

MEMORANDUM

TO: A.W. & S.J. Anderson Transfer (45-00294) File

FROM: Corey Skinner *CS*

DATE: June 2, 1997

SUBJECT: Staff Review

The enclosed transfer, filed by A.W. & S.J. Anderson, seeks to change the recorded place of use of all of water right decree A45-00294A and a portion of water right decree 45-00294B for water out of Lake Cleveland. In addition, recording redirection points for these water rights is also proposed. These proposed changes will also result in a split of 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 Andersons, 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, George & Gwen Montgomery have filed an additional transfer application, that should be processed at the same time as the Anderson's application, for a 1.6 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.

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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.

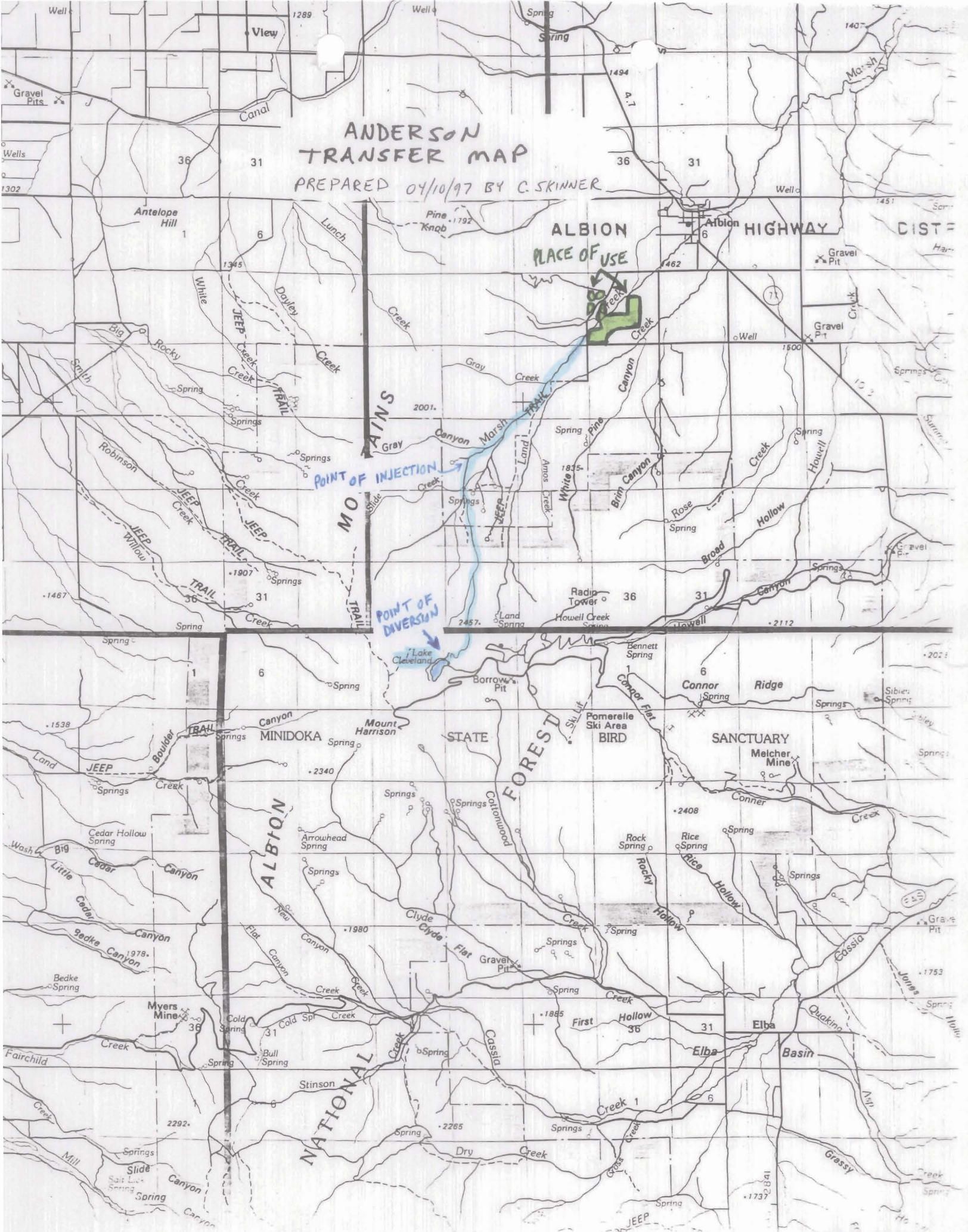
Using this information, it appears that 1.5 cfs of 45-00294B is pinned down to the De Naughel property and that all of 45-00294A has been sold off of the original decreed place of use. This would leave 1.6 cfs of 45-00294A and a 1.7 cfs portion of 45-00294B of the originally decreed total amount of 4.8 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.

