

JAN 21 2022

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

In Re 'SRBA

Case No. 39576

A.

Subcase

67-15263

(Insert water right number
From the Objection Form)STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: KEITH R. HOOD / KAREN M. HOOD

Address: P.O. BOX 100

CAMBRIDGE, ID 83610

Daytime Phone: 208-550-3884

Name & Address of Attorney, if any:

N/A

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: DEPT. OF INTERIOR - BUREAU LAND MGMT / IDAHO

Address: 1387 SOUTH VINNELL WAY

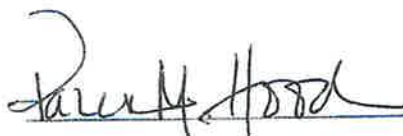
BOISE, IDAHO 83709-1657

D. I am responding to the Objections to the following elements or general provision. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
2. ☐ **Source**
3. ☐ **Quantity**
4. ☒ **Priority Date** (SEE ATTACHED)
5. ☐ **Point of Diversion**
6. ☐ **Instream Flow Beginning and Ending Point**
7. ☐ **Purpose(s) of Use**
8. ☐ **Period of Year**
9. ☐ **Place of Use**
10. ☐ **General Provision**
11. ☐ **Recommendation:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

 1/18/2022
(Signature of person filing)

(Attorney signing in representative capacity)

INSTRUCTIONS FOR MAILING

You must mail the Response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

E. CERTIFICATE OF MAILING

I certify that on JANUARY 20, 2022, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court

~~Coeur d'Alene-Spokane River Basin Adjudication~~

SNAKE RIVER BASIN ADJUDICATION

253 Third Avenue North

PO Box 2707

Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name:

KEITH & KAREN HOOD (SELF)

Address:

P.O. BOX 100

CAMBRIDGE, ID 83610

3. One copy to the party who filed the Objection at the following address:

Name:

DEPT. OF INTERIOR - BUREAU OF LAND MGMT / IDAHO

Address:

1387 SOUTH VINNELL WAY

BOISE, IDAHO 83709-1657

4. Copies to:

IDWR Document Depository

PO Box 83720

Boise, ID 83720-0098

United States Department of Justice

Environment & Nat'l Resources Div

550 W Fort Street, MSC 033

Boise, ID 83724

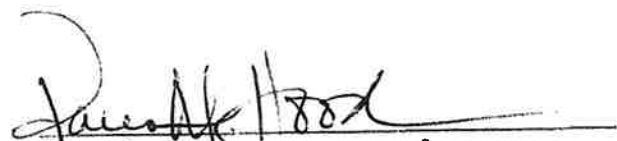
Chief, Natural Resources Division

Office of Attorney General

State of Idaho

PO Box 83720

Boise, ID 83720-0010


Your signature or signature of attorney
mailing on your behalf

We believe the objection submitted regarding our requested priority date filed by Mr. Frederic W. Price, Water Rights Specialist representing the Department of Interior, Bureau of Land Management, Idaho State Office (BLM) is not based upon facts, but speculation and is not clear in his intent. It appears that he did not review our documentation submitted with our applications but was merely focused on the priority date.

The stated REASONS FOR SUPPORTING OBJECTIONS do not recognize stockgrazing and stockwater rights granted and protected through legislated Acts of Congress, and State and Territorial laws, and validated by State Supreme court cases as well as U.S. Supreme Court cases.

His statement that "General grazing activities that occurred on federal land prior to patents being issued for what is now the claimants' base property were not conveyed to the claimant's predecessors". This statement is incorrect in that it does not recognize that the 1795 and 1834 Commerce Acts that created an implied license for free grazing upon unclaimed and unoccupied 'federal' lands (Buford v Houty, Ash Sheep Co v United States, 1920). It was lawful for settlers to run their livestock upon unclaimed and unoccupied lands.

