

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

RIGHT NUMBER: 1-17

NAME AND ADDRESS:

MILNER IRRIGATION DIST
5294 E 3610 N
MURTAUGH ID 83344

SOURCE:

Source:

SNAKE RIVER

Tributary:

COLUMBIA RIVER

QUANTITY:

135.000 CFS

PRIORITY DATE:

11/14/1916

POINT OF DIVERSION:

T10S R21E S29 SESE
Within TWIN FALLS County

~~T10S R21E S29 NESESE~~
~~Within TWIN FALLS County~~

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

3/15 11/15

135.000 CFS

PLACE OF USE:

13335 ACRES TOTAL

Place of use is within the boundary of Milner Irrigation District pursuant to Section 43-323, Idaho Code.

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

Right Nos. 1-17 and 1-2050 are limited to the irrigation of a combined total of 9468 acres in a single irrigation season.

This right is limited to the irrigation of 8114.4 acres within the place of use described above in a single irrigation season.

Use of the rights listed below is limited to the irrigation of a combined total of 13,335 acres in a single irrigation season. Combined Right Nos.: 45-463, 1-9, 1-17, and 1-2050.

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

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 - Decreed

Water is delivered through Milner Irrigation pumps.

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

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

05/11/2006

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

RIGHT NUMBER: 1-17
NAME AND ADDRESS: MILNER IRRIGATION DIST
5294 E 3610 N
MURTAUGH ID 83344
SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER
QUANTITY: 135.000 CFS
PRIORITY DATE: 11/14/1916
POINT OF
DIVERSION: T10S R21E S29 ~~NESESE~~ Within TWIN FALLS County
PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	135.000 CFS

PLACE OF USE:

13335 ACRES TOTAL

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

Place of use is within the boundary of Milner Irrigation District pursuant to Section 43-323, Idaho Code.

✓ This right is limited to the irrigation of 8114.4 acres within the place of use described above in a single irrigation season.

+ E55

+ E56

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 - Decreed

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

Water is delivered through Milner Irrigation pumps.

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

03/30/2005

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

RIGHT NUMBER: 1-17

NAME AND ADDRESS: MILNER IRRIGATION DIST
5294 E 3610 N
MURTAUGH ID 83344

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 135.000 CFS

PRIORITY DATE: 11/14/1916

POINT OF DIVERSION:

T10S R21E S29 NESESE Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	135.000 CFS

PLACE OF USE:

13,335
9468 ACRES TOTAL

Place of use is within the boundary of Milner Irrigation District pursuant to Section 43-323, Idaho Code.

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

Use of the rights listed below is limited to the irrigation of a combined total of 9468 acres in a single irrigation season. Combined Right Nos.: 1-9 and 1-17.

This right is limited to the irrigation of 8114.4 acres within the place of use described above in a single irrigation season.

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: Decreed

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

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

Water is delivered through Milner Irrigation pumps.

Proof of Completion of Works

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. D. B. Moorman, Age 63 years, Twin Falls, Idaho.

Farmer, Twin Falls, Idaho.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. Mustang Canal Company, Twin Falls, Idaho. I am the Secretary

Treasurer and General Manager of said company.

I appear as such officer.

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. 12759, 160 Sec. ft. Snake River, in Section

22 Twp 10 South, Range 21 East F. M.

Ques. 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you intend to reclaim.

Ans. Irrigation and domestic. 11, 200 acres in 10 and 11 South

and ranges 19, 20 and 21 E. B. M. see map on file. being the land embraced in the Milner Low Lift Irrigation District.

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Yes to the extent of 100 Sec. Ft. various amounts and at

various times during the last three years.

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. No. In as far as they have gone they do.

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. XXXXXXXXXX

Ques. 8. Give description of works, state dimensions and capacity of each part, and give cost of same.

Ans. Intake Canal from Snake river 15 ft. in width, and 6 ft deep.

Steel pipe 5 ft. in diameter and 1000 ft. in length. Canal 14 ft

width at bottom at head the end. maximum capacity 135 Sec.

ft. at the main canal. East Canal 25 Sec. Ft.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, in Twin Falls, Twin Falls County, Idaho.

State of Idaho, on this 14th day of

October 1922. A. D. 19

Clark of the District Court.

12759

REPORT OF ENGINEER

This proof is for **CONVEYANCE WORKS**

In Water District No. **10-A**

1. State name of applicant and number of permit: **Burroughs Canal Company - Permit 12750**
2. State source of water supply: **Main River - 200 sec. ft.**
3. Location of point of diversion: **Lat 8, Sec. 29, Twp. 10 S., R. 21 E., S. 21.**

4. Describe works as they exist, giving dimensions and capacities of same: *Works consist of 3, 24 inch centrifugal pumps direct connected to 500 H.P. 570 R.P.M. 2200 V. A.C. motors. Each pump has 20,000 gal. P.M. each. Machinery is properly housed in concrete 68' x 34' and equipped with necessary switchboard and controlling apparatus. 5 Outside transformers 1000 K.V.A. each, lightning rods, chokes, etc. also provided. Water is pumped from Main River into an intake canal 30' long, then a 60" steel pipe to the distribution canal system. Capacity 135,000 ft.*

5. State whether or not water has been turned into works of diversion: *Yes*
6. Give exact location of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): **Land embraced in the Milner Low Lift Irrigation Dist., vein wells and Cassia Convention.**

Tract No.	Sec.	13 th				14 th				15 th				16 th				Totals
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	
11	2.15	.13	26	10	40	40								31	40	40	21	141.00
	24		31	40	40	40	20		20.3	3				40	34	3	40	221.30
	25				40									40				80
11	2.20	1					6	14.1	20.6									38.70
								9.1										
	2	40	40	40	40	40	40	40	40	40	40	40	40	17	11	11		100.00
	3	40	40	40	40	40	4	20.3	30	40	40	40	40	40	40	40	40	217.66
	4									3	10	17		11	17	40	40	101.40
	5	11		10	40					10		18		40	11	40	40	101.00
	6	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	100.00
	10	10	17				20	40	10	6	34	40	40	40	40	17	40	161.10
	11		8.1				40	10			40	40						100.00
	14						40	40	40	40								100.00
	15	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	100.00
	16	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	100.00
	17	40	40	40	35		3		15					20	10			203
	18	10	10	10			10	4-17										47
	19	40	40	40	40	40	21	4		40				40	40	40	40	
		1-1	35				1-1	77.51		1-1	77.57			1-1	67.3			201.79
	20	30	20	40	40	40	14	10	40	40	40	40	40	40	40	40	40	117.91
	21	30	40				40	25	40	40	30	40						107.00
	22							14										14
	23		17.4					10										27.40
	24	10	10				10	10										70.40
	25	24	20	40			40		40	40	40	40	40	40	40	40	40	209.90
							1-1	77.5		1-1	77.5			1-1	77.5			
10	3.20	2.25																25
	36						8.7			20	10	20		30	25	40	40	210.3
	34	40	40	40	40	40	25	8	32	40	40	40	10	40	40	40	40	255.9

in concrete 744.61' and supplied with necessary switchgear and
controlling apparatus. 5 Outside transformers 1000KVA each, lightning rods
chokes coils etc. all provided. Water is pumped from Milner Lake through an
intake canal 30' long, then a 60" dia. pipe to the distribution canal
system. Capacity 185 M.C.F.

3. State whether or not water has been turned into works of diversion:

Yes

6. Give exact location of lands to be irrigated. If proof is for beneficial use, give exact number of
acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than
irrigation): Land embraced in the Milner Low Lift Irrigation Dist., Twin Falls and
Cassia Counties.

Tract No.	Section	10	20	30	40	50	60	70	80	90	100	Total
11	3.19	13	20	10	40	40						
	24	31	40	40	40		20	20.3	3			100.00
	25				40							20.00
11	3.20	1					6	14.2	20.6			40.80
								39.1				39.10
	2	40	40	40	40		40	30.5	40	40	40	170.00
	3	40	40	40	40		4	151.00	40	40	40	317.66
	4								3	180.07	40	101.40
	8	10		10	40				10	18	40	100.00
	9	40	40	40	40				40	40	40	160.00
	10	10	17				10	40	40	40	40	100.00
	11		40	40	40				40	40		160.00
	14		40	40	40	40			40	40	40	160.00
	15	40	40	40	40				40	40	40	160.00
	16	40	40	40	40				40	40	40	160.00
	17	40	40	40	35		3	15				200.00
	18	40	40	40	40							160.00
	19	40	40	40	40							160.00
	20	40	40	40	40							160.00
	21	40	40	40	40							160.00
	22	40	40	40	40							160.00
	23	40	40	40	40							160.00
	24	40	40	40	40							160.00
	25	40	40	40	40							160.00
	26	40	40	40	40							160.00
	27	40	40	40	40							160.00
	28	40	40	40	40							160.00
	29	40	40	40	40							160.00
	30	40	40	40	40							160.00
	31	40	40	40	40							160.00
	32	40	40	40	40							160.00
	33	40	40	40	40							160.00
	34	40	40	40	40							160.00
	35	40	40	40	40							160.00
	36	40	40	40	40							160.00
	37	40	40	40	40							160.00
	38	40	40	40	40							160.00
	39	40	40	40	40							160.00
	40	40	40	40	40							160.00
	41	40	40	40	40							160.00
	42	40	40	40	40							160.00
	43	40	40	40	40							160.00
	44	40	40	40	40							160.00
	45	40	40	40	40							160.00
	46	40	40	40	40							160.00
	47	40	40	40	40							160.00
	48	40	40	40	40							160.00
	49	40	40	40	40							160.00
	50	40	40	40	40							160.00
	51	40	40	40	40							160.00
	52	40	40	40	40							160.00
	53	40	40	40	40							160.00
	54	40	40	40	40							160.00
	55	40	40	40	40							160.00
	56	40	40	40	40							160.00
	57	40	40	40	40							160.00
	58	40	40	40	40							160.00
	59	40	40	40	40							160.00
	60	40	40	40	40							160.00
	61	40	40	40	40							160.00
	62	40	40	40	40							160.00
	63	40	40	40	40							160.00
	64	40	40	40	40							160.00
	65	40	40	40	40							160.00
	66	40	40	40	40							160.00
	67	40	40	40	40							160.00
	68	40	40	40	40							160.00
	69	40	40	40	40							160.00
	70	40	40	40	40							160.00
	71	40	40	40	40							160.00
	72	40	40	40	40							160.00
	73	40	40	40	40							160.00
	74	40	40	40	40							160.00
	75	40	40	40	40							160.00
	76	40	40	40	40							160.00
	77	40	40	40	40							160.00
	78	40	40	40	40							160.00
	79	40	40	40	40							160.00
	80	40	40	40	40							160.00
	81	40	40	40	40							160.00
	82	40	40	40	40							160.00
	83	40	40	40	40							160.00
	84	40	40	40	40							160.00
	85	40	40	40	40							160.00
	86	40	40	40	40							160.00
	87	40	40	40	40							160.00
	88	40	40	40	40							160.00
	89	40	40	40	40							160.00
	90	40	40	40	40							160.00
	91	40	40	40	40							160.00
	92	40	40	40	40							160.00
	93	40	40	40	40							160.00
	94	40	40	40	40							160.00
	95	40	40	40	40							160.00
	96	40	40	40	40							160.00
	97	40	40	40	40							160.00
	98	40	40	40	40							160.00
	99	40	40	40	40							160.00
	100	40	40	40	40							160.00

930 - 4000 - 2000

11,213.16

12759

REPORT OF ENGINEER

8. How many parties conduct water in this system?

Only this permit holder

9. Give names and amount of each right:

10. What large stream would the water here appropriated finally reach?

Columbia

11. Describe the various tributaries en route, from point of diversion to the principal drainage stream:

Remarks:

This examination was made on the

(Signed)

16th day of May
Geo. B. Carter

19 *23*

Examiner.

12759

Milner Low Lift Irrigation District.

Twin Falls, Idaho, July 9 1923.

Re: Permit No. 12759

**Commissioner of Reclamation
Boise, Idaho.**

Dear Sir:-

I am enclosing you a Certified Check for \$42.50
as per your letter to us of June 29, 1923.

Please issue to Milner Low Lift Irrigation District
Certificate for completion of works, and mail to me at Twin
Falls, Idaho.

We believe we are entitled to and should have 145
sec. feet as our 3 motors and pumps will furnish that amount.
We have been pumping considerable more than 90 sec. ft. with
two motors. Please take the matter up with Mr. Carter and if
possible give us ten more sec. feet.

Very Truly Yours,

D. B. Morrison

12759

December 16, 1957

Nielsen & Nielsen
Attorneys At Law
P. O. Box 267
Burley, Idaho

Re: Milner Low Lift
Irrigation District

Attention: A. H. Nielsen

Dear Mr. Nielsen:

In reply to your letter of December 14, 1957 requesting to know the status of Permit No. 12759, which is as follows:

Applicant - James B. Hays
Source of Supply - Snake River
Amount - 300 cubic feet per second
Filed - November 14, 1916
Completion of Works Proof made - Jul 12, 1923
Beneficial Use Proof never made.

On December 29, 1916, James B. Hays assigned said permit to D. B. Moorman; on August 24, 1919, D. B. Moorman assigned said permit to Hartaugh Canal Company; on February 10, 1922 the Hartaugh Canal Company assigned said permit to the Milner Low Lift Irrigation District. Certificate of works proof was issued by this department for 135 cubic feet per second, this right being superseded by decree dated April 29, 1931 in the case entitled Milner Low Lift Irrigation District vs. Lynn Grandall, Watermaster.

According to our records, the water rights for the Milner Low Lift Irrigation District is 135 cubic feet per second decreed water right, and 37 cubic feet per second licensed under Permit No. 18919 and a filing for 70 cubic feet per second under Permit No. 21713.

Hoping this answers your inquiry.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
by

Roy W. Thompson
Office Manager

RWT:lw

12759

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

IN THE MATTER OF Permits No. 01-2029,)
01-2063 & 02-2081 in the name of MILNER)
LOW LIFT IRRIGATION DISTRICT)

ORDER TO SHOW CAUSE

Application for Permit No. 01-2029 was originally filed on November 14, 1916, and sought a permit to appropriate 300 second feet of water from the Snake River for irrigation purposes. On July 12, 1923, a Certificate of Completion of Works was issued to the Milner Low Lift Irrigation District, indicating that works had been constructed sufficient to divert 135 second feet of water from the Snake River for irrigation purposes. No proof of beneficial use of the water was subsequently submitted, probably due to the fact that this right was included in a decree of the district court.

Application for Permit 02-2081 was filed on May 3, 1950, for a permit to appropriate 70 second feet of water from the Snake River for irrigation purposes. Proof of beneficial use of the water was submitted on April 27, 1956, but no license confirming the right has been issued by the Department.

Application for Permit 01-2063 was filed on April 26, 1966, seeking a permit to appropriate 14 second feet of water from the Snake River for irrigation purposes. Proof of beneficial use of the water was submitted on May 3, 1967, but no license has been issued confirming the water right.

Information available to this office indicates that the Milner Low Lift Irrigation District has diverted a maximum quantity of 298 second feet of water during periods when they were not withdrawing water from storage. It appears evident, therefore, that the maximum "natural" flow water rights of the district cannot exceed that amount. The district has decreed and licensed natural flow water rights for a total of 293 second feet as follows:

<u>Number</u>	<u>Amount</u>	<u>Priority</u>	<u>Right Established By & Remarks</u>
01-0017	135 cfs	11/14/1916	Decree - Milner Low Lift vs. Lynn Crandall
01-0609	121 cfs	4/01/1939	Decree - Burley Irrigation District vs. Henry Eagle
01-2050	37 cfs	10/25/1939	License - Lands within Milner Low Lift Irrigation District

It appears, therefore, that licenses cannot be issued under Permits No. 01-2029, 01-2063 & 02-2081, due to the inability of the permit holder to show proof that they have diverted and beneficially used water under these permits, in addition to those rights previously decreed or licensed.

IT IS THEREFORE ORDERED and the Milner Low Lift Irrigation District is hereby required to show cause, in writing, on or before June 15, 1974, as to why Permits No. 01-2029, 01-2063 and 02-2081 should not be cancelled and removed from the records of this Department.

Dated this 14 day of May, 1974.


R. KEITH HIGGINSON
Director

**STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
STATE OFFICE**



Cecil D. Andrus
Governor
R. Keith Higginson
Director

614 State Street
Statehouse Annex 2
Boise, Idaho 83720
(208) 384-2215

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection
Geothermal Resources

IN THE MATTER OF CANCELLATION OF PERMITS)
TO APPROPRIATE THE PUBLIC WATERS OF THE)
STATE OF IDAHO NO. 01-2029, 01-2063 & 02-2081)
IN THE NAME OF Milner Low Lift Irrigation District)

ORDER OF CANCELLATION

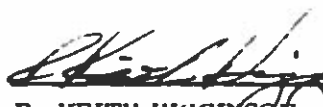
WHEREAS, the permit holder has failed to show proof that water has been diverted and beneficially used under the above numbered permits in addition to those rights previously decreed or licensed; and,

WHEREAS, on May 14, 1974, notice was sent to the holder of said permits to appear before the Director of the Department of Water Administration on or before June 15, 1974, to show cause why said permits should not be cancelled; and,

WHEREAS, the holder of said permits has failed to comply with the requirements of said permits and has not shown adequate cause why such permits should not be cancelled.

IT IS, THEREFORE, ORDERED and Permits No. 01-2029, 01-2063 & 02-2081 are hereby CANCELLED.

Dated this 18 day of June, 1974.



R. KEITH HIGGINSON
Director

01-2029

01-A

Judgment Book No. 14, Page No. 433
IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

MILNER LOW LIFT IRRIGATION DISTRICT,)
Plaintiff)

-vs-

LYNN CRANDALL, Water Master in charge)
of distribution of the water from)
Snake River,)
Defendant)

DECREE

8111
DISTRICT COURT
Eleventh Judicial Dist
County of Twin Falls,
State of Idaho
Filed Apr. 30, 1931
/s/ Harry C. Parsons
Clerk

/s/ Frank J. Smith
Deputy Clerk
Entered Apr. 30, 1931

This cause came on duly to be heard in open court on the 17th day of April, 1931, before the Court sitting without a jury. J. L. Hodgin, Esq. appeared as counsel for the plaintiff; and there being no appearance for the defendant, his default was duly entered. Now, upon filing the Findings of Fact and Conclusions of Law herein, and the Court being fully advised in the premises;

01-0017 IT IS HEREBY ORDERED, ADJUDGED AND DECREED That the Milner Low Lift Irrigation District is entitled to the use of One Hundred Thirty-five (135) cubic feet per second of the waters of Snake River for the irrigation and cultivation of the following described land situate in the counties of Twin Falls and Cassia, State of Idaho, to-wit:

In Township Eleven (11) South, Range Nineteen (19) E, B. M.:

West Half of Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$), and
Northwest Quarter of Southeast Quarter ($NW\frac{1}{4} SE\frac{1}{4}$), and
Southeast Quarter of Southeast Quarter ($SE\frac{1}{4} SE\frac{1}{4}$), of
Section Thirteen (13).

