

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 37-22797
Date Received: 1/29/2013
Receipt No: C097011
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ALVIN V SHOEMAKER Phone: (208) 788-2921
PO BOX 550
BELLEVUE ID USA 83313

SALLY P SHOEMAKER Phone: (208) 788-2921
PO BOX 550
BELLEVUE ID USA 83313

2. Date of Priority: 07/21/1880

3. Source: SEAMANS CREEK Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02N	19E	33	NW NE	BLAINE	

5. Description of diverting works:

An embankment and on-stream pond are located at the above referenced point of diversion of water from Seamans Creek for irrigation purposes. The pond is approximately 7 feet deep, has a surface area of approximately 5.9 acres and a volume of approximately 41.3 af. Diversions from the pond are accomplished by (1) opening the outlets and lowering the pond to provide an adequate discharge for irrigation, and then (2) closing the outlet gates until the pond fills again. In the winter months the pond is lowered and the flow from Seamans Creek is allowed to proceed downstream.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION STORAGE			04/15 10/31	634
IRRIGATION FROM STORAGE			04/15 10/31	322
WILDLIFE			01/01 12/31	27.9
RECREATION			01/01 12/31	27.9
AESTHETIC			01/01 12/31	27.9

7. Total Quantity Appropriated is:
634 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
02N	19E	31	NE	NE	IRRIGATION FROM STORAGE	26
			SE	NE	IRRIGATION FROM STORAGE	15
					Section Acres	41
02N	19E	32	NE	NE	IRRIGATION FROM STORAGE	31
			NW	NE	IRRIGATION FROM STORAGE	25
			SW	NE	IRRIGATION FROM STORAGE	7.1
			NE	NW	IRRIGATION FROM STORAGE	28
			NW	NW	IRRIGATION FROM STORAGE	33
			SW	NW	IRRIGATION FROM STORAGE	3
			SE	NW	IRRIGATION FROM STORAGE	4.4
					Section Acres	131.5
02N	19E	33	NE	NW	IRRIGATION FROM STORAGE	18
			NW	NW	IRRIGATION FROM STORAGE	26
					Section Acres	44
					Total Acres	216.5

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Beneficial Use

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APR 18 2013

DEPARTMENT OF
WATER RESOURCES

SRBA Form No.42-1409-1 (Internet 2/09)

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN 29 2013

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 39-22797

Date Received: 4-18-13

Receipt No: C097011

Received By: [Signature]

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Alvin V. Shoemaker and Sally P. Shoemaker Phone (208) _____
Mailing Address P.O.Box 550 Bellevue ID 83313
Street or Box City State
2. Date of Priority (Only one (1) per claim) July 21, 1880
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Seamans Creek
which is tributary to (b) Sinks

4. a. Location of Point of Diversion is: Township 2 North, Range 19 East, Section § 33,
NW, 1/4 of NE, 1/4 Govt. Lot _____, BM., County of Blaine

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

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

Govt. Lot _____, BM., County of _____

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

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. An embankment and on-stream pond are located at the above referenced point of diversion of water from Seamans Creek for irrigation purposes. The pond is approximately 7 feet deep, has a surface area of approximately 5.9 acres and a volume of approximately 41.3 af. Diversions from the pond are accomplished by (1) opening the outlets and lowering the pond to provide an adequate discharge for irrigation, and then (2) closing the outlet gates until the pond fills again. In the winter months the pond is lowered and the flow from Seamans Creek is allowed to proceed downstream.

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6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For storage for irrigation* purposes from 4-15 to 10-31 amount or 634 ac feet

For aesthetic,wildlife, rec* purposes from 1-1 to 12-31 amount or 27.9 ac feet

For irrigation from storage*** purposes from 4-15 to 10-31 amount or 322 ac feet

For purposes from to amount or

7. Total quantity claimed (a) (cfs) and/or (b) 634 (acre feet)

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

9. Description of place of use:

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

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

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	19E	31	26			15	~~28~~	~~32~~	~~3.0~~	~~4.4~~									
02N	19E	32	31	25	7.1		~~28~~	~~33~~	~~3.0~~	~~4.4~~									
02N	19E	33					18	26											
02N	19E	33	awr																

Parcel (PIN) no(s).

Total number of acres irrigated 216.5

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

11. Do you own the property listed above as place of use? Yes (✓) No ()

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

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

 or None (✓)

13. Remarks: This claim is for a storage right associated with irrigation Water Right No. 37-22582, and for Recreation Storage. As shown by the attached Affidavit of Les Cameron, there has been significant public use of the pond for hunting and fishing purposes.

* Storage for irrigation includes storage above the minimum pool for irrigation cycles (322 ac ft), plus open water evaporation(15.2 ac ft, U of I Et for Idaho, Hailey Ranger Station), plus seepage (297 ac ft), for a total of 634 ac ft.

** Recreation, aesthetics and wildlife storage equals the minimum storage volume or 27.9 ac. ft.

*** Irrigation from storage equals the sum of refill volumes (24) delivered for irrigation (322 ac ft) delivered to the place of use under water right 37-22582.

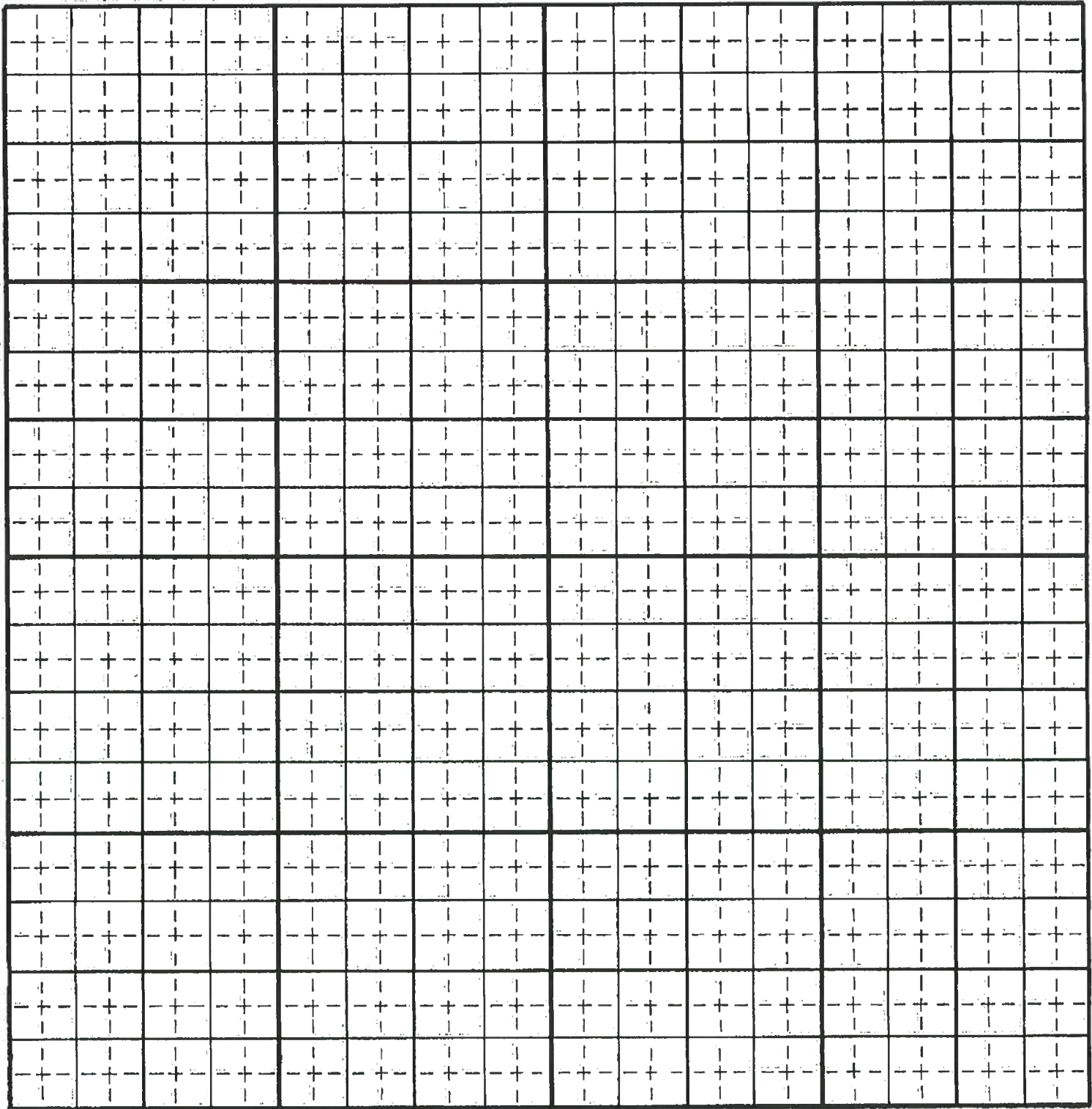
Last Name Identification No.

SCANNER

APR 19 2017

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



Last Name _____ Identification No. _____

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APR 19 2013

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

Court Blaine Cnty Dist Decree Date 5/25/1909 Plaintiff v. Defendant Joslyn vs Daly

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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 Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

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

_____ of _____,
Title Organization

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

_____ of _____,
Title Organization

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

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Robert E. Williams, will be acting as attorney at law of 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 [Signature] Date 4/16/13

Address PO Box 168

Jerome ID 83338

Last Name _____ Identification No. _____

SCANNED
APR 19 2013

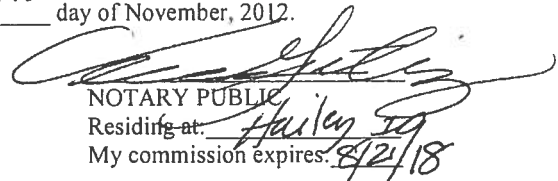
- 1

DATED this 26th

26th

Yes Cameron

26th

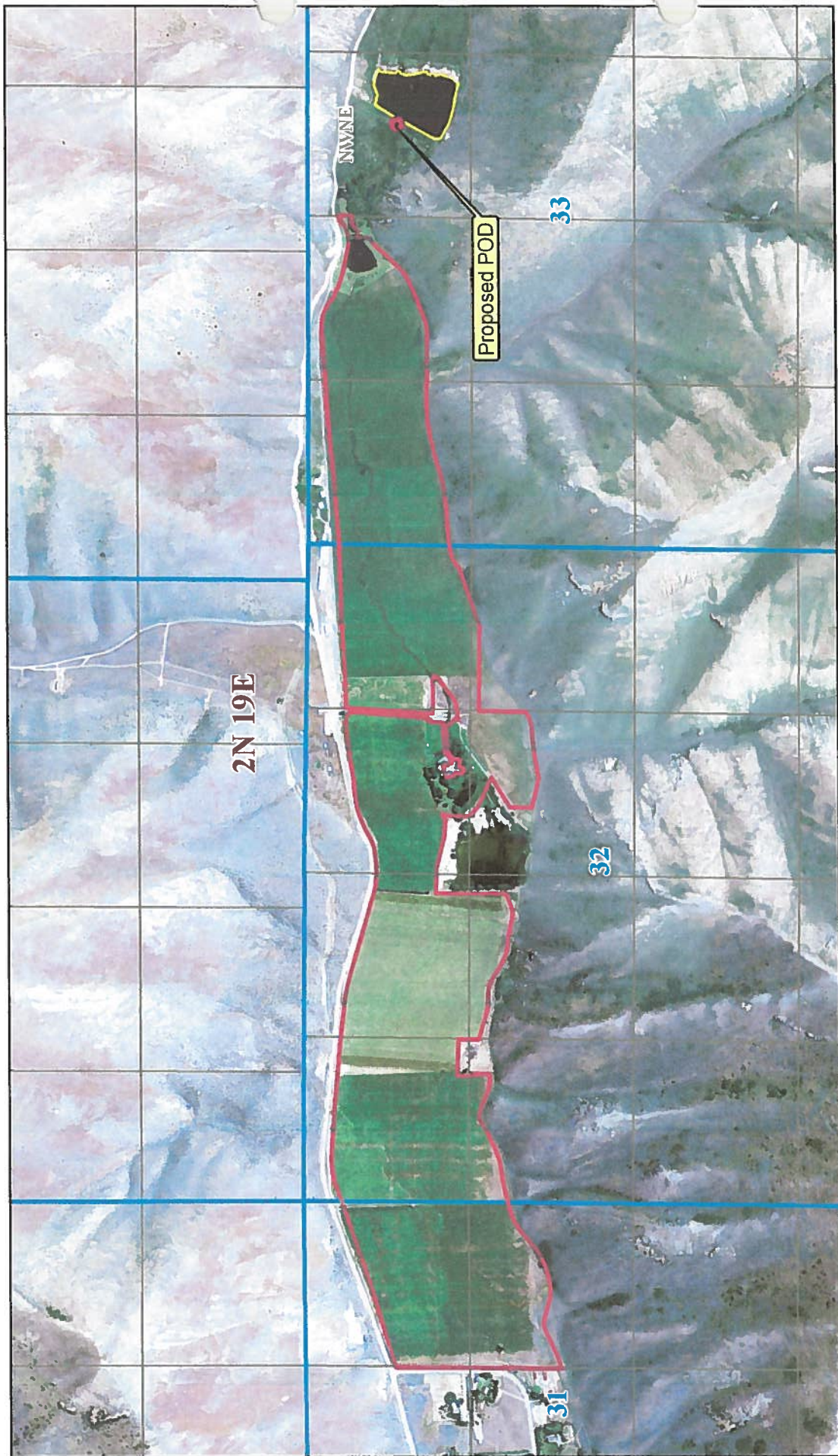


NOTARY PUBLIC

Residing at:

My commission expires. 8/21/18

APR 19 2013



- Legend
- 37-22582 WR POU
 - Upper Pond
 - first
 - township
 - ladasc

ALVIN V & SALLY P SHOEMAKER
AMENDED CLAIM UPPER POND
NAIP 2011 AERIAL

Feet
0 500 1,000 2,000

SCANNED
APR 19 2013

WILLIAMS, MESERVY & LOTHSPREICH, LLP
153 East Main
PO Box 168
Jerome, Idaho 83338
Telephone: 208.324.2303
Fax: 208.324.3135

RECEIVED

APR 17 2013

DEPARTMENT OF
WATER RESOURCES

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: Hon. Eric J. Wildman
FAX #: 1-208-736-2121
From: Robert E. Williams
Subject: Subcase 37-22797
Alvin V. Shoemaker and Sally P. Shoemaker
Date: April 16, 2013

Documents transmitted:

*Signature page of Notice of Claim to a Water Right
(pursuant to instructions received in the hearing held April 16, 2013)*

THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

_____, COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE Brenda IMMEDIATELY AT 208.324.2303.

SCANNED

APR 17 2013

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

Court Blaine Cnty Dist Decree Date 5/25/1909 Plaintiff v. Defendant Joslyn vs Daly

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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 Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

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

_____ of _____,
Title Organization

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

_____ of _____,
Title Organization

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

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Robert E. Williams, will be acting as attorney at law of 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 [Signature] Date 4/16/13

Address PO Box 168

Jerome ID 83338

Last Name _____ Identification No. _____

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APR 17 2013

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APR 18 2013

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 17 2013

By _____

Clerk

Deputy Clerk

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

In Re SRBA

Case No. 39576

Water Right Claim: 37-22797

ORDER GRANTING MOTION TO FILE
LATE NOTICE OF CLAIM

On January 29, 2013, Alvin V. and Sally P. Shoemaker, by and through counsel, Robert E. Williams, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. Hearing was held on the *Motion* was held on April 16, 2013. This *Motion* complied with all procedural requirements under *SRBA Administrative Order 1*, and no objections were made to this late Notice of Claim.

THEREFORE, IT IS ORDERED, that the *Motion to File a Late Notice of Claim* for the above-captioned water right is **granted**.

The original Notice of Claim, as well as any attached filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action. Following investigation by the Idaho Department of Water Resources, recommendation for the claim will be reported in the next *Late Claims Director's Report* which is issued on an annual basis. This modifies the provisions of *SRBA Administrative Order 1* 4d(2)(h).

IT IS SO ORDERED.

Dated: April 17, 2013.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

SCANNED

APR 19 2013

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on April 17, 2013, with sufficient first-class postage to the following:

ALVIN V SHOEMAKER
SALLY P SHOEMAKER

Represented by:
ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS ET AL
PO BOX 168
JEROME, ID 83338
Phone: 208-324-2303

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

SCANNED
APR 19 2013

ORDER

Page 1 4/17/13

FILE COPY FOR 01902

Deputy Clerk

Julie Murphy

4-16-2013

1-29

Williams, Meservy & Lothspeich, LLP
Attorneys at Law

153 East Main Street
Post Office Box 168
Jerome, Idaho 83338-0168



ROBERT E. WILLIAMS
JAMES C. MESERVY
JOHN B. LOTHSPICH
BRIAN J. WILLIAMS - ASSOCIATE
THEODORE R. LARSEN - ASSOCIATE
EUGENE D. FREDERICKSEN - RETIRED

TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135
E-MAIL: REWILLIAMS@CABLEONE.NET

January 28, 2013

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls ID 83303-2707

RECEIVED

JAN 29 2013

DEPARTMENT OF
WATER RESOURCES

Dear Clerk:

Enclosed for filing is a Motion to File Late Notice of Claim to which the Idaho Department of Water Resources has assigned the water right no. 37-22797. Also enclosed is a check in the amount of \$106.00 for the cost of filing and a front page for conforming and return to this office in the enclosed self addressed envelope.

Please contact me if you have any questions.

Very truly yours,

WILLIAMS MESERVY & LOTHSPICH, LLP

ROBERT E. WILLIAMS

REW/bsb
Encl.
Z:\data\Shoemaker Properties (Alvin)\SRBA 13 Jan 28th.doc

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JAN 29 2

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JAN 29 2013

DEPT. OF WATER RESOURCES

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

In Re SRBA	)	Subcase	37-22797
- Fees ok.	)		(Insert water right number)
Case 39576	)		
- claim complete.	)		
	)		STANDARD FORM 4
	)		
	)		MOTION TO FILE:
	)		☒ LATE NOTICE OF CLAIM
	)		☐ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☐ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Alvin V. and Sally P. Shoemaker

My name is Robert E. Williams

My address is P.O. Box 168, 153 East Main Street, Jerome, Idaho

My phone number is 1 (208) 324-2303

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

See **EXHIBIT A** attached hereto.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

See **EXHIBIT A** attached hereto.

I have attached:

☒ A fully completed Notice of Claim (available from IDWR).

☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$.

☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 106.00.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on April 16, 2013 at 1:30 p.m.
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

☐ I must amend my Notice of Claim to the use of water in the SRBA because:

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

I have attached:

- ☐ An amended Notice of Claim (available from IDWR).

- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of IDAHO

County of JEROME

Robert E. Williams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

[Handwritten Signature]

Attorney signing in representative capacity

Subscribed and sworn to before me on January 28, 2013
(Insert Date)



Brenda S. Butler
Notary Public for Idaho
Residing at: Gooding
My Commission expires: 3/5/2016

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy

to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on January 28, 2013, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

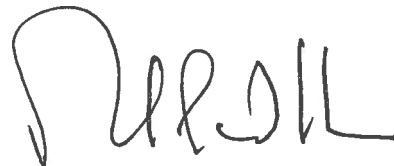
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

NARRATIVE IN SUPPORT OF PETITION TO FILE A LATE CLAIM E-DA-HOW RANCH - ALVIN SHOEMAKER

INTRODUCTION

After a conference with IDWR officials in September, 2012 concerning an alleged notice of violation, Alvin and Sally Shoemaker, owners of E-Da-How Ranch east of Bellevue, Idaho, determined that they would file a motion to file a late claim in SRBA for storage of irrigation water and associated uses involving the eastern most pond on their real property. E-DA-HOW Ranch is located in the Seamans Creek drainage east of Bellevue, Idaho and contains the major portion of irrigated area in the Seamans Creek valley. Water supply for irrigation is provided entirely by natural flow of Seamans Creek and springs which contribute to the flow of the stream. The discharge of Seamans Creek is inadequate for continuous irrigation of the 206 decreed acres of the E-DA-HOW ranch and as a result, a pond upstream of the ranch is utilized to store and enhance the discharge. A version of this pond has been in use for irrigation of all lands in the valley since at least 1909 according to decree. It is believed that the pond identified in *Joslyn vs Daly vs Campbell*, under decree filed May 25, 1909 in the District Court for Blaine County, was re-established at its present location after the original pond was filled in by landslide. The pond has likely been cleaned and improved since it was originally installed and currently includes a pipeline outlet and a gated open channel outlet. An aerial photo, attached as **EXHIBIT A-1** taken in 1950, shows the pond as it existed at that time and the 2011 photo attached as **EXHIBIT A-2** shows the current configuration of the pond. No significant changes have been made in the pond between these two dates. Similarly, examinations of aerial photographs in 1964, 1969, and 1991 indicate the same pond configuration. The moving parties own Water Right No. 37-22582, for 4.33 cfs in Seamans Creek, for irrigation purposes.

The pond serves to regulate the entire flow of Seamans Creek and it also collects subsurface water from various springs up-gradient and adjacent to the pond. Adjacent to the E-DA-HOW property, the City of Bellevue has installed subsurface collectors to obtain municipal water which is conveyed down the valley to the City of Bellevue through a pipeline. The pond and associated seepage are hydraulically connected and early decrees recognize the City of Bellevue water right as earlier in priority than the E-DA-HOW ranch and three other irrigation water rights downstream of the ranch. That priority has been confirmed by partial decrees issued in the SRBA.

There was no water right claim for storage in the pond filed in the Snake River Basin Adjudication. It is believed that a right associated with the pond was not claimed because language in the *Joslyn* decree cited above indicates that the pond should be considered as an integral part of Seamans Creek for the benefit of all users as follows:

“That a certain lake or pond situated on the so-called Water Company Ranch to wit: The NE¼NE¼ Section 33 and W½NW¼ and NE¼SW¼ Section 34, Township 2 North, Range 19 East and the waters thereof are part of and tributary to Seamans Creek and that neither Plaintiff herein nor any of the other parties has any exclusive

right to the use of the same, nor any right thereto except as part of the waters of said Creek.”

This language indicates that no storage claim was necessary, or that if any claim was made, it should have been a joint claim made by all users of the pond. A full copy of the decree in *Joslyn vs. Daly vs. Campbell* is attached to this Exhibit as **EXHIBIT A-3**.

