

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE.

PRESTON-MONTPELIER IRRIGATION
COMPANY, a corporation,

Plaintiff,

vs.

DINGLE IRRIGATION COMPANY, a cor-
poration; Grismett-Black Otter
Irrigation Company, a corporation;
Peg Leg Island Irrigation Company, a
corporation; West Fork Irrigation
Company, a corporation; Ream-Crockett
Irrigation Company, a corporation;
Fugaire Livestock & Land Company, a
corporation; Continental Life Insur-
ance Company, a corporation; Ole
Transtrum; Carrie Hill; J.A.C. Nielson;
John A. Jensen; Oron Quayle; Thomas
Quayle; George Parker; Edw. LaRocco;
John O. Miller; Ezra J. Phelps; George
A. Sparks; Myrum Esterholdt, and Joseph
Esterholdt,

Defendants

D E C R E E

This cause came on regularly for trial on the 4th
day of August, 1923, John A. Bagley, Esquire, and D. C. Kunz,
Esquire, appearing as attorneys for the plaintiff Preston- Montpelier
Irrigation Company, a corporation, and John A. Bagley, Esquire, appearing
as attorney for Oron Quayle, Thomas Quayle, George Parker, Edw. LaRocco,
John O. Miller, Ezra J. Phelps, and George A. Sparks, defendants and cross-
complainants; and D. C. Kunz, Esquire, appearing as attorney for the
Continental Life Insurance Company, a corporation, Ole Transtrum, Carry
Hill, J. A. C. Nielson and John A. Jensen, defendants and cross-complain-
ants; and A. B. Gough, Esquire, appearing as attorney for Dingle Irrigation
Company, a corporation, Peg Leg Island Irrigation Company, a corporation,
Grismett Black Otter Irrigation Company, a corporation, and the Fugaire
Livestock & Land Company, a corporation, defendants and cross-complainants;
Ross W. Bates, Esquire, appearing as attorney for the Ream-Crockett Irriga-
tion Company, a corporation, defendants and cross-complainants; and Jesse P.
Rich, Esquire, appearing as attorney for the West Fork Irrigation Company,
a corporation, defendants and cross-complainants; and Darwin Haddock, Esquire,
appearing as attorney for Myrum Esterholdt and Joseph Esterholdt, defendants
and cross-complainants. Whereupon, the respective parties proceeded to
negotiate a settlement and adjustment of the issues raised by the complain-

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JOSEPH ESTERHOLDT:

1877- April 15th, What is designated in this decree as a "Meadow Right".

April 1stth - July 1st .9 cubic feet per second
July 1st - September 30th, .6 cubic feet per second

1890- April 15th, What is designates in this decree as a "Meadow Right".

April 15th - July 1st 2.7 cubic feet per second.
July 1st - September 30th, 1.8 cubic feet per second.

All of said waters to be diverted from Bear River, water for 15 acres of the following described land being diverted from Bear River by means of the Miller ditch, the point of diversion of which is about 150 yards east from the Northeast corner of Section 31, Township 14 South, Range 46 East of the Boise Meridian; and water for 105 acres of the following described land being diverted from Bear River by means of the Nuffer Ditch at or near a point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian intersects Bear River; said water to be used on a total of 120 acres of land, described as follows, to-wit:

Beginning at a point on the South line of Section one (1) Township fifteen (15) South of Range forty-five (45) East of Boise Meridian, 225 feet West of the Southeast corner of Section one (1) where the West line of Oregon Short Line right-of-way intersects section line, running thence West 1425 feet; thence North 2640 feet; Thence East 330 feet; Thence South 1225 feet; Thence East 1320 feet; Thence South 342 feet, more or less to intersection with West boundary line of the O. S. L. Railway right-of-way; thence Southwesterly (S.20 degrees 45') 646 feet, more or less, to jog in right-of-way fence; thence Southwesterly at right angles 335 feet to right-of-way; thence Southwesterly along right-of-way fence 304 feet to place of beginning, containing in all sixty acres more or less.

Together with all water rights thereunto belonging.

Also, commencing at a point sixteen hundred and fifty (1650) feet West from the Southeast corner of Section one (1), in Township fifteen (15) South of Range forty-five (45) East of the Boise meridian and running thence West nine hundred and ninety (990) feet, more or less, to the Southwest corner of the Southeast quarter of said Section one; thence North twenty-six hundred and forty (2640) feet; thence East nine hundred and ninety (990) feet; thence South twenty-six hundred and forty (2640) feet to the place of beginning and containing sixty acres of land, more or less, together with all water rights thereunto belonging and water and ditches used in the irrigation of said land.

