

DRAFT MEMO

TO: Water Right Files

FROM: James Cefalo

DATE: October 22, 2019

RE: Split of Water Right 13-53

In 1996, Wanda Jensen filed Application for Transfer 4980 proposing to split water right 13-53 and update the ownership records for a portion of the right. The Department approved the transfer in July 1997 and split water right 13-53 into 13-53A (remaining portion) and 13-53B (Jensen).

On April 5, 2018, G & G Franklin Properties LLC filed a Notice of Change in Water Right Ownership proposing to split water right 13-53A and update the ownership records for a portion of the right. On May 23, 2019, Chatterton Land & Livestock LLC and the Orval and Vaunda Rallison Family Trust filed Notices of Change in Water Right Ownership proposing to update the ownership records for their portions of water right 13-53A.

This memo is meant to summarize the original decree for water right 13-53, identify the critical deeds for determining the ownership of the water right, and describe how the water right was split between the current property owners.

Water right 13-53 was described in the 1905 Decree *Flack v. Franklin Maple Creek Pioneer Irrigation Company*. The hearing for the decree was conducted in November 1903, but the final decree was not issued until October 1905. The 1905 decree described water right 13-53 as follows:

Priority Date: 1883 (beginning of irrigation season = 4/1/1883)

Diversion Rate: 11.40 cfs

Point of Diversion: Not defined

Owners: Joseph Chatterton
E.M. (Elizabeth) Chatterton
James G. Lowe
W.B. Gibson

Place of Use: 440 acres

80 acres S1/2 of the SW1/4, Section 13, T16S, R40E (Joseph Chatterton)

80 acres W1/2 of the SE1/4, Section 14, T16S, R40E (Elizabeth Chatterton)

40 acres SWNE, Section 14, T16S, R40E (James G. Lowe)

240 acres Parts of Sections 11, 12, 13 and 14, T16S, R40E (W.B. Gibson)

Condition: Water right "to be equally divided among them, share and share alike"

The lands owned by Joseph Chatterton, Elizabeth Chatterton and James Lowe, to which water right 13-53 was appurtenant, are clearly identified in the decree. The lands owned by

W.B. Gibson are not clearly defined. The attached map shows the acres originally covered by water right 13-53. The Gibson portion is approximated based on topography and the documents currently available to the Department.

The 1905 decree states that the four water users (J Chatterton, E Chatterton, Lowe and Gibson) would divide the water of Deep Canyon Creek equally, share and share alike. Therefore, at the time of decree, the water users were entitled to water as follows:

Water User	Share	Percentage
J Chatterton	1/4	25%
E Chatterton	1/4	25%
Lowe	1/4	25%
Gibson	1/4	25%
Total	1	100%

Each portion of the original water right will be analyzed separately.

Joseph Chatterton

The record includes a May 24, 1909 Indenture from Joseph and Elizabeth Chatterton conveying the western-most 31 acres of the SWSW of Section 13, T16S, R40E to Lester Chatterton. The Indenture did not withhold or reserve any water rights. The record also includes a May 24, 1909 Indenture from Joseph and Elizabeth Chatterton conveying the SESW and the eastern-most 9 acres of the SWSW of Section 13, T16S, R40E to Aaron Chatterton. The Indenture did not withhold or reserve any water rights.

After the May 24, 1909 conveyances, the J Chatterton share of water right 13-53 was divided as follows:

Water User	Share	Percentage
Lester Chatterton	$31/80 \times 1/4 = 31/320$	9.7%
Aaron Chatterton	$49/80 \times 1/4 = 49/320$	15.3%
Total	80/320 (1/4)	25%

Currently, Chatterton Land & Livestock owns the property once owned by Lester Chatterton. The deeds linking Lester Chatterton and Chatterton Land & Livestock do not reserve or withhold water rights from the conveyances. Therefore, Chatterton Land & Livestock owns the Lester Chatterton portion of water right 13-53.

Currently, G & G Franklin Properties owns the property once owned by Aaron Chatterton. The deeds linking Aaron Chatterton to G & G Franklin Properties do not reserve or withhold water rights from the conveyances. Therefore, G & G Franklin Properties owns the Aaron Chatterton portion of water right 13-53.