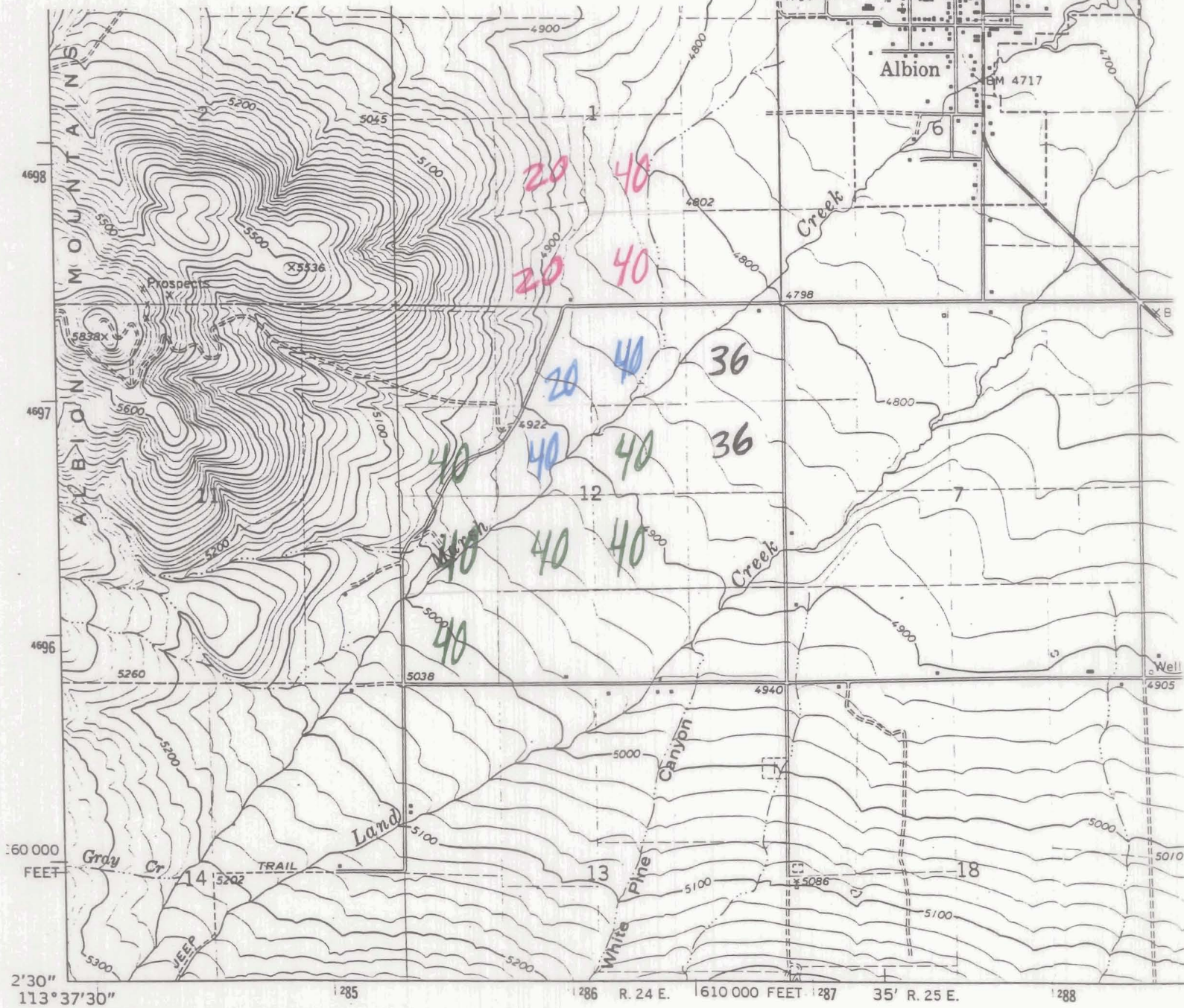
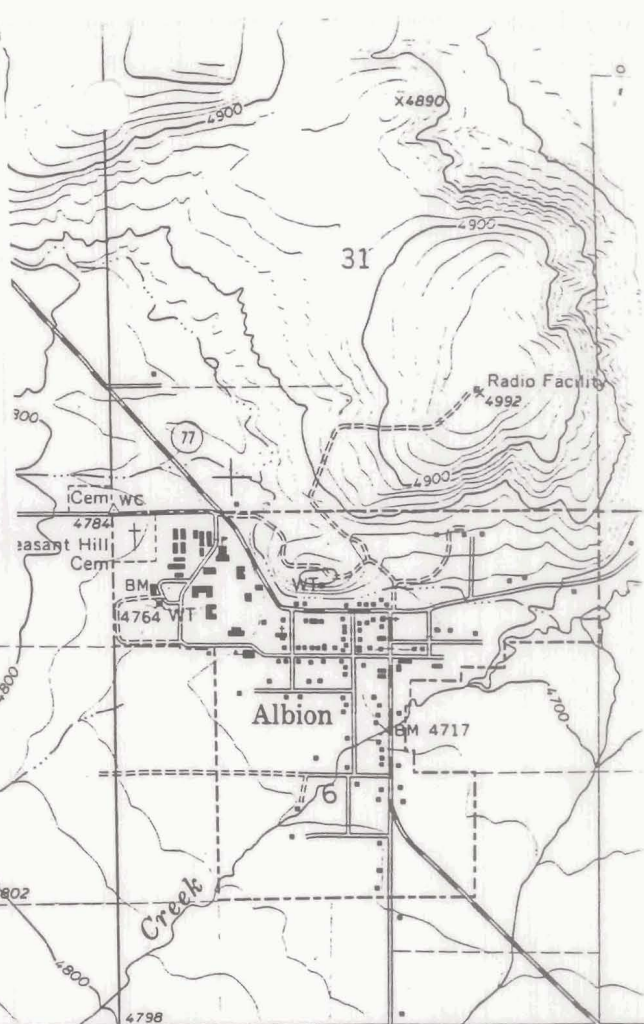
PREPARED 04/10/97 BY C. SKINNER