EZRA J. PHILIPS:

1877- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st, 4.8 cubic feet per second.
July 1st - September 30th, 3.2 cubic feet per second.

1890- April 15th, What is designated in this decree as an "Agricultural Right". 2 cubic feet per second.

All of said water to be diverted from Bear River, at a point described as follows:

and to be used on 260 acres of land, described as follows, to-wit:

The NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T. 14 S. R. 45 East Boise Meridian.

And that part of NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$, of Section 23, that lies North and East of the Old West channel of Bear River.

And that part NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 14, T. 13 S. R. 45 E. B. M. which lies West of the Phelps Canal and below said canal.

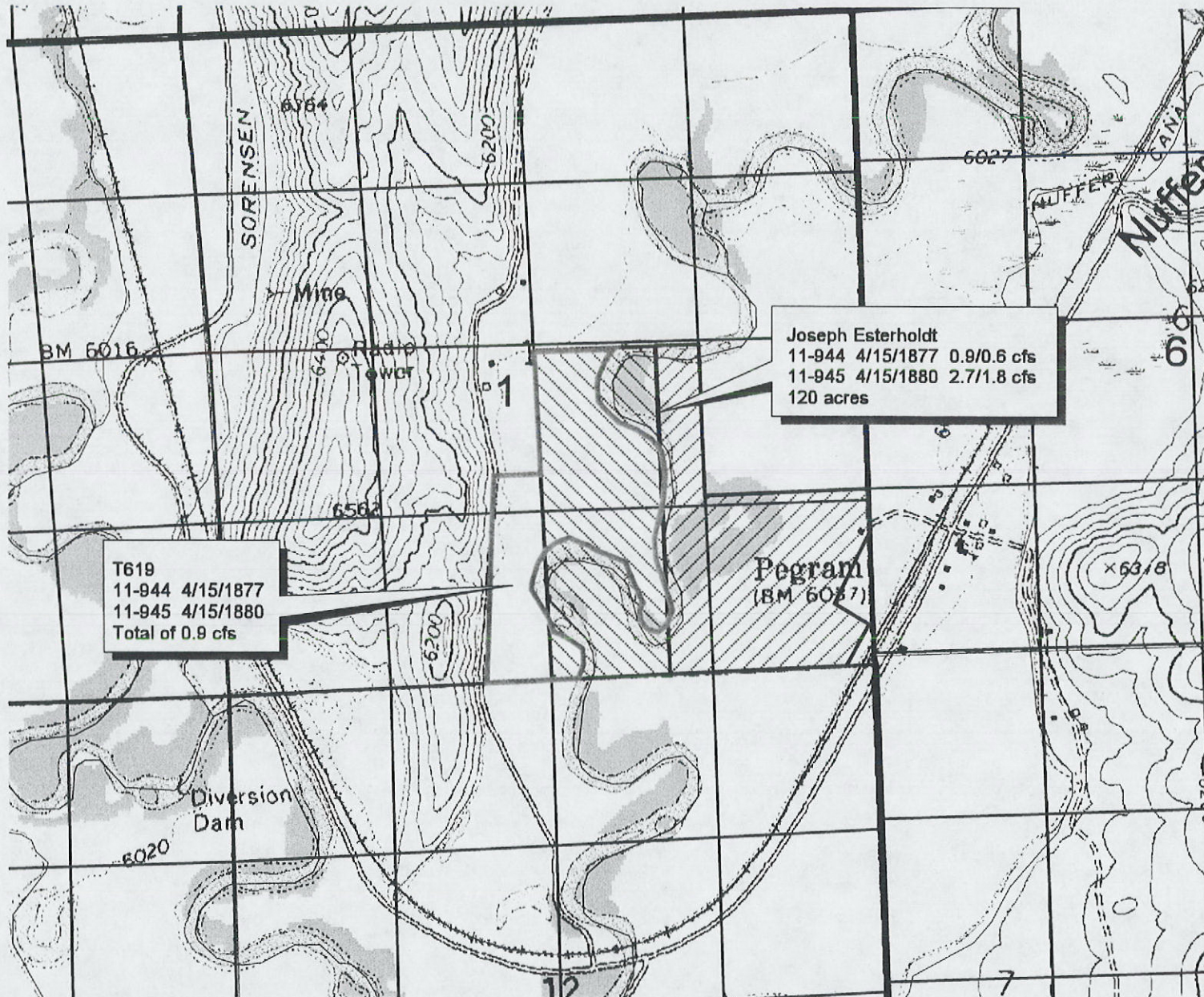
Containing in all 260 acres and all being in Bear Lake County, State of Idaho.