OPERATION AND MANAGEMENT OF E-DA-HOW RANCH UPPER POND

According to the long time ranch manager of E-Da-How Ranch, the pond has been operated as an irrigation storage reservoir and provides interim storage to assure adequate discharge to the irrigation system and provide hydraulic head to maintain adequate sprinkler pressure in the main line for the lower part of the ranch. The area of the pond, when full, is estimated at 5.9 acres and the average depth is approximately 7 feet for an estimated total volume of 41.3 acre feet. During an average irrigation season, the pond may be filled early with Seamans Creek flow and then a cycle of filling and release from spring inflow is followed as needed until the end of the season. The pond is usually drawn down about 2.5 feet during each cycle and, depending on the inflow from springs, the refill requires about 3 days. This 2.5 ft draw down per cycle includes diversion from the pond for irrigation, evaporation from the pond open water surface, and seepage into the aquifer through the pond bottom. The pond also provides recreation, wildlife, and aesthetic benefits to local fisherman and bird hunters so it is apparently maintained at this level if possible. Seamans Creek in most years now provides little, if any, inflow during the irrigation season. It is estimated that the pond may fill and release between 12 and 24 times over the irrigation season from May 1 through October 15 (24 weeks). A drawdown of 2.5 feet results in a volume release of 13.4 acre feet per irrigation cycle. This irrigation operation results in a total volume release for irrigation of 160 to 322 acre feet per year. The pond is near full or full over the winter so no total refill is required in the spring. Total annual storage consists of storage for irrigation diversion, evaporation from the pond water surface, and seepage from the pond. Open water evaporation is estimated at 782 mm (2.57 ft) per year (University of Idaho ET, Hailey Ranger Station) and seepage is estimated at 0.3 ft/day or 50.4 ft/year. Total storage inflow during the year is therefore equal to the storage and subsequent diversion to irrigation (322 acre feet) plus annual evaporation (15.2 acre feet) plus seepage (297 acre feet) for a total of 634 acre feet. The inactive storage level in the pond at the end of the season is estimated to be at the 2.5 ft drawdown level with the storage volume remaining in the pond at the end of the irrigation season at 27.9 acre feet .

Assuming 24 refills maximum per year of 13.4 acre feet results in an estimated 322 acre feet of irrigation from storage per year. Since essentially all of the irrigation water is cycled through this pond, the 322 acre feet applied to the 216.5 allowed irrigated acres under water right 37-22582 results in 1.1.49 acre feet per acre per year or less than one-half of the estimated irrigation diversion requirement per acre. This estimated irrigation storage comports with the testimony by the ranch manager that there is seldom enough irrigation water to provide a full irrigation on the ranch and the goal is to ‘just keep things green’.

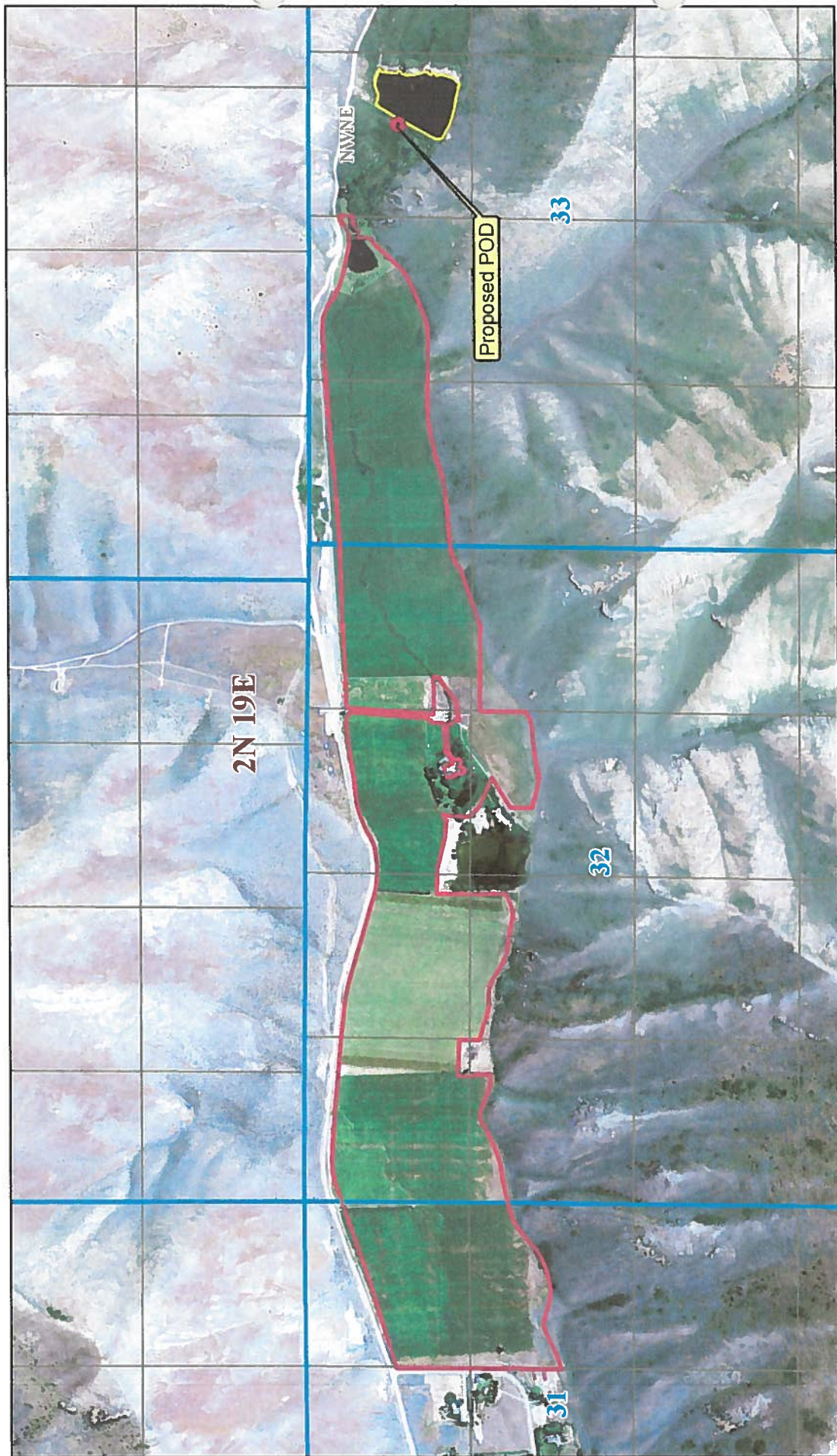
POND IMPACTS

The City of Bellevue primary subsurface water collectors are located below and downstream of the pond and seepage from the pond is likely a major contributor to these collectors. Draining or cessation of storage in the pond will likely have a negative impact on the City of Bellevue water supply. The pond is also used by the public for fishing, recreation, and wildfowl hunting. Affidavits from a long time local resident, Les Cameron, and Bob Marcroft, long time ranch manager, are attached hereto respectively as **EXHIBITS A-4 AND A-5**.



SHOEMAKER
PONDS HISTORICAL ANALYSIS
SCS 1950 AERIAL PHOTO
EXHIBIT A-1

BROCKWAY ENGINEERING, PLLC.
ALR - SEPT. 17, 2012



ALVIN V & SALLY P SHOEMAKER
AMENDED CLAIM UPPER POND
NAIP 2011 AERIAL

0 500 1,000 2,000 Feet

Legend
37-22582 WR POB
Upper Pond
first
township
ladesec

①

~~XXXXXXXXXXXXXXXXXXXX~~

~~37-0X~~
37-A4.

IN THE DISTRICT COURT, FOURTH JUDICIAL DISTRICT, BLAINE COUNTY,

IDAHO.

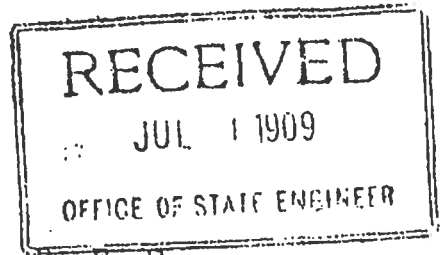
T. A. JOSLYN,
Plaintiff,

— vs. —

M. J. DALY,
Defendant,

— vs. —

NEIL CAMPBELL,
Intervenor.



D E C R E E .

This cause having been submitted to the court upon the issues raised by the pleadings, McFadden and Brodhead, appearing for the plaintiff and R. F. Buller, Esq., for the defendant and intervenor and thereupon pursuant to stipulation and agreement of parties and their counsel, the court now makes this its final decree.

I.

It is ordered, adjudged and decreed that the plaintiff, Joslyn, and the defendant, Daly, and the intervenor, Campbell, are each entitled to use one-third of the waters of Seamans Creek in Muldoon Gulch, Blaine County, Idaho, less the prior right of the City of Bellevue to one hundred fifty inches thereof, under a four inch pressure, by each party during the one-third of the time which he is authorized to use it at any place on said Seamans Creek so that each party can apply it on any part of his lands.

II.

That the plaintiff is the owner of the right to use all of the waters

EXHIBIT A-3

37 1198

SCANNED
JAN 29 2013

of certain springs described in the cross complaint, as about seven hundred seventy-five yards Easterly from plaintiffs residence on his ranch, known as the Kimbrough Ranch in Blaine County, Idaho, on the Northerly side of Seemans Creek. The same being the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32 and N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW NE $\frac{1}{4}$ of Section 33, Township 2, North Range 19 East, that said defendant and said intervenor have no right, title or interest therein or any part thereof.

III.

That a certain lake or pond situated on the so called Water Company Ranch, to-wit: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33 and W $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, Township 2, North Range 19 East, and the waters thereof are part of and tributary to Seemans Creek and that neither the plaintiff herein nor any of the other parties has any exclusive right to the use of the same nor any right thereto, except as part of the waters of said creek.

37 1200

IV.

That the defendant, Daly, as successor in interest of Jennie B. Galbraith, has the exclusive right to the use of the whole of the one-third of the waters of Seemans Creek formerly owned by said Jennie B. Galbraith (less one hundred fifty inches, belonging to the City of Bellevue) for the purpose of irrigating his lands, as follows: E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 31, and W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 32, Township 2 North Range 19 East NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31, Township 2 North Range 19 East.

37 1201

V.

That the intervenor, Campbell, as successor in interest of R. F. Buller has the exclusive right to the use of the whole of the one-third of waters of Seemans Creek formerly owned by Simpson Goble (less one hund-

SCANNED

1929

fty inches, belonging to the City of Bellevue) for the purpose of
ting his lands; to-wit: Lots four and five (4 & 5) SE NW Section
nship 1, North Range 19 East 118.17 acres, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$,
, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 31, Township 2 North, Range 19 East.

VI.

2
hat the plaintiff, Joslyn as successor in interest of Asa M. Kim-
, has the exclusive right to the use of the whole of the one-
of waters of Seamans Creek formerly owned by Asa M. Kimbrough
one hundred fifty inches belonging to the City of Bellevue) for the
e. of irrigating his lands; to-wit: E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ section 32,
 $\frac{1}{4}$ Section 32 N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33 NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,
n 34 all in township 2 North Range 19 East Boise Meridian.

VII.

ach party, hereto, is to have the right to use the whole of the
to which they are entitled in rotation for an equal period of time,
d of one-third thereof, for all the time (save and except the
s aforementioned rising on the Kimbrough Ranch on the Northerly side
Seamans Creek, the waters of which plaintiff is entitled to the
continuously), said period of time to be one week for each during
rigating season.

VIII.

It is further ordered, adjudged and decreed, that the plaintiff,
, and the defendant, Daly, and the intervenor, Campbell, and each
m, their servants, agents, employees or successors, in interest

SCANNED
JAN 29 201

those acting by, through or under them, be and are hereby perpetually enjoined and restrained from in any manner interfering with or obstructing, the use of the said waters or the various allotments thereof, in time and manner and to the extent hereinbefore set forth.

The plaintiff, Joslyn, and defendant, Daly, to each pay his own costs not heretofore paid; except that the costs of entering this decree, which shall be divided equally between the said parties and paid by them in equal portions.

Dated May 14th, 1909.

Edward A. Walters,

District Judge.

Certificate of True Copy.

STATE OF IDAHO,

County of Blaine.

} ss.

I, W. F. Horne Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a true and correct copy of the original Decree in the above entitled action now on file and of record in my office. (Given under my hand and the seal of said Court, at office in Hailey, this, the 26th day of May A.D. 1909.

Attest: W. F. Horne Clerk.
By Des A. E. Ford Deputy

SCANNED

JAN 29 201

SIMPSON GOBLE, MRS. JENNIE GALBRAITH,

-- WOMACK, JOHN W. BROWN,

MICHAEL BROWN, MIKE SMITH, A. BRYAND,

JOHN HUBBARD, AND THE WOOD RIVER

SMELTING COMPANY.

McCREE.

Defendant.

This cause came on regularly to be heard at the May Term 1885 of this Court and by stipulation of the parties was by order of this Court made and entered on the 25th day of July, A.D. 1885, referred to D. E. Waldron, Esq., to take the testimony and report his findings of fact and conclusions of law therein at the October Term, A.D. 1885 of this Court and the said Referee having taken said testimony and having made and filed his report containing his findings of fact and conclusions of law thereon, which report was filed herein on the 31st day of October, 1885, whereby the said Referee found that the plaintiff is entitled to 300 inches of the waters of Seamand's Creek measured under a four inch pressure and that the Defendants had unlawfully interfered with the plaintiff's right to the use thereof as stated in the complaint to which report and findings reference is hereby made, Now on motion of G. L. Waters, Esq. and Messrs. Angel & Sullivan, Attorneys for the Plaintiff,

37-1208

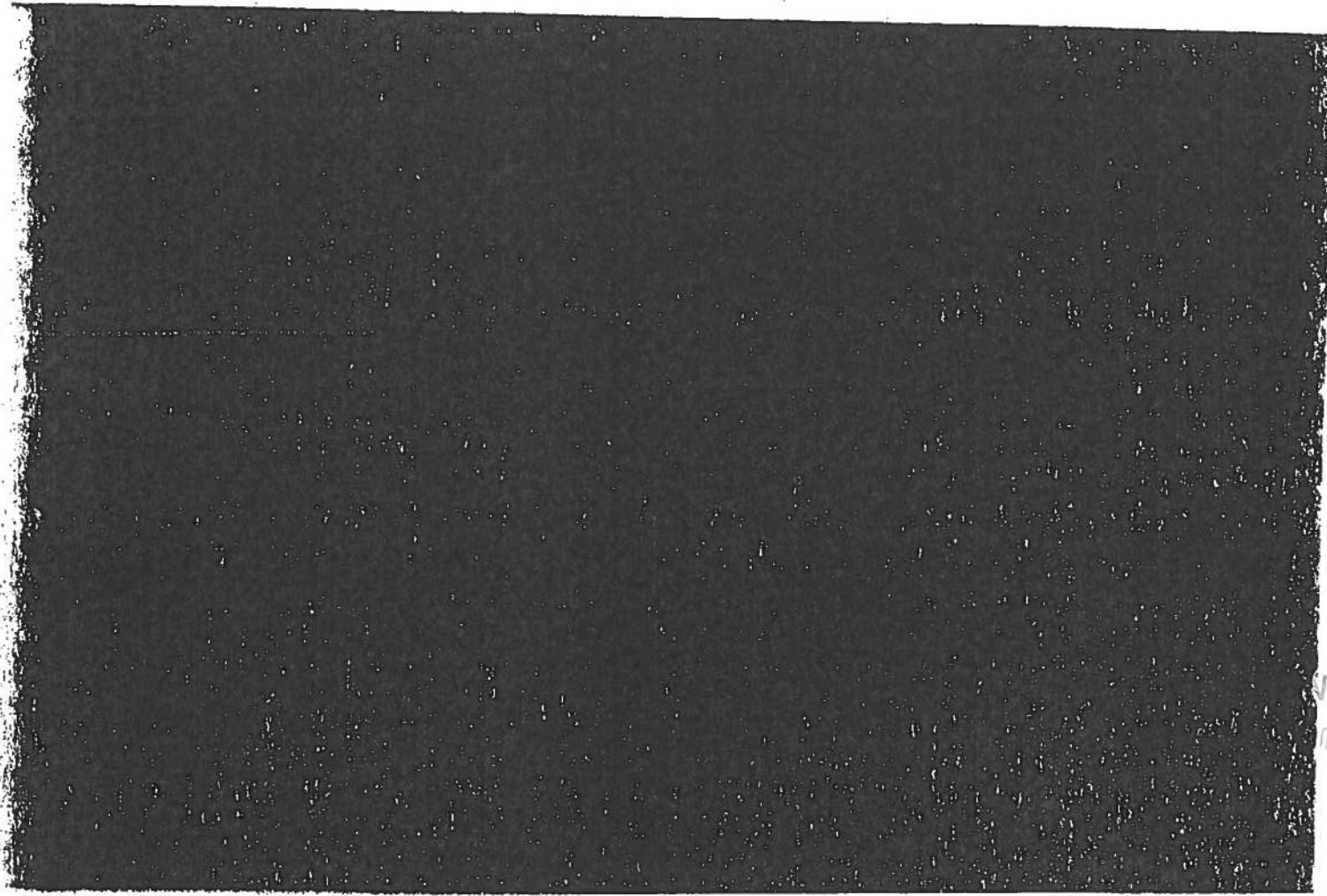
It is ordered, adjudged and decreed that the plaintiff in this action, the City of Bellevue, is the owner of and entitled to the possession of Three Hundred ^{150 (see modification at end of decree)} (300) inches measured under a four inch pressure of the waters of Seamand's Creek under and by virtue of the appropriation, diversion, and use thereof as stated in the complaint and found by the said Referee and that the

37-AG

1. DECREE -- T. A. Joslyn -vs- M. J. Daly 37-1198 thru 37-120a
2. LAND LIST -- M. J. Daly, et al. -vs- Torrensto A. Josslyn
3. DECREE -- The City of Bellevue -vs- Simpson Goble, et al.
4. JUDGMENT -- Frank Drake, et al. -vs- Gustave Bohlke, et al.
5. FINDINGS OF FACT AND CONCLUSIONS OF LAW -- Frank Drake, et al. -vs- Gustave Bohlke, et
6. JUDGMENT -- John E. Miller vs. Peter Weber, et al.

also

37-1208, 1209 thru 1211

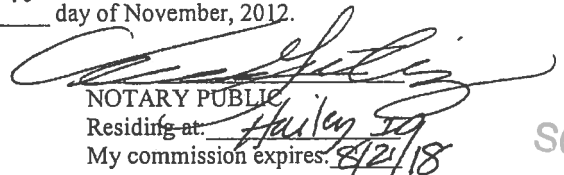


STATE OF IDAHO)
) ss
County of Blaine)

1. I am a resident of Bellevue, Idaho. My current mailing address is P.O. Box 326, Bellevue, Idaho 83313. I am a lifelong resident of Bellevue, Blaine County, Idaho. I am presently sixty-five (65) years of age.
2. Commencing in the early 1950s and continuing through the 1960s I frequently hiked or drove to a pond approximately five (5) acres in size located in the NE¼ NE¼ Section 33 and W½NW¼ and NE¼SW¼ Section 34, Township 2 North, Range 19 East. My purpose in going to the pond was to hunt or fish. During my frequent visits to the pond during the time period I have mentioned, I became aware that the pond was used for the storage of irrigation water from Seamans Creek for irrigation purposes. The irrigation water was used for irrigation of what is now Ee-Da-How Ranch, and a ranch to the west of EE-Da-How Ranch. The property west of Ee-Da-How Ranch is now a subdivision.
3. When I commenced visiting the pond in the early 1950s there were many dead aspen trees within the perimeter of the pond. These aspen trees appeared to have been dead for a long time, and must have been dead, in my estimation, for several decades prior to the early 1950s.
4. From the early 1950s through approximately 1961 I would visit the pond four (4) or (5) during each summer.
5. I recently visited the pond I have previously described. The pond currently appears to have the same configuration in terms of its location and area that it had when I visited it in the 1950s and 1960s.

DATED this 24th day of November, 2012.

SUBSCRIBED AND SWORN to before me this 20th day of November, 2012.



SCAN
JAN 29

AFFIDAVIT OF ROBERT E. MARCROFT

STATE OF IDAHO)
County of Blaine) :ss

ROBERT E. MARCROFT, first being duly sworn, deposes and says as follows:

1. I am currently a resident of Idaho, residing at 8210 East Sun River Street, Nampa, Idaho.
2. From 1990 through 2010 I was employed as the Manager of Ee-Da-How Ranch in Blaine County, Idaho, east of the City of Bellevue. Ee-Da-How Ranch is currently owned by Alvin and Sally Shoemaker.
3. Part of my responsibilities as Manager was to oversee the irrigation system for the ranch and to carry out the irrigation of the property. During the time period that I was Manager of Ee-Da-How Ranch, the upper, most easterly pond was utilized for the purpose of storing irrigation water in order to properly irrigate the property.
4. During the time I was Manager certain improvements were made to the embankment at the west end of the pond to allow it to more effectively filter moss and to avoid water from the pond penetrating the domestic water collection system of the City of Bellevue near the pond's location.
5. The most easterly pond and irrigation system was used for fishing by the public throughout the time I was Manager. My son, Robert C. Marcroft, took over for me and has served as the Manager of the ranch since 2012. I am still at the ranch frequently. The most easterly pond is currently leased by Silver Creek Outfitters for the purpose of fly fishing school instruction and general fishing.
6. Wildlife frequently visit and utilize the most easterly pond. I have personally observed Blue Herons, ducks, geese, deer, elk and other species utilizing the pond.
7. The pond continues to be occasionally used by duck hunters.

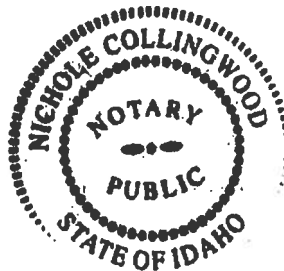
8. The pond adds a great deal to the scenic beauty of the local area and is frequently photographed by the public.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this ____ day of December, 2012.

Robert E. Marcroft
ROBERT E. MARCROFT

SUBSCRIBED AND SWORN to before me this 18 day of December, 2012.



