

MEMORANDUM

TO: George & Gwen Montgomery Transfer (45-00294) File

FROM: Corey Skinner *CS*

DATE: June 2, 1997

SUBJECT: Staff Review

The enclosed transfer, filed by George & Gwen Montgomery, seeks to change the recorded place of use of a portion of water right decree 45-00294B for water out of Lake Cleveland. In addition, recording redirection points for this water is also proposed. This proposed change will also result in a split of the original water right, 45-00294B.

The greatest obstacle for this particular transfer to overcome relates to the ownership of the water right(s) out of Lake Cleveland. The original decree for the water out of Lake Cleveland was for two separate portions for separate ground for a total amount of 4.8 cfs for approximately eight 40 acre tracts and/or government lots (see attached map). Four parties, including the Montgomery s, have filed SRBA claims based on this original decree. A summary of these claims is included below:

CLAIM NUMBER	CLAIMANT	AMOUNT OF WATER	ACRES IRRIGATED
A45-00294A	Kent Cooper	1.60 cfs	120 acres
A45-00294C	A.W. & S.J. Anderson	3.30 cfs	240 acres
A45-00294D	George Montgomery	1.60 cfs	100 acres
A45-00294E	Kyle & Rozalys De Naughel	1.60 cfs	72 acres
TOTAL		8.10 cfs	532 acres

The total amount of water claimed under these four adjudication claims amounts to 8.1 cfs for 532 acres. I have included a map showing the locations of the acres claimed under these four adjudication claims. Note that more water and irrigated acres from Lake Cleveland has been claimed than was originally decreed. In addition, A.W. & S.J. Anderson have filed an additional transfer application, that should be processed at the same time as the Montgomery's application, for a 3.3 cfs portion of the decreed Lake Cleveland water. Note that the Montgomery's and Anderson's transfers total more water than the original total amount decreed.

T #5089

I have researched the documents provided by the Montgomerys and the Andersons that they included with their respective transfer applications. In addition, I have researched records at the Cassia County Courthouse and the Land Title and Escrow office in Burley. I have carefully examined these documents and records and find that there is still not enough information to determine the historical ownership trail of the decreed water from Lake Cleveland.

I have included a summary of the known documented transactions involving water from Lake Cleveland. To the best of my knowledge, this summary represents the recorded transactions that have occurred involving the Lake Cleveland water since it was decreed in 1892. However, I suspect that additional transactions may have occurred that may help clarify the ownership record. Most of the documents that this summary is based on do not specify where the water came from or went to in the transactions.

From what I have gathered, it appears that by 1932 all of the Lake Cleveland water decreed to George Giles (45-00294A totaling 1.6 cfs) had been sold. However, where this water was moved to is not clear. In addition in 1942, T. Bailey Lee, a District Judge, decreed the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12 (T12S, R24E) along with 1.5 cfs of the 45-00294B portion of the Lake Cleveland water to the Federal Farm Mortgage Corporation. Examination of ownership documents after this 1942 decree indicate that this water stayed with this property and is still appurtenant to the property, which is now owned by Kyle and Rozalys De Naughel.

Using this information, it appears that 1.5 cfs of 45-00294B is pinned down to the De Naughel property and that all of 45-00294A has been sold off of the original decreed place of use. This would leave 1.6 cfs of 45-00294A and a 1.7 cfs portion of 45-00294B of the originally decreed total amount of 4.8 cfs of Lake Cleveland water that is unaccounted for. These remaining portions (totaling 3.3 cfs) is what the Andersons claim to own. The Montgomery's claim to own 1.6 cfs of the 45-00294B portion.

Since the department is proceeding with the processing of the transfer applications filed by the Andersons and Montgomerys, the actual ownership of the Lake Cleveland water needs to be determined. These proposed transfers can, and will, have an effect on all the Snake River Basin Adjudication Claims filed on the water out of Lake Cleveland. I have sent letters to all the parties who have SRBA claims filed based on the decreed water out of Lake Cleveland. In addition, I have personally spoken with A.W. Anderson and George & Gwen Montgomery regarding clarifying the ownership situation.

I have not performed any thorough field review of the current lands involved with the proposed transfer(s) and SRBA claims based on the Lake Cleveland rights. However, I have driven by the lands and they appeared to be irrigated. The database indicates that all the lands appear to have water out of Marsh Creek as an irrigation source. Apparently, the water out of Lake Cleveland is turned out later in the summer when the Marsh Creek rights are no longer available. For this reason, there appears to be no obvious large stacking of water rights on the involved lands.

