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Evans, Edward T. et. al -vs.- Pancheri, duane et. al

No file numbers the original was lost at western region.

See 63-3056
63-2256
63-2711

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JUL 24 1996

63-U

Evans, Edward T. et. al -vs.- Pancheri, duane et. al

No file numbers the original was lost at western region.

See

63-3056

63-2256

63-2711

INDEXED

JUL 24 1966

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CREATING
WATER DISTRICT 63-A, PECKHAM
DRAIN AND PANCHERI DRAIN.

O R D E R

WHEREAS, the Department of Water Resources received a petition for creation of a water district for that portion of a natural drain, known locally as Peckham Drain, which drains into and across the west half of Section 24, and Section 25, in Township 1 South, Range 2 West, Boise-Meridian in Canyon County, Idaho; and,

WHEREAS, Peckham Drain is tributary to an unnamed drain, known locally as Pancheri Drain; and,

WHEREAS, neither the Peckham Drain nor Pancheri Drain are natural streams fed by springs or other natural streams, but rather both collect only the surface waste water from irrigation of adjacent lands; and,

WHEREAS, the rights of the Plaintiff and Defendants to the use of waste water in said Drains have been confirmed by decree of the Third Judicial District Court of the State of Idaho in the case of:

Edward T. Evans et al, Plaintiffs,

vs.

Duane Pancheri et al, Defendants; and,

WHEREAS, the Department of Water Resources has the duty to supervise the distribution of Idaho's public waters pursuant to Section 42-602, Idaho Code; and further has been charged with the responsibility for creation of water districts pursuant to Section 42-704, Idaho Code; and,

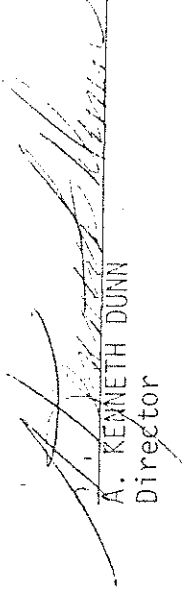
WHEREAS, the Department of Water Resources has determined that there is a necessity for the creation of a water district for the proper distribution of the public waters, said waters being waste water flowing in Peckham Drain and Pancheri Drain;

IT IS, THEREFORE, ORDERED that Water District 63-A, portions of Pancheri Drain and its tributary Peckham Drain be and the same is hereby created for the distribution of the waste water; and,