Nichole Collingwood
NOTARY PUBLIC
Residing at: Canyon County
My commission expires: 7/18/16

EXHIBIT A-5

1-29

RECEIVED

JAN 29 2013

SRBA Form No.42-1409-1 (Internet 2/09)

DEPT. OF WATER RESOURCES

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 37-22797

Date Received: _____

Receipt No: _____

Received By: _____

1-29-13

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Alvin V. Shoemaker and Sally P. Shoemaker Phone (208) _____

Mailing Address P.O.Box 550 Bellevue ID 83313
Street or Box City State

2. Date of Priority (Only one (1) per claim) July 21, 1880
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Seamans Creek
which is tributary to (b) Sinks

4. a. Location of Point of Diversion is: Township 2 North, Range 19 East, Section § 33,
NW, 1/4 of NE, 1/4 Govt. Lot _____, BM., County of Blaine

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

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

Govt. Lot _____, BM., County of _____

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

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. An embankment and on-stream pond are located at the above referenced point of diversion of water from Seamans Creek for irrigation purposes. The pond is approximately 7 feet deep, has a surface area of approximately 5.9 acres and a volume of approximately 41.3 af. Diversions from the pond are accomplished by (1) opening the outlets and lowering the pond to provide an adequate discharge for irrigation, and then (2) closing the outlet gates until the pond fills again. In the winter months the pond is lowered and the flow from Seamans Creek is allowed to proceed downstream.

SCANNED
JAN 29 2013

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For storage for irrigation* purposes from 4-15 to 10-31 amount or 634 ac feet

For aesthetic, wildlife, rec* purposes from 1-1 to 12-31 amount or 27.9 ac feet

For irrigation from storage*** purposes from 4-15 to 10-31 amount or 322 ac feet

For purposes from to amount or

7. Total quantity claimed (a) (cfs) and/or (b) 634 (acre feet)

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

9. Description of place of use:

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

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

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	19E	31	26			15	28	33	3.0	4.4									
02N	19E	32	31	25	7.1														
02N	19E	33					18	26											
02N	19E	33	awr																

Parcel (PIN) no(s).

Total number of acres irrigated 216.5

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

11. Do you own the property listed above as place of use? Yes (✓) No ()

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

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

or None (✓)

13. Remarks: This claim is for a storage right associated with irrigation Water Right No. 37-22582, and for

Recreation Storage. As shown by the attached Affidavit of Les Cameron, there has been

significant public use of the pond for hunting and fishing purposes.

* Storage for irrigation includes storage above the minimum pool for irrigation cycles (322 ac ft), plus open water evaporation (15.2 ac ft, U of I Et for Idaho, Hailey Ranger Station), plus seepage (297 ac ft), for a total of 634 ac ft.

** Recreation, aesthetics and wildlife storage equals the minimum storage volume or 27.9 ac. ft.

*** Irrigation from storage equals the sum of refill volumes (24) delivered for irrigation (322 ac ft) delivered to the place of use under water right 37-22582.

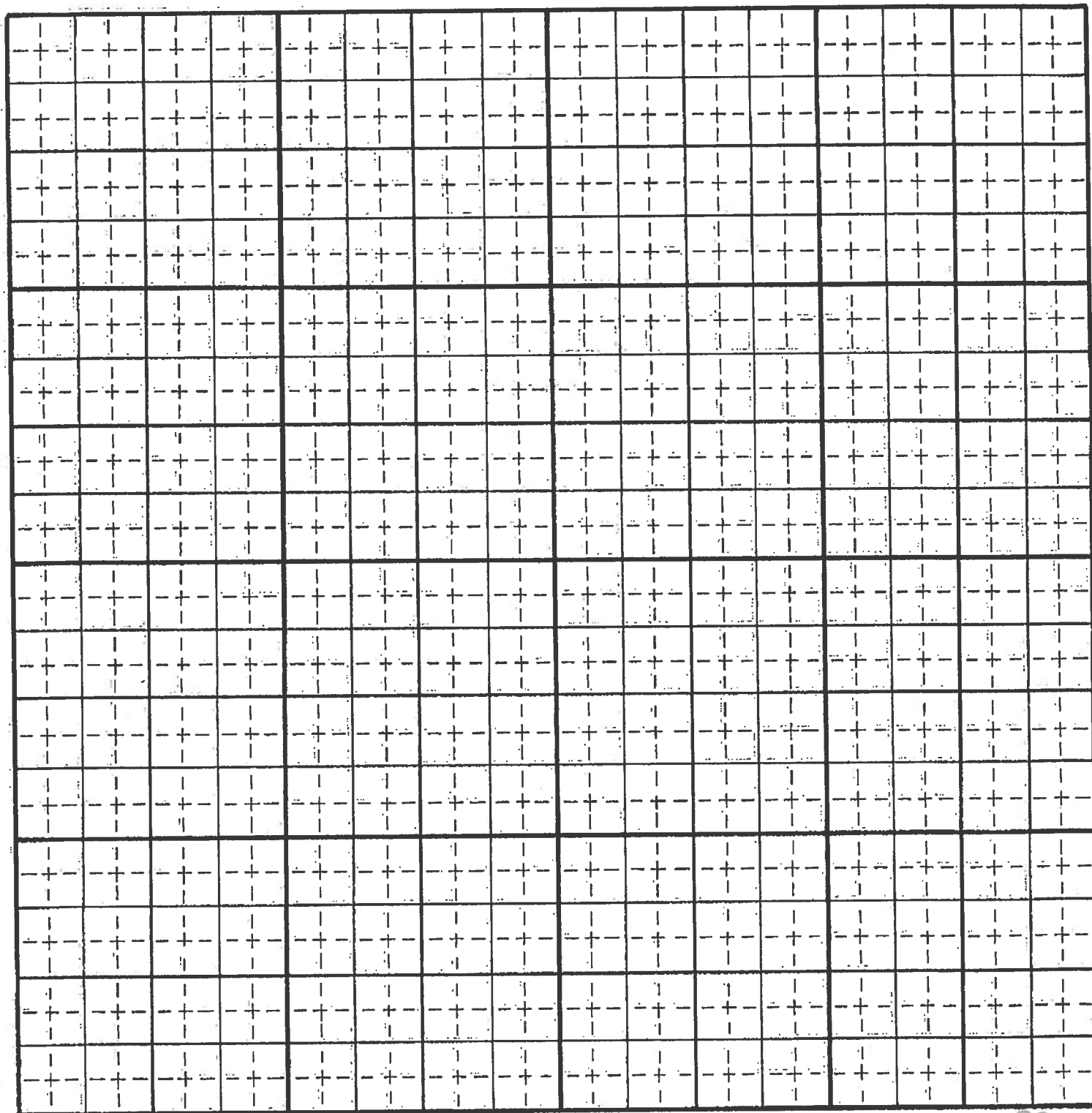
Last Name Identification No.

SCANNED

JAN 29 2011

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



Last Name _____ Identification No. _____

SCANN

JAN 29

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

Court Blaine Cnty Dist Decree Date 5/25/1909 Plaintiff v. Defendant Joslyn vs Daly

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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 Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

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

_____ of _____,
Title Organization

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

_____ of _____,
Title Organization

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

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Robert E. Williams, will be acting as attorney at law of 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 _____ Date _____

Address PO Box 168

Jerome ID 83338

Last Name _____ Identification No. _____

SCANN

JAN 29 2011

HOW YOU WILL RECEIVE NOTICE IN THE SNAKE RIVER BASIN ADJUDICATION

All documents filed in the Snake River Basin Adjudication, other than notices of claim, are filed with the court. Notices of claim to water rights filed in the Snake River Basin Adjudication are filed with the Idaho Department of Water Resources (IDWR). Copies of all documents filed in the Snake River Basin Adjudication will not be mailed to all parties (claimants) in the adjudication. Any document filed with the court will be mailed only to those parties who may be directly affected by it.

A monthly docket sheet is prepared by the court, which contains a summary of all documents filed with the court in the previous month and the dates and locations of hearings scheduled for the following three months. The docket sheet will be filed with the district court clerk in each county within the Snake River Basin Adjudication. Copies of a monthly docket sheet may be obtained from any of the offices of the department; a small fee may be charged to cover the cost of mailing and/or copying. If you wish to receive an annual subscription of the docket sheet printed each month, you should mark the appropriate place on your notice of claim form. You will be charged a small annual subscription fee by the court to cover the cost of copying and mailing. The docket sheet is also available on the court's web site at www.srba.state.id.us/docket.htm. Copies of any document listed on the docket sheet may be obtained from any of the offices of the department or the court and a small fee may be charged to cover the cost of mailing and/or copying the document.

Copies of all notices of claim filed with the department will be available for inspection from all offices of the department. You may also obtain copies of the notices of claim filed by other claimants, but you may be charged for the cost of copying and mailing. A claimant will not be charged for a copy of his or her own notice of claim, and a person who acquires property with water rights for which a notice of claim was filed will not be charged for a copy of the notice of claim filed by the previous owner.

After the notices of claim have been reviewed, the director will prepare and file a Director's report with the court that will contain the Director's recommendations as to each water right claimed under state law and a copy of each federal reserved water right claimed. Director reports will be prepared in each administrative basin within the Snake River Basin Adjudication. When the report for your basin is filed with the court, you will be mailed a notice informing you that the report for your basin has been filed. The notice will be sent to the most recent address shown by the department's files. Attached to the notice will be a copy of those portions of the report describing the water rights you have claimed. If you do not agree with the way your water right is described, you may file an objection to the report with the court. You can also file an objection if you disagree with the way other claimant's water rights are described, and the notice will tell you where a copy of the full report is available for inspection. The notice will tell you when and where to file your objection.

It is very important that you inform the department in writing of any change in your address. This is to make sure that you receive the notices affecting your water rights that are to be mailed by the department or the court.

If you are acquiring property with water rights in the Snake River Basin Adjudication water system in Idaho (either by purchase, gift, inheritance, or other means), it is very important that you inquire of the department whether a notice of claim has been filed. If you fail to file a required notice of claim for a water right, that water right may be determined to no longer exist.

If a notice of claim has been filed, it is very important that you file a written notice of change in ownership with the department. You may contact IDWR regional offices or the IDWR web site www.idwr.idaho.gov for change of ownership forms. The notice of change in ownership form must be accompanied by evidence of the ownership of the property. Again, this is to make sure that you receive the notices affecting your water rights that are to be mailed by the department or the court.

STATE OF IDAHO)
) ss.
County of Blaine)

1. I am a resident of Bellevue, Idaho. My current mailing address is P.O. Box 326, Bellevue, Idaho 83313. I am a lifelong resident of Bellevue, Blaine County, Idaho. I am presently sixty-five (65) years of age.

3. When I commenced visiting the pond in the early 1950s there were many dead aspen trees within the perimeter of the pond. These aspen trees appeared to have been dead for a long time, and must have been dead, in my estimation, for several decades prior to the early 1950s.

5. I recently visited the pond I have previously described. The pond currently appears to have the same configuration in terms of its location and area that it had when I visited it in the 1950s and 1960s.

DATED this 11 day of November, 2012.

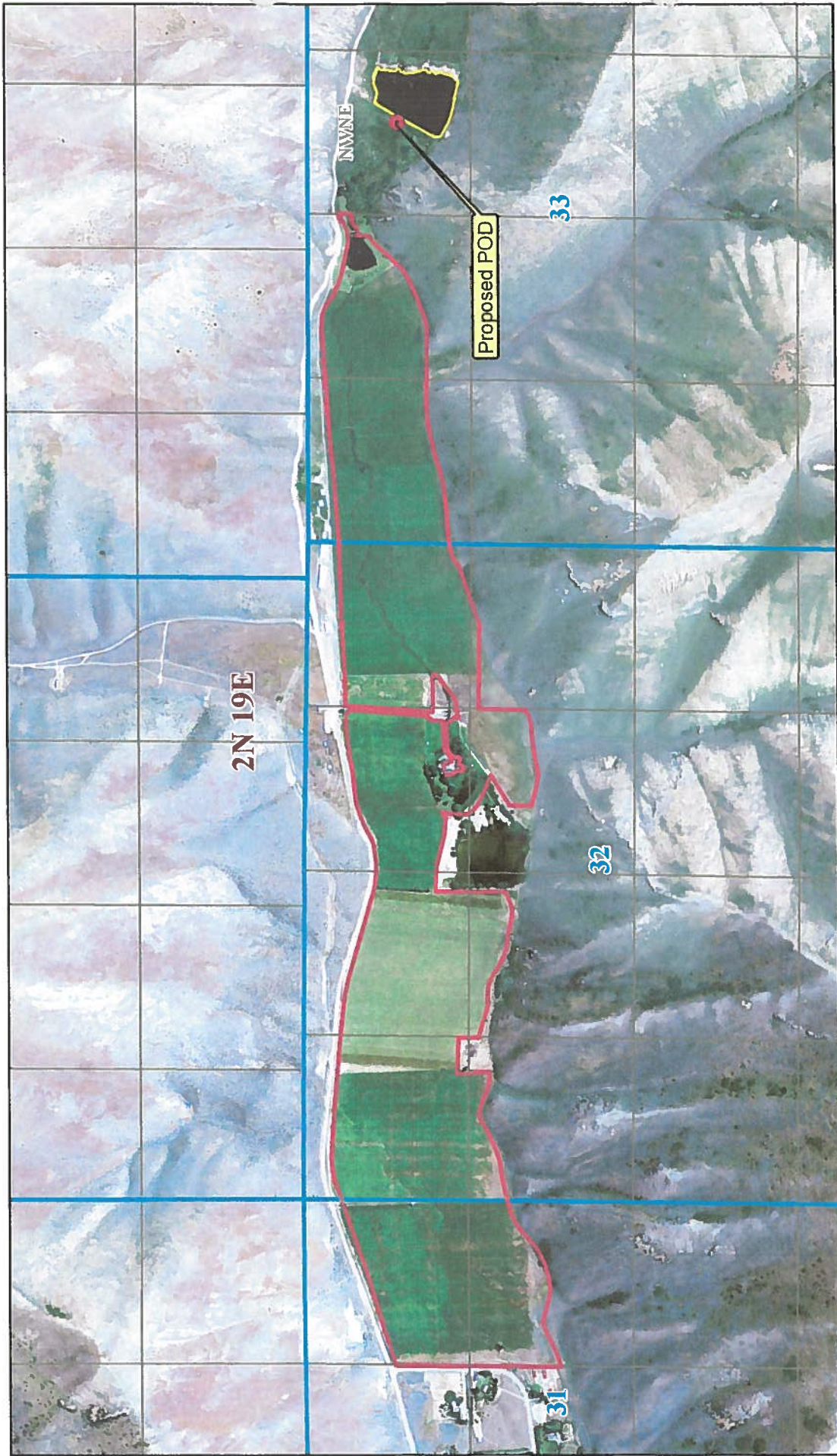
SUBSCRIBED AND SWORN to before me this 20th day of November, 2012.



Residing at:

My commis

My commission expires:



SCANNED
JAN 29 2013

BROCKWAY ENGINEERING, PLLC
ALR - JAN. 10, 2013

ALVIN V & SALLY P SHOEMAKER
AMENDED CLAIM UPPER POND
NAIP 2011 AERIAL



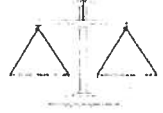
EXHIBIT A

The priority date claimed is one (1) day after the priority date for the City of Bellevue's right in Seamans Creek, #37-1208, which is July 20, 1880. The priority date claimed is one (1) day before the claim of Harry Rinker for right # 37-20624, also in Seamans Creek. Summons in the case of Goble vs. Kimbrough was issued June 18, 1890. The Complaint in that case alleged that water from "Seamonds Creek" had been used for ten (10) years prior to that date. A subsequent agreement of the litigants dated 4/21/92 divided "Seamonds Creek" water among Goble, Galbraith, and Kimbrough, who are predecessors in interest to the current claimants of rights in Seamans Creek. The City of Bellevue was involved as Plaintiff in the separate case of Bellevue vs. Goble, et al, begun in 1884, in which its right in Seamans Creek was given a July 20, 1880 priority date. The Complaint in that case and other historical documents establish that competing uses in Seamans Creek began as early as March, 1880.

— from OBJ
filed 5/18/11
37-22582

Williams, Meservy & Lothspeich, LLP
Attorneys at Law

153 East Main Street
Post Office Box 168
Jerome, Idaho 83338-0168



ROBERT E. WILLIAMS
JAMES C. MESERVY
JOHN B. LOTHSPREICH
BRIAN J. WILLIAMS - ASSOCIATE
THEODOR E. LARSEN - ASSOCIATE
EUGENE D. FREDERICKSEN - RETIRED

TELEPHONE: (208) 324-2303
TELESCOPIER: (208) 324-3135
E-MAIL: REWILLIAMS@CABLEONE.NET

February 9, 2011

Nick Spencer
Steve Clelland
Idaho Department of Water Resources
PO Box 83720
Boise ID 83720

RE: Water Rights 37-1200 and 37-1202 (37-22582); 37-1198

Gentlemen:

This letter will follow up our recent discussions on the above referenced water rights, in light of information we were able to glean from documents located in the Blaine County Records office. Some of these documents you have seen before but I thought it would be better for discussion purposes to include them with this letter. Copies of all the documents discussed are enclosed. I have added comments which I deemed appropriate for current purposes. The documents and comments are as follows:

1. NOTICE OF WATER RIGHT filed by Jennie Riddle under date of February 1, 1883, for the waters of Seamonds Creek (now "Seamonds Creek") for the purposes of irrigation and domestic purposes. The notice also recites that the waters have been "used for the last three (3) years". Ms. Riddle later became Ms. Galbraith.
2. APPLICATION FOR SURPLUS WATER RIGHT dated May 23, 1883, made by John W., Michael and Joseph Brown for waste and surplus water passing through the Seamonds and Mabees Ranches from Seamonds Creek.
3. SUMMONS in the case of *Simpson Goble, et al vs Kimbrough, et al*, dated June 18, 1890.
4. COPY OF COMPLAINT in *Simpson Goble, et al vs Kimbrough, et al*, alleging that the water in Seamonds Creek commenced to be used in the year 1880 and had been used ten (10) years prior to the date the complaint was filed. The complaint also references the Decree in *City of Bellevue vs Goble, et al*, being entered November 9, 1886, which granted rights in Seamonds Creek to the City of Bellevue. The Decree was subsequently modified June 21, 1887, according to the Complaint. As shown hereafter those dates appear to be one (1) later than actuality.

5. FINDINGS OF FACT in the case of *Daly, et al vs Josselyn*.

A. Finding No. 1, in response to a question submitted to the jury by the Plaintiff, refers to the 1891 suit between Simpson Goble as Plaintiff and Galbraith and Kimbrough, et al as Defendants and a finding of the jury that the waters of Seamonds Creek were divided between the parties by contract in the year 1891.

B. Finding No. 4, also in response to questions submitted to the jury by the Plaintiff, determined that Goble had the use of the waters of Seamonds Creek for the years 1896, 1897, 1898, 1899 and 1900.

C. In Findings related to questions addressed to the jury by the Defendants, starting on the second page of the Findings, the jury determined that the Defendant and his predecessor had continuously used the water in Seamonds Creek since the year 1800, which is obviously an error. Most likely, the year "1880" was intended. Josselyn was the successor to Kimbrough.

D. On page 3 of the Findings, the Court references findings made by it, made apart from the jury, including that the contract referenced in 5.A above was recorded of record as of the 21st day of April, 1892.

E. The Court's third finding on page 4 determined that the Plaintiff purchased lands and owned the appurtenant rights from Seamonds Creek in 1899. Daly was the successor to Galbraith.

F. On the last page of its Findings, the Court determined that the parties were awarded all the water of Seamonds Creek, in equal shares, except for 150 inches thereof.

6. The final DECREE entered in the case of *Daly, et al vs Josselyn* confirmed that Plaintiff owned one-third (1/3) of the waters of Seamonds Creek remaining after deducting 150 inches, in accordance with the contract entered into on the 17th day of December in 1891, among Plaintiffs' predecessor in interest, (Galbraith), Simpson Goble and Asa M. Kimbrough. The Court awarded the two (2) remaining one-third (1/3) interests in Seamonds Creek after the first 150 inches to RF Buller and Defendant Forrest Josselyn.

7. In a DECREE entered in the subsequent case of *Josselyn vs Daly vs Campbell*, on May 14, 1909, the Court determined that Josselyn, Daly and Campbell were each entitled to one-third (1/3) of the water in Seamonds Creek less the 150 inches allocated to the City of Bellevue. It appears to us that the Josselyn water described in Paragraph II of the Decree is now Water Right No. 37-1198. The Daly right described in Paragraph IV of the Decree is now Water Right No. 37-1200. The water right decreed to Campbell is now Water Right 37-1201 and the water awarded to Josselyn in paragraph VI was Water Right No. 37-1202, now part of 37-1200.

8. THE AGREEMENT among Simpson Goble, Jenny Galbraith and Asa Kimbrough, dated December 17, 1891, recorded April 21, 1892. The Agreement, referred to in some of the previously identified documents, divides among the parties the water in Seamonds Creek, except for 150 inches owned by the City of Bellevue. Half of the identified amount of water was to be owned by Mr. Goble and the other half by Galbraith and Kimbrough. The Agreement further provides that the case of *Goble vs Galbraith and Kimbrough*, the

Complaint for which appears in the previously identified documents, was dismissed as a result of the Agreement.

9. DECREE in *City of Bellevue vs Goble, et al*, dated November 12, 1885. This Decree originally awarded three hundred (300) inches of Semonds Creek to the City of Bellevue. Note the information in the margin on page 2 of the Judgment reciting that the Judgment was modified on June 28, 1886, to reduce the Plaintiff's rate of diversion to 150 inches. These dates appear to be correct. See paragraph 4 above. Goble and Galbraith were named Defendants in the case making it clear that they must have been using water from Semonds Creek at the time the case was filed.

10. We were also able to obtain a MANUSCRIPT OF A RESEARCH HISTORY being prepared by John Lundin, regarding settlement and development in the Big Wood River Valley. His manuscript contains several relevant references to the Semonds Creek litigation. The following pages of the manuscript are enclosed:

A. Pages 13 and 14: Goodman, Tunney and Hash claimed water from Semonds Creek on March 22, 1880, and filed notice with the Alturas County Recorder on March 25, 1880; Bellevue filed the Complaint regarding the Semonds Creek water in 1884. Private parties were apparently using Semonds Creek water prior to the City of Bellevue.