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WR Decree Nos. 11-944 and 11-945



Transfer No. 619



TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
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Esterholdt, Joseph

2.7

11-0945

619

Esterholdt, George J.

0.45

2.25

11-0945A

*Incorrect, see discussion
under 11-0944*

Probably 1.35 / 0.90

S

N

A

R

T

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
CERTIFICATE OF WATER RIGHT
TRANSFERRED RIGHT NO. 619

THIS IS TO CERTIFY THAT GEORGE J. ESTERHOLDT, of Pegasus, Idaho, is the owner of and using a certain water right described as .9 cubic foot per second dated, April 15th to July 1st, 1877, and .6 cubic foot per second from July 1st to September 30th, 1877; also 2.7 cubic feet per second dated, April 15th, 1880, and 1.8 cubic feet per second, from July 1st to September 30th, 1880, of the waters of Bear River, as decreed to JOSEPH ESTERHOLDT, by Judge Robert M. Terrell, of the Fifth Judicial District of the State of Idaho, in and for the County of Bear Lake, in the case of

PRESTON MONTPELIER IRRIGATION COMPANY vs. DINGLE

IRRIGATION COMPANY ET AL

SAID decree bearing date of March 7, 1924, for the purpose irrigating the following described lands situate, lying and being in Water District No. 5, in the County of Bear Lake, State of Idaho, to-wit:

Beginning at a point on the south line of Section One (1) Township 15 South of Range 45 East of Boise Meridian, 225 feet west of the Southeast corner of Section 1 where the West line of the Oregon Short Line right-of-way intersects Section line, running thence West 1425 feet, thence North 2640 feet; thence East 330 feet; thence South 1225 feet; thence East 1320 feet; thence South 342 feet, more or less to intersection with West boundary line of the O.S.L. railway right-of-way; thence Southwesterly (S. 20° 45') 646 feet more or less to jog in right-of-way fence; thence Southeasterly at right angles 335 feet to right-of-way; thence Southwesterly along right-of-way fence 304 feet to place of beginning, containing in all sixty acres more or less. Together with all water rights thereunto belonging.

Also commencing at a point sixteen hundred fifty (1650) feet West from the Southeast corner of Section One (1) in Township fifteen (15) South of Range forty-five (45) East of the Boise Meridian and running thence West nine hundred and ninety (990) feet more or less, to the Southwest corner of the Southeast Quarter of Section One; thence North twenty six hundred and forty (2640) feet; thence East 990 feet; thence South 2640 feet to the place of beginning containing sixty acres of land, more or less, together with all water rights thereunto belonging and water and ditches used in the irrigation of said lands.

MICROFILMED

11-0945

THAT THE SAID DECREE has been entered in the records of the Department of Reclamation of the State of Idaho, in Book 4 of Decrees, at Page 650.

THAT THE SAID APPLICANT has become the owner of the said water right by the decree of the said Court.

THAT, NOW, UPON THE APPLICATION of the Said GEORGE J. ESTERHOLDT, of Pegrarn, Idaho, for a Certificate of Transfer of Water Right, made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted the right to the use of .9 second foot of the waters of BEAR RIVER, upon the lands above described is HEREBY ABANDONED and the lands to be irrigated under such right and to which the water right hereby confirmed shall become appurtenant by this Certificate for irrigation and domestic purposes, are described as follows:

Beginning at a point on the Westerly bank of Bear River which lies East 252 feet from the 1/4 corner on the South line of Section 1, Township 15 South Range 45 E.B.M.; thence West on Section line 777 feet; thence Northeasterly 1659 feet; thence East 365 feet to the 1/4 Section line; thence North 981 feet to the center of Section 1, Township 15 South Range 45 E.B.M.; thence East 635 feet to the Westerly bank of Bear River; thence down the Westerly and Northerly bank of Bear River to the point of beginning, containing 60 acres more or less. All of the land being west of Bear River,

situated, lying and being in the County of Bear Lake, State of Idaho, and said water to be limited at any time to an amount actually needed and beneficially used for such purpose, and shall not exceed the following amount, to-wit:

0.9 cubic feet per second of the waters of Bear River
with dates of priority of April 15, 1877 and April 15,
1880.