Despite the fact that the ownership issues still need to be answered, I found no reason to delay the processing of the transfers involving the Lake Cleveland water. Perhaps, advertising the applications and allowing the protest period to occur, will hopefully reveal information that will help to clarify the ownership and other issues involved with the Lake Cleveland water rights.

SUMMARY OF KNOWN TRANSACTIONS INVOLVING LAKE CLEVELAND WATER

1890

1892
1.6 cfs decreed to
George Giles

1892
3.2 cfs decreed to
John Parke Estate
(Andrew Parke administrator)

1892 Order
1.0 cfs
from Andrew Parke
to Ira Parke

"About 1893"
1934 affidavit from
Andrew Parke stating that
he sold 1/3 of waters of
Lake Cleveland to Ira Parke
used on current Montgomery property

1900

1904 Quitclaim
0.80 cfs
from Mary Guiles to
S.D. Parke & Bros.

1930

1932 Quitclaim
0.80 cfs
from Mary Guiles to L.B. Parke

1940

1942 Decree
1.5 cfs
to Federal Farm Mortgage Corporation
later documents appear to track
to De Naughel

1945 Quitclaim
0.80 cfs
from Sterling and Ferl Adams
to Ira and Anna May Parke

1947 Quitclaim
0.80 cfs
from L.B. Parke to Ira Parke

Present

A45-00294A for 1.6 cfs (Cooper)

A45-00294C for 3.3 cfs (Anderson)

A45-00294D for 1.6 cfs (Montgomery)

A45-00294E for 1.6 cfs (De Naughel)