In Township Eleven (11) South, Range Twenty (20) E B M:

Sections Two (2), Three (3), Nine (9), Ten (10),
Eleven (11), Fifteen (15), Sixteen (16), Seventeen (17),
Nineteen (19), Twenty (20) and Twenty-one (21); North
Half ($N\frac{1}{2}$) of Section One (1);
South Half ($S\frac{1}{2}$) of Section Four (4);
South Half ($S\frac{1}{2}$) and Northeast Quarter ($NE\frac{1}{4}$) of
Section Eight (8);
Northwest Quarter ($NW\frac{1}{4}$) of Section Fourteen (14);

Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-two (22);
North Half (N $\frac{1}{2}$) of Section Twenty-eight (28);
North Half (N $\frac{1}{2}$) of Section Twenty-nine (29); and
North Half of Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$) of
Section Thirty (30).

In Township Ten (10) South, Range Twenty (20) E B M;
Section Thirty-six (36); and
Northeast Quarter (NE $\frac{1}{4}$) and
South Half (S $\frac{1}{2}$) of Section Thirty-five (35).

In Township Ten (10) South, Range Twenty-one (21) E B M;
Sections Thirty-one (31) and Thirty-two (32);
South Half of Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of
Section Twenty-nine (29); and
South Half (S $\frac{1}{2}$) of Section Thirty (30).

and for domestic purposes; and the right to the use of said amount of water
is hereby dedicated and made appurtenant to said above described lands, with
priority dating from the 14th day of November, 1916; and the same shall be
diverted in Lot Eight (8), Section Twenty-nine (29), Township Ten (10) South,
Range Twenty-one (21), E B M.

Dated this 29th day of April, 1931.

Wm. A. Babcock
District Judge.

wh

STATE OF IDAHO)
COUNTY OF TWIN FALLS) ss.

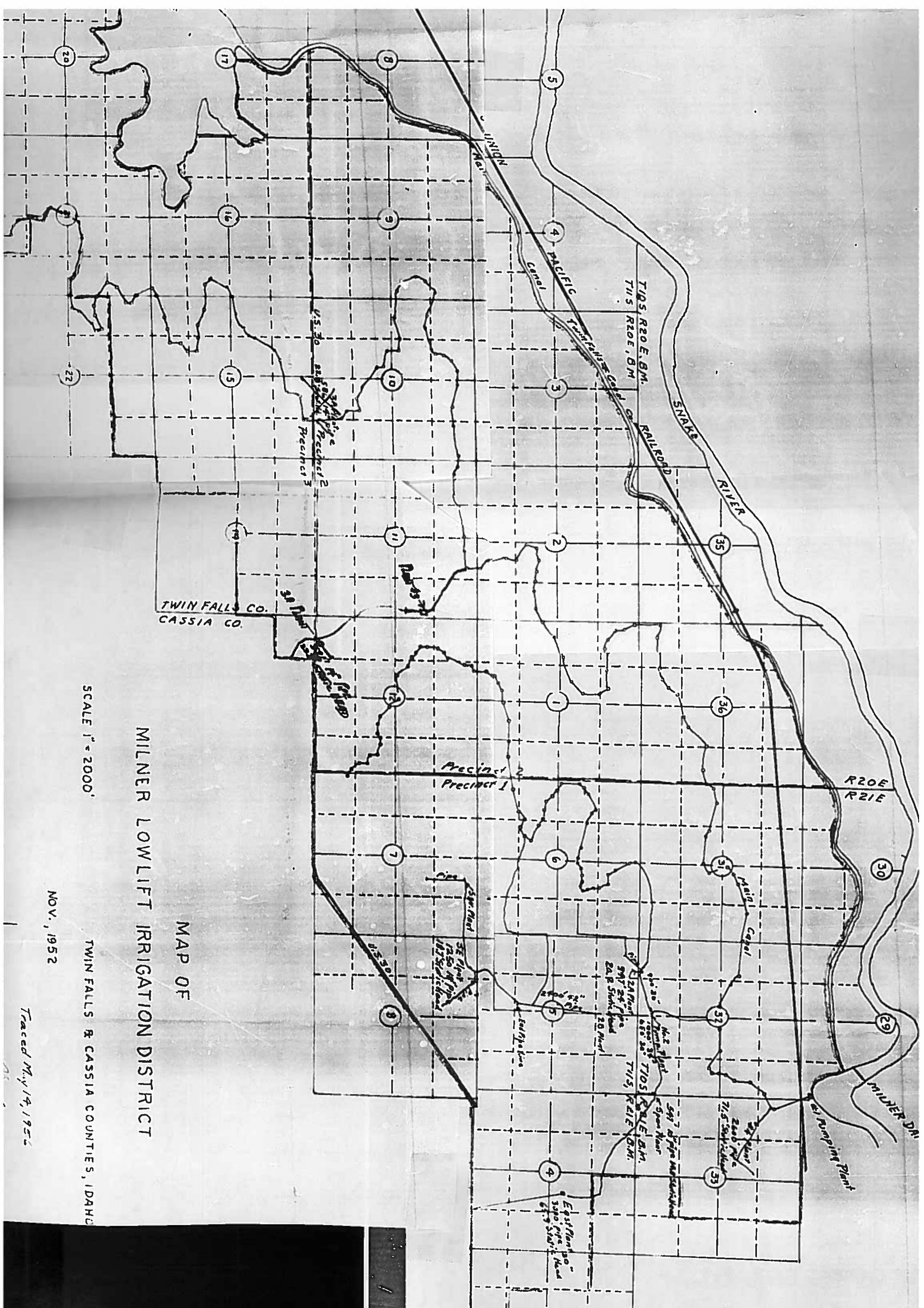
I hereby certify the foregoing to be a full, true and
correct copy of the original as file in the above
entitled action.

/s/ C. A. Buslas
Clerk of the District Court

/s/ Irene Sinema
Deputy

12,094.15 AC

7 BLM are BLM (280 AC)



MILNER LOWLIFT IRRIGATION DISTRICT
MAP OF

SCALE 1" = 2000'

TWIN FALLS & CASSIA COUNTIES, IDAHO

NOV., 1952

Traced May 14, 1956

PROFFLED

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



Travis L. Thompson
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October 27, 2005

Via Facsimile (208) 525-7177 & U.S. Mail

Michael Holliday
Idaho Department of Water Resources
Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718

RECEIVED

OCT 31 2005

Department of Water Resources
Eastern Region

**Re: Milner Irrigation District Water Right Claims 01-09, 01-17, and 01-2050 /
August 15, 2005 Letter**

Dear Michael:

This letter responds to your August 15, 2005 letter (addressed to Gary Slette, former counsel for Milner) regarding the Department's interpretation of the Idaho Supreme Court's decision in *Bradshaw v. Milner Low Lift Irrigation District*, 85 Idaho 528 (1963), and the preliminary recommendations for Milner's natural flow water rights (Basin 01) in the SRBA.

In the *Bradshaw* decision, the Idaho Supreme Court expressly held that the "new lands", or those annexed after 1952, were entitled to use water under Milner's natural flow water rights, provided that use did not interfere with use on the "old lands", those lands included in the district prior to 1952. Specifically, the Court held:

However, we do not construe the conclusions or judgment of the district court as denying to the owners of the new lands any right or interest whatever in the water rights held by the district prior to their annexation. *The irrigation district law regards the irrigation district as a unit*, and as a legal entity, holding title to its property and water rights in trust for the uses and purposes set forth in that law . . . *we recognize the right acquired by the owners of new lands, by their inclusion within the district, to the use of any water owned by the district when the use thereof is not required for the proper irrigation of the old lands, and when such use is not in conflict with the rights previously acquired by the owners of the old lands, or when such use is not in derogation or impairment of such prior rights.*

We find nothing in the conclusions or judgment of the district court in conflict with this right of the owners of the new lands and its decree must be construed in harmony therewith.

Bradshaw, 85 Idaho at 547 (emphasis added).¹

Accordingly, the Idaho Supreme Court has plainly recognized that the owners of "new lands" within Milner's district have a "right" to use "any water" owned by the district, including the natural flow rights (01-09, 01-17, and 01-2050), as long as the use is not required for "proper irrigation" of the old lands and the use does not "conflict" with or "impair" the rights of the "old lands" landowners.

Consistent with this ruling, Milner has historically irrigated all lands within the district, including "old" and "new" lands, with its natural flow water rights. Therefore, the Department should recognize all of Milner's irrigated acres, including both "old" and "new" lands, for purposes of Milner's natural flow water right recommendations. In addition, Milner does not believe it is necessary to file an additional "beneficial use" or "enlargement" claim to cover the "new lands" under a separate natural flow water right.

Thank you for your attention to this matter and please call me at 733-0700 after the Department has reviewed this letter. In addition, please advise if the Department has any additional questions or would like to meet with representatives of Milner to discuss this matter further.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

cc: Walt Mullins, Manager
Scott Breeding, Chairman (Board of Directors)

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¹ I have enclosed a copy of the Idaho Supreme Court's *Bradshaw* decision for the Department's reference.

miss as a demand and motion for change of venue, and on that basis, ordered the case transferred to Caribou County where the defendants reside. Plaintiffs appeal from the order for change of venue, contending the trial court erred in treating the motion to dismiss as a motion to change venue.

The issue presented by this appeal is identical to that decided by this Court in *Bistline v. Eberle*, 376 P.2d 501.¹ (1962) Therein it was held that I.R.C.P. 12(b) (3) does not authorize dismissal of an action upon grounds of improper venue; that if a motion to dismiss upon the grounds of improper venue is made, the same should be denied; and that the trial court is without power to change the venue of its own motion.

By virtue and under the authority of the decision in the case of *Bistline v. Eberle*, supra, the order of the trial court transferring the case to the Thirteenth Judicial District, in and for Caribou County is vacated and the cause is remanded for further proceedings.

Pursuant to a stipulation of the parties, no costs will be allowed.

KNUDSON, C. J., and McFADDEN, TAYLOR and SMITH, JJ., concur.

381 P.2d 440

Bernard C. BRADSHAW and Mickey Bradshaw, husband and wife, et al.,
Plaintiffs-Appellants,

v.

MILNER LOW LIFT IRRIGATION DISTRICT, a quasi-municipal corporation,
et al., Defendants-Respondents.

No. 9106.

Supreme Court of Idaho.

May 3, 1963.

Rehearing Denied May 29, 1963.

Action by owners of lands newly annexed to irrigation district for judgment establishing right to share in water rights of district and in payment of its bonded debt and cost of maintenance and operation on pro rata basis to owners of lands previously annexed. The District Court, Eleventh Judicial District, Cassia County, Sherman J. Bellwood, J., entered judgment denying relief and adjudging owners of new lands liable for entire cost of acquiring additional water rights, enlarging and equipping system to irrigate their lands and for higher cost of maintenance and operation and adjudging that plaintiffs could not compel district to assess benefits and deliver water to lands for which no water was available, and the plaintiffs appealed. The Supreme Court, Taylor, J., held that owners

1. Ante, p. 167.

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529

440

and Mickey Brad-
d wife, et al.,
s-Respondents.

IRRIGATION DIS-
trict corporation,
s-Respondents.

106.

rt of Idaho.

1963.

1 May 29, 1963.

of lands newly an-
nected for judgment
share in water rights
vestment of its bonded
intenance and opera-
s to owners of lands

The District Court,
istrict, Cassia County,
, J., entered judgment
adjudging owners of
ntire cost of acquiring
s, enlarging and equip-
te their lands and for
tenance and operation

plaintiffs could not
ess benefits and deliver
which no water was
aintiffs appealed. The
or, J., held that owners

of lands which were within irrigation dis-
trict and to which district provided water
for irrigation for many years acquired
valuable water rights which had become
appurtenant to and dedicated to their lands,
and of which they could not be deprived
without their consent when they needed it,
and owners of later annexed land did not
acquire right to share in those water rights
by process of annexation alone.

Affirmed.

1. Waters and Water Courses §247(1)

Evidence supported finding that irriga-
tion district, sued to permit owners of an-
nexed land to share in all water rights
owned by district equally with all other
owners without regard to date of annexa-
tion or of water rights, did not have avail-
able sufficient water for irrigation of all of
its lands for which more acre feet of stor-
age was necessary in certain reservoir than
was allocated to district.

2. Appeal and Error §1010(1)

Findings supported by evidence would
not be disturbed on appeal. I.C. § 13-219.

3. Waters and Water Courses §216

Constitutional provisions governing and
guaranteeing water rights and concerning
priority of appropriation apply to irrigation
districts. Const. art. 15, §§ 3-5.

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4. Waters and Water Courses §256

Irrigation district which bought rights
of original appropriator of water and made
subsequent appropriations and purchases of
water stood in position of "appropriator"
for distribution to landowners within the
district, within constitutional provision
making use of water subject to regulation
and control of state. Const. art. 15, § 1.

See publication Words and Phrases
for other judicial constructions and
definitions.

5. Waters and Water Courses §251

Irrigation district which bought rights
of original appropriator of water and made
subsequent appropriations and purchases of
water held title to water rights in trust for
landowners, and landowners to whose lands
the water had become dedicated had ac-
quired status and rights of "distributees"
within constitutional provisions guarantee-
ing continuing rights to water and govern-
ing priorities. Const. art. 15, §§ 4, 5.

See publication Words and Phrases
for other judicial constructions and
definitions.

6. Waters and Water Courses §249, 251

Owners of lands within irrigation dis-
trict which provided irrigation water for
many years for those lands acquired valua-
ble water rights of which they could not be
deprived without consent when they needed
it and owners of later annexed land did not
acquire right to share in those rights by

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process of annexation alone. Const. art. 15, §§ 1, 3-5; I.C. §§ 42-101, 42-904, 42-914, 43-1010.

7. Waters and Water Courses Ⓒ249

Owners of lands newly annexed by irrigation district which initiated water rights acquired or to be acquired from reservoir storage expressly for benefit of those lands were entitled to have water acquired from the reservoir storage treated as appurtenant to those lands. Const. art. 15, §§ 1, 3-5; I.C. §§ 42-101, 42-904, 42-914, 43-1010.

8. Waters and Water Courses Ⓒ224, 228½

Irrigation district law regards district as a unit and a legal entity holding title to its property and water rights in trust for uses and purposes set forth. I.C. §§ 43-101, 43-316.

9. Waters and Water Courses Ⓒ226, 249

Purpose of statute providing that after recording of order changing boundaries, irrigation district shall remain a district as fully as if new lands had been included therein at original organization is to make landowners within district equal, except as to any disparity existing in benefits received, so far as may be consistent with priority of water rights. Const. art. 15, §§ 1, 3-5; I.C. §§ 43-404, 43-1010.

10. Waters and Water Courses Ⓒ249

Owners of lands newly annexed by irrigation district have right to use any water

owned by district and not required for proper irrigation of prior annexed lands so long as that use does not conflict with rights previously acquired by the other owners or is not in derogation or impairment of the prior rights. I.C. §§ 43-101, 43-316, 43-404, 43-1010; Const. art. 15, §§ 1, 3-5.

11. Waters and Water Courses Ⓒ231

Owners of lands newly acquired by irrigation district were required to bear cost of acquiring water therefor, enlarging, equipping, and extending system for irrigation thereof, and to pay differential in cost of maintenance and operation due to any factor necessarily increasing cost of irrigation of new lands. I.C. §§ 43-101, 43-316, 43-404, 43-1009; Const. art. 15, §§ 1, 3-5.

12. Constitutional Law Ⓒ290(1)
Eminent Domain Ⓒ2(10)

To require owners of land previously annexed to irrigation district to bear part of cost of acquiring water for newly annexed lands, enlarging, equipping, and extending system for irrigating new lands, and of differential in cost of maintenance and operation due to higher elevation of new lands without consent would invade constitutional rights to just compensation for condemnation and to due process. Const. art. 1, §§ 13, 14.

13. Waters and Water Courses Ⓒ249

Board of directors of irrigation district could not be required to accept payment of

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benefits assessed and thereafter be required to deliver water to newly annexed lands which had not been irrigated and for which no water right had been acquired or was available. Const. art. 1, §§ 13, 14; art. 15, §§ 1, 3-5.

Lowe & Lowe, Burley, Ralph R. Breshcars, Boise, for appellant.

When the Milner Low Lift Irrigation District annexed the 4000 acres of additional lands, such lands, upon payment of the annexation fee of \$125.00 per acre, were entitled to share proportionately in the available water of the District with the lands that were in the District prior to annexation on an equal basis without regard to the time of entry or location of the land. Section 43-316, Idaho Code; Section 55-101, Idaho Code; Title 43, Chapter 10, Idaho Code; Section 43-1004, Idaho Code; Section 43-1005, Idaho Code; Section 43-1008, Idaho Code; Section 43-1009, Idaho Code; Section 43-1010, Idaho Code; Section 42-2601, Idaho Code; Section 43-1007, Idaho Code; Yaden v. Gem Irrigation District, 37 Idaho 300, 216 P. 250; Knowles v. New Sweden Irrigation District, 16 Idaho 217, 101 P. 81; Harsin v. Pioneer Irrigation District, 45 Idaho 369, 263 P.2d 988; Eldridge v. Black Canyon Irrigation District, 55 Idaho 443, 43 P.2d 1052; Hicks v. Combs, et al., 311 Ky. 149, 223 S.W.2d 379, 11 A.L.R.2d 1393.

The owners of the new lands did not waive any right they might have had to equality of water rights within the District and they are not estopped by reason of any alleged information, representations and agreements, given and made to the old land owners, from insisting upon equality of water rights within the District. Cahoon v. Seger, 31 Idaho 101, 168 P. 441; Little v. Bergdahl Oil Company, 60 Idaho 662, 95 P.2d 833; United States, for the Use and Benefit of Continental Lumber Company v. Embrey, D.C.Idaho, 130 F.Supp. 643; 115 A.L.R., page 152; 48 A.L.R.2d, page 1071; 19 American Jurisprudence, para. 54, page 660; Jones v. United States, 96 U.S. 324, 24 L.Ed. 644; Sturm v. Boker, 150 U.S. 312, 14 S.Ct. 99, 37 L.Ed. 1093, 1096.