B. Pages 17 and 18: Tatro and Whiting filed a claim for 1500 inches of water from Semonds Creek in January of 1882; Tatro transferred his interest in the rights to Semonds Creek to E.C. Coffin in April of 1883, with the intention of supplying a city water works for Bellevue.

C. Pages 30-32: Counsel was obtained by Bellevue to defend 500 inches of water in Semonds Creek; Bellevue filed suit on September 22, 1884, against Goble, Lomax, Brown, Smith, Bryant, Hubbard and Wood River Smelting Company, regarding water appropriated after March of 1880; the 1885 decision on the case gave Bellevue 300 inches of water in Semonds Creek later reduced to 150 inches in October of 1886. The date referenced in paragraph 9 above still appears to be correct.

D. Pages 36-39: A Referee was appointed to take testimony and issue findings of fact and conclusions of law on October 31, 1885 in the City of Bellevue case; the appropriation date for the Bellevue water right was July 20, 1880; 47 days were spent taking testimony and hearing arguments of counsel; discovery of the marginal note in the original Decree reducing 300 inches of water awarded to Bellevue to 150 inches on June 21, 1886 was noted by the City of Bellevue.

E. Pages 70-71: Derivation of *Daly, et al, vs Josselyn*, identified; Resolution of the 1890 case filed by Goble against Galbraith and Kimbrough by the December 17, 1891 agreement referenced; Daly was successor to Galbraith, Buller was successor to Goble, and Josselyn was successor to Kimbrough under the December 17, 1891, Agreement.

F. Pages 91-93: In *Josselyn vs Daly, et al*; Josselyn was the successor to Kimbrough, Daly was the successor to Galbraith and Campbell, an intervenor in the case was successor to Buller and Goble; Reaffirmation of the right of each of the litigants to one-third (1/3) of the water in Semonds Creek, above the City of Bellevue's 150 inches is noted.

G. Pages 119-120: An agreement of July 9, 1920 between Bellevue and LeMoyne Farm and Livestock Company acknowledged Bellevue's right to 150 inches of water in Seamonds Creek; the City of Bellevue construction of a pipeline for conveyance of 150 inches of water on property now owned by Shoemaker discussed.

11. MAP prepared by Brockway Engineering. The map shows the outline of the present amended claim acreage of 219 acres (now agreed to be 216.5 acres per Steve Clelland's analysis) overlain by the place of use of the rights owned by the historic litigants. The Shoemaker rights originate from Galbraith, Kimbrough, Josselyn and Daly.

I believe the documentation submitted herewith, taken together with Steve Clelland's reasoning for combining the three (3) rights into one (1), substantiate a case for Rights 37-1198, 37-1200 and 37-1202 to be combined under a single right, 37-22582, with a priority date one (1) day after the City of Bellevue right, in Seamans Creek (formerly Seamonds Creek), making the Shoemaker right priority date July 21st, 1880. The other parameters of the Shoemaker rights would be as last proposed by Steve Clelland (216.5 acres POU, etc). The most reasonable inference that can be drawn from the documents enclosed is that Goble, Galbraith and Kimbrough began using water from Seamans Creek in 1880. The Shoemakers propose to file a motion for amended claims reflecting the revised priority date proposed by us, together with the other parameters proposed by Steve Clelland.

Please call me when you are ready to discuss the above information.

Very truly yours,

WILLIAMS, MESERVY & LOTHSPREICH, LLP

A handwritten signature in black ink, appearing to read 'R. E. Williams', written over a horizontal line.

ROBERT E. WILLIAMS

EXHIBIT 1

Spring is at the head of Tringlers
Creek and about five miles in
 an Easterly direction from the
 town of Nailey, in Alturas County
Idaho Territory.

George M. Parsons
 P. R. Williams,
 W. J. Seaman &

Recorded at request of P. R. Williams,
 Feb. 1. 1883. at 5 o'clock P.M.

C. J. Fox,
 County Recorder.

Water Right.

Notice is hereby given: That Henry
 Riddle lately deceased has for the
 last three years claimed and used
 the waters of & of Seamands' Creek Situated
 in Alturas County Idaho Territory, for
 the purpose of irrigating his Ranch
 known as the "Riddle Ranch" situated
 in said County and Territory about one
 and one half miles distant from the town
 of Bellvue and for farm household and
 domestic purposes. Now therefore as ad-
 ministrators of the Estate of said Henry
 Riddle deceased I hereby claim the water
 of said Creek for the purpose of irrigating
 said Ranch and for farming household
 and domestic purposes. And all persons
 are hereby warned not to interfere
 with said water.

Feb. 1. 1883

Wm. Jennie R. Riddle

Recorded at request of J. C. Emery Feb. 2nd 1883 at 10 o'clock

EXHIBIT 2

Application for surplus water right.

Belleme March 23rd 1883

We the undersigned do this day locate and claim for the purpose of irrigation, all the waste and surplus water passing through Steamons and Mabeck's Ranches so called, in creek which is known as Trail or Steamons Creek, Commencing at a point on said Creek about the middle of the S $\frac{1}{4}$ of N E $\frac{1}{4}$ of Sec 7. Vetch E. run along the base of the mountain to the S E corner of the S E $\frac{1}{4}$ of S E $\frac{1}{4}$ of Sec 17 in Township 22 N R 19 E 1 Base Meridian

John W. Brown

Michael Brown

Joseph Brown

Belleme, Idaho, Alturas Co

Recorded at request of Joseph Brown
March 23rd 1883 at 1.35 o'clock P M

(J. H. Hox)

By J. H. Hox Deputy

Co Recorder

Location Notice

Now all men by these presents that the Undersigned a citizen of the United States and resident of the County of Alturas and Territory of Idaho, claims by right of location primal appropriation possession occupation and diversion Five Thousand (5000) inches miners measurement of the waters of Hood River for mining milling manufacturing irrigating domestic, See manufacturing, agricultural, and any other useful or beneficial purpose & we

EXHIBIT 3

SUMMONS.

In the District Court of the Second Judicial District, Territory of Idaho,

IN AND FOR THE COUNTY OF LOGAN.

Simpson Goble John W. Brown and
Michael Brown

Plaintiff

VS.

Asa Kimbrough and
Jennie Galbraith

Defendant

The People of the United States in the Territory of Idaho send Greeting to

Asa Kimbrough and
Jennie Galbraith

Defendant

You are hereby required to appear in an action brought against you by the above-named Plaintiff in the District Court of the Second Judicial District of the Territory of Idaho, in and for the County of Logan, and to answer the complaint filed therein, within ten days (exclusive of the day of service) after the service on you of this summons—if served within this county; or, if served out of this county, but in this district, then within twenty days; otherwise within forty days—or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to restrain you and each of you from using the waters of "Deadman's Creek" (so called) in said County until the plaintiff Goble shall have received at the head of his ditch or ditches upon his land 100 inches of water. And until the plaintiffs John W. and Michael Brown shall have received of the waters of said creek at the head of their ditch or ditches 100 inches of the water of said creek. And for an injunction and for other relief as prayed for in the complaint.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said Plaintiff's will apply to the Court for the relief demanded in Complaint.



Given under my hand and the seal of the District Court of the Second Judicial District of the Territory of Idaho in and for the said County of Logan this 8th day of June in the year of our Lord one thousand eight hundred and 90.

Sol. Harbrouck Clerk.
By Chas. K. McGinn Deputy.

EXHIBIT 4

In the District Court of the Second Judicial District of
Idaho Territory in and for Logan County.

Simpson Goble, John W. Brown
and Michael Brown - - - - - Plaintiffs,

-----Vs-----
Asa Kimball ^{much} and
Jennie Galbraith - - - - - Defendants.

Plaintiffs complain and allege:

That for nearly ten years past, and up to the time of filing the
complaint herein, the plaintiff, Simpson Goble, has been the owner,
(except, for a portion of that period, as against the United States)
and in the possession of that certain tract of land, situate in
Logan County, Idaho Territory, and described as Lots numbered four
and five and the south east quarter of the north west quarter of
section six, township one North of range nineteen East, containing
one hundred eighteen and 17-100ths acres, and of the right to use
for irrigating the same, and for household purposes and the water-
ing of stock, of one hundred inches of water, measured under a four-
inch pressure, of the flow of that certain stream of water, known as
Seamands Creek situate in Logan County aforesaid, and easterly from
the City of Ellivue, in said County.

That the use of the water of said stream for and during the
said years has been as follows: that for the first year of said
period, to wit, the year 1880, the said plaintiff Goble, appropriated
^{fifty} one hundred inches of the water of said stream for household and
domestic uses, for the watering of stock, and for the irrigation of
the lands hereinbefore described, and in the Spring of 1881, did ap-
propriate an additional fifty inches of the flow of water in said
stream for the same purposes as hereinbefore set forth, and ever
since said last mentioned date, except when such use has been inter-
rupted by the acts of the defendants as hereinafter alleged, the
said one hundred inches of water, so appropriated as aforesaid, had
been used by the said plaintiff Goble for the purposes of irriga-

ting said lands, and for domestic uses as hereinbefore set out, under claim of right and adversely to all persons whomsoever.

And plaintiffs further allege, that for more than ten years last past, the plaintiffs John W. and Michael Brown, and their predecessors in interest have been the owners, (except, for a portion of that period as against the United States) and in the possession of that certain tract of land, situate in Logan County, Idaho Territory, and described as follows, to wit, the south west quarter of section six, township one North of range nineteen East and of the right to use for irrigating the same, and for ~~HOUSEHOLD~~ ~~AND~~ the irrigation of other lands adjacent thereto and since acquired by the said last named plaintiff, of one hundred inches of water measured under a four-inch pressure, of the flow of that certain stream, hereinbefore mentioned, known as Seemands Creek and situate in Logan County aforesaid.

That the predecessors in interest of the said last named plaintiff in the year 1880, appropriated fifty inches of the water of said stream for household and domestic uses, for the watering of stock, and for the irrigation of the lands hereinbefore described; and in the year 1891, did appropriate an additional fifty inches of the flow of water in the said stream for the same purposes as hereinbefore set forth and ever since the dates last hereinbefore mentioned, except when such use has been interrupted by the acts ~~BY~~ of the defendants as hereinafter alleged, the said one hundred inches of water, so appropriated as aforesaid, has been used by the said plaintiffs, John W. and Michael Brown and their predecessors in interest, for the purposes of irrigation of said lands so owned by them, and other lands immediately adjoining, also owned by said last named plaintiffs.

That at frequent times during the two years last past, the defendants in this action have diverted water from said stream without the consent of the said plaintiffs herein or either of them; and ~~KA~~ have maintained, and do now maintain in said stream, dams and obstructions to the flow of said water, which divert the water *of*

said stream away from, and prevent its flow to the ditches of the plaintiffs, and by so doing have frequently deprived the plaintiffs herein of the use of the water of said stream altogether, thereby interfering with the enjoyment and free use by the plaintiffs of their said property. That the defendants threaten to continue to maintain said obstructions in ~~said~~ said stream, and to continually divert said water and prevent these plaintiffs and each of them, from using the same.

That heretofore, to wit, on the 22nd day of September, 1884, an action was begun in the District Court of the Second Judicial District of Idaho Territory in and for Alturas County, wherein the City of Bellevue, in trust for the use and benefit of the inhabitants of the said City of Bellevue, was plaintiff, and the plaintiff Goble herein, (sued in said action as W.H. Goble) Mrs. Jennie Riddle, (being the defendant Jennie Galbraith in this action) Elihu Womack, John W. Brown and Michael Brown, (plaintiffs in this action) Mike Smith, A. Bryant, and John Hubbard were defendants, which said action was brought to determine the title and right of the City of Bellevue, plaintiff therein, as against each and every of the defendants in the said action, to the water flowing in Seamands Creek hereinbefore referred to, and such proceedings were had in said action in said Court, that heretofore, to wit, on the 9th day of November, 1886, a judgment and decree was duly entered, awarding the plaintiff in said action three hundred inches, measured under a four inch pressure, of the water flowing in said creek, - which judgment and decree was thereafter, to wit, on the 21st day of June, 1887, modified so as to allow the plaintiff one hundred inches of said water, and which said decree forever enjoined the defendants in said action from any and all interference with said one hundred and fifty inches of water, so awarded to said city.

Plaintiffs further aver, that the obstructions hereinbefore, in this complaint referred to, and which have been and now are maintained in said stream by the said defendants herein, are above the point on said stream, where the waters so awarded to the said City of Bellevue, are diverted therefrom, and that the lands of plaintiffs,

referred to in this complaint are situated on and along the said

stream below the point of such diversion by said city, and the defendants herein, during the period of two years above referred to, have frequently diverted all of the water of said stream, except such as was awarded to said city as above stated, and have thereby deprived these plaintiffs and each of them of any and all use of the waters thereof, and threaten to continue to maintain said obstructions and to continue to so divert the said water so as to continue to deprive these plaintiffs of the use and enjoyment of their rights and property in and to the said water.

And plaintiffs on their information and belief aver that the defendants and each of them are insolvent, and unable to respond in damages in an action at law, and that these plaintiffs have no adequate remedy at law for the injuries complained of, and ^{are} ~~is~~ entirely without remedy except by the equitable interposition of the Court.

Wherefore plaintiffs demands judgment, that the defendants and each of them be restrained by injunction from interference with or use of two hundred inches of the water of said Seamands Creek,

exclusive of the water heretofore decreed to the said City of Bellevue, as herein in this complaint alleged.

That the defendants and each of them be restrained by injunction from the use of any water of said Seamands Creek until the plaintiff shall have received the said two hundred inches of water demanded in said complaint.

That said injunction be made perpetual, and for other proper relief.

Territory of Idaho)
County of Logan) ss

Wm. R. Smith
Attorney for plaintiffs

Simpson Goble being duly sworn says that he is one of the plaintiffs in the above-entitled action; that he has heard the foregoing complaint read and knows the contents thereof; that the same is true of his own knowledge, except as to

EXHIBIT 5

JUDGMENT BOOK,

This Plaintiff paid all his taxes assessed against his land and improvements including his ditch and water rights and the ditch and right of way on the east side of Canal Creek.

Yes.

A. V. Burnett,

Foreman.

Paid for record July 6, 1899.

W. E. Hedges,

Clerk.

In the District Court of the State of Iowa, at Iowa City, Iowa, this day of June, 1899.

W. E. Hedges, Plaintiff,

vs.

Harold H. Hedges, Defendant.

A. V. Burnett,

and of the same name, sons of the parties aforesaid, are parties in the above entitled cause, as defendants, attorneys, and the cause is now on for trial, hearing, and the Court is now open and duly considered the matter, and by both parties, and the Court is now duly advised in the premises, and the findings of the Court are as follows:

The Court is now advised in the premises, and the findings of the Court are as follows:

That there is a right of way, or easement, between the land of the plaintiff, and the land of the defendant, and the Court is now duly advised in the premises, and the findings of the Court are as follows:

DISTRICT COURT, ALTA CO., IDAHO.

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between them: If so when?

(Answer) Yes, in the year 1891.

A. M. Burdum, Foreman.

2.

Did either of the parties to said contract, if there was one, ever refuse to carry it out, if so who, and when?

(Answer) Yes, P. A. Gosselyn, in May, 1900.

A. M. Burdum, Foreman.

3.

If you find that the contract referred to in the first question was made, who refused to comply with it, and when was such refusal first made known to the plaintiffs, or either of them?

(Answer) P. A. Gosselyn, in May, 1900.

A. M. Burdum, Foreman.

4.

Has the Plaintiff, Noble, had the use of any of the waters of Bearman's Creek for irrigating purposes on the ranch mentioned in the complaint during the irrigating season of any of the years since 1895: if so during what years?

(Answer) Yes, in 1896, 1897, 1898, 1899 & 1900.

A. M. Burdum, Foreman.

5.

Has the Plaintiff, Daly, or Mrs. Galbraith, or any tenant or renter of hers, had the use of any of the waters of said Creek for the purpose of irrigating their ranches described in the Complaint in the irrigating season at any time within five years before the 11th day of May, 1900.

(Answer) Yes.

A. M. Burdum, Foreman.

Questions propounded to the jury by the Defendants Counsel.

1.

Has the Defendant and his predecessors, continuously ever year since the year 1800, used the water of Bearman's Creek to the capacity of the two ditches upon his land used alternately in irrigating first one

JUDGMENT BOOK.

side, and then the other of said Creek.
(Answer) Yes.

A. M. Purdum, Foreman.

2.
Have the Plaintiffs, Goble & Butler, been seized or possessed for the period of five years before the commencement of this suit of any greater quantity of the waters of Steamboat Creek than the Defendants & their predecessors in the City of Salt Lake permitted them to have & did they had supplied their own wants.

(Answer) No.

A. M. Purdum, Foreman.

3.
Have any of the provisions of the contract ever been carried into effect or required by either the Plaintiffs or their predecessors to be performed?

(Answer) Yes.

A. M. Purdum, Foreman.

4.
Have the plaintiffs in this action acquired any of the waters of Steamboat Creek by virtue of said contract?

(Answer) Yes.

A. M. Purdum, Foreman.

Sister Johnson, George Sampson, Rosa Field, James Carey, A. Stetter, Joseph Ainsworth, Anna L. Bellgren, F. W. Hastings,

And the Court further finds from the evidence.

1st.
That the contract set forth and referred to in the plaintiffs amended complaint was duly and properly acknowledged by all the parties thereto, and was entitled to be recorded, and that the same was duly filed for record by Adm. W. Kimbrough, one of the parties thereto, on the 21st day of April, 1892.

DISTRICT COURT, ALTA CO., IDAHO.

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That the same was duly recorded; and that the Defendant purchased the lands, and the water described in the Plaintiff's amended complaint with notice of the said contract and of its terms, and subject thereto, which notice he had only from the said record.

2nd.

The Court further finds from the evidence and admissions of the Defendant Counsel in open Court, that the Plaintiff Goble purchased before the commencement of this suit, and was the owner and in possession of the lands described in the said amended complaint as having belonged to Jennie Galbraith, and the Court further finds from the evidence that said purchase and ownership included all of her right, title and interest of in and to the waters of Scamans Creek by virtue of the contract aforesaid, or otherwise.

3rd.

The Court further finds from the evidence and the admissions of Defendants Counsel in open Court, that the Plaintiff Buller, in the year 1899, and before the commencement of this suit, had purchased and became the owner of the lands described in the said amended complaint as having belonged to the Plaintiff Goble, and the Court further finds from the evidence that the said Buller also owns all of the right, title, and interest of the said Goble of in and to the waters of said Scamans Creek, as appurtenant to said lands, whether acquired by virtue of said contract, or otherwise, and that at the time of the commencement of this suit, the said Goble was in possession of the said lands as lessee of the said Buller.

4th

The Court further finds, that in ordinary

JUDGMENT BOOK.

years, during the irrigating season, there is about 500. million inches of water or about ten cubic feet per second flowing in said San Juan Creek, and that the same is sufficient, when properly used, and applied to irrigate all the lands under cultivation on the ranches of the Plaintiffs and defendant described in the complaint, and that all of said lands are arid lands, and will not raise cultivated crops without irrigation.

5th
The Court further finds that neither the Defendant nor his grantors have been in adverse possession, occupation or use of all the waters of said Laramie Creek for five years next before the commencement of this suit, and that no grantor of the defendant, after making the contract set forth in the amended complaint, to divide the waters of said Creek, ever claimed any right to hold or use, any of the waters of said creek adversely to the Plaintiffs, or their grantors, nor contrary to any of the provisions of said contract.

6th.
The Court further finds, that the Defendant, shortly after his purchase of the said ranch from Asa M. Kimbrough, during on the 28th day of May 1898, began to claim and use all of the waters of said creek except 160 inches which was conceded to the City of Bellvue, contrary to the provisions of the said contract, and in total disregard of the rights of the plaintiffs therein, and to their share of the waters of said creek, and that at and before the time of the commencement of this suit, he was diverting, and threatening to continue to divert to his own exclusive use and benefit, all of the waters of said creek except the 160 inches belonging to the City of Bellvue.

DISTRICT COURT, ALTA CO., IDAHO.

Printers, Lithographers and Stationers, St. Louis.

to the great and irreparable injury of the Plaintiffs, and that the Plaintiffs, on or about the 5th day of May 1900, requested him to permit them to put in a diversion gate, or box, and to divide the waters of said creek pursuant to the terms of said contract, which he then and there refused, and that was the first time that there was any refusal to carry out and perform the said contract, and it was also the first time that any of the parties to said contract or their successors had demanded that such diversion gate be put in, on the part of any of the parties thereto and that there after and during all of the irrigating season of the year 1900, until served with the restraining order in this cause, the Defendant denied the rights of the Plaintiffs to any of the waters of said creek, and continued to divert the same to his own exclusive use and benefit, and that such diversion is a great and irreparable injury to the plaintiffs

C. O. Stockslager
 Discharge.

Upon the foregoing findings of fact the court declares the law to be that the plaintiffs and Defendants as between themselves are each entitled to one third of the waters of Shamans Creek less 150 inches thereof for irrigating domestic and other agricultural purposes in and upon their respective ranches described in the complaint by virtue of the contract set forth therein.

And that the said plaintiffs are entitled to decree as prayed for in their amended complaint for the specific performance of the said contract, and for a perpetual injunction against the Defendant to restrain and prevent him from diverting to his own use more than one third of the waters of said stream less 150 inches, or from depriving the plaintiffs of the use of the remaining two thirds of the said water.

C. O. Stockslager.

EXHIBIT 6

JUDGMENT BOOK,

Geo. D. Bennett & Co., Print. & Book Binders

W. J. Daly, Simpson Goble and R. F. Buller
 vs
 Forrest A. Josselyn
 Plaintiffs
 Defendant
 Final Decree.

This cause having been regularly called and tried by the Court and a jury, and the finding of fact and conclusions of law and the decision thereon, in writing having been duly rendered by the Court, which are now on file in this cause, wherein judgment was awarded in favor of the said W. J. Daly, Simpson Goble & R. F. Buller, and against the Defendant Forrest A. Josselyn, on motion of J. E. Esquivel, and R. F. Buller Esqrs. attorneys for the said Plaintiffs.

