
Notary Public for Idaho, residing
at Riggins, Idaho

not sufficient for more than five or six acres.

Louis Reeves

Subscribed and sworn to before me this May 9th, 1938.

A. S. Hardy
Notary Public for Idaho, resid-
ing at Grangeville, Idaho

(seal)

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

CLYDE E. SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)
 Plaintiffs,)
) A F F I D A V I T
vs.)
)
GEORGE BOODRY,)
 Defendant,)

STATE OF IDAHO)
County of Idaho) ss.

RAYMOND TRIPLETT, being first duly sworn, says he resides at
Riggins, Idaho County, Idaho, and is of the age of 45 years;

That he is acquainted with the lands involved in this action
and especially with the place known as the Maglemre place and the
Bridge place; that during the time that C. M. Clay was in possession
of said places under lease and operating the same and prior thereto
he was acquainted with the way the land was watered and irrigated and
worked there during all of the said time; that he has been there since
that time and worked there for the defendant Boodry;

That during the years from 1924 to 1931, inclusive, he knows
that C. M. Clay diverted the water through ditches and used the water
from the upper spring, so-called, arising in the gulch referred to as
unnamed gulch and sometimes as Maglemre creek gulch, as well as the
water from the lower spring in said gulch, in irrigating on the said
Maglemre place and on the said Bridge place and used the same each
of the years in question;

That the amount of land irrigated on the Maglemre place afore-
said, was about eight acres in a flat near the creek bottom above the
house, about one acre of orchard and four acres of land below the
house, which land had theretofore been used for raising hay, garden,

etc., and that there was about two to three acres on the Bridge place which had theretofore been irrigated and which, or a great portion of which, the said C. M. Clay continued to irrigate from the said source during all of said times;

That in the year 1926 ditches were completed taking water from Shingle Creek and Papoose Creek through a saddle on to what is known as the Basin Ranch, by turning the water into the upper part of said unnamed gulch and letting it flow down such gulch perhaps three-quarters of a mile, where it was taken out by a ditch ~~xxx~~ built to the Basin Ranch, which said ditch connected with the said unnamed gulch at a point just a few feet above the above named upper spring, which spring comes out below a lime stone reef;

That in order to prevent the water from running down the said gulch a dam was built across the gulch just below said upper spring of such height that it caused all of the water to flow into the above named ditch leading to Basin Ranch; that a short distance below such point of diversion a headgate was placed in such ditch where the water was again turned out into the gulch for irrigating upon the said Maglemre place and Bridge place, and that during the time the said C. M. Clay operated the said places there was as much water turned out of the said ditch for irrigating upon the said Maglemre place and Bridge place as the said upper spring ran, and probably considerably more, the balance of water being water from Papoose Creek and Shingle Creek, and that such water was used during irrigation season during each of the years above mentioned from 1924 to 1931, inclusive, while the said C. M. Clay occupied the said places; that at no time was any of the water in the said gulch used on the said Basin Ranch unless it was for a few days at a time when the headgate in the said ditch was closed; that fully as much water was diverted through the said ditches leading to the lands on the Maglemre place

and Bridge place and used for irrigation after the said ditch was built as previous thereto; that said C. M. Clay never claimed the water from said upper spring nor from the said gulch for use on said Basin Ranch, but only on the said Maglemre and Bridge places; that the said Clay directed affiant on different occasions to change the water on said last mentioned places and a shovel was kept at the ditches for that purpose; on the Maglemre place;

That after the said Clay ceased to operate said places and in the year of 1932 the defendant Boodry purchased what is known as the Maglemre place and the Bridge place and occupied the same; that during different portions of the irrigating season in the year 1932 and each year thereafter affiant has been on said places and observed the use of water made thereon by defendant Boodry and has worked for him at different times assisting him in haying and other work and knows how the water was used by defendant Boodry;

That during all of the years when defendant Boodry occupied the places affiant knows that defendant has claimed the use of the water from both the lower and upper springs in said unnamed gulch, so-called, and has used all the same in irrigating such lands, except that affiant believes that in the year 1937, as he recalls, there was a portion of the year when water was not used by defendant Boodry after a dispute arose between the parties;

That in the year 1937 affiant, while working for defendant Boodry, went with with Boodry over the ditches leading from Papoose Creek and Shingle Creek to the above mentioned unnamed gulch and found that said ditches were filled up with rocks, debris, logs and brush; that the banks were broken down and the ditches looked as though they had not been cleaned out and repaired for many years; that they were in such condition that they would not carry the amount of water for which they were built and only a small portion of the water which otherwise, and if they were in good repair, would flow through them;

That the ditches are in a country where cattle range and that cattle run over the ditches and cause rocks to roll into the same and break the sides of the ditches; that the ditches are through a timbered country and that logs and debris fall into the ditches, and they need constant repair each year; that affiant knows that while the said C. M. Clay had the occupancy and use of said lands the ditches were cleaned out in the fall before the snow came and water allowed to run through such ditches the greater length thereof, flowing all winter, to a waste gate which was placed just above a galvanized iron flume, and that early in the spring the waste gate was closed and the water turned into the remainder of the ditch and a man with a shovel made a small track in the snow in the ditch below the galvanized iron flume so that the water melted the snow out of the remainder of the ditch, which would be only a few hundred feet, and the water thereby was brought to the said Basin ranch ditch early in the spring and in the early part of the month of April or before in ordinary years and in time for early irrigation; that the same things could be done at the present time if the ditches were kept in repair and such arrangements and precautions taken as would enable the water to be used;

That the lands irrigated by the said defendant from the above mentioned unnamed gulch require the irrigation of and the use of all the water flowing therein for the proper irrigation of the above mentioned lands and that if he is deprived of the same it will greatly damage his ranch; that there is no other source of water supply available and that the amount of water flowing in the said unnamed gulch is unneeded and unnecessary for the uses of said plaintiffs for the reasons above stated;

That at the present season of the year and until at least August in ordinary years and in such years as the present year, there

is a great deal more water flowing in said Papoose Creek and Shingle Creek than can be utilized or flowed through the said Basin Ranch ditch.

Raymond Triplett

Subscribed and sworn to before me this 12 day of May, 1938.

John H. Clay

Notary Public for Idaho, residing
at Riggins, Idaho

(seal)

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

CLYDE E SUMMERS and ELMER ARMFIELD)
and AGNES A. ARMFIELD, his wife,)

Plaintiffs,)

vs.)

GEORGE BOODRY,)

Defendant,)

A F F I D A V I T

STATE OF IDAHO)
County of Idaho) ss.

C. D. SULLIVAN, being first duly sworn, says he resides near
Pollock on Little Salmon River in Idaho County, Idaho, and is of the
age of 56 years; that he is engaged in farming and stock raising and
has been for many years;

That during the time Ed. Gage lived upon the lands now owned
by defendant, George Boodry, and known as the Freidenrich place, or
previous to that as the Maglemre place, and about the years from
1914 to 1916, inclusive, he worked for Mr. Gage on the above named
place;

That during that time Mm. Gage used the water from a gulch,
which was referred to as a gulch with no name and sometimes as
Maglemre Creek Gulch, which is fed by springs, the upper spring
coming out below a lime reef on the ~~an~~ place above afterwards known
as the Jack Bridge homestead; that this water was taken out of the
creek or gulch in ditches and conducted upon a tract of meadow which
was in alfalfa of about eight acres and used for irrigation thereon,
said eight acres being on the creek bottom above the house, and was
also used in irrigating an orchard of about an acre and a pasture
below the orchard of about four acres;

That this is the same use that had been made of the water in
previous years, as he is advised and believes and as indications
showed at the time he went there.

Subscribed and sworn to before me this May 9th, 1938.

(seal)

C. D. Sullivan
George Boodry
Notary Public for Idaho, residing at
Grangeville, Idaho

CLYDE E. SUMMERS, ELMER ARMFIELD
and AGNES A. ARMFIELD,

vs.

Defendant,)

STATE OF IDAHO)
County of Idaho) ss.

That in July 1924 he leased from the Salmon River State Bank what is known as the Maglemre place, described as NW $\frac{1}{4}$ of SW $\frac{1}{4}$, N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 36; SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, Township 24 N.R.1, W. B. M., and that he also leased from the said bank at the same time what is known as the Bridge homestead, which latter homestead includes the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, Township 24 N. R. 1, W. B. M.; that he also at the same time and in the same manner leased the place known as the Holbrook place, which includes the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 25, Township 24 N.R. 1, W. B. M.; that during that year and prior to that date he had been in possession of such premises under a verbal understanding he would have a lease on the same;

That at the time he leased the said premises the water from what is referred to in the plaintiffs' complaint as an unnamed gulch and which is sometimes called Maglemre creek (being the same party mentioned in the complaint as McGlimery) was being used upon the premises known as Maglemre place for the purpose of irrigating a tract of hay land on the flat above the house of about eight acres in extent, for irrigating an orchard of about one acre below the house, and also

of a tract of about four acres below the orchard, also used for hay; that at that time and prior thereto the water had been used from said gulch on said forty acres contained in the Bridge place for the purpose of irrigating an orchard and a tract^{of} from two to three acres;

That affiant had been familiar with the said premises for many years prior to that time and prior to the time the land was even surveyed under the public land survey; that said Maglemre was living upon the said land claiming squatter's homestead prior to the survey and using the water from said springs and gulch upon said land prior to the land, on which same were located or any land in said township, being surveyed and prior to its being patented, and using the water from said gulch on the same tracts and in the same manner and to the same extent for many years and continually until he sold his ranch, as hereinafter stated;

That Bridge settled on the said land somewhere around the year 1905 and used the water upon said forty acres above mentioned from and after that time and prior to his patenting the same;

That the said water was used on said Maglemre place by taking the same from ditches diverting the water from said gulch upon said respective tracts, and that the said water was used on said Bridge place also by a ditch diverting the water from the said gulch; all at points on the lands of said respective owners, and said ditches were of sufficient capacity to and did carry all the waters from said springs and gulches and same were all diverted through same, except during early flood waters when snow was melting in said gulch;

That the water was continued to be used upon said lands by said parties until said Maglemre sold said premises to Gage in the year 1908; that said Gage thereafter continued to use said water until he sold the same to Bridge & Lamont (being the above named Bridge) in the year 1917; thereafter the said Bridge and Lamont continued to use the water as theretofore until they sold to the said Salmon River State Bank in the year 1924, at which time affiant acquired the premises by lease as aforesaid;

That during all of the said years the water from the said gulch and the whole thereof continued to be diverted, used and applied to the irrigation ^{of the respective places} ~~as~~ as aforesaid; that after affiant acquired the said ranches by leases, as aforesaid, he continued in possession thereof until the spring of 1932 and during all of the said times he continued to use the said water as previously used in the irrigation of said tracts of land aforesaid; that he irrigated the orchard and tracts above mentioned as hay land, which affiant pastured off instead of cutting the hay, and on the Bridge place he used the water for irrigating the above mentioned orchard and berries adjacent thereto during all of said times;

That in the year 1925 affiant commenced the construction of an irrigation ditch leading from what is known as the Basin Ranch, which he then ~~owned~~ owned, to take the water from Papoose Creek and Shingle Creek and was assisted in that work by R. L. Irwin, Raymond Triplett and others;

That the said ditch was commenced to be constructed at the Basin Ranch end and was constructed on a proper grade toward the gulch named in the plaintiffs' complaint as unnamed gulch, without any particular objective, except to strike the gulch at whatever place the ditch would reach it, and not in any way for the purpose of appropriating the water in the said gulch; ^{nor the spring involved in this action} that the ditch was built for the purpose of enabling affiant, after taking ditches from Papoose Creek and Shingle Creek and dumping the water ^{therefrom} into the above named gulch at a point from half or three-quarters of a mile up the gulch, to re-capture the same water and convey it through the above mentioned Basin Ranch ditch, and not for the purpose in any way of using the water from the said gulch; that water from said gulch was never appropriated and claimed for or used on said Basin Ranch;

That the water in the said gulch originates in a spring which comes out through a clearly defined hole or crevice just underneath

a limestone reef or cliff from five to ten feet high, and from a spring or springs which come out a hundred or two hundred feet further down the gulch; that the said water in the said upper spring has no connection in any way with any of the waters from Papoose Creek or Shingle Creek;

That when the ditch above mentioned reached the said gulch it was found that the same connected therewith just a few feet above the upper spring, last mentioned; that it was thought advisable to so construct the said ditch in crossing the said gulch as to connect at a straight angle, rather than to ~~take it up and~~ cause it to connect with a jog, so to speak, and for that reason a dam was built across the gulch just below the above mentioned spring at such height as to throw the water into the ditch which had joined the gulch just above such spring, and by so doing the water from the said upper spring could be caused to flow through the said ditch, together with any water which came down the ditch from Papoose Creek and Shingle Creek; that thereafter affiant continued the completion of his ditch system, referred to in the plaintiffs' complaint, by building a ditch from Shingle Creek toward Papoose Creek and a ditch from Papoose Creek backing up the water from Shingle Creek near the said Papoose Creek and conveying the water from both creeks across a saddle into the upper end of the above named gulch, referred to in plaintiffs' complaint as the unnamed gulch, and after flowing down the creek about half or three-quarters of a mile it was then re-captured at the dam, as aforesaid, and caused to flow to the Basin Ranch; that such ditches were completed in the year 1926;

That in the year 1924, before the ^{Basin Ranch} said ditch was built, affiant used the waters ^{from said upper spring & said gulch} as aforesaid, and after the ditch was built, affiant still used the same waters from the unnamed gulch, both from the upper spring and the lower spring therein for irrigation, the same as it had previously been used, except affiant caused the said

water from the upper spring to flow in the said ditch a distance of from 75 to 100 feet where, at a convenient place, there was a headgate placed in said ditch for the purpose of, and which was used for letting out the water from such spring back into the gulch where it could be used as previously, on said Bridge and Maglemre places, and where it was continued to be used every year affiant was there, that is, from the years 1924 to 1931, inclusive; that there was no year when said water from said spring and the whole thereof was not used on said premises, to-wit, said Maglemre and Bridge places;

That ~~that~~ during the years 1927 and 1928 the water flowing from Papoose and Shingle Creeks could not be carried through said Basin Ranch ditch and was used on said Maglemre and Bridge places; in 1929 the said Basin Ranch ditch was enlarged but there was still an excess of water from Papoose and Shingle Creeks, which was used on said Maglemre and Bridge places, in addition to the water from said upper spring;

That affiant has also been familiar with the use of said water on the said Maglemre place and Bridge place since he ceased to occupy the same, as aforesaid, and has been on such places each year, except the present year of 1938, during the irrigating season of such years; that he knows in the spring of 1932 the defendant Boodry or his wife purchased the Maglemre place and in the fall of 1932 he purchased the Bridge place; that in that year affiant saw the water being used from said springs, both the upper spring and the lower spring, on both the said Maglemre place and Bridge place, and that he has seen the water used by said defendant Boodry in the same manner each of the other years 1933, 1934 and 1935, and that in the years 1936 and 1937 affiant also saw the said defendant using the water from the said gulch, but he was not at the upper spring;

Affiant is advised that the plaintiffs had caused the said upper spring to be dynamited previous to the last two years mentioned which had caused the said upper spring to go dry, but affiant is ad-

vised that in the present year the flow in the said upper spring has re-commenced and that it is understood and believed that the cracks and crevices caused by the said dynamiting have become puddled or filled with sediment until the water is flowing in its old course;

That affiant did not own either the Maglemre place or Bridge place and had no authority to abandon any water right which was appurtenant to those places when he leased the same and had no intention of abandoning any water right there, but on the contrary used and continued to use the water on the said premises from the said gulch to the same extent as it had previously been used or even to a larger extent;

That in the early spring there is sufficient water running in the said gulch to irrigate all the lands above mentioned as irrigated on the said Maglemre and Bridge places, and possibly some excess, but that after the weather becomes warm and by the month of July there is insufficient water flowing therein to irrigate the lands theretofore irrigated on the said premises herein above mentioned; that the water runs down rapidly in the latter part of the summer until there is a very small amount of water running either from the upper spring or lower spring and in some years the said ^{upper} spring goes nearly dry; that in fact, during the last three years all springs in that vicinity have decreased very rapidly and some springs, never known to have gone dry, ~~became~~ dry; that during the present year the flow in the springs seems to have re-commenced and there seems to be an ample water supply, as was the case previous to the recent dry years;

That the amount of water running in said upper spring is so small, that if it were attempted to be taken around through the ditch, above mentioned, to the Basin Ranch, so-called, which is a distance

of about three-quarters of a mile, the greater portion of the same would be lost by seepage and evaporation and would fail to reach the said Basin Ranch or would be of little, if of any benefit, to the said ranch; that the only way such water could be of any particular use on the said ranch would be if it were mingled with the waters of Papoose Creek and Shingle Creek and in that way it might reach the said Basin Ranch;

That the amount of water flowing in Papoose Creek and Shingle Creek during the present season of the year and until August first in ordinary years, and including the present year, is much more than can be put through the said Basin Ranch ditch and two or three times the quantity which could possibly be used in irrigating the Basin Ranch, and that at such seasons of the year, if the waters from Papoose Creek and Shingle Creek, [which were appropriated for the Basin ~~or~~ Ranch,] were brought around through the ditches and applied there the water from the said upper spring would be inconsequential and of no use whatever to the said Basin Ranch;

That the said ditches from Papoose Creek and Shingle Creek run along a steep mountainside in a country where cattle range and through timber; that for something over half a mile after the ditch leaves Papoose Creek and conveying the mingled waters of Papoose Creek and Shingle Creek the ditch runs along the mountain or hillside in a ditch constructed in the ground and then is conveyed around a cliff in a metal flume, at which place, just before reaching the flume, there is a waste gate constructed;

That while affiant was in operation of said ditch system the said ditches were cleaned out in the fall, cleaning out rocks and other debris caused to partially fill the said ditches by trampling of cattle and by other means, and the water was then caused to run through the said ditch to the said waste gate, which melted the snow

and the water ran all winter to the said gate, the water being more or less warm on account of coming from springs; that early in the spring by March or the first of April the snow in the remainder of the ditch was marked with a shovel, a distance of some five hundred feet, and which would take a man a day or two, and the water then caused to flow through the ditch the remainder of the distance, melting out the snow until the water would flow down to the above unnamed gulch, and this flow would start by the first of April in ordinary years, if managed in the ~~xxxx~~ above manner; that in that way there was water for the Basin Ranch as soon as irrigation was required or more than ample to fill the entire Basin Ranch ditch; that the water from the said upper spring was never used on the Basin Ranch and never appropriated therefor, but that the amount of water from the said upper spring was always taken out as above explained and used on the Maglemre and Bridge ranches, as above stated, and that method was continued by the defendant after he purchased the ranches in 1932, as above stated, until interfered with by the plaintiffs herein; except, however, that during the years 1932, 1933 and 1934 the said Basin Ranch was operated by or through agents or employees of said plaintiff Summers and that only a small amount of water was used thereon, and that a great portion of the water flowing through the said ditches from Papoose Creek and Shingle Creek remained unused and was allowed to run down into the said unnamed gulch where defendant Boodry used a considerable portion of the same in irrigating his lands; and that in the year 1934 affiant surveyed out for defendant and defendant commenced the construction of new ditches taking the water from said gulch at a different place than the original point of diversion on said Maglemre place (on which the previous points of diversion were located) and below the said upper spring and below the said Basin Ranch ditch, for the purpose of enabling him to better conserve the said water and to enable him to use any excess water

water from Papoose Creek and Shingle Creek along with the water from said unnamed gulch;

That during none of said times to the knowledge of affiant was any claim made by plaintiffs or by any predecessor of any of the plaintiffs to any of the water from said upper spring or the water of said unnamed gulch, and none of such waters were used on said Basin Ranch;

That a copy of the above mentioned lease which affiant secured from said Salmon River State Bank in 1924 for the said lands is hereto attached marked Exhibit "A";

That the said lands so irrigated on said Boodry ranch, formerly the said Maglemre and Bridge ranches, are now used in raising alfalfa, orchard and garden and if he is deprived of the water from said upper spring it will greatly damage and depreciate the value of his said ranches, cause his said alfalfa, garden and orchard to dry up and eventually to die;

That such damage will amount to large sums which it is difficult to estimate, but at least \$5000.00 and probably more; that the additional water which the said Boodry can secure from said upper spring, together with the water running from said lower spring, ~~but~~ is much less effective, as it requires a considerable body of water to properly irrigate such tracts of land, and that he will suffer great loss and damage out of proportion to the amount of water in said upper spring compared with the total flow of water;

That if the plaintiffs do not have water for their said Basin Ranch from said Papoose Creek and Shingle Creek it is because of their own neglect in failing to keep the said ditches in repair and in failing to so manage the same that the water will flow through the said ditches in the manner explained above, and that with the use of said waters from Papoose Creek and Shingle Creek which could

be had if the plaintiffs desired to put their ditches in such shape that the water would run, the water from said upper spring would be of no consequence to the plaintiffs whatever.

That a 1st illustration said solution is accented to the original being and shows the same opportunity as it exists.

B. M. Clary

Subscribed and sworn to before me this 14th day of May, 1938.

A. D. Henry

Notary Public for Idaho, residing
at Grangeville, Idaho

(seal)

EXHIBIT "A"

copy

THIS INDENTATURE, made this 29th day of July in the year of our LORD Nineteen-hundred and Twenty-four, WITNESSETH that The Salmon River State Bank, a corporation existing under the laws of the State of Idaho, with its principal place of business located at Whitebird, Idaho, Lessor, do hereby lease, Demise, and let unto C. M. Clay of Riggins, County of Idaho State of Idaho, LESSEE, the following Described land,

The South half of the South half of the Southwest Quarter of the Northwest Quarter, the West half of the Southwest Quarter, the North-East Quarter of the Southwest Quarter, the West half of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter, all in Section Twenty-five; the South half of the Southwest Quarter of the North-east Quarter of the Southeast Quarter, the east half of the Northeast Quarter of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter, all in Section Twenty-six, in Township Twenty-four North of Ranger One West of the Boise Meridian:

The above containing four hundred and eighty acres more or less according to the survey thereof. This parcel of land was formerly known as the North end of the Lamont and Bridge Lands.

To have and to hold for the term of three years from the First day of August 1924 to the First day of August 1927, yielding and paying therefore the rent of 25 cents per acre for the First year and 40 cents per acre for the remaining two years. The above rental to be paid as follows. \$120.00 being the first years rent to be paid on or before September 15th 1924.