prepared 05/29/97
by C. Skinner

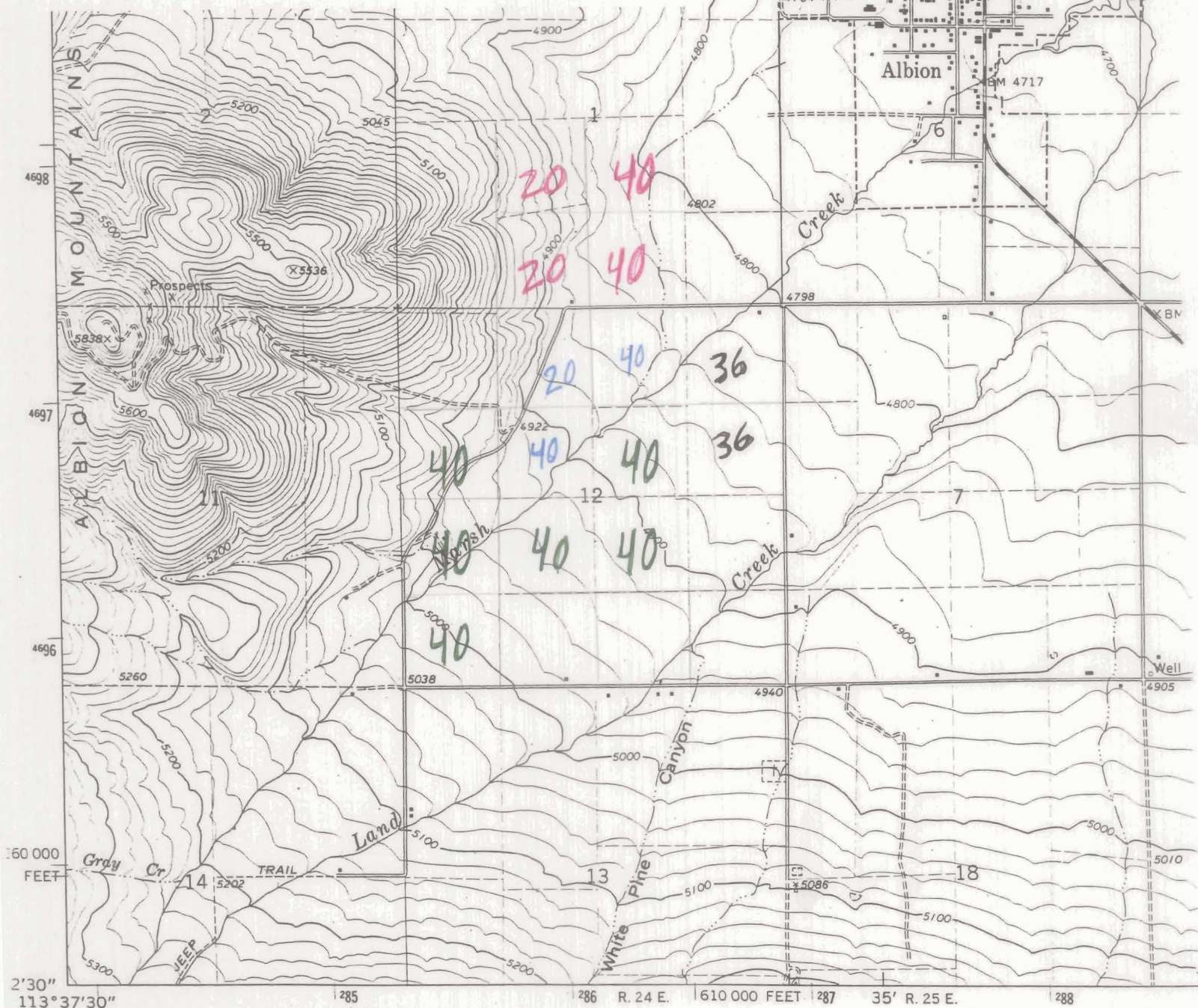
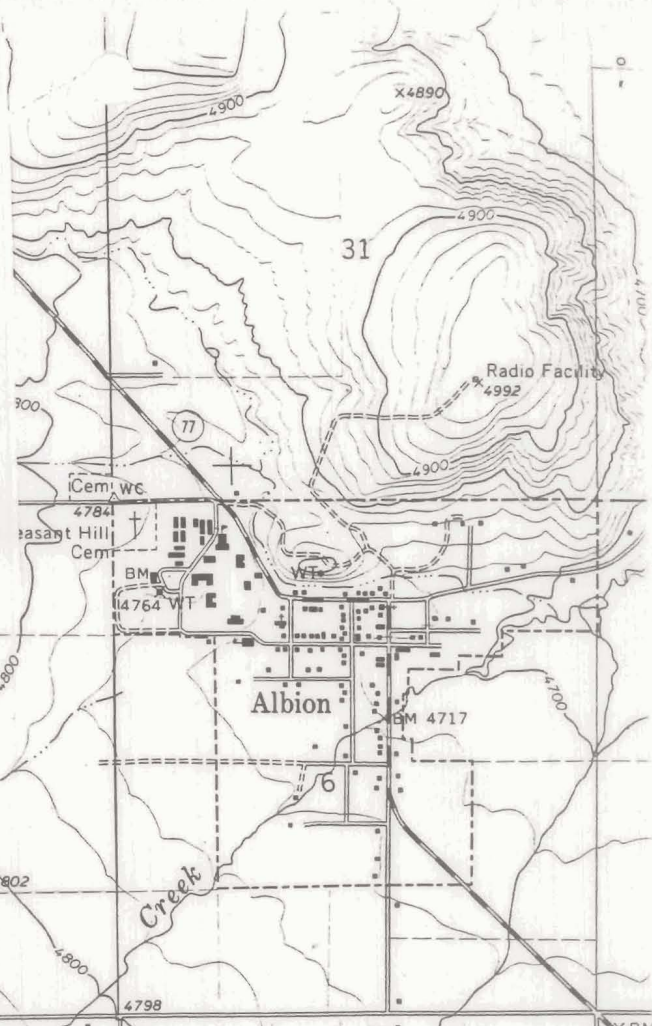
T#5089

A45-00294 A (COOPER) 1.6 cfs 

A45-00294 C (ANDERSON) 3.3 cfs 

A45-00294 D (MONTGOMERY) 1.6 cfs 

A45-00294 E (DE NAUGHEL) 1.6 cfs 



Control by USGS and USC&GS

Topography by photogrammetric methods from aerial



MONTGOMERY

OVERLAP

ANALYSIS

04/10/97

C. SKINNER

12S 24E 12

NW
NE

* 45-00312A Marsh Creek

* 45-07090 groundwater

45-00312A

45-007090

NEW

~~45-07729~~ metts application (3 acres) monitorium hold diffrent pov

* 45-07090 groundwater

~~45-07728~~ Metts permit (stock) diffrent pov

SE NW

* 45-00312A Marsh Creek

* 45-07090 groundwater

12S 24E 12

NW NE

* A45-10912 springs

* A45-00312A Marsh Creek

* A45-07090 groundwater

A45-00294 D Lake Cleveland

A45-00312A Wetzstein (out)

A45-10915 Domestic

A45-10915 Domestic

A45-10912

A45-07090

A45-00312A

NEW

* A45-10912 springs

* A45-00312A Marsh Creek

A45-10475 Holmes Domestic

A45-00294 D Lake Cleveland

* A45-07090 groundwater

SE NW

* A45-10912 springs

A45-10913 Montgomery Domestic & stock

* A45-07090 groundwater

* A45-00312A Marsh Creek

A45-00294 D Lake Cleveland

#142824 COMPARED

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

R9 JDC

Case No. 4181

138

Federal Farm Mortgage Corporation,
a corporation.