The Board of Directors of Milner Low Lift Irrigation District does not have the legal right to classify the lands within the boundaries of the District, placing in one classification all lands included therein prior to the annexation of 4,000 acres by order of the Board October 23, 1952, and in a different classification the annexed lands, and providing that after such classification the new lands, upon payment of the annexation fee, will be entitled to receive for irrigation thereof, from the District, only such water available to it as is not required for the irrigation of the other lands within the District. Section 42-904, Idaho Code; Harsin v. Pioneer Irrigation District, 45 Idaho 369, 263 P. 988; Yaden v. Gem Ir-

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rigation District, 37 Idaho 300, 216 P.2d 250; Scott v. Nampa & Meridian Irrigation District, 55 Idaho 672, 45 P.2d 1062.

The Board of Directors of Milner Low Lift Irrigation District does not have any legal right to discriminate against the owners of the 4,000 acres of new lands annexed to the District by order of the Board dated October 23, 1952, by levying an assessment for operation and maintenance of the District at a higher rate per acre than the assessment per acre for operation and maintenance of the District levied and assessed against the owners of the old lands. Section 43-701, Idaho Code; Colburn v. Wilson, 24 Idaho 94, 132 P. 579; Gedney v. Snake River Irrigation District, 61 Idaho 605, 104 P.2d 909.

The Board of Directors of Milner Low Lift Irrigation District should be required to levy the annexation assessment of \$125.00 per acre upon all lands remaining unsupplied with irrigation water that were annexed to the District by order of the Board dated October 23, 1952, and thereafter be required to complete the extension of the distribution system of the District so as to be able to deliver water for the irrigation of the lands of appellants. Harsin v. Pioneer Irrigation District, 45 Idaho 369, 263 P. 988; Yaden v. Gem Irrigation District, 37 Idaho 300, 216 P. 250; 94 C.J.S. Waters § 352, page 403; In re Water Rights of Deschutes River, and Tributaries, 134 Or. 623, 286 P. 563, 294 P. 1049; Hanes v. Idaho Irrigation Company, Ltd.,

21 Idaho 512, 122 P. 859; Beatty v. Clark Colony Water Company, 28 Cal.App. 749, 153 P. 990; Hidalgo County Water Control & Improvement District No. 1 v. Quick, Tex.Civ.App., 13 S.W.2d 209.

Parry, Robertson & Daly, Twin Falls, Nielson & Nielson, Burley, for respondent.

Appellants and the Board of Directors are bound by the information, representations, and agreements given and made to the owners of the old lands at and prior to the time of the annexation proceedings; it is the obligation and duty of the Board of Directors to carry out the representations and agreements made to the owners of the old lands prior to the 1952 annexation proceedings; and appellants, as well as the Board of Directors, have waived any right to claim equality of water rights within the District, and both are estopped from asserting any such right. Tukey v. City of Omaha, 54 Neb. 370, 74 N.W. 613; Tingwall v. King Hill Irrigation District, 66 Idaho 76, 155 P.2d 605; Indian Cove Irrigation District v. Pridcaux, 25 Idaho 112, 136 P. 618; American Law Institute's, Restatement of the Law of Contracts § 90; White v. Ralph, 66 Idaho 38, 154 P.2d 167.

It is the duty of the Board of Directors of the District to classify the lands within the District in accordance with the provisions of Section 42-904, Idaho Code, and to find and declare that the water rights owned by the District, except Palisades Reservoir water, are appurtenant to the old lands, and such lands are entitled to a prior

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use of such waters. Section 42-904, Idaho Code; Section 1 of Article 15 of the Idaho Constitution; Section 4 of Article 15 of the Idaho Constitution; Section 5 of Article 15 of the Idaho Constitution; Session Laws of the State of Idaho, 1899, p. 408; Session Laws of the State of Idaho, 1903, p. 150; Section 42-101, Idaho Code; Section 43-304, Idaho Code; Section 43, Session Laws of the State of Idaho, 1899, p. 424; Section 43, Session Laws of the State of Idaho, 1903, p. 179; Nampa & Meridian Irrigation District v. Brose, 11 Idaho 474, 83 P. 499; Biddick v. Laramie Valley Municipal Irrigation District, 76 Wyo. 67, 299 P.2d 1059; Brose v. Board of Directors of the Nampa & Meridian Irrigation District, 20 Idaho 281, 118 P. 504; Brose v. Board of Directors of the Nampa & Meridian Irrigation District, 24 Idaho 116, 132 P. 799; Gerber v. Nampa & Meridian Irrigation District, 16 Idaho 1, 100 P. 80; Gerber v. Nampa & Meridian Irrigation District, 19 Idaho 765, 116 P. 104.

The Board of Directors had and now has authority to make additional assessments upon the new lands. Section 43-1009, Idaho Code.

The Board of Directors are under no obligation to accept assessment fees in any amount for land not now irrigated until there is complete assurance that an adequate water supply from Palisades Reservoir, or some other source, has been obtained and is available. Municipal Law by Chester James Antieu, Vol. 3, p. 309, Vol.

2, p. 367; 64 C.J.S. Municipal Corporations § 1929, p. 551; Hayes v. City of Seattle, 120 Wash. 372, 207 P. 607; State ex rel. Lang v. Anderson, 164 Minn. 134, 204 N.W. 925; Harding v. Board of Supervisors of Osceola County, 213 Iowa 560, 237 N.W. 625.

It is the duty and obligation of the Board of Directors to levy one assessment for maintenance and operation upon the old lands, based upon the cost of delivery of water to such lands, and another assessment for maintenance and operation on the new lands, based upon the cost of delivery of water to such lands. Colburn v. Wilson, 24 Idaho 94, 132 P. 579, distinguished; Gedney v. Snake River Irrigation District, 61 Idaho 605, 104 P.2d 909, distinguished; State ex rel. Lang v. Anderson, 164 Minn. 134, 204 N.W. 925; Harding v. Board of Supervisors of Osceola County, 213 Iowa 560, 237 N.W. 625; Tukey v. City of Omaha, 54 Neb. 370, 74 N.W. 613; 66 Idaho 76, 155 P.2d 605; Indian Cove Irrigation District v. Prideaux, 25 Idaho 112, 136 P. 618; American Law Institute's, Restatement of the Law of Contracts § 90; White v. Ralph, 66 Idaho 38, 154 P.2d 167.

TAYLOR, Justice.

The defendant (respondent) Milner Low Lift Irrigation District was organized in 1921. At that time it acquired by purchase the water rights and the incomplete diversion and distribution system of the Murtaugh Canal Company. The purchase price

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ultimately agreed upon was \$486,864 to be paid in bonds of the district. At that time there were 8114.4 acres of land within the district. The purchase price was calculated upon a basis of \$60 per acre, which was determined, and decreed, to be the amount of benefits accruing to each acre, and to be the basis for the fixing of annual assessments. During the years between its organization and 1952 the district acquired additional water rights, and certain lands were excluded and other lands were added by fourteen separate annexations, so that the total acreage within the district in 1952, prior to the annexation involved herein, had been increased to 9468 acres.

The acres added by these previous annexations were assessed for benefits on the basis of their proportionate share of the original indebtedness of the district remaining unpaid at the date of their respective annexations, and after annexation the added lands shared in the distribution of water belonging to the district, and in the payment of debts and maintenance and operation expenses, equally with all other lands within the district.

Some two years prior to 1952, various proposals were made and discussed among water users of the district for the irrigation of lands lying outside of, and adjacent to, the boundaries of the district. These proposals were made by owners of lands within the district who also owned a major portion of the lands proposed to be annexed. Some

of these owners were also officers and directors of the district. The acreage to be annexed was increased in each succeeding proposal so that the final proposal, which was consummated on October 23, 1952, resulted in the annexation of 4000 acres of new land.

It was understood by all concerned that the existing water rights owned by the district were insufficient for the irrigation of more than a fraction of the proposed additional land. This is apparent from the terms of the petition for annexation.

During that period the construction of the Palisades dam and reservoir on the Snake river, by the Federal Bureau of Reclamation, was authorized. The promoters of the proposed annexation understood that the Palisades project was planned and was to be developed as a source of water supplemental to the water available to existing irrigation systems, and was not intended primarily for the development of new projects. Hence, annexation to an existing district would facilitate the acquisition of additional water from the Palisades storage for the irrigation of the lands to be annexed.

June 8, 1950, at a meeting of the landowners of the district, a committee was appointed to act with the chairman of the board and secretary of the district in making a study of the proposed extension of the district. All of the five members of this

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committee, as well as the chairman of the board and secretary of the district, were owners of lands proposed to be annexed to the district, and the lands of all, except one, were ultimately annexed.

Water for the irrigation of the lands of the district as it existed prior to the annexation involved was taken from the Snake river by means of a pumping plant located on the forebay above the Milner dam. The water was pumped to an elevation above the river from which it was distributed by means of canals, laterals and subsidiary pumping stations to the lands of the district. The average lift was 77 feet. The irrigation of the lands proposed to be annexed required the enlargement of the existing pumping plant and main canal, the construction of additional laterals, and the pumping of the water for such lands to an average elevation of 150 feet.

The lands in the district as it existed prior to the annexation of 1952 are referred to as the "old lands", and the lands annexed in 1952 are referred to as "new lands".

At a landowners' meeting held January 22, 1952, the committee appointed to study the proposed extension of the district made a report of its findings as to feasibility and conditions of such extension. The following appears in the minutes of the meeting:

"The subject of a 4,000 acre extension to the Milner Low Lift Irrigation District was presented to the landown-

ers by Charles L. Fisher, Chairman of the extension Committee. Mr. Fisher stated that after considerable study, the Committee members believe that \$100.00 per acre is a very fair price for the entrance fee, which includes all construction and additional power cost for lifting water to a higher level. The purchase of storage water for the extension being in addition to the \$100.00 per acre entrance fee, because the Milner Low Lift Irrigation District will have 40 years to pay for the same, without interest. Thereby making the annual storage water payment out of the Bond Levy.

"In addition to the extension paying for all new construction and additional power costs, it will pay for its own storage water and help pay for the construction and water-rights on the present 9,468 acre project.

"A 4,000 acre extension to the Milner Low Lift Irrigation District was unanimously approved by each person standing and expressing his opinion."

At a meeting of the board of directors of the district, held August 5, 1952, a petition was filed with the board requesting annexation of the 4000 acres before referred to. The petition was signed by the owners of approximately 3425 acres of the 4000 acres proposed to be annexed. The petition contains the following agreement:

"That we, the undersigned, do hereby covenant and agree to pay to the said Milner Low Lift Irrigation District, at such time as the same may be assessed against the said land by the said District, the sum of \$100.00 per acre for the purpose of equaling the amount we would have been required to pay such District had the land been included in such District at the time the same was originally formed and the additional increased cost of putting water on the land. If such sum be not sufficient to pay such increased cost, then we do hereby authorize and direct the Board of Directors to make such additional assessment or assessments as shall be sufficient to pay the cost of putting the water on the land.

"This petition is presented with the expressed understanding and agreement that water is not now available for more than the following described real estate, to-wit: [approximately 800 acres described] and that water cannot be placed upon the real estate last above described until an additional pumping unit has been installed and necessary laterals constructed.

"That water is not now available and will not be available for the following described real estate, to-wit: [approximately 3200 acres described] until the Palisades Reservoir is constructed and

in operation, and if the land last above described be annexed to the District, no demand will be made upon the District for water for the irrigation thereof until water is available therefor and the necessary pump or pumps and other diversion equipment have been installed and placed in operation, and the necessary canals and laterals constructed."

September 2, 1952, following publication of the petition, written objection and showing in opposition to the proposed annexation was filed with the board by one of the "old land" owners. September 5, 1952, at a regular meeting of the board, a resolution was adopted, declaring that the directors deemed it to be for the best interests of the district to include therein the lands described in the petition (I.C. § 43-1007). The conditions of annexation set forth in the resolution follow closely those set forth in the petition as to the 800 acres. As to the 3200 acres the conditions were stated as follows:

"Section 3: That the following described real estate shall be annexed to the said District on the expressed condition that water is not now available and will not be available for the irrigation thereof until the Palisades Reservoir has been constructed and is in operation and the necessary pump or pumps and other diversion equipment have been installed and placed in opera-

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tion and necessary canals and laterals constructed, and that no demand will be made upon the District for water for the irrigation of the same, or any part thereof, until water is available from the Palisades reservoir and the necessary diversion works and laterals have been constructed * * *."

As to all lands, the resolution concludes:

"Section 4: That all of the above described land shall be annexed to the Milner Low Lift Irrigation District on the expressed condition that each and every landowner, or their grantees, shall severally pay to the Milner Low Lift Irrigation District the sum of One Hundred (\$100.00) per acre, or such sum in excess thereof as shall be necessary to procure and place water upon land so annexed. The said sum of \$100.00 per acre, or any sum in excess thereof, shall be levied and assessed against the said land by the Board of Directors in one assessment, or in assessments from time to time as the Board of Directors shall deem right under the circumstances, and such assessment shall be paid by the landowner or his grantee before and as a condition precedent to the said land becoming entitled to receive any water, unless the Board of Directors of said District shall otherwise direct."

Pursuant to a further resolution of the board, adopted at the same time, an election was held October 7, 1952, on the issue of annexation. October 10, 1952, upon a canvass of the returns of the election, the board determined and declared that the proposal to change the boundaries of the district to include the 4000 acres was carried by a vote of 58 for, and 34 against, the annexation. At a special meeting of the board, held October 23, 1952, an order was adopted changing the boundaries of the district to include the lands described in the petition and resolution for annexation. The order contained the same conditions set forth in the petition, as modified by the resolution, as hereinabove set out.

Prior to the annexation and particularly between January and October, 1952, several meetings of the landowners were held in the district to consider the annexation proposal. Also, some of the members of the extension committee and the chairman of the board and secretary of the district visited landowners of the district in their homes. At these landowners' meetings and visits in the homes of landowners, the committee members and the officers of the district sought to allay the fears, widely held and expressed among the landowners, that their water rights would be jeopardized, and that they would be subjected to additional financial burdens by the annexation proposed. To overcome such fears and

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to secure a favorable vote on the annexation proposal, the committee members and officers mentioned assured the landowners that if they would vote in favor of the annexation, and the proposal carried, their existing water rights would not be jeopardized; that they would not be required to assume any additional financial burden; and that the owners of the new lands would pay any additional costs involved, including the costs of expanding and extending existing facilities, the cost of acquiring necessary additional water, and the additional costs for power to raise water to the level of the new lands. Some of the old landowners testified at the trial that in voting in favor of annexation they relied upon the assurance thus given them.

A short time prior to the annexation, the district began negotiations for the purchase of a storage water right in the American Falls reservoir. The contract for the purchase was executed in 1953. By its terms the district acquired 11,574 acre feet of water from the American Falls reservoir at a cost of \$18,999.50. This low cost was the result of a credit allowed by the bureau of reclamation for rentals paid by the district for 15,000 acre feet of water leased from that source during the years from 1936. The 11,574 acre feet purchased was a replacement for the water theretofore leased. By the same contract the district also acquired 27,500 acre feet of storage right in the Palisades reservoir at a cost of \$7.75

per acre foot, and the district has been allotted an additional 17,000 acre feet of storage water from the Palisades reservoir at the same cost per acre foot. This the district has not yet contracted for.

Mr. Lynn Crandall, Snake river water-master for district 36, which embraced all of the watershed involved in these proceedings, qualified as an expert on the duty and availability of water, and testified that to irrigate adequately all of the annexed lands, the district would require a total of 55,000 acre feet of water from the Palisades reservoir, 10,500 acre feet of which were, and are, not available.

Following the execution of the contract for storage water rights, the district leased only 3332 acre feet from the American Falls reservoir. In 1957 only 1822 acre feet were available for lease by the district from that source. No water was leased in 1958. In 1958 the Palisades project was completed and placed in operation. In 1954 water was delivered to 2259 acres of the new lands. In 1955, 1956, 1957 and 1958 water was delivered to 2359 acres of the new lands.

Following the annexation and on June 2, 1953, by resolution of the board of directors the annexation fee chargeable to the new lands was increased to \$125 per acre. From 1954 to 1958 water available to, and received by, the district was distributed pro rata and equally to all irrigated lands within the district, including the 2359 acres of

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the new lands. 1628 acres of the new lands had never been irrigated at the time of trial. At all times during the existence of the district, prior to the year 1958, all charges for maintenance and operation were spread equally over all lands receiving water for irrigation.

At the date of annexation, there remained unpaid of the old bonded indebtedness of the district the sum of \$194,000. During the years 1954, 1955, 1956 and 1957, the owners of new lands were assessed and paid toward the retirement of this original indebtedness the total sum of \$6654. No assessment was made after 1957 against any of the new lands for the retirement of the old indebtedness.

The board of directors advised the owners of new lands that their right to receive water, after payment of the annexation fee, was subject, and inferior, to the rights of the owners of the old lands.

By resolution of the board of directors at its meeting on September 3, 1957, the assessment levied for the maintenance and operation of the district, for the 1957-58 fiscal year, was made upon the old lands at the rate of \$7.24 per acre, and on the new lands at \$9.50 per acre. The levies for payments due on the old bonded debt of the district, and for the purchase of 11,574 acre feet of American Falls reservoir storage water, were made upon the old lands

of the district only. These levies were protested by certain owners of new lands.

This action was commenced by certain owners of new lands against the district and the owners of the old lands, to have the claimed right of the owners of new lands to share in all water rights owned by the district equally with all other landowners within the district, without regard to the date of their annexation to the district, or the date of the water rights.

There were 20 owners of new lands who refused to join as parties plaintiff and who were joined as defendants, as provided by I.C. §§ 5-313, 5-316. (See I.R.C.P. Rule 19(a) now in effect.) These defendants held title to approximately 1400 acres of the new lands.

The cause was tried to the court without a jury.

The trial court found that all of the water rights acquired by the district, except the Palisades storage water, had been made appurtenant to, and beneficially used upon, and had reclaimed, land in the district prior to the annexation made in October, 1952.

