

#48096

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR CASSIA COUNTY:

Joseph B. Alexander, John L. Alexander
Riley G. Judd, and Sarah Bates Marcus,

Plaintiffs

vs

Hyrum L. Hunter and J. J. Simmons

Defendants

D E C R E E

This cause coming on regularly to be heard on the 17th day of April, 1919, at the regular March term of said court before the Honorable William A. Babcock, without a jury, with W. L. Dunn, Esq. appearing as counsel for plaintiffs, and B. P. Howells, Esq. appearing as counsel for defendants herein:

45 0176 In is now ORDERED, ADJUDGED AND DECREED, That the defendant, Hyrum L. Hunter, shall have one hundred twenty miner's inches, measured under a four-inch pressure of the combined waters of Little Cottonwood Creek, and Oakley Meadow Creek, Spring, excepting the increase of said spring over and above twenty miner's inches for use for irrigation purposes on the following described lands situate in the County of Cassia, State of Idaho, to-wit:

15-0693 The south half of the southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) and the northeast quarter of the southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section twenty-five (25) Township thirteen (13) south, range twenty-one (21) East Boise Meridian, containing one hundred twenty (120) acres of land with a priority date for said water right, the 1st day of April 1876, and the right to use the increase or excess of said Oakley Meadow Creek Spring over and above twenty miners inches thereof on his said lands above described, and for the irrigation of lands within the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of Section twenty-five (25) in said Township and range, with a priority date of May 1, 1906.

45 0177 And it is further ordered, adjudged and decreed that the plaintiff, Joseph B. Alexander, shall have the right to the use of fifty miners inches measured under a four-inch pressure of the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Spring, excepting the increase of said spring over and above twenty miners inches thereof, for use for irrigation purposes on the following described lands, situate in the County of Cassia, State of Idaho to-wit:

✓ The southeast quarter of the southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$) and the south half of the southwest quarter of the southeast quarter ($S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$) of Section nineteen (19) township thirteen (13) south Range twenty-two (22) East Boise Meridian, containing sixty (60) acres of land, with a priority date for said water right of the 1st day of April 1882.

45 0178 And it is further order, adjudged and decreed, that the plaintiff John L. Alexander shall have the right to the use of fifty miners inches measured under a four-inch pressure of the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Spring, excepting the increase of said spring over and above twenty miners inches thereof for use for irrigation purposes on the following described lands situate in the County of Cassia, State of Idaho to-wit:

The northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) and the north half of the southwest quarter of the southeast quarter ($N\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$)

APR 15 1919

✓ of section nineteen (19) Township thirteen (13) south range twenty-two (22) East Boise Meridian, containing sixty (60) acres of land, with a priority date for said water right of the 1st day of April 1882.

45 0178 And it further ordered, adjudged and decreed, that the plaintiff George A. Adams, shall have the right to the use of fifty miners inches measured under a four-inch pressure of the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Spring, excepting the increase of said spring over and above twenty miners inches thereof for use for irrigation purposes on the following described lands situate in the County of Cassia, State of Idaho, to-wit:

✓ That south half of lot two (S $\frac{1}{2}$ L2) and all of lot three (L3) of Section thirty (30) Township thirteen (13) south, Range twenty-two (22) East Boise Meridian, containing seventy (70) acres, more or less, with priority date the 30th day of June, 1881.

45 0180 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant, Lowell Hunter, shall have the right to the use of ten miners inches measured under a four-inch pressure of the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Spring, excepting the increase of said spring over and above twenty miners inches thereof for use for irrigation purposes on the following described lands situate in the county of Cassia, State of Idaho, to-wit:

✓ The north half of Lot two (N $\frac{1}{2}$ L2) of Section thirty (30) township thirteen (13) south Range twenty-two (22) East Boise Meridian, containing twenty (20) acres more or less, with priority date the 30th day of June, 1881.

45 0188 And it further ordered, adjudged and decreed, that the defendant, Orson P. Bates, Jr., shall have the right to the use of the waters of said Little Cottonwood Creek only when and at such times as the flow of the same shall be insufficient to reach the lands of the said defendants, Hyrum L. Hunter and Lowell Hunter or the said plaintiffs, Joseph B. Alexander, John L. Alexander and George A. Adams, or the excess of the said waters of the said Little Cottonwood Creek that may be over and above said rights herein awarded to the other said parties hereto in the quantity or volume of one hundred twenty miners inches for irrigation purposes on his said lands situate in the County of Cassia, State of Idaho, described as follows, to-wit:

✓ The north half of the northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) of section twelve (12) and the south half of the northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section eleven (11) township fourteen (14) south range twenty-one (21) East of the Boise Meridian, containing one hundred sixty (160) acres of land, with a priority date the 1st day of April, 1904, provided that in making such use of any such excess over the other prior decreed rights herein, he shall not impair or diminish said prior rights in any manner whatever, and he is hereby enjoined and restrained from making any sue of any of the flow of the waters of said Little Cottonwood Creek when such use shall or may impair or diminish said prior rights in volume or quantity as they are herein decreed to the other parties hereto.

X AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT EACH AND EVERY OF THE PARTIES hereto may use such lawful means of appropriation and diversion of the said waters of the said Little Cottonwood Creek and the said Oakley Meadow Creek spring as may be available to or made available and determined by them as a necessary means for the diversion of the said waters to the said uses upon their respective lands above described, and the said plaintiffs Joseph B. Alexander and John L. Alexander and George A. Adams and the said defendant Lowell Hunter are not to be confined to or required to await the flow of said waters herein awarded to them, over the lands of the said

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defendant Hyrum L. Hunter, but they may if they choose, convey the same directly to their respective lands by such means as may be or are made available to them outside of the said lands of the said defendant Hyrum L. Hunter, either by meand of new and additional or independent ditches, provided that in the excercise of such rights, they shall not impair or dimish the flow of the waters of the said Little Cottonwood Creek and Oakley Meadow Creek Spring in the volume herein awarded to the said Hyrum L. Hunter.

And, it is FURTHER ORDER__, ADJUDGED AND DECREED that the respective parties hereto and each and every of them, their heirs, executors, administrators and assigns, and each and every of them, are hereby perpetually enjoined and restrained from in any manner diverting or interfering with the flow of the waters of the said Little Cottonwood Creek and the said Oakley Meadow Creek Spring, excepting only in the quantities and in the manner and from the time and in the order in which they and each and every of them are herein decreed to be entitled thereto.

And it is FURTHER ORDERED, ADJUDGED AND DECREED that when said parties hereto, or any of them are not making beneficial use of the said waters, or applying the same to the said lands for irrigation purposes then the said waters of the said Little Cottonwood Creek and Oakley Meadow Creek Spring shall be returned to their natural channel.

And it is further ordered, adjudged and decreed that each of the parties hereto shall bear and pay any and all costs incurred by him herein, without recourse upon any of the other parties hereto.

Wm. A. Babcock, District Judge

Dated this 11th day of May, 1920.

Received copy above decree this 8, day of May, 1920.

B. P. Howells, Attorney for Defendants.

Filed for record at the request of W. L. Dunn at 10:36 A.M., May 15th, 1920.

B.F.Wilson, County Recorder.

Certificate of True Copy—Recorder.

State of Idaho, } ss.
County of Cassia }

I, B.F. Wilson

County Recorder of

Cassia

County, Idaho,

do hereby certify that the foregoing is a true and correct copy of the original

Joseph B. Alexander et al vs. Hyrum L. Hunter et al

now on file in my office

Given under my hand and the seal of said court, at office in

this 24th day of

May

A. D. 1921

Attest:

B.F. Wilson

County Recorder.

By

Deputy.

RECORDED

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DOCKETED
INDEXED
JOSEPH NOVAK
Attorney for Petitioners-Appellants
520 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: 328-4737

RECEIVED
JUL 16 1980
IN THE DISTRICT COURT OF THE STATE OF IDAHO
JUL 25 1980
Department of Water Resources
FRANK B. LEE, CLERK
BY

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

GLENN BRIGGS and HAZEL BRIGGS,)
Husband and Wife; JOE TUGAW,)
Successor in Interest of BILL)
BROCKMAN and MARIE BROCKMAN,)
Husband and Wife,)

Petitioners-Appellants,)

vs.)

R. KEITH HIGGINSON, Director of the)
Department of Water Administration,)
State of Idaho; SIMON L. BAKER and)
MARJORIE BAKER, Husband and Wife;)
RALPH POULTON and DESMA POULTON,)
Husband and Wife; BILL R. POULTON)
and PATRICIA L. POULTON, Husband)
and Wife; RAYMOND POULTON and)
BESSIE MAUD POULTON, Husband and)
Wife; and J. RICHARD POULTON, a)
Bachelor; GOLDEN VALLEY LAND &)
CATTLE COMPANY, a Corporation;)
GOLDEN VALLEY MUTUAL WATER COMPANY)
a corporation,)

Respondents.)

J U D G M E N T

Case No. 9818

This matter came on regularly before the above-entitled Court on the written Stipulation for Judgment entered into among the above-named parties and filed herein and the Court having reviewed the files and pleadings herein and being fully advised in the premises hereby approves said Stipulation for Judgment and based thereon makes and enters its Judgment as follows:

It is hereby ORDERED, ADJUDGED and DECREED:

I.