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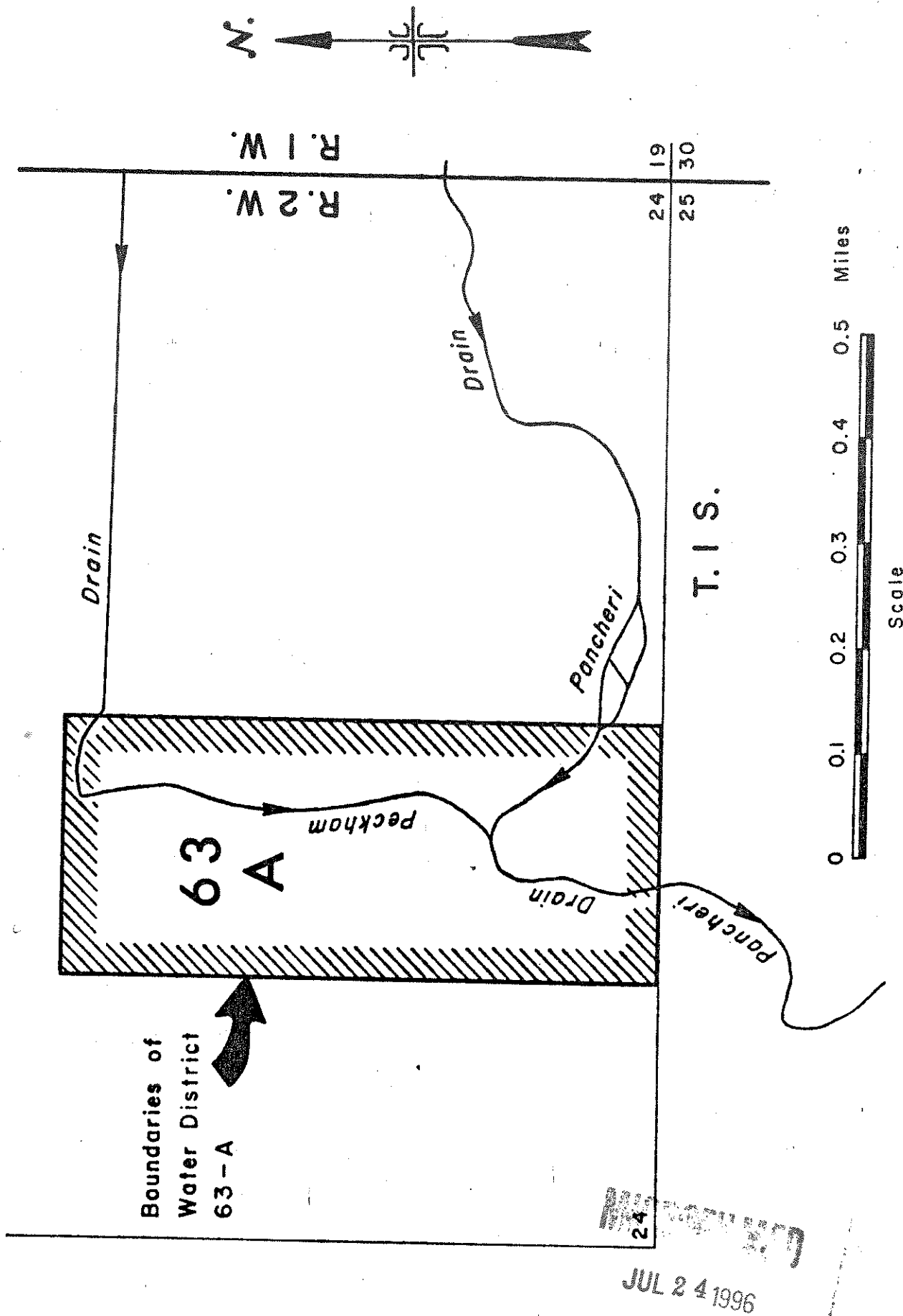
WHEREAS, said Water District boundaries shall be limited to portions of said drains located within the E₁SW₄, Section 24, Twp. 1 South, Rge. 2 West, B.M., as shown on Exhibit A.

Dated this 21 day of December, 1981.


A. KENNETH DUNN
Director

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JUL 24 1996

Water District 63-A



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Department of Water Resources

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BILL J. SUMNER
CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

EDWARD T. EVANS and CRYSTAL J.)
EVANS, husband and wife,)
CATHERINE L. EVANS and REX E.)
EVANS and MARYON E. EVANS by)
EDWARD T. EVANS, their Guardian)
ad Litem,)

Plaintiffs,

VS

DUANE PANCHERI and LAURA ELLEN)
PANCHERI, husband and wife,)
JOE PANCHERI, and SARAH DIANTHA)
PANCHERI, husband and wife,)
GEORGE T. THOMAS and DONNA)
THOMAS, husband and wife,)
LOUISE O. PECKHAM, a widow,)
JOE E. ROESBERY and JERRY)
ROESBERY, husband and wife,)
et al.,)

Defendants.

CASE NO. 24876

AMENDED JUDGMENT

The above entitled matter having come on for trial before the court sitting without a jury on the 7th day of October, 1977, William F. Ringert of the firm of Anderson, Kaufman, Anderson and Ringert, appearing for plaintiffs, Wayne E. Davis of the firm of Alexanderson, Davis Rainey and Whitney, appearing for the defendants George T. Thomas and Donna Thomas, husband and wife, and Louise O. Peckham, a widow, and Raymond D. Givens of the firm of Givens, McDevitt, Pursley & Webb, appearing for the defendants, Duane Pancheri

AMENDED JUDGMENT

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JUL 24 1996

and Laura Ellen Pancheri, husband and wife, Joe E. Roesbery, Jerry Roesbery, Charles A. Ross and Eunice M. Ross, husband and wife. The Court after hearing and considering the evidence introduced by the respective parties upon trial and evidence of counsel, and having made and filed in said action Findings of Fact and Conclusions of Law, ordering Amended Judgment be entered accordingly,

NOW THEREFORE, It is hereby ORDERED, ADJUDGED AND

DECREED, as follows:

I

That the Plaintiffs are the owners of all those waste water rights in certain natural drains with dates of priority and in the amounts and with the points of diversion as alleged in Paragraph IV, First Count and paragraph V, Second Count of plaintiff's complaint filed in this action.