[1] The court also found:

"That a majority of the owners of the old lands, relying upon the information given and representations made in the meetings and home visits above

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referred to, and upon the agreements contained in the annexation petition, were prevailed upon to vote in favor of the annexation of the new lands; that the information and representations above referred to were made to the owners of the old lands either on behalf of the owners of the new lands or with their knowledge and consent and without objection on their part; that a majority of the owners of the old lands would not have voted in favor of the annexation if such information, representations and agreements had not been given and made to them, as the owners of the new lands and the Board of Directors of the District knew; that the owners of the old lands voted at the election as they did only because of such information, representations and agreements; that the proposal to annex the 'new lands' would have been defeated at the election except for such information, representations and agreements." Finding XX.

"That the sum of \$125.00 per acre is insufficient to pay (1) the cost of construction and equipment necessary to deliver water to the new lands; (2) the added power costs necessary to deliver water to the new lands; and (3) the cost of acquiring the rights to water for the irrigation of such new lands; that in order to furnish water

from the facilities of the District to the new lands, it would be necessary for the District to expend funds over and above the amount per acre that the District is required to spend in placing water on the old lands; there is nothing in said resolution, or in the petition for annexation or in any understanding or agreement at any water users' meeting or meetings or otherwise, which precludes the Board of Directors from making assessments in addition to the \$125.00 per acre if the cost of construction and equipment necessary to deliver water to the annexed lands and the cost of acquiring the rights to water for the irrigation of the annexed lands should exceed \$125.00. The petition for annexation and the resolution of September 5, 1952, calling for the election, specifically provide for the making of such additional assessments. The majority of the members of the Board of Directors understood, at the time of the adoption of the June 2, 1953, resolution above referred to, that the Board of Directors could make such additional assessments upon the new lands as are necessary to pay such costs when they are finally determined and this was also the general understanding of the owners of new and old lands. The final cost of extending the system of the District is not yet known." Finding XXIII.

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"Experience in the operation of the District since the annexation in 1952 has shown that there is and will be a difference in the cost of delivery of water to the new lands and that of the old lands. Experience was necessary to determine the extent of this difference in cost. In 1957 after the District had the advantage of some experience of the delivery of water to the new lands it was determined that the difference in the cost of this delivery, allowing credits for any benefit to the District as it existed prior to 1952, was \$2.26 per acre and that difference was reflected in the assessment made for operation and maintenance for the year 1958. For the years 1959 and 1960 the difference in assessment was \$2.46." Finding XXVI.

"That the water delivered * * * [to new lands during 1953 through 1958] was not pursuant to any water right which has been made appurtenant to the new lands pursuant to the annexation proceedings of 1952; and that said water was made available only on a year-to-year basis until a permanent supply would be available from Palisades Reservoir; and that such water was not delivered to such lands by the District to be beneficially used with the ultimate purpose of creating a permanent right in said lands to demand such water as an appurte-

nance to the new lands; that there is not now appurtenant to the new lands any permanent water right, and there will not be any such right available during the year 1958, and the District will never be able to secure, from the waters to be stored in the Palisades Reservoir, a full or adequate water right for the new lands; that for the year 1955, the District was compelled to lease additional water other than the water received pursuant to the water rights * * * [held by the district] to be used on the lands in the District; that during the years 1954, 1956 and 1957, because of the above-normal flow of Snake River, it was not necessary for the District to acquire water other than that received under the aforementioned water rights, but in any normal water year, those water rights will not be sufficient to furnish water to the lands in the District." Finding XXVII.

"That based upon historical use, the duty of water in the Milner Low Lift Irrigation District is 5.8 acre feet per acre diverted at Snake River of which approximately 75% is delivered to the land. Assuming Palisades Reservoir was in operation during the historical period from 1920 to 1958, and assuming the District was comprised of 13,468 acres (old lands and new lands) there would be 15 years during this period

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when less than 5.8 acre feet would be available for diversion and 11 years when less than 5 acre feet would be available with critical shortages occurring during the 1930-34 period. If the figure 5.2 acre feet was used, which is the amount that has been diverted during the past few years, there would be 13 years during this period when less than 5.2 acre feet would be available and 11 years when less than 5 acre feet would be available with the same critical shortages occurring during the 1930-1934 period." Finding XXVIII.

"That the present water supply of the District is not sufficient to adequately irrigate both the old and the new lands; that if water is delivered on an equal basis to both the old and the new lands in the future the water rights appurtenant to the old lands prior to the annexation of the new lands will be diminished and jeopardized; that to provide an adequate water supply for the new lands, it will be necessary for the District to purchase sufficient storage space in Palisades Reservoir to provide at least 5 acre feet of water per acre; that Palisades Reservoir is the only source of available water, of which the space is only $\frac{1}{3}$ firm; and that it would be necessary for the District to acquire at least 60,000 acre feet of storage space to supply adequately water for the 4,000 acres of

new lands, and such storage space will cost not less than \$7.75 per acre foot of storage capacity, which would be paid by the owners of the new lands; that 60,000 acre feet of storage space in Palisades is not available to the District; that not more than 44,500 acre feet of such storage space is or will be available to the District." Finding XXIX.

(In our consideration of appellant's contention that the trial court erred in finding that the district did not have, and there was not available to it, sufficient water for the irrigation of all of the lands of the district, both old and new, we have determined that the finding of the trial court is supported by the evidence, and particularly on the basis of the testimony of Mr. Crandall, the river watermaster, that a total of 55,000 acre feet of Palisades storage would be necessary for that purpose.)

"That if the Board of Directors cannot make additional assessments on the new lands, the owners of old land will be required to assume added financial burdens for operation and maintenance charges, construction costs, and acquisition of additional water rights and storage, all of which would be contrary to the information, representations and agreements given and made to and with the owners of old lands." Finding XXX.

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[2] The findings of the trial court are amply supported by the evidence and will not now be disturbed. I.C. § 13-219 and annotations.

From its findings, the court, among other things, concluded:

"It is the duty of the Board of Directors of the Milner Low Lift Irrigation District to classify the lands within the District in accordance with the provisions of Section 42-904 of the Idaho Code and to find and declare the water rights owned by the District, except Palisades Reservoir water, are appurtenant to the lands within the District prior to October, 1952, and the lands within the District prior to 1952 are entitled to a prior right to the use of such waters." Conclusion I.

"The water rights owned by the District, except Palisades Reservoir waters, are appurtenant to the lands within the District as it existed prior to October, 1952, and the District holds title to such waters in trust for the owners of old land. That the unpaid part of the costs of the acquisition and construction of the facilities of the District and for the acquisition of the water rights * * *, exclusive of Palisades storage, and acquired prior to 1952 remain an obligation of the old lands." Conclusion II.

"Any attempt to use the waters now appurtenant to the old lands on new or annexed lands without just compensation to the old land owners would constitute deprivation of property without due process of law." Conclusion III.

"That if and when water is made available from Palisades Reservoir such water shall be appurtenant to the lands annexed to the District in 1952. That the cost of acquiring 27,500 acre feet of storage space in Palisades Reservoir and, if purchased, the cost of acquiring the additional 17,000 acre feet in Palisades Reservoir now allotted but for which no contract has been entered into or approved, would be an obligation to be assumed and paid for by the owners of the new lands. That the cost of 11,574 acre feet of storage space in American Falls Reservoir now under contract, should be an obligation to be assumed and paid for by the owners of the old lands." Conclusion IV.

"Plaintiffs cannot now compel the present Board of Directors of said District to perform contrary to the information, representation, and agreement which were given and made to the old land owners for the purpose of obtaining their favorable vote on the annexation proposal prior to the election in September, 1952; and that the

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Board of Directors is bound by such information, representation and agreements." Conclusion VI.

"It is the duty and obligation of the present Board of Directors to make any assessment or assessments upon the new lands necessary over and above the \$125.00 assessment in June, 1953, to complete construction and purchase equipment and pay the cost of the water which will be made available from Palisades Reservoir for use on the annexed lands." Conclusion IX.

"The present Board of Directors are under no obligation to accept assessment fees for land not now irrigated until it is assured that an adequate water supply from Palisades Reservoir or from some other source has been obtained and is available." Conclusion X.

"Priority of appropriation shall give the better right as between those using the water." Constitution, Art. 15, § 3.

"Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has set-

tled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law." Constitution, Art. 15, § 4.

"Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent

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in time of settlement or improvement, may by law prescribe." Constitution, Art. 15, § 5.

[3-5] These constitutional provisions apply to irrigation districts. The defendant district, having acquired by purchase the rights of the original appropriator and having itself made subsequent appropriations and purchases of water, stands in the position of appropriator for distribution to the landowners within the district, within the meaning of Const., Art. 15, § 1. The district holds title to the water rights in trust for the landowners. The landowners, to whose lands the water has become dedicated by application thereon to a beneficial use, have acquired the status and rights of distributees under Const., Art. 15, §§ 4 and 5. *Nampa & Meridian Irr. Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557.

Plaintiffs cite the statement in *Yaden v. Gem Irr. Dist.*, 37 Idaho 300, 307, 216 P. 250, to the effect that these constitutional provisions "have no application to an irrigation district, except as hereinafter noted." The quoted statement was dictum and inconsistent with the conclusion reached in that case. The action was brought by an owner of land lying outside the district, for damages for refusal of the district to deliver water. The plaintiff *Yaden* had been allowed to use water belonging to the district when it was not needed by the

landowners within the district. It was held that the plaintiff could not thus acquire a right to the continuous use of the water as against the district. The basis of the *Yaden* decision was that the water had become dedicated to a beneficial use on the lands within the district.

In conformity with the foregoing § 5 of Art. 15 of the Constitution, the legislature in 1901 enacted what is now I.C. § 42-904, as follows:

"When any ditch, canal or reservoir delivering or distributing water to several users has one or more rights or priorities by reason of enlargements made from time to time, the right of the land being irrigated by such works shall be divided into classes; rights of the first class belonging to those lands reclaimed between the dates of the first and second priorities or rights of such works; rights of the second class belonging to those lands reclaimed between the dates of the second and third priorities of such works; rights of any other class being determined in like manner; but all the rights belonging to the same class shall be equal and subject alike to the regulations of their respective class." I.C. § 42-904.

In *Brose v. Board of Directors*, 20 Idaho 281, 118 P. 504, and *Brose v. Board of Directors*, 24 Idaho 116, 132 P. 799, the

foregoing statute was applied to an irrigation district.

[6] In support of their contention that by the process of annexation they acquired a right to share in existing water rights of the district on the basis of equality with the owners of old lands, the plaintiffs rely upon I.C. § 43-1010, which after requiring the recording of the order changing the boundaries of the district, provides:

" * * * and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the original organization of the district."

To construe this statute as plaintiffs do, would render it repugnant to the provisions of the constitution above set out.

The owners of the old lands, through and by means of the irrigation district, acquired, and for many years applied to the irrigation of their lands, valuable water rights, which had become appurtenant and dedicated to their lands, and which were held in trust by the district for their use. They could not thereafter, without their consent, be deprived of the use of that water when needed to irrigate their lands. Const. Art. 15, § 4; I.C. §§ 42-101, 42-914. Further, their use of the water for many years

prior to the annexation gave them "superiority of right to the use of such water." Const. Art. 15, § 5; *Gerber v. Nampa & Meridian Irr. Dist.*, 16 Idaho 1, 100 P. 80; *Gerber v. Nampa & Meridian Irr. Dist.*, 19 Idaho 765, 116 P. 104; *Biddick v. Laramie Valley Municipal Irrigation Dist.*, 76 Wyo. 67, 299 P.2d 1059.

The fact that owners of lands, annexed between the original organization of the district and 1952, were accorded equality with other landowners therein, in the use of water and in the debts and expenses of the district, is of no consequence here. The original landowners within the district may have consented to such treatment of the comparatively small annexations occurring during those years. No issue is presented in this case as between such owners. Moreover, it is abundantly clear from the record that the owners of lands within the district prior to 1952, did not consent to any sharing or impairment of their existing water rights with the owners of the new lands. Furthermore, the owners of the new lands, by the terms of their petition for admission to the district, specifically disavowed any purpose to claim, or infringe, the existing water rights of owners of the old lands, and that same limitation was carried forward into the order changing the boundaries of the district, and became a condition of that order. See: *Nampa & Meridian Irr. Dist. v. Briggs*, 27 Idaho 84, 147 P. 75; *Knowles v. New Sweden Irr.*

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Dist., 16 Idaho 217, 101 P. 81; *In re Water Rights of Deschutes River & Tributaries*, 134 Or. 623, 286 P. 563; *Fenton v. Tri-State Land Co.*, 89 Neb. 479, 131 N.W. 1038.

[7] We agree with the conclusion of the trial court that the water acquired or to be acquired from Palisades reservoir storage should be treated as appurtenant to the new lands. It was and is a new right initiated expressly for the benefit of such lands.

[8] However, we do not construe the conclusions or judgment of the district court as denying to the owners of the new lands any right or interest whatever in the water rights held by the district prior to their annexation. The irrigation district law regards the irrigation district as a unit, and as a legal entity, holding title to its property and water rights in trust for the uses and purposes set forth in that law. I.C. §§ 43-101, 43-316; *Gedney v. Snake River Irr. Dist.*, 61 Idaho 605, 104 P.2d 909; *Yaden v. Gem Irr. Dist.*, 37 Idaho 300, 216 P. 250; *Colburn v. Wilson*, 24 Idaho 94, 132 P. 579.

[9, 10] It is the apparent purpose of the provisions of I.C. § 43-1010, above quoted, to make the landowners within an irrigation district equal [except as to any disparity which may be found to exist in benefits received (I.C. § 43-404)] so far as may be consistent with priority of water rights as recognized and protected by the

provisions of the constitution. *Harsin v. Pioneer Irr. Dist.*, 45 Idaho 369, 263 P. 988. Having regard to such purpose of the statute, and the authority of the legislature in the premises as recognized by the constitutional provisions above quoted, we recognize the right acquired by the owners of new lands, by their inclusion within the district, to the use of any water owned by the district when the use thereof is not required for the proper irrigation of the old lands, and when such use is not in conflict with the rights previously acquired by the owners of the old lands, or when such use is not in derogation or impairment of such prior rights. We find nothing in the conclusions or judgment of the district court in conflict with this right of the owners of new lands and its decree must be construed in harmony therewith.

[11, 12] We also agree with the conclusions of the trial court that the owners of the new lands must bear the cost of acquiring water for such lands; of enlarging, equipping and extending the system for the irrigation thereof; and the differential in the cost of maintenance and operation, due to the higher elevation of the new lands, or any other factor necessarily increasing the cost of the irrigation thereof. *Brown v. Shupe*, 40 Idaho 252, 233 P. 59; *City of Nampa v. Nampa & Meridian Irr. Dist.*, 19 Idaho 779, 115 P. 979. These burdens were assumed by the owners of the

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new lands in their petition for annexation, and were made a condition thereof. Moreover, the imposition of such additional costs and burdens upon the owners of the old lands, without their consent, would be an invasion of their constitutionally protected property rights. Const. Art. 1, §§ 13 and 14; *Bennett v. Twin Falls, etc., Co.*, 27 Idaho 643, 150 P. 336; *Nampa & Meridian Irr. Dist. v. Briggs*, 27 Idaho 84, 147 P. 75; *Knowles v. New Sweden Irr. Dist.*, 16 Idaho 217, 101 P. 81; *Merchant's Nat. Bank of San Diego v. Escondido Irr. Dist.*, 144 Cal. 329, 77 P. 937.

What is said here is not in conflict with *Colburn v. Wilson*, 24 Idaho 94, 132 P. 579, nor with *Gedney v. Snake River Irr. Dist.*, 61 Idaho 605, 104 P.2d 909. In those cases the water rights of the respective owners were of the same origin and of equal priority. No classification of lands was made in the organization of the districts nor in the assessment of benefits, based upon any difference in the cost of construction or of maintenance and operation. Nor was there any enlargement or extension of either district after the original landowners' rights had become fixed.

The holding of the court, that the owners of new lands are subject to assessment for benefits over and above the \$125 per acre to the extent necessary to pay the cost of acquiring additional water rights and of enlarging, equipping and extending its sys-

tem to their lands, is also recognized by the provision of I.C. § 43-1009, as follows:

" * * * The order shall describe the land so annexed to said district, and thereafter such land so annexed shall be subject to such assessments from time to time as the board of directors shall deem right under the circumstances, and such assessments shall be deemed to be assessments for benefits to said lands by reason of their annexation to said district. * * *"

[13] The court also correctly held that the board of directors of the defendant district cannot be required to accept payment of benefits assessed and thereafter be required to deliver water to new lands (1628 acres) which have not been irrigated and for which no water right has been acquired or is available. *Gerber v. Nampa & Meridian Irr. Dist.*, 16 Idaho 1, 100 P. 80; *Gerber v. Nampa & Meridian Irr. Dist.*, 19 Idaho 765, 116 P. 104; *Boley v. Twin Falls Canal Co.*, 37 Idaho 318, 217 P. 258. As hereinbefore set out, this conclusion is in keeping with the express conditions of the annexation. Moreover, enforcement of the claimed right to compel delivery of water to such lands, would effect an invasion of the constitutionally protected priority rights, and property rights, of the owners of the old lands, hereinbefore cited. *Bennett v. Twin Falls, etc., Co.*, 27 Idaho 643, 150 P. 336; *Nampa & Meridian Irr. Dist. v.*

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Briggs, 27 Idaho 84, 147 P. 75; Knowles v. New Sweden Irr. Dist., 16 Idaho 217, 101 P. 81; Merchants' Nat. Bank of San Diego v. Escondido Irr. Dist., 144 Cal. 329, 77 P. 937.

Judgment affirmed.

Costs to respondents.

KNUDSON, C. J., and McQUADE, McFADDEN and SMITH, JJ., concur.



381 P.2d 453

George E. SARGENT and Mabel C. Sargent,
husband and wife, Plaintiffs-Appellants,

v.

Julius E. NEUMANN, Edwin E. Brune, and
Max Boley, as Directors of the Milner Low
Lift Irrigation District, a public corporation,
Defendants-Respondents.

No. 9107.

Supreme Court of Idaho.

May 3, 1963.

Rehearing Denied May 29, 1963.

Appeal from the District Court of the
Eleventh Judicial District, Cassia County;
Sherman J. Bellwood, District Judge.

Lowe & Lowe, Burley, Ralph R. Bre-
shears, Boise, for appellants.

Parry, Robertson & Daly, Twin Falls,
Nielson & Nielson, Burley, for respondents.

TAYLOR, Justice.