Based on current property ownership, and consistent with the deeds available to the Department at this time, the Joseph Chatterton portion of water right 13-53 should be divided as follows:

Water User	Share	Percentage
Chatterton L & L	$31/80 \times 1/4 = 31/320$	9.7%
G & G Franklin Prop	$49/80 \times 1/4 = 49/320$	15.3%
Total	80/320 (1/4)	25%

Elizabeth Chatterton

Chatterton Land & Livestock owns all of the S1/2 of the SE1/4 of Section 14, the land described in the 1905 Decree under the name Elizabeth Chatterton. The deeds linking Elizabeth Chatterton to Chatterton Land & Livestock do not reserve or withhold water rights from the conveyances. Therefore, Chatterton Land & Livestock owns the entire portion of the Elizabeth Chatterton portion of water right 13-53 (1/4 share, 25%).

James Lowe

Lowe's portion of water right 13-53 was only appurtenant to 40 acres (SWNE of Section 14). The record includes an October 29, 1904 Indenture from James and Eliza Lowe conveying 23.5 acres of the SWNE of Section 14 to Levi Oliverson. This conveyance occurred between the date when the hearing was held in *Flack v. Franklin Maple Creek Pioneer Irrigation Company* (1903) and the date when the final decree was issued (1905). The decree was based on information provided to the court in 1903 and was meant to reflect how water rights existed in 1903. Therefore, water right 13-53 will be considered appurtenant to the SWNE of Section 14 prior to the conveyance from Lowe to Oliverson. The Indenture from Lowe to Oliverson did not withhold or reserve any water rights.

After the October 29, 1904 conveyance, the Lowe portion of water right 13-53 was divided as follows:

Water User	Share	Percentage
Levi Oliverson	$23.5/40 \times 1/4 = 23.5/160$	14.7%
James Lowe	$16.5/40 \times 1/4 = 16.5/160$	10.3%
Total	40/160 (1/4)	25%

James Lowe had two wives, Eliza D. Lowe and Elizabeth K. Lowe. James Lowe died sometime prior to 1917. In May 1919, the Franklin County Probate Court issued an Amended Decree of Distribution, stating that Eliza D. Lowe was the owner of the 16.5 acres in the SWNE of Section 14. On December 1, 1933, the Franklin County Sheriff executed a Sheriff's Deed confirming the conveyance of the 16.5-acre parcel in the SWNE of Section 14, along with other property, to Union Central Life Insurance Company ("Union Central"). The 1933 Sheriff's Deed to Union Central included "a full water right from Deep Canyon Creek for Sixteen (16) acres of land" In 1946, Union Central conveyed the 16.5-acre parcel, along with other property, to Cyril Lowe. The deed only included a general appurtenance reference to water rights.

On August 26, 1939, the Estate of Elizabeth K. Lowe (widow of James Lowe) conveyed certain lands (which did not include the 16.5-acre portion of the SWNE of Section 14) to Oussie Lowe. Cyril Lowe was the administrator for the Estate of Elizabeth K. Lowe. The 1939 Deed of Administration specifically included "One-fourth interest of the water of Deep Canyon Creek."

There is no documentary evidence confirming a conveyance of Deep Creek water rights from Eliza Lowe or Union Central (who owned the 16.5-acre parcel in 1939) to Elizabeth Lowe. The reference to Deep Canyon Creek water in the 1939 Deed of Administration only has value if there is evidence that Eliza Lowe or Central Union conveyed the water right (separate from the 16.5-acres property) to Elizabeth Lowe prior to August 1939. At this point, the Department does not have any evidence of such a conveyance.

On August 27, 1958, Cyril and Fern Lowe conveyed the 16.5-acre portion of the SWNE of Section 14 to Dale and Dorothy Caldwell. The warranty deed did not reserve or withhold any water rights.

According to the January 26, 2010 Trust Agreement creating the Rallison Family Trust (Instrument #249322) the trust owned the entire 16.5-acre parcel in the SWNE of Section 14 and all of the 23.5-acre parcel once owned by Levi Oliverson. On August 18, 2015, the Rallison Family Trust conveyed a 5.3-acre parcel in the southeast corner of the SWNE of Section 14 to Dwight A. Lowe. The warranty deed (Instrument #265308) did not reserve or withhold any water rights.

At this point, the documents do not support the conveyance of Deep Creek rights to Oussie Lowe. There is no evidence that Elizabeth Lowe acquired any part of water right 13-53 prior to her death. Water right 13-53 was not appurtenant to any of the land included in the conveyance from the Estate of Elizabeth Lowe to Oussie Lowe. Without evidence to the contrary, James Lowe's portion of water right 13-53 has always been appurtenant to the SWNE of Section 14. Based on the current property ownership of the SWNE of Section 14, the James Lowe portion of water right 13-53 would be divided as follows:

Water User	Share	Percentage
Rallison Trust	$34.7/40 \times 1/4 = 34.7/160$	21.7%
Dwight Lowe	$5.3/40 \times 1/4 = 5.3/160$	3.3%
Total	40/160 (1/4)	25%

Dwight Lowe has not yet filed an ownership change. At this point, the Rallison Trust will be identified as the current owner of the James Lowe portion of water right 13-53. If Dwight Lowe or his successors in interest file a notice of ownership change in the future, the Rallison Trust water right will be split accordingly.