Charles Roy Edwards by testimony of his initial Application for Grazing Permit with the United States Department of the Interior, Division of Grazing, as per the Taylor Grazing Act of 1934, please note on the top of page 3, #8 under the question "Have you previously used the lands covered by this application for grazing permit? **YES**. If so, how many years and what is the usual period of use each year? **FOR PAST 40 YEARS**. The date of this document he signed certifying that the foregoing answers and statements are true and correct to the best of his knowledge is July 27th, 1935. So by calculation of using the date of the application and subtracting the number of years he says grazed livestock on lands that are now the Horse Flat Grazing Allotment it clearly shows the year livestock were first grazed on 'federal' lands... $1935 - 40 = 1895$. David G. Edwards, Charles Roy Edwards and the Edwards family had grazed livestock on 'federal' lands since 1895 at the time the Taylor Grazing Act of 1934. We requested 1896 because at that time we did not have the original grazing application document when we applied for the applications. We were required by the BLM to submit an official FOIA request in order to see the historical grazing back files relevant to our grazing allotment file because we were not related to the applicants C.R. Edwards and Melvin & Inez Dotson by blood or by legal representation despite this file being of importance showing the historical use and operation of our grazing allotment since the inception of the Taylor Grazing Act of 1934.

In regards to the Braden patent land, between 1885 to 1898 the Post Office of Spring, Idaho was in operation on the land identified on Mr. Price's BLM base property map as the patent for Braden. The Post Mistress was Mrs. Elizabeth Cole, who herself had a registered livestock brand for her stock. All that exists of the town of Spring are several rubble rock foundations, a rock wall and the spring. There were no patents for the Post Office land at that time nor for any settlers for this location. The post office was closed and the land remained unoccupied and unsettled until the Edwards family homesteaded.

1972 Mineral Land Act and the 1875 Grazing Rights Act gave stockraisers a surface claim or 'surface title'. As an adverse claimant under the 1872 Act, which incorporated Sec 13 of the the 1870 Act, there is no mention of grazing permits. Settlers ran livestock over unfenced, unoccupied and unclaimed lands.

The Survey Act of March 3, 1853, Sec 8 granted right of occupation and cultivation only to settlers on or near mineral lands. There was no acreage limit on the number of locations claimed. Each stockwater site is a 'location' under mineral land laws.

The Grazing Rights Act of 1875 validated the right of settlers to graze cattle, horses and other stock animals on any land open to settlement under the homestead preemption or mineral land laws.

The Enclosure Act of 1885 authorized stockraisers surface claims containing stockwater locations to fence in their grazing surface claims. (Cameron v United States, 1893)

Section 10 of the Ditch & Canal Act of 1866 provided for entry under the Homestead Act of 1862 without acreage limitation where the surface was more suitable for agricultural use (14 Stat 253). July 26, 1866 Ditch Act also states that water rights that existed under State or Territorial law in the West were validated.

The National Forests Management Act clearly states that "all present and future permits, contracts and other instruments shall be subject to valid existing rights". The Federal Land Policy Management Act states that "all actions by the Secretary concerned under this Act shall be subject to valid existing rights".

Mr. Price/BLM stated that 'Homesteaders who received patents from the U.S. for claimants' base property would have established their own separate priority dates for water uses'. The patent dates are irrelevant to these stockwater applications. We are not claiming de minimis stockwater rights for our deeded patent lands which make up our base property. We are claiming the de minimis stockwater rights for are all within our grazing allotment, NOT private deeded lands. The BLM and Forest Service did not exist in 1895 when the Edwards family homesteaded the land. The first time the Edwards family put those waters and water sources to beneficial use on lands that is now Horse Flat Grazing Allotment was when their livestock drank from those stockwater locations in 1895 per his signed testimony on his original grazing application 'permit' dated in 1935 (attached with this rebuttal) under the Taylor Grazing Act of 1934 and correspondence to the Owyhee Grazing District No 1 Advisory board dated December 28, 1955 (that document was submitted with our stockwater applications).

The definition of 'base property' under 43 CFR 4110.2-1 states that the authorized officer shall find land or water owned by an 'applicant' to be base property. It is land that is capable of producing crops or forage that can be used to support authorized livestock for a specific period of the year or water that is suitable for consumption by livestock and is available and accessible to authorized livestock. There is nothing in this statute about patent dates, land size or water limits. If you can't graze on the 'federal' land for some reason, you have some place to feed and water your stock.