Plaintiffs (appellants) brought this action
November 22, 1957, against defendants (re-
spondents) as directors of the Milner Low
Lift Irrigation District, for a decree en-
joining defendants from levying upon their
lands within the district, a higher charge or
assessment for maintenance and operation
of the district's irrigation system, than that
levied upon other lands in the district.

This action was combined with Brad-
shaw et al. v. Milner Low Lift Irrigation
District et al., ante, p. 528, 381 P.2d 440,
and with Seymour, et al. v. Milner Low
Lift Irrigation District, et al., post, p. 550,
381 P.2d 452, for trial in the district court
and also on appeal to this court.

Plaintiffs are owners of a portion of the
lands referred to in the Bradshaw case as
2359 acres of "new lands" which received
water for irrigation from the district prior
to 1957. September 3, 1957, the directors
of the district levied an assessment upon
these new lands for maintenance and opera-
tion for the year 1958 in the amount of
\$9.50 per acre, and upon the old lands in
the amount of \$7.24 per acre.

Plaintiffs brought this action for them-
selves and on behalf of other owners of new
lands similarly situated, for the purpose of
obtaining a decree enjoining the making and
enforcement of such levy, or any levy, im-

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State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 15, 2005

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTN: GARY D. SLETTE
P O BOX 1906
TWIN FALLS ID 83303

To Whom It May Concern:

Your notice of error reply form, received in this office on June 1, 2005, indicated that IDWR's recommendation for Milner Irrigation District's natural flow claims were in error. You stated that "the number of irrigated acres should be recommended...to accurately reflect the total number of irrigated acres within the project."

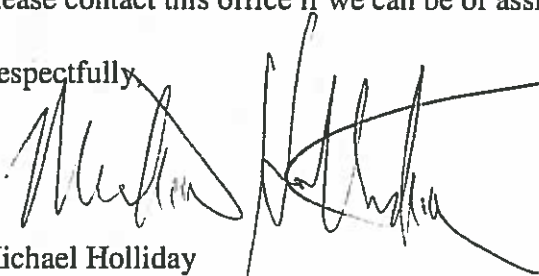
However it is our understanding, based on the supreme court decision in the case of Bradshaw v. Milner Low Lift Irrigation District, that the District's natural flow rights were limited to the 9468 acres irrigated as of 1952 and that the lands annexed after 1952 were irrigated exclusively with storage.

If you believe that additional acreage was irrigated prior to 1987 with the District's natural flow rights, we invite you to file an additional claim based on beneficial use for the additional acreage, or an enlargement claim if you can demonstrate that:

1. the combined flow rate of the natural flow rights was adequate to irrigate the additional acreage, and
2. the acreage was irrigated with natural flow prior to November 19, 1987.

Please contact this office if we can be of assistance in this matter.

Respectfully,


Michael Holliday

cc: Milner Irrigation District

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NOTICE OF ERROR
REPLY

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 1-17

MILNER IRRIGATION DISTRICT
5294 E 3610 N
MURTAUGH ID 83344

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

Milner disagrees with the number of irrigated acres identified in the proposed recommendation.

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

The number of irrigated acres should be recommended as depicted in the attached ArcView shapefile to accurately reflect the total number of irrigated acres within the project.

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

The preliminary recommendation incorrectly identifies 9,468 total acres within the place of use. The preliminary recommendation incorrectly limits the irrigation of 8,114.4 acres within the place of use.

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

DATE:

5/26/05

SIGNATURE:

[Signature]

Please print your name:

Travis Thompson

IDWR Regional Office, 900 N Skyline Dr. Ste A, Idaho Falls, ID 83402, 2085257161

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Department of Water Resources
Eastern Region

11/12/05

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C

Supreme Court of Idaho
 Bernard C. BRADSHAW and Mickey Bradshaw,
 husband and wife, et al, Plaintiffs-
 Appellants,
 v.
 MILNER LOW LIFT IRRIGATION DISTRICT
 , a quasi-municipal corporation, et al,
 Defendants-Respondents
 No. 9106.

May 3, 1963
 Rehearing Denied May 29, 1963.

Action by owners of lands newly annexed to irrigation district for judgment establishing right to share in water rights of district and in payment of its bonded debt and cost of maintenance and operation on pro rata basis to owners of lands previously annexed. The District Court, Eleventh Judicial District, Cassia County, Sherman J. Bellwood, J., entered judgment denying relief and adjudging owners of new lands liable for entire cost of acquiring additional water rights, enlarging and equipping system to irrigate their lands and for higher cost of maintenance and operation and adjudging that plaintiffs could not compel district to assess benefits and deliver water to lands for which no water was available, and the plaintiffs appealed. The Supreme Court, Taylor, J., held that owners of lands which were within irrigation district and to which district provided water for irrigation for many years acquired valuable water rights which had become appurtenant to and dedicated to their lands, and of which they could not be deprived without their consent when they needed it, and owners of later annexed land did not acquire right to share in those water rights by process of annexation alone.

Affirmed.

West Headnotes

[1] Waters and Water Courses ¶247(1)
 405k247(1) Most Cited Cases

Evidence supported finding that irrigation district, sued to permit owners of annexed land to share in all water rights owned by district equally with all other owners without regard to date of annexation or of water rights, did not have available sufficient water for irrigation of all of its lands for which more acre feet of storage was necessary in certain reservoir than was allocated to district.

[2] Appeal and Error ¶1010.1(1)

30k1010 1(1) Most Cited Cases

(Formerly 30k1010(1))

Findings supported by evidence would not be disturbed on appeal. I.C. § 13-219.

[3] Waters and Water Courses ¶216

405k216 Most Cited Cases

Constitutional provisions governing and guaranteeing water rights and concerning priority of appropriation apply to irrigation districts. Const art. 15, §§ 3-5.

[4] Waters and Water Courses ¶256

405k256 Most Cited Cases

Irrigation district which bought rights of original appropriator of water and made subsequent appropriations and purchases of water stood in position of "appropriator" for distribution to landowners within the district, within constitutional provision making use of water subject to regulation and control of state. Const art 15, § 1.

[5] Waters and Water Courses ¶251

405k251 Most Cited Cases

Irrigation district which bought rights of original appropriator of water and made subsequent appropriations and purchases of water held title to water rights in trust for landowners, and landowners to whose lands the water had become dedicated had acquired status and rights of "distributees" within constitutional provisions guaranteeing continuing rights to water and governing priorities. Const art. 15, §§ 4, 5.

[6] Waters and Water Courses ¶249

405k249 Most Cited Cases

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[6] Waters and Water Courses ⚡251

405k251 Most Cited Cases

Owners of lands within irrigation district which provided irrigation water for many years for those lands acquired valuable water rights of which they could not be deprived without consent when they needed it, and owners of later annexed land did not acquire right to share in those rights by process of annexation alone Const art 15, §§ 1, 3-5; I.C. §§ 42-101, 42-904, 42-914, 43-1010

[7] Waters and Water Courses ⚡249

405k249 Most Cited Cases

Owners of lands newly annexed by irrigation district which initiated water rights acquired or to be acquired from reservoir storage expressly for benefit of those lands were entitled to have water acquired from the reservoir storage treated as appurtenant to those lands. Const. art. 15, §§ 1, 3-5; I.C. §§ 42-101, 42-904, 42-914, 43-1010.

[8] Waters and Water Courses ⚡224

405k224 Most Cited Cases

[8] Waters and Water Courses ⚡228.5

405k228 5 Most Cited Cases

(Formerly 405k2281/2)

Irrigation district law regards district as a unit and a legal entity holding title to its property and water rights in trust for uses and purposes set forth I.C. §§ 43-101, 43-316.

[9] Waters and Water Courses ⚡226

405k226 Most Cited Cases

[9] Waters and Water Courses ⚡249

405k249 Most Cited Cases

Purpose of statute providing that after recording of order changing boundaries, irrigation district shall remain a district as fully as if new lands had been included therein at original organization is to make landowners within district equal, except as to any disparity existing in benefits received, so far as may be consistent with priority of water rights. Const art 15, §§ 1, 3-5; I.C. §§ 43-404, 43-1010

[10] Waters and Water Courses ⚡249

405k249 Most Cited Cases

Owners of lands newly annexed by irrigation district have right to use any water owned by district and not required for proper irrigation of prior

annexed lands so long as that use does not conflict with rights previously acquired by the other owners or is not in derogation or impairment of the prior rights. I.C. §§ 43-101, 43-316, 43-404, 43-1010; Const art 15, §§ 1, 3-5.

[11] Waters and Water Courses ⚡231

405k231 Most Cited Cases

Owners of lands newly acquired by irrigation district were required to bear cost of acquiring water therefor, enlarging, equipping, and extending system for irrigation thereof, and to pay differential in cost of maintenance and operation due to any factor necessarily increasing cost of irrigation of new

lands I.C. §§ 43-101, 43-316, 43-404, 43-1009; Const art. 15, §§ 1, 3-5

[12] Constitutional Law ⚡290(1)

92k290(1) Most Cited Cases

[12] Eminent Domain ⚡2.17(3)

148k2 17(3) Most Cited Cases

(Formerly 148k2(10))

To require owners of land previously annexed to irrigation district to bear part of cost of acquiring water for newly annexed lands, enlarging, equipping, and extending system for irrigating new lands, and of differential in cost of maintenance and operation due to higher elevation of new lands without consent would invade constitutional rights to just compensation for condemnation and to due process. Const art 1, §§ 13, 14

[13] Waters and Water Courses ⚡249

405k249 Most Cited Cases

Board of directors of irrigation district could not be required to accept payment of benefits assessed and thereafter be required to deliver water to newly annexed lands which had not been irrigated and for which no water right

had been acquired or was available. Const art. 1, §§ 13, 14; art. 15, §§ 1, 3-5.

*531 **441 Lowe & Lowe, Burley, Ralph R. Breshears, Boise, for appellant.

*532 Parry, Robertson & Daly, Twin Falls, Nielson & Nielson, Burley, for respondent

*533 TAYLOR, Justice

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1916 ↓
10/1939 ↓
The defendant (respondent) Milner Low Lift Irrigation District was organized in 1921. At that time it acquired by purchase the water rights and the incomplete diversion and distribution system of the Murtaugh **442 Canal Company. The purchase price *534 ultimately agreed upon was \$486,864 to be paid in bonds of the district. At that time there were 81144 acres of land within the district. The purchase price was calculated upon a basis of \$60 per acre, which was determined, and decreed, to be the amount of benefits accruing to each acre, and to be the basis for the fixing of annual assessments. During the years between its organization and 1952 the district acquired additional water rights, and certain lands were excluded and other lands were added by fourteen separate annexations, so that the total acreage within the district in 1952, prior to the annexation involved herein, had been increased to 9468 acres.

The acres added by these previous annexations were assessed for benefits on the basis of their proportionate share of the original indebtedness of the district remaining unpaid at the date of their respective annexations, and after annexation the added lands shared in the distribution of water belonging to the district, and in the payment of debts and maintenance and operation expenses, equally with all other lands within the district.

Some two years prior to 1952, various proposals were made and discussed among water users of the district for the irrigation of lands lying outside of, and adjacent to, the boundaries of the district. These proposals were made by owners of lands within the district who also owned a major portion of the lands proposed to be annexed. Some of these owners were also officers and directors of the district. The acreage to be annexed was increased in each succeeding proposal so that the final proposal, which was consummated on October 23, 1952, resulted in the annexation of 4000 acres of new land.

It was understood by all concerned that the existing water rights owned by the district were insufficient for the irrigation of more than a fraction of the proposed additional land. This is apparent from the terms of the petition for annexation.

During that period the construction of the Palisades

dam and reservoir on the Snake river, by the Federal Bureau of Reclamation, was authorized. The promoters of the proposed annexation understood that the Palisades project was planned and was to be developed as a source of water supplemental to the water available to existing irrigation systems, and was not intended primarily for the development of new projects. Hence, annexation to an existing district would facilitate the acquisition of additional water from the Palisades storage for the irrigation of the lands to be annexed.

June 8, 1950, at a meeting of the landowners of the district, a committee was appointed to act with the chairman of the board and secretary of the district in making a study of the proposed extension of the district. All of the five members of this *535 committee, as well as the chairman of the board and secretary of the district, were owners of lands proposed to be annexed to the district, and the lands of all, except one, were ultimately annexed.

Water for the irrigation of the lands of the district as it existed prior to the annexation involved was taken from the Snake river by means of a pumping plant located on the forebay above the Milner dam. The water was pumped to an elevation above the river from which it was distributed by means of canals, laterals and subsidiary pumping stations to the lands of the district. The average lift was 77 feet. The irrigation of the lands proposed to be annexed required the enlargement of the existing pumping plant and main canal, the construction of additional laterals, and the pumping of the water for such lands to an average elevation of 150 feet.

The lands in the district as it existed prior to the annexation of 1952 are referred to as the 'old lands', and the lands annexed in 1952 are referred to as 'new lands'.

At a landowners' meeting held January 22, 1952, the committee appointed to study the proposed extension of the district made a report of its findings as to feasibility and conditions of such extension. The following appears in the minutes of the meeting: **443

'The subject of a 4,000 acre extension to the Milner Low Lift Irrigation District was presented to the landowners by Charles L. Fisher, Chairman

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of the extension Committee. Mr. Fisher stated that after considerable study, the Committee members believe that \$100.00 per acre is a very fair price for the entrance fee, which includes all construction and additional power cost for lifting water to a higher level. The purchase of storage water for the extension being in addition to the \$100.00 per acre entrance fee, because the Milner Low Lift Irrigation District will have 40 years to pay for the same, without interest. Thereby making the annual storage water payment out of the Bond Levy.

'In addition to the extension paying for all new construction and additional power costs, it will pay for its own storage water and help pay for the construction and water-rights on the present 9,468 acre project.

'A 4,000 acre extension to the Milner Low Lift Irrigation District was unanimously approved by each person standing and expressing his opinion.'

At a meeting of the board of directors of the district, held August 5, 1952, a petition was filed with the board requesting annexation of the 4000 acres before referred to. The petition was signed by the owners of approximately 3425 acres of the 4000 acres proposed to be annexed. The petition contains the following agreement:

*536 'That we, the undersigned, do hereby covenant and agree to pay to the said Milner Low Lift Irrigation District, at such time as the same may be assessed against the said land by the said District, the sum of \$100.00 per acre for the purpose of equaling the amount we would have been required to pay such District had the land been included in such District at the time the same was originally formed and the additional increased cost of putting water on the land. If such sum be not sufficient to pay such increased cost, then we do hereby authorize and direct the Board of Directors to make such additional assessment or assessments as shall be sufficient to pay the cost of putting the water on the land.

'This petition is presented with the expressed understanding and agreement that water is not now available for more than the following described real estate, to-wit: [approximately 800 acres described] and that water cannot be placed upon the real estate last above described until an additional pumping unit has been installed and necessary laterals constructed

'That water is not now available and will not be available for the following described real estate, to-wit: [approximately 3200 acres described] until the Palisades Reservoir is constructed and in operation, and if the land last above described be annexed to the District, no demand will be made upon the District for water for the irrigation thereof until water is available therefor and the necessary pump or pumps and other diversion equipment have been installed and placed in operation, and the necessary canals and laterals constructed.'

September 2, 1952, following publication of the petition, written objection and showing in opposition to the proposed annexation was filed with the board by one of the 'old land' owners. September 5, 1952, at a regular meeting of the board, a resolution was adopted, declaring that the directors deemed it to be for the best interests of the district to include therein the lands described in the petition (I.C. § 43-1007). The conditions of annexation set forth in the resolution follow closely those set forth in the petition as to the 800 acres. As to the 3200 acres the conditions were stated as follows:

'Section 3: That the following described real estate shall be annexed to the said District on the expressed condition that water is not now available and will not be available for the irrigation **444 thereof until the Palisades Reservoir has been constructed and is in operation and the necessary pump or pumps and other diversion equipment have been installed and placed in operation *537 and necessary canals and laterals constructed, and that no demand will be made upon the District for water for the irrigation of the same, or any part thereof, until water is available from the Palisades reservoir and the necessary diversion works and laterals have been constructed * * *'

As to all lands, the resolution concludes:

'Section 4: That all of the above described land shall be annexed to the Milner Low Lift Irrigation District on the expressed condition that each and every landowner, or their grantees, shall severally pay to the Milner Low Lift Irrigation District the sum of One Hundred (\$100.00) per acre, or such sum in excess thereof as shall be necessary to procure and place water upon land so annexed.

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The said sum of \$100 00 per acre, or any sum in excess thereof, shall be levied and assessed against the said land by the Board of Directors in one assessment, or in assessments from time to time as the Board of Directors shall deem right under the circumstances, and such assessment shall be paid by the landowner or his grantee before and as a condition precedent to the said land becoming entitled to receive any water, unless the Board of Directors of said District shall otherwise direct.'

Pursuant to a further resolution of the board, adopted at the same time, an election was held October 7, 1952, on the issue of annexation. October 10, 1952, upon a canvass of the returns of the election, the board determined and declared that the proposal to change the boundaries of the district to include the 4000 acres was carried by a vote of 58 for, and 34 against, the annexation. At a special meeting of the board, held October 23, 1952, an order was adopted changing the boundaries of the district to include the lands described in the petition and resolution for annexation. The order contained the same conditions set forth in the petition, as modified by the resolution, as hereinabove set out

Prior to the annexation and particularly between January and October, 1952, several meetings of the landowners were held in the district to consider the annexation proposal. Also, some of the members of the extension committee and the chairman of the board and secretary of the district visited landowners of the district in their homes. At these landowners' meetings and visits in the homes of landowners, the committee members and the officers of the district sought to allay the fears, widely held and expressed among the landowners, that their water rights would be jeopardized, and that they would be subjected to additional financial burdens by the annexation proposed. To overcome such fears and *538 to secure a favorable vote on the annexation proposal, the committee members and officers mentioned assured the landowners that if they would vote in favor of the annexation, and the proposal carried, their existing water rights would not be jeopardized; that they would not be required to assume any additional financial burden; and that the owners of the new lands would pay any additional costs involved, including the costs of expanding and extending existing facilities, the cost

of acquiring necessary additional water, and the additional costs for power to raise water to the level of the new lands. Some of the old landowners testified at the trial that in voting in favor of annexation they relied upon the assurance thus given them.