\$192.00 the second years rent to be paid at anytime convenient to the LESSEE during the year of 1926. \$192.00 the Third years rent to be paid on or Before August 1st 1927.

AND to quit and deliver up the premises to the lessor, their agent or attorney, peaceably and quietly at the end of the term, in as good order and condition as the same are now or may be put into and pay the rent as above stated for such further time as the Lessee may hold the same and not make or suffer to be made any alterations therein but with the approbation of the Lessor in Writing having first obtained and that the Lessor may enter to view and make improvements and to expel the Lessee if he shall fail to pay the rent and aforesaid or make or suffer any strip or waste thereof.

FURTHER, should default be made in payment of or any portion of said rent, when due and for 30 days thereafter, the said Lessor their agent or attorney, may re-enter and take possession and at their option terminate this lease.

The Lessor reserves the right to sell the above property at any time during the lifetime of this lease and agrees to pay the lessee for such fencing as he may have done on the property and agrees to return any rent or portion of rent that the lessee has paid in advance, but in case of sale of the property the Lessee shall have the first right to purchase the property at the amount offered or the purchase price set by the Lessors agent or attorney.

Signed sealed and delivered in presence of

W. E. Mc Gaffee

C. M. Clay

John Kimbrough

SALMON RIVER STATE BANK
WHITEBIRD, IDAHO

A. W. Behrens

Cashier

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

CLYDE E. SUMMERS, ELMER ARMFIELD
and AGNES A. ARMFIELD,
Plaintiffs,

vs.

GEORGE BOODRY,
Defendant,

)
)
) A F F I D A V I T
)
)
)

STATE OF IDAHO)
County of Idaho) ss.

GEORGE BOODRY, being first duly sworn, says he is the defend-
ant named in the above entitled action;

That he has read the plaintiffs' complaint, as well as the
affidavits filed herein of Elmer Armfield, Clyde E. Summers, Albert
Armfield, John Kimbrough, C. N. Hall and W. H. Lamont; that many of
the statements contained in said complaint and affidavits are wholly
incorrect and misleading;

That affiant has been familiar with the matters and things
therein referred to for more than fifteen years, personally worked
upon the lands during each of said irrigating seasons, and since
1932 he and his wife have owned the lands known as the Maglemre
ranch, which is described as the $W\frac{1}{2}$ of $NW\frac{1}{4}$, $NW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 36,
the $SE\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 35, Township 24 N. R. 1, W. B. M., and also
the lands known as the John Bridge ranch, containing, among other
lands, the $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 26, the $W\frac{1}{2}$ of $SW\frac{1}{4}$, $NE\frac{1}{4}$ of $SW\frac{1}{4}$, $W\frac{1}{2}$
of $SE\frac{1}{4}$, the $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 25, all in said Township 24 N. R.
1, W. B. M., and affiant has been in the actual occupation, posses-
sion and residing upon and using the same since said time;

That prior to the time he acquired said lands he worked for
C. M. Clay, who was then in the occupation and possession of the

same from the spring of 1924 to the fall of 1931, and was upon said lands assisting in working, cultivating, irrigating and doing the necessary work thereon and is personally familiar with the way the land was used, watered and irrigated during said time and with the so-called system of irrigation ditches leading to what is known as the Basin Ranch, claimed by the said plaintiffs;

That in the plaintiffs' complaint it is alleged that the plaintiffs are the owners of the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, which is incorrect, but the said forty-acre tract last mentioned is owned by affiant, and affiant believes that plaintiffs intended to claim the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 36 thereof instead;

That long prior to the time that C. M. Clay owned said Basin Ranch and occupied the lands now owned by this affiant and his wife, affiant was familiar with said lands; that when affiant first knew said lands, the lands referred to as the Maglemre and John Bridge places were being irrigated from the water in said unnamed gulch, including the water referred to in plaintiffs' complaint as a spring which comes out underneath a reef of limestone rock, and which is, in fact, a spring originating at that point and independent of any water coming out of a spring or springs further down said gulch, and does not flow from above said reef of rock;

That long prior to the year 1924 all of the water flowing in said spring was appropriated and diverted through ditches of sufficient capacity to carry, and which did carry, all of the waters flowing from said upper spring and all the water in said gulch (except, perhaps, the early flood waters when snow is melting), upon the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said section 24 (part of the Bridge ranch, so-called), in irrigating approximately three acres thereon consisting of orchard, berries, hay land, garden, etc., and upon the Maglemre ranch, and especially upon the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ ~~SW~~ and the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said section 36 in irrigating a tract of hay land of approximately eight acres located above the house and on the flat, and an orchard of about one acre and a tract of hay land adjoining of about four acres below the house,

all of which required irrigation and without which would produce nothing, and which, by irrigation, produced large crops;

That the said lands known as the Maglemre place were patented to one Maglemre in the year 1907 by United States patent;

That the said lands known as the Bridge place were patented to John Bridge in the year 1913 by United States patent and owned and occupied by the said parties, respectively, for a considerable time thereafter;

That the said Maglemre ranch was conveyed by the latter to one Gage in the year 1907; that the said Gage thereafter continued to use the said water until he sold to Bridge & Lamont (being the above named Bridge) in the year 1917, and that thereafter the same was occupied by the said Bridge and Lamont until about the year 1924, and early in the year 1924 both the said places were conveyed by the said Bridge and Lamont to the Salmon River State Bank, and afterwards, through certain mesne conveyances, to affiant and his wife, Eunice M. Boodry, who acquired the same in the year 1932, acquiring the Maglemre ranch early in the spring of that year and the Bridge place in the fall of that year, and ever since have been the owners thereof, together with the water rights appurtenant thereto;

That in the year 1924 the said C. M. Clay had the Bridge and Maglemre places leased but no other right thereto, but owned the ranch referred to in plaintiffs' complaint as the Basin Ranch;

That in the year 1924 the said C. M. Clay continued to use the water from the said springs, including the upper spring arising beneath the reef of rock above referred to in the unnamed gulch referred to, as well as the other water below in that gulch, for irrigation upon the said Bridge ranch and Maglemre ranch, as above stated, using the same to irrigate the same tracts as aforesaid, to-wit, the tract of hay land above the house, the orchard and hay land below the house on the Maglemra ranch, and the orchard and

tract above mentioned upon the Bridge ranch, and used the same for raising grasses thereon and for the needs of said orchards;

That during said time after the first run-off in the spring in ordinary years and after June 1st to 10th, there was and is insufficient water from both springs running in said gulch to irrigate the tracts of land upon either of said places as irrigated prior to the year 1925, as aforesaid, and not sufficient water to fill said ditches so diverting said water from said springs and gulch;

That in ordinary years by about June first there is running from said upper spring not over ten miner's inches of water and from the lower spring and gulch a less amount. And that by July the water from said springs and gulch run down to a much less amount, and during the latter part of the summer almost no water runs therein. That the ditches so used by Bridge and Maglemre and thereafter by said Clay and affiant were of sufficient capacity to and did carry all the water running from said springs and gulch during the whole of the irrigating season.

That the said C. M. Clay continued to irrigate said lands in said manner during the entire time that he occupied the said places under lease, to-wit, during the years 1924, 1925, 1926, 1927, 1928, 1929, 1930 and 1931, and to use all the water from the said upper spring in said unnamed gulch on the said places ~~xxxxxx xxxxxx~~ and after the early spring, when flood waters had run off, all the waters in said gulch; that the ditches supplying the water for said lands on said places were taken from said gulch for the Bridge ranch at a point on the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec.35, and the ditches for the water on the Maglemre ranch were taken from said gulch at different points on W $\frac{1}{2}$ of NW $\frac{1}{4}$ and on NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec.36, and such waters were diverted thereby to said respective places of use; and the whole thereof were so used and necessary for such use;

That the amount of water used upon said Bridge place was approximately six miner's inches, measured at the point of diversion, and upon said Maglemre place was ~~px~~ approximately 25 miner's inches, measured at the point of diversion, so long as there was that amount of water running in said gulch, and that such amounts of water were and at all

times have been necessary for such purposes on said places; that each of said points of diversion are below the origin of said upper spring, heretofore mentioned;

That commencing in the year 1925 the said C. M. Clay, without any grant of authorization, as affiant is advised and believes and so states, but merely by virtue of the fact that he had the temporary occupation and use of said Maglemre and Bridge places, commenced the construction of a ditch from the said Basin Ranch leading to the said unnamed gulch and completed the same on the proper grade therefrom until it connected with the said unnamed gulch at a point just above the above named spring, perhaps only three to four feet above such spring; that the said ditch was commenced to be built at the Basin Ranch and built toward the said gulch without any regard to whether it would connect with the said spring or any other portion in said gulch, but simply to establish the proper grade and was not built for the purpose of diverting the water from the said upper spring or any part of said upper gulch, but for the purpose of taking water, to be dumped into the said gulch, from Papoose Creek and Shingle Creek, as hereinafter stated;

That when the said ditch was completed to the said unnamed gulch a dam was thrown across the gulch in such manner that the dam was just below the said upper spring and was raised to such height that it diverted any water, either from the said spring or afterwards dumped into the said gulch, into the said ditch leading to said Basin Ranch;

That thereafter in the year 1926 the said C. M. Clay constructed ditches leading from Shingle Creek and Papoose Creek by which the water of both creeks were intermingled in one connecting ditch leading from Papoose Creek through a saddle, a distance of something over half a mile, to the upper end of said unnamed gulch and there dumped

into the gulch and flowing down the said gulch about three-quarters of a mile to the said dam in the said gulch, where the same was then diverted into the ditch leading to Basin Ranch, and that commencing with the year ~~1926~~ 1927 the said Basin Ranch was watered and irrigated by the waters from Papoose Creek and Shingle Creek so conducted thereon;

That while the said ditch and ranch was in the possession of said C. M. Clay he managed the same so that the said ditches from Papoose Creek and Shingle Creek were cleaned out each fall to remove rocks, debris and rubbish which would fall into the said ditch and were caused to fall in also by the tramping of stock ranging in that vicinity, and that the water from Papoose Creek and Shingle Creek were then allowed to flow through the said ditch for a distance of about half a mile to a waste gate, which is placed just above a galvanized iron flume or pipe leading around a bluff; that early in the spring and about March, a man with a shovel made a track in the snow which had accumulated in the remainder of the ditch leading from the said flume to the said saddle, the water which had flowed in the ditch to the above waste gate all winter, was then turned into the remainder of the ditch and, following the shovel track, melted the snow in the remainder of the ditch, which was only a few hundred feet as above stated, perhaps 500 feet, and thereupon flowed through the gulch to the said Basin Ranch ditch and was available for irrigation on or about the first of April of each year;

That during each of the said years there was taken out by the said C. M. Clay from the said ^{Basin Ranch or new} ditch ~~at~~ at a point near the said dam, perhaps seventy-five feet from the head of the ditch, as much or more water than flowed in the said gulch from the said upper spring or otherwise in the gulch and turned back into the gulch for use in irrigating the said Maglemre place and Bridge place in the

same manner as previously used, and the same was used in irrigating the said fields and orchard on the said Maglemre place and Bridge place, irrigating as much of said lands as said water could be made to irrigate or cover; that such procedure was followed during all of said years above mentioned and the water was so used on each of the above mentioned places in each of the above mentioned years, to and including the year 1931;

That in the year 1932 when affiant and his wife became the owners of said Maglemre and Bridge ranches, they continued to take the water from the said upper spring and gulch, which had been mingled with the said Papoose and Shingle Creeks waters, taking the same from the same place in the said Basin Ranch or new ditch (which ditch was provided with a headgate for that purpose) and turning the same back into the gulch and using the same to irrigate on said Maglemre and Bridge ranches;

That during the years 1932, 1933 and 1934 the said plaintiff Summers, by and through his agents and employees, allowed and caused large amounts of water from said Papoose and Shingle Creeks flowing in said unnamed gulch to go to waste through the above named headgate made in the said Basin Ranch ditch, and to flow down said gulch in such quantities that it caused the said gulch to be washed out to a depth of fifteen or twenty feet and ^{and about a mile long} made much wider, and it was in such condition that stock of defendants could not pass over the same, and that ^{two} ~~steers~~ had been caught in the said gulch and injured and killed, and that such acts of said plaintiff have damaged this affiant in the sum of at least \$1000.00;

That the waters from said upper spring, as well as all the water in said unnamed gulch, were claimed as appurtenant to the said Maglemre ranch and said Bridge ranch from the time the said waters were first used, as hereinbefore stated,

owners and by
to and including the year 1937 by the said Clay while he had possession of said ranches and by this affiant since he purchased the same in 1932, and that affiant has claimed the right to the use of such amount of said water during all of said time;

That never at any time have all the waters from the said unnamed gulch, nor from the said upper spring, been used on the said Basin Ranch, nor have any of the waters been used thereon, except perhaps ~~the~~ at occasional times ^{by accident} when the same happened to flow through the said Basin Ranch ditch, either with the waters from Papoose Creek and Shingle Creek or on account of having been diverted from the use of affiant as claimed by the plaintiffs;

That during the year 1935 the said plaintiffs caused the said upper spring, originating under said reef, which is a limestone reef, to be dynamited, exploding two different charges of dynamite therein without the consent and against the will of affiant and his said wife and were threatening to continue further to dynamite the same when they were required to desist by this affiant and to leave the said lands on which they were then trespassing;

That at that time affiant had a large number of cattle which he was feeding on the said lands and such dynamite explosions caused the said cattle to become stampeded and scattered over the range and affiant required several days to round up the said cattle; that when he got them rounded up and returned to the said spring he found that the waters of Papoose Creek and Shingle Creek were flowing down the gulch and over the said spring and into the said ditch leading to the said Basin Ranch; that during the remainder of the season affiant used the waters through the said head gate in the side of said ditch mentioned above, taking the amount of water which was considered to be ^{and was} the flow of said ^{upper} spring~~s~~ and was the flow of said spring~~s~~, from the mingled waters and used the same to irrigate his said lands, both the Maglemre ranch and Bridge ranch, as above stated,

and that no argument occurred between the parties concerning the same, and that affiant did the same thing in the year 1936, except that a headgate was then buried by plaintiffs, who trespassed on defendant's ground; and defendant dug a small ditch to convey said spring water. That no claims to the waters of said spring or gulch were ever initiated by plaintiffs or their grantors, except by such trespass; that in the year 1937, when affiant attempted so to do a dispute arose between the parties, partly on account of the fact that ~~waz~~ water was then short and partly on account of the fact that plaintiffs had failed to clean out the ditches from Papoose and Shingle Creeks so that the waters which would otherwise flow in the said ditch therefrom was not fully diverted; but that affiant used the water for a portion of the season of 1937 upon his said ranches;

That after the dynamiting of said spring and at some time later affiant discovered that when the waters from Papoose Creek and Shingle Creek were not flowing over the said fee that the water from the said upper spring had totally dried up and ceased to flow, apparently on account of the fact that the floor of said spring had been shattered by the dynamite, and that no water flowed therefrom in the year 1936 nor in the year 1937;

That during the present season, however, the water seems to have re-commenced to flow in the said upper spring and that apparently the floor of said spring has become puddled and the cracks therein filled with sediment, so that the water flows to some extent from said spring;

That after the dispute arose between the parties concerning the said water affiant built a ditch leading from the said gulch above the said spring around the said spring and back to the said ditch, a distance of only a few feet, in order to enable the plaintiffs to secure the waters from Papoose Creek and Shingle Creek to which they claimed they were entitled, without mingling the same with the waters from the said upper spring and flowing in said unnamed gulch, which are appurtenant to the said Maglemre and Bridge ranchs owned by affiant and his said wife; and that the only purpose of said ditch was to prevent any further disputes concerning the said water (9)

but that plaintiffs have continued to dispute with affiant and to deny him the right to take the said waters which have always been used on the said ranches owned by himself and wife;

That other disputes have arisen between affiant and said plaintiffs, and especially the said Armfield; that they have driven large numbers of horses and cattle upon affiant's land and cut his fences in order to place such stock thereon, and that when he remonstrated with them they made threats against him, that they claimed portions of his land and attempted to use the same; that they attempted to secure criminal proceedings to be taken against affiant and by untrue representations because of his use of the waters from the said ditch; that they have made statements they were going to drive him out of the country and secure his ranches, which statements have been reported to affiant;

That since the said dispute arose affiant has ~~fenced~~ a portion of the boundary line between himself and said plaintiffs along the line which had been previously disputed and placed his fence upon the true line as determined by a measurement and survey from a government corner, and that during the present year affiant and said plaintiff Elmer Armfield and Albert Armfield, in a conversation, agreed that the said Armfields would complete a certain other portion of said fence, and in the same conversation they promised and agreed to build a flume taking the water from the said unnamed gulch above the spring and to the said Basin Ranch ditch so as to eliminate the dispute concerning the said spring; that since the said time affiant is advised that they deny any such arrangement was made and at any rate have failed and refused to carry out the same;

That during the irrigating season from early in the spring until at least in August in ordinary years there is a large amount of water flowing in the said Shingle Creek and Papoose Creek; at the present season approximately one thousand miner's inches of water (and much more than it would even carry) and much more than can be flowed through the said Basin Ranch ditch, ^

provided the ditches from the said Papoose Creek and Shingle Creek are cleaned out so that the water will flow; that very little, if any, work has been done in cleaning the ditch from the said unnamed gulch to the said Basin Ranch in the last several years, and that affiant is advised and believes that no work whatever has been done upon the said ditches leading from Papoose Creek and Shingle Creek since the said Armfields have become interest in said Basin Ranch, nor for many years prior thereto; that affiant has been over the said ditches a number of times and has been unable to discover any work of any consequence;

That the said ditches are constructed in a country where cattle range and through timber and brush, that the said ditches are tramped by cattle and the banks broken down thereby and ^{they are} filled with rocks, logs and debris and require frequent cleaning out; that in the fall of 1937 he was over the said ditches and at that time the banks were practically gone, the ditches filled with earth, rocks, logs and debris, so that it was almost impossible to get along the course of said ditches;

That at that time there was water flowing in said Papoose Creek but not flowing through the said ditch on account of the matters above stated; that the said ditch was so shallow, in order to get water to flow in the ditch so that he could get a drink even, he had to scoop out with his hands to make a little channel for the water to flow in the ditch;

That if the said ditches were cleaned out and kept in repair therè is more than ample water flowing in the said ditches at all times for the uses of said Basin Ranch, and until about August much more than the said Basin Ranch ditch will carry, except that during certain periods the last year or two the said creeks have run down, as have all other springs in the country on account of the excessively dry years for several years, but that in ordinary years, such

as the present year, there is a great abundance of water flowing in said creeks for said Baxin Ranch; that the reason said plaintiffs do not have water from Shingle Creek and Papoose Creek at the present time is that they have not kept their ditches in repair, have not cleaned out rocks, logs and debris which should have been cleaned out in the fall of 1937 and previous thereto, and that they have failed to arrange and provide that the water should flow through the said ditch in the fall, as above stated, for the purpose of keeping the snow melted out of the ditch from Papoose Creek a greater portion of the distance, as above indicated, so that they could flow the water through the ditch at any time in the spring after the spring thaws commence;

That it is not true, as stated in the complaint, that not less than 3.96 second feet, or 198 miner's inches, of water are required for the use of said Basin Ranch; that the amount of water required for irrigation of all the said lands on said Basin Ranch is 132 miner's inches and no more, and that same is the amount of water for which license was issued for such irrigation thereof as alleged in plaintiffs' complaint, and the amount shown by the proof filed with the State Engineer, as required to irrigate same, as affiant is advised and believes and so states;

Nor is it true, as stated by plaintiffs, that the flow of water in said gulch, including the water from Shingle Creek and Papoose Creek, does not exceed 3.96 second feet during the ordinary and usual irrigating season from April to October, but that during the greater portion of such season there is a great deal more water than that flowing in said Shingle Creek and Papoose Creek, which has been and can be flowed through the said ditches therefrom, to-wit, approximately from 300 to 500 miner's inches. And that the amount of water

flowing from said upper spring in said gulch is not required for the use of said Basin Ranch and is inconsequential as compared with the amount of water which can be secured from the said creeks;

That there is no water flowing in the said gulch above said upper spring, except while snow is melting in the gulch. That when the water originating in Papoose and Shingle Creeks as stated, was turned from the said gulch above the said upper spring, as above stated, by affiant's ditch during the years 1936 and 1937 after the said spring was dynamited as aforesaid, the said spring was entirely dry;

That without the use of the water from said upper spring in said unnamed gulch affiant's lands are rendered almost worthless; that the amount of water which can be secured from a lower spring therein is insufficient for the irrigation thereof and will not do the same duty in proportion as if the entire flow of said gulch, including said upper spring, is used together, for the reason that a considerable head of water is required in order to flow the same without too much loss over the land to be irrigated, and that the water will do a greater duty and irrigate more land accordingly and in proportion to the amount of water used when there is a considerable head of water to be used and available;

That none of the waters of said unnamed gulch have ever become appurtenant to the lands upon said Basin Ranch, nor have all or any of the same been appropriated therefor nor used thereon unless by accident and temporarily, but under no claim of right prior to the above mentioned dispute with plaintiffs;

That never at any time have the waters flowing from said upper spring, or any of the waters in said unnamed gulch, been owned, held, managed or possessed by the plaintiffs or their predecessors or otherwise as against affiant and his said wife or their predecessors in interest, the owners of said Maglemre and Bridge ranches,

nor have any of the same ever been used adversely or under color of right or otherwise as against affiant and his said wife, nor their said predecessors in interest, except such use as may have been made since the dispute, hereinbefore mentioned, has arisen commencing subsequent to the year 1935;

That it is not true that defendant has no right, title, interest or ownership in or to the said system of ditches and canals set out in the complaint, but that on the contrary affiant and his said wife are the owners of the entire water right and of the right to use the entire water running in the said unnamed gulch and from the said spring and especially the upper spring and to the amount of at least thirty miner's inches of water flowing through the said gulch;

That the said plaintiffs, or their predecessors in interest, never at any time had a right to appropriate or divert any water from the said springs located upon the said places known as the Maglemre place or Bridge place, but that during all the times mentioned, and long prior to the construction of said Basin Ranch ditch or to the year 1923, the lands were patented lands and said springs arose on said patented lands and that neither the said plaintiffs nor any predecessor in interest ever secured any grant of right of way for any ditches across the same or leading from the said springs, but that any ditch leading to the said Basin Ranch and crossing the lands now owned by the said defendant and his said wife, known as the Maglemre and Bridge ranches, were constructed thereon merely by sufferance and under a permissive license from and under the predecessors in interest of affiant and his said wife, which license is subject to revocation at any time;

That any attempts made by said plaintiffs or anyone, ~~xxx~~ other than affiant and his wife and their predecessors in interest, to use any of the waters of said upper spring or through the said Basin Ranch

ditch have been unlawfull and in violation of the rights of affiant and his said wife, and that any persons attempting so to use the same have at all times been trespassers upon the lands of ~~affizant~~ affiant and his said wife, and that any acts of plaintiffs in attempting so to use said waters have been in derogation of the rights of affiant and his said wife, and in violation of the rights of affiant and his said wife to the exclusive possession of their said lands and said water right from said upper spring;

That if the waters to which affiant is entitled, as aforesaid, from the said gulch are taken from him the said places owned by him self and wife will be practically worthless and he will be damaged to the extent of at least \$5000.00; that with the use of said water he is able to raise large amounts of hay and to care for livestock thereon, which it would be impossible for him to do without such hay and without water to raise the same;

That affiant and his said wife have growing upon the said ranches approximately 30 acres of alfalfa, besides garden and orchard of about 3 acres, and that all the water flowing from the said upper spring in the said unnamed gulch have been appropriated and used upon the said ranches in the irrigation thereof by affiant and his said wife and their predecessors in interest, and that such use commenced under claim of right long prior to any use or attempted use or claim of use thereof by the said plaintiffs or any predecessors of plaintiffs;

That the amount of water flowing in the said upper spring, together with the water flowing in said other or lower spring in said gulch, or running therein and available for use upon said lands, has all been used for the said purposes during all of the years before mentioned and especially since the spring of 1932 when affiant and his said wife acquired the said lands; that since affiant and

his said wife acquired said lands affiant, by improved ditches and methods of application, has caused the said waters to do more duty than it could or did do in such previous years, and especially during the dry season of the year, and that he has applied the waters to irrigating his said alfalfa, so far as the same will go; that in connection with the rain fall and the irrigation which he ~~was~~ then secured from the said gulch he has succeeded in securing said alfalfa to grow~~d~~ and produce crops of hay, but that if he is deprived of the water from said upper spring it will cause a great portion of his alfalfa to die and reduce the amount of hay that can be raised thereon to his damage in the amounts hereinbefore stated;

That at the time the water was applied to the said uses of affiant there never had been any use of said water or claim of use thereof by the plaintiffs or their predecessors in interest; ^{nor until 1935} that ditches previously constructed upon said lands, or constructed by affiant and his said wife, for the irrigation of said lands prior to any claim of plaintiffs of any right to use any of said waters, were of sufficient capacity to carry, and did carry and flow the entire water running in the said ^{upper} spring and in the gulch below the same during all of said time;

That during the whole of said times there has been ample water flowing in said Papoose Creek and Shingle Creek for the use of said plaintiffs and more than ever were applied to irrigating the said lands, except in the last two or three years in the latter part of the irrigating season, when, on account of the unusually dry conditions, there was a shortage of water in the entire country;

That there is no shortage of water in the said Papoose Creek or Shingle Creek at this time of year, nor will there occur any such shortage of water prior to August and probably not then or at all during the present year; that if the ditches from said Papoose

Creek and Shingle Creek were cleaned out and made fit to run water there would be more water come through the same to the lands of plaintiffs than the said Basin Ranch ditch would or could carry.