It is now therefore, ordered, adjudged and decreed, that the plaintiffs have judgment as prayed for in their complaint herein against the Defendant and that the Plaintiff W. J. Daly as successor in interest to Jennie B. Galbraith is entitled to one third of all the water remaining in Scamans Creek after deducting 150 runners inches therefrom, for irrigating and domestic and live stock purposes, upon the lands described in the amended complaint as the E $\frac{1}{2}$ of the S $\frac{1}{2}$ of Section 81 and the N $\frac{1}{2}$ of the N $\frac{1}{2}$ of Section 32, Township 2 N. of Range 19 E. by virtue of the contract entered into on the 17th day of December 1891, by and between said Jennie B. Galbraith, Simpson Goble, and Asa W. Kimbrough set up in the said amended complaint, and that the said R. F. Buller as successor in interest to the said Goble as owner of the land described in said amended complaint as lots 4 & 5, being the West $\frac{1}{2}$ of the N $\frac{1}{2}$ of the N $\frac{1}{2}$ and the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of Section 6, Township 1 N. of Range 19 E. and the said Goble as his heirs, are together entitled to another one third of the water of said creek less 150 runners inches as aforesaid or 3 cubic feet per second by virtue of the contract aforesaid, for use in irrigating and for domestic and live stock purposes upon the said last described lands.

And that the Defendant Josselyn is

DISTRICT COURT, ALTA CO., IDAHO.

Printers, Lithographers and Stationers, St. Louis.

successor in interest to the said Asa M. Kimbrough is entitled to the remaining one third of the waters of said creek less the 150 minus inches aforesaid, by virtue of the contract aforesaid, for use in irrigating and live stock and domestic purposes in and upon the lands described in the said amended complaint as the $N. E. \frac{1}{4}$ of the $N. E. \frac{1}{4}$ & the $N. E. \frac{1}{4}$ of the $N. E. \frac{1}{4}$ of Section 32, and the $N. W. \frac{1}{4}$ of the $N. E. \frac{1}{4}$ of Section 33 Township 24 of Range 19 East, all of said land lying and being in Blaine County, Idaho.

It is further ordered, adjudged, and decreed that the said contract be specifically performed by the said parties Plaintiff and Defendant, and the said Defendant make or assist in making, or permit the Plaintiffs to make, such such division of the waters of said stream, in the channel thereof, at a point as near as practicable to the head of the ditches heretofore, on the 17th, day of December, 1891, made by said Asa M. Kimbrough for irrigating his said lands by putting in a box, or flume with division boards inserted therein so that 150 inches or three cubic feet and two thirds of the remainder of the waters of said Creek shall flow unobstructed, down the channel thereof over and past the Defendants said lands, and it is further ordered, adjudged, and decreed, that the said defendant, his servants, employees, agents, and attorneys, and each of them be and they are hereby perpetually enjoined and restrained from diverting, or using more than one third of the water remaining in said Scamans Creek, after deducting, 150 minus inches or three cubic feet therefrom for the use of the City of Bellevue, or from interfering with the free and constant flow the said two thirds of the waters of said Creek, less 150 minus inches or three cubic feet per second thereof over and past his lands hereinbefore described, It is further adjudged, that each party pay his own costs in this behalf laid out and expended

L. C. Stockslager,
Dist Judge

EXHIBIT 7

109 Case
IN THE DISTRICT COURT, FOURTH JUDICIAL DISTRICT, BLAINE COUNTY, IDAHO.

J. J. JONES, Plaintiff.

M. J. DALL

Defendant.

M. J. C. E. E.

WILL CAMPBELL,

Intervenor.

This cause having been submitted to the court upon the issues raised by the pleadings, McQuinn and McQuinn, appearing for the plaintiff and B. F. Butler, Esq., for the defendant and intervenor and thereupon pursuant to stipulation and agreement of parties and their counsel, the court now makes this the final decree.

I.

It is ordered, adjudged and decreed, that the plaintiff, Joslyn, and the defendant, Dally, and the intervenor, Campbell, are each entitled to use one-third of the waters of Seemans Creek in Muldon Gulch, Blaine County, Idaho, less the prior right of the City of Bellevue to one hundred fifty inches thereof, under a four inch pressure, by each party during the one-third of the time which he is authorized to use it at any place on said Seemans Creek so that each party can apply it on any part of his lands.

II.

375498

That the plaintiff is the owner of the right to use all of the waters of certain springs described in the cross complaint, as about seven hundred seventy-five yards easterly from plaintiff's residence on his ranch, known as the Muldon Ranch in Blaine County, Idaho, on the easterly side of Seemans Creek. The same being the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 32 and NE $\frac{1}{4}$ NW $\frac{1}{4}$ and N.W.N.E $\frac{1}{4}$ of Section 33, Township 2, North Range 12 East, that said defendant and said intervenor have no right, title or interest therein or any part thereof.

III.

That a certain lake or pond situated on the so called water company ranch to-wit: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33 and NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, Township 2, North Range 12 East, and the waters thereof are part of and tributary to Seemans Creek and that neither the plaintiff herein nor any of the other parties has any exclusive right to the use of the same nor any right thereto except as part of the waters of said creek.

IV.

37-1200 That the defendant, Daly, as successor in interest of Jennie B. Galbraith, has the exclusive right to the use of the whole of the one-third of the waters of Seamans Creek formerly owned by said Jennie B. Galbraith (less one hundred fifty inches, belonging to the City of Bellevue) for the purpose of irrigating his lands, as follows: $E\frac{1}{2}$ $NE\frac{1}{4}$ Section 31, and $W\frac{1}{2}$ $NW\frac{1}{4}$ Section 32, Township 2 North Range 19 East $NW\frac{1}{4}$ $NE\frac{1}{4}$ Section 31, Township 2 North Range 19 East.

V.

37-1201 That the intervenor, Campbell, as successor in interest of A. F. Butler has the exclusive right to the use of the whole of the one-third of waters of Seamans Creek formerly owned by Simpson Goble (less one hundred fifty inches, belonging to the City of Bellevue) for the purpose of irrigating his lands; to-wit: Lots four and five (4&5) S.E.N.W. Section 6, Township 2 North Range 19 East 118.17 acres, $SW\frac{1}{4}$ $NE\frac{1}{4}$ S. $NE\frac{1}{4}$ $NW\frac{1}{4}$ $SE\frac{1}{4}$, $N\frac{1}{2}$ $SW\frac{1}{4}$, $SW\frac{1}{4}$ $SW\frac{1}{4}$ Section 31, Township 2 North, Range 19 East.

VI.

37-1202 That the plaintiff, Joslyn as successor in interest of Asa M. Kimbrough, has the exclusive right to the use of the whole of the one-third of waters of Seamans Creek formerly owned by Asa M. Kimbrough (less one hundred fifty inches belonging to the City of Bellevue) for the purpose of irrigating his lands; to-wit: $E\frac{1}{2}$ $NW\frac{1}{4}$ and $W\frac{1}{2}$ $NE\frac{1}{4}$ Section 32, $NE\frac{1}{4}$ $NE\frac{1}{4}$ Section 32 $N\frac{1}{2}$ $NW\frac{1}{4}$, $NW\frac{1}{4}$ $NE\frac{1}{4}$ Section 33 $NE\frac{1}{4}$ $NE\frac{1}{4}$, $W\frac{1}{2}$ $NW\frac{1}{4}$, $NE\frac{1}{4}$ $NW\frac{1}{4}$, Section 34 all in Township 2 North Range 19 East Boise Meridian.

VII.

Each party, hereto, is to have the right to use the whole of the water to which they are entitled in rotation for an equal period of time, instead of one-third thereof, for all the time (save and except the springs aforementioned rising on the Kimbrough ranch on the Northernly side of the Seamans Creek, the waters of which plaintiff is entitled to the use of continuously), said period of time to be one week for each during the irrigating season.

VIII.

It is further ordered, adjudged and decreed, that the plaintiff, Joslyn, and the defendant, Daly, and the intervenor, Campbell, and each of them their servants, agents, employees or successors, in interest or those acting by,

through or under them, be and are hereby perpetually enjoined and restrained from in any manner interfering with or obstructing, the use of the said waters or the various allotments thereof, in time and manner and to the extent hereinbefore set forth.

The plaintiff, Joslyn, and defendant, Daly, to each pay his own costs, not heretofore paid; except that the costs of entering this decree, which shall be divided equally between the said parties and paid by them in equal portions.

Dated May 14th, 1909.

Edward A. Walters.

District Judge.

Filed May 25, 1909.

W. F. Horne, Clerk.

By Geo. A. McLeod, Deputy.

STATE OF IDAHO
County of Blaine.

I, George F. McLeod, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a full, true and correct copy of a certain Decree recorded in Book 6 page 421 in the above entitled action and on file in my office.

Given under my hand and the seal of said Court in my office, at Hatley, this _____ day of _____, A.D., 19____.

Attest: George F. McLeod, Clerk.

By Hazel Barber, Deputy.

EXHIBIT 8

This Agreement,

Agreement.

Simpson Lake,
Gennie Eastbrock and
Asa Kinkorrough.

Set. 3. Dec. 1st 1891
Recorded & renewed of A. H. Kinkorrough, Apr. 21 1892, 3 p. m.
W. B. Gorge,
County Recorder.

Between Simpson M. Lake of
Boson County, State of Idaho, of the
one part, and Gennie Eastbrock and
Asa Kinkorrough of the same county
and state, of the other part.

Whereas, The 1st 9th Nov. there
is now pending in the District
Court of the Fourth Judicial
District of the State of Idaho, and
for the County of Teton, a
suit in the name of Simpson M. Lake

vs. Plaintiff and Gennie Eastbrock and Asa Kinkorrough
are defendants, which suit was and is for the
purpose of trying the respective rights and title
of the parties thereto in and to the water of Sea-
monds Creek; and.

Whereas, the parties to said litigation are desir-
ous of settling all matters in difference between
them relative to the use of said water;

Now, Therefore, in consideration of the mutual
covenants hereinafter contained and the further con-
sideration of the dollar, by each party to this
agreement to the other party, the receipt whereof
is hereby acknowledged.

It is agreed that the water flowing in said
stream, known as Seamon's Creek, being, formerly,
from Baldern, in Seamon's or Muldon Creek, be
divided equally between the parties hereto, (always ex-
cepting the 150 inches owned by the City of Baldern)
that such division be made in the channel of said
stream at a point as near as practicable to the
head of the ditches now and heretofore used by
said Kinkorrough; that it be made by means of a box
or flume and division boards inserted there-
into and said Lake have and it is hereby granted to
him without charge by the said Gennie E. Eastbrock
a right of way over any and all lands owned by
her for a ditch of sufficient size and capacity
to carry the portion of water awarded to him.

under this agreement, with right to enter upon said land and construct such ditch, together with the necessary dams, and any and everything necessary, to a complete enjoyment and use of the water as awarded to him, said Goble, under this agreement.

The suit now in Court, and heretofore referred to, is to be dismissed, each party to pay his or her own costs, and all claim for damages arising or growing out of any injunction heretofore issued in said suit, or in the suit of said Goble and J. W. and Marshall Brown, as Plaintiffs, against said Kimbrough and Galbraith, as Defendants, is hereby waived and declared fully satisfied, paid and discharged.

Should a suit be instituted hereafter by any one not a party to this agreement against the parties hereto, claiming a prior right to the use of the waters of said creek, and the same result in a decree favorable to the rights of the said claimant, then and in that case each party to this agreement binds themselves by this agreement to convey unto such party obtaining said decree, an equal portion of the amount of water so decreed, so that the parties hereto may continue to share equally, as between themselves, the waters of said stream.

For the faithful observance of this agreement, and each and every of the provisions thereof the parties hereto bind themselves, each unto the other in the sum of One Thousand Dollars, which sum may be recovered, by the party injured, against the party or parties violating the same, as liquidated damages.

In witness whereof, the parties to this agreement, have herunto set their hands and seals, this 7th day of December, 1891.

Chimpoen Goble.

Asa M. Kimbrough.

Gemma Palfreman

22: On the 17th day of
April, A.D. 1881
and eight hundred

Quantity of Alterations

and myself one, before me, J. W. Garrett, Auditor
Recorder, in and for the County of Alturas,
State of Idaho, personally appeared Simpson &
Goble, Geo. M. Kindrough, and James R. Carson
names are subscribed to the annexed instrument
as parties thereto, personally known to me to be
the same persons described in and who execute
the said annexed instrument as parties thereto
and they, each duly acknowledged the same that
they, each of them, executed the same freely and
voluntarily, and for the uses and purposes
therein set forth.

In Witness whereof, I have hereunto set my hand and affixed my official seal, this 1st day and year in the 22nd year of the said above written.

J. W. Garrett,
County Recorder

EXHIBIT 9

DISTRICT COURT, BUTTE COUNTY, IDAHO

In the District Court of the Second Judicial District
of the Territory of Idaho in and for the County
of Alturas.

The City of Bellevue
Plaintiff

vs

Simpson Goble
Mrs Jennie Galbraith
Wormack.

Deceit

John W. Brown
Michael Brown
Mike Smith
A. Ryland, John Hubbard
The Nevada River Smelting
Company.
Defendants

This cause came on
regularly to be heard at the ~~may~~ term 1885 of
this Court and by stipulation of the parties was
by order of this Court made and entered on the
23rd day of July A.D. 1885 referred to G. E. Wal-
ton Esq. to take the testimony and report his
findings of fact and conclusions of law thereon
at the October Term A.D. 1885 of this Court and
the said referee having taken said testimony and
having made and filed his report containing his
findings of fact and conclusions of law thereon
which report was filed herein on the 31st day
of October 1885 whereby the said referee found
that the plaintiff ~~is~~ entitled to 300 inches of
the waters of Seaman's Creek measured under
a four inch pressure and that the defendants
had unlawfully interfered with the plaintiff's
right to the use thereof as stated in the complaint
to which report and findings reference is hereby
made. Now on motion of G. E. Walton Esq
and Messrs Angel Sullivan Attorneys for
the Plaintiff It is ordered, adjudged and de-
creed that the plaintiff in this action the City
of Bellevue is the owner of and entitled to
the possession of Three Hundred (300) inches
measured under a four inch pressure of the
waters of Seaman's Creek under and by virtue

of the Appropriation Division and use thereof as
stated in the Complaint and found by the said
Officer and that the defendants made not nor
have either of them any right title or interest
in or to said three hundred (300) inches of the
waters of said Seaman's Creek owned by the
plaintiff as aforesaid or any part thereof.
And it is further adjudged and decreed that the
said defendants, Benjamin Noble, Thomas
Jennings Galbraith, Little Smith, John Brown,
Michael Brown, A. J. Bryant, John Van
bars and The Wood River Smelting Company
their and each of their Attorneys, Agents, Ser-
vants Employees and all persons acting by
through or under them or either of them be and
each is hereby forever enjoined and restrained
from in any manner stopping, diverting, ap-
propriating or using any portions of the water
of Seaman's Creek or in any manner what-
ever interfering with the free and unobstruc-
ted use and possession of the waters of said
Seaman's Creek or in any manner what-
ever interfering with or turning out any
waters from said Seaman's Creek after
said waters shall have reached the said
plaintiffs, head and ditch so long as the
quantity running in said ditch shall not ex-
ceed three hundred inches measured under
a four inch pressure or in any manner what-
ever prevent or obstruct the said plaintiff
the City of Bellvue and the inhabitants
thereof from the free and unobstructed use
and possession of the said quantity of three hun-
dred inches measured under a four inch pres-
sure of the waters of said Seaman's Creek or
in any manner whatever obstruct or pre-
vent the said three hundred inches of the
said waters so measured as aforesaid from
freely and without obstruction flowing into
the ditch or ditches of the plaintiff and it
is further ordered and adjudged that the
plaintiff the City of Bellvue do have and
receive from the defendants the sum of \$

Goldman & Co. Attorneys

The defendant must pay this sum of \$

DISTRICT COURT, ALTURAS CO., IDAHO.

bursements at this action

Dated November
9th 1885

By the Court

Lease Broderick

District Judge

In the District Court of the Second Judicial District of
Idaho Territory, in and for Alturas County
Present Hon. Lease Broderick

Presiding Judge

October Term A. D. 1885

Thursday Nov. 12, 1885

Levied No. 23

P. H. Rollins Resp't

J. E. Picotte

Appel from
Probate Court

On motion of S. L. Littleton

Price Esq. Atty for Applt. Ordered that this cause
be dismissed at Plaintiff's & Respondents cost,
for want of prosecution and that judgment be
entered herein in favor of Resp't & Applt and
against Plff & Resp't for defendants costs herein
to be taxed.

Wherefore by Virtue of the law and by
reason of the premises, aforesaid. It is ordered
and Adjudged that Resp't have and recover from
said Plff. the sum of \$39.75 with interest
thereon at 10 per cent. per annum from the date
hereof till paid, being Resp'ts costs & disbursements
incurred in this action.

Judgment rendered Nov. 12, 1885

Costs \$39.75

A. S. Richardson
Clerk

By E. E. Richards
Deputy

EXHIBIT 10

in tents. The one conspicuous exception was a log cabin, J.O. Smith's saloon."¹¹

In 1880, a correspondent for the Boise Statesman, J.B. Foster, described the flow of fortune hunters entering Bellevue:

Day after day, the stream of bonanza hunters continues to pour through our little town, each armed with pick, pan and shovel and such articles as are necessary for the simple culinary department for the prospector....Tents, wagons and willow shanties are scattered along the margin of the stream for half a mile: and as soon as some restless prospector folds his tent and leaves the scene for some new excitement his place is promptly filled by some newcomer.¹²

Providing water to the new cities was critical. On March 22, 1880, George Goodman, William Tunney, and A.J. Hash, residents of the Town of Bellevue, located, claimed, and appropriated water from Seamonds Creek located one mile east of Bellevue, "for the use and benefit and in trust and for and behalf of the inhabitants" of the Town. They posted a written notice claiming the water, and on March 25, 1880, filed a notice of location with Alturas County Recorder.¹³ Bellevue's Complaint in a lawsuit filed in 1884, alleged the men claimed 500 inches of water from Seamonds Creek, although the Court later found they claimed 300 inches. On March 26, 1880, the three men constructed a

¹¹ Brandt Scrapbook, pages 93-94.

¹² Spence, *For Wood River or Bust*, pages 11, 12.

¹³ Bellevue was first in Alturas County, one of Idaho Territory's original counties which included much of central Idaho. On February 7, 1889, Elmore and Logan counties were created from Alturas by the Idaho Territorial Assembly, with Bellevue becoming part of the new Logan County, leaving Alturas "only a small part of its original domain." The temporary seat of Logan County was located at Shoshone, but in a general election held October 1, 1890, the permanent seat was taken away from Shoshone and located at Bellevue. Idaho became a state in 1890, and its Legislature created Blaine and Lincoln County in March 1895, and dissolved Logan County. McCloud, George, *History of Blaine and Alturas Counties*, pages 73-75.

dam in Seamonds Creek about 1,650 yards east from the easterly line of Bellevue, and began building a ditch from the dam that was six feet wide and sixteen inches deep, sufficient to carry 500 inches of water into and along the streets, alleys and lands of Bellevue. On March 26, 1880, the men diverted water from Seamonds Creek into the ditch for the use and benefit of the inhabitants of Bellevue, although the Court later found the water was diverted on July 20, 1880. Prior to the diversion of the water, the town had been "laid off into lots, blocks, streets and alley ways," and a large number of the streets were occupied by families.

The Creek was named after William Seamonds, an early pioneer of the area. However, the name of the creek has been spelled a number of ways over the year.¹⁴

Bellevue Township was surveyed and "laid out" in May 1880. However, title to the land was still vested in the U.S. government. The Desert Land Act of 1894 (Carey Act) provided that title to arid land in the west could be obtained by staking a claim, laying out a townsite, and providing water to the town.

In addition to the water from Seamonds Creek connected by ditches to city lots, Bellevue had two community wells located in the middle of its main street as its original water system. The 1885 Sandborn map showed a public well in the middle of the road at the corner of Main and Elm, and it is shown in a picture taken in 1884, with a caption

¹⁴ There are many different spellings of Seamonds' name, including Seaman, Seamon, Seamons, Seamans, and Seamands. The creek named after him is spelled "Seamans Creek" on many maps, including the City of Bellevue Utility map. We generally use the spelling "Seamands" since that is what is used today, although we used the other spellings in the documents that are cited in this paper.

Main Street was 100 feet wide and the side streets were 80 feet. Initial prices for lots were \$20 for corner lots and \$15 for inside lots.¹⁹

The Wood River Times of January 17, 1883, reported that Judge Dilley received and filed for record, the patent to the Bellevue town-site. It was registered in Washington, D.C. on January 2, 1883. The January 24, 1883 paper raised questions about the validity of the titles previously issued for land in Bellevue. Judge Dilley had issued deeds to Bellevue lots in advance of receiving the patent to the town-site, which were in then question. Further, Dilley's appointment as Probate Judge may not have been valid, since the Organic Act of Idaho prohibited members of the Legislature from holding any other office, and Dilley was a member of the Legislature when he was appointed Judge. His acts as Probate Judge may have been illegal and void, and the validity of the titles granted by him disputed. These issues caused Bellevue landowners who had purchased lots prior to November 1882, to refile for titles to their land, including Matt McFall, who had bought the lot on which his International Hotel sat on main street in 1881.

On January 12, 1882, Charles P. Tatro and Charles V. Whiting filed a claim for 1,500 inches or all the water from Seamands Creek. These claims gave rise to a conflict with Bellevue over water rights from the creek which had to be resolved. On February 6, 1882, Tatro, Whiting, and G.L. Waters filed articles of incorporation with the Idaho Secretary of State's Office for the Bellevue Water Company, which was organized to provide a water system to supply water to the city of Bellevue, using their claimed water

¹⁹ Patterson, Mark, *Privately Owned Land & City Owned Water*, RM-11 #4, paper in Ketchum Community Library.

rights in Seamands Creek.²⁰

The next major event concerning water from Seamands Creek occurred in 1883. The Wood River Times of April 4, 1883, announced that Isaac Bingham transferred his interests to the ditch and water rights in Seamands Creek to Con [Charles] Tatro, who then sold them to E.C. Coffin for \$10,000.

It is to be utilized for supplying a city water-works for Bellevue, the ground or site for which has been located. The water-ditch is 1½ miles from the town, and high enough to give a good head and an ample supply for a much larger town than Bellevue.