In the Joyce Livestock Co vs United States, the State of Idaho Supreme Court held that the United States "bases its claim upon the constitutional method of appropriation. Under Idaho law that method requires that the appropriator actually apply the water to beneficial use". Idaho Title 42 Chapter 1 Appropriation of Water-General Provisions, Section 42-113 Instream and other water uses for livestock (2) For rights to the use of water for instream or out-of-stream livestock purposes associated with grazing on federally owned or managed land, established under the diversion and application to beneficial use method of appropriation:

(a) the priority date shall be the first date that water historically was used for livestock watering associated with grazing on the land...

David G. Edwards first beneficially used the waters and water sources on the lands which consist of the Horse Flat grazing allotment. David G. Edwards, his son Charles R. Edwards, Melvin & Inez Dotson, lessors Charles Edwards (Dotsons nephew) & Ford Ranch, and we, the claimants, have applied the waters and water sources available within our grazing allotment to beneficial use for over 126 years.

Mr. Price/BLM makes note that David G. Edwards did not apply for a grazing permit in 1935. He died in 1916 but he did own livestock prior to his death which he willed to his son, Charles R. Edwards. Document 299-Instrument 52081 (10-26-1928) is attached to show the inheritance of land and livestock from David G. Edwards to his son, Charles R. Edwards.

The 1935 original grazing use application signed by Charles R. Edwards also has an attached plat map showing the property he owned and the property he intended to graze. That map did not identify the 640 acre base property divided up into separate 'patent' properties. It shows one piece of property and this map was recognized by and accepted the authorizing officer of the grazing district. These stockwater applications are for de minimis stockwater rights within our grazing allotment for livestock, not for watering our private deeded land.

Mr. Price/BLM also states "Forfeited for non-use (1993-2014)" then states that our "immediate predecessor, (Melvin & Inez) Dotson, leased his base property to Charles Edwards" (NOTE: This is not Charles Roy Edwards – he died in 1961. This Charles Edwards is his grandson and was a nephew to Inez Dotson).

Charles Edwards did lease the Dotson base property from 1993 – 2010 for reason to run cattle on the grazing allotment. There would be no other reason to submit a base property lease agreement with BLM without the intent of running additional cattle not owned by him, on the grazing allotment. Without the submittal of the lease between Edwards and Dotsons to the BLM, Charles would not have been allowed to run additional cattle under the Dotson grazing 'permit'. Dotsons still owned some cattle but Melvin Dotson suffered from dementia. Mr. Price/BLM failed to include documents supporting that the grazing allotment was indeed grazed by Edwards under the Dotson 'permit' since BLM notified Charles that two Dotson grazing allotments 10-year term was about to 'renew' and that he needed to submit a new, signed lease before turnout. Fees were paid and collected. Charles was a co-owner of the Horse Flat grazing allotment by 'permit' that was passed down from his father. The Dotson property was put up for sale in 2008 after the death of Melvin & Inez Dotson. The executor of their estate continued the lease with Charles Edwards until 2010. We purchased the property in late 2012 and did not graze cattle on our grazing allotment in 2013 and 2014 – we did not own cattle at the time.

BLM neglected to include in his timeline that we leased our base property and grazing allotment numbers to Ford Ranch in 2015 and 2016, which were allowed by the authorized officer. That we were authorized for nonuse in 2017, grazed stock in 2018-2019, and then suffered the Woodhead Fire in September 2020 which prevented fall turnout and 2021 we chose non-use to allow the range to recover instead of grazing. Leasing the base property with the grazing allotment right does not constitute forfeiture. BLM is incorrect to claim that the 'permit' was 'forfeited for non-use' when in fact the allotment is directly tied to our base property per Acts of Congress. Though we may not own the

mineral rights (physical land) we do own the surface rights. And per the terms and conditions of our grazing allotment 'permit' allotment holders can make 'temporary' changes each year prior to turn out. On our grazing 'permit' application 43 CFR 4130.4 (e) - Authorization of temporary changes in grazing use within the terms and conditions of 'permits' and leases, including temporary nonuse.

It reads as follows:

(1) Temporary nonuse is authorized -

(i) Only if the authorized officer approves in advance, and

(ii) For no longer than one year at a time.