That between the years 1927 and 1929 the water running through the said ditches from Papoose Creek and Shingle Creek and into the said natural gulch could not be taken through the said ditch leading to Basin Ranch and ran to waste in the said gulch; that in the year 1929 the said C. M. Clay enlarged the said ditch leading to Hasin Ranch so that a larger portion of the waters from Papoose and Shingle Creeks could be conveyed to such ranch, but that even thereafter there was a surplus of water flowing in the said ditches from Papoose Creek and Shingle Creek and down the said gulch, which could not be carried by the said Basin Ranch ditch a considerable portion of the year, and much more water than was required for the irrigation of said Basin Ranch and approximately 300 miner's inches of water;

That during all of the years the said C. M. Clay occupied the said Maglemre and Bridge ranches, to and including the year 1931, he used all of the waters from said springs and gulch thereon, and in addition used surplus water flowing from said Papoose Creek and Shingle Creek thereon in ~~water~~ watering said pasture lands on said premises;

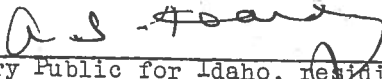
That after affiant and his wife secured the said ranches, as above stated and in the years 1932, 1933 and 1934 the said affiant appropriated and diverted from the said gulch ^{a natural water way} surplus water flowing from said Papoose and Shingle Creeks and applied the same upon said Maglemre and Bridge lands; and that in the year 1934 he constructed a new ditch higher up and through it diverted, appropriated, used and claimed the surplus water flowing from said Papoose and Shingle Creeks;

That during the ^{latter part of} years 1936 and 1937 there was insufficient water for the purposes of plaintiffs and defendant, but in ordinary years there is more water flowing from said Papoose and Shingle Creeks, when the ditches therefrom are in repair so that the water will be conducted through the same, than the said plaintiffs can use upon their said Basin Ranch. And defendant and his said wife claim the right to use the surplus and additional water flowing from said Papoose and Shingle Creek and the entire water flowing from said upper spring and in said unnamed gulch; and that none of the same has ever been used by the said plaintiffs, except since the

That the said Plaintiffs Armfields did not come to the said Basin Ranch until ^{free} 1934 and knew nothing about the use of the water prior to that time;

That the plaintiff Summers has never been about the place except on rare visits and has no personal knowledge of the use of the water on the place, unless it be at some time when he was there he may have seen the water running, but could have no knowledge of the way the water had been used or handled, and had no interest in the place prior to 1932 and no knowledge of the same; that statements made in the affidavit of Summers as to his knowledge of the place are necessarily merely his opinions and cannot be and are not statements of facts known to him personally.

(seal)


Notary Public for Idaho, residing
at Grangeville, Idaho

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

CLYDE E. SUMMERS, Elmer Armfield)
and Agnes A. Armfield,)
Plaintiffs,)

vs.)

GEORGE BOODRY,)
Defendant,)

A F F I D A V I T

STATE OF IDAHO)
County of Idaho) ss.

JOHN KIMBROUGH, being first duly sworn, says he has read the
affidavit made herein by him dated April 26, 1938;

That the said affidavit is incorrect and mistaken in its
recitals; that at the time it was signed by him affiant understood
certain portions of the affidavit were to be crossed out and evident-
ly through some misunderstanding with the notary that was not done;
that the last paragraph of the affidavit is not correct and was part
of the matter that was intended to be crossed out;

That affiant also states that after the Basin Ranch ditch
was built he never was at the head of the ditch during irrigating
season; that he has crossed the Maglemre ranch since that time, how-
ever, and remembers there was a green tract there which ~~he~~ was evi-
dently irrigated from the Maglemre spring or gulch;

That the only time affiant had any ownership of the ranch
was about six months during the winter season, that is, from the
fall of 1931 to the spring of 1932, and that during that time he had
no occasion to use any water; that he made no claim to any water
other than had been claimed by C. M. Clay; in fact, no claim was made
one way or the other, and especially as to the spring involved;

Affiant further states he does not personally know as to any waters from the spring in the unnamed gulch being used with the waters of Papoose and Shingle Creeks, or otherwise, on the Basin Ranch, and that that statement in the affidavit is part of the statement that is erroneous.

And affiant further states he does not know how the water was used from the spring after the Basin Ranch ditch was completed, except as to the green tract above mentioned, which he supposes must have been irrigated from the said spring or gulch.

This affidavit is made for the purpose of correcting any errors in the affidavit as filed, and to prevent a misunderstanding.

John Kimbrough

Subscribed and sworn to before me this May 16, 1938.

U. B. Bannan
Notary Public for Idaho, residing
at Grangeville, Idaho

(seal)

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IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF IDAHO1

CLYDE E. SUMMERS and ELMER
ARMFIELD and AGNES A. ARMFIELD,
his wife,

Plaintiffs,

vs.

GEORGE BOODRY,

Defendant,

FILED
AT 10 O'CLOCK 9 M.

OCT 13 1938

ANSWER AND CROSS COMPLAINT

HENRY TELCHER
Clerk of District Court

By W. K. Knox Deputy

Comes now the defendant herein and answers plaintiffs' complaint herein as follows:

1.

Answering paragraph I, denies that plaintiffs are either the legal or equitable owners of, or in the possession of the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, Township 24 N. R. 1, W. B. M., Idaho County, Idaho, (but alleges the fact to be that the said subdivision is owned by and lawfully in the possession of defendant); and denies that the plaintiff Summers is the equitable owner or that the plaintiffs Armfield have any interest in the N $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, Township 24 N. R. 1, W. B. M., except that the said plaintiff Summers may hold a contract for the purchase of the same from the State of Idaho and its State Board of Land Commissioners, subject to completion of payments which have not been made therefor.

2.

Answering paragraph III, this defendant denies that C. M. Clay was at any time the owner of any of said lands alleged in the complaint to be held under certificates of the State Board of Land Commissioners, numbers 17090, 17091, 17092 and 17095, or of any equity therein; and denies that the said C. M. Clay ever made any

application for or filing upon the waters of Shingle Creek or Papoose Creek, or either or then, for any use upon said last mentioned lands, or for the irrigation thereof, or that any certificate of completion of works for use of water upon said lands, or any certificate or license was ever issued by the Department of Reclamation of the State of Idaho for the use of waters upon said lands or any of the same; and as to the other allegations in paragraph III this defendant states he does not have sufficient information or belief to enable him to answer the same, and therefor denies the same, except as hereinafter alleged, and places his denial on that ground.

3.

Answering paragraph IV, this defendant denies that for the purpose of diverting any other waters, other than the waters of Shingle Creek and Papoose Creek, the said C. M. Clay constructed any system of ditches or canals or any other works mentioned in said paragraph IV, and denies that the same were constructed at any time prior to 1926.

4.

Answering paragraph V, this defendant denies each and every allegation therein contained.

5.

Answering paragraph VI, this defendant denies that the said so-called unnamed gulch has any natural flow of water in or along the same, except in the early spring when there are melting snows along the same, other than the flow from a spring therein flowing out from under a large reef or dike of rock therein referred to, and other than that which flows from a further spring below in the said gulch, and below any of the irrigating system referred to in

the plaintiffs' complaint; and denies that the flow of water from the said spring flowing from under said reef or dike of rock exceeds in the flood-water season 25 miner's inches; and denies that at other times it exceeds 15 miner's inches, or that after approximately September first there is any water flowing therefrom, and denies that the amount of water flowing in said spring is at all dependent upon the amount of irrigating water conveyed in said gulch from said other sources; and denies that the said water flowing from under said reef or dike of rock is not in fact a spring arising at said point, and alleges the fact to be that the said water coming from under said reef or dike of rock is in fact a true spring arising at said point.

6.

Answering paragraph VII, this defendant denies each and every allegation therein contained.

7.

Answering paragraph VIII, denies that the said ditch system and water conveyed thereby or beneficially used upon said lands of plaintiffs, or any of the same, has a value of not less than \$10,000.00, or a value exceeding \$3000.00.

8.

Answering paragraph IX, this defendant denies each and every allegation, matter and thing therein contained, generally and specifically.

9.

Answering paragraph X, this defendant denies each and every allegation, matter and thing therein contained, generally and specifically.

10.

Answering paragraph XI, this defendant denies each and every allegation, matter and thing therein contained, generally and specifically.

11.

Answering paragraph XII, this defendant denies each and every allegation, matter and thing therein contained, generally and specifically, except that defendant admits that he constructed a ditch on his own land out of the said unnamed gulch at a point above said spring arising under the said reef or dike of rock, and so dug around the same as to prevent the water turned into the said unnamed gulch from Shingle Creek and Papoose Creek from flowing further down the said gulch, and so as to convey the same into the said ditch claimed by plaintiffs leading to the said Basin Ranch.

12.

Answering paragraph XIII, this defendant denies each and every allegation, matter and thing therein contained, generally and specifically, except this defendant admits that plaintiffs have no other source of water for the said Basin Ranch, except such as is taken through said system of ditches and canals and diverted from said Shingle Creek and Papoose Creek.

FOR A FURTHER AND SEPARATE DEFENSE AND CROSS COMPLAINT
OF THE DEFENDANT, GEORGE BOODRY, AGAINST THE SAID PLAIN-
TIFFS, AND FOR A COMPLAINT IN INTERVENTION OF EUNICE M.
BOODRY, JOINING WITH THE SAID DEFENDANT, HEREIN, SAID DE-
FENDANT AND SAID INTERVENOR ALLEGE:

1.

That the said defendant, George Boodry, and said intervenor,
Eunice M. Boodry, are and at all times mentioned herein have been
husband and wife.

2.

That prior to the year 1900 one William H. Meglemre settled
upon and held under the homestead laws of the United States the $W\frac{1}{2}$
of $NW\frac{1}{4}$, the $NW\frac{1}{2}$ of $SW\frac{1}{4}$ of Section 36; the $SE\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 35,
Township 24 N. R. 1, W. B. M., Idaho County, Idaho, and that the said
Meglemre thereafter and on June 15, 1907, became the owner of said
lands by patent from the government of the United States issued to
him, and that while so in possession of said lands under claim of
right under the homestead laws of the United States, the said Meglemre,
prior to the year 1900, the exact date not being now known to defend-
ant and intervenor, he diverted, appropriated and used the water flow-
ing in a gulch crossing said lands, known as an unnamed gulch, and
applied the same to beneficial use for irrigating and domestic pur-
poses upon said lands through ditches arising in said gulch and on
the said lands, to the irrigation of approximately eight acres of
land thereon on what is known as the flat above his residence, and of
about one acre upon orchard below such residence, and of about four
acres below such orchard, amounting in all to thirteen acres, for the
purpose of raising hay, orchards, garden, pasture and other crops
thereon, and used such water also for domestic purposes and watering
stock.

3.

That on or about the year 1905 one John Bridge settled upon the $W\frac{1}{2}$ of $SW\frac{1}{4}$ of Section 25, the $SE\frac{1}{4}$ of $SE\frac{1}{4}$, the $E\frac{1}{2}$ of $NE\frac{1}{4}$, the $S\frac{1}{2}$ of $SW\frac{1}{4}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 26, Township 24 N. R. 1, W. B. M., under the homestead laws of the United States and thereupon made entry thereof under such laws, and on or about November 12, 1913, a patent from the government of the United States was issued to the said Bridge for the said lands, and that thereby he became the owner of said lands;

That while so in possession of said lands and claiming the same as a homestead under the laws of the United States and while he held under the said patent, the said Bridge diverted water from said unnamed gulch, and especially from two springs thereon arising on the said $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 26, through ditches constructed from said gulch and below the said springs, and conveyed the same upon said lands for the purpose of irrigating thereon an orchard, garden and tract used for raising hay and pasture of approximately three acres, and that the said Bridge also used the said water so diverted through said ditch for domestic purposes and for watering stock.

4.

That the said ditches so taken from the said respective tracts of land by the said Meglemre and said Bridge, at all of said times and at all times herein mentioned, were of sufficient capacity to and did divert all of the water flowing from said springs and said gulch during the irrigating season, and especially all the water flowing therein from and after, to-wit, June first of each year and at all times, except for a few days during the early flood water season when there is melting snows in said gulch.

5.

That thereafter by certain mesne conveyances the said respective tracts of land, known as the Meglemre place and said Bridge place were, ~~conveyed~~ with all water rights and ditches appurtenant thereto,

conveyed to the Salmon River State Bank, a corporation of Idaho, on April 3, 1924. That in the spring of 1924 the said Salmon River State Bank leased the said lands to C. M. Clay, who continued to occupy and hold the same as lessee of said bank until the fall of the year 1931; that by the said diversion of said waters and use of said waters upon said lands the said ditches diverting the said waters became appurtenant to the said respective tracts of land and have continued to be appurtenant thereto at all times.

6.

That in the year 1931 the said Meglemre place, through certain mesne conveyances from said patentee, the said Wm. H. Meglemre, was granted, sold and conveyed to the defendant herein, together with all water rights and ditches appurtenant thereto; and that in the same year the said Bridge place, through certain mesne conveyances from said John Bridge and said bank, was granted, sold and conveyed to the intervenor, Eunice M. Boodry, herein, together with all water rights and ditches appurtenant thereto, and that the said lands, together with said appurtenances and water rights, and all water rights appurtenant thereto, including the right to use the waters from Papoose Creek and Shingle Creek, as hereinafter alleged, have ever since been and now are owned by the said defendant and his wife, the said intervenor herein, and that the said and all water rights so appurtenant to the said lands, as aforesaid, continued to be appurtenant thereto and the water continued to be used thereon until the said conveyance thereof to the said defendant and intervenor, as herein alleged, and ever since have been and now are appurtenant to the said lands, and said waters ever since have been and now are diverted and used thereon for the irrigation thereof, all to the full amount of water flowing in the said unnamed gulch and from the said springs, as well as the additional waters from said Papoose Creek and Shingle Creek, hereinafter mentioned.

7.

That during all the times from and after the settlement upon said lands by the said Meglemre and said Bridge, respectively, and from the times they respectively diverted and used the waters thereon from the said unnamed gulch and said springs for irrigating and domestic purposes, as hereinbefore alleged, the said waters have been used by the said respective owners and occupants, including the said bank and said C. M. Clay and defendant and intervenor herein, for the purpose of irrigating the said lands, as hereinbefore alleged, on the said respective places and for domestic purposes; and in doing so the said respective occupants and owners, including the said bank and said C. M. Clay and said defendant and intervenor, have continuously diverted the said waters through the said ditches, or other ditches constructed in lieu thereof, to the full amount of all the water flowing in said unnamed gulch, except the excess water for a few days in the early flood water season when there were melting shows in the said gulch and prior to April 15th; and that the said ditches were and are of sufficient capacity to and did convey all of the waters flowing in said gulch and from said springs, from and after approximately April 15th in each year, for use upon said lands, and that the amount of water flowing from said springs and in the said gulch were during all of said times and are now required for use upon said lands in irrigation and for domestic purposes, as aforesaid, and except in the early flood water season there was and is insufficient water flowing in said gulch and from said unnamed spring to irrigate said lands so irrigated from the same;

That the amount of water flowing from said springs and in the said unnamed gulch during the early irrigating season does not exceed 20 miner's inches in the ordinary year, and that as the season advances and on or after July 1st the said water diminishes in volume until it does not exceed 15 miner's inches in the ordinary year, and

that during all of the said times the said respective occupants, owners and tenants of said land, including the said C. M. Clay and defendant and intervenor, have actually diverted and used all of the waters flowing from said unnamed gulch and from the said springs for the said purposes, and that during all of the said times all the said waters so following from said springs and in said unnamed gulch, were required therefor and ~~and~~ were insufficient for such purposes.

8.

That the said lands are arid in character and without the use of water will not produce remunerative crops, either hay, pasture, orchard or garden, and that with the use of said water said lands produce abundant crops of said and other kinds, and that the said uses so made of said waters on the said lands were at all of said times and are now beneficial uses and necessary therefor.

9.

That on or about the year 1926, the said C. M. Clay, while in the possession of said Meglenre place and Bridge place, as tenant of said Salmon River State Bank (but having no other rights thereon) and while he owned and occupied lands in plaintiffs' complaint set out, embraced in what is known as the Basin Ranch, and described as E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36; the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, and S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35, in Township 24 N.R.1, W.B.M., Idaho County, Idaho, applied to the Department of Reclamation of the State of Idaho and to the State Engineer for a permit to appropriate the waters of Shingle Creek and Papoose Creek to the extent of four second feet, which said permit was granted and issued to him, and that thereafter he constructed ditches leading from Shingle Creek and diverting the water therefrom into Papoose Creek and a further ditch taking the commingled waters of said Shingle Creek and Papoose Creek therefrom and conveying the same to said unnamed gulch, and therefrom to the said lands, hereinbefore described as owned by the said Clay, ~~for~~ which said ditches were constructed in the year 1926.

That thereafter, and commencing with the year 1927 the said Clay used such water upon the said lands so owned by him and embraced in what is known as the Basin Ranch, and continued so to do and including the year 1931 to the extent of 132 miner's inches, being 2.64 cubic feet per second, and no more, and that the ditches conveying water upon said last mentioned lands, being the Basin Ranch, were, during all of said times, insufficient to convey more than 132 miner's inches, or 2.64 second feet;

That no license was ever issued by the Department of Reclamation or State Engineer of the State of Idaho to the said C. M. Clay or anyone for any use of the waters from Shingle Creek and Papoose Creek through the said ditches or upon the said Basin Ranch for exceeding 132 miner's inches, or 2.64 second feet, and that no rights were ever acquired for the use of any additional waters thereon.

10.

That in conveying the said commingled waters of Shingle Creek and Papoose Creek, as aforesaid, to the said Basin Ranch, the same were taken from the said Papoose Creek and dumped into a natural water way, hereinbefore referred to as unnamed gulch, which said gulch traverses the lands hereinbefore described as owned by defendant and intervenor; that during all of the said times from and after the spring of 1927 to the fall of 1931 the waters so diverted from Papoose Creek and flowed in the said unnamed gulch, which was a natural water way, as aforesaid, were there~~x~~ diverted by said Clay for use upon said Meglemre place and Bridge place, or places now owned by the defendant and intervenor, to the extent of more than fifty miner's inches, which said water so diverted for use upon said Meglemre and Bridge places was diverted through ditches constructed thereon and from the said unnamed gulch, and in addition to the waters from the said springs, hereinbefore alleged, previously used on said places, and were used for the purpose of irrigating pasture, alfalfa,

orchard, ~~(under said waterway)~~ grown thereon, and which waters were necessary for the irrigation of said lands for said purposes, and without which the said lands would not produce sufficient crops to be remunerative, and which uses were beneficial uses.

11.