THAT THE WATER RIGHTS HEREBY transferred have been diverted from the Bear River at a point in the SE $\frac{1}{4}$ of Section 31, Township 14 South, Range 46 E.B.M., and conducted to the lands first described through the Nuffer Ditch and will hereafter be diverted in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, Township 14 South, Range 46 E.B.M., and will be conducted through the Miller Ditch to the lands last above described.

THAT THE LANDS to which this water right is being transferred by this Certificate already have appurtenant to them water rights for .3 cubic feet per second, with a priority of April 15, 1877.

THAT THE RIGHT to the use of the water aforesaid, hereby confirmed, is restricted to the lands or places of use specifically set forth in this transfer, as provided by the Laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Department of Reclamation of the State of Idaho to be affixed at Boise, Idaho, this 26th day of March, 1941.

E. V. BERG
Commissioner of Reclamation

IN AND TO THE HONORABLE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IOWA, IN AND FOR THE COUNTY OF HAMILTON.

PEACOCK-GRANTHAM IRRIGATION
COMPANY, a corporation,

Plaintiff,

vs.

GRAND IRRIGATION COMPANY, a cor-
poration; Grantam-Black Otter
Irrigation Company, a corporation;
Big Leg Island Irrigation Company, a
corporation; West Fork Irrigation
Company, a corporation; Pease-Crockett
Irrigation Company, a corporation;
Fugate Livestock & Land Company, a
corporation; Continental Life Insur-
ance Company, a corporation; Ole
Transtum; Carrie Hill; J. O. Nielson;
John A. Jensen; Owen Mayle; Thomas
Mayle; George Barker; Edw. Lafooco;
John C. Miller; Fern J. Phelps; George
A. Sparks; Byron Osterholt, and Joseph
Osterholt,

Defendants.

This cause came on regularly for trial on the 4th
day of August, 1923, John A. Hagley, Esquire, and J. C. Kunz,
Esquire, appearing as attorneys for the plaintiff Pease-Crockett
Irrigation Company, a corporation, and John A. Hagley, Esquire, appearing
as attorney for Owen Mayle, Thomas Mayle, George Barker, Edw. Lafooco,
John C. Miller, Fern J. Phelps, and George A. Sparks, defendants and cross-
complainants; and J. C. Kunz, Esquire, appearing as attorney for the
Continental Life Insurance Company, a corporation, Ole Transtrum, Carrie
Hill, J. O. Nielson and John A. Jensen, defendants and cross-complain-
ants; and A. M. Cough, Esquire, appearing as attorney for Big Leg Irriga-
tion Company, a corporation, Big Leg Island Irrigation Company, a corporation,
Grantam-Black Otter Irrigation Company, a corporation, and the Fugate
Livestock & Land Company, a corporation, defendants and cross-complainants;
Dora A. Bates, Esquire, appearing as attorney for the Pease-Crockett Irriga-
tion Company, a corporation, defendants and cross-complainants; and Jesse A.
Rich, Esquire, appearing as attorney for the West Fork Irrigation Company,
a corporation, defendants and cross-complainants and Marvin Haddock, Esquire,
appearing as attorney for Byron Osterholt and Joseph Osterholt, defendants
and cross-complainants. Whereupon, the respective parties proceeded to

present their evidence and a judgment of the issue raised by the complain-

ANTHONY

DESIGNATION:

1877- April 25th, that is designated in this decree as a

"border ditch".

April 15th - July 1st .9 cubic feet per second.

July 1st - Sept. 30th, .8 cubic feet per second.

1890- April 15th, that is designated in this decree as a "border ditch".

April 15th - July 1st 2.7 cubic feet per second.

July 1st - September 30th, 1.8 cubic feet per second.