II

That the aforementioned water rights of the Plaintiffs are prior to and superior to any claimed rights of the defendants in the waste waters of the subject drains, subject only to the rights of the defendants to cease wasting water delivered to such defendants by the Boise-Kuna Irrigation District and to recapture it and to apply it to a beneficial use upon their lands.

III

That the prior and superior water rights of the Plaintiffs include the prior right of the Plaintiffs to any waters which are wasted into the Peckham Drain and not recaptured for beneficial use upon their own lands by the upstream parties referred to in this action as Harris and Herman.

AMENDED JUDGMENT

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IV

That the defendants, and each of them, have not abandoned any rights to any water delivered to said defendants, and each of them, by the Boise Kuna Irrigation District.

V

That the use and re-use by the defendants of water delivered to said defendants by the Boise Kuna Irrigation District does not constitute an enlargement of use of said water.

VI

That the reduction of waste water reaching the plaintiffs' points of diversion, was not the result of any unlawful interference with plaintiffs' water rights by the defendants, or any of them, except as to waters in the Peckham Drain which were wasted from the Harris and Herman property.

VII

That the defendants Thomas be, and they hereby are, enjoined and restrained from interfering with plaintiffs' right to receive any waste water which is wasted from the Harris and Herman property into the Peckham Drain until such time as the rights of plaintiffs have been satisfied in full, provided, however, that this Order shall not in any way limit the right of the defendants Thomas to collect and apply to a beneficial use upon their lands any waters which have been wasted from the irrigation of

AMENDED JUDGMENT

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JUL 24 1908

said lands, nor does such Order in any way limit the right of defendants Thomas to utilize the Peckham Drain as a conduit for the conveyance of any waters delivered to said defendants Thomas by the Boise-Kuna Irrigation District.

VIII

That except as hereinbefore provided, plaintiffs have and recover nothing from said defendants, or any of them.

IX

That defendants have and recover nothing from the plaintiffs on their counterclaims.

X

That each party bear their own costs.

Dated this 10 day of August, 1978.

James R. Kuntz
District Judge

State of Idaho }
County of Canyon } ss.

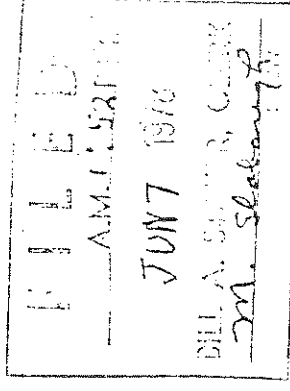
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears in this office.

DATED 2-27-80

FILED 2-27-80 Clerk of the District Court
and Ex. Officer

By J. B. Beckman Deputy

JUL 24 1980



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

EDWARD T. EVANS and CRYSTAL J.)
EVANS, husband and wife,)
CATHERINE L. EVANS, and REX E.)
EVANS and MARYON E. EVANS by)
Edward T. Evans, their Guardian)
Ad Litem,)

CIVIL CASE NO. 24876

Plaintiffs,)

-vs-

)

ORDER ON MOTION TO AMEND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

DUANE PANCHERI and LAURA ELLEN)
PANCHERI, husband and wife,)
JOE PANCHERI and SARAH DIANTHA)
PANCHERI, husband and wife,)
GEORGE T. THOMAS and DONNA)
THOMAS, husband and wife,)
LOUISE O. PECKHAM, a widow,)
JOE E. ROESBERRY and JERRY)
ROSEBERRY, husband and wife,)
et. al.,)
Defendants.)

The Court has reviewed the original Findings and Conclusions and considered the agreement of counsel and concludes that the plaintiffs' motion should be denied except as to the following modifications:

1. Finding of Fact number V should be supplemented as follows:

V.