A short time prior to the annexation, the district began negotiations for the purchase of a storage water right in the American Falls reservoir. The contract for the purchase was executed in 1953. By its terms the district acquired 11,574 acre feet of water from the American Falls reservoir at a cost of \$18,999 50. This low cost was the result of a credit allowed by the bureau of reclamation for rentals paid by the district **445 for 15,000 acre feet of water leased from that source during the years from 1936. The 11,574 acre feet purchased was a replacement for the water theretofore leased. By the same contract the district also acquired 27,500 acre feet of storage right in the Palisades reservoir at a cost of \$7.75 per acre foot, and the district has been allotted an additional 17,000 acre feet of storage water from the Palisades reservoir at the same cost per acre foot. This the district has not yet contracted for.

Mr Lynn Crandall, Snake river watermaster for district 36, which embraced all of the watershed involved in these proceedings, qualified as an expert on the duty and availability of water, and testified that to irrigate adequately all of the annexed lands, the district would require a total of 55,000 acre feet of water from the Palisades reservoir, 10,500 acre feet of which were, and are, not available.

Following the execution of the contract for storage water rights, the district leased only 3332 acre feet from the American Falls reservoir. In 1957 only 1822 acre feet were available for lease by the district from that source. No water was leased in 1958. In 1958 the Palisades project was completed and placed in operation. In 1954 water was delivered to 2259 acres of the new lands. In 1955, 1956, 1957 and 1958 water was delivered to 2359 acres of the new lands.

Following the annexation and on June 2, 1953, by resolution of the board of directors the annexation fee chargeable to the new lands was increased to

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\$125 per acre. From 1954 to 1958 water available to, and received by, the district was distributed pro rata and equally to all irrigated lands within the district, including the 2359 acres of *539 the new lands. 1628 acres of the new lands had never been irrigated at the time of trial. At all times during the existence of the district, prior to the year 1958, all charges for maintenance and operation were spread equally over all lands receiving water for irrigation.

At the date of annexation, there remained unpaid of the old bonded indebtedness of the district the sum of \$194,000. During the years 1954, 1955, 1956 and 1957, the owners of new lands were assessed and paid toward the retirement of this original indebtedness the total sum of \$6654. No assessment was made after 1957 against any of the new lands for the retirement of the old indebtedness.

The board of directors advised the owners of new lands that their right to receive water, after payment of the annexation fee, was subject, and inferior, to the rights of the owners of the old lands.

By resolution of the board of directors at its meeting on September 3, 1957, the assessment levied for the maintenance and operation of the district, for the 1957-58 fiscal year, was made upon the old lands at the rate of \$7.24 per acre, and on the new lands at \$9.50 per acre. The levies for payments due on the old bonded debt of the district, and for the purchase of 11,574 acre feet of American Falls reservoir storage water, were made upon the old lands of the district only. These levies were protested by certain owners of new lands.

This action was commenced by certain owners of new lands against the district and the owners of the old lands, to have the claimed right of the owners of new lands to share in all water rights owned by the district equally with all other landowners within the district, without regard to the date of their annexation to the district, or the date of the water rights.

There were 20 owners of new lands who refused to join as parties plaintiff and who were joined as defendants, as provided by I.C. §§ 5-313, 5-316. (See I.R.C.P. Rule 19(a) now in effect.) These defendants held title to approximately 1400 acres of the new lands.

The cause was tried to the court without a jury.

The trial court found that all of the water rights acquired by the district, except the Palisades storage water, had been made appurtenant to, and beneficially used upon, and had reclaimed, land in the district **446 prior to the annexation made in October, 1952.

[1] The court also found:

'That a majority of the owners of the old lands, relying upon the information given and representations made in the meetings and home visits above *540 referred to, and upon the agreements contained in the annexation petition, were prevailed upon to vote in favor of the annexation of the new lands; that the information and representations above referred to were made to the owners of the old lands either on behalf of the owners of the new lands or with their knowledge and consent and without objection on their part; that a majority of the owners of the old lands would not have voted in favor of the annexation if such information, representations and agreements had not been given and made to them, as the owners of the new lands and the Board of Directors of the District knew; that the owners of the old lands voted at the election as they did only because of such information, representations and agreements; that the proposal to annex the 'new lands' would have been defeated at the election except for such information, representations and agreements' Finding XX

'That the sum of \$125.00 per acre is insufficient to pay (1) the cost of construction and equipment necessary to deliver water to the new lands; (2) the added power costs necessary to deliver water to the new lands; and (3) the cost of acquiring the rights to water for the irrigation of such new lands; that in order to furnish water from the facilities of the District to the new lands, it would be necessary for the District to expend funds over and above the amount per acre that the District is required to spend in placing water on the old lands; there is nothing in said resolution, or in the petition for annexation or in any understanding or agreement at any water users' meeting or meetings or otherwise, which precludes the Board of Directors from making assessments in addition to the \$125.00 per acre if the cost of construction

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and equipment necessary to deliver water to the annexed lands and the cost of acquiring the rights to water for the irrigation of the annexed lands should exceed \$125 00. The petition for annexation and the resolution of September 5, 1952, calling for the election, specifically provide for the making of such additional assessments. The majority of the members of the Board of Directors understood, at the time of the adoption of the June 2, 1953, resolution above referred to, that the Board of Directors could make such additional assessments upon the new lands as are necessary to pay such costs when they are finally determined and this was also the general understanding of the owners of new and old lands. The final cost of extending the system of the District is not yet known.' Finding XXIII.

*541 'Experience in the operation of the District since the annexation in 1952 has shown that there is and will be a difference in the cost of delivery of water to the new lands and that of the old lands. Experience was necessary to determine the extent of this difference in cost. In 1957 after the District had the advantage of some experience of the delivery of water to the new lands it was determined that the difference in the cost of this delivery, allowing credits for any benefit to the District as it existed prior to 1952, was \$2.26 per acre and that difference was reflected in the assessment made for operation and maintenance for the year 1958. For the years 1959 and 1960 the difference in assessment was \$2.46.' Finding XXVI.

*That the water delivered * * * [to new lands during 1953 through 1958] was not pursuant to any water right which has been made appurtenant **447 to the new lands pursuant to the annexation proceedings of 1952; and that said water was made available only on a year-to-year basis until a permanent supply would be available from Palisades Reservoir; and that such water was not delivered to such lands by the District to be beneficially used with the ultimate purpose of creating a permanent right in said lands to demand such water as an appurtenance to the new lands; that there is not now appurtenant to the new lands any permanent water right, and there will not be any such right available during the year 1958, and the District will never be able to secure, from the waters to be stored in the Palisades Reservoir, a full or adequate water right

for the new lands; that for the year 1955, the District was compelled to lease additional water other than the water received pursuant to the water rights * * * [held by the district] to be used on the lands in the District; that during the years 1954, 1956 and 1957, because of the above-normal flow of Snake River, it was not necessary for the District to acquire water other than that received under the aforementioned water rights, but in any normal water year, those water rights will not be sufficient to furnish water to the lands in the District.' Finding XXVII.

*That based upon historical use, the duty of water in the Milner Low Lift Irrigation District is 5.8 acre feet per acre diverted at Snake River of which approximately 75% is delivered to the land. Assuming Palisades Reservoir was in operation during the historical period from 1920 to 1958, and assuming the District was comprised of 13,468 acres (old lands and new lands) there would be 15 years during this period *542 when less than 5.8 acre feet would be available for diversion and 11 years when less than 5 acre feet would be available with critical shortages occurring during the 1930-34 period. If the figure 5.2 acre feet was used, which is the amount that has been diverted during the past few years, there would be 13 years during this period when less than 5.2 acre feet would be available and 11 years when less than 5 acre feet would be available with the same critical shortages occurring during the 1930- 1934 period.' Finding XXVIII.

*That the present water supply of the District is not sufficient to adequately irrigate both the old and the new lands; that if water is delivered on an equal basis to both the old and the new lands in the future the water rights appurtenant to the old lands prior to the annexation of the new lands will be diminished and jeopardized; that to provide an adequate water supply for the new lands, it will be necessary for the District to purchase sufficient storage space in Palisades Reservoir to provide at least 5 acre feet of water per acre; that Palisades Reservoir is the only source of available water, of which the space is only 1/3 full; and that it would be necessary for the District to acquire at least 60,000 acre feet of storage space to supply adequately water for the 4,000 acres of new lands, and such storage space will cost not less than \$7.75 per acre foot of storage capacity,

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which would be paid by the owners of the new lands; that 60,000 acre feet of storage space in Palisades is not available to the District; that not more than 44,500 acre feet of such storage space is or will be available to the District.' Finding XXIX

(In our consideration of appellant's contention that the trial court erred in finding that the district did not have, and there was not available to it, sufficient water for the irrigation of all of the lands of the district, both old and new, we have determined that the finding of the trial court is supported by the evidence, and particularly on the basis of the testimony of Mr. **448 Crandall, the river watermaster, that a total of 55,000 area feet of Palisades storage would be necessary for that purpose.)

'That if the Board of Directors cannot make additional assessments on the new lands, the owners of old land will be required to assume added financial burdens for operation and maintenance charges, construction costs, and acquisition of additional water rights and storage, all of which would be contrary to the information, representations and agreements given and made to and with the owners of old lands.' Finding XXX.

*543 [2] The findings of the trial court are amply supported by the evidence and will not now be disturbed. I.C. § 13-219 and annotations.

From its findings, the court, among other things, concluded:

'It is the duty of the Board of Directors of the Milner Low Lift Irrigation District to classify the lands within the District in accordance with the provisions of Section 42-904 of the Idaho Code and to find and declare the water rights owned by the District, except Palisades Reservoir water, are appurtenant to the lands within the District prior to October, 1952, and the lands within the District prior to 1952 are entitled to a prior right to the use of such waters.' Conclusion I.

* 'The water rights owned by the District, except Palisades Reservoir waters, are appurtenant to the lands within the District as it existed prior to October, 1952, and the District holds title to such waters in trust for the owners of old land. That the unpaid part of the costs of the acquisition and

construction of the facilities of the District and for the acquisition of the water rights * * *, exclusive of Palisades storage, and acquired prior to 1952 remain an obligation of the old lands.' Conclusion II.

'Any attempt to use the waters now appurtenant to the old lands on new or annexed lands without just compensation to the old land owners would constitute deprivation of property without due process of law.' Conclusion III.

'That if and when water is made available from Palisades Reservoir such water shall be appurtenant to the lands annexed to the District in 1952. That the cost of acquiring 27,500 acre feet of storage space in Palisades Reservoir and, if purchased, the cost of acquiring the additional 17,000 acre feet in Palisades Reservoir now allotted but for which no contract has been entered into or approved, would be an obligation to be assumed and paid for by the owners of the new lands. That the cost of 11,574 acre feet of storage space in American Falls Reservoir now under contract, should be an obligation to be assumed and paid for by the owners of the old lands.' Conclusion IV.

'Plaintiffs cannot now compel the present Board of Directors of said District to perform contrary to the information, representation, and agreement which were given and made to the old land owners for the purpose of obtaining their favorable vote on the annexation proposal prior to the election in September, 1952; and that the *544 Board of Directors is bound by such information, representation and agreements.' Conclusion VI.

'It is the duty and obligation of the present Board of Directors to make any assessment or assessments upon the new lands necessary over and above the \$125.00 assessment in June, 1953, to complete construction and purchase equipment and pay the cost of the water which will be made available from Palisades Reservoir for use on the annexed lands.' Conclusion IX.

'The present Board of Directors are under no obligation to accept assessment fees for land not now irrigated until it is assured that an adequate water supply from Palisades Reservoir or from some other source has been **449 obtained and is available.' Conclusion X.

'Priority of appropriation shall give the better right as between those using the water.'

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Constitution, Art 15, § 3.

'Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.' Constitution, Art 15, § 4

'Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent *545 in time of settlement or improvement, may by law prescribe' Constitution, Art 15, § 5.

[3][4][5] These constitutional provisions apply to irrigation districts. The defendant district, having acquired by purchase the rights of the original appropriator and having itself made subsequent appropriations and purchases of water, stands in the position of appropriator for distribution to the landowners within the district, within the meaning of Const., Art. 15, § 1. The district holds title to the water rights in trust for the landowners. The landowners, to whose lands the water has become dedicated by application thereon to a beneficial use, have acquired the status and rights of distributees

under Const., Art. 15, §§ 4 and 5. *Nampa & Meridian Irr. Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557

Plaintiffs cite the statement in *Yaden v. Gem Irr. Dist.*, 37 Idaho 300, 307, 216 P. 250, to the effect that these constitutional provisions 'have no application to an irrigation district, except as hereinafter noted.' The quoted statement was dictum and inconsistent with the conclusion reached in that case. The action was brought by an owner of land lying outside the district, for damages for refusal of the district to deliver water. The plaintiff *Yaden* had been allowed to use water belonging to the district when it was not needed by the landowners within the district. It was held that the plaintiff could not thus acquire a right to the continuous use of the water as against the district. The basis of the *Yaden* decision was that the water had become dedicated to a beneficial use on the lands within the district.

In conformity with the foregoing § 5 of Art 15 of the Constitution, the legislature in 1901 enacted what is now I.C. § 42-904, as follows:

'When any ditch, canal or reservoir delivering or distributing water to several users has one or more rights or priorities by reason of enlargements made from time to time, the right of the land being irrigated by such works shall be divided into classes; rights of the first class belonging to those lands reclaimed between the dates of **450 the first and second priorities or rights of such works; rights of the second class belonging to those lands reclaimed between the dates of the second and third priorities of such works; rights of any other class being determined in like manner; but all the rights belonging to the same class shall be equal and subject alike to the regulations of their respective class.' I.C. § 42-904

In *Brose v. Board of Directors*, 20 Idaho 281, 118 P. 504, and *Brose v. Board of Directors*, 24 Idaho 116, 132 P. 799, the *546 foregoing statute was applied to an irrigation district.

[6] In support of their contention that by the process of annexation they acquired a right to share in existing water rights of the district on the basis of equality with the owners of old lands, the plaintiffs

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rely upon I.C. § 43-1010, which after requiring the recording of the order changing the boundaries of the district, provides:

" * * * and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the original organization of the district."

To construe this statute as plaintiffs do, would render it repugnant to the provisions of the constitution above set out

The owners of the old lands, through and by means of the irrigation district, acquired, and for many years applied to the irrigation of their lands, valuable water rights, which had become appurtenant and dedicated to their lands, and which were held in trust by the district for their use. They could not thereafter, without their consent, be deprived of the use of that water when needed to irrigate their lands. Const. Art. 15, § 4; I.C. §§ 42-101, 42-914. Further, their use of the water for many years prior to the annexation gave them 'superiority of right to the use of such water.' Const. Art. 15, § 5; *Gerber v. Nampa & Meridian Irr. Dist.*, 16 Idaho 1, 100 P. 80; *Gerber v. Nampa & Meridian Irr. Dist.*, 19 Idaho 765, 116 P. 104; *Biddick v. Laramie Valley Municipal Irrigation Dist.*, 76 Wyo. 67, 299 P.2d 1059

The fact that owners of lands, annexed between the original organization of the district and 1952, were accorded equality with other landowners therein, in the use of water and in the debts and expenses of the district, is of no consequence here. The original landowners within the district may have consented to such treatment of the comparatively small annexations occurring during those years. No issue is presented in this case as between such owners. Moreover, it is abundantly clear from the record that the owners of lands within the district prior to 1952, did not consent to any sharing or impairment of their existing water rights with the owners of the new lands. Furthermore, the owners of the new lands, by the terms of their petition for admission to the district, specifically disavowed any purpose to claim, or infringe, the existing water rights of owners of the old lands, and that same limitation was carried forward into the order changing the

boundaries of the district, and became a condition of that order. See: *Nampa & Meridian Irr. Dist. v. Briggs*, 27 Idaho 84, 147 P. 75; **547 Knowles v. New Sweden Irr. Dist.*, 16 Idaho 217, 101 P. 81; *In re Water Rights of Deschutes River & Tributaries*, 134 Or. 623, 286 P. 563; *Fenton v. TriState Land Co.*, 89 Neb. 479, 131 N.W. 1038

[7] We agree with the conclusion of the trial court that the water acquired or to be acquired from Palisades reservoir storage should be treated as appurtenant to the new lands. It was and is a new right initiated expressly for the benefit of such lands.

[8] However, we do not construe the conclusions or judgment of the district court as denying to the owners of the new lands any right or interest whatever in the water rights held by the district prior to their annexation. The irrigation district law regards the irrigation district as a unit, and as a legal entity, holding title to its property and water rights in trust for the **451 uses and purposes set forth in that law I.C. §§ 43-101, 43-316; *Gedney v. Snake River Irr. Dist.*, 61 Idaho 605, 104 P.2d 909; *Yaden v. Gem Irr. Dist.*, 37 Idaho 300, 216 P. 250; *Colburn v. Wilson*, 24 Idaho 94, 132 P. 579.

[9][10] It is the apparent purpose of the provisions of I.C. § 43-1010, above quoted, to make the landowners within an irrigation district equal [except as to any disparity which may be found to exist in benefits received (I.C. § 43-404)] so far as may be consistent with priority of water rights as recognized and protected by the provisions of the constitution. *Harsin v. Pioneer Irr. Dist.*, 45 Idaho 369, 263 P. 988. Having regard to such purpose of the statute, and the authority of the legislature in the premises as recognized by the constitutional provisions above quoted, we recognize the right acquired by the owners of new lands, by their inclusion within the district, to the use of any water owned by the district when the use thereof is not required for the proper irrigation of the old lands, and when such use is not in conflict with the rights previously acquired by the owners of the old lands, or when such use is not in derogation or impairment of such prior rights. We find nothing in the conclusions or judgment of the district court in conflict with this right of the owners of new lands and its decree must be construed in harmony therewith.

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[11][12] We also agree with the conclusions of the trial court that the owners of the new lands must bear the cost of acquiring water for such lands; of enlarging, equipping and extending the system for the irrigation thereof; and the differential in the cost of maintenance and operation, due to the higher elevation of the new lands, or any other factor necessarily increasing the cost of the irrigation thereof. *Brown v Shupe*, 40 Idaho 252, 233 P 59; *City of Nampa v Nampa & Meridian Irr. Dist.*, 19 Idaho 779, 115 P. 979. These burdens were assumed by the owners of the *548 new lands in their petition for annexation, and were made a condition thereof. Moreover, the imposition of such additional costs and burdens upon the owners of the old lands, without their consent, would be an invasion of their constitutionally protected property rights. *Const. Art. 1, §§ 13 and 14; Bennett v Twin Falls, etc., Co.*, 27 Idaho 643, 150 P. 336; *Nampa & Meridian Irr. Dist. v Briggs*, 27 Idaho 84, 147 P. 75; *Knowles v. New Sweden Irr. Dist.*, 16 Idaho 217, 101 P. 81; *Merchant's Nat. Bank of San Diego v Escondido Irr. Dist.*, 144 Cal 329, 77 P 937

What is said here is not in conflict with *Colburn v. Wilson*, 24 Idaho 94, 132 P. 579, nor with *Gedney v. Snake River Irr. Dist.*, 61 Idaho 605, 104 P 2d 909. In those cases the water rights of the respective owners were of the same origin and of equal priority. No classification of lands was made in the organization of the districts nor in the assessment of benefits, based upon any difference in the cost of construction or of maintenance and operation. Nor was there any enlargement or extension of either district after the original landowners' rights had become fixed.