All of said waters to be diverted from Bear River, water for 15 acres of the following described land being diverted from Bear River by means of the Miller ditch, the point of diversion of which is about 150 yards east from the northeast corner of Section 21, Township 14 South, Range 45 East of the Boise meridian; and water for 108 acres of the following described land being diverted from Bear River by means of the Huffer ditch at or near a point where the south line of the Northwest quarter of Section 31, Township 14 South, Range 45 East of the Boise meridian intersects Bear River; said water to be used on a total of 123 acres of land, described as follows, to-wit:

Beginning at a point on the south line of Section one (1) Township fifteen (15) South of Range first (15) East of Boise meridian, 225 feet East of the southeast corner of Section one (1) where the West line of Oregon (first line right-of-way intersects section line, running thence West 1425 feet; thence North 2640 feet; thence East 330 feet; thence South 1225 feet; thence East 1320 feet; thence South 242 feet, more or less to intersection with West boundary line of the U. S. L. Railway right-of-way; thence Southwesterly (S. 80 degrees 48' 046 feet, more or less, to jog in right-of-way fence; thence Southwesterly at right angles 335 feet to right-of-way; thence Southwesterly along right-of-way fence 504 feet to place of beginning, containing in all sixty acres more or less.

To go with all water rights therunto belonging.

160, commencing at a point sixteen hundred and fifty (1550) feet West from the southeast corner of Section one (1), in Township fifteen (15) South of Range forty-five (45) West of the Boise meridian and running thence West nine hundred and ninety (990) feet, more or less, to the Southwest corner of the Northwest quarter of said Section one; thence North twenty-six hundred and forty (2640) feet; thence East nine hundred and ninety (990) feet; thence South twenty-six hundred and forty (2640) feet to the place of beginning and containing sixty acres of land, more or less, together with all water rights therunto belonging and water and ditcher used in the irrigation of said land.

DESIGNATION:

1877- April 15th, that is designated in this decree as a

"border ditch".

April 15th - July 1st, 4.6 cubic feet per second.

July 1st - September 30th, 3.2 cubic feet per second.

1890- April 15th, that is designated in this decree as a "border ditch".

April 15th - July 1st, 4.6 cubic feet per second.

July 1st - September 30th, 3.2 cubic feet per second.

All of said waters to be diverted from Bear River, at a point five hundred and thirty (530) yards East from the southeast corner of Section 23, T. 14 N. R. 45 East Boise meridian.

160, that part of said and thence, of Section 23, that lies North and East of the U. S. West channel of Bear River.

All that part of said, sections, Sec. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, which lies East of the Phelps Canal and below Sec. 14, T. 15 N. R. 45 E. which lies East of the Phelps Canal and below said canal.

Containing in all 250 acres and all being in Bear Lake County, State

of Idaho.

RECORDED

MEMORANDUM

Date: September 27, 2001

To: WR File Nos. 11-944 and 11-945

From: Jeff Peppersack

Re: Transfer No. 619

The purpose of this memo is to attempt to clarify the change resulting from the approval of Transfer No. 619. Water Right Nos. 11-944 and 11-945 were decreed in the case Preston-Montpelier Irrigation Company, vs. Dingle Irrigation Company, et al., dated March 7, 1924. The water rights were decreed to two parcels of land totaling 120 acres as shown on the attached illustration.

The decree indicates that 15 acres were irrigated from the Miller Ditch and the remaining 105 acres were irrigated from the Nuffer Ditch. This appears to be incorrect, since there are more than 15 acres of the decreed parcels lying west of the Bear River, which could not have been irrigated from the Nuffer Ditch located on the east side of the Bear River. Transfer No. 619, filed by George J. Esterholdt (same person as decree owner – Joseph Esterholdt) was an attempt to correct the situation, but the approval did not completely resolve the problem.

Information in the file indicates that, at the time of the transfer, the east 60 acres of the decreed parcels was owned by someone other than Joseph Esterholdt. The transfer applicant only owned the west 60-acre parcel and some adjacent land to the west. This would indicate that the applicant only had ½ of the original decreed rights to transfer or 0.45/0.30 cfs of 11-944 and 1.35/0.90 cfs of 11-945.

Based on correspondence in the file, it is clear that the intent of the transfer was to allow water from the Miller Ditch to irrigate 60 acres west of the Bear River and water from the Nuffer ditch to irrigate 60 acres east of the Bear River. Since the decree already provided for 15 acres from the Miller ditch, the transfer should have moved water for 45 acres from the Nuffer Ditch to the Miller Ditch. Unfortunately, the transfer approval did not recognize that the rights were decreed for a maximum of 1.5" of water per acre of land. The approval only authorized the transfer of 0.9 cfs (45") rather than 1.35 cfs. This left 0.45 cfs on the portion of the west decreed parcel lying east of the Bear River.