(2) 'Permittees' or lessees applying for temporary nonuse use must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:

(i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards, or

(ii) the business or personal needs of the 'permittee' or lessee.

The authorizing officer approved all nonuse requests for the years requested above. They also approved all submitted base property lease agreements and collected fees associated with it.

We continue to believe that our request for a 1896 priority date for the Horse Flat grazing allotment is not unreasonable based upon Charles Roy Edwards first original grazing application that he and his father grazed 'federal' lands for 40 years prior to the enactment of the Taylor Grazing Act of 1934. The 1955 correspondence of Charles R Edwards to the grazing district advisory board (we submitted with our applications for de minimis stock water rights) reiterated that fact.

We also believe that the de minimis stockwater rights have been put to beneficial use and that the priority date of 1896 be accepted. Wild animals and livestock have drank out of these natural streams, sinks, springs and seasonal streams within this grazing allotment regardless of the date of base property land patents or approval from some authorized official. The Edwards family homesteaded this land in 1895 and their stock ran freely over the unclaimed, undeveloped and unfenced land. This is a 'fence out' state. This practice continues to this day. Their livestock drank where there was water available, as do ours to this day within the grazing allotment. Charles R. Edwards stated that the date Edwards livestock used the resources within the now defined grazing allotment was in 1895... 40 years prior to the Taylor Grazing Act.

Thank you for your consideration,

Sincerely,



Keith Hood



Karen Hood

Dated January 19, 2022

JUL 29 1935

1-291

(April 1935)

UNITED STATES
DEPARTMENT OF THE INTERIOR
DIVISION OF GRAZING

Application for Grazing Permit

Date July 27th 1935 19...

I, Charles R Edwards of Cambridge, Idaho
(Name of applicant) (Address)

hereby apply for a permit to graze 250 cattle; _____ horses;
_____ sheep; _____ goats upon lands of the United States within
the Idaho No one Grazing District, in common with other users, or
Common users- See plats
(if an individual allotment of range is desired, describe the area
either by Section, Township and Range, or by natural boundaries)

My brands and earmarks are A On left hip, and (Clover leaf) on the right
ribs of Cattle

1. Are you a citizen of the United States? Yes By birth? Yes
by naturalization? _____ (If by naturalization, state when naturalized.)

If not a citizen, have you filed the necessary declaration of intention to
become such? _____ When? _____ Where? _____

2. Are you interested, directly or indirectly, in any grazing permit held
or applied for by any other person, firm, or corporation on this or any other
grazing district? If so, give name of permittee and nature and extent of your
interest. No

3. Are you the owner, lessee, entryman, bona fide occupant or settler
(Cross out words not needed) upon any ranch property? owner Describe such
property by legal subdivisions of the public lands surveys.

See attached plat

(Plot holdings on accompanying diagram.)

How many acres of this are now under cultivation? 100

How many acres are grazing land? 540

Where located? See plat
(Give section, township and range.)

How much of the above ranch land is used in connection with the stock to be
grazed? I use all of it.

4. How many tons of hay are produced on the above-described lands during
an average year? 125 Other forage crops? _____ tons. Kind

How many tons of grain? 15 tons wheat

5. Where do you reside? On the lands I own
(Give city, town, or location of ranch.)

6. Do you own or control any source of water supply needed or used for
livestock purposes? Yes Describe it See plats

Where located _____
(Section, township, range.)

7. Do you hold a permit to graze stock on a national forest? 208 Yes
If so, how many? 208 cattle; _____ horses; _____ sheep; _____ goats,
Name of National Forest and location of your range therein _____

Weiser National Forest

Period of use _____

8. Have you previously used the lands covered by this application for grazing permit? yes If so, how many years and what is the usual period of use each year? For past 40 years

How many stock have you grazed thereon during the average year? 250

9. How many head of livestock do you own? 250 cattle; 10 horses; sheep; goats. Does any other person own an interest in the stock to be grazed under the permit herein requested? no If so, give name, nature and extent of interest:

10. How many range stock do you usually run under normal weather and economic conditions? 250 cattle and ten horses

11. How many milch cows do you keep? 9 How many work horses? 10

12. If running cattle, do you operate on a cow and calf, steer, or mixed basis? mixed basis

13. Do you feed your stock in winter? Yes
If so, where? On my ranch principally

How long? 4 months

How many tons of hay or forage per head is fed? 1 1/2 tons per head of cattle

14. If you do not winter feed, where do you winter your stock?

(If public land or national forest, give location; if private land, give section, township and range.)