WB Gibson

Gibson's portion of water right 13-53 was appurtenant to 240 acres in Sections 11, 12, 13 and 14. This part of the 1905 Decree was the most ambiguous. The Department has a copy of an 1883 Homestead Record for William W. Gibson (William M. Gibson?) for 160 acres (SESE

of Sec. 11, SWSW of Sec. 12, NENE of Sec. 14 and NWNW of Sec. 13, T16S, R40E). The Department also has a copy of a 1917 Bargain and Sale Deed from William M. Gibson and his wife Phebe Gibson to twelve individuals (presumably children and their spouses). The Bargain and Sale Deed describes the same 160 acres listed in the Homestead Record, but also includes the SENE of Sec. 14 T16S, R40E. In total, the 1917 document covers 200 acres.

The Department has copies of various deeds confirming that Wanda Jensen owns a 27.7 acre portion of the SENE of Section 14. None of Jensen's line of deeds withhold or reserve any water rights. In 1996, Wanda Jensen filed Application for Transfer 4980 proposing to split water right 13-53 and update some of the elements on the split portion of the right. Jensen proposed to irrigate only 23 acres with her portion of the right, even though she owns a 27.7-acre portion of the SENE of Section 14. The Jensen portion of water right 13-53 is dependent on how many acres were irrigable by Gibson in 1905. If it was less than 240 acres, then Jensen may be entitled to a larger share of the water right.

G & G Franklin Properties LLC did not provide the documents required to establish the correct number of acres for the Gibson portion of water right 13-53. At this point, there is not sufficient evidence that Gibson owned 240 acres that could have been irrigated by Deep Canyon Creek in 1905.

Water Right Conditions

The 1905 Decree is unique because it assigns the four water users (J Chatterton, E Chatterton, Lowe and Gibson) an equal share of the creek, regardless of the flow. The decree did not attempt to define individual flow rates for the water users. In the Snake River Basin Adjudication, the Department was confronted with similar decrees in a few of the basins. The following condition was adopted for Birch Creek water rights (Basin 29):

The amount of water diverted under this water right may not exceed 5/24 of the stream flow of Birch Creek at the point of diversion described below at any given time. This water right shall not provide more than .02 cubic feet per second per acre at any time.

As water rights on Birch Creek have been split, the Department has entered percentages into the conditions rather than fractions. A similar condition should be incorporated when splitting water right 13-53. Transfer approval 4980 (for Wanda Jensen) did not include such a condition. Jensen's portion of the water right (13-53B) should be amended to describe Jensen's share of the total flow of the creek.

The attached table shows the ownership split information in two ways. First, it displays the current owners of each of the four original divisions of water right 13-53. Second, it displays the total amount of water owned by each of the current owners of the water right.

Current Ownership of the Original Water Right Parts

Joseph Chatterton (1/4)

Current Owner	Acres	Share	Percentage	Share of Total
Chatterton Land & Livestock	31.0	31/320	9.7%	93/960
G & G Franklin Properties	49.0	49/320	15.3%	147/960
Totals	80.0	1/4	25.0%	

Elizabeth Chatterton (1/4)

Current Owner	Acres	Share	Percentage	
Chatterton Land & Livestock	80.0	1/4	25.0%	240/960
Totals	80.0	1/4	25.0%	

James Lowe (1/4)

Current Owner	Acres	Share	Percentage	
Rallison Family Trust / Lowe	40.0	1/4	25.0%	240/960
Totals	40.0	1/4	25.0%	