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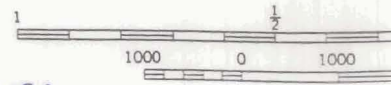
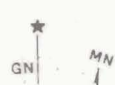
MAP SHOWING LOCATIONS AND # OF IRRIGATED ACRES ACCORDING TO CLAIMS FILED IN THE SNAKE RIVER BASIN ADJUDICATION.

A45-00294 A (CUOPER) 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



Mapped, edited, and published by the Geological Survey
 Control by USGS and USC&GS

Topography by photogrammetric methods from aerial photographs taken 1967. Field checked 1968



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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

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

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

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 # 5090

GEORGE GUILLES 80"

Date May 28, 1904
 Quantity 40"
 Means of Transfer Quitclaim Deed
 Person S. D. Parke
 Places of Use _____

Date July 9, 1932
 Quantity 40"
 Means of Transfer Quitclaim Deed
 Places of Use to L. B. Parke

Date _____
 Quantity 40"
 Means of Transfer Estate
 Person Fred Adams
 Places of Use _____

Date November 24, 1947
 Quantity 40"
 Means of Transfer Quitclaim Deed
 Places of Use to Ira Parke

Date October 18, 1945
 Quantity 40"
 Means of Transfer Quitclaim Deed
 Person Ira C. & Anna May Parke
 Places of Use _____

Date July 6, 1988
 Quantity 40"
 Means of Transfer Estate
 Places of Use to

Date July 6, 1988
 Quantity 40"
 Means of Transfer Estate
 Person Fred Parke
 Places of Use _____

ANDERSON OVERLAP ANALYSIS

04/11/97
C. SKINNER

12S 24E
12

SWNE

* 45-00312B marsh creek water

SWNW

* 45-00311 marsh creek water

NESW

* 45-00311 marsh creek water

NWSW

* 45-00311 marsh creek water

SWSW

* 45-00311 marsh creek water

NWSE

* 45-00312B marsh creek water

45-00312B

45-00311

SWNE

* A45-00312B Marsh creek water

A45-00294C Lake Cleveland water

SWNW

* A45-00311 marsh creek water

~~A45-10042~~ Anderson domestic

A45-00294C Lake Cleveland water

NESW

* A45-00311 marsh creek water

A45-00294C Lake Cleveland water

NWSW

~~A45-10042~~ Parke and Bake domestic

~~A45-11129~~ ✓ Thomas Geary stockwater

* ~~A45-00311~~ marsh creek water

A45-00294C Lake Cleveland water

SWSW

* A45-00311 marsh creek water

A45-00294C Lake Cleveland water

NWSE

A45-00294C Lake Cleveland water

* A45-00312B Marsh Creek Water

~~A45-00312B~~

~~A45-00311~~