The defendants, Thomas, expended time and money in cooperation with their upland neighbors, Harris and Herman, in order to capture and put to beneficial use, waste water coming to the Thomas property from the Harris and Herman properties. Harris and Herman may cease wasting this water anytime they see fit and they cannot, in any event, be subjected to any order of the Court arising from this

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proceeding to which they are not parties; that since plaintiffs' waste water rights in the Peckham Drain or wasteway are prior to and superior to the rights of the defendants, Thomas; these defendants may not appropriate to their own use water which is in fact wasted from the Harris and Herman properties.

2. Conclusion of Law number V should be modified and supplemented as follows:

V.

That the reduction in the amount of waste water reaching the plaintiffs' property through the subject drains is not the result of unlawful interference with plaintiffs' water rights by the defendants, except possibly for water wasted onto the property of the defendants, Thomas, from the properties of Harris and Herman. As to such water as may be actually so wasted, the defendants, Thomas, rights are inferior to the rights of the plaintiffs.

3. Conclusion of Law number VI should be modified and supplemented as follows:

VI.

That judgment should be entered against the plaintiffs and for the defendants on the plaintiffs' complaint, except as to wasted water from the Harris and Herman property onto the Thomas property, concerning which the plaintiffs have a prior right and concerning which the defendants, Thomas, should be enjoined from interfering with plaintiffs' right to receive such water, if any.

Counsel for defendants who prepared the original judgment is requested to submit an Amended Judgment for the Court's signature.

Dated this 7th day of June, 1978.

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CHRISTINE HARRIS, Acting

CLERK OF DIST. COURT

BY

Christine Harris

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

EDWARD T. EVANS and CHRYSTAL J.
EVANS, husband and wife,
CATHERINE L. EVANS, and REX E.
EVANS and MARYON E. EVANS BY
Edward T. Evans, their Guardian
Ad Litem,

Plaintiff,

VS

DUANE PANCHERI and LAURA ELLEN
PANCHERI, husband and wife,
JOE PANCHERI and SARAH DIANTHA
PANCHERI, husband and wife,
GEORGE T. THOMAS and DONNA
THOMAS, husband and wife,
LOUISE O. PECKHAM, a widow,
JOE E. ROESBERY and JERRY
ROESBERY, husband and wife,
CHARLES A. ROSS and EUNICE M.
ROSS, husband and wife, and
the unknown owners, claimants,
and parties in interest of, in
and to all or any part of the
waters flowing in a certain un-
named natural drain which drains into
and across the west half of
Section 24, and Sections 25 and
36, in Township 1 South, Range 2,
West, Boise Meridian, in Canyon
County, Idaho, and the unknown
owners, claimants and parties in
interest of, in and to all or any
part of the waters flowing in a
certain unnamed natural drain
(sometimes referred to as Rock
Creek) which drains into and across
the south half of the south half of

CASE NO. 24876

JUDGMENT

FILED
JUL 24 1996

Section 19, Township 1 South, Range)
1 West in Ada County, Idaho, the)
south half of the southeast quarter)
and the southeast quarter of the)
southwest quarter of Section 24,)
and portions of Section 25 and)
36, all in Township 1 South, Range)
2 West, Boise Meridian, in Canyon)
County, Idaho,)

Defendants.)

The above entitled matter having come on for trial before the court sitting without a jury on the 7th day of October, 1977, William F. Ringert of the firm of Anderson, Kaufman, Anderson and Ringert, appearing for plaintiffs, Wayne E. Davis of the firm of Alexander, Davis, Rainey and Whitney, appearing for the defendants George T. Thomas and Donna Thomas, husband and wife, and Louise O. Peckham, a widow, and Raymond D. Givens of the firm of Givens & Givens, appearing for the defendants, Duane Pancheri and Laura Ellen Pancheri, husband and wife, Joe E. Roesbery, Jery Roesbery, Charles A. Ross and Eunice M. Ross, husband and wife. The Court after hearing and considering the evidence introduced by the respective parties upon trial and evidence of counsel, and having made and filed in said action Findings of Fact and Conclusions of Law, ordering Judgment be entered accordingly,

NOW THEREFORE, It is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I

That the Plaintiffs are the owners of all those waste water rights in certain natural drains with dates of priority and in the amounts and with the points of diversion as alleged in paragraph IV, First Count and paragraph V, Second Count of plaintiff's complaint filed in this action.