15. State your usual method of handling stock the year round?.....

I feed during winter- Gaze on open range, and use the
Reserv during summer season from June to Nov. each year

16. If stock are trailed from one range to another in your system of
operation, describe routes used. Not trailed

I certify that all of the foregoing answers and statements are true and
correct to the best of my knowledge and belief.

Charles R. Edwards
(Signature of applicant)

July 27th 1935
(Date)

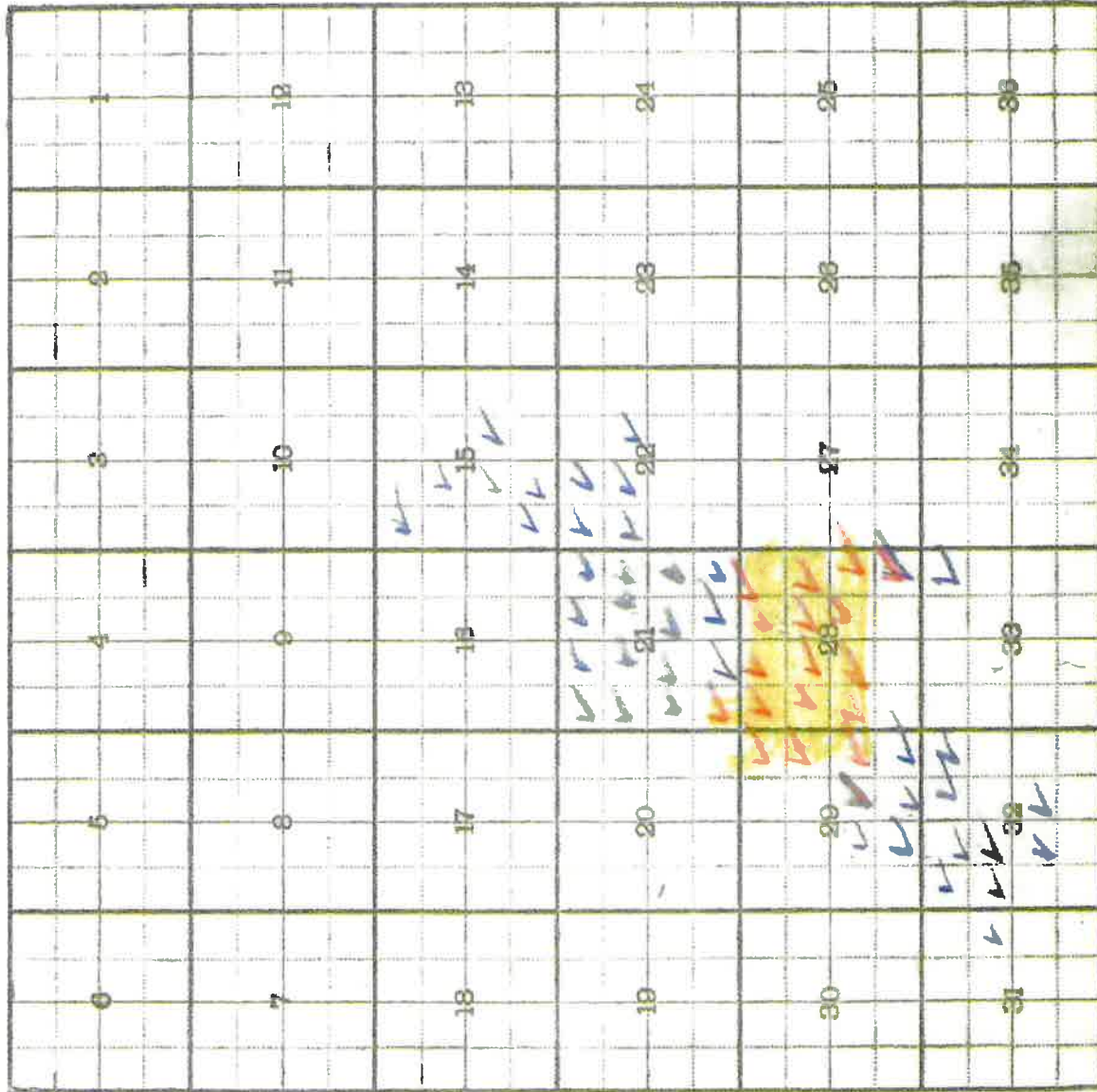
NOTE: Animals which are under six months old at the time of entry and
which are the natural increase of stock to be grazed under the permit applied
for will not be counted and therefore should not be included in this application.