That thereafter and commencing with the year 1932 the said defendant and intervenor, as owners and occupants of said Maglemre and Bridge places, continued to use the said commingled waters from Shingle Creek and Papoose Creek through ditches conveying the same from said unnamed gulch, the said natural waterway, upon said Meglemre and Bridge places then possessed and owned by defendant and intervenor, to the extent of more than fifty miner's inches in each of the seasons 1932, 1933 and 1934, as well as the said waters from said springs arising in said unnamed gulch to the extent and amount heretofore alleged, being all of the waters arising in said springs or flowing in said gulch, and that such diversion of said waters of Shingle Creek and Papoose Creek ~~were~~ made by the said C. M. Clay was made for the purpose of irrigating the said lands known as the Meglemre place and Bridge place, as aforesaid, in addition to said lands known as the Basin Ranch, and that the said waters of said Shingle Creek and Papoose Creek, so caused to flow in said unnamed gulch, were, as aforesaid, diverted and used therefrom at all times for said uses upon the said Meglemre place and Bridge place and were necessary therefor, all to the extent hereinbefore alleged, and that thereby the said waters, to the extent aforesaid, became appurtenant to the said Meglemre place and Bridge place, and that such use was thereafter continued by the said defendant and intervenor herein, and that during all of the said times the use was continued by said respective appropriators and users under claim of right. That thereby and from the time the said waters were first so applied to the said Maglemre and Bridge places the said amount of water from Shingle and Papoose Creek flowing in and diverted from said gulch

for use on the said Meglemre and Bridge places became appurtenant thereto and are now appurtenant thereto, and that such use is superior, prior and paramount to any rights which the said plaintiffs have to use the said waters of Papoose and Shingle Creeks, and that the said defendant and intervenor are joint owners with the plaintiffs of said ditch so conveying the waters from Papoose and Shingle Creeks to the said unnamed gulch for the purpose of flowing the said waters, to which they are so entitled, from Papoose and Shingle Creeks.

12.

That the ditch conveying the said waters from said unnamed gulch to the said Basin Ranch was never during any of said times, of sufficient capacity to convey more than 132 miner's inches and not of sufficient capacity to convey the excess waters so turned into the said unnamed gulch from the said Shingle and Papoose Creeks, and that the same never have been used upon said Basin Ranch, except to the extent of ~~13~~ 132 miner's inches, until after the commencement of this action, if at all.

13.

That during none of the times aforesaid until the year 1935 was there any denial of the rights of defendant and intervenor to use the said waters, either from the said two springs or the said commingled waters from said Shingle Creek and Papoose Creek, so used as aforesaid, and that during all of said times the said defendant and intervenor and their predecessors in interest claimed the right to use the said waters on said respective tracts of land as appurtenant thereto and adversely to all other persons, and continued so to do without adverse claims of any other person. That during certain recent years, and especially the year 1937, that vicinity became unusually dry on account of the lack of rainfall and said creeks and springs dried up to an extent never before known, and that in the year 1935

the said plaintiffs wrongfully and unlawfully and while trespassing upon the lands of defendant and intervenor and against the consent of defendant and intervenor and for the purpose of injuring them, caused the said spring arising under said reef or dike of rock to be dynamited and thereby destroyed the flow therefrom to a large extent, and that thereafter during the years 1935, 1936 and 1937 the said plaintiffs attempted to deprive the said defendant and intervenor of their right to use the said waters, both from the said upper spring and from the said unnamed gulch flowing therein from Papoose Creek, but that even during said years there was excess of water a great portion of the season, over and above that required for irrigating the said Basin Ranch, and over and above the amount that could be or ever was caused to flow through the said ditch leading thereto, and over and above the said 132 miner's inches of water, and that never at any time have all the waters so flowing in said unnamed gulch from Papoose Creek and Shingle Creek been used upon the said Basin Ranch; and that during all of said years defendant and intervenor, except at times when interfered with by the plaintiffs, continued to use the said waters upon the said lands known as the Meglémre and Bridge places;

That the waters flowing in said Papoose Creek and Shingle Creek during the greater part of the year and until, to-wit, August 15th of each year in ordinary years, including the year 1938, exceed 500 miner's inches, and are greatly in excess of the amount that ever had been or could be caused to flow through said ditch leading to said Basin Ranch, but that the said plaintiffs have attempted to waste the said water and to prevent defendant and intervenor from using the same since the said controversy arose in 1935.

14.

That said ditch leading to said Basin Ranch, so-called, is taken out and said waters from Shingle and Papoose Creeks are diverted from said gulch immediately above said upper spring in said gulch, and that a dam was built across said gulch just below said upper spring in such a way that the water from said upper spring could be raised to a height sufficient to flow in such ditch leading to Basin Ranch, but that at all of the times hereinbefore mentioned (until in 1935 when the same was wrongfully destroyed by plaintiffs) there has been a gate therein by which the waters flowing from said upper spring, as well as the additional waters so diverted from said unnamed gulch, were permitted to go by and flow down the said gulch to the various points of diversion upon the lands of defendant and intervenor, hereinbefore described, and that the point of diversion on the said Bridge place for said commingled waters is at a point on the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 26, which is below said lower spring, and that the points of diversion on the said Meglemre place are in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, and in the SW $\frac{1}{4}$ of ~~NE~~ NW $\frac{1}{4}$ of said Section 36, and in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 36 in said township, at which places where said ditches are now constructed from the said gulch and are distinctly and clearly shown upon the ground.

15.

That the point of diversion for the said ditch leading to said Basin Ranch from said unnamed gulch, which point is as hereinbefore alleged, is located upon the lands known as the Bridge place belonging to defendant and intervenor, as aforesaid, and that the same was constructed thereon by said C. M. Clay (who had no authority to make any grant of any right therefor), and that the said defendant and intervenor have revoked any license or pretended right which said plaintiffs have to maintain said ditch across said lands.

16.

That commencing on or about the year 1935 the said plaintiffs caused a great quantity of water to be turned into said unnamed gulch from Papoose Creek and Shingle Creek, as aforesaid, and to flow down the said gulch beyond the upper of said springs and to run to waste, especially in the flood water seasons, and such amounts of water to be turned into said unnamed gulch as the ditches leading therefrom would not and could not carry, and have caused the said water to wash out a precipitious gully in the bottom of said unnamed gulch to the depth of 15 or 20 feet, so that stock cannot pass from one side to the other, and to such an extent that stock have been caught therein and died attempting to get out, and that the same has damaged said Meglemre place, ^{and Bridge place} and the defendant and intervenor to the extent of \$1000.00 .

17.

That in the years 1935, 1936 and 1937, the said plaintiffs, by force and violence and unlawfully, deprived defendant and intervenor of the water flowing in said unnamed gulch, and including the water from said upper spring, and prevented defendant and intervenor from securing the same for irrigation on the said lands of defendant and intervenor and caused the crops of hay and other crops thereon to dry up and die, to their damage in the sum of \$1500.00; and that in the year 1938 the said plaintiffs have caused the ditch carrying water from said Papoose Creek and Shingle Creek to become and remain broken since the middle of August 1938, and thereby have prevented any water from flowing therein and have prevented defendant and intervenor from securing any water therefrom, to their additional damage in the sum of \$500.00.

WHEREFORE, defendant and intervenor pray that the plaintiffs take nothing herein, and that their complaint be dismissed;

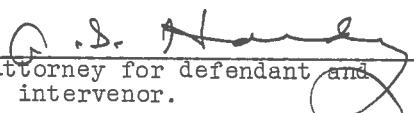
That it be adjudged and decreed that the defendant and intervenor are the owners of the right and entitled to appropriate and divert all the waters flowing in the said unnamed gulch, and especially the waters flowing from the said upper spring and lower spring and the whole thereof, and that they are also entitled to divert from the waters of Shingle Creek and Papoose Creek, turned into the said unnamed gulch, at least fifty miner's inches thereof during the entire irrigating season, all through the ditches now located upon said lands and heretofore used for diverting the same, and that the said defendant and intervenor are also jointly with plaintiffs the owners and entitled to the use of said ditches from Shingle Creek and Papoose Creek for the purpose of flowing the said fifty miner's inches of water therefrom;

That defendant have judgment against said plaintiffs for the sum of \$1000.00 damages on account of washing out the gully through his said lands;

And defendant and intervenor have judgment for \$1500.00 damages for the destruction of and injury to their crops prior to the year 1938, and for \$500.00 damages for injury and destruction thereof in the year 1938;

And for such other and further relief as to the court shall seem equitable;

And defendant and intervenor pray judgment for their costs herein as against plaintiffs.



Attorney for defendant and
intervenor.

STATE OF IDAHO)
 : ss.
County of Idaho)

GEORGE BOODRY, being first duly sworn, says he is the defendant named in the above entitled action; that he has read the foregoing answer and cross complaint and knows the contents thereof and believes the facts therein stated to be true.

George Boodry

Subscribed and sworn to before me this October 8, 1938.

John H. Clay
Notary Public for Idaho,
Residing at Riggins,
Idaho

(seal)

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

CLYDE E. SUMMERS AND ELMER
ARMFIELD and AGNES A. ARMFIELD,
his wife,

Plaintiffs,

vs.

GEORGE BOODRY,

Defendant,

)

)

)

)

)

No. 4580

ORDER ALLOWING INTER-

VENTION

In the above entitled cause it appearing that Eunice M.
Boodry, wife of said defendant, is interested in the said action
and should be a party thereto, and she having applied to inter-
vene in said action and proper showing having been made,

It is hereby ordered that the said Eunice M. Boodry be
allowed to intervene in said action and to join with the said
defendant, George Boodry in defending said action, and that her
cross-complaint with him be filed and allowed.

Dated October 13, 1938.


J u d g e

FILED

AT O'CLOCK M.

OCT 14 1938

HENRY TELCHER
Clerk of District Court

By Deputy

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

_____:_____

CLYDE E. SUMMERS and ELMER)
ARMFIELD and AGNES ARMFIELD,)
his wife,)
Plaintiffs,)
-vs-)
GEORGE BOODRY)
Defendant,)
and)
EUNICE M. BOODRY,)
Intervenor,)

No. 4580

A N S W E R

FILED
AT 1 O'CLOCK 9 M.

NOV 4 - 1938

HENRY TELCHER
Clerk of District Court
By W. H. Knox Deputy

_____:_____

Comes now the plaintiffs herein and in answer to the defendant and Intervenor's cross complaint and complaint in Intervention admit, deny and allege as follows:

I

Answering Paragraph 1 of said cross complaint and complaint in intervention these plaintiffs admit the allegations therein contained.

II

Answering Paragraph 2 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 2.

III

Answering Paragraph 3 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 3.

IV

Answering Paragraph 4 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 4.

V

Answering Paragraph 5 of said Cross Complaint and Complaint in Intervention these plaintiffs admit the allegations therein contained, appearing prior to the semicolon in line eight of said paragraph and deny each and every ^{other} allegation in said paragraph.

VI

Answering Paragraph 6 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 6.

VII

Answering Paragraph 7 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 7, save and except that these plaintiffs admit that the amount of water flowing from said springs referred to in said paragraph 7, in the said unnamed gulch during the earlier irrigation season does not exceed twenty miner's inches in the ordinary year, and that as the season advances and on or after July 1st the said water diminishes in volume until it does not exceed fifteen miner's inches in ordinary years.

VIII

Answering Paragraph 8 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 8.

IX

Answering Paragraph 9 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 9.

X

Answering Paragraph 10 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 10.

XI

Answering Paragraph 11 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 11.

XII

Answering Paragraph 12 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 12.

XIII

Answering Paragraph 13 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 13.

XIV

Answering Paragraph 14 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 14.

XV

Answering Paragraph 15 of said Cross Complaint and Complaint in Intervention these plaintiffs deny that said ditch was constructed on the lands therein mentioned by C. M. Clay without authority or right so to do, and deny that the defendant and intervenor have revoked any license or pretended right which said plaintiffs have to maintain said ditch across said lands and allege the facts to be that said ditch leading to said Basin Ranch was used for the purpose of conveying water to said Basin Ranch and was constructed

for that purpose and its use has been uninterrupted and continuous for more than five years, and has been openly, exclusively and notoriously so used by the owners of said Basin Ranch, their tenants and employees and these plaintiffs and predecessors in interest have spent considerable money in fixing up their irrigation system and have used said ditch located as alleged in plaintiff's complaint herein, for more than five years, with full knowledge of all those facts by the defendant and intervenor and without protest from them, and that said defendant and intervenor are by their actions estopped from now claiming a merely permissive right or license. Their right to the use of said ditch having prior to 1938 ripened into an irrevocable right to maintain the ditch as located.

XVI

Answering Paragraph 16 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 16, and further deny that the defendant and intervenor were by actions alleged in said paragraph, or by any other action of these plaintiffs were damaged to the extent of one thousand dollars or to the extent of any number of dollars at all.

XVII

Answering Paragraph 17 of said Cross Complaint and Complaint in Intervention these plaintiffs deny each and every allegation contained in said Paragraph 17.

WHEREFORE, plaintiffs pray that the defendant and the intervenor take nothing herein and that their Cross Complaint and

Complaint in Intervention be dismissed and for such other and further relief as to the court shall seem equitable.

Carl Swanson
J.M. Lampert
J.M. Lampert, Attorney for Plaintiffs

STATE OF IDAHO }
COUNTY OF ADA } ss

CLYDE E. SUMMERS being first duly sworn says that he is one of the plaintiffs in the above entitled action, that he has read the foregoing answer to defendants Cross Complaint and Complaint of Intervention, knows the contents of said Answer and believes the facts stated therein to be true.

Clyde E. Summers

Subscribed and sworn to before me this 2nd day of November, 1938.

J.M. Lampert
J. M. Lampert, Notary Public
in and for the State of Idaho
Residence, Boise, Idaho

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

CLYDE E. SUMMERS, ELMER ARMFIELD
and AGNES A. ARMFIELD,

Plaintiffs,

-vs-

GEORGE BOODRY,

Defendants.

No. 4580

STIPULATION

FILED

AT O'CLOCK M

FEB 9 - 1942

HENRY TELCHER

Clerk of District Court

By W. H. H. H. H. Deputy

It is hereby STIPULATED by and between the parties hereto through
their respective counsel, Carl H. Swanstrom and Paul G. Eimers, as follows:

That the plaintiffs, Clyde E. Summers, Elmer Armfield and Agnes Arm-
field, have sold and disposed of their interest and ownership in the real estate,
water and water rights involved in the above entitled action, and are no longer
parties in interest as to said action and the issues of said action are moot
as to said parties and no controversy now exists as to the parties hereto.

Now, therefore, it is hereby STIPULATED by and between the parties
through their said attorneys that the above entitled action may be dismissed
and all orders and agreements made during the course of said action shall be of
no effect from this date; that an order of the Court may be entered dismissing
said action, without award of costs to either party, and without prejudice to
the rights of either of the parties to this action, it being intended that
their respective rights shall exist as of the time prior to the commencement of
this action and with the same force and effect as though this action had not
been instituted, and it is further STIPULATED that plaintiffs and their
surety, the General Casualty Company of America, be exonerated of any and all
liability to defendant arising from the temporary restraining order issued in
this action on May 3rd. 1938.

Dated February 2nd. 1942.

Carl H. Swanstrom
Attorney for Plaintiffs

Paul G. Eimers
Attorney for Defendant

1
2
3 IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE
4 STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

5 CLYDE E. SUMMERS, ELMER ARMFIELD)
6 and AGNES A. ARMFIELD,)

7 Plaintiffs,)

No. 4580

8 -vs-)

ORDER

9 GEORGE BOODRY,)

of

DISMISSAL

Defendant.

-----0-----

11 This cause is now before the Court upon the stipulation of counsel
12 for the respective parties to this action for the dismissal of this action
13 by the Court, without award of costs and without prejudice to the rights of
14 the respective parties hereto, and upon reading and filing said stipulation,
15 and it satisfactorily appearing therefrom that the plaintiffs are no longer
16 parties in interest in this action and the issues thereof have become moot as
17 to them,

18 It is, therefore, hereby ORDERED that the above entitled action be, and
19 the same is, hereby, dismissed without award of costs to either of the parties
20 and without prejudice to the rights of either of the parties thereto and that
21 all orders, agreements or stipulations made or entered during the course of
22 this action shall be of no effect from this date.

23 It is further ORDERED that plaintiffs and their surety, the General
24 Casualty Company of America, be, and they are, hereby, exonerated of any and
25 all liability arising or to arise in connection with their bond filed herein
26 on May 3rd, 1938, upon the issuance of a temporary restraining order enjoining
27 defendant from the commission of certain acts therein enumerated.

28 Dated in open Court this 10th day of Feb, 1942.

29 FILED

30 AT 10 O'CLOCK AM

31 FEB 10 1942

32 *W. L. Johnson*
District Judge

HENRY TELCHER

Clerk of District Court

By *W. L. Johnson* Deputy

Vol. 8 p 403 of Judge

No. 4580

IN THE DISTRICT COURT

OF THE Tenth JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF Idaho

Clyde E. Summers et al

Plaintiff

vs.

George Boodry

Defendant

Judgment Roll Certificate.

Filed Feb. 10, 1942,
Henry Telcher, Clerk,
By W. K. Knox Deputy.

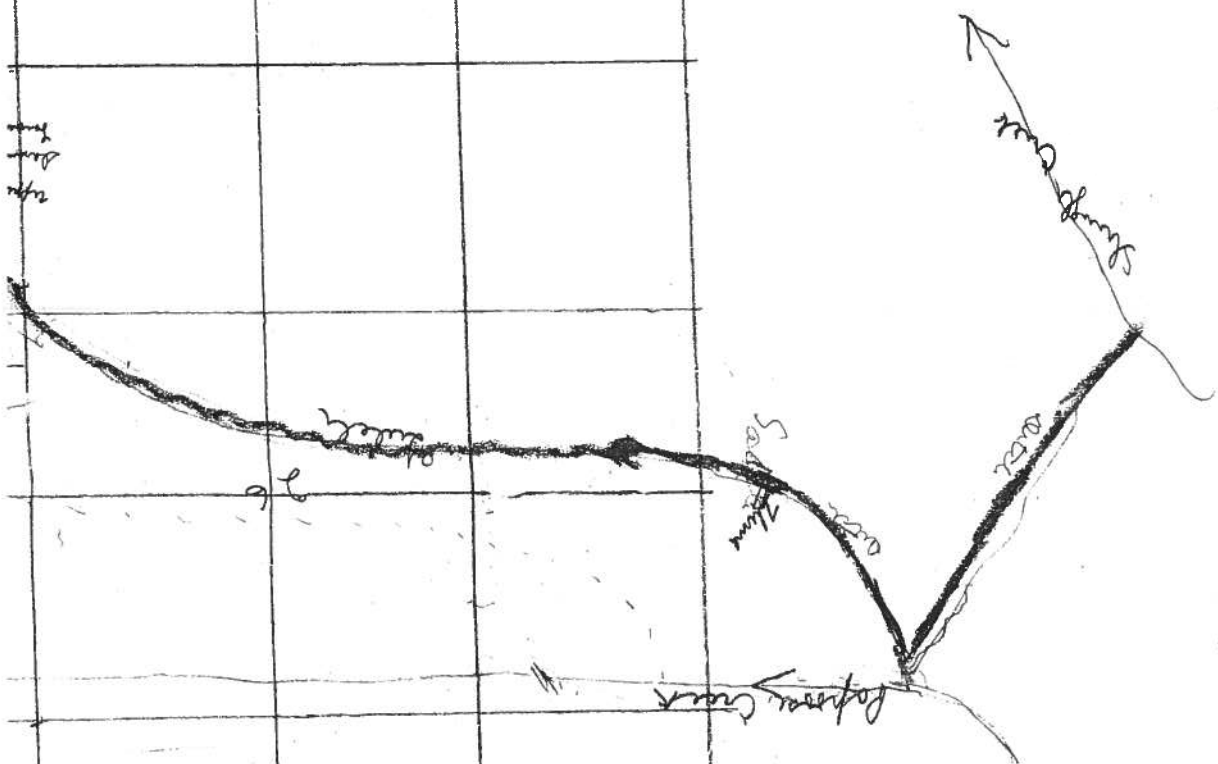
I, the undersigned, Clerk of the District Court of the Tenth Judicial
District of the said State, in and for said County, do hereby certify the foregoing to be a true copy of the
Judgment entered in the above-entitled action, and recorded in Judgment Book -8- of said
Court, Page 403. And I further certify that the foregoing papers, hereto annexed, constitute
the Judgment Roll in said action.

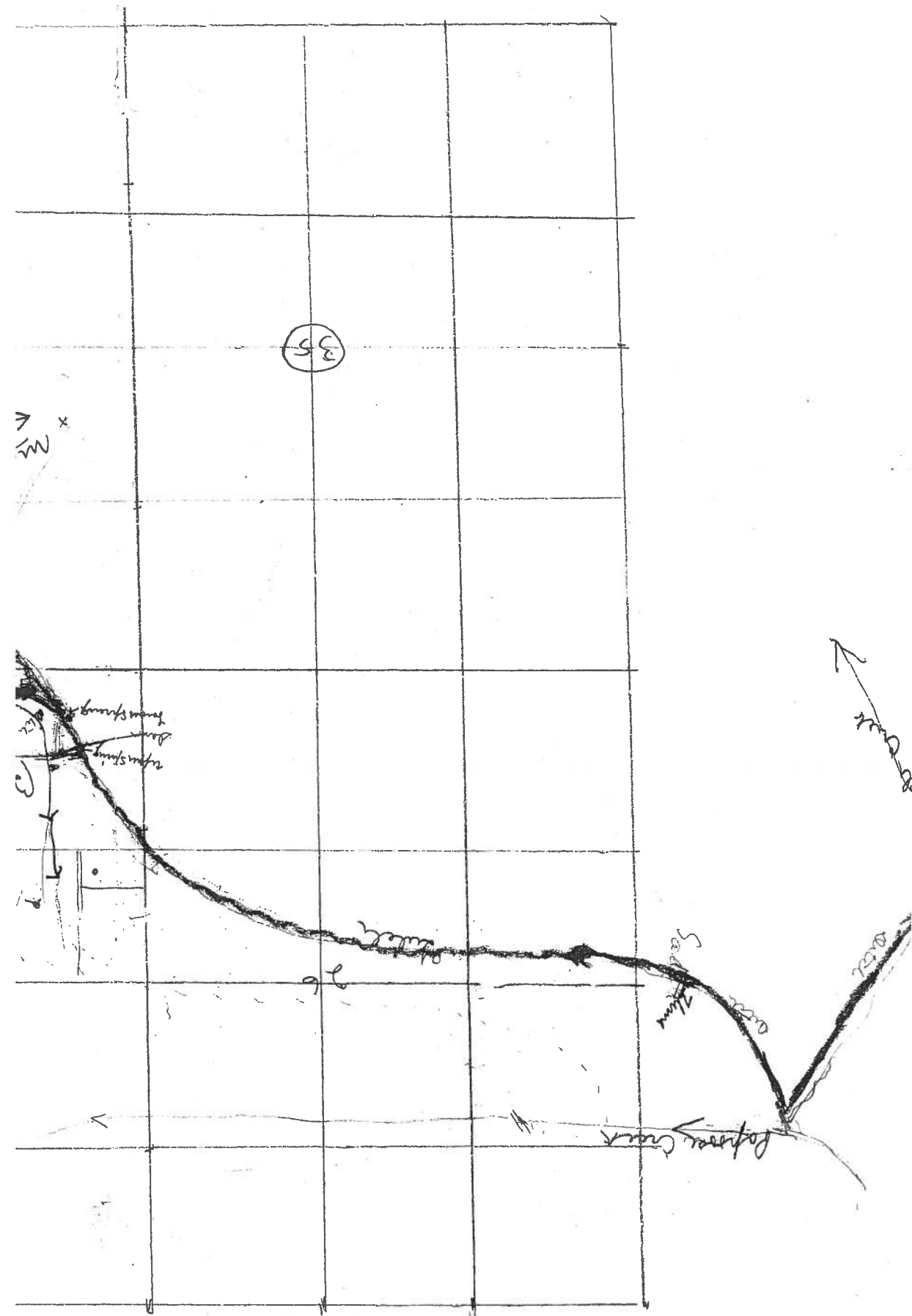
Witness my hand, and the Seal of said Court, this 10th
day of February, A. D. 19 42

Henry Telcher
Clerk.
By W. K. Knox
Deputy.