The rights to the use of the first 5,500 acre feet of underground waters annually from the limestone aquifer in Cassia County, Idaho by the following parties under the water rights and by means of the wells hereinafter set forth be and the same are hereby settled, confirmed and adjudged as follows:

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	<u>Pole No.</u>	<u>Owner</u>	<u>Permit No.</u>	<u>Priority</u>	<u>Licensed Amounts-CFS</u>	<u>Acre Feet Per Year</u>
45-2283	201)	Joseph E. Tugaw	G-20805	12/13/48)	1.64	
45-2322	205)	(Briggs-Brockman)	G-21359	1/16/50)	3.33	1,663
45-2575	207)		G-27866	4/3/59)	0.55	
45-2578	208	Golden Valley Mutual Water Co.	G-27908	4/29/59	3.56	978
45-2582	339	Baker-Poulton	G-27987	6/16/59	4.00	952
45-2585	214	Baker-Poulton	G-28052	7/20/59	6.31	1,413
45-2597	211 &348	Golden Valley Mutual Water Co.	G-28374	1/13/60	13.5	494
					Total	5,500

II.

The well at Pole No. 201 shall be used only as a part of a group of wells used by Tugaw to pump his 1,663 acre feet. The well at Pole No. 207 has been transferred to Tugaw and may be used by him in accordance with this Judgment.

III.

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Golden Valley may pump the wells at Poles 216/and 386 under Permit Nos. G-27908 and G-28374, but total withdrawal from all listed wells of Golden Valley shall not exceed the total quantities stated in Paragraph I hereinabove.

IV.

The quantity of underground water which each of the parties shall be entitled to divert and use annually from the first 5,500 acre feet of water annually diverted from the limestone aquifer in Cassia County, Idaho under the provisions of Paragraph X of the Amended Decree made and entered on October 1, 1971, in said Civil No. 7876, be and the same are hereby fixed and determined to be the respective quantities of water in acre feet per year as set forth in Paragraph I hereinabove under the respective water rights and priorities stated therein and the rights of the parties to the annual diversion and use of the quantities of water in acre feet per year stated therein be and the same are hereby settled, confirmed and adjudged to be final and binding on the parties hereto.

V.

In the event that the average annual rate of natural recharge of the limestone aquifer exceeds 5,500 acre feet per year and the Director allows water to be pumped therefrom in addition to the 5,500 acre feet now allowed, the first 430 acre feet of increased pumping shall be allocated between Baker and Golden Valley as follows: Baker to receive 255 and Golden Valley 175 on a proportional basis as it becomes available.

The portion going to Baker shall be proportioned between the rights under Permit ⁴⁵⁻²⁵⁸² G-27987 and ⁴⁵⁻²⁵⁸⁵ G-28052 in the proportion of ⁴⁵⁻²⁵⁸² 86/255 to G-27987 and ⁴⁵⁻²⁵⁸⁵ 169/255 to G-28052. Any additional water above 430 acre feet shall be allocated in accordance with Paragraphs XII and XIII of the Amended Decree made and entered on October 1, 1971 in said Civil No. 7876.

VI.

The administration and distribution of the underground waters under the water rights of the parties set forth in Paragraph I hereinabove shall be based on a five-year average annual diversion beginning with the 1981 irrigation season. The average annual pumpage from all wells combined (exclusive of the carryover water provided for in Paragraph VII hereinafter) shall not exceed 5,500 acre feet during any consecutive five-year period. Each of the parties shall be entitled to pump water in excess of his annual quantity specified in Paragraph I hereinabove during any year but not to exceed an additional fifty per cent (50%) thereof, provided that the rights of the other parties shall not be impaired thereby and provided further that the total quantity of water pumped by any party (exclusive of his carryover water) during any consecutive five-year period shall not exceed five times his annual quantity of water specified in Paragraph I hereinabove.

VII.

Each of the parties shall be entitled to carry over for pumping during succeeding years any water which he did not pump but was entitled to pump during a preceding year. Each

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party shall be considered to have unpumped water from previous years (water in the bank) when the number of preceding years of the then existing five-year period multiplied by his allocations specified in Paragraph I hereinabove (or as might be modified under Paragraph V hereinabove) produces a total allowed pumpage larger than his actual pumpage in those preceding years. In any subsequent year of the five-year period, any such party may pump and use his water in the bank, or any portion thereof, in addition to his said annual allocation subject to the provisions of Paragraph VI hereinabove. Any party having water in the bank at the end of a five-year period may carry over such water in the bank to his credit at the start of the next five-year period.

VIII.