JUDGMENT

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JUL 24 1996

II

That the water rights of the plaintiffs, as hereinabove set forth are subject to and inferior to the right of the defendants, and each of them to cease wasting water delivered to such defendants by the Boise-Kuna Irrigation District and to recapture it and to apply it to a beneficial use upon their lands.

III

That the defendants, and each of them, have not abandoned any rights to any water delivered to said defendants, and each of them, by the Boise Kuna Irrigation District.

IV

That the use and re-use by the defendants of water delivered to said defendants by the Boise Kuna Irrigation District does not constitute an enlargement of use of said water.

V

That the reduction of waste water reaching the plaintiffs' points of diversion, was not the result of any unlawful interference with plaintiffs water rights by the defendants, or any of them.

VI

That said plaintiff have and recover nothing from said defendants, or any of them, and that the defendants recover of the plaintiffs their costs and disbursements incurred in this action which are hereby taxed in the amount of \$

Dated this 27 day of March, 1978.

W. R. Cantale
DISTRICT JUDGE

RECORDED
JUL 24 1978

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MAR 3 1978
DEPUTY
D. Carpenter

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

EDWARD T. EVANS and CHRYSTAL J.)
EVANS, husband and wife,)
CATHERINE L. EVANS, and REX E.)
EVANS and MARYON E. EVANS by)
Edward T. Evans, their Guardian)
Ad Litem,)
Civil Case No. 24876

Plaintiffs,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-vs-

DUANE PANCHERI and LAURA ELLEN
PANCHERI, husband and wife,)
JOE PANCHERI and SARAH DIANTHA
PANCHERI, husband and wife,)
GEORGE T. THOMAS and DONNA
THOMAS, husband and wife,)
LOUISE O. PECKHAM, a widow,)
JOE E. ROESBERY and JERRY)
ROESBERY, husband and wife,)
CHARLES A. ROSS and EUNICE M.)
ROSS, husband and wife, etc.,)

Defendants.

FINDINGS

I.

That the plaintiffs are owners of certain waste water rights
in certain natural drains with dates of priority in the amounts and
with points of diversion all as alleged in paragraph IV, First Count,
and paragraph V, Second Count, of the Complaint on file in this
action.

II.

That the defendant's lands in question herein, except for 40
acres of the Thomas land, are within the Boise-Kuna Irrigation
District which District furnishes irrigation water to the defendants.

JUL 24 1996

III.

That all of the defendants herein from time to time use the subject drains to carry some of their live water from one point on their respective lands to another point.

IV.

That water of any significant volume which has in the past reached the plaintiffs' property by way of the drain which traverses the property of the defendants, Thomas, (that is the so-called Peckham Drain or Wasteway) was either waste water from the properties of Harris and Herman, who are not parties in this action, or it was Thomases own wasting of his Boise-Kuna Irrigation District water.

V.

The defendants, Thomas, expended time and money in cooperation with their upland neighbors, Harris and Herman, in order to capture and put to beneficial use, waste water coming to the Thomas property from the Harris and Herman properties. Harris and Herman may cease wasting this water anytime they see fit and they cannot, in any event, be subjected to any order of the Court arising from this proceeding to which they are not parties.

.VI.

That neither the Peckham Drain nor Rock Creek, also referred to as the Roesbery Drain or Wasteway, are natural streams fed by springs or other natural streams, but rather both collect only the surface runoff from irrigation of adjacent lands; the sporadic collection of rain or snow runoff being negligible in the area in question.

VII.

That since 1972 plaintiff has experienced a significant reduction in the volume of water reaching his property via the drains in question.

JUL 24 1996

VIII.

That a significant decrease in the volume of water in Rock Creek occurred when the Waldvogel Canal flume was re-routed so that water was no longer wasted from the flume into Rock Creek; that further reduction in the volume of waste water resulted from a conversion by the defendants from flood irrigation to sprinkler irrigation on many fields. Still further loss of water volume occurred because a culvert near plaintiffs' point of diversion has not been kept clean and water has backed up on the Ross property creating a swamp-like area. The main decrease in the volume of the water formerly available to plaintiff is due, however, to the fact that the defendants in recent years have been recapturing and re-using on their respective lands, the surface runoff of irrigation water which they formerly wasted.