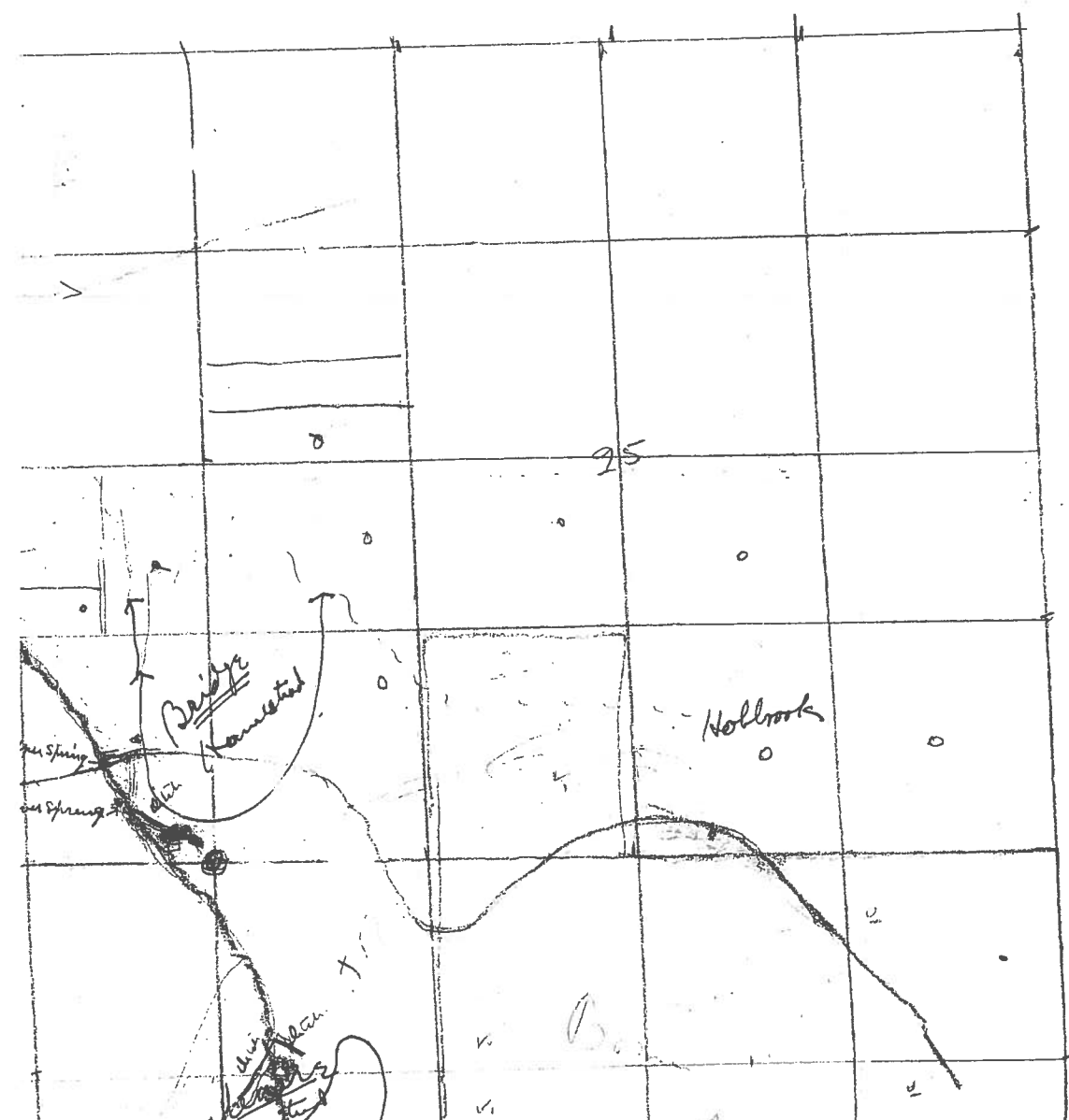
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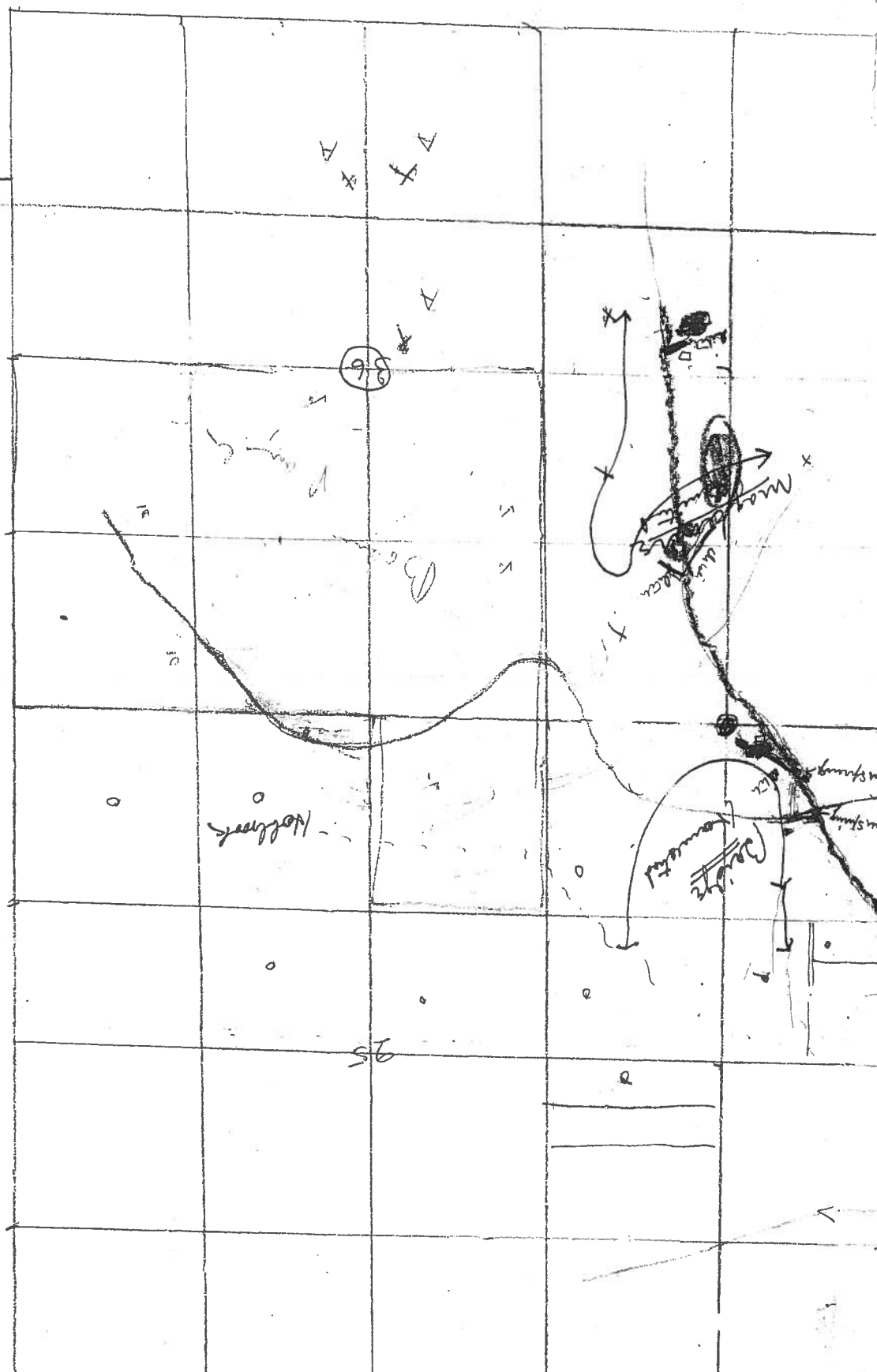
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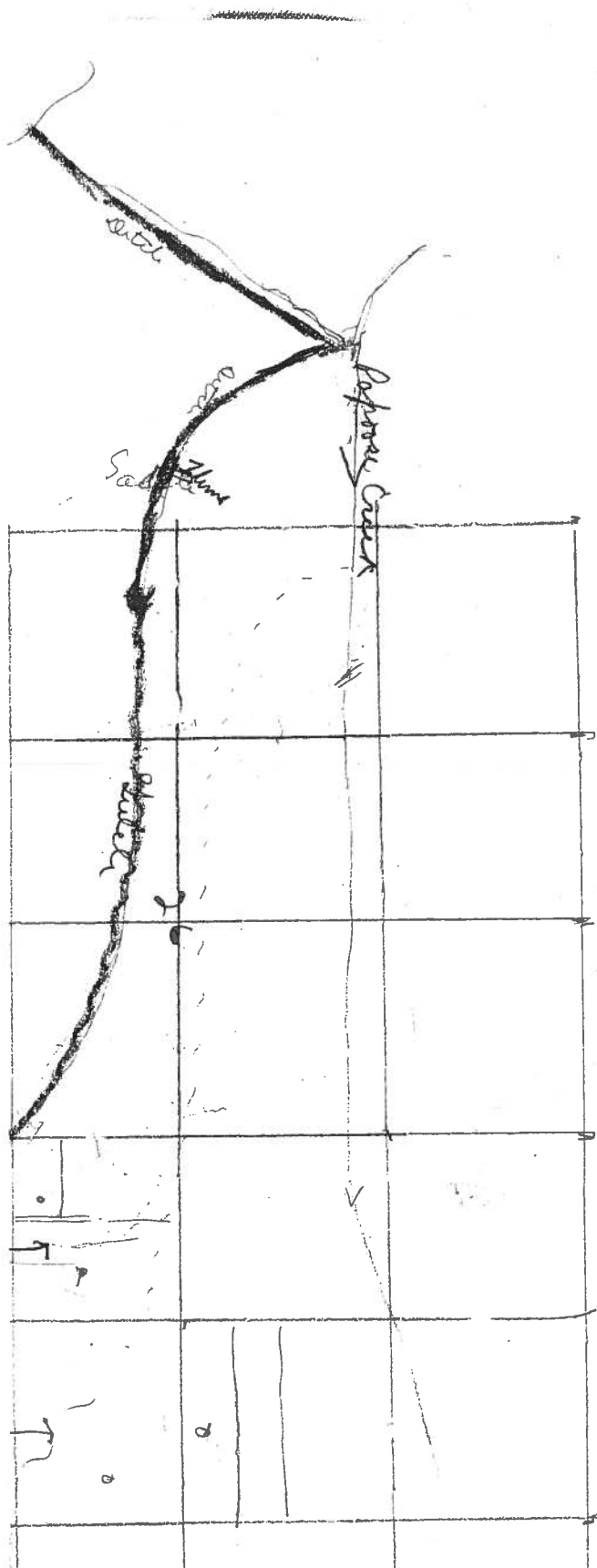


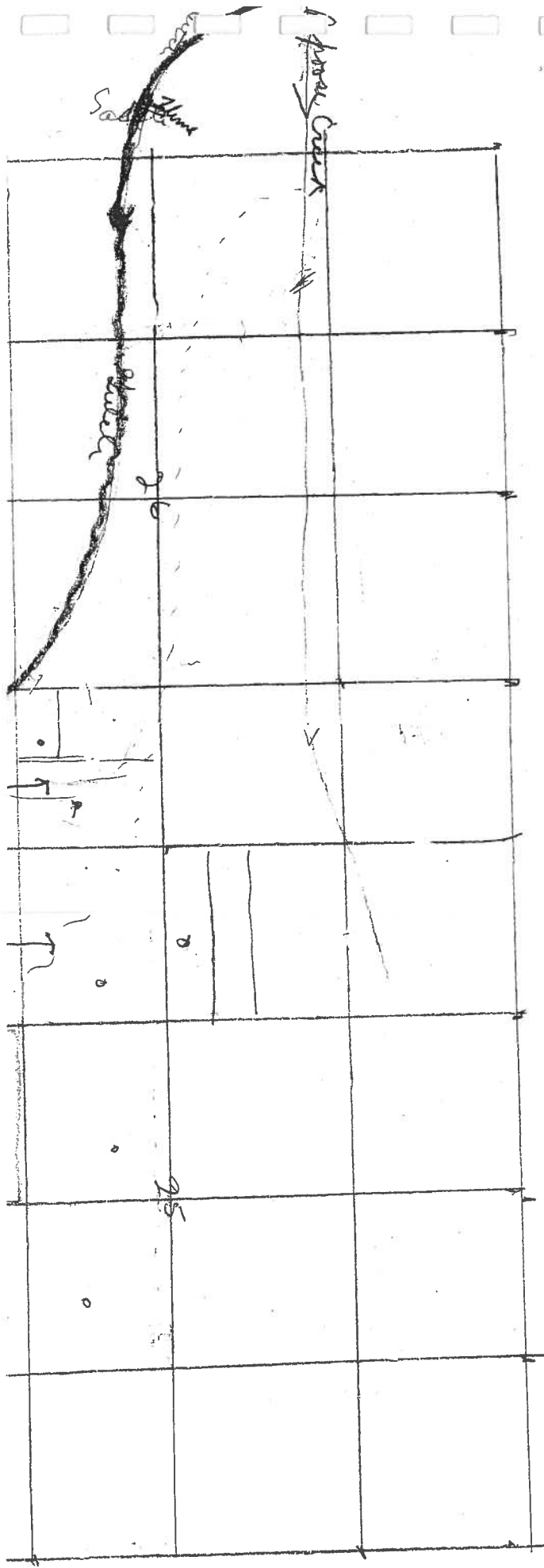


North
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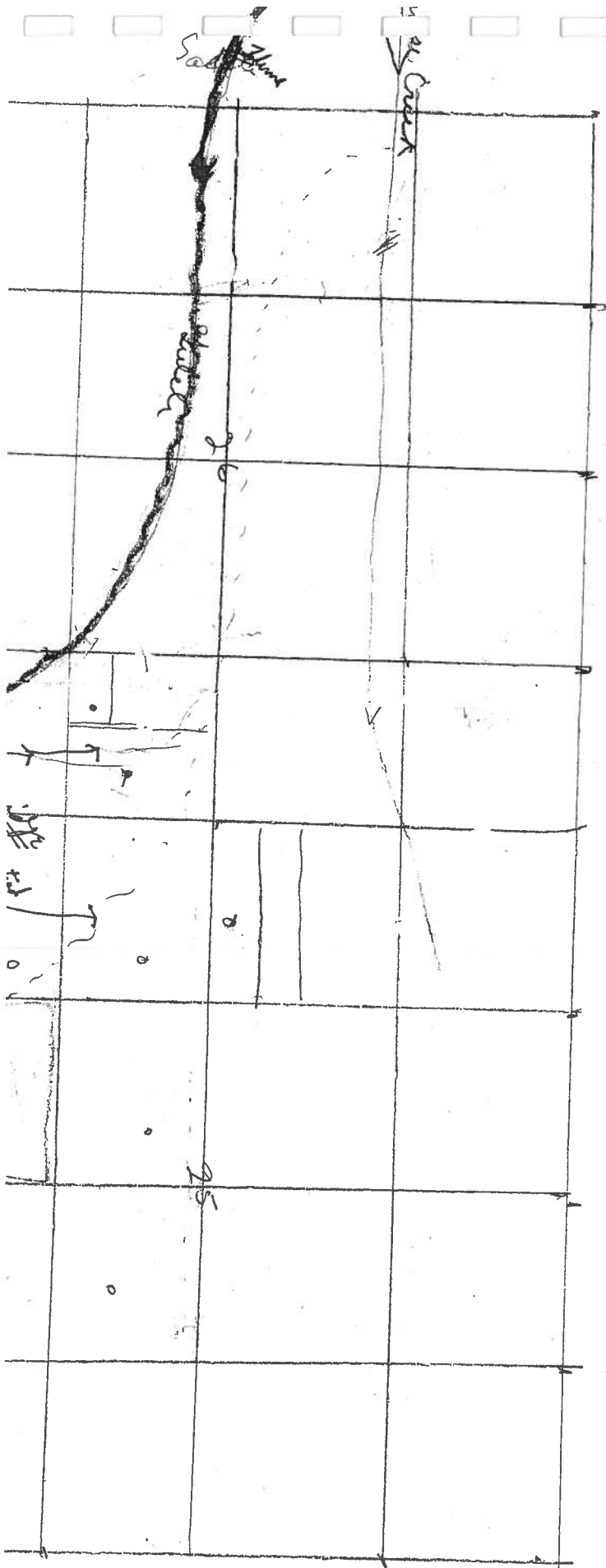








North
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North
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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

CIVIL CASE NUMBER: 39356
Ident. Number A 78 - 04087
Date Received 7-29-88
Receipt Number COO 2071 *ca*

**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) R & S Realty, Corp Phone (208) 628-3446
Mailing Address P. O. Box 247, Riggins, Idaho Zip 83549
2. Date of Priority (Only one (1) per claim) April 1, 1936
3. Source of water supply (a) Papoose Creek
which is tributary to (b) Squaw Creek
4. a. Location of existing point of diversion is: Township 24N Range 1W Section 27 ,
1/4 of NW 1/4 of SW 1/4, Govt. Lot, B.M., County of Idaho
Additional points of diversion if any: N/A
- b. If instream flow, beginning point of claimed instream flow is: N/A
Township _____ Range _____ Section _____ , _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____ , _____ 1/4 of _____ 1/4 of _____
_____ 1/4, Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates , Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Culvert pipe, ditch and headgate from
Papoose Creek. Irrigation is conducted through using flood irrigation techniques.

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OCT 06 1992

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 3/1 to 12/1 amount 4.2 or 840

For Stockwater purposes from 1/1 to 12/31 amount .08 or 58

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.28 (cfs) and/or (b) 898 (acre feet)

8. Total consumptive use claimed is 688 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 300 plus head of cattle

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
24N	1W	25									20	20	35		5	35	5		120
24N	1W	26													20			25	45
24N	1W	36						10	25			10							45

Total number of acres irrigated 210

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

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

If your answer is No, describe in Remarks below the authority you have to claim this water right.

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

or None (X)

14. Remarks:

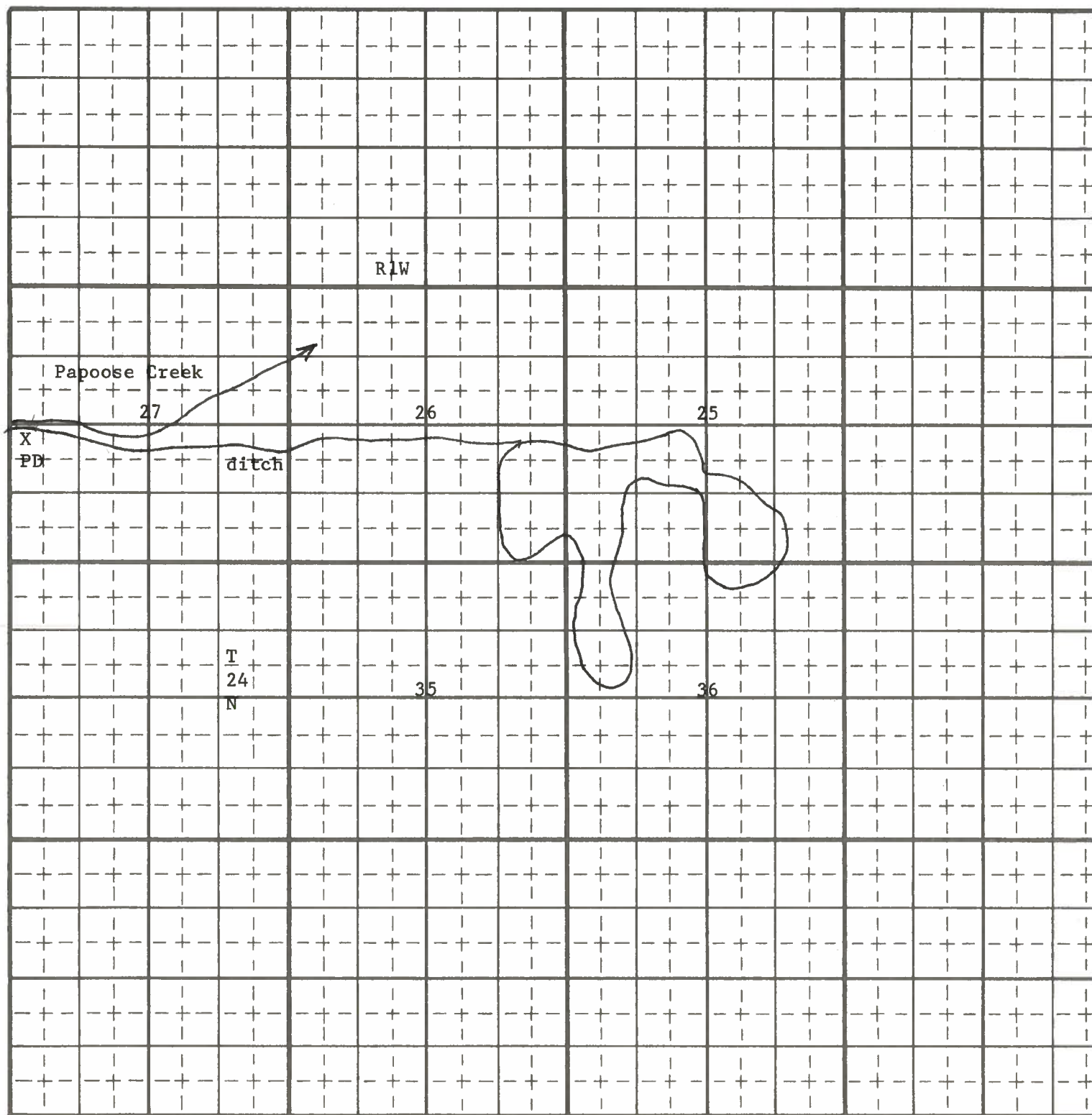
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OCT 16 1992

Last Name R & S Realty Ident No. _____

Copies: White -State, Yellow-Claimant

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

Scale: 2 inches equals 1 mile



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OCT 06 1992

Last Name R & S Realty Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use XX Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 78-4087
Court _____ Case Number _____ Decree Date _____
Plaintiff vs 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 XX wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

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

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Mgr Title

of R & S Realty, Corp. Organization, that I have signed the foregoing

document in the space below as Mgr Title of R & S Realty, Corp. Organization

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

Signature of Authorized Agent Wangler Buzza

Title and Organization Mgr R & S Realty, Corp Date 7-26-88

State of Idaho/or _____)
County of Adair) SS.