The current five-year period expires December 31, 1980. As a part of this settlement, the parties agree that as of January 1, 1980 Golden Valley had 774 acre feet of its allocation for the current five-year period unused in the water bank; Baker-Poulton has 115 acre feet of allocated water unused and Joseph Tugaw (Briggs-Brockman) has no unused water and no deficit from previous years pumping. During the 1980 irrigation season Golden Valley shall be entitled to pump 2246 acre feet, Baker-Poulton shall be entitled to pump 2480 acre feet and Joseph Tugaw shall be entitled to pump 1663 acre feet.

IX.

All parties are hereby adjudged to have sufficient lands to apply the amounts of water specified in Paragraph I hereinabove to beneficial use and in fact are now and have been applying said water to beneficial use in compliance with the Statutes of the State of Idaho and the law as established in this case.

X.

The administration and distribution of the underground waters under the water rights of the parties as set forth in Paragraph I hereinabove shall be by the Idaho Department of Water Resources and shall be administered and distributed by

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it among the parties hereto in accordance with the priorities stated therein. The said Department may limit or expand the amount of water which may be pumped from the aquifer without exceeding its average annual rate of recharge in accordance with Paragraphs XII and XIII of the Amended Decree made and entered on October 1, 1971, in said Civil No. 7876 provided, however, that the quantities of water in acre feet per year set forth in Paragraph I hereinabove shall not be reallocated or reapportioned among the parties hereto in the administration or distribution thereof.

XI.

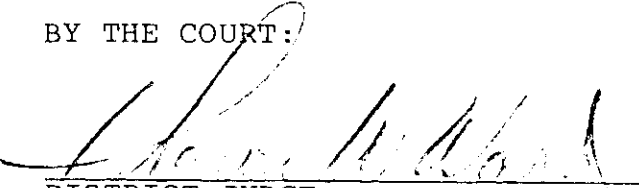
The Director's Order dated May 9, 1972, and Supplemental Order dated May 19, 1972, and Amendment to Order dated March 15, 1977, be and the same are modified to conform to this Judgment and as so modified the said Director's Orders be and the same are hereby affirmed.

XII.

Each party shall bear his own costs.

DATED this 25th day of June, 1980.

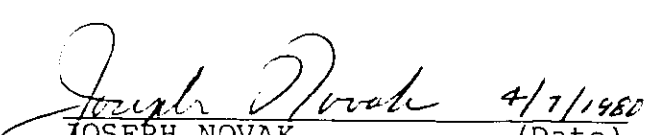
BY THE COURT:


DISTRICT JUDGE

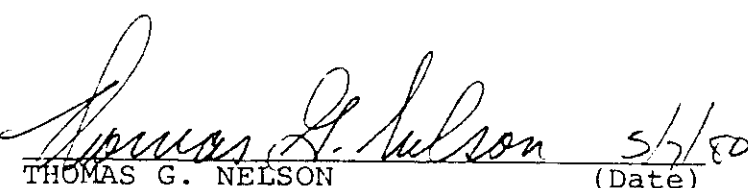
Approved as to form and substance prior to signature and

entry:


HERMAN E. BEDKE (Date)
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1416 Overland Avenue
Burley, Idaho 83318


JOSEPH NOVAK (Date)
520 Continental Bank Building
Salt Lake City, Utah 84101

Attorneys for Petitioner-
Appellant Joe Tugaw,
a/k/a Joseph E. Tugaw


THOMAS G. NELSON (Date)
Attorney for Respondents Simon L.
Baker and Marjorie Baker,
husband and wife; Ralph Poulton
and Desma Poulton, husband and
wife; Bill R. Poulton and
Patricia L. Poulton, husband
and wife; Raymond Poulton and
Bessie Maud Poulton, husband
and wife, and J. Richard Poulton,
a bachelor
P. O. Box 525
Twin Falls, Idaho 83301


JUN 05 1980

Lloyd J. Walker
LLOYD J. WALKER (Date)
Attorney for Respondents Golden
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corporation, and Golden Valley
Mutual Water Company, a corpor-
ation
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Twin Falls, Idaho 83301

Josephine P. Beeman 6/18/80
MICHAEL H. HYER (Date)
Deputy Attorney General
Attorney for Respondent C. Stephen
Allred, Director
Statehouse
Boise, Idaho 83720

State of Idaho } ss.
County of Cassia }
I hereby certify that the foregoing instrument
is a true and correct copy of the original
on file in this office.
Dated July 15 1980
FRANK B. KEARNS
Clerk of the District Court, Beneficial Auditor
and Recorder of Cassia County, Idaho
By James J. Farrell
Deputy

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CLERK OF DISTRICT COURT
FRANK B. KEARNS
BOISE, IDAHO
13th DEPUTY
JUL 15 1980
JUL 15 1980

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