On February 8, 1883, the 1881-1883 Legislative Assembly of Idaho Territory enacted special legislation incorporating Bellevue as a city, and providing the new city with a formal charter. The City of Bellevue took jurisdiction over all of the land previously within the boundaries of the Township of Bellevue, which had been surveyed in May 1880. Bellevue is one of the few Idaho cities that still operates under its charter. Bellevue was granted a franchise to build a street railway to link Bellevue with the mines at Broadford, but none was ever built, although there was at least one proposal submitted.²¹

²⁰ Patterson, Mark, *Privately Owned Land & City Owned Water*, page 2. The corporation was authorized to buy, sell, acquire, locate and appropriate water rights and all franchises incident thereto; to construct ditches, dams, flumes, conduits and reservoirs; to lay down pipes and other artificial means for conducting water through all the streets and alleys of the town of Bellevue, for the purposes of supplying the citizens with water for domestic use at such rates as may be charged by the corporation, for fire purposes, and for agricultural, milling, mining and merchandise purposes; to acquire land for the construction of reservoirs and dams; and to acquire rights of way through lands for ditches and for laying down pipes to conduct water acquired or owned by the corporation. The corporation was authorized to issue 50,000 shares of stock to sell for \$1.00 apiece.

²¹ On April 8, 1885, Bellevue's Council granted to the Bellevue and Broadford Passenger and Freight Transportation Company, a right-of-way through the streets and highways fo Bellevue to build a railway operated by horse power or steam for 50 years.

June [1884] for their land below Bellevue, and Chinamen began gardening on said land to supply the mining camps of Bullion, Doniphan, Broadford, Bellevue, Ketchum, Deer Creek and Hailey. They grew vegetables of corn, cabbage, turnips, rutabagas, parsnips, beans, peas, radishes, lettuce, onions, celery, carrots and even watermelons and cantaloupes. It seemed the frost didn't and even now does not settle there as it does in the rest of the valley.³⁴

"Chinamen" rented the Spring of Gladness ranch in 1887, and raised vegetables for Wood River mines until the early 1900s. They also had "good gardens" between Broadford and Bellevue. The ditch "carried water for many years until later a second ditch was built to the east of this first one and the former Brown Brothers big ditch was abandoned." The water sold by the Brown Brothers to Bellevue was taken from the ditch at the northeast corner of the city, and was extensively used by its residents.

The city of Bellevue, which had been made a Chartered City in the year of 1883 in Idaho Territory, made a ditch coming out of the Brown Brothers ditch at the northeast side of the city and through small open ditches got water to the places needing it in the city yards, stores, shops, homes and the school. By this time, Bellevue had more than two thousand population."³⁵

On August 11, 1884, the Special Committee on Water Rights made a report to the Council. They had retained the services of J.S. Waters Esq. of Bellevue as special counsel to defend and maintain the right of the inhabitants of Bellevue in 500 inches of the waters of Seamands Creek claimed by the city. Waters was to receive \$300 for representing the city in a lawsuit in District Court, and another \$200 for an appeal to the

³⁴ McGonigal, *Spring of Gladness*, pages 110.

³⁵ McGonigal, *Spring of Gladness*, pages 110 -111, 120, 172. However, beyond McGonigal's description, there is little information about what water was provided to Bellevue by the Brown Brothers. In 2007, attorneys advising the City of Bellevue concluded that "we do not know if the Brown Group ever sold water to the inhabitants of Bellevue, nor do we know how that water was delivered and how it was used, and by how many people. In other words, we do not know the historical facts that would serve as a basis that the City ever obtained water from the Cove [Brown Brothers] canal." Letter to City of Bellevue, dated September 10, 2007, from the Law Firm of Hemmerle & Hemmerle, Hailey, Idaho.

Supreme Court. A special committee appointed earlier that spring to investigate whether **Matt McFall** was committing a nuisance by keeping cattle so near the residence of Mr. E.B. Hall. The committee recommended that the Council declare McFall's actions to be a nuisance, and take immediate steps to abate the same. The Council passed a resolution that Brown & Co. be required to make boxes across their ditch to conduct the water from the small ditches.

The lawsuit to protect Bellevue's water rights was filed on September 22, 1884, against landowners who had appropriated water from Seamands Creek after March of 1880: *City of Bellevue v. Simpson Goble, Mrs. Jamie Goldsmith Womack, John Brown, Michael Brown, Mike Smith, A. Bryant, John Hubbard, and the Wood River Smelting Co.*, in the District Court of the Second Judicial District of the Territory of Idaho in and for the County of Alturas³⁶ On October 6, 1884, G.L. Waters, special water council to the city, reported to the Council that Mr. Hash and Goodman would sell to the city their interests in water rights which were then in litigation, for \$175. The lawsuit was decided in the fall of 1885, with Bellevue getting 300 inches of water in Seamonds Creek, not the 500 inches

³⁶ The Wood River Smelter was located at the foot of Lookout Mountain east of Bellevue near the mouth of Muldoon Canyon. The smelter was built in 1881, and expanded in 1883. The smelter at Bellevue, erected by E. A. Martin, was ready to be started up in September 1881, processing ore from the Munday mine, and it was expected to run until winter processing ore from the Queen Victoria and Minnie Moore. *Idaho, An Illustrated History*, page 110; McLeod, *History of Alturas and Blaine County*, page 30; Strahorn, Robert, *Idaho Territory*, page 59.

The News-Miner of January 27, 1883, reported that a heavy load of machinery for the Wood River Smelter at the foot of Lookout Mountain had arrived, which nearly completed the necessary machinery for the plant. The stack would be raised as soon as soon as a "competent machinist" could be found. The superintendent "is pushing affairs ahead vigorously and will touch her off on the 1st of May without doubt. After starting, it is doubtful if the fires are allowed to die out for months to come."

it claimed. That amount was reduced to 150 inches by agreement in June 1886.

On November 3, \$9 was paid for three days labor on ditches, and \$5 to a person who was watchman at a fire. The Council approved the construction of a ditch along the east side of Main Street down to the south corner of **McFall's Hotel**. On November 25, the Council passed a motion instructing the Mayor to take all necessary steps at the Land Office to obtain title for the City of Lots 3 & 7 claimed by I.H. Young.

On December 1, it was reported that the ditch had not been constructed to **McFall's Hotel** because of objections at Larson's building. This was located just to the north of the hotel, where a stone building is now located. A committee was appointed to find a place to keep the city's hooks and ladders. The Brown Brothers were to be notified to construct a flume for their ditch so water from Slaughterhouse Creek could run in its natural channel. On December 10, the committee reported that it had secured a place to keep the fire apparatus at the rear of the [name illegible] building, and a proper building was nearly completed.

1885

On January 5, 1885, a committee was appointed to check the safety of stove pipes and to enforce the city ordinance. On January 13, the committee reported that all pipes in the city were in good condition, except for one at St. James Restaurant.

On February 2, payment of \$18.82 from the fire fund was approved for lumber for building and framing the hook and ladder shed. The Bellevue Fire Department made a request for aid for the department, and a committee was appointed to "act with the Fire Company, with full power to act on behalf of the City." On March 2, the Bellevue Hook and

The map shows that most of the main buildings had water barrels on their roofs as their firefighting system, which was typical in those days when municipal fire fighting capabilities were limited, and fire was a major threat to wooden structures heated by burning wood or coal. **McFall's** International Hotel had four barrels of water on its roof as its fire fighting system, which was typical for those times.

On October 21, the petition of William Pearson for a right-of-way through Bellevue for a canal "was on motion of Mr. Dayton Ignored." Other water issues were discussed the meeting. A motion to draft an ordinance was made to permit the Whitton Canal Company to run a certain number of ditches of water through Second and Main streets of Bellevue. A committee was appointed to prosecute the Brown Brothers for non-performance and neglect in keeping in all bridges, culverts etc. good repair at all cross pipes of streets and alleys in the city of Bellevue through which their water ditch ran.

Bellevue's lawsuit against other parties taking water from Seamands Creek was resolved in the fall of 1885. A Referee, David Waldron, Esquire, was appointed by the Court to take testimony on the water rights questions, and hearings were held beginning on August 17, 1885. On October 31, 1885, the Referee issued Findings of Fact and Conclusions of Law. The Referee held that the City of Bellevue had succeeded to the

The maps are color coded to show each building's construction materials (wood frame, brick, stone or special), show how fires would be fought for each building, and give information about the city's fire fighting capacity. The maps give information about structures only, and not about vacant land. Sandborn maps have sketches of the internal configuration of the first floors of the larger buildings.

The Boise State Albertson Library has a collection of Sandborn maps for Idaho for 1867-1970. Libraryboisestate.edu/Reference/help/Sandbornmaps.htw. The Idaho State Historical Society in Boise also has some Sandborn maps. The library at Cal. State at Northridge has the largest collection of Sandborn maps in the country, for 1,631 cities primarily in the west, including some from Idaho.

rights of the Townsite of Bellevue. On July 20, 1880, inhabitants of Bellevue for themselves and for the use and benefit of the Town, had appropriated 300 inches of water (not the 500 inches the City claimed) under 4 inches of pressure from Seamands Creek by means of a ditch, and caused the water to flow through the ditch into and along the streets and alley ways of Bellevue Township. The water had been continuously used by the inhabitants of Bellevue for household and domestic purposes, irrigation of gardens, watering stock, for protection against fires, and for other purposes. The defendants had jointly and separately and unlawfully interfered with the use and appropriation of Bellevue's water from Seamands Creek, and deprived its inhabitants of their lawful use of the water. The City of Bellevue was declared to be the owner of 300 inches of water from Seamands Creek. Although it was not specifically stated in the Court's decree, the defendants shared the water in the flow Seamands Creek above Bellevue's 300 inches.³⁹

On November 9, 1885, the District Court entered a judgment in favor of the City of Bellevue against the defendants in the water case, confirming the city's rights to 300 inches

³⁹ The Referee's decision was reported in the Wood River News-Miner of November 7, 1885. Forty- seven days was spent taking testimony and hearing arguments of counsel. Judge Waters of Bellevue and Texas Angel of Hailey appeared for the city, and the defendants were represented by F. E. Ensign and James H. Hawley (later the U.S. Attorney for Idaho and Governor of Idaho). The referee described the rationale for his decision in the interview,, and provided details that did not appear in the decision. "By my decision the city gets 300 inches of the water of Seamand's creek. It claimed 500. The evidence shows that by the time the city diverted the waters, a prior right to 200 inches of the water had accrued to Cox and Riddle. Edster had also diverted on ground now owned by Goble, all the water of the east fork of the creek by a short ditch, turning same into the west fork of the creek, but afterward abandoned it. When the city claimed 500 inches of the water, allowing for the 200 claimed by Cox and Riddle, but 400 inches remained for diversion down to the point of the city's ditch. The decision upon the whole testimony has allowed the city three-fourths of 400 inches, viz. 300 inches of water. There is, therefore, left in the creek 300 inches of water for the ranchers use."

of water under four inches of pressure from Seamands Creek, and enjoining the defendants from interfering with the City's exercise of those rights. The defendants were enjoined from "turning out any waters from said Seamands creek after said waters shall have reached the said plaintiffs dam and ditch so long as the quantity running in said ditch shall not exceed three hundred inches."⁴⁰ However, when Tom Blanchard, Bellevue's City Administrator, examined the court file of the case, he found a handwritten note on the court records which says that: "June 21, 1886, This judgment modified so as to allow plaintiff to have 150 inches of water and that each party pay their own costs." This action reduced the City's rights from 300 to 150 inches of water in Seamands Creek.⁴¹

On December 7, 1885, the Council approved the payment of a legal bill from Angel & Sullivan for \$450 for the water suit. It deferred paying G.L. Waters \$300 for the water suit, and another bill from Angel & Sullivan for \$50. There was no reported discussion of the results of the litigation.

⁴⁰ According to the interview of the referee, Seamand's Creek had 600 inches of water available for diversion. The court found that 200 inches of water from Seamands Creek had been appropriated by two landowners, Cox and Riddle, before Bellevue's rights were claimed. This left 400 inches of water available for diversion prior to the date when the city's ditch was built, of which 300 were awarded to Bellevue. The judgment was silent regarding allocation of the Creek's waters beyond Bellevue's 300 inches, only noting that 300 inches remained for "rancher's use" of which 200 were claimed by Cox and Riddle. This left 100 inches for other ranchers. The Wood River Smelter, one of the defendants that lost its use of waters from Seamands Creek, did not last for long thereafter, likely as a result of losing its use of the water.

⁴¹ There is no mention of this action in the Minutes of the Bellevue City Council around this time. Tom could find no other material relating to this change; the action could have been based on steps taken in another court case or a negotiated settlement between the parties. There is nothing that allocated the 150 inches taken from Bellevue's share, but it seemed to have gone to lands owned by other defendants in the case including Simpson Goble.

A special meeting was held on December 15, to consider a motion to authorize the City Clerk to purchase in the name of the City of Bellevue, any city property that was being sold for delinquent taxes for the year 1885.

1886

On January 4, 1886, the first regular meeting of the Council in 1886, it "disallowed" a \$50 bill from Angel & Sullivan for services after the judgment in *Bellevue v. Simpson*. A bill from G.L. Waters for \$50 for legal services in the water case was laid over until final motion by the District Court. On January 23, G. L. Waters "made a statement of the present legal status of" the water case." The Council approved his bill for \$70, and if the case was appealed, Waters will credit the city for \$60 on his bill of \$200.

On March 1, a general election was set for April 5, and **Matt McFall** and two others were named as election judges for the First Ward. The Mayor was requested to return to the Governor, the 60 Government arms and 10 boxes of ammunition he received on March 28, 1885, at the Council's request, "for the purpose of enabling the citizens and people at this place to protect life and property during the riots of last spring." This is a reference to the labor dispute that took place in Bellevue during the spring of 1885, involving the Minnie Moore and Queen of the Hills Mines, which were described in George McLeod's book, *The History of Alturas and Blaine County*.

In early 1885, the superintendent of the Queen of the Hills mines sought a reduction in worker's pay to \$3.50, telling the miners that the company could not afford to pay \$4 per day because of low prices for silver and lead and high rates for freight. The miners refused to accept a pay reduction, and on January 20, 1885, the Queen of the Hills mine was shut

of \$75 for taxes. On April 4, the election results were announced; J. M. Ballantine was reelected Mayor.

On June 5, the Council discussed the propriety of the City becoming the owner of the **Third Street Ditch**, and a committee was appointed to look into the matter. On August 6, the committee reported that **the ditch had been sold**. The Marshal was directed to clean out and open the ditches so more water could be brought into the city. The Marshal was to notify Henry E. Miller that he must put a bridge over the Third Street ditch or the water would be shut off.

1901

The rights to water in **Seamands Creek** continued to be an issue in the new century. A lawsuit was filed in 1901, involving rights to water in the Creek above the 150 inches of water belonging to Bellevue: *M.J. Daley, Simpson Gobles and R.F. Buller v. Foressto Josselyn* (District Court for the 4th Judicial District of Idaho for Blaine County). Blaine County Judgment Book 4, page 192.

The Court made a series of findings in the judgment entered in the case, including the following. A lawsuit had been filed in 1890, by Goble against Galbraith and Kimbrough to determine the rights of the parties to the waters of Seamands Creek, which was resolved by agreement dated December 17, 1891, between the parties. That agreement gave each of the three parties one third of "all of the waters remaining in Seamands creek after deducting 150 inches" for Bellevue, for irrigating and domestic and livestock purposes. The parties thereafter used the waters of Seamands Creek to irrigate their farms.

Since the 1891 case, Daley had become a successor in interest to Galbraith for

property in Sections 31 and 32, Township 2 N, Range 19 E; Buller had become a successor in interest to Goble for his property, lots 4 and 5 in Section 6, and other land in Township 1 N, Range 19 E; and the defendant Josselyn had become a successor in interest to Kimbrough for land in Sections 32 and 33, Township 2 N, Range 19 E.

The Court found that after his purchase of the Kimbrough property in 1898, Josselyn “began to claim and use all of the waters of said creek (except 150 inches belonging to the City of Bellevue) contrary to the provisions” of the settlement of the 1891 case. The Court found that in ordinary years, there was 500 inches of water flowing in Seamands Creek, which was sufficient when properly used to irrigate all three properties. (Note that the Court in the 1885 case found there was 600 inches of water in Seamands Creek.) The Court declared that the two plaintiffs and the defendant each were entitled to “one third of all of the waters of Seamands Creek after deducting 150 inches belonging to Bellevue “for irrigating, domestic and other agricultural purposes.” This decision carried forward the 1891 agreement between the three landowners that divided up “all of the waters of Seamands Creek after deducting” Bellevue’s 150 inches.⁵⁷

On March 4, the Council approved the purchase of supplies for the Bellevue Fire Department. On April 1, the election results were announced; J. M. Ballantine was

⁵⁷ The decision did not discuss how those three landowners acquired the right to all of the waters of Seamands Creek above Bellevue’s 150 inches. Possibly the landowners only had the right to the 150 inches of water deducted from Bellevue’s 300 inches in the 1886 modification to the judgment in the 1885 case. Somehow, the right to 1/3 of 150 inches in excess of Bellevue’s water rights got converted to 1/3 of the remaining water in Seamands Creek. It is not clear what happened to the 200 inches which the referee in the 1885 case said had been appropriated by two landowners, Cox and Riddle, before Bellevue’s rights were claimed, and the additional 100 inches of water remaining after the 1885 decision that was not allocated in the court’s findings.

1909

The fourth lawsuit over the waters from Seamands Creek was filed in 1909, *T.A. Joslyn v. M.J. Daly*, in which **Neil Campbell** intervened. Note - the names are spelled differently here than in the 1901 case, including the name of the creek.⁶³

The Court implemented the 1901 decision, and found that the plaintiff Joslyn, the defendant Daly and the intervener **Campbell** "are each entitled to use one-third of the waters of **Seamans Creek** in Muldoon Gulch, ...less the prior rights of the City of Bellevue to one hundred fifty inches, thereof."⁶⁴

lost their water.

Beyond the Rockwell - White power plant, the canal split into two sections. The west section went down the tail race to the Minnie Moore millsite, and emptied water back in to the river below Broadford Road. The other section ran down the east side of the Highway 75 to 2nd Street in Bellevue, although it may have moved up to 3rd Street and run the length of the city according to Tom Blanchard, Bellevue's City Administrator. The canal's outlet to the river can still be seen down the hill on Kirtley, just below the bench. At the bottom of the hill, there is a river access trail that follows the tail race for a long way until the ditch branches to the east, eventually crossing Broadford Road just west of a trailer court. The power plant had an easement for an electrical line that ran down Broadford Road from Bellevue to the mill to supply power.

⁶³ District Court for the Fourth Judicial District, Blaine County Idaho. Blaine County Book of Judgments 46, page 421.

⁶⁴ The plaintiff T.A. Joslyn was a party in the 1901 case, to property originally owned by Kimbrough (a party in the 1891 case) in Sections 32, 33 and 34, Township 2 N, Range 19 E, known as the Kimbrough Ranch. Daly was a party in the 1901 case as the successor in interest to Galbraith (a party in the 1891 case) to property in Sections 31 and 32, Township 2 N, Range 19 E. **Neil Campbell** was the successor in interest to Buller, a party in the 1901 case, to property formerly owned by Simpson Goble (a party to the 1891 case), lots 4 and 5 in Section 6, Township 1 N, Range 19 E, and 118.17 acres in Section 31, Township 2 N, Range 19 E.

Note that the description of Campbell's land in this case differs Buller's land in the 1901 case. Buller's land included lots 4 and 5 and other described areas in Section 6, Township 1 N, Range 19 E. Campbell's land in this case in Section 6 did not mention anything except lots 4 and 5, and the other described land in Section 6 was not included in the 1909 case. Also, Campbell's land in the 1909 case included 118 acres

The Court awarded each of the three landowners "the right to use the whole of the water to which they are entitled in rotation for an equal period of time ,instead of one-third thereof, for all of the time...said period of time to be one week for each during the irrigating season." The Judge excepted from this provision, the springs on the Kimbrough Ranch, which Joslyn " was entitled to use continuously." Josyln had the exclusive right to use all of the waters of springs on the Kimbrough Ranch in Section 33, Township 2 N, Range 19 E, located on the northerly side of Seamans Creek. The Court also held none of the parties had any right to use waters in a lake or pond on the Water Company Ranch in Sections 33 and 34, Township 2 N, Range 19 E, which was part of and tributary to Seamans Creek, except as part of Seamans Creek.

This decision carried forward the finding in the 1901 case, that each of the three landowners were entitled to one-third of all of the water in Seamands Creek in excess of Bellevue's 150 inches, rather than to one-third of the 150 inches of Bellevue's 300 inches of water that was taken away from the City's 300 inches in 1886.

Another major water rights case was completed in December 1909, *Frost v. Alturas Water Co., et.al.*, In the District Court of the Fourth Judicial District of the State of Idaho, in the County of Lincoln. The lawsuit was filed in Lincoln county, where Shoshone is located, but the judgment in the case was filed both in Lincoln and Blaine Counties since it affected landowners in both counties.

in Section 31, Township 2 N, Range 19 E which did not belong to Buller in 1901. Campbell had purchased 119.22 acres of land in 1903, from the Philadelphia Sureties Co. in Section 31, which included the land described in the 1909 lawsuit, along with lot 2 in the same Section 31. Lot 2 was not included in the description of his land in the 1909 case.

In 1920, Bellevue had a population of 629. Major improvements to Bellevue's water works waited for over a decade after the city acquired the water works, which happened in 1920 under the leadership of Mayor Herman J. Martin. Bellevue finally gained full control over its domestic water supply in 1920, improved its quality, and took steps to introduce water under pressure to the city.

On January 7, the Council authorized **contacting Mr. LeMoyne to make arrangements regarding the right of way for the proposed new pipeline extension.**

The city's attorney was directed to draw up a contract for a right of way through LeMoyne's field and maintaining the new pipeline, the right to excavate the spring and the right to develop any of the other springs that may be required to get the amount of water due the city. On February 4, a petition was delivered to the Council to place street lights in other neighborhoods presently without them. The clerk was instructed to contact the manager of the Wood River Power Company to obtain a proposition. On February 27, a draft contract between the city and LeMoyne Farm & Livestock co. was approved. On April 7 the election results were reported; H. J. Martin was reelected Mayor.