Subscribed and sworn (or affirmed) before me this 26th day of July 19 88

SEAL

Notary Public Carter Fritschler

Residing at Eagle, Id

My Commission Expires 3-21-94

Please Print Name

17. Notice of Appearance:

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

Signature _____

Address _____

Date _____

MICROFILMED
OCT 06 1992

Last Name R & S Realty Ident. Number _____

Copies White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License X Permit _____
Decree _____
If applicable provide IDWR Water Right Number 78-4073
Court _____ Case Number _____ Decree Date _____
Plaintiff vs 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 X
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 2

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

Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Vice-
President Title _____
of Little Salmon River Estates Inc. , that I have signed the foregoing
Organization Vice-
document in the space below as President of Little Salmon River Estates
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent x Red Randolph
Title and Organization V.P. Little Salmon River Estates Date 6/8/88

State of Idaho/or Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 8th day of JUNE 19 88
Notary Public John B. Crockett
Residing at 1490 DUNDEE, BOISE, ID
My Commission Expires AUGUST 27, 1992
Please Print Name

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

Signature _____
Address _____
Date _____

MICROFILMED
OCT 06 1992

Last Name Little Salmon River Ident. Number _____
Estates

Copies White-State, Yellow-Claimant

~~78-4188~~

78-4087

Go up Rapid River Road to Hatchery

Old sign "Shingle Creek" Hard Right.

1 1/2 mile up Creek come to a gate $\Rightarrow$ on right is a concrete house

1/2 mile after $\Rightarrow$ Power House double door

Called: 6-9-05 11:20 Left Message.

Returned call @ 5:30

Not currently running water. Waiting for Hwy.
Pipe is changed.

Called: 6-13-05

Appointment 6-15-05 $\rightarrow$ ~~7:30 am~~ 4: pm

7-28-05 / 10:00 Mountain Time

POD on McClinnery ^{ck. spelling} Creek

Ditch goes around Hill $\approx$ 3/4 mile.

also 1" buried black Poly line.

$\rightarrow$ Runs into cistern $\approx$ 8' Deep.

Other Source Running into Cistern is a spring
just feet above cistern.

Ditch is thought (and very probably so) to feed spring
However - ditch is currently being redone.

Domestic $\rightarrow$ Water out of cistern to house & $\approx$ a
couple Stock tanks @ house.

Old workings $\rightarrow$ Used to come out of Papoose Creek to
~~Spring Creek~~ to McClinnery Creek probably into early 90's
(Maybe originally from Shingle Creek to Papoose)
Quit because of dispute $\bar{c}$ Neighbors about Papoose Cr.

Photo # 66 - Pond Facing W

67 - House SW

68 - Pond SW

Photo #69 - Stock Tanks N

About 250 Head cattle (winter range)

GPS $\rightarrow 45^{\circ} 22' 46.1''$

$116^{\circ} 24' 17.1''$

EI 3720 $\pm$ 50

1" Pipe From McCluney Creek feeds cistern
also fed by spring (sinks)

$\frac{1}{2}$ " line to House & Barn & Tanks

$\rightarrow$ Sink in barn

Photo #70 - Cistern S

20-30 ft. below

GPS $\rightarrow 45^{\circ} 23' 4.3''$

$116^{\circ} 24' 23.7''$

#71 - POD - $1\frac{1}{2}$ " Pipe

Actual POD for Pipe abt 200 ft up stream

This is site of POD when new ditch completed.

Grade is put in to abt 50' from this pt.

POD GPS $\rightarrow 45^{\circ} 23' 05.2''$

$116^{\circ} 24' 59.4''$

4137 $\pm$ 120 ft

Original Ditch (at current elevation) built
in 40's (hear say builder told claimant)

Ditch was is so disrepair that just decided
to replace. $\therefore$ POD for both ditches at
same place is not exact.

#72 (Photo) - Grade Stake for ditch

#73 Old ditch & pod for new NW

GPS from where pic taken. $\rightarrow 45^{\circ} 22' 52.4''$

$\pm 20 ft$

#75 - Old Ditch E

$116^{\circ} 24' 36.6''$

EI 4150

#76 - Old Ditch NNE

#77 - Old upper ditch & New lower. SE

78 - " " " " SW

There seems to be some discrepancy here. I believe the old upper ditch was used when water came from Repose to McCluney. Later, lower ditch was put in & went to disrepair & is now being replaced.

78-4087



Photo 5: Looking south over cistern.

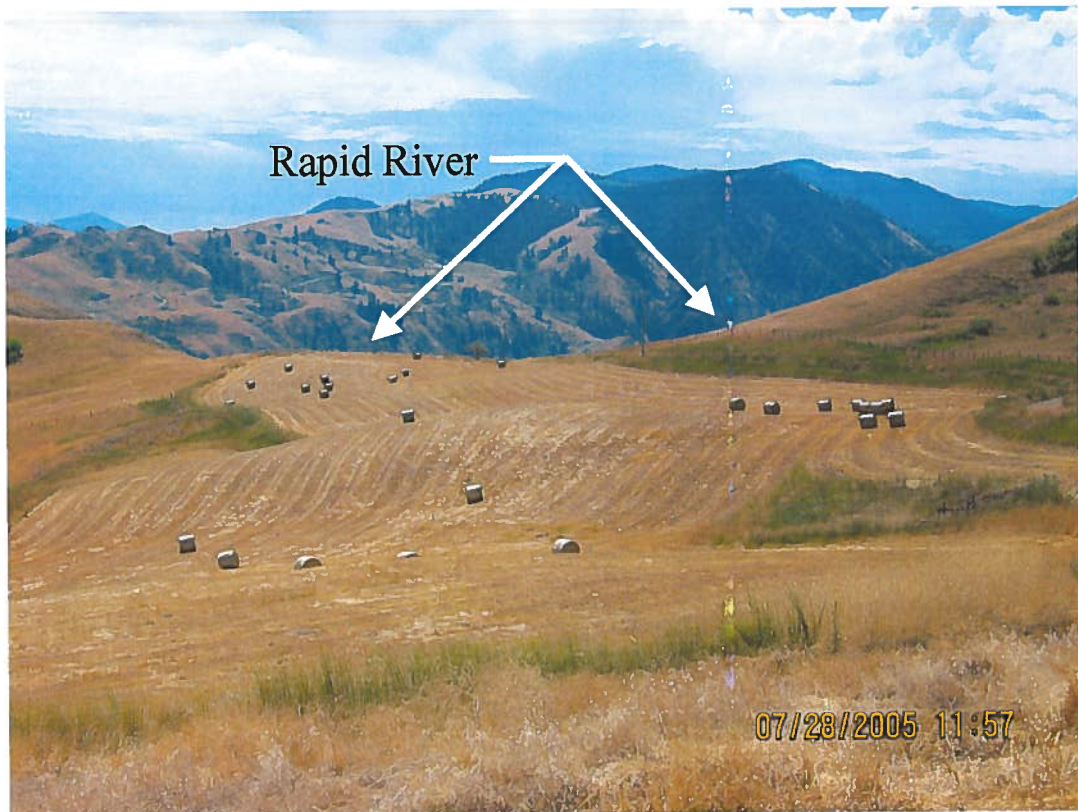


Photo 6: POU. Looking south.

78-4087

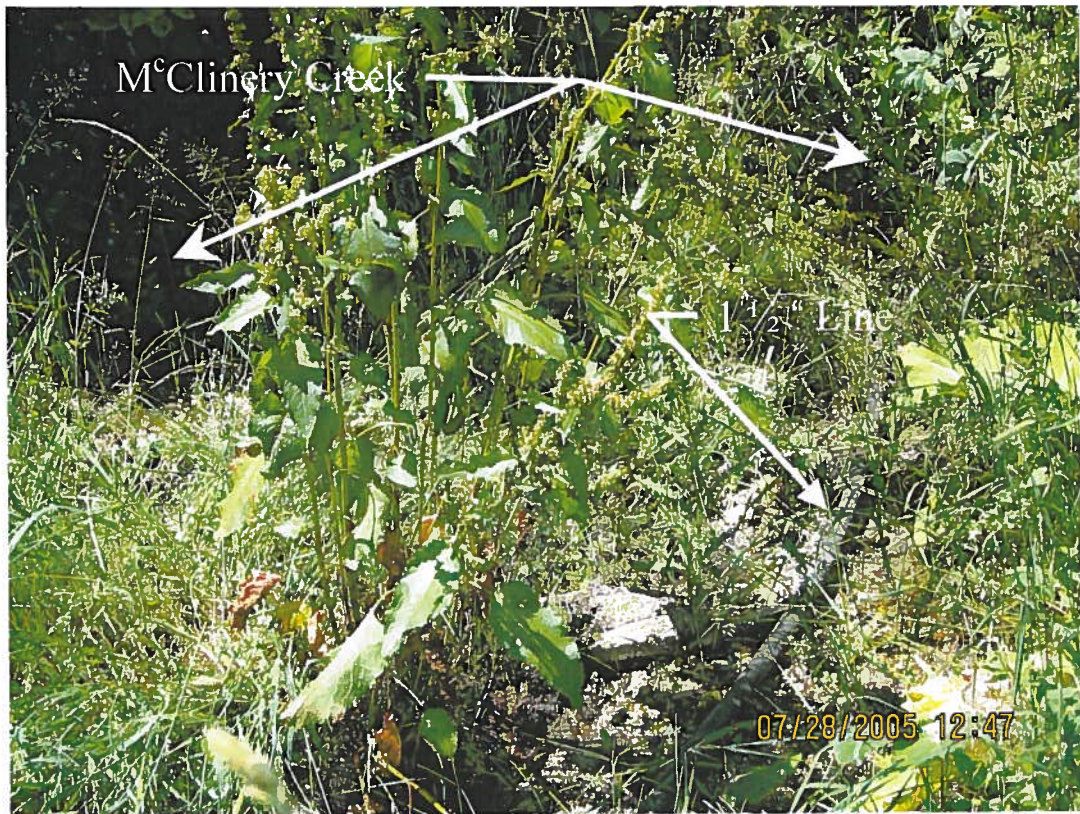


Photo 1: POD.



Photo 2: Looking northwest over partially built pad for new ditch.

78-4087



Photo 3: Grade stake for new ditch.

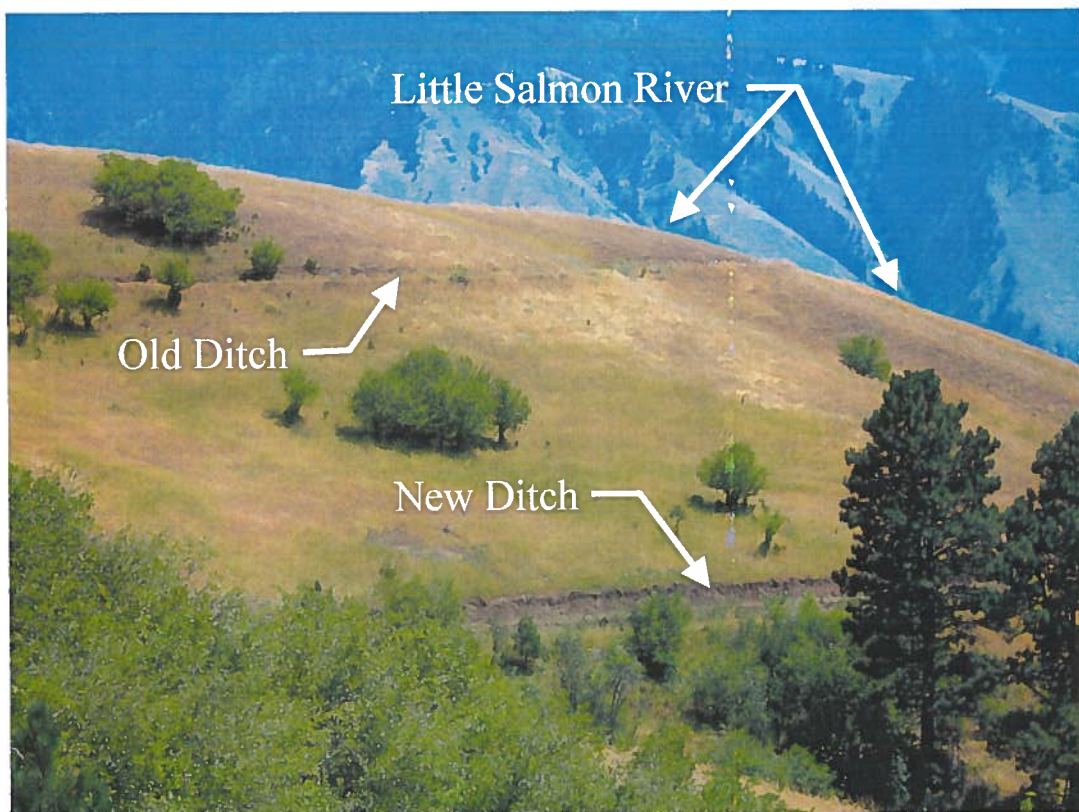


Photo 4: Looking southeast to old and new ditches.

78-4087

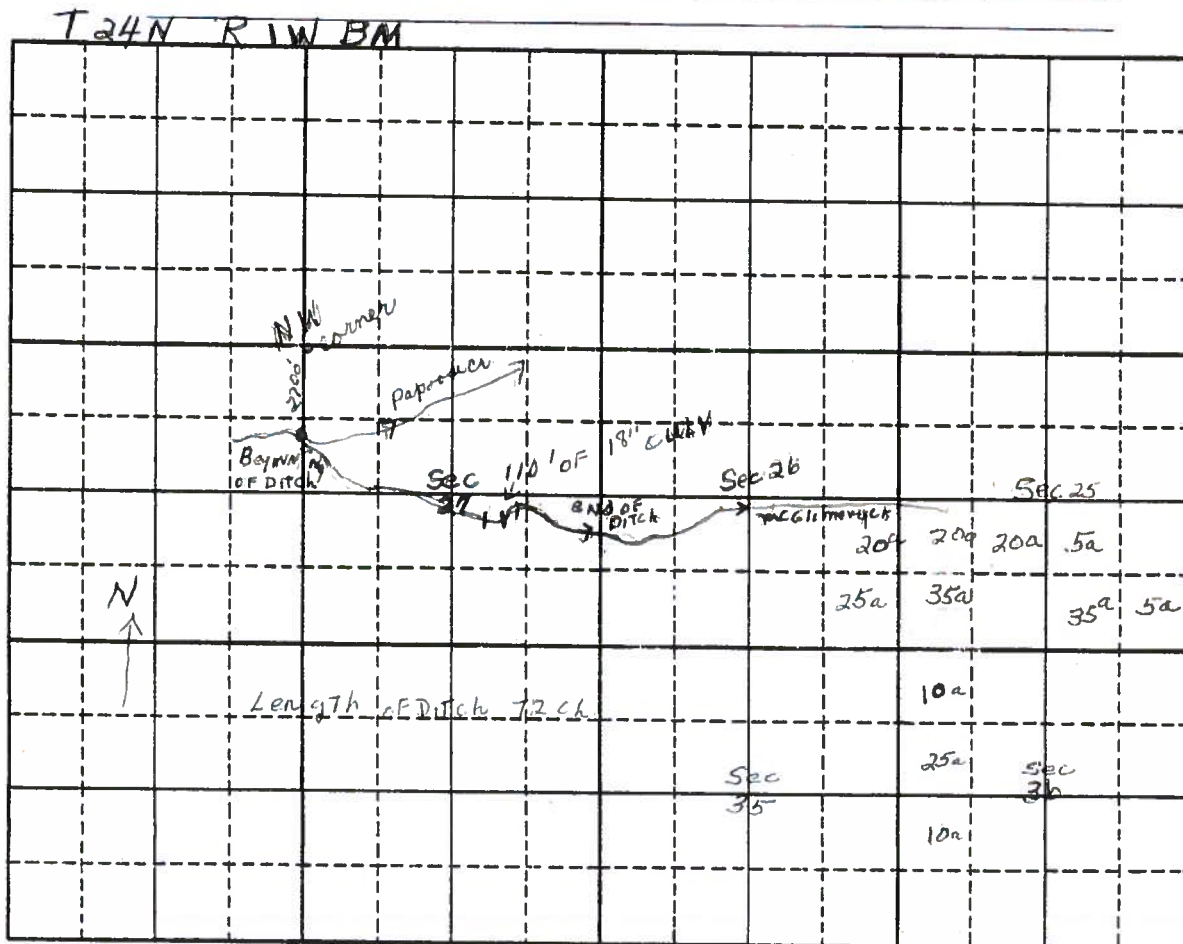


Photo 7: POU. Looking north over stock tanks.



Photo 8: POU. Looking southwest to house

(8) Remarks



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this 15th day of March, 19 78.

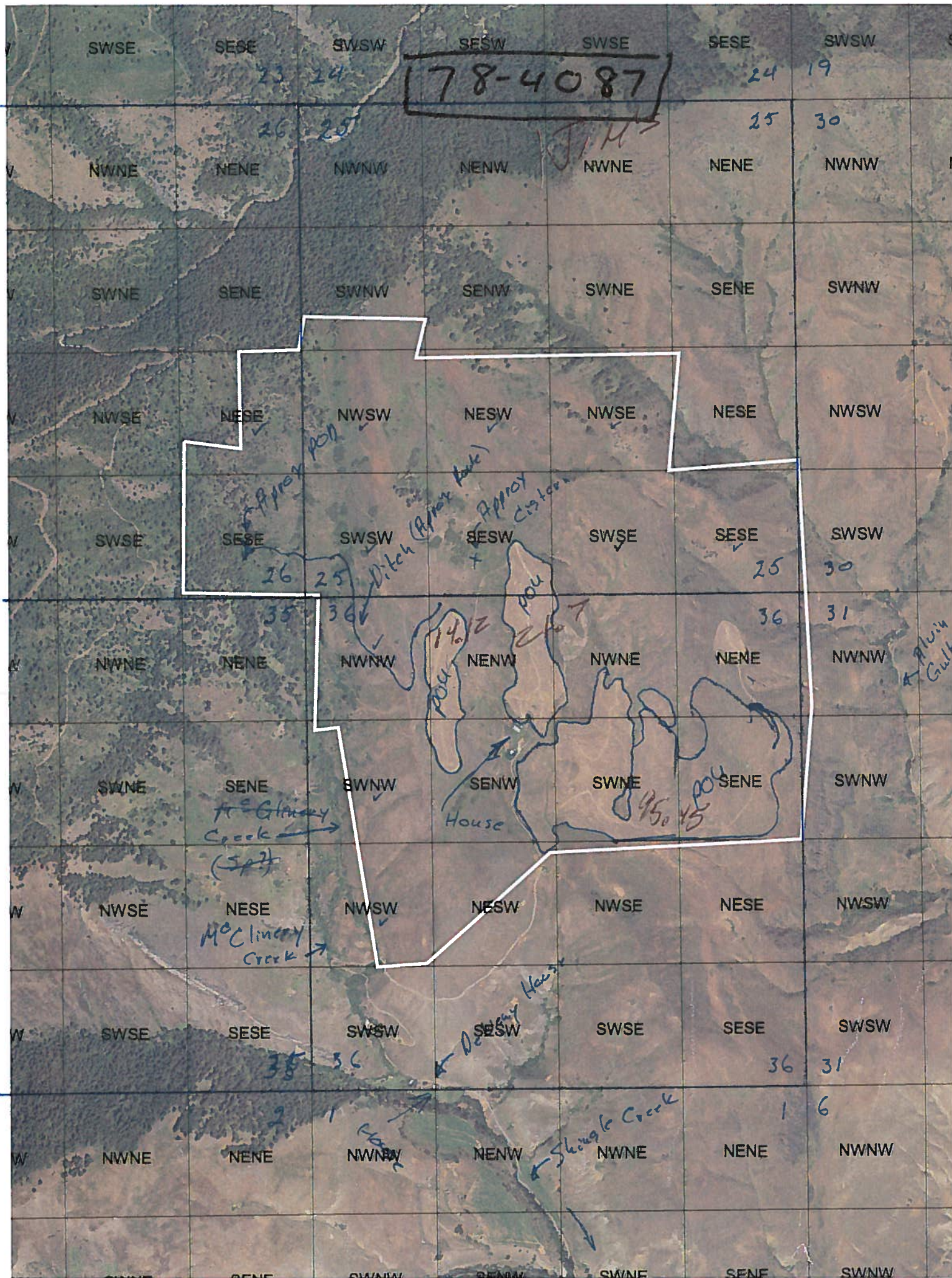
Notary Public

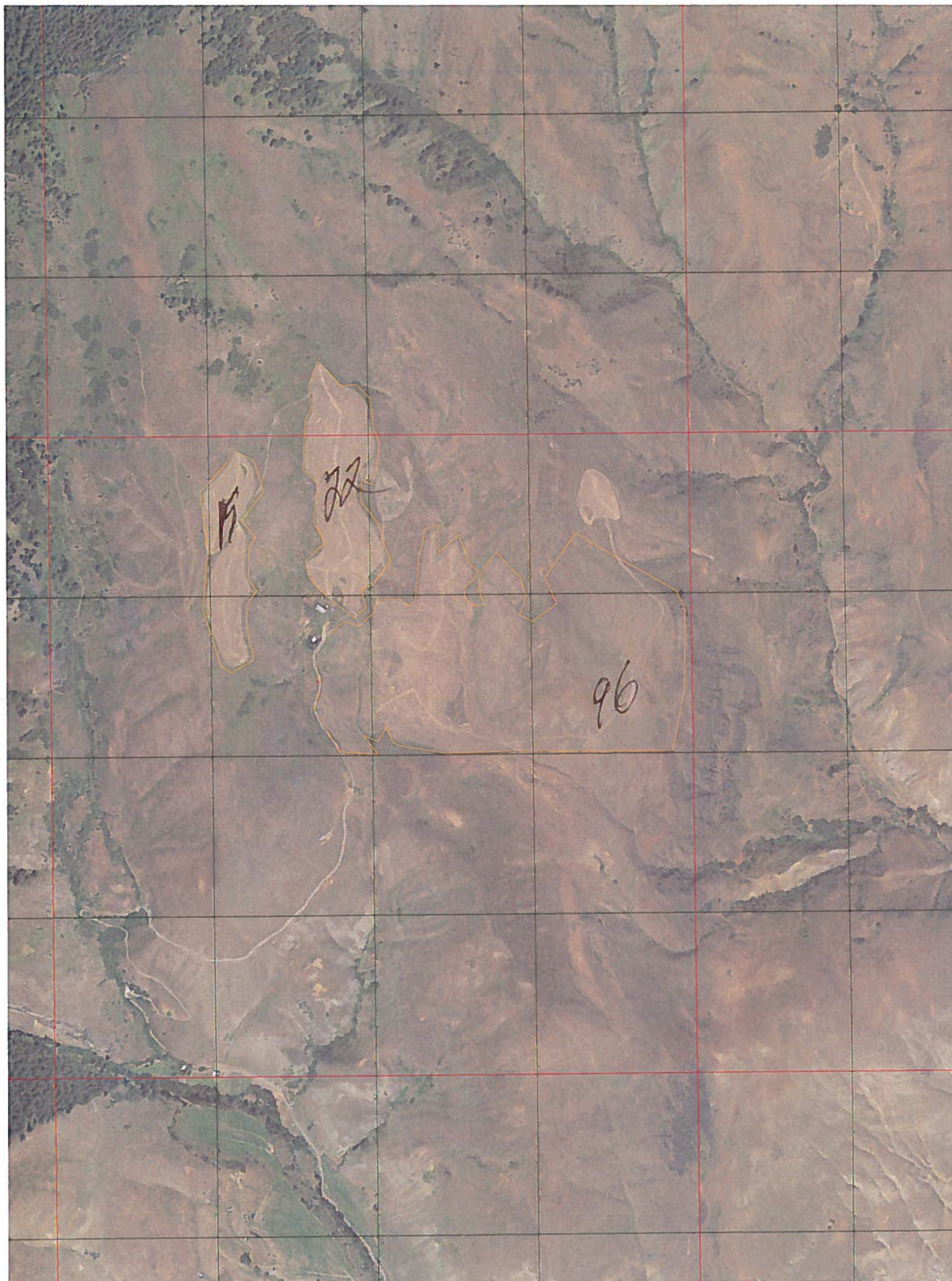
Residing at

My commission expires

For Department Use Only

Received by <u>[Signature]</u>	Date <u>3/15/78</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>[Signature]</u>	Date <u>3/15/78</u>		claimant by:	
\$10.00 fee received by <u>[Signature]</u>	Date <u>3/15/78</u>			
Approved for publication by <u>[Signature]</u>	# <u>10378</u>			
Published in <u>Ada County Free Press</u>				
Dates <u>March 29 + April 5</u>				