IX.

That the recapture of waste water and its re-application to their respective lands by the defendants takes place prior to the water leaving their respective lands.

CONCLUSIONS

I.

The plaintiffs have the water rights claimed in their Complaint.

II.

The plaintiffs water rights in this case are subject to the right of the defendants to cease wasting of their water and to recapture it and apply it to a beneficial use on their own lands.

III.

That the defendants have not abandoned their rights as purchaser from the Boise-Kuna Irrigation District.

JUL 24 1966

IV.

That the defendants use and re-use of their water on their lands does not constitute an enlargement of their initial use of the water received from the Boise-Kuna Irrigation District.

V.

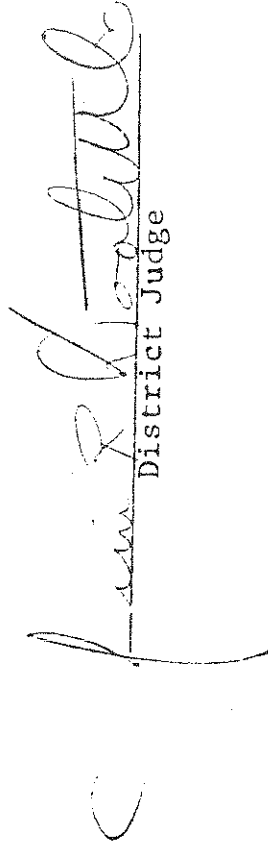
That the reduction in the amount of waste water reaching the plaintiffs' property through the subject drains is not the result of unlawful interference with plaintiffs' water rights by the defendants.

VI.

That judgment should be entered against the plaintiffs and for the defendants on the plaintiffs' complaint.

Counsel for defendant, Pancheri, is requested to prepare and forward a proposed judgment.

Dated this 1st day of March, 1978.


District Judge

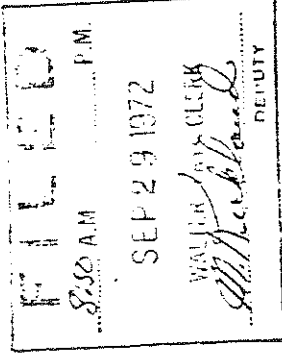
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ANDERSON, KAUFMAN, ANDERSON & RINGERT
503 Idaho Building, Boise, Idaho
Attorneys for Plaintiffs
Telephone: 342-4591

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Department of Water Resources



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

*
*
*

EDWARD T. EVANS and CHRYSTAL J.)
EVANS, husband and wife,)
CATHERINE L. EVANS, and REX E.)
EVANS and MARYON E. EVANS by)
Edward T. Evans, their Guardian)
Ad Litem,)

Case No. 24/846

Plaintiffs,

C O M P L A I N T

-vs-

DUANE PANCHERI and LAURA ELLEN)
PANCHERI, husband and wife,)
JOE PANCHERI and SARAH DIANTHA)
PANCHERI, husband and wife,)
GEORGE T. THOMAS and DONNA)
THOMAS, husband and wife,)
LOUISE O. PECKHAM, a widow,)
JOE E. ROESBERY and JERRY)
ROESBERY, husband and wife, and)
the unknown owners, claimants,)
and parties in interest of, in)
and to all or any part of the)
waters flowing in a certain un-)
named natural drain which drains)
into and across the west half of)
Section 24, and Sections 25 and)
36, in Township 1 South, Range 2)
West, Boise Meridian, in Canyon)
County, Idaho, and the unknown)

Fee Category: E
(Adjudication of water rights)
Fee: \$17.00

JUL 24 1996

owners, claimants, and parties in)
interest of, in and to all or any)
part of the waters flowing in a)
certain unnamed natural drain)
(sometimes referred to as Rock)
Creek) which drains into and across)
the south half of the south half of)
Section 19, Township 1 South, Range)
1 West in Ada County, Idaho, the)
south half of the southeast quarter)
and the southeast quarter of the)
southwest quarter of Section 24,)
and portions of Sections 25 and)
36, all in Township 1 South, Range)
2 West, Boise Meridian, in Canyon)
County, Idaho,)
)

Defendants.)

