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73-E

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER.

\_\_\_\_\_  
ROSCOE HAMILTON, et al,  
Plaintiffs  
-vs-  
W. G. SWENDSEN, Commissioner  
of Reclamation, et al,  
Defendant.  
\_\_\_\_\_

D E C R E E

This cause came on regularly for trial before Honorable James H. Anderson, sitting as a Referee, who by consent of all the parties to this action, and by order of the Court, was appointed Referee to try the same, and report his recommendations to the court, and the said Referee sitting without a jury, on the 12th day of August, 1924, at Challis, Challis, Custer County, State of Idaho and the plaintiffs and defendants appearing by their respective attorneys, and the default of the non-answering defendants having been duly entered and the parties hereto, by stipulation, being duly filed with the Court, having agreed upon a decree and the matter having been presented to the Referee for his findings and recommendations thereon and the findings and recommendations of the Referee, and a further stipulation having been entered into under date of November 2, 1925, and filed herein permitting Minnie W. Kerr to file her complaint in intervention and that the decree heretofore reported and recommended by the Referee be amended by adding thereto and including therein the rights said Minnie W. Kerr as claimed in her complaint in intervention, and the same having been fully considered by the court, and the court being fully advised in the premises finds that the decree should be entered in accordance with the stipulation on file herein.

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73 0110 ✓

F. M. Kobbe, from Pahsimeroi River to be diverted through the Reed & Bartlett Ditch .8 cubic feet per second of time to date from March 21, 1905, appurtenant to NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 3, T. 14 N., R. 21 E. B. M.; from Little Spring Creek and Pahsimeroi River to be diverted through the Mulvanie Ditch; from Little Spring Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 7, T. 14 N., R. 22 E. B. M., and from the Pahsimeroi River in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 7, T. 14 N., R. 22 E. B. M.; .8 cubic feet per second of time to date from March 21, 1905, and to be appurtenant to the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 3, T. 14 N., R. 21 E. B. M.

73 0111 ✓

ALBERT J. EDSON, from Big Spring Creek to be diverted through the HardScrable ditch 3.2 cubic feet per second of time to date from July 27, 1900, and to be appurtenant to the SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 8, all in T. 15 N., R. 21 E. B. M.

73 0004 ✓

JULIUS MAELZER from Sulphur Creek .6 cubic feet per second of time to be diverted in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 24, T. 14 N., Range 21 E. B. M., to date from May 1, 1884; also 2.8 cubic feet per second of time to be diverted in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 24, T. 14 N., R. 21 E. B. M., to date from May 1, 1911; all to be appurtenant to the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 13, NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  and the E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 24, all in Township 14, N. R. 21 E. B. M., that the right for .6 cubic feet per second of time with date of priority May 1, 1884, shall be a part of the waters of Sulphur Creek, that was decreed to Holiday H. Cochran, as evidenced by that certain decree entered in an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Custer wherein Holiday H. Cochran was plaintiff and Valentine Maelzer was defendant of date of October 3rd, 1901.

73 0114 ✓

WILLIAM MILLICK from Big Spring Creek 1.6 cubic feet per second of time to be diverted in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 7, T. 14 N., R. 22 E. B. M., to date from June 20, 1908, and to be appurtenant to the NE $\frac{1}{4}$ NE $\frac{1}{4}$  NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 1, all in T. 14, N., R. 21 E. B. M.

73 0115 ✓

ED MULVANIA from Little Spring Creek to be diverted in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 7, T. 14 N. R. 22 E. B. M. 2.8 cubic feet per second of time to date from April 25, 1904, and to be appurtenant to Lot 1, Section 3, Lots 2, 3 and 4, and the S $\frac{1}{2}$ NW $\frac{1}{4}$  Section 2 all in T. 14 N., R. 21 E. B. M.

73 0116 ✓

LEWIS DECOCQ, from Big Spring Creek 1.4 cubic feet per second of time to be diverted in NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 7, T. 14 N., R. 22 E. B. M., through the Mulvanie Ditch to date from November 29, 1907, and to be appurtenant to the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 34, T. 15 N., R. 21 E. B. M.