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 78-4087
Date Received: 7/29/88
Receipt No: C002071
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s): SHINGLE CREEK LLC
PO BOX 1160
RIGGINS ID USA 83549

Phone: (208) 628-3462

2. Date of Priority: 04/01/1936

3. Source: PAPOOSE CREEK Trib. to: SQUAW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County
24N	01W	27	SW NW	IDAHO

5. Description of diverting works:

HEADGATE, PIPE, DITCH FROM PAPOOSE CREEK, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/01	12/01	4.2	
STOCKWATER	1/01	12/31	0.08	

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

8. Total consumptive use:

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
24N	01W	25	SW		SW		IRR	35.0
			NW		SE		IRR	5.0
			SW		SE		IRR	35.0
			SE		SE		IRR	5.0
							Section Acres	120.0
		26	NE		SE		IRR	20.0
			SE		SE		IRR	25.0
							Section Acres	45.0
		36	NW		NW		IRR	10.0
			SW		NW		IRR	25.0
			NW		SW		IRR	10.0
							Section Acres	45.0
							Total Acres	210.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: _____

For Organizations:

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

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

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: 39356
Ident. Number A 78 - 04087
Date Received 7-29-88
Receipt Number COO 2071 CA

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) R & S Realty, Corp Phone (208) 628-3446
Mailing Address P. O. Box 247, Riggins, Idaho Zip 83549

2. Date of Priority (Only one (1) per claim) April 1, 1936

3. Source of water supply (a) Papoose Creek
which is tributary to (b) Squaw Creek

4. a. Location of existing point of diversion is: Township 24N Range 1W Section 27,
1/4 of NW 1/4 of SW 1/4, Govt. Lot, B.M., County of Idaho

Additional points of diversion if any: N/A

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

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

Govt. Lot _____ B.M., County of _____

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

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

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Culvert pipe, ditch and headgate from
Papoose Creek. Irrigation is conducted through using flood irrigation techniques.

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 3/1 to 12/1 amount 4.2 or 840

For Stockwater purposes from 1/1 to 12/31 amount .08 or 58

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.28 (cfs) and/or (b) 898 (acre feet)

8. Total consumptive use claimed is 688 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 300 plus head of cattle

10. Description of place of use:

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
24N	1W	25									20	20	35			5	35	5	120
24N	1W	26													20			25	45
24N	1W	36						10	25			10							45

Total number of acres irrigated 210

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

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

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)

14. Remarks:

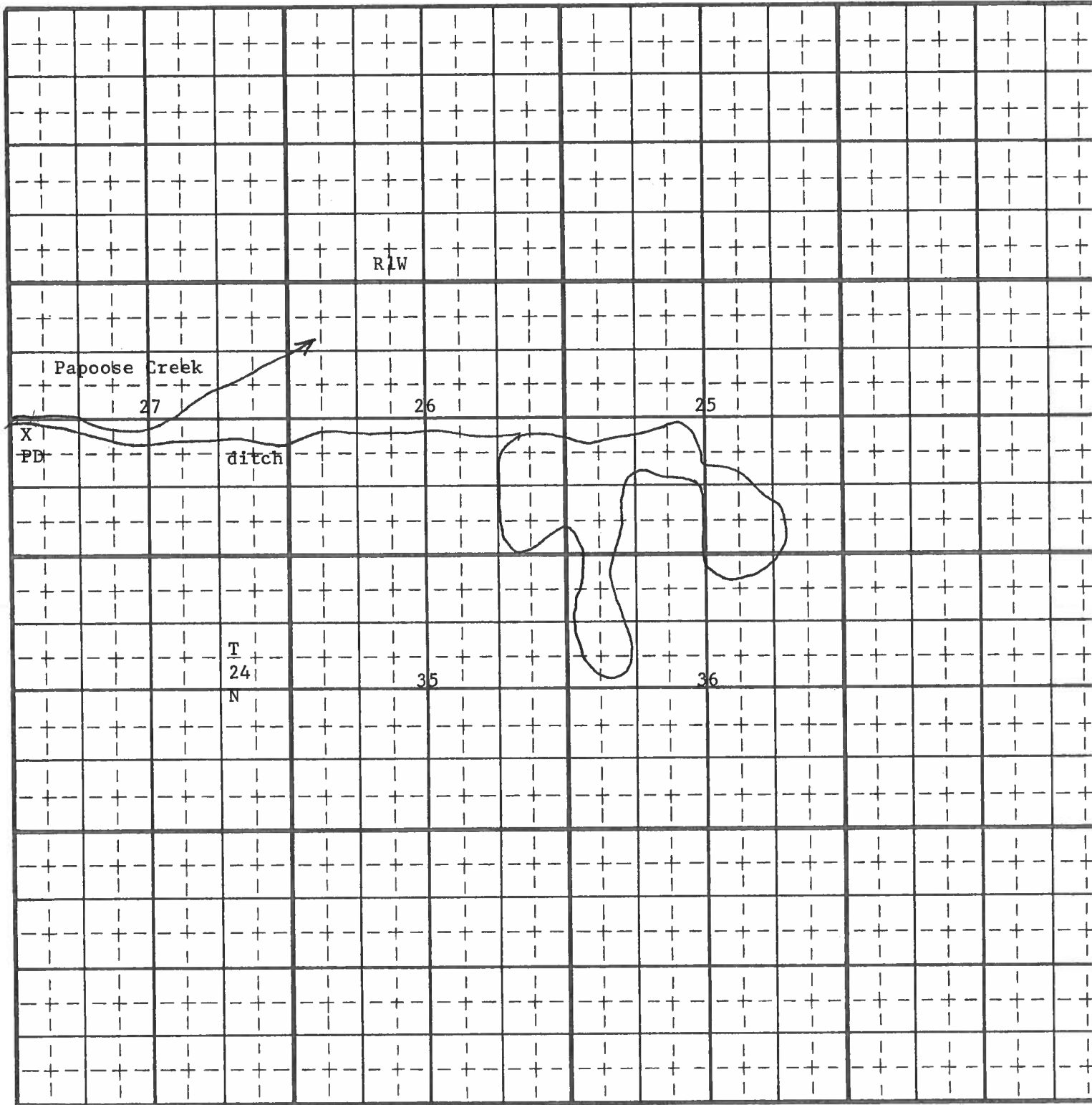
MICROFILMED
OCT 06 1992

Last Name R & S Realty Ident No. _____

Copies: White -State, Yellow-Claimant

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

Scale: 2 inches equals 1 mile



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OCT 06 1992

Last Name R & S Realty Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use XX Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 78-4087
Court _____ Case Number _____ Decree Date _____
Plaintiff vs 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 XX
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments _____

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

Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Mgr Title
of R & S Realty, Corp. Organization, that I have signed the foregoing
document in the space below as _____ Mgr Title of R & S Realty, Corp. Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Wangler Buzza
Title and Organization Mgr R & S Realty, Corp Date 7-26-88

State of Idaho/or _____)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 26th day of July 19 88

SEAL

Notary Public Arthur Fritschl
Residing at Eagle, Id
My Commission Expires 3-21-94

Please Print Name

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

Signature _____

Address _____

Date _____

Last Name R & S Realty Ident. Number _____

MICROFILMED
OCT 06 1992

Copies White-State, Yellow-Claimant

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: **A78-04087**
Date Received: 7/29/1988
Receipt No: C002071
Received By: _____

**COPY FOR
YOUR FILES**

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

**COPY FOR
YOUR FILES**

1. Name: WILLIS D DEVENY 208-628-3462
Address: BOX 239
RIGGINS ID 83549
AND
Name: BETTY G DEVENY 208-628-3462
Address: BOX 239
RIGGINS ID 83549

2. Date of Priority: APR 1, 1936

3. Source: PAPOOSE CREEK Trib. to: SQUAW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
24N	01W	27	SW	NW			IDAHO

5. Description of diverting works:
HEADGATE, PIPE, DITCH FROM PAPOOSE CREEK, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	12/01	4.200		
STOCKWATER	01/01	12/31	0.080		

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

8. Total consumptive use is 688.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/300 PLUS RANGE.

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OCT 22 1996

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
24N	01W	25	NE		SW		IRR	20.0
			NW		SW		IRR	20.0
			SW		SW		IRR	35.0
			NW		SE		IRR	5.0
			SW		SE		IRR	35.0
			SE		SE		IRR	5.0
							Section Acres	120.0
		26	NE		SE		IRR	20.0
			SE		SE		IRR	25.0
							Section Acres	45.0
		36	NW		NW		IRR	10.0
			SW		NW		IRR	25.0
			NW		SW		IRR	10.0
							Section Acres	45.0
							Total Acres	210.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
SPELLING OF DEVENY CORRECTED 09/26/1994 AS PER CORR FROM CLAIMANT
CORR IN FILE A78-10322 AND A78-10315. MM

15. Basis of Claim: STATUTORY CLAIM

CHANGE IN ADDRESS OF NOTICE OF CLAIM

[] Water Right Number (s): A78-02070/04173/07157/10325
07272/10338/10340/10341/11965
10339/02033/04087/10315

[] Old Mailing Address: Willis & Betty DeVery
P.O. Box 259
Riggins 83549

[] New Mailing Address: P.O. Box 1160

New Telephone Number: (208) 628-3462

[] Signature of Claimant: Betty A. DeVery
Date: 8/1/95

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: 8-1-95 By: RTF

Further Action Needed: 0

Further Action Taken

Date: By:

Final Review and Data-Entry

Date: 8-1-95 By: RTF

SEND TO YOUR NEAREST
REGION OFFICE:

Western Region Office
2735 Airport Way
Boise, ID 83705
(208) 334-2190

Southern Region Office
222 Shoshone St. East
Twin Falls ID 83301
(208) 734-3578

State Office
1301 N. Orchard St.
Boise, ID 83720
(208) 327-7900

Eastern Region Office
150 Shoup Ave. #15
Idaho Falls ID 83402
(208) 525-7161

Northern Region Office
1910 Northwest Blvd. #210
Coeur d'Alene ID 83814
(208) 756-4639

MICROFILMED
OCT 22 1996

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: A78-04087
Date Received: 7/29/1988
Receipt No: C002071
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: WILLIS D. DE VENY
Address: BOX 239
RIGGINS, ID

208-628-3462

83549

AND

Name: BETTY G. DE VENY
Address: BOX 239
RIGGINS, ID

208-628-3462

83549

2. Date of Priority: APR 1, 1936

3. Source: PAPOOSE CREEK

Trib. to: SQUAW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
24N	01W	27	SW	NW			IDAHO

5. Description of diverting works:

HEADGATE, PIPE, DITCH FROM PAPOOSE CREEK, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/01	12/01	4.200		
STOCKWATER	01/01	12/31	0.080		

7. Total Quantity Appropriated is:

4.280 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

688.0 Acre Feet Per Annum.

9. Non-irrigation uses:

S/300 PLUS RANGE.

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres	
24N	01W	25	NE		SW		IRR	20.0	
			NW		SW		IRR	20.0	
			SW		SW		IRR	35.0	
			NW		SE		IRR	5.0	
			SW		SE		IRR	35.0	
			SE		SE		IRR	5.0	
			Section Acres						120.0
		26	NE		SE		IRR	20.0	
			SE		SE		IRR	25.0	
			Section Acres						45.0
		36	NW		NW		IRR	10.0	
			SW		NW		IRR	25.0	
			NW		SW		IRR	10.0	
			Section Acres						45.0
			Total Acres						210.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

January 24, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

SHINGLE CREEK LLC
PO BOX 1160
RIGGINS ID 83549

Re: Notice of Claim to a Water Right No. A78-02033 & A78-04087

Dear Claimant(s):

Enclosed is a copy of the above referenced claim, which reflects the change in ownership of the land and appurtenant water rights covered under the original filing.

The Department will contact you in the future concerning any requirements that may be needed in order to process this claim for final court decree.

Thank you for your patience and cooperation, as we have had several ownership changes to process. If you have any questions concerning the enclosed claim, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Denise Buffington".

Denise Buffington
Office Specialist 1
Adjudication Section
Western Region Office

DB:db

Enclosure



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

August 26, 1994

R. KEITH HIGGINSON
DIRECTOR

BETTY DEVENEY
BOX 239
RIGGINS ID 83549

RE: Snake River Basin Adjudication Claim Nos: A78-02033 A78-04087
A78-10315 A78-10322

Dear Ms. DeVenev:

As per our telephone conversation yesterday, I am sending copies of the original claims referenced above.

Claim number A78-02033 is based on a license for water from Shingle Creek and Papoose Creek. You indicated in our conversation that the ditches are now inoperable and all water for the licensed acres comes from an unnamed stream known locally as McClinery Creek. Please review these claims as well as the copies of the original filing papers for this license. The locations for the ditches may help you determine if the ditches are still operating. I have also included some correspondence from the file; the names and dates may help for determine when and if the ditches from Shingle and Papoose Creeks were abandoned. The date is very important because it will indicate when the water right from McClinery Creek was established. If that date is previous to May 20, 1971, the right can be claimed in the SRBA as a beneficial use right. If that date is on or after May 20, 1971, a new application for permit is required. Please read the enclosed pamphlet "Idaho Water Rights A Primer" for more information.

Claim number A78-04087 is based on a statutory claim for water from Papoose Creek. This right has not been previously investigated by the Department. I have included copies of correspondence from the original file; this information is included to help you determine the progression of water development on your property and to provide additional names of people familiar with the property.

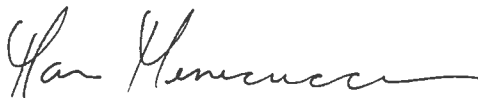
Claim numbers A78-10315 and A78-10322 are for developed springs and instream stock water. Please make any changes to these claims on the claim forms which were sent on August 15, 1994; add your notarized signature and return them to this office with the completed change of ownership form (including supporting documentation).

Also enclosed are two claim forms. One of these forms is for an instream stockwater claim which you indicated you would like to file (\$25 fee). The second form is for the water right from McClinery Creek (provided that use started before May 20, 1971). An application for permit is enclosed in case the use from McClinery Creek started on or after May 20, 1971. Fees must accompany the claims and/ or the permit application.

MICROFILMED
OCT 22 1996

Please do not hesitate to contact this office with any questions you have.

Sincerely,



Maria Minicucci
Water Agent, Adjudication Bureau

Encs: SRBA Claim Nos. A78-02033, A78-04087, A78-10315, A78-10322
Notice of Claim forms (2)
Application for permit form
Change of Ownership form
"Idaho Water Rights A Primer" pamphlet
"Evidence of Priority" pamphlet

MICROFILMED
OCT 22 1996

ADJUDICATION MEMORANDUM

CLAIM NO.: A78-02033, 04087

SUBJECT: Change of Ownership

EMPLOYEE: T. Minicucci

DATE: 08/25/1994

Returned Ms. DeVeney's call regarding the change of ownership of the claims filed by R & S Realty Corp. We discussed these claims in regard to the point(s) of diversion and source(s).

Ms. DeVeney stated that the water is diverted from McClurey (McGlimmer?) Creek only - ditches from Rapoose Creek and Shingle Creek are no longer operational and have not been for many years. We discussed the date the other sources + ditches were abandoned and how to establish that date. I told her that it appears that she should file a B/V claim for the irrigation of those acres ~~of~~ from McClurey Creek waters, with ~~the~~ priority date being the date the ditches from the licensed sources were abandoned.

Ms. DeVeney thinks 78-04087 may have been filed on top of 78-02033 - same land list or at least substantial overlap. I told her the time for untangling these water rights is when the field exam is done, but that she could + should get information regarding the development + changes of the delivery system to the acres in question.

Agreed to send copies of our files 78-04087 & 78-02033, claim form for instream stock + ~~orig~~ copies of original claim files (including maps) A78-10315, A78-10322, A78-020

MICROFILMED

OCT 22 1996 78-04087



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866



CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 10, 1991

Mr. & Mrs. Willis D. DeVeney
Box 239
Riggins, ID 83549

RE: Snake River Basin Adjudication (SRBA)
Idaho County - Claim #A78-04087

Dear Mr. & Mrs. DeVeney:

Thank you for returning the signed ownership change form so promptly. The Claim to Water Rights records of the Department have been changed to reflect your new ownership.

A claim prepared from the Agency's computer is enclosed for your review and records. If you find the address is incorrect, please contact us.

Yours truly,

Donald V. Shaff
Manager, Adjudication Section

DVS:sf:west
Enclosures:
Claim #A78-04087

MICROFILMED
OCT 06 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 2, 1991

Willis D. DeVeney
Box 239
Riggins, ID 83549

RE: Snake River Basin Adjudication (SRBA)
Idaho County - Claim #A78-04087
Change of Ownership

Dear Mr. DeVeney:

Notice of the change in ownership of the above-referenced water right has been received. However, I am returning the form for your signature(s).

Upon receipt of the signed Change of Ownership form, a Notice of Claim will be prepared from the Agency's computer and sent to you for your review and records.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Donald V. Shaff', written over a horizontal line.

Donald V. Shaff
Manager, Adjudication Section

DVS:sf:state

Enclosure:

Change of Ownership Form

Sorry we forgot to sign the form
Betty

MICROFILM
OCT 06 1992

Box 239
Riggins, ID 83549
June 24, 1991

RECEIVED
JUN 26 1991
Department of Water Resources

Idaho Department of Water Resources
attn: Adjudication Bureau
Statehouse Mail
Boise, ID 83720-9000

Gentlemen:

Enclosed is form 42-1409(7), New Property Owner Notice of Change of Water Right Ownership.

Enclosed with it is a copy of the warranty deed and copies of the adjudication claim notice no. C002071 and the claim to a water right no. 78-4087.

Please advise us of any other requirements concerning this water right and the transfer of ownership. Thank you.

Sincerely,

Willis D. DeVeney

Willis D. DeVeney

enclosures

MICROFILMED
OCT 06 1992



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

RECEIVED
SHIP
JUN 26 1991

Department of Water Resources

DATE OF CLOSING: May 31, 1991

LEGAL DESCRIPTION OF PROPERTY: Township 24 North Range 1 West Boise Meridian
Section , 1/4 of 1/4 of 1/4, Govt. Lot , BM.