The holding of the court, that the owners of new lands are subject to assessment for benefits over and above the \$125 per acre to the extent necessary to pay the cost of acquiring additional water rights and of enlarging, equipping and extending its system to their lands, is also recognized by the provision of I.C. § 43-1009, as follows:

* * * The order shall describe the land so annexed to said district, and thereafter such land so annexed shall be subject to such assessments from time to time as the board of directors shall deem right under the circumstances, and such assessments shall be deemed to be assessments for benefits to said lands by reason of their

annexation to said district * * *

[13] The court also correctly held that the board of directors of the defendant district cannot be required to accept payment of benefits assessed and thereafter be required to deliver water to new lands (1628 acres) which have not been irrigated and for which no water right has been acquired or is available. **452 *Gerber v. Nampa & Meridian Irr. Dist.*, 16 Idaho 1, 100 P. 80; *Gerber v. Nampa & Meridian Irr. Dist.*, 19 Idaho 765, 116 P. 104; *Boley v. Twin Falls Canal Co.*, 37 Idaho 318, 217 P. 258. As hereinbefore set out, this conclusion is in keeping with the express conditions of the annexation. Moreover, enforcement of the claimed right to compel delivery of water to such lands, would effect an invasion of the constitutionally protected priority rights, and property rights, of the owners of the old lands, hereinbefore cited. *Bennett v. Twin Falls, etc., Co.*, 27 Idaho 643, 150 P. 336; *549 *Nampa & Meridian Irr. Dist. v Briggs*, 27 Idaho 84, 147 P. 75; *Knowles v. New Sweden Irr. Dist.*, 16 Idaho 217, 101 P. 81; *Merchants' Nat. Bank of San Diego v Escondido Irr. Dist.*, 144 Cal 329, 77 P. 937.

Judgment affirmed

Costs to respondents

KNUDSON, C. J., and McQUADE, McFADDEN
and SMITH, JJ, concur

85 Idaho 528, 381 P.2d 440

END OF DOCUMENT

**ROBERTSON, HEPWORTH, SLETTE,
WORST & STOVER,
P.L.L.C.
ATTORNEYS AT LAW**

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GARY D. SLETTE
RICHARD J. "TUG" WORST
TIMOTHY J. STOVER



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P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

April 18, 2005

HAND DELIVERED

Travis Thompson
Barker Rosholt & Simpson LLP
113 Main Ave. W.
Twin Falls, ID 83301

RE: Milner Irrigation District

Dear Travis:

I am delivering to you copies of information I received today from the Idaho Department of Water Resources regarding the Milner Irrigation District water rights. Please advise the Idaho Department of Water Resources that you have substituted as counsel for the Milner Irrigation District, and that all future correspondence should be sent directly to you. If you have any questions or comments, please contact me.

Yours truly,

GARY D. SLETTE

GDS:rlm

Encls.

cc: IDWR - Attn: Ernest Carlsen (w/o encls.)
(208-525-7177)

rlm\gds\erestRosholtS

SCANNED

APR 18 2005

PROFILE

SCANNED

FEB 28 2006

Received Time Apr. 18. 2:15PM

Contact Name	Water Rt.	Type	Owner Ty
☐ MILNER IRRIGATION D...	1-17	Claim	Current O...
☐ MILNER IRRIGATION D...	1-17 1	Recommendation	Current O...
☐ MILNER IRRIGATION D...	1-2050	Claim	Current O...
☐ MILNER IRRIGATION D...	1-2050 1	Recommendation	Current O...
☐ MILNER IRRIGATION D...	1-2054B	Claim	Current O...
☐ MILNER IRRIGATION D...	1-2054B 1	Recommendation	Current O...
☐ MILNER IRRIGATION D...	1-2058D	Claim	Current O...
☐ MILNER IRRIGATION D...	1-2058D 1	Recommendation	Current O...
☐ MILNER IRRIGATION D...	1-9	Claim	Current O...
☐ MILNER IRRIGATION D...	1-9 1	Recommendation	Current O...

Milner Irrigation District

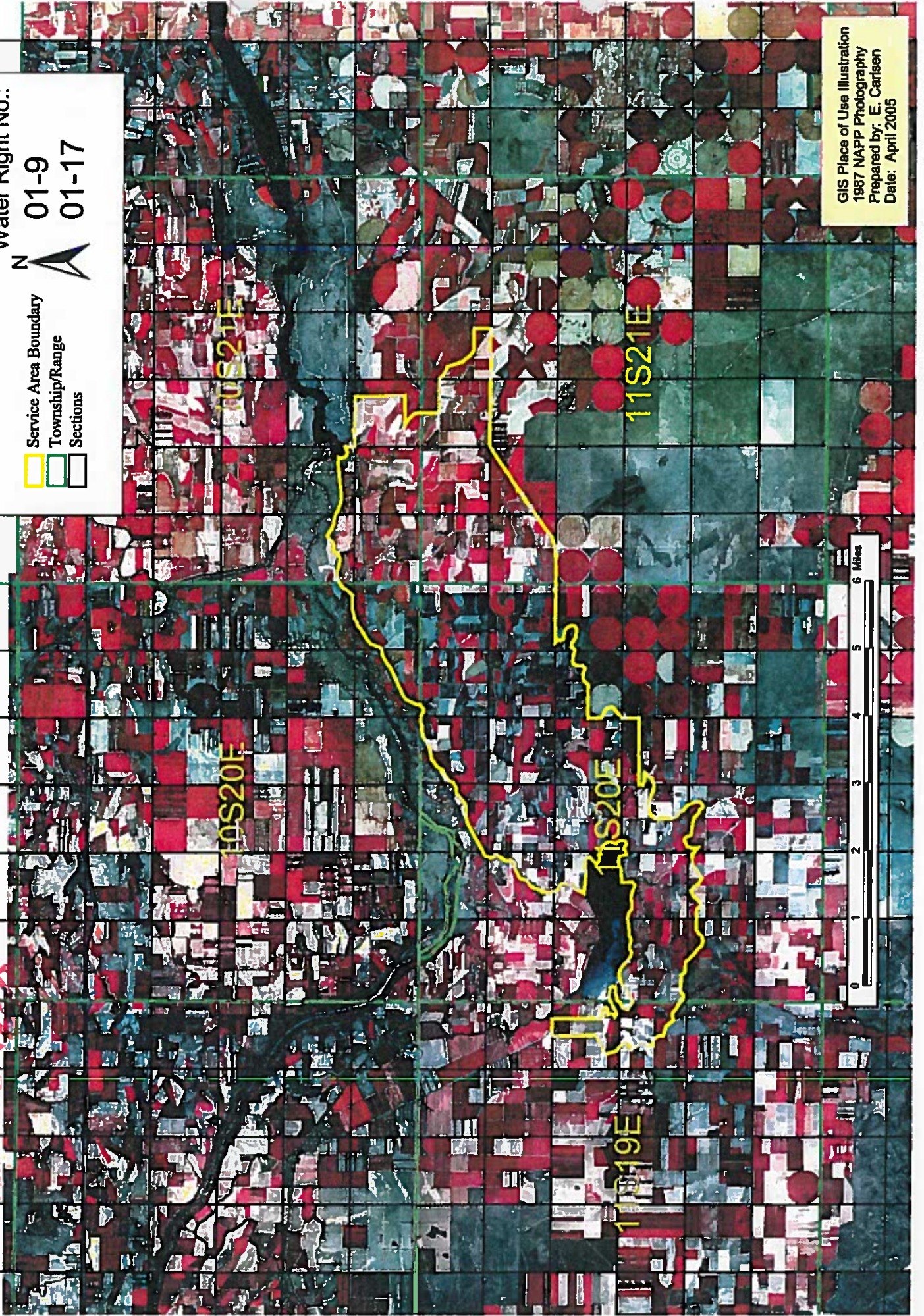
Service Area Boundary

Water Right No.:

N 01-9
01-17

- Service Area Boundary
- Township/Range
- Sections

GIS Place of Use Illustration
1987 NAPP Photography
Prepared by: E. Carlsen
Date: April 2005



NELSON, RSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
142 3RD AVENUE N.
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

DATE:

TO: MID Fees

RE: 1. A01-00017 \$50 + 12,760
2. A45-04171 \$50 + 1 + 7 = 58
3. A01-00009 \$50
4. A01-02050 \$50
5. A45-00463 \$50
6. domestic \$25
7. domestic \$25
8. A01-02064B \$50
9. A01-02068D \$50

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NELSON, RSHOLT, ROBERTSON, TOLMAN & TUCKER

SCANNED

MICROFILMED

BY

FEB 28 2006

MAR 20 1993

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

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FAX (208) 334-6034

February 5, 1992

Attention: Judy Givens
Southern Region
Idaho Department of Water Resources
222 Shoshone St. E.
Twin Falls, ID 83301

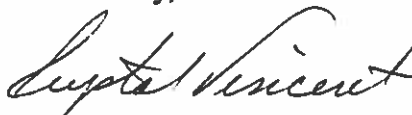
RE: SRBA CLAIMS IN THE SOUTHERN REGION

Dear Judy:

The attached is a list of our clients for whom we filed claims in the SRBA, and who by signing and returning a letter to our office, have requested that we continue to represent them in the adjudication process.

The claims highlighted identify those we filed in your region. Please check these claims and make certain that we are shown on your computer as representative, in order for us to receive the mailings from the department and perform the required service for our clients in a timely manner.

Yours truly,


Crystal Vincent

CV:mw
02059207.CV

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FEB 28 2006

MICROFILMED

MAR 20 1993

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 1-17
Date Received: 8/11/1989
Receipt No: S008827
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

MILNER IRRIGATION DIST Phone: (208)432-5560

5294 E 3610 N
MURTAUGH ID USA 83344

2. Date of Priority: 11/14/1916

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

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
10S	21E	29	NE SE SE	TWIN FALLS	

5. Description of diverting works:

MILNER DAM RESERVOIR TO PUMPS TO CANAL SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	11/15	135	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
PLACE OF USE IS SERVICE AREA OF MILNER IRRIGATION DISTRICT.					

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FEB 28 2006

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11. Place of use in counties:

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

13. Other Water Rights Used:

14. Remarks:

3/4/2005: CLAIM AMENDED TO CORRECT PRIORITY DATE. - VH

P/U WITHIN LANDS SERVED BY MILNER IRRIGATION DISTRICT.

P/D AT PUMPS IN MILNER POOL.

OTHER WATER RIGHTS: A45-04171, A01-00009, A01-02050, A45-00463 A01-02064B AND A01-02068D.

ALSO, A45-11897 & A45-11898 DOMESTIC & STOCK

15. Basis of Claim: Decreed

16. Signature(s)

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FEB 28 2006

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am CHAIRMAN OF THE BOARD of
Title
MILNER IRRIGATION DISTRICT that I have signed the foregoing
Organization
document in the space below as CHAIRMAN OF THE BOARD of
Title
MILNER IRRIGATION DISTRICT and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

CHAIRMAN MILNER IRRIGATION DISTRICT
Title and Organization

3/4/05

Date

State of Idaho

County of Adair } SS.

Subscribed and sworn (or affirmed) before me this 4th day of March 2005



[Signature]

Notary Public

Residing at Bull, Idaho

My commission Expires 5-7-2009

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FEB 28 2005

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: A01-00017
Date Received: 8/11/1989
Receipt No: S008827
Received By: Adm

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MILNER IRRIGATION DISTRICT 208-432-5560
Address: RT. 1
MURTAUGH, ID 83344
2. Date of Priority: APR 30, 1931
3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	29	NE	SE	SE		TWIN FALLS
5. Description of diverting works:
MILNER DAM RESERVOIR TO PUMPS TO CANAL SYSTEM
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	135.000		
7. Total Quantity Appropriated is:
135.000 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 40905.0 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE
10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	20E	35	SE	SW		IRR	35.0
			NE	SE		IRR	35.0
			NW	SE		IRR	15.0

A01-00017

Page 1

Date: 08/22/89

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FEB 28 2006

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MAR 20 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	20E	35	SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				165.0
		36	SW	SW		IRR	38.0
			SE	SW		IRR	38.0
			Section Acres				76.0
	21E	29	SW	SW		IRR	26.0
			SE	SW		IRR	15.0
			SW	SE		IRR	22.0
			SE	SE		IRR	8.0
			Section Acres				71.0
		30	SW	SW		IRR	33.0
			SE	SW		IRR	19.0
			NW	SE		IRR	5.0
			SW	SE		IRR	39.0
			SE	SE		IRR	40.0
			Section Acres				136.0
		31	NE	NE		IRR	33.0
			NW	NE		IRR	42.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	33.0
			NW	NW		IRR	36.0
			SE	NW		IRR	40.0
			NE	SW		IRR	17.0
			NW	SW		IRR	47.0
			SW	SW		IRR	40.0
			SE	SW		IRR	39.0
			NE	SE		IRR	40.0
			NW	SE		IRR	38.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				565.0
		32	NE	NE		IRR	35.0
			NW	NE		IRR	30.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
10S	21E	32	SW		NE		IRR	31.0
			SE		NE		IRR	42.0
			NE		NW		IRR	23.0
			NW		NW		IRR	32.0
			SW		NW		IRR	40.0
			SE		NW		IRR	38.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			SW		SW		IRR	25.0
			SE		SW		IRR	43.0
			NE		SE		IRR	9.0
			NW		SE		IRR	36.0
			SW		SE		IRR	57.0
			SE		SE		IRR	13.0

Section Acres 534.0

33	NW	NE	IRR	40.0
	SW	NE	IRR	40.0
	NE	NW	IRR	40.0
	NW	NW	IRR	34.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	20.0
	NW	SE	IRR	40.0

Section Acres 334.0

36	NE	NE	IRR	33.0
	NW	NE	IRR	37.0
	SW	NE	IRR	40.0
	NE	NW	IRR	21.0
	SW	NW	IRR	25.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	80.0

Section Acres 476.0

11S	19E	13	NW	NE	IRR	40.0
-----	-----	----	----	----	-----	------

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	19E	13	SW	NE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	39.0
			SE	SE		IRR	16.0
			Section Acres				175.0
		24	NE	NE		IRR	17.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	27.0
			NE	NW		IRR	25.0
			SW	NW		IRR	44.0
			NE	SE		IRR	38.0
			NW	SE		IRR	39.0
			SW	SE		IRR	1.0
			SE	SE		IRR	15.0
			Section Acres				286.0
20E		1	NE	NE		IRR	40.0
			NW	NE		IRR	38.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	35.0
			NW	NW		IRR	35.0
			SW	NW		IRR	40.0
			SE	NW		IRR	25.0
			SW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				493.0
		2	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	68.0
			SW	NW		IRR	39.0
			SE	NW		IRR	40.0
			NE	SW		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	2	NW	SW		IRR	40.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	19.0
			SW	SE		IRR	61.0
			SE	SE		IRR	40.0

Section Acres 666.0

3	NW	NE	IRR	16.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	SW	NW	IRR	9.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	27.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	70.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section Acres 482.0

4	NE	SW	IRR	4.0
	SW	SW	IRR	13.0
	SE	SW	IRR	35.0
	NE	SE	IRR	17.0
	NW	SE	IRR	7.0
	SW	SE	IRR	40.0
	SE	SE	IRR	38.0

Section Acres 154.0

8	NE	NE	IRR	4.0
	SW	NE	IRR	40.0
	SE	NE	IRR	27.0
	NW	NW	IRR	36.0
	SW	NW	IRR	40.0
	NE	SW	IRR	40.0
	SE	SW	IRR	10.0
	NE	SE	IRR	40.0
	SE	SE	IRR	40.0

Section Acres 277.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
11S	20E	9	NE		NE		IRR	39.0
			NW		NE		IRR	40.0
			SE		NE		IRR	39.0
			NE		NW		IRR	40.0
			SW		NW		IRR	20.0
			NW		SW		IRR	40.0
			SW		SW		IRR	60.0
			SE		SW		IRR	40.0
			NE		SE		IRR	40.0
			NW		SE		IRR	38.0
			SW		SE		IRR	37.0
			SE		SE		IRR	40.0

Section Acres 473.0

10	NE	NE	IRR	40.0
	NW	NE	IRR	39.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	NE	NW	IRR	39.0
	NW	NW	IRR	40.0
	SW	NW	IRR	38.0
	SE	NW	IRR	37.0
	NE	SW	IRR	35.0
	NW	SW	IRR	40.0
	SW	SW	IRR	39.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	39.0
	SW	SE	IRR	40.0
	SE	SE	IRR	38.0

Section Acres 624.0

11	NE	NE	IRR	35.0
	NW	NE	IRR	33.0
	SW	NE	IRR	39.0
	SE	NE	IRR	36.0
	NE	NW	IRR	39.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	11	SE	SW		IRR	40.0
			NE	SE		IRR	42.0
			NW	SE		IRR	37.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0

Section Acres 581.0

12	NE	NE	IRR	40.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	39.0
	NW	SE	IRR	39.0
	SW	SE	IRR	40.0
	SE	SE	IRR	39.0

Section Acres 637.0

13	NE	NW	IRR	6.0
	NW	NW	IRR	35.0

Section Acres 41.0

14	NE	NE	IRR	36.0
	NW	NE	IRR	40.0
	SW	NE	IRR	24.0
	SE	NE	IRR	10.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NW	SW	IRR	3.0
	SW	SW	IRR	15.0