On May 19, the Council authorized Mayor Martin to sign a contract with LeMoyne Farms. **A Memorandum Agreement signed on July 9, 1920, between the City of Bellevue and the LaMoyne Farm and Livestock Company,** allowed Bellevue to extend its water works by granting a 10 foot right of way over the LaMoyne property to allow the installation of underground pipes to bring water from the springs into the city, part of a plan to replace the open ditch that had previously been used to supply Bellevue's water. The agreement said that Bellevue had the right to use 150 inches of water from Seaman's

creek pursuant to the 1885 litigation, and the ranch had the right to use all of the water from a spring located on its land, as a successor in interest to T.A. Josalyn as set forth in the same case. The parties believed

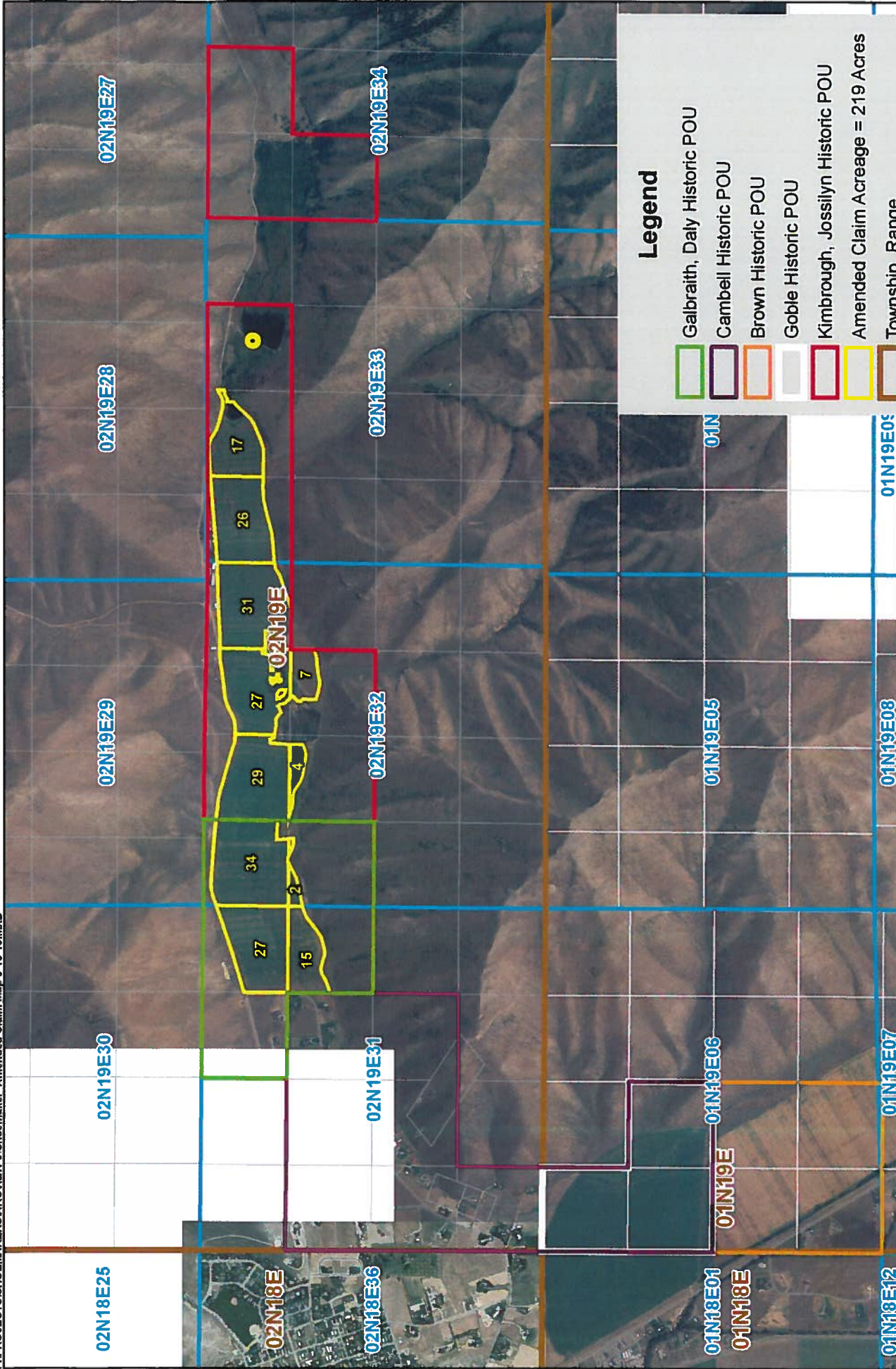
that the sanitary condition of [Bellevue's] water supply would be greatly improved by obtaining from the [LeMoyne ranch] the right of way hereinafter described, and by securing from [the ranch] the exclusive right to the use of a certain tract of land immediately surrounding the said springs for the purpose of enclosing the same and otherwise protecting the same from the encroachment of stock.

Bellevue traded part of its water rights in Seamand's Creek plus \$350 for the rights for a portion of the LaMoyne ranch's water rights in the springs. Bellevue got a 10' right of way over the ranch property and the right to construct a pipeline to carry 150 inches of water, consisting of a 10" pipe running for 2,200 feet and an 8" pipe for the remaining 4,740 feet.⁷⁸ Bellevue agreed to construct a two inch pipeline from the spring to the ranch's dwelling house and to provide two miner's inches of water to the dwelling. Bellevue agreed to clean the springs so the natural flow would be unobstructed and to install a measuring device at the springs. The ranch got the right to an amount of water for irrigation purposes equal to the water taken from the springs by Bellevue.⁷⁹

⁷⁸ Mark Patterson, a Bellevue historian, reported that on May 19, 1920, Bellevue traded its water rights in excess of 150 inches in Seamands Creek (obtained in the 1885 litigation) to the LaMoyne Farms and Livestock Company (now the Ee-da-ho ranch), for the right to collect water from springs on its property further up Muldoon Canyon, which are the source of the creek, and to install an underground pipe to bring the water into the city. The city also got the use of lands surrounding the springs, the right to fence the area, and to exclude livestock. The terms of the contract were made binding on succeeding owners of the property. However, Bellevue's water rights in Seamands Creek were reduced from 300 to 150 inches in June 1886 as previously discussed. He may have been misinterpreting this agreement. Patterson, *Privately Owned Land & City Owned Water*, page 3.

⁷⁹ This information was provided by Tom Blanchard, Bellevue's City Administrator.

EXHIBIT 11



Legend

- Galbraith, Daly Historic POU
- Cambell Historic POU
- Brown Historic POU
- Goble Historic POU
- Kimbrough, Josselyn Historic POU
- Amended Claim Acreage = 219 Acres
- Township, Range
- Sections
- 01n19e
- 02n19e

ALVIN V AND/OR SALLY P SHOEMAKER
PRIORITY DATE QUEREY
 37-1198, 37-1200
 2004, 2006 NAIP AERIAL PHOTOGRAPH

Shoe makers

Rob W. issued NOV - Compliance Agree.

N: @ Southern

↳ Complaint pot. illog. Water Use
↳ B37

↳ 2012 Seawans Cr.

= response to call from lower users
= Newer WR/permits?

37-8739

PERMIT
3/4/91

DAM SAFETY?

DOQQ - Y25 NW 1992

OPQ - Y25 1974

@

1966

37-14278

Large Lower Pond

37-12375	stock	Seawans Cr
... 76	D/	SPR.
... 77	S/	GW
... 78	P/S/	GW

37-22797

(current pond 6 ac
 $6 * 7 * .4 = 16.8 \text{ AFA}$)

1953 Aerial - Pond is 2 AC

$$2 \text{ AC} * 7 \text{ ft} * .4 = 5.6 \text{ AFA}$$

(1st/AC)

irrig. Rt (37-1200)

4.33 cfs

(37-1198)

216.5 A

<Shoemaker
IRR.> 37-22582

7/21/1880

37-20624

Rinker (B.U. Right)

6.06 cfs

7/22/1880

Evap. 15.2 AF (per Broadway) $\div$ 5.9 AC pond

$$= 2.58 \text{ AF/AC} \left| \begin{smallmatrix} \text{Ev} \\ 1880 \end{smallmatrix} \right.$$

$$2.58 * 2 \text{ AC (1953 pond)}$$

$$= 5.15 \text{ AF}$$

$$5.15 + 5.6 \text{ AF (POND VOL)} \\ \text{(Evap.)}$$

$$= 10.75 \text{ AFA}$$

MEMORANDUM

TO: 37-14278

FROM: Erin Retelle

RE: Field Exam

Date: January 8, 2007

.....
On October 31, 2006, I visited the EE-Da-How Ranch. The ranch is irrigated with water primarily from Seamons Creek.

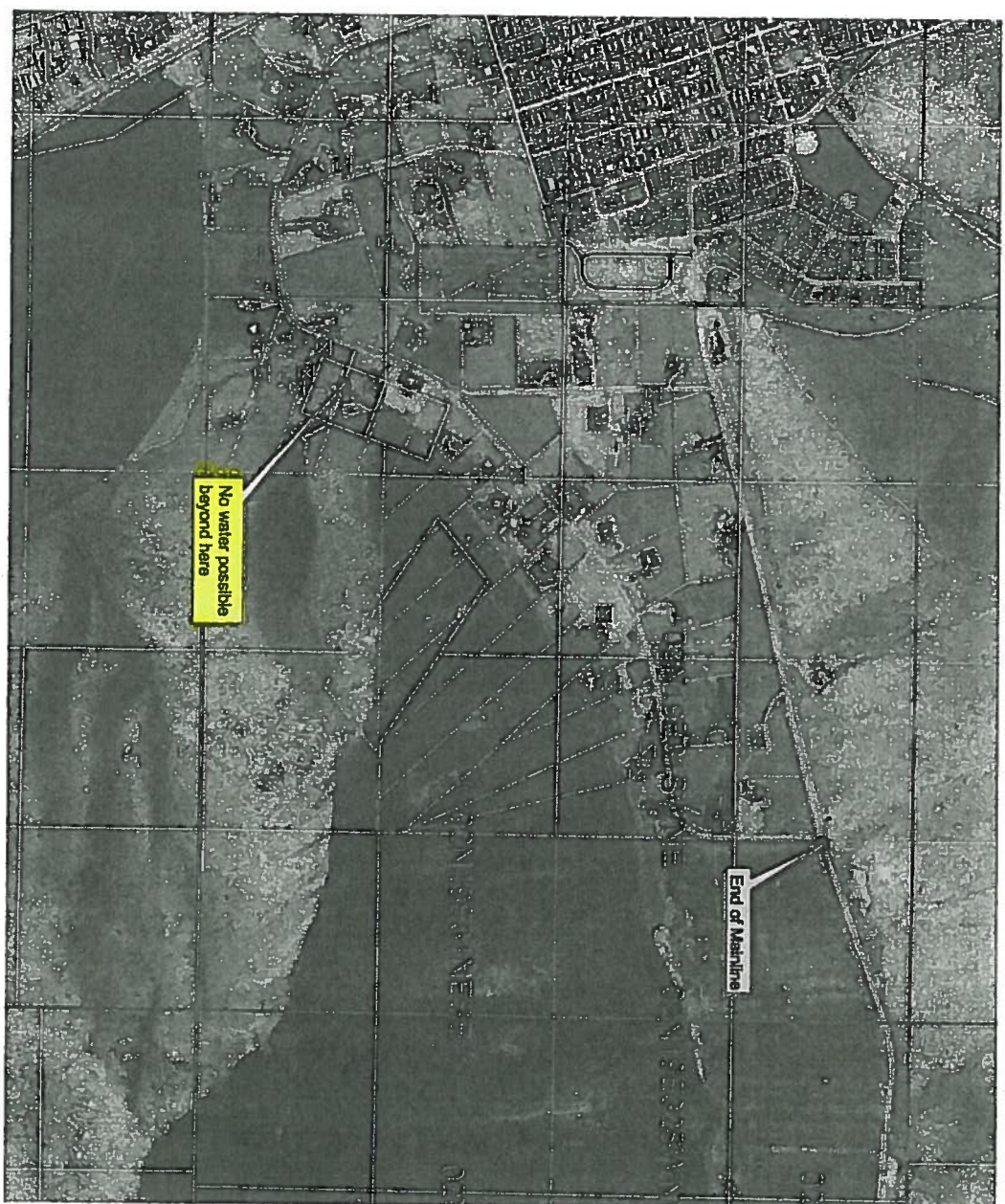
With the assistance of the ranch manager, I performed a Manning's equation estimate on Seamons Creek in Section 34, just upstream of the ranch. The calculation gave a flow rate of 0.73 cfs.

The water is collected in a large reservoir in the middle of the ranch (see layouts) and pumped through mainlines throughout the property. At the point labeled "Pumps 1" is a pumphouse containing a 20 hp pump. At the point labeled "Pumps 2" are 2 7hp submersible pumps. The ranch also has smaller aesthetic/recreational ponds that are not part of the irrigation system.

The outflow from the reservoir is through a glory hole in to a channel. The water sinks near the middle of the NW quarter of Section 32, and rises again in a lesser amount in the NENE of Section 31. At the time I visited the area, no water was flowing off the ranch. However, a very small channel (2 ft wide x less than a foot deep) meandered into the subdivision downstream of the ranch. The channel was evident on the Schwenk and Beudet properties in the SWNE of Section 31, but became less defined and fizzled out in the properties to the west. I marked a GPS point where someone built their driveway over where the channel would have been with no drainage pipe (labeled "no water possible beyond here).

37-14278

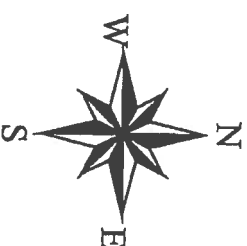
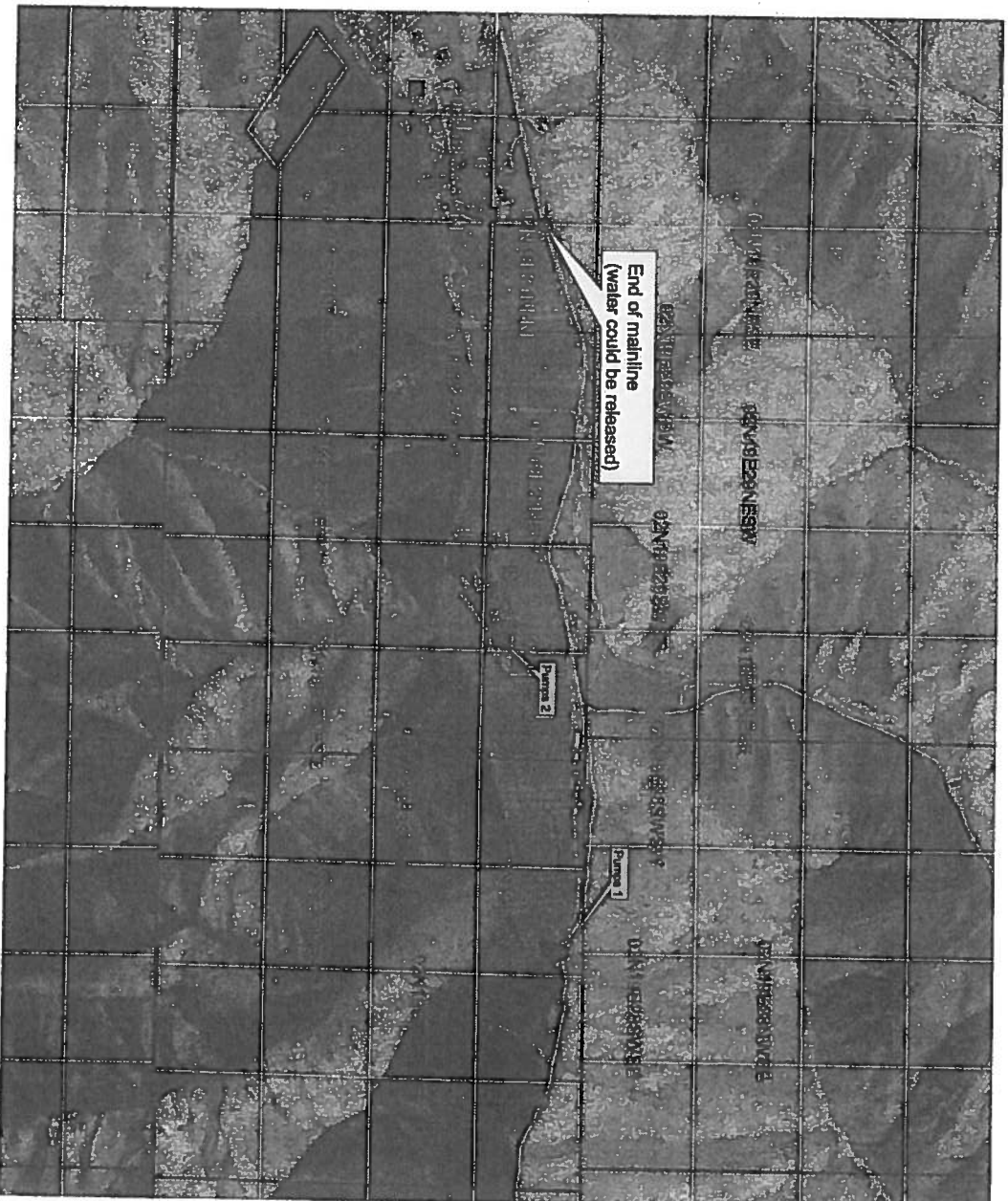
- ☐ Blaine taxlots
- ☒ Recommendation POD
- ☐ Administrative BasinsAdminbas.shp
- ☐ Township/Range
- ☐ Sections
- QQ



January 8, 2007
Erin Retelle, IDWR

37-14278

- Recommendation POD
- Administrative Basins Adminbas.shp
- Township/Range
- Sections
-