SCALE: ONE INCH TO MILE

TOWNSHIP

RANGE

19th 34 12th



✓ lands of owner -
✓ land I wish to give -

Charles R.
Swanson, Son

INSTRUMENT NO 52081

Filed Sept. 26, 1928, No. 616-Reg No 2, Page 240, P A Markson, Clerk

IN THE PROBATE COURT OF WASHINGTON COUNTY, IDAHO

Recorded in Book of Minutes 12, Page 14, 10-23-28, Clara Board, (Asst. Clerk)

IN THE MATTER OF THE ESTATE }
OF DAVID G EDWARDS, Deceased }

DECREE OF DISTRIBUTION

The petition of E E Edwards, Executor, heretofore filed herein, praying for the distribution of the estate of the said David G Edwards, deceased, among the persons entitled thereto, coming on regularly this day for hearing, and, it appearing that notice of such hearing being given as required by law, and that all claims against said estate are fully paid, including the special bequests under the said will, and that the final account of said Administrator has been duly made and has been confirmed by this Court, and that all taxes due from said estate have been paid, and that due notice has been given of this hearing, and that the said David G Edwards' only devisees are Edward E Edwards of Cambridge, Idaho, a son; Charles R Edwards, of Cambridge, Idaho, a son, May Poynor, of Cambridge, Idaho, a daughter; Jessie Powers, of Rupert, Idaho, a daughter; and that the bequests to the said May Poynor and Jessie Powers being paid,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the residue of said estate be distributed under the terms of the said will, as follows:

To Charles R Edwards: The Northeast Quarter of the Southeast Quarter of Section Twenty-nine, North Half of the Southwest Quarter, Southwest Quarter of the Northwest Quarter of Section Twenty-eight, Township Fifteen North, Range Three West of Boise Meridian containing 160 acres; Lot seven of Block Forty of Moses H Hopper's Division of the Village of Cambridge, Idaho. Lots Nine, Ten and Eleven of Block Thirty-two of Moses H Hopper's Division of Cambridge, Idaho; All of the livestock belonging to the said deceased at the time of his death.

To Edward E Edwards: Lots Seven and Eight of Block Thirty-two of Moses H Hopper's Division of Cambridge, Idaho. Lots Thirty-four and Thirty-five of Block Ten of Lambertson's Addition to Boise, Idaho, in Ada County. Also all of the remainder of said estate.

Seal Done in open Court this 26th day of September, 1928.

{ Probate Court
Washington Co, Idaho }

P A Markson
Probate Judge

CERTIFICATE

IN THE PROBATE COURT OF THE COUNTY OF WASHINGTON, STATE OF IDAHO

State of Idaho }
County of Washington } ss

I, P A Markson, Judge and ex-officio clerk of the Probate Court of the County of Washington, State of Idaho, do hereby certify that the attached copy of Decree of Distribution in the matter of The Estate of David G Edwards, has been by me compared with the original, and that it is a true and correct copy therefrom as the same appears on file or recorded in Book 12, Page 14, in my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Probate Court this 30th day of September, 1930.

P A Markson
Probate Judge and Ex-officio Clerk

Seal
{ Probate Court, Washington Co }
Idaho

Filed for record at the request of R E Wilson & Son at 9:00 o'clock A M October 2, 1930.

Fee \$1.00

Frank E Smith, Recorder