Plaintiff,

-vs-

Idaho Parke, a widow, individually, as
heir at law of Stephen D. Parke,
deceased, and devisee of Oren H.
Melcher, deceased; Robert Stephen Parke,
Audrey Ethel Parke Peacock, Ronald
Douglas Parke, and Howard Cryder Parke,
individually, as heirs at law of Stephen
D. Parke, deceased, heirs at law of Eliza
Melcher, deceased, heirs at law of Andrew
H. Parke, deceased, and devisees of Oren
H. Melcher, deceased; the unknown heirs at
law, unknown devisees and unknown grantees
of John Parke, deceased; Ethel Baylor and
John Parke, heirs at law of Eliza Melcher,
deceased, and heirs at law of Andrew H. Parke,
deceased; Ross Worthington, Wendell Worthing-
ton, Jessica Worthington and Marguerite
Worthington, heirs at law of Eliza Melcher,
deceased, heirs at law of Andrew H. Parke,
deceased, and heirs at law of Dora Worthing-
ton, deceased; the unknown heirs at law,
unknown devisees and unknown grantees of
Dora Worthington, deceased; the unknown heirs
at law, unknown devisees and unknown grantees
of Andrew H. Parke, deceased; State of Idaho;
and the unknown owners and unknown claimants
of the following described real estate in
Cassia County, Idaho, to-wit: East half of
Northeast quarter (E1/4) of Sec. 12, Twp. 12,
S.R. 24 E.B.M.; 75 inches of water of Lake
Cleveland with date of priority of March 31,
1888; 80 inches of the water of Marsh Creek
with date of priority of August 1, 1881, and
all other water, water rights and water privi-
leges together with all and singular the ten-
ements, hereditaments and appurtenances there-
unto belonging or in anywise appertaining.
Defendants.

JUDGMENT

This cause came regularly on for hearing before the Honorable T. Bailey Lee, one of the judges of the above
entitled court, in chambers at Burley, County of Cassia, State of Idaho, on the ____ day of August, 1942, on the
complaint of the plaintiff filed herein. The plaintiff appeared by S. T. Lowe and Kales E. Lowe, its attorneys,
and the defendants, and each and all of them, having failed to appear either in person or by an Attorney, and it
appearing to the satisfaction of the court that due and legal personal service of summons within the State of
Idaho had been had upon the defendants, Ida Parke, a widow, individually, as heir at law of Stephen D. Parke,
deceased, and devisee of Oren H. Melcher, deceased; Audrey Ethel Parke Peacock and Howard Cryder Parke, individually,
as heirs at law of Stephen D. Parke, deceased, heirs at law of Eliza Melcher, deceased, heirs at law of Andrew H.
Parke, deceased, and devisees of Oren H. Melcher, deceased; John Parke, and the State of Idaho; that constructive
service of summons had been had on all of the other defendants named in the complaint of the plaintiff by publication
in the Burley Herald, a weekly newspaper published at Burley in the County of Cassia, State of Idaho, for a full

COPY OF 1942 DECREE

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period of four weeks and that 26 days intervened between the first and last publication of said summons; that the first publication thereof was made on the 11th day of June, 1942, and the last publication was made on the 9th day of July, 1942; that the time for appearing and pleading to the complaint of the plaintiff has expired and no appearance, answer or demurrer has been made or filed by the said defendants, or any or either of them, excepting only that answer to the complaint of the plaintiff had been made and filed herein by J. I. Burgess, the duly appointed, qualified and acting guardian ad litem of the defendant, Howard Cryder Parke, individually as heir at law of Stephen D. Parke, deceased, heir at law of Elisa Melcher, deceased, heir at law of Andrew H. Parke, deceased, and devisee of Oren H. Melcher, deceased, a Minor, wherein and whereby the said guardian ad litem did admit all of the allegations of the complaint of the plaintiff herein; and it further appearing to the satisfaction of the court that the plaintiff had filed herein an affidavit in conformity with the requirements of the Soldiers and Sailors Civil Relief Act of 1940, and that an order had been made and entered in the above entitled court and cause directing that judgment be entered against the defaulting defendants, and each and all of them, without requiring the plaintiff to file a bond herein. Thereupon, on motion of Kales E. Lowe, one of the attorneys for the plaintiff, a default of the defendants named in the complaint, and each and all of them excepting Howard Cryder Parke, individually as heir at law of Stephen D. Parke, deceased, heir at law of Andrew H. Parke, deceased, and devisee of Oren H. Melcher, deceased, a Minor, had made and filed herein a stipulation wherein and whereby he did waive the making of Findings of Fact and Conclusions of Law; the court orders that the plaintiff have judgment as appear and answer or demur to the complaint of the plaintiff, was by the court ordered entered.