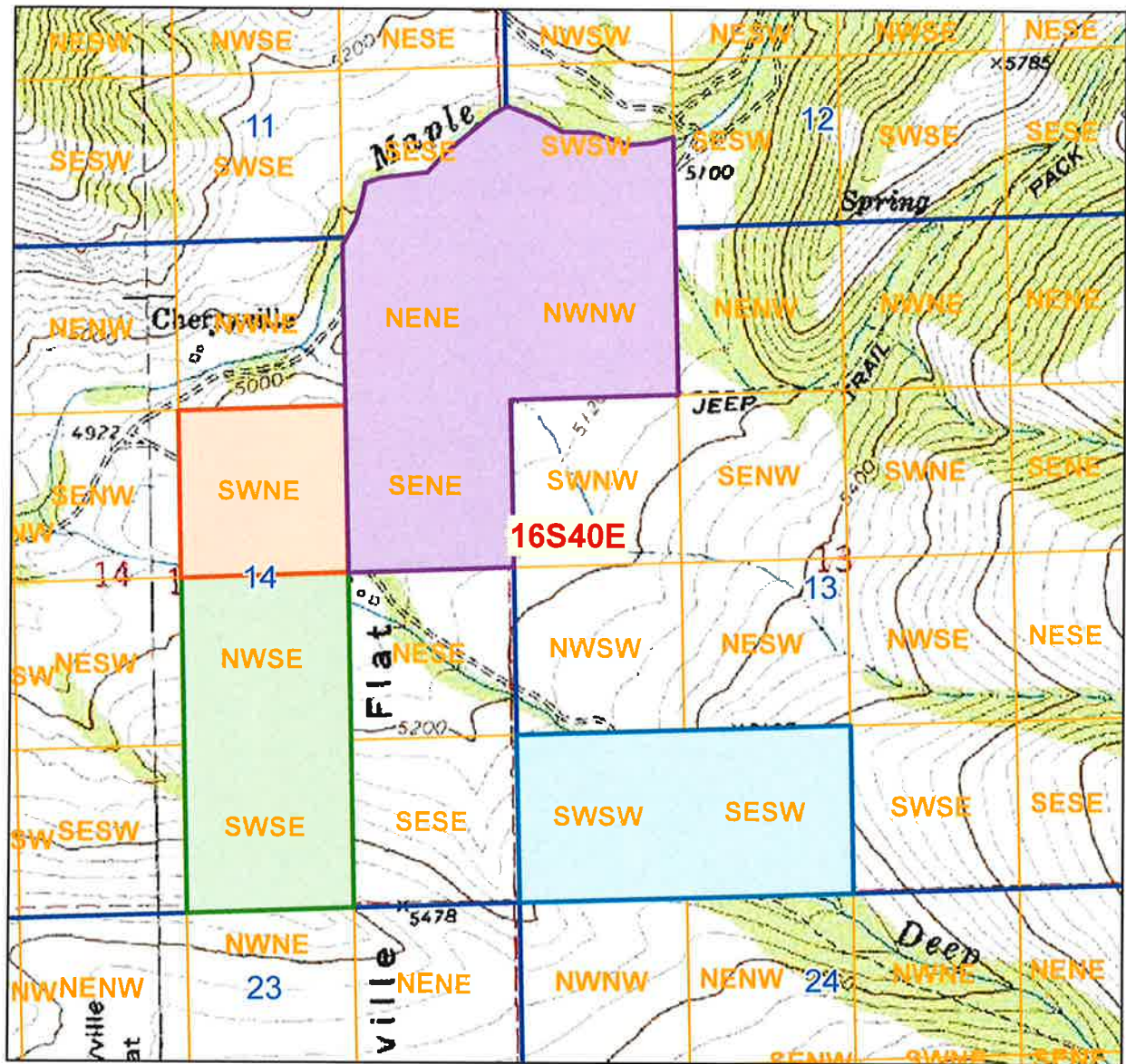
WB Gibson (1/4)

Current Owner	Acres	Share	Percentage	
Wanda Jensen	27.7	27.7/960	2.9%	27.7/960
G & G Franklin Properties	212.3	212.3/960	22.1%	212.3/960
Totals	240.0	1/4	25.0%	

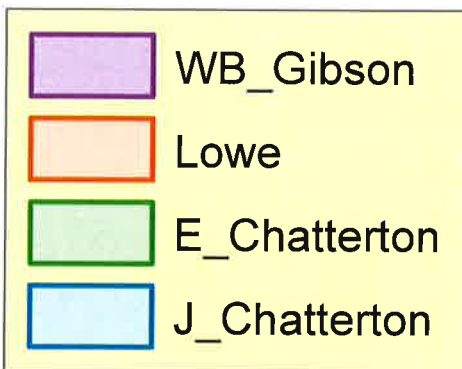
Total Amounts

Current Owner	Acres	Share	Percentage	Days	Rate (cfs)
Chatterton Land & Livestock	111.0	333/960	34.7%	2.8	3.95
G & G Franklin Properties	261.3	359.3/960	37.4%	3.0	4.27
Rallison Family Trust/Lowe	40.0	240/960	25.0%	2.0	2.85
Wanda Jensen	27.7	27.7/960	2.9%	0.2	0.33
	440.0	960/960	100.0%	8.0	11.40

Water Right 13-53



2013 Aerial Photo



0 1,250 2,500 Feet