Lot _____, Block, _____, Subdivision/Townsite _____

If you have additional legal descriptions, please attach separate sheet. SEE ATTACHED DESCRIPTION

- [] Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

Water Right Number(s) Assigned by IDWR: 78-4087

[] Name and Address of Former Owner/Claimant(s)(Seller): R & S REALTY CORP
P O BOX 416, PLAISTOW NH 03865

[] New Owner/Claimant
(Purchaser): WILLIS D DEVENY AND BETTY G DEVENY

[] New Mailing Address: BOX 239, RIGGINS ID 83549

[] New Telephone Number: (208) 628 . 3462

[] Does the change in ownership result in a splitting of the water right owned/claimed? yes no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

[] Attach proof of ownership, describe proof attached: copy of recorded Warranty Deed

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

☒	Signature of New Owner/Claimant(s)	<u>William D. Sullivan</u> <u>Betty D. D. Verry</u>	Date	<u>7/5/91</u>
☐	Signature of Former Owner/Claimant(s):		Date	

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry
Date: 2/2/91 By: 701-91

Further Action Needed:
Signature(s)

Further Action Taken *Letter*
Date: *7-03-91* By: *EL*

Final Review and Data-Entry
Date: 7-10-91 By: [Signature]

Claim Numbers of Split, if any:

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OCT 06 1992

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

EXHIBIT "A"

The following property situate in Idaho County, State of Idaho, to-wit:

Township 24 North, Range 1 West, Boise Meridian

Section 25: $S\frac{1}{2}S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$

Section 26: $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$

Section 36: $NE\frac{1}{4}SW\frac{1}{4}$ LESS that part and portion of $NE\frac{1}{4}SW\frac{1}{4}$ lying and being southeas of a line running from the NE corner of said $NE\frac{1}{4}SW\frac{1}{4}$ to the SW corner of said $NE\frac{1}{4}SW\frac{1}{4}$ in said Section 36.
 $N\frac{1}{2}$, $NW\frac{1}{4}SW\frac{1}{4}$

Excluding and excepting the follwoing described portion of said property, to-wit:

Being a portion of Section 36, Township 24 North, Range 1 West, B.M., Idaho County, Idaho, more particularly described as follows:

Beginning at the $\frac{1}{4}$ Section Corner to said Section 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence North $01^{\circ}08'16''$ East along the section line 1316.37 feet to the North 1/16 corner between said Sections 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence East 369.85 feet to a 1" iron pipe;
thence South $08^{\circ}52'51''$ East, 1941.84 feet to a 1" iron pipe;
thence South $12^{\circ}26'34''$ East, 699.88 feet to a 1" iron pipe;
thence North $46^{\circ}02'34''$ West, 134.26 feet to a 1" iron pipe;
thence South $88^{\circ}00'57''$ West, 39.92 feet to a 1" iron pipe;
thence South $64^{\circ}27'07''$ West, 111.95 feet to a 1" iron pipe;
thence North $81^{\circ}11'18''$ West, 252.04 feet to a $1\frac{1}{2}$ " iron pipe;
thence South $74^{\circ}02'56''$ West, 389.19 feet to the South 1/16 corner between said Sections 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence North $00^{\circ}37'23''$ East along the section line 1310.79 feet to the point of beginning.

MICROFILMED
OCT 06 1992

358539

COMPUTER
INDEXED
FILED
APR 22 1991WARRANTY DEED
(CORPORATE FORM)

R & S REALTY CORP, a corporation organized and existing under the laws of the State of New Hampshire and authorized to do business in the State of Idaho, with its principal office at Plaistow the County of Rockingham, State of New Hampshire, grantor, hereby CONVEYS, GRANTS and WARRANTS TO WILLIS D. DEVENY and BETTY G. DEVENY, grantees, of Riggins, Idaho, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, lawful money of the United States of America, to Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged by Grantor, all of the following described real property, situated in the County of Idaho, State of Idaho, to-wit:

All is more particularly set forth on Exhibit "A" to this Warranty Deed, which Exhibit "A" is incorporated herein by reference as if set forth in full.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to such premises, but subject to all matters apparent, reservations, exceptions, and all matters of record, and all matters of title.

TO HAVE AND TO HOLD, the said premises with their appurtenances unto the said Grantee, their heirs and assigns forever, and the said Grantor does hereby covenant to and with the said Grantee that it is the owner in fee simple of said premises and that they are free from all encumbrances except as stated above in this Deed. Grantor further covenants and agrees that it will warrant and defend the same from all lawful claims whatsoever.

The officers of the Grantor corporation who sign this Deed hereby certify that this Deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the Board of Directors of the Grantor corporation at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, the Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 9th day of May, 1991.

R & S REALTY CORP.

(Seal)

by [Signature]
President/Treasurer
(Capacity)

Filed and recorded at the request of Ed City Little Co
at 2:30 o'clock P M this 3 day of June 1991

By [Signature]
Deputy

ROSE E. GEHRING

Ex-Officio Auditor and Recorder
Idaho County, IdahoFee \$ 9.00
m/pro...MICROFILMED
OCT 06 1992

STATE OF NEW HAMPSHIRE)

)

ss:

County of Rockingham)

On this Nineth day of May, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Senter, Sr. _____, known or identified to me to be the President/Treasurer _____, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

dya m wu
NOTARY PUBLIC for New Hampshire
Residing at Plaistow, NH
My Comm. Expires: 7/12/95

GRANTEES ADDRESS:

WILLIS D. DEVENY & BETTY G. DEVENY
P O BOX 239
RIGGINS ID 83549

MICROFILMED
OCT 06 1992

EXHIBIT "A"

The following property situate in Idaho County, State of Idaho, to-wit:

Township 24 North, Range 1 West, Boise Meridian

Section 25: $S\frac{1}{2}S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$

Section 26: $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$

Section 36: $NE\frac{1}{4}SW\frac{1}{4}$ LESS that part and portion of $NE\frac{1}{4}SW\frac{1}{4}$ lying and being southeast of a line running from the NE corner of said $NE\frac{1}{4}SW\frac{1}{4}$ to the SW corner of said $NE\frac{1}{4}SW\frac{1}{4}$ in said Section 36.
 $N\frac{1}{2}$, $NW\frac{1}{4}SW\frac{1}{4}$

Excluding and excepting the following described portion of said property, to-wit:

Being a portion of Section 36, Township 24 North, Range 1 West, B.M., Idaho County, Idaho, more particularly described as follows:

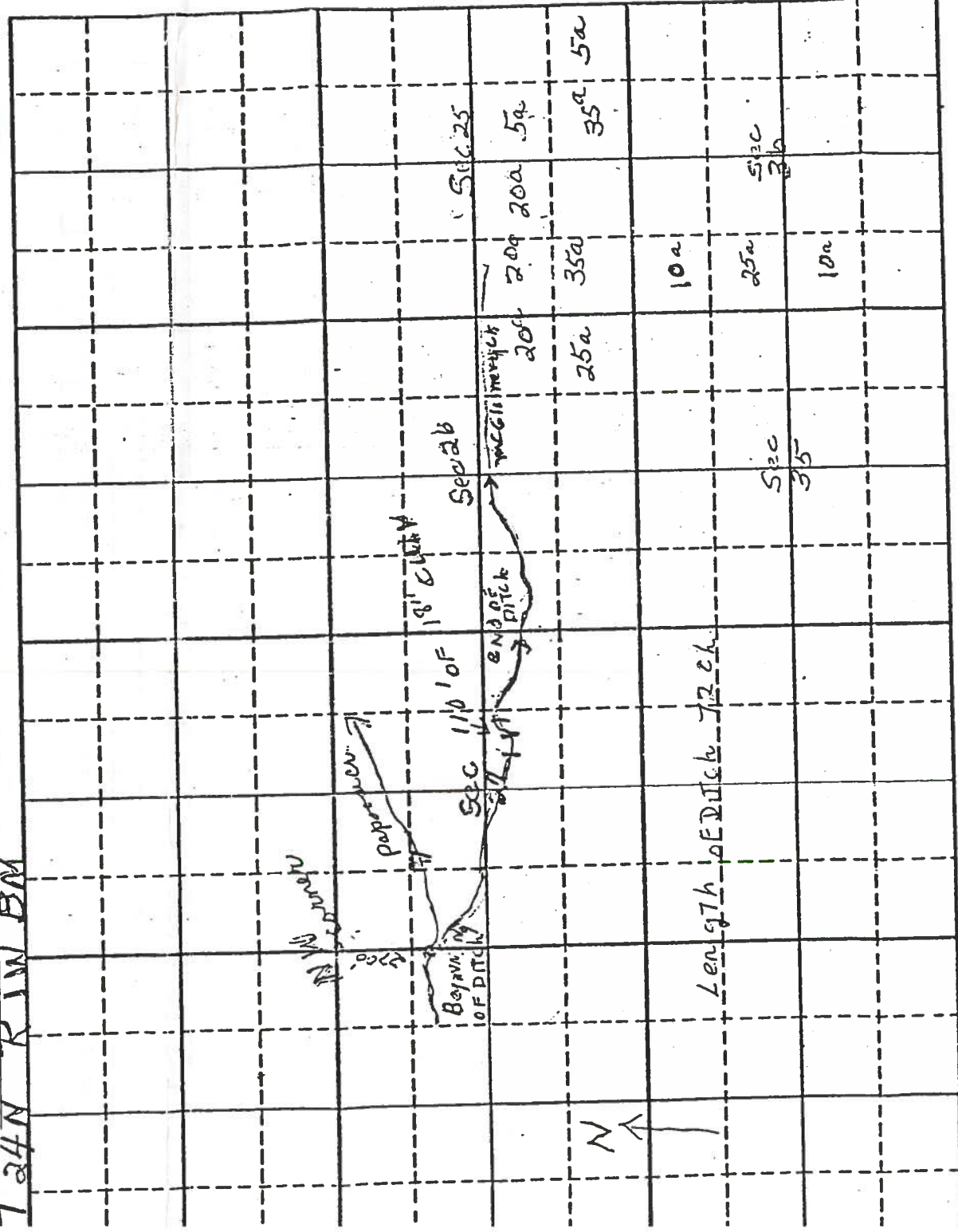
Beginning at the $\frac{1}{4}$ Section Corner to said Section 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence North $01^{\circ}08'16''$ East along the section line 1316.37 feet to the North 1/16 corner between said Sections 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence East 369.85 feet to a 1" iron pipe;
thence South $08^{\circ}52'51''$ East, 1941.84 feet to a 1" iron pipe;
thence South $12^{\circ}26'34''$ East, 699.88 feet to a 1" iron pipe;
thence North $46^{\circ}02'34''$ West, 134.26 feet to a 1" iron pipe;
thence South $88^{\circ}00'57''$ West, 39.92 feet to a 1" iron pipe;
thence South $64^{\circ}27'07''$ West, 111.95 feet to a 1" iron pipe;
thence North $81^{\circ}11'18''$ West, 252.04 feet to a $1\frac{1}{2}$ " iron pipe;
thence South $74^{\circ}02'56''$ West, 389.19 feet to the South 1/16 corner between said Sections 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence North $00^{\circ}37'23''$ East along the section line 1310.79 feet to the point of beginning.

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OCT 06 1992

Remarks

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OCT 06 1997

T 24N R 1W BM



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho

County of

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

[Signature] D. D. D.

Sworn to before me this 15 day of Aug

Notary Public

Residing at

My commission expires

For Department Use Only

Received by Date 3/15/78

Prelim. check by J.O.O. Date 3/15/73

\$10.00 fee received by D.J. Date 3/15/78
10328

Approved for publication by _____
Published in the County Free Press

Dates March 29 + April 5

Forwarded to _____ Date _____
claimant by: _____

CF

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: A78-04087
Date Received: 7/29/1988
Receipt No: C002071
Received By: _____

RECEIVED
AUG 5 1988

Department of Water Resources
Western Regional Office

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: R. AND S. REALTY, CORP. 208-628-3446
Address: P.O. BOX 247
RIGGINS, ID 83549

2. Date of Priority: APR 01, 1936

3. Source: PAPOOSE CREEK Trib. to: SQUAW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
24N	01W	27	SW	SW	NW		IDAHO

5. Description of diverting works:
HEADGATE, PIPE, DITCH FROM PAPOOSE CREEK, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/01	12/01	4.200		
STOCKWATER	01/01	12/31	0.080		

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

8. Total consumptive use is 688.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/300 PLUS RANGE.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
24N	01W	25	NE	SW		IRR	20.0
			NW	SW		IRR	20.0

A78-04087

Page 1

Date: 08/03/88

MICROFILMED
OCT 06 1992

Please print or type
(see instructions on back of page)

LEGAL DESCRIPTION OF PROPERTY: Township 24N Range 1W
 Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.
 Lot _____, Block _____, Subdivision/Townsite _____.
 If you have additional legal descriptions, please attach separate sheet. see attachment

JAN 22 2001

WATER RESOURCES
WESTERN REGION

- | | | | | |
|-----|---------------------|--|------|-----------|
| [] | Signature of New | Shingle Creek LLC | Date | |
| | Owner/Claimant(s) | By: <u><i>William L. Davis</i></u> manager | Date | 1/18/2001 |
| [] | Signature of Former | | Date | |
| | Owner/Claimant(s): | | Date | |

FOR IDWR USE ONLY:
Initial Review and Data-Entry
Date: **By:**
Further Action Needed:
Further Action Taken
Date: **By:**
Final Review and Data-Entry
Date: **By:**
Claim Numbers of Split, if any:

**Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner**

0415102 QUITCLAIM DEED

THIS QUITCLAIM DEED,

Executed This Fifteenth Day of January 2001 by first party,
Willis D. and Betty G. DeVeney, husband and wife,
whose post office address is Box 1160, Riggins, Idaho 83549
to second party, Shingle Creek LLC, an Idaho limited liability
company, whose post office address is Box 1160,
Riggins, Idaho 83549

WITNESSETH, That the said first party, for good and valuable consideration and for the sum of ten Dollars (\$10.00) and other
valuable considerations paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim
unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel
of land, and improvements and appurtenances thereto in the County of Idaho, State of Idaho to wit:

As more particularly set forth in Exhibit "A", which
Exhibit "A" is incorporated herein by reference as if
set forth in full.

TOGETHER with the appurtenances and all the state and rights of
the Grantor in and to such premises, but subject to all matters
apparent, reservations, exceptions, and all matters of record,
and all matters of title.

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Chadane Hinkley
Witness

Sandra Karlis
Witness

Willis D. DeVeney
First Party

Betty G. DeVeney
Second Party

State of Idaho

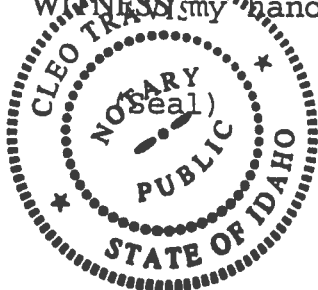
County of Idaho

On January 16, 2001 before me, Cleo Travis

appeared Willis & Betty DeVeney

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature: Cleo Travis

Affiant Known Produced ID

Type of ID _____

EXHIBIT "A"

Township 24 North, Range 1 West, Boise Meridian, Idaho County, Idaho

Sec. 25: S1/2S1/2SW1/4NW1/4, SW1/4, NW1/4SE1/4, S1/2SE1/4
Sec. 26: E1/2NE1/4SE1/4, S1/2SW1/4NE1/4SE1/4, SE1/4SE1/4
Sec. 36: NE1/4SW1/4 Less that part and portion of NE1/4SW1/4
lying and being SE of a line running from the NE corner
of said NE1/4SW1/4 to the Southwest corner of said
NE1/4SW1/4 in said Sec. 36.
✓N1/2, NW1/4SW1/4✓

Excluding and excepting the following described portion of said property, to with:

Being a portion of Section 36, Township 24 North, Range 1 West, Boise Meridian, Idaho County, Idaho, more particularly described as follows:

Beginning at the 1/4 Section Corner to said Sections 35 and 36, which is marked by a 2" iron pipe with a brass cap;
thence North 01° 08' 16" East along the section line
1316.37 feet to the North 1/16 corner between said
Sections 35 and 36, which is marked by a 2" iron pipe with
a brass cap;
thence - East 369.85 feet to a 1" iron pipe;
thence South 08° 52' 51" East - 1941.84 ft. to a 1" iron pipe;
thence South 12° 26' 34" East - 699.88 ft. to a 1" iron pipe;
thence North 46° 02' 34" West - 134.26 ft. to a 1" iron pipe;
thence South 88° 00' 57" West - 39.92 ft. to a 1" iron pipe;
thence south 64° 27' 07" West - 111.95 ft. to a 1" iron pipe;
thence North 81° 11' 18" West - 252.04 ft. to a 1 1/2" iron
pipe;
thence South 74° 02' 56" West - 389.19 ft. to the South 1/16
corner between said Sections 35 and 36, which is marked by a
2" iron pipe with a brass cap;
thence North 00° 37' 23" East along the section line
1310.79 feet to the point of beginning.

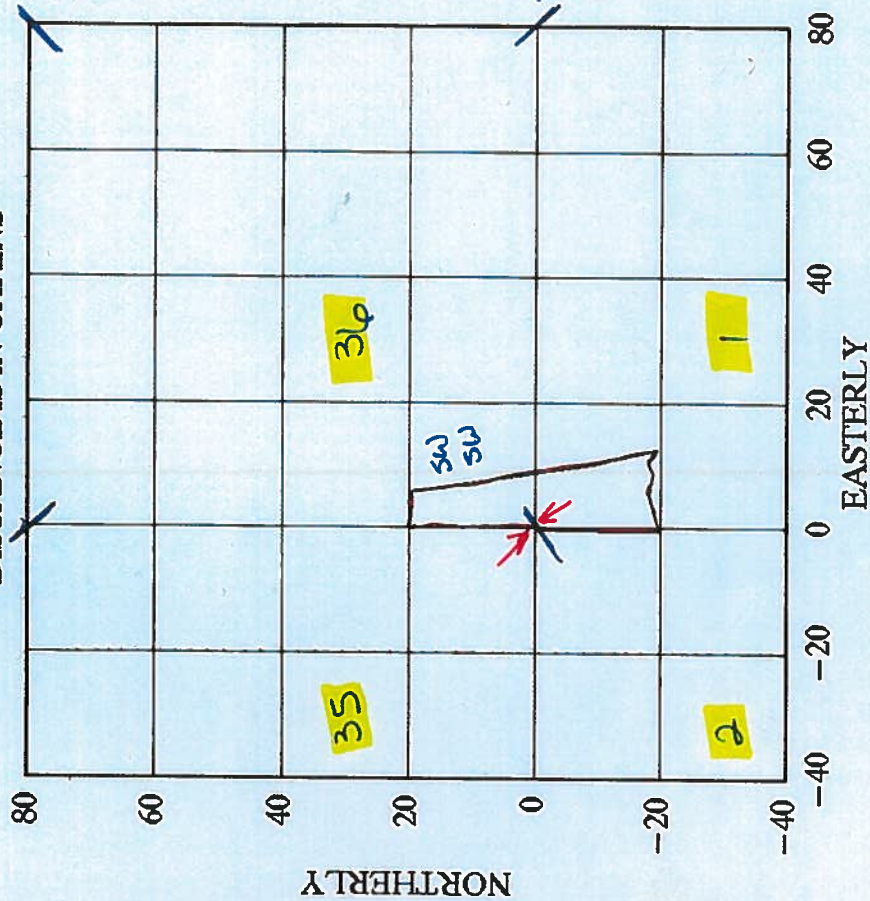
X=Ø Y=Ø

STATE of IDAHO	
County of Idaho	
Recorded at request of	
Baker DeWitt	
at 9:05A	on 11/17/01
ROSE E. GEMMING	
By B. H. S. / B. H. S.	Recorder
Fees \$ 1.00	Deputy

M/ Box 1160
Riggins Id 83549

DeVeny / Shingle Creek (Exception)

PARCEL PLOT - METES & BOUNDS
DISTANCE IS IN CHAINS



24N 1W

→ beginning point

23N 1W

METES AND BOUNDS TABLE

PRESS ALT P TO PRINT GRAPH

	X-COR	Y-COR	ANGLE			BEARING	DIST (FT)
			DEGREES	MINUTES	SECONDS		
BEGIN POINT COR.	0.00	0.00					
(SEE SHEET)	0.05	19.94	0.00	8.00	16.00	NE	1316.37
	5.65	19.94	90.00	0.00	0.00	NE	369.85
	10.19	-9.12	8.00	52.00	51.00	SE	1941.84
	12.48	-19.48	12.00	26.00	34.00	SE	699.88
-QUAD COEF-	11.01	-18.07	46.00	2.00	34.00	NW	134.26
IF NE, X=1,Y=1	10.41	-18.09	88.00	0.00	57.00	SW	39.92
IF SE, X=1,Y=-1	8.88	-18.82	64.00	27.00	7.00	SW	111.95
IF SW, X=-1,Y=-1	5.11	-18.23	81.00	11.00	18.00	NW	252.04
IF NW, X=-1,Y=1	-0.56	-19.86	74.00	2.00	56.00	SW	389.19
	-0.35	0.00	0.00	37.00	23.00	NE	1310.79
	-0.35	0.00					

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: **A78-04087**
Date Received: 7/29/1988
Receipt No: C002071
Received By: _____

**COPY FOR
YOUR FILES**

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

**COPY FOR
YOUR FILES**

1. Name: BETTY G DE VENY 208-628-3462
Address: PO BOX 1160
RIGGINS ID 83549

AND

Name: WILLIS D DE VENY 208-628-3462
Address: PO BOX 1160
RIGGINS ID 83549

2. Date of Priority: APR 1, 1936

3. Source: PAPOOSE CREEK Trib. to: SQUAW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
24N	01W	27	SW		NW		IDAHO

5. Description of diverting works:
HEADGATE, PIPE, DITCH FROM PAPOOSE CREEK, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	12/01	4.200		
STOCKWATER	01/01	12/31	0.080		

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

8. Total consumptive use is 688.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/300 PLUS RANGE.

MICROFILMED
OCT 22 1996

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
24N	01W	25	SW	SE		IRRIGATION	35
			SE	SE		IRRIGATION	5
			NE	SW		IRRIGATION	20
			NW	SW		IRRIGATION	20
			SW	SW		IRRIGATION	35
			NW	SE		IRRIGATION	5
Section Acres							120
24N	01W	26	NE	SE		IRRIGATION	20
			SE	SE		IRRIGATION	25
Section Acres							45
24N	01W	36	NW	NW		IRRIGATION	10
			SW	NW		IRRIGATION	25
			NW	SW		IRRIGATION	10
Section Acres							45
Total Acres							210

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

SPELLING OF DEVENY CORRECTED 09/26/1994 AS PER CORR FROM CLAIMANT CORR IN FILE A78-10322 AND A78-10315. MM
Ownership changed by DB 1/24/2001.

15. Basis of Claim: Statutory Claim

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
24N	01W	25	NE		SW		IRR	20.0
			NW		SW		IRR	20.0
			SW		SW		IRR	35.0
			NW		SE		IRR	5.0
			SW		SE		IRR	35.0
			SE		SE		IRR	5.0
							Section Acres	120.0
		26	NE		SE		IRR	20.0
			SE		SE		IRR	25.0
							Section Acres	45.0
		36	NW		NW		IRR	10.0
			SW		NW		IRR	25.0
			NW		SW		IRR	10.0
							Section Acres	45.0
							Total Acres	210.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

SPELLING OF DEVENY CORRECTED 09/26/1994 AS PER CORR FROM CLAIMANT
CORR IN FILE A78-10322 AND A78-10315. MM

15. Basis of Claim: STATUTORY CLAIM