*

*

*

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JUL 24 1996

COME NOW the Plaintiffs and complain and allege of the Defendants, and each of them, as follows:

FIRST COUNT

I

That the Defendants, George T. Thomas and Donna Thomas, are husband and wife.

II

That the Defendant, Louise O. Peckham, is a widow.

III

That there are certain persons interested in this controversy whose respective names are unknown to Plaintiffs, and who have or claim to have an interest in and to the waters described in the caption, or in some part thereof, adverse to the Plaintiffs, and whose respective names, and each of them, are unknown to the Plaintiffs and who have been made parties defendant in this action under the following description and designation, to-wit:

The unknown owners, claimants, and parties in interest of, in and to all or any part of the waters flowing in a certain unnamed natural drain which drains into and across the west half of Section 24, and Sections 25 and 36, in Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho.

JUL 24 1936

IV

That the Plaintiffs are the owners of a water right in the waters of an unnamed natural drain which drains into and across the west half of Section 24, and Sections 25 and 36, Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho. Said water right is for 1.0 cubic feet per second (cfs) of the waters flowing in said drain, with priority of July 7, 1955, and with point of diversion in the southeast quarter of the southwest quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, for use on the east half of the southwest quarter of Section 23, Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho. Said water right is evidenced by Water License No. 25801 issued by the State of Idaho on May 8, 1959.

V

That the lands of the Plaintiffs described in Paragraph IV are arid lands which require application of water by artificial means to render the same susceptible of cultivation and the production of crops, and the entire amount of water included in said water right is required for the proper irrigation of said lands of the Plaintiffs.

VI

That the said Defendants, and each of them, claim an interest in the waters of the unnamed natural drain identified and described in Paragraph IV hereof, the right to divert which said water is

owned by the Plaintiffs, and that the said Defendants are now diverting said waters and are converting the use thereof to the use and benefit of said Defendants and each of them, and against the will of the Plaintiffs and in violation of the rights of the Plaintiffs, and are depriving the Plaintiffs of the use of said water to such an extent that the water available to Plaintiffs is not sufficient for the proper irrigation of their said lands, and the said Defendants threaten to, and will continue to divert said water and convert the use of the same to the use of said Defendants, to the irreparable injury of the Plaintiffs, unless restrained from so doing by an order of this court.

VII

That the said water right of the Plaintiffs is prior to any rights of any of the said Defendants to divert water from such unnamed natural drain, and that any right to divert water from said drain, claimed by said Defendants or by any of them, is subsequent, inferior and subject to the said water right of the Plaintiffs.

SECOND COUNT

I

That the Defendants, Duane Pancheri and Laura Ellen Pancheri, are husband and wife.

II

That the Defendants, Joe Pancheri and Sarah Diantha Pancheri, are husband and wife.

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JUL 24 1996

III

That the Defendants, Joe E. Roesbery and Jerry Roesbery, are husband and wife.

IV

That there are certain persons interested in this controversy whose respective names are unknown to Plaintiffs, and who have or claim to have an interest in and to the waters described in the caption, or in some part thereof, adverse to the Plaintiffs, and whose respective names, and each of them, are unknown to the Plaintiffs and who have been made parties defendant in this action under the following description and designation, to-wit:

The unknown owners, claimants, and parties in interest of, in and to all or any part of the waters flowing in a certain unnamed natural drain (sometimes referred to as Rock Creek) which drains into and across the south half of the south half of Section 19, Township 1 South, Range 1 West, in Ada County, Idaho, the south half of the southeast quarter and the southeast quarter of the southwest quarter of Section 24, and portions of Sections 25 and 36, all in Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho.