Section Acres 288.0

15	NE	NE	IRR	40.0
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10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
11S	20E	15	NW		NE		IRR	39.0
			SW		NE		IRR	40.0
			SE		NE		IRR	40.0
			NE		NW		IRR	39.0
			NW		NW		IRR	40.0
			SW		NW		IRR	39.0
			SE		NW		IRR	39.0
			NE		SW		IRR	39.0
			NW		SW		IRR	39.0
			SW		SW		IRR	39.0
			SE		SW		IRR	39.0
			NE		SE		IRR	40.0
			NW		SE		IRR	40.0
			SW		SE		IRR	35.0
			SE		SE		IRR	40.0
							Section Acres	627.0
		16	NE		NE		IRR	37.0
			NW		NE		IRR	40.0
			SW		NE		IRR	40.0
			SE		NE		IRR	38.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	76.0
			NE		SW		IRR	40.0
			NW		SW		IRR	36.0
			SW		SW		IRR	2.0
			SE		SW		IRR	32.0
			NE		SE		IRR	39.0
			NW		SE		IRR	44.0
			SW		SE		IRR	43.0
			SE		SE		IRR	35.0
							Section Acres	582.0
		17	NE		NE		IRR	40.0
			NW		NE		IRR	30.0
			SE		NE		IRR	33.0
			SE		NW		IRR	4.0
			SW		SE		IRR	33.0
							Section Acres	140.0
		19	NE		NE		IRR	86.0

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10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
11S	20E	19	NW		NE		IRR	39.0
			SW		NE		IRR	20.0
			SE		NE		IRR	50.0
			NE		NW		IRR	79.0
			NW		NW		IRR	95.0
			SE		NW		IRR	32.0
			NE		SW		IRR	40.0
			SE		SW		IRR	35.0
			NE		SE		IRR	40.0
			NW		SE		IRR	39.0
			SW		SE		IRR	30.0
			SE		SE		IRR	40.0

Section Acres 625.0

20	NE	NE	IRR	22.0
	NW	NE	IRR	30.0
	SW	NE	IRR	28.0
	SE	NE	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	20.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section Acres 500.0

21	NE	NE	IRR	35.0
	NW	NE	IRR	40.0
	SW	NE	IRR	27.0
	SE	NE	IRR	9.0
	NE	NW	IRR	40.0
	NW	NW	IRR	5.0
	SW	NW	IRR	30.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	30.0
	SW	SW	IRR	37.0
	SE	SW	IRR	33.0
	SW	SE	IRR	10.0

Section Acres 376.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
11S	20E	22	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
							Section Acres	160.0
		28	NW		NE		IRR	30.0
			NW		NW		IRR	8.0
							Section Acres	38.0
			29	NE		NE		IRR
		NW			NE		IRR	25.0
		NE			NW		IRR	14.0
		NW			NW		IRR	25.0
							Section Acres	77.0
		30	NE		NE		IRR	20.0
			NW		NE		IRR	38.0
							Section Acres	58.0
21E		3	SW		NW		IRR	19.0
			NW		SW		IRR	38.0
			SW		SW		IRR	40.0
			SE		SW		IRR	40.0
							Section Acres	137.0
		4	SW		NE		IRR	39.0
			SE		NE		IRR	31.0
			NE		NW		IRR	39.0
			NW		NW		IRR	39.0
			SW		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
NW			SW		IRR	40.0		
SW			SW		IRR	40.0		
SE			SW		IRR	40.0		
NE			SE		IRR	40.0		
NW			SE		IRR	40.0		
SW		SE		IRR	40.0			

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10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	21E	4	SE	SE		IRR	40.0

Section	Acres
	548.0

5	NE	NE	IRR	40.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section	Acres
	640.0

6	NE	NE	IRR	40.0
	NW	NE	IRR	39.0
	SW	NE	IRR	43.0
	SE	NE	IRR	47.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	39.0
	SE	NW	IRR	39.0
	NE	SW	IRR	39.0
	NW	SW	IRR	38.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section	Acres
	644.0

7	NE	NE	IRR	40.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
11S	21E	7	SE		NE		IRR	40.0
			NE		NW		IRR	40.0
			NW		NW		IRR	43.0
			SW		NW		IRR	43.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			SW		SW		IRR	43.0
			SE		SW		IRR	40.0
			NE		SE		IRR	39.0
			NW		SE		IRR	40.0
			SW		SE		IRR	29.0
							Section Acres	597.0
		8	NE		NE		IRR	12.0
			NW		NE		IRR	36.0
			SW		NE		IRR	4.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SW		NW		IRR	40.0
			SE		NW		IRR	31.0
			NW		SW		IRR	19.0
							Section Acres	222.0
		32	SW		SW		IRR	15.0
			SW		SE		IRR	1.0
			SE		SE		IRR	27.0
							Section Acres	43.0
		33	NW		SW		IRR	20.0
			SW		SW		IRR	40.0
			SE		SW		IRR	27.0
							Section Acres	87.0
							Total Acres	13635.0

11. Place of use in counties: TWIN FALLS, CASSIA

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

13. Other Water Rights Used:
SEE REMARKS

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14. Remarks:

P/U WITHIN LANDS SERVED BY MILNER IRRIGATION DISTRICT.

P/D AT PUMPS IN MILNER POOL.

OTHER WATER RIGHTS: A45-04171, A01-00009, A01-02050, A45-00463

A01-02064B AND A01-02068D.

ALSO, A45-11897 & A45-11898 DOMESTIC & STOCK

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

MILNER LOW LIFT IRRIGATION DIS

Decree Plaintiff

vs

LYNN CRANDALL.

Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of

Title

_____, that I have signed the foregoing

Organization

document in the space below as _____ of

Title

_____, and that the statements contained in the

Organization

foregoing document are true and correct.

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

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

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

CIVIL CASE NUMBER: 39576

RECEIVED

AUG 11 1989

Ident. Number: A01-00017
Date Received: 8/02/1989
Receipt No: 5008827
Received By: for

Department of Water Resources
Southern Region Office
NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MILNER IRRIGATION DISTRICT 208-432-5560
Address: RT. 1
MURTAUGH, ID 83344

2. Date of Priority: APR 30, 1931

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	29	NE	SE	SE		TWIN FALLS

5. Description of diverting works:
MILNER DAM RESERVOIR TO PUMPS TO CANAL SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	135.000		

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

8. Total consumptive use is 40905 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	20E	35	SE	SW		IRR	35.0
			NE	SE		IRR	35.0
			NW	SE		IRR	15.0

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MAR 20 1993

Computer
generated land
list - MID mo
lands only - 1416

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	20E	35	SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				165.0
		36	SW	SW		IRR	38.0
			SE	SW		IRR	38.0
			Section Acres				76.0
21E		29	SW	SW		IRR	26.0
			SE	SW		IRR	15.0
			SW	SE		IRR	22.0
			SE	SE		IRR	8.0
			Section Acres				71.0
		30	SW	SW		IRR	33.0
			SE	SW		IRR	19.0
			NW	SE		IRR	5.0
			SW	SE		IRR	39.0
			SE	SE		IRR	40.0
			Section Acres				136.0
		31	NE	NE		IRR	33.0
			NW	NE		IRR	42.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	33.0
			NW	NW		IRR	36.0
			SE	NW		IRR	40.0
			NE	SW		IRR	17.0
			NW	SW		IRR	47.0
			SW	SW		IRR	40.0
			SE	SW		IRR	39.0
			NE	SE		IRR	40.0
			NW	SE		IRR	38.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				565.0
		32	NE	NE		IRR	35.0
			NW	NE		IRR	30.0

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10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
10S	21E	32	SW		NE		IRR	31.0
			SE		NE		IRR	42.0
			NE		NW		IRR	23.0
			NW		NW		IRR	32.0
			SW		NW		IRR	40.0
			SE		NW		IRR	38.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			SW		SW		IRR	25.0
			SE		SW		IRR	43.0
			NE		SE		IRR	9.0
			NW		SE		IRR	36.0
			SW		SE		IRR	57.0
			SE		SE		IRR	13.0
							Section Acres	534.0
		33	NW		NE		IRR	40.0
			SW		NE		IRR	40.0
			NE		NW		IRR	40.0
			NW		NW		IRR	34.0
			SW		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
			NW		SW		IRR	20.0
			NW		SE		IRR	40.0
							Section Acres	334.0
		36	NE		NE		IRR	33.0
			NW		NE		IRR	37.0
			SW		NE		IRR	40.0
			NE		NW		IRR	21.0
			SW		NW		IRR	25.0
			SE		NW		IRR	40.0
			NE		SW		IRR	40.0
			NW		SW		IRR	40.0
			NE		SE		IRR	40.0
			NW		SE		IRR	40.0
			SW		SE		IRR	40.0
			SE		SE		IRR	80.0
							Section Acres	476.0
11S	19E	13	NW		NE		IRR	40.0

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10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	19E	13	SW	NE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	39.0
			SE	SE		IRR	16.0
					Section Acres		175.0
		24	NE	NE		IRR	~~42.0~~ 17
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	27.0
			SW	NW		IRR	20.0
			NE	SE		IRR	38.0
			NW	SE		IRR	39.0
			SW	SE		IRR	1.0
			SE	SE		IRR	15.0
			NE	NW			~~25~~
					Section Acres		~~262.0~~ 286
	20E	1	NE	NE		IRR	40.0
			NW	NE		IRR	38.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	35.0
			NW	NW		IRR	35.0
			SW	NW		IRR	~~39.0~~ 40
			SE	NW		IRR	~~20.0~~ 25
			SW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
					Section Acres		~~487.0~~ 493
		2	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	~~38.0~~ 68
			SW	NW		IRR	~~68.0~~ 39
			SE	NW		IRR	40.0
			NE	SW		IRR	39.0
			NW	SW		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	2	SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	19.0
			SW	SE		IRR	61.0
			SE	SE		IRR	40.0
			Section Acres				
3			NW	NE		IRR	16.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			SW	NW		IRR	9.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	27.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	70.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
			Section Acres				
4			NE	SW		IRR	4.0
			SW	SW		IRR	13.0
			SE	SW		IRR	35.0
			NE	SE		IRR	17.0
			NW	SE		IRR	7.0
			SW	SE		IRR	40.0
			SE	SE		IRR	38.0
Section Acres						154.0	
8			NE	NE		IRR	4.0
			SW	NE		IRR	40.0
			SE	NE		IRR	27.0
			NW	NW		IRR	36.0
			SW	NW		IRR	40.0
			NE	SW		IRR	40.0
			SE	SW		IRR	~~8.0~~ 10
			NE	SE		IRR	40.0
			SE	SE		IRR	40.0
Section Acres						~~275.0~~ 277	

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	9	NE	NE		IRR	39.0
			NW	NE		IRR	40.0
			SE	NE		IRR	39.0
			NE	NW		IRR	40.0
			SW	NW		IRR	20.0
			NW	SW		IRR	40.0
			SW	SW		IRR	60.0
			SE	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	38.0
			SW	SE		IRR	37.0
			SE	SE		IRR	40.0

Section Acres 473.0

10	NE	NE	IRR	40.0
	NW	NE	IRR	39.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	NE	NW	IRR	39.0
	NW	NW	IRR	40.0
	SW	NW	IRR	38.0
	SE	NW	IRR	37.0
	NE	SW	IRR	35.0
	NW	SW	IRR	40.0
	SW	SW	IRR	39.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	39.0
	SW	SE	IRR	40.0
	SE	SE	IRR	38.0

Section Acres 624.0

11	NE	NE	IRR	35.0
	NW	NE	IRR	33.0
	SW	NE	IRR	39.0
	SE	NE	IRR	36.0
	NE	NW	IRR	39.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	11	SE	SW		IRR	40.0
			NE	SE		IRR	~~32.0~~ 42
			NW	SE		IRR	37.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
					Section Acres		~~571.0~~ 581
		12	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	~~35.0~~ 40
			NW	SW		IRR	40.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0
			SW	SE		IRR	40.0
			SE	SE		IRR	39.0
					Section Acres		~~632.0~~ 637
		13	NE	NW			6.0
			NW	NW		IRR	35.0
					Section Acres		~~35.0~~ 41
		14	NE	NE		IRR	36.0
			NW	NE		IRR	40.0
			SW	NE		IRR	24.0
			SE	NE		IRR	10.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NW	SW		IRR	3.0
			SW	SW		IRR	15.0
					Section Acres		288.0
		15	NE	NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	15	NW	NE		IRR	39.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	39.0
			NW	NW		IRR	40.0
			SW	NW		IRR	39.0
			SW	NW		IRR	39.0
			SE	NW		IRR	39.0
			SE	NW		IRR	39.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	35.0
			SE	SE		IRR	40.0

Section Acres 627.0

16	NE	NE	IRR	37.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0
	SE	NE	IRR	38.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	76.0
	NE	SW	IRR	40.0
	NW	SW	IRR	36.0
	SW	SW	IRR	2.0
	SE	SW	IRR	32.0
	NE	SE	IRR	39.0
	NW	SE	IRR	~~40.0~~ 44
	SW	SE	IRR	~~15.0~~ 43
	SE	SE	IRR	35.0

Section Acres ~~550.0~~ 582

17	NE	NE	IRR	40.0
	NW	NE	IRR	30.0
	SE	NE	IRR	~~30.0~~ 33
	SE	NW	IRR	4.0
	SW	SE	IRR	33.0

Section Acres ~~137.0~~ 140

19	NE	NE	IRR	~~20.0~~	86
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10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	19	NW	NE		IRR	39.0
			SW	NE		IRR	20.0
			SE	NE		IRR	50.0
			NE	NW		IRR	~~39.0~~ 41 79
			SE	NW		IRR	32.0
			NE	SW		IRR	40.0
			SE	SW		IRR	35.0
			NE	SE		IRR	40.0
			NW	SE		IRR	39.0
			SW	SE		IRR	30.0
			SE	SE		IRR	~~30.0~~ 40
			NW	NW			95
					Section Acres		~~414.0~~ 625

20	NE	NE	IRR	22.0
	NW	NE	IRR	~~18.0~~ 30
	SW	NE	IRR	28.0
	SE	NE	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	20.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

			Section Acres	~~480.0~~ 500
21	NE	NE		~~40~~ 35
	NW	NE	IRR	~~43.0~~
	SW	NE	IRR	27.0
	SE	NE	IRR	9.0
	NE	NW	IRR	40.0
	NW	NW	IRR	5.0
	SW	NW	IRR	30.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	30.0
	SW	SW	IRR	37.0
	SE	SW	IRR	33.0
	SW	SE	IRR	10.0
			Section Acres	~~344.0~~ 376

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	20E	22	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
						Section Acres	160.0
		28	NW	NE		IRR	30.0
			NW	NW		IRR	8.0
						Section Acres	38.0
		29	NE	NE		IRR	13.0
			NW	NE		IRR	25.0
			NE	NW		IRR	14.0
			NW	NW		IRR	25.0
						Section Acres	77.0
		30	NE	NE		IRR	~~10.0~~ 20
			NW	NE		IRR	38.0
						Section Acres	~~48.0~~ 58
21E		3	SW	NW		IRR	19.0
			NW	SW		IRR	38.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
						Section Acres	137.0
		4	SW	NE		IRR	39.0
			SE	NE		IRR	31.0
			NE	NW		IRR	39.0
			NW	NW		IRR	39.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	21E	4	SE	SE		IRR	40.0

Section Acres 548.0

5	NE	NE	IRR	40.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0
	SE	NE	IRR	40.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	40.0
	NE	SW	IRR	40.0
	NW	SW	IRR	40.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section Acres 640.0

6	NE	NE	IRR	40.0
	NW	NE	IRR	39.0
	SW	NE	IRR	~~39.0~~ 43
	SE	NE	IRR	~~40.0~~ 47
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	~~35.0~~ 39
	SE	NW	IRR	39.0
	NE	SW	IRR	39.0
	NW	SW	IRR	38.0
	SW	SW	IRR	40.0
	SE	SW	IRR	40.0
	NE	SE	IRR	40.0
	NW	SE	IRR	40.0
	SW	SE	IRR	40.0
	SE	SE	IRR	40.0

Section Acres ~~629.0~~ 644

7	NE	NE	IRR	40.0
	NW	NE	IRR	40.0
	SW	NE	IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	21E	7	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	43.0
			SW	NW		IRR	43.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			SW	SW		IRR	43.0
			SE	SW		IRR	40.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	29.0

Section Acres 597.0

8	NE	NE	IRR	12.0
	NW	NE	IRR	36.0
	SW	NE	IRR	4.0
	NE	NW	IRR	40.0
	NW	NW	IRR	40.0
	SW	NW	IRR	40.0
	SE	NW	IRR	31.0
	NW	SW	IRR	19.0

Section Acres 222.0

32	SW	SW	IRR	15.0
	SW	SE	IRR	1.0
	SE	SE	IRR	27.0

Section Acres 43.0

33	NW	SW	IRR	20.0
	SW	SW	IRR	40.0
	SE	SW	IRR	27.0

Section Acres 87.0

Total Acres ~~13258.0~~ 13635.0

11. Place of use in counties: TWIN FALLS *and CASSIA counties*

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

13. Other Water Rights Used:
SEE REMARKS

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(64)

→ A45-04171, A01-00009, A01-02050, A45-00463, A01-02066E
A01-02068D

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14. Remarks:

P/U WITHIN LANDS SERVED BY MILNER IRRIGATION DISTRICT.
P/D AT PUMPS IN MILNER POOL.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

MILNER LOW LIFT IRRIGATION DIS

Decree Plaintiff

vs

LYNN CRANDALL.

Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):

Ronald M. Fowler

Date: 08-09-1989

Date: _____

State of Idaho)

County of Twin Falls)

Cassia

) SS.

Subscribed and sworn (or affirmed) before me this 9th day

of August 19 89

Amber D. Farland
Notary Public

Seal

Residing at Mustang

My Commission Expires 3/31/95

17. Notice of Appearance:

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

Signature

Nelson, Resholt, Robertson, Tolman & Tucker

Address

P.O. Box 1906, Twin Falls, ID 83303

Date

8-9-89

Last Name Milner Irr. Dist. Ident. Number _____

Copies White-State, Yellow-Claimant

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MAR 20 1993

RE: In Re the General Adjudication of Rights to the Use of
Water from the Snake River Basin Water System, Case
No. 39576, District Court for Twin Falls County, Idaho

Claimant: Milner Irrigation District

Claim No.(s): A01-00017; A01-00009; A01-00463; A01-02050;
A01-02064B; A01-02068D; A45-04171; A45-11898;
A45-11897

XX It is my desire that the law firm of Rosholt,
Robertson & Tucker enter an appearance on my behalf in the
Adjudication and represent my interest in the Adjudication
process.

DATED this 18th day of November, 1991.

J. B. S. / Manager

It is not my desire that the law firm of Rosholt,
Robertson & Tucker represent my interest in the Adjudication
process.

DATED this _____ day of _____, 1991.

SCANNED

FEB 28 2006

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MAR 20 1993