Water Right Nos. 11-944 and 11-945 should eventually be split if a change in ownership and documentation are submitted in the future to reflect the two decreed parcels. For purposes of water right numbering and data entry, I see no reason to separate the transferred place of use from the west 60-acre decreed parcel since both were owned by the applicant and both still have portions of the

same two water rights. Future notice of ownership changes or transfer applications related to these rights may warrant further splitting.

The results of the transfer are as follows for each right:

East 60 Acres of Decreed Parcels

11-944 0.45/0.30 cfs from Nuffer Ditch

11-945 1.35/0.90 cfs from Nuffer Ditch

POU is T15S R45E Sec. 1 SE1/4 for 60 acres

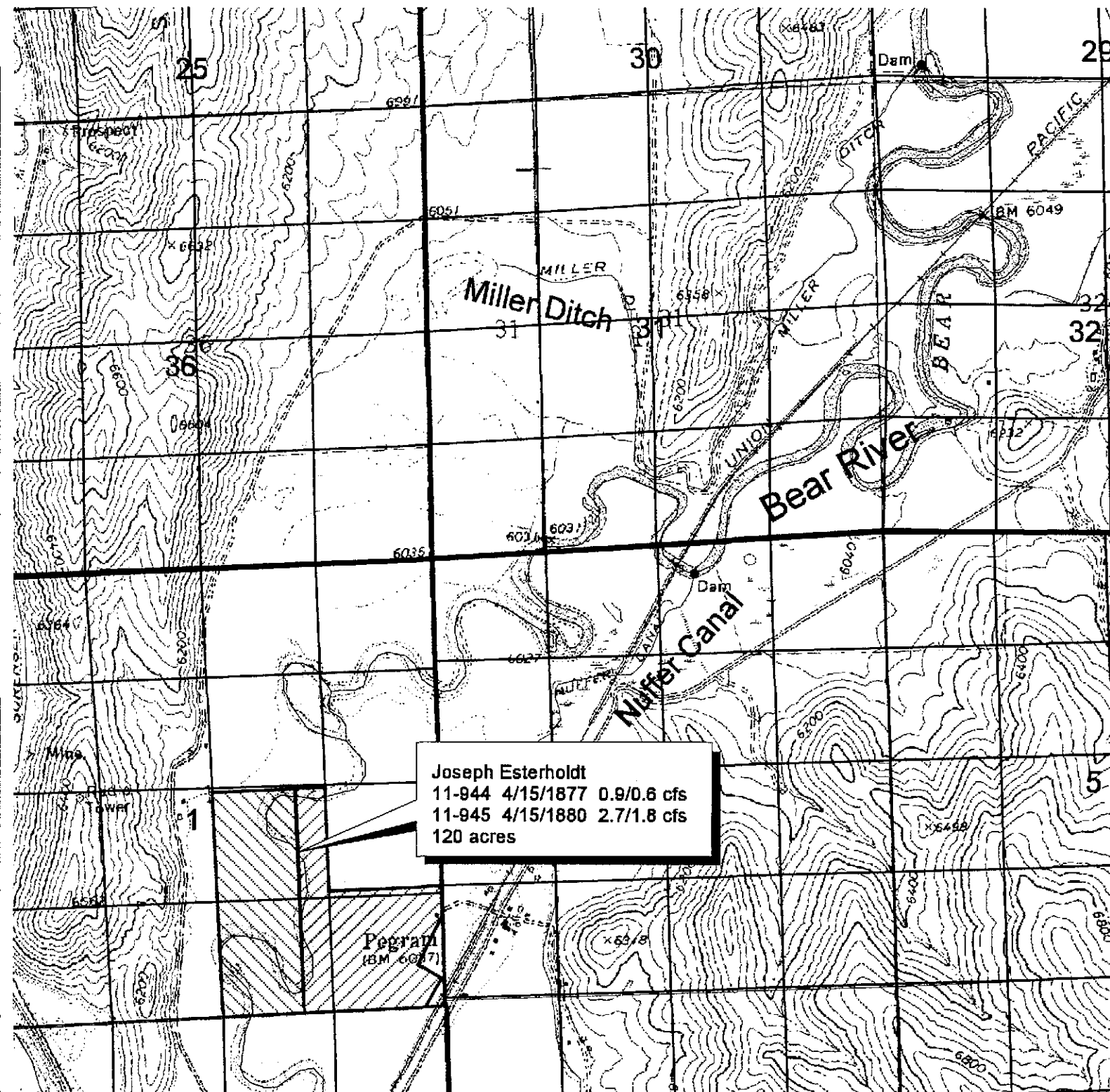
West 60 Acres of Decreed Parcels and Transferred POU