January 8, 2007
Erin Retelle, IDWR

HALEY 6 MI

4816

4817

25

36

TOP OF MOUNT

Slougherhouse

30

6

Gravel

SEMI 0108

29

5

Gravel

+

Gravel

Gravel

Marble

4

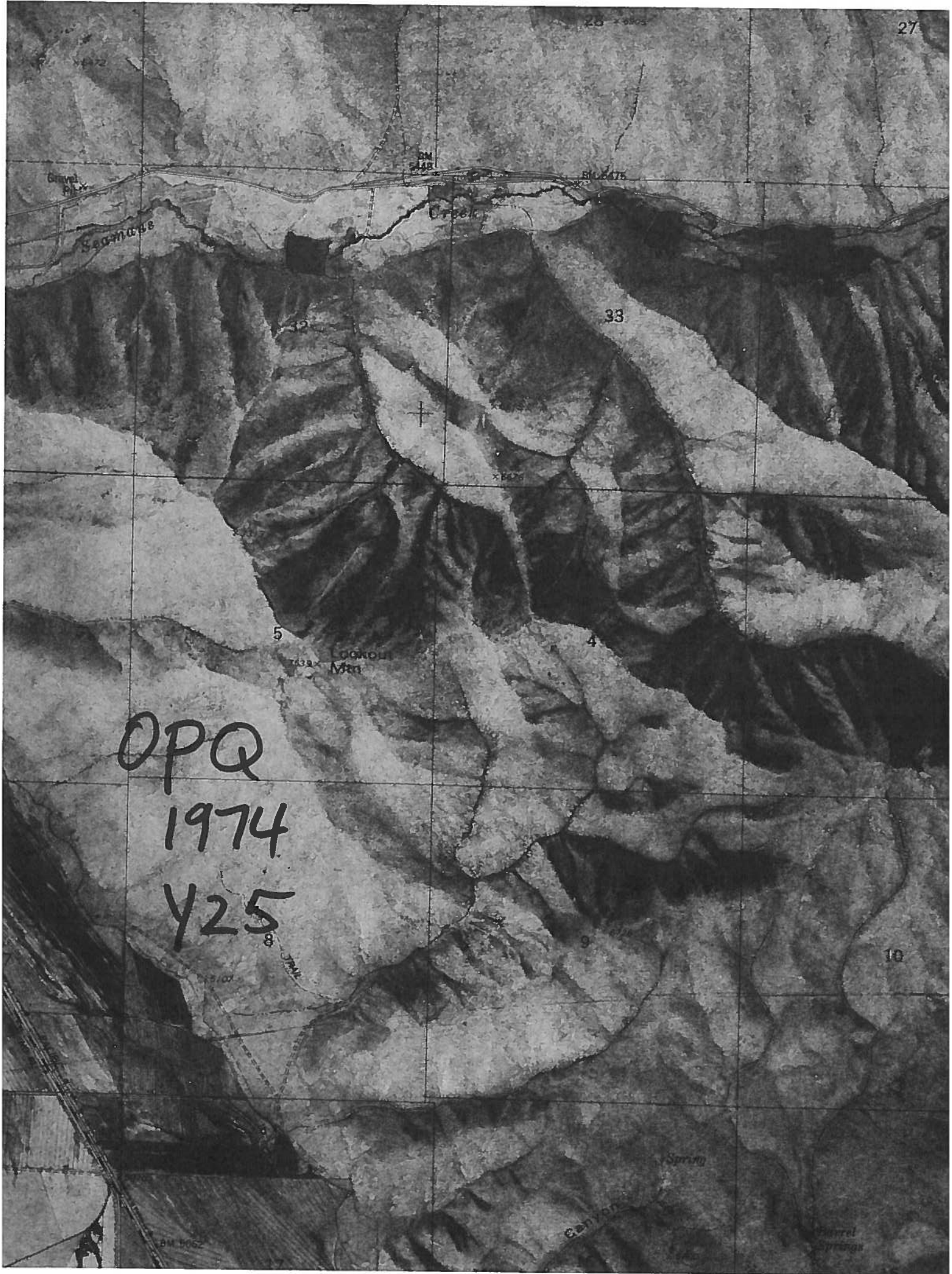
33

28

OPQ
Y25
1944

27

OPQ
1974
Y25





12/19/2013

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

RIGHT NUMBER: 37-22797
NAME AND ADDRESS: ALVIN V SHOEMAKER
PO BOX 550
BELLEVUE ID 83313

SALLY P SHOEMAKER
PO BOX 550
BELLEVUE ID 83313

SOURCE: SEAMANS CREEK TRIBUTARY: SINKS
QUANTITY: 10.800 AFY

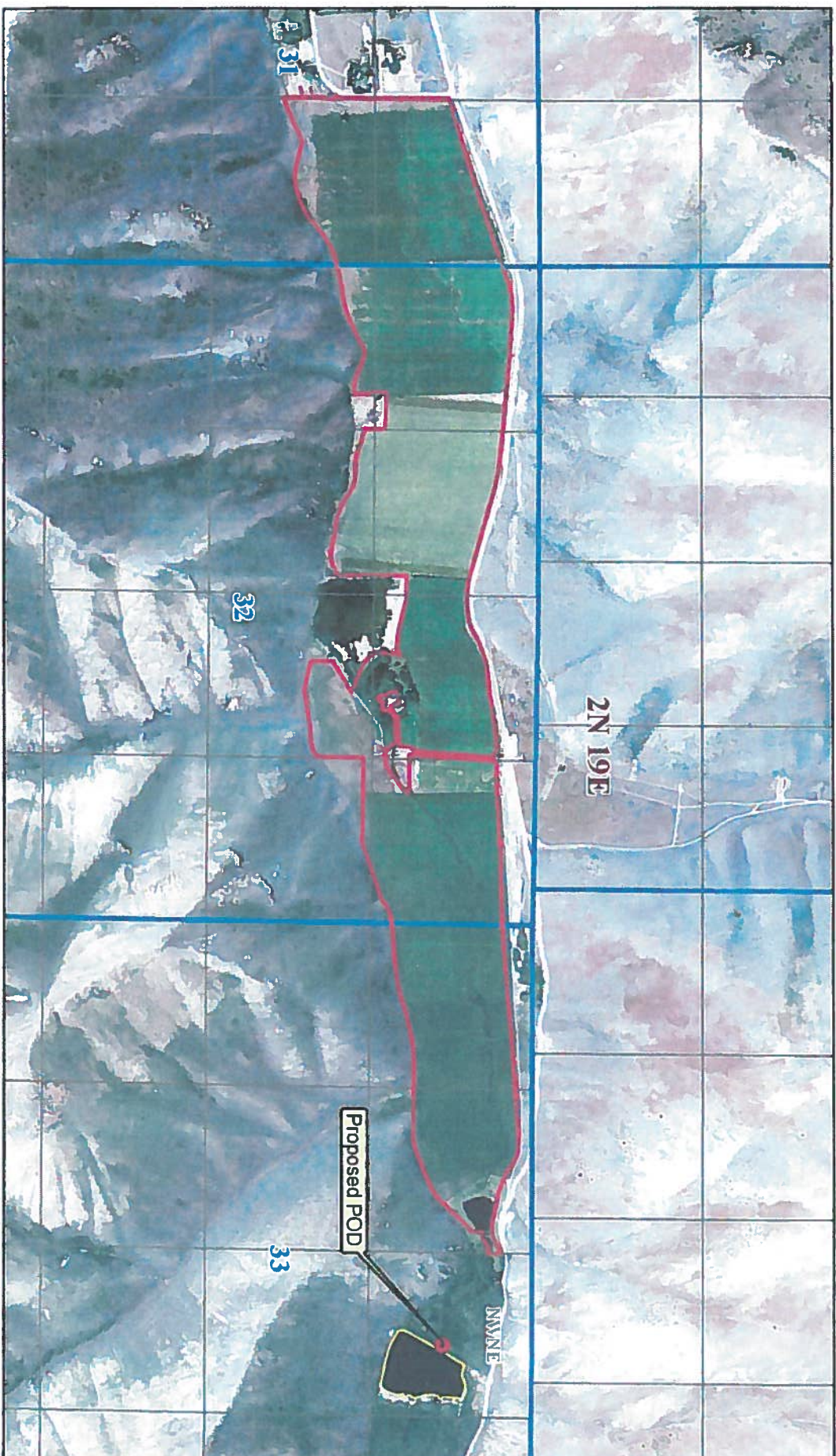
PRIORITY DATE: 07/18/1953
POINT OF
DIVERSION: T02N R19E S33 NWNE Within BLAINE County
PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
WILDLIFE STORAGE	01/01 12/31	10.80 AFY

PLACE OF
USE: WILDLIFE STORAGE in BLAINE County
T02N R19E S33 NWNE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER
RIGHT:
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
Right No. 37-22582 is also diverted through point of
diversion described above.



ALVIN V & SALLY P SHOEMAKER
 AMENDED CLAIM UPPER POND
 NAIP 2011 AERIAL

COPY



RECEIVED

JAN 29 2013

SRBA Form No.42-1409-1 (Internet 2/09)

DEPT. OF WATER RESOURCES

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 37-22797

Date Received:

Receipt No:

Received By:

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Alvin V. Shoemaker and Sally P. Shoemaker Phone (208) _____
Mailing Address P.O.Box 550 Bellevue ID 83
Street or Box City State ZIP
2. Date of Priority (Only one (1) per claim) July 21, 1880
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Seamans Creek
which is tributary to (b) Sinks

4. a. Location of Point of Diversion is: Township 2 North, Range 19 East, Section § 33,
NW, 1/4 of NE, 1/4 Govt. Lot _____, BM., County of Blaine

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

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

Govt. Lot _____, BM., County of _____

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

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. An embankment and on-stream pond are located at the above
referenced point of diversion of water from Seamans Creek for irrigation purposes. The pond is approximately 7
feet deep, has a surface area of approximately 5.9 acres and a volume of approximately 41.3 af. Diversions from
the pond are accomplished by (1) opening the outlets and lowering the pond to provide an adequate discharge for
irrigation, and then (2) closing the outlet gates until the pond fills again. In the winter months the pond is lowered
and the flow from Seamans Creek is allowed to proceed downstream.

COPY

57 page
Doc
2/9/11
email
2/4/11 Rob W.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For storage for irrigation* purposes from 4-15 to 10-31 amount or 634 ac feet

For aesthetic,wildlife, rec* purposes from 1-1 to 12-31 amount or 27.9 ac feet

For irrigation from storage*** purposes from 4-15 to 10-31 amount or 322 ac feet

For purposes from to amount or

7. Total quantity claimed (a) (cfs) and/or (b) 634 (acre feet)

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

9. Description of place of use:

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

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

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	19E	31	26			15	28	33	3.0	4.4									
02N	19E	32	31	25	7.1														
02N	19E	33					18	26											
02N	19E	33	awr																

Parcel (PIN) no(s).

Total number of acres irrigated 216.5

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

11. Do you own the property listed above as place of use? Yes (✓) No ()

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

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

or None (✓)

13. Remarks: This claim is for a storage right associated with irrigation Water Right No. 37-22582, and for Recreation Storage. As shown by the attached Affidavit of Les Cameron, there has been significant public use of the pond for hunting and fishing purposes.

* Storage for irrigation includes storage above the minimum pool for irrigation cycles (322 ac ft), plus open water evaporation(15.2 ac ft, U of I Et for Idaho, Hailey Ranger Station), plus seepage (297 ac ft), for a total of 634 ac ft.

** Recreation, aesthetics and wildlife storage equals the minimum storage volume or 27.9 ac. ft.

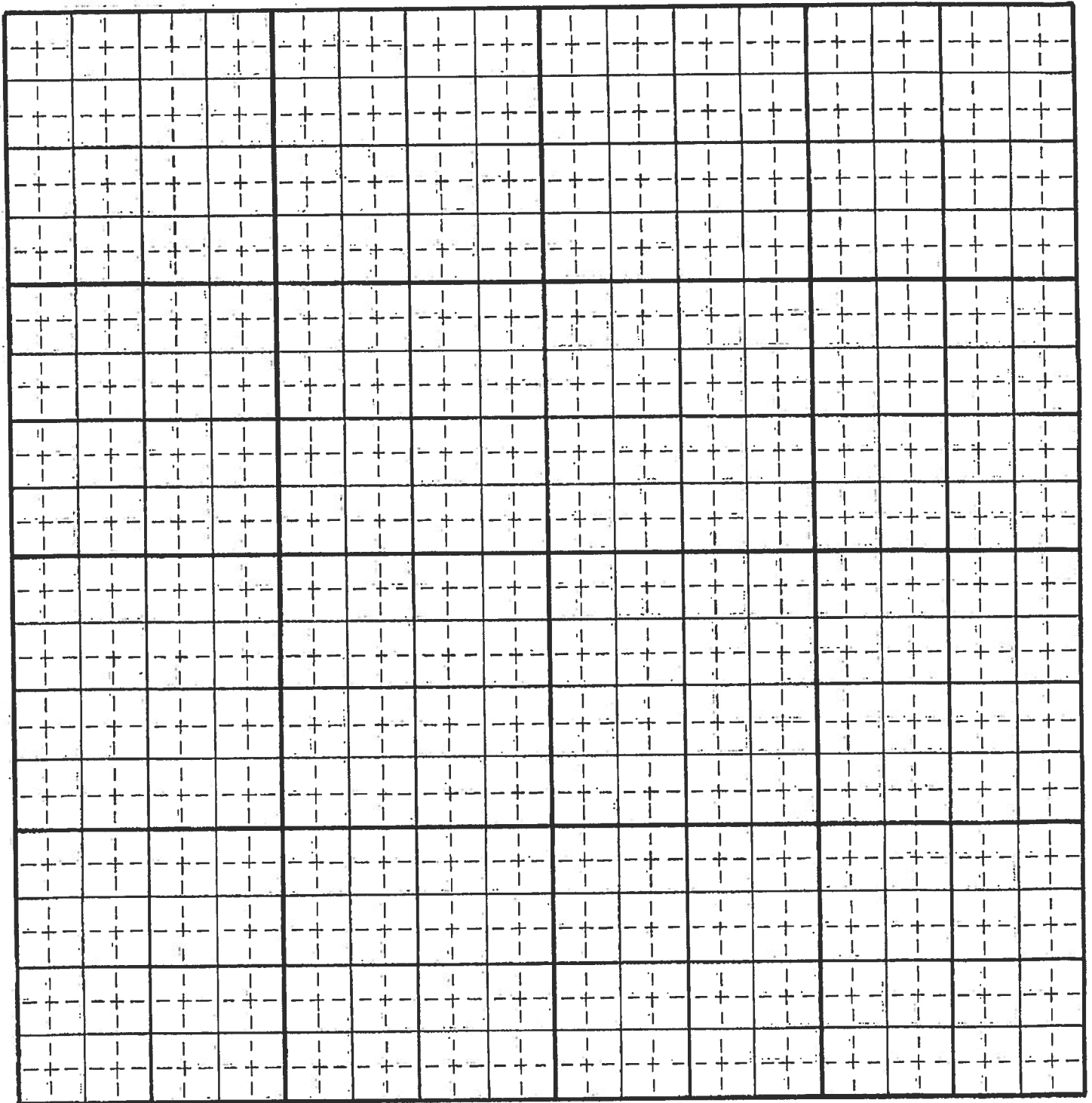
*** Irrigation from storage equals the sum of refill volumes (24) delivered for irrigation (322 ac ft) delivered to the place of use under water right 37-22582.

Last Name Identification No.

COPY

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



Last Name _____ Identification No. _____

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

Court Blaine Cnty Dist Decree Date 5/25/1909 Plaintiff v. Defendant Joslyn vs Daly

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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 Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

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

_____ of _____,
Title Organization

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

_____ of _____,
Title Organization

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

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Robert E. Williams, will be acting as attorney at law of 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 _____ Date _____

Address PO Box 168

Jerome ID 83338

COPY

Last Name _____ Identification No. _____

AFFIDAVIT OF LES CAMERON

STATE OF IDAHO)
 :ss
County of Blaine)

LES CAMERON, first being duly sworn, deposes and says as follows:

1. I am a resident of Bellevue, Idaho. My current mailing address is P.O. Box 326, Bellevue, Idaho 83313. I am a lifelong resident of Bellevue, Blaine County, Idaho. I am presently sixty-five (65) years of age.
2. Commencing in the early 1950s and continuing through the 1960s I frequently hiked or drove to a pond approximately five (5) acres in size located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33 and W $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34, Township 2 North, Range 19 East. My purpose in going to the pond was to hunt or fish. During my frequent visits to the pond during the time period I have mentioned, I became aware that the pond was used for the storage of irrigation water from Seamans Creek for irrigation purposes. The irrigation water was used for irrigation of what is now Ee-Da-How Ranch, and a ranch to the west of EE-Da-How Ranch. The property west of Ee-Da-How Ranch is now a subdivision.
3. When I commenced visiting the pond in the early 1950s there were many dead aspen trees within the perimeter of the pond. These aspen trees appeared to have been dead for a long time, and must have been dead, in my estimation, for several decades prior to the early 1950s.
4. From the early 1950s through approximately 1961 I would visit the pond four (4) or (5) during each summer.
5. I recently visited the pond I have previously described. The pond currently appears to have the same configuration in terms of its location and area that it had when I visited it in the 1950s and 1960s.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 26th day of November, 2012.

Les Cameron
LES CAMERON

SUBSCRIBED AND SWORN to before me this 26th day of November, 2012.

VERONICA GUTIERREZ
Notary Public
State of Idaho

Veronica Gutierrez
NOTARY PUBLIC
Residing at: Harley 309
My commission expires: 8/2/18

Clelland, Steve

SHOEMAKER @ SEAMANS CR

From: Spencer, Nick
Sent: Thursday, April 11, 2013 11:58 AM
To: Clelland, Steve
Cc: Courtney, Andrea; Bromley, Chris; Kelly, Vicki
Subject: FW: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim): 37-22797, Shoemaker (POU Typo)
Attachments: 37-22797, Shoemaker.pdf

lower pond
1.2 AC

Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Red Category

upper
est 6.9 AC
pond

Steve, with Kelly having retired, you are now our sole resident expert on Seaman's Creek. Could you review Fred's concerns below and let me know your initial thoughts? I think Fred raises some legitimate concerns, but I think all of them save the POU typo should be addressed during claims investigation. Thanks. NBS

From: Price, Fredric [mailto:fwprice@blm.gov]
Sent: Thursday, April 11, 2013 11:34 AM
To: Spencer, Nick; Bromley, Chris
Cc: David L Negri (David.Negri@usdoj.gov)
Subject: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim): 37-22797, Shoemaker (POU Typo)

assoc. w/ IRRIG 37-22582 (S.M.)
* Rinker 37-20624
7/22/1880

Nick, Chris,

RE: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim):
37-22797, Shoemaker (POU Typo)

The Notice of Claim attached to the SF-4 describes Places of Use (POU) on BLM land (NENW, NWNW, S31, T02N, R19E). It appears that a clerical error occurred and the claimant inadvertently claimed 4 quarter-quarters in the NW4, S31, T02N, R19E, but should have claimed them in NW4 S32, T02N, R19E. See attached map.

The SF-4 Late Claim seeks to establish a Storage for Irrigation; Aesthetic, Wildlife, Recreation and Irrigation from Storage right. The Claimant is late because they did not realize that they needed to file a claim until IDWR held a conference with them concerning a Notice of Violation. As a result of the meeting they determined that they would file a Late Notice of Claim.

The SF-4 Late Claim seeks to establish a Storage for Irrigation, Aesthetic, Wildlife, Recreation and Irrigation from Storage right based on Beneficial Use from surface water (Seamans Creek) with a priority date of 07/21/1880. This basin closed on 01/31/2013, however this claim was filed on 01/29/2013.

The priority date claimed of 07-21-1880 appears inconsistent with information provided in their motion which states that they believe the pond was identified in the prior Joslyn v Daly decree of 05-25-1909. The entire flow of Seamans Creek was adjudicated in that decree, therefore no beneficial use claim appears possible. If it were possible, then any beneficial use claim would have to assert a priority date which is junior to the 05-29-1909 decree. Since the total flow of Seamans Creek has been adjudicated, it appears the only claim which could be made by Shoemaker on Seamans Creek would be as a successor to one of the rights (or portion thereof) decreed in the Joslyn v Daly decree (37-01198, 37-01200, 37-01201 or 37-01202). The prior decree determined that the pond was a component of the rights decreed (see section III of the decree), therefore there shouldn't be a separate right to the pond?

city of Bellevue 7/21/1880
all others 7/22/1880

The motion adversely affects BLM, however BLM does not oppose it. BLM would prefer that errors in the motion be amended, but if not, then BLM will have to file an objection to any future recommendation of this claim.

The hearing on the motion is set for 04/16/2013 at 1:30 during the court's Monthly Status Conference.

Fred

Clelland, Steve

From: Spencer, Nick
Sent: Monday, April 15, 2013 5:55 PM
To: Clelland, Steve
Subject: RE: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim): 37-22797, Shoemaker (POU Typo)

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Steve. That would be great if you are willing, but since there are so many late claims on the calendar this month, it might be better for us to just talk briefly on Tuesday morning. Otherwise you might be cooling your heels in my office for a long period of time after lunch. NBS

From: Clelland, Steve
Sent: Monday, April 15, 2013 9:21 AM
To: Spencer, Nick
Cc: Courtney, Andrea; Bromley, Chris; Kelly, Vicki
Subject: RE: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim): 37-22797, Shoemaker (POU Typo)

Nick,
I would agree with the POU error as claimed for irrigation. I think the "awr" uses are also incorrectly described (with regards to POU – NENE S. 33) by their description in the claim and in the affidavit. I would need more time and records to re-visit the old decision and sort the pieces out again. I do believe we recommended all the other Seaman's Creek water users with the same priority date of 7/22/1880 – one day after the City of Bellevue's right to the creek source. I sent all the related files for Seaman's Creek back to Southern when all the claims were partially decreed. I can sit in on the hearing tomorrow if you would like.
Steve

From: Spencer, Nick
Sent: Thursday, April 11, 2013 11:58 AM
To: Clelland, Steve
Cc: Courtney, Andrea; Bromley, Chris; Kelly, Vicki
Subject: FW: 04-16-13, 1:30 pm, Hearing on SF-4 (late claim): 37-22797, Shoemaker (POU Typo)

Steve, with Kelly having retired, you are now our sole resident expert on Seaman's Creek. Could you review Fred's concerns below and let me know your initial thoughts? I think Fred raises some legitimate concerns, but I think all of them save the POU typo should be addressed during claims investigation. Thanks. NBS

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The motion adversely affects BLM, however BLM does not oppose it. BLM would prefer that errors in the motion be amended, but if not, then BLM will have to file an objection to any future recommendation of this claim.

The hearing on the motion is set for 04/16/2013 at 1:30 during the court's Monthly Status Conference.

Fred

Clelland, Steve

From: Spencer, Nick
Sent: Thursday, April 28, 2011 5:26 PM
To: Robert E. Williams
Cc: Kelly, Vicki; Clelland, Steve; Christensen, Kelly
Subject: 37-1198 and 37-1200 (Shoemaker); 37-20624 (Rinker)

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Rob.

I am sending this e-mail to give you the heads up on what Steve Clelland is recommending in the amended director's reports for the two Shoemaker second amended claims, and what Kelly Christensen is recommending in the amended director's report for the Rinker amended claim.

All three of us have now reviewed all the material accompanying your February 9th letter to Steve Clelland and me. You certainly have accomplished some significant historical research which we all find extremely useful in better understanding the development of these rights. I also find particularly helpful the shape file prepared by Brockway Engineering showing the historic POUs of the various parties referenced in the historic records.

Your research has convinced me that the priority date for the rights decreed in the *Josselyn v. Daly v. Campbell* decree (1909 decree) should be 1880 or 1881. More importantly, I think it demonstrates that those decreed rights were intended to share the same priority date, the conflict arising from equal priority being resolved through the rotation mechanism provided for by the 1909 decree.

However, because of the clear intent that 37-1200, 37-1201, and 37-1202 (and 37-1198 by virtue of the exchange in source from the creek to the spring for the City of Bellevue right) all share an equal priority date, IDWR has decided to still recommend the May 14, 1909 date of entry of the 1909 decree as the priority date for 37-22582, which will be the recommendation for the single combined right based upon your client's second amended claims for 37-1198 and 37-1200. Steve is doing this with the anticipation that you will file an objection to the recommended priority date.

Steve's basis for doing this is to prevent injury to three other rights which are splits of, apparently, the 37-1201 right. One of these, claim 37-1201B has not yet been recommended, but its companion right, 37-1201A, has gone to Special Master Report and Recommendation with the May 14, 1909 priority date. Even more troubling is 37-11850, which was unobjected to and went to partial decree last September with the May 14, 1909 priority date. If IDWR were to recommend a priority date for 37-22582 earlier than May 14, 1909, it would make that right senior to these three other rights, thereby injuring them. To IDWR what priority date is chosen for these rights is less important than insuring that all the rights have equal priority. This is particularly so here because--whether these rights ultimately are decreed with an 1880 priority date or a 1909 priority date--they still will be junior only to the City of Bellevue's right.

Steve and I are open to a more senior priority date than 1909 so long as allowance is made for 37-1201A, 37-1201B, and 37-11850 to likewise receive an earlier priority date. I am not sure how this ought to be accomplished at this point since it will require pulling back the Special Master's Report and Recommendation for 37-1201A and setting aside the partial decree for 37-11850. Frankly I wish we could collaborate on how to address this matter before the amended director's report is filed for 37-22582. Unfortunately, since IDWR has already received one extension from the court it doesn't feel like it can seek an extension for today's deadline to file the amended director's report. Therefore Steve and I believe that we need to file it today with the expectation that you will object and we will then sort things out in the objection resolution process.

Regarding 37-20624, the Rinker right, I was initially confused as to why it was not claimed as a decreed right rather than a beneficial use right, since its POU overlaps the Goble, and then the Campbell, place of use for right 37-1201 in the 1909 decree. However, Kelly then explained to me that the purpose of this claim is to obtain a water right to allow Mr. Rinker to use whatever tail water and other flow makes it past the upstream appropriators down to his property at the lower end of the creek, which flow, I understand, he has no choice but to receive. Therefore it does seem clear that this right should be junior to the rights from the 1909 decree. Kelly, therefore, is recommending for it a priority date of May 15, 1909, one day junior to the priority date Steve is recommending for 37-22582.

I understand that this is not the news you wanted to hear about these claims. However, I don't think there is any issue between us that cannot be resolved through additional discussions. We just need more time to hold those discussions.

Please feel free to get back with me with questions or concerns.

Best wishes,
NBS

OPQ Y25(NW)

SESE 1

SWSE 2

SESW 3

28

NENE

NWNE

NENW

02N10E

33

SENE

SWNE

SENW

37-22797, Alvin & Sally Shoemaker