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V

That the Plaintiffs are the owners of two water rights in the waters of a certain unnamed drain (sometimes referred to as Rock Creek) which drains into and across the lands identified and described in Paragraph IV.' One of said water rights is for 2.5 cubic feet per second (cfs) of the waters flowing in said Rock Creek, with priority of February 1, 1915, and with point of diversion in the southeast quarter of the southwest quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, for use on the southwest quarter of the northwest quarter of Section 25, the north half of the northeast quarter and the southeast quarter of the northeast quarter of Section 26 and the southeast quarter of the northwest quarter of Section 25, all in Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho. Said water right is evidenced by Water License No. 11042/63-2256 issued by the State of Idaho on October 29, 1971. The other such water right is for 3.79 cubic feet per second (cfs) of the waters flowing in said unnamed drain, with priority of July 29, 1948, and with point of diversion in the northeast quarter of the northwest quarter of Section 25, Township 1 South, Range 2 West, Boise Meridian, for use on the south half of the southwest quarter and the southwest quarter of the southeast quarter of Section 23, the northeast quarter of the northwest quarter, the northeast quarter and the northeast quarter of the southeast quarter of Section 26, the southwest quarter of the northwest quarter

7-am

JUL 24 1986

and the north half of the southwest quarter of Section 25, all in Township 1 South, Range 2 West, Boise Meridian, in Canyon County, Idaho. Said water right is evidenced by Water License No. 20584⁶³⁻²⁷¹¹ issued by the State of Idaho on September 11, 1959.

VI

That the lands of the Plaintiffs described in Paragraph V are arid lands which require application of water by artificial means to render the same susceptible of cultivation and the production of crops, and the entire amount of water included in said water right is required for the proper irrigation of said lands of the Plaintiffs.

VII

That the said Defendants, and each of them, claim an interest in the waters of the unnamed natural drain identified and described in Paragraph V hereof, the right to divert which said water is owned by the Plaintiffs, and that the said Defendants are now diverting said waters and are converting the use thereof to the use and benefit of said Defendants and each of them, and against the will of the Plaintiffs and in violation of the rights of the Plaintiffs, and are depriving the Plaintiffs of the use of said water to such an extent that the water available to Plaintiffs is not sufficient for the proper irrigation of their said lands, and the said Defendants threaten to, and will continue to divert said water and convert the use of the same to the use of said Defendants, to the irreparable

JUL 24 1959

injury of the Plaintiffs, unless restrained from so doing by an order of this court.

VIII

That the said water rights of the Plaintiffs are prior to any rights of any of the said Defendants to divert water from such unnamed natural drain, and that any right to divert water from said drain, claimed by said Defendants or by any of them, is subsequent, inferior and subject to the said water rights of the Plaintiffs.

WHEREFORE, Plaintiffs pray judgment as follows:

1. That, under the First Count, the Plaintiffs be adjudged and decreed to be the owners of the right to divert from said unnamed natural drain, at the Plaintiffs' point of diversion in the southeast quarter of the southwest quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, 1.0 cfs of water, with priority of July 7, 1955, and that such water right be decreed to be a prior right to any right claimed by said Defendants named in the First Count, or any or either of them.

2. That under the Second Count the Plaintiffs be adjudged and decreed to be the owners of the right to divert from said Rock Creek at their point of diversion in the southeast quarter of the southwest quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, 2.5 cfs of water with priority of February 1, 1915, and that the Plaintiffs be adjudged and decreed to be the owners

of the right to divert from said unnamed drain, at their point of diversion in the northeast quarter of the northwest quarter of Section 25, Township 1 South, Range 2 West, Boise Meridian, 3.79 cfs of water with priority of July 29, 1948, and that said water rights be decreed to be prior rights to any right or rights claimed by said Defendants named in the Second Count, or any or either of them.

3. That upon a final determination of this action the said Defendants and each of them, their agents, servants, employees, successors and assigns, be perpetually enjoined from in any manner interfering with the said water rights of the Plaintiffs.

4. That the said Defendants, and each of them, be required to appear in this court and set forth in proper pleading the nature of their respective claims in and to the waters identified and described in the First Count and in the Second Count of this Complaint.

5. For the Plaintiffs' costs and disbursements in this action and for such other and further relief as the court may deem just and proper in the premises.

ANDERSON, KAUFMAN, ANDERSON & RINGERT

By *Edward Kaufman*
A Member of the Firm

503 Idaho Building, Boise, Idaho
Attorneys for Plaintiffs