Thereupon witnesses on behalf of the plaintiff were sworn and examined and documentary evidence introduced and the plaintiff rested; it appearing to the court that all of the allegations of the complaint of the plaintiff were true and had been sustained and supported by the evidence and that Findings of Fact and Conclusions of Law had been waived as a matter of law by the defaulting defendants, and that J. I. Burgess, the duly appointed qualified and acting guardian ad litem of the defendant, Howard Cryder Parke, individually as heir at law of Stephen D. Parke, deceased, heir at law of Elisa Melcher, deceased, heir at law of Andrew H. Parke, deceased, and devisee of Oren H. Melcher, deceased, a Minor, had made and filed herein a stipulation wherein and whereby he did waive the making of Findings of Fact and Conclusions of Law; the court orders that the plaintiff have judgment as prayed for in its complaint, without costs.

NOW, THEREFORE, By virtue of the law and by reason of the premises aforesaid, it is hereby ordered, adjudged and decreed:

1.

That at the time of the institution of this action and at the time it acquired title to the real estate described in the complaint of the plaintiff; and at all times thereafter, the plaintiff, Federal Farm Mortgage Corporation, was, and now is a corporation organized and existing under and by virtue of the laws of the United States of America, having its principal office at Washington, D. C., and as such, is duly authorized to take and hold title to real estate within the State of Idaho.

2.

That at the time of the institution of this action, the plaintiff, Federal Farm Mortgage Corporation, was, ever since has been, and now is the owner of the real estate described in the complaint of the plaintiff and hereinafter described, the water rights appertenant thereto and the improvements thereon, in fee simple, unconditional, free and clear of any and all claims, demands and pretensions of the said defendants, and each and all of them, their and each of their heirs, executors, administrators, successors and assigns, and the unknown owners and unknown claimants of said real estate.

3.

That the defendants, and each and all of them, their, and each of their heirs, executors, administrators, successors, and assigns, have no right, title, claim or interest of, in or to, or lien upon the real estate described in the complaint of the plaintiff and hereinafter described, or any part or parcel thereof, or the water rights appertenant thereto or the improvements thereon; that the said defendants, and each and all of them, their, and each of their heirs, executors, administrators, successors and assigns, and all persons claiming through or under them, or any or either of them, are hereby perpetually and forever enjoined, restrained, barred and estopped from making, asserting or claiming any right, title, claim or interest of, in or to the said real estate or any part or parcel thereof or the water rights appertenant thereto and the improvements thereon. That the real estate described in the complaint of the plaintiff and of which the plaintiff, Federal Farm Mortgage Corporation, is hereby found, adjudged, decreed and declared to be the owner in fee simple, unconditional, free and clear of all incumbrances, is located in the County of Cassia, State of Idaho, and particularly described as follows to-wit:

East half of the Northeast quarter (ENE $\frac{1}{4}$) of Section 12, Township 12, South, Range 24 East, Boise Meridian; 75 inches of the water of Lake Cleveland with date of priority of March 31, 1888; together with a right to use Lake Cleveland as a reservoir for storing the same, decreed to Andrew H. Parke, administrator of the Estate of John Parke, deceased, by that certain decree made and entered in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Cassia, on the 11th day of April, 1892, in that certain action wherein E. L. Wood, et al, were plaintiffs and William Stokes, et al, were defendants together with the right to convey and transport the same thru the channel of Marsh Creek; 80 inches of the waters of Marsh Creek with date of priority of August 1, 1881, as decreed to John Parke in that certain action in the Third Judicial District of the Territory of Idaho, in and for the County of Cassia, on the 1st day of September, 1885, wherein W. R. Vaughn, et al, were plaintiffs and J. E. Harrow, et al, were defendants, and all other water rights, water privileges and water ditches thereto belonging or in anywise appertaining, together with all and singular the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining.

DATED This 28th day of August, 1942.

T. Bailey Lee
District Judge.

Filed for record at the request of Office at 9:10 A. M. Aug. 29, 1942.

Fee. 1

Ivin Haggan, County Recorder.

COPY OF 1942 DECREE
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Demargh/property
dated 1942
75"
1.50cfe