73 0117 ✓

MINNIE W. KERR, from Spring Creek 2 cubic feet per second of time through what is known as the Hardscrable Ditch with date of priority July 27, 1900, and to be appurtenant to the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 8, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 15 N. R. 21 E. B. M.

73 0118 ✓

MINNIE W. KERR from Spring Creek 4 cubic feet per second of time with date of priority March 24, 1891, to be conveyed through what is known as the Halleran Ditch, and to be appurtenant to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , the S $\frac{1}{2}$ NE $\frac{1}{4}$ , and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 15 N., R. 21 E. B. M.

Dated this 17th day of February, 1926.

Ralph W. Adair

District Judge

STATE OF IDAHO, )  
                  : ss.  
County of Custer,)

This instrument was filed for record at the request of  
Judge Ralph W. Adair at 1 o'clock P. M. Feb. 19, 1926.

Emmett Donahue

Ex-Officio Recorder

By John Boyd

Deputy

(Recorded in book 3 of Judgments at pages 114-122)

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JUL 30 1966



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

May 12, 2003

RECEIVED

MAY 13 2003

SCOTT HAYES  
2610 STARCREST DRIVE  
BOISE ID 83712

Department of Water Resources

**RE: CHANGE IN DISTRIBUTION SYSTEM. WATER RIGHTS NOS. 73-78 AND 73-116.**

Dear Mr. Hayes:

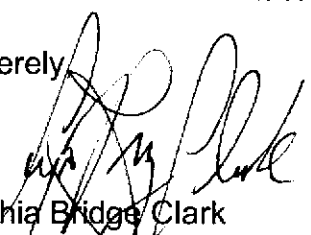
The Idaho Department of Water Resources (department) received your letter dated May 6, 2003 regarding change in the delivery of the water associated with the above referenced water rights.

Section 42-222, *Idaho Code*, requires a right holder to obtain a transfer approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. You indicated in your letter and in our conversations that you do not plan to make any of the above noted changes to your water right, but will be modifying the system through which water is delivered to your property by replacing a portion of an existing ditch with a pipe. Based on the information you provided, it does not appear that a transfer of the rights will be required.

During your visit on May 7, 2003, you were also provided with a pamphlet with copies of various Idaho laws pertaining to water distribution on canals and laterals. It may be a useful reference to Idaho Statutes pertaining to the rights of landowners to water and the right to right-of-way.

Please feel free to contact this office if you have additional questions.

Sincerely,

  
Cynthia Bridge Clark  
Water Allocations Bureau  
Idaho Department of Water Resources

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521 7890  
May 6, 2003

Ms. Cynthia Bridge Clark  
Idaho Dept. of Water Resources  
1301 N. Orchard Street  
Boise, Idaho 83706-2237

Dear Ms. Clark,

This is confirming our conversations. I own a ranch in the Pahsimeroi Valley, your Irrigation State Water District #73.

I have two water rights: #73-78 (2.1 c.f.s.) and #73-116 (1.4 c.f.s.) that are diverted out of Big Spring Creek and the Pahsimeroi River approximately 2 ½ miles up the Valley from my ranch and flow through dirt ditches down to my ranch losing a lot of water to evaporation and dirt ditch loss. Bordering my ranch, the open dirt ditch flows through my neighbor, Billy Gyddesen, dissecting a newly seeded alfalfa field with a new pivot irrigation system. He and his renter, Ben Yates of the Circle Pi, have requested to plow in that ditch and direct my water into Mr. Gyddesen's ditch which originates at P 12 headgate. Our water rights and flow of water would then be combined and co-mingled in his P 12 ditch which he pumps out of for his pivot. Then, he would dump my water at our adjoining property line back into my ditch through a new culvert under his ranch road.

We would not change the point of diversion or the use of the water but just co-mingle our water into one ditch across his ranch. This is being done at his and his renter's request. It would be accomplished by piping underground my water through a 150 yard pipe from my ditch (P 13) into his ditch (P 12). The cost would be shared by all three involved parties.

It is paramount that we do nothing to jeopardize our existing water rights, and that you acknowledge and o.k. what we are doing.

Thank you.

*William Hays*  
May 6 2003

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