11-944 0.45/0.30 cfs from Miller Ditch and Nuffer Ditch

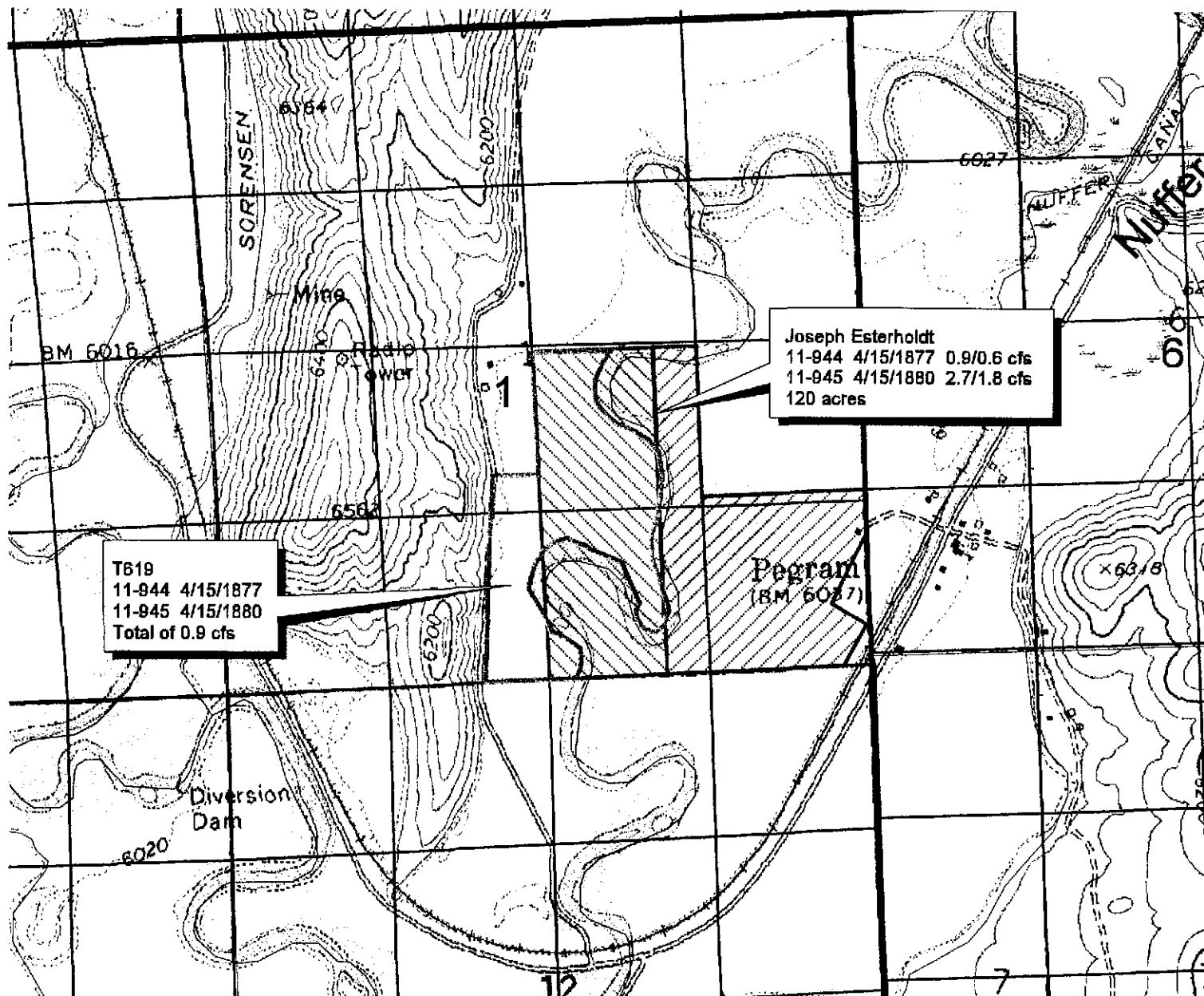
11-945 1.35/0.90 cfs from Miller Ditch and Nuffer Ditch

POU is T15S R45E Sec. 1 NWSE, SWSE, NESW, and SESW

WR Decree Nos. 11-944 and 11-945



Transfer No. 619



See 11-0944 for
correspondence
relating to
Transfer No. 619

MICROFILMED