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WATER RESOURCES
WESTERN REGION

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS.

THOMAS CAREY, whose name is)
sometimes written as)
"Thomas Carrey",)

Plaintiff,)

-vs-

HOWARD DRYDEN and MINNIE)
DRYDEN, his wife; LOYAL E.)
CAMPBELL and MARY O. CAMPBELL,)
his wife; ALBERT CAMPBELL, and)
GEORGE WILSON, bachelor)

Defendants.)

Case # 923
D E C R E E

This cause came on regularly to be heard by the Court in open term at Council, Idaho on the 12 day of May, 1932.

The plaintiff appeared by Carl H. Swanstrom, his attorney of record herein: and the defendants Howard Dryden and Albert Campbell appeared by George Donart, their attorney or record herein and the defendants Minnie Dryden, Loyal E. Campbell, Mary O. Campbell and George Wilson, who were on this day brought into this action as defendants herein by order of this Court, made appearance in open Court by George Donart, their attorney, and waived service of summons upon them and any and all further time for pleading to plaintiff's complaint on file herein and in open court consented that decree of this Court might be entered herein in accordance with the terms, conditions and provisions of a certain written stipulation heretofore duly made and signed by each of the parties hereto and filed herein.

Whereupon the Court having read and considered said stipulation and having found that same is just, equitable and according to law and being now fully advised in the law and the premises, orders, adjudges and decrees as follows to-wit:

Filed and entered 5-19-32

1932 DECREE

1: That "Campbell Swamp" is a public body of water situate in Adams County, Idaho upon the following lands and premises, to-wit:

The East Half of the Northwest Quarter: the Southeast Quarter of the Northwest Quarter and the North Half of the Southwest Quarter of Section 29, Township 19 North of Range 2 East, Boise Meridian.

That the defendants Loyal E. Campbell and Mary O. Campbell are the legal owners of the lands and premises wherein said swamp is situated and that the defendants Howard Dryden and Minnie Dryden have an interest in and to said lands by reason of contract of sale therefor and are now in possession thereof and are legally entitled to construct such drainage works in said swamp as will reasonably drain same and prevent its further growth, but subject to the conditions and limitations hereinafter contained

2: That the plaintiff, Thomas Carey and Jeanie Carey, his wife, are the owners of the

Southeast Quarter of Section 25, Township 19 North of Range 2 East, Boise Meridian.

3: That the defendant George Wilson is the owner of

The West Half of the Northeast Quarter: and the Southeast Quarter of Section 30, Township 19, North of Range 2 East, Boise Meridian.

4: That the defendants Loyal E. Campbell and Mary O. Campbell, Howard and Minnie Dryden are the owners of and are in possession of, among other lands

The East Half of the Southwest Quarter: the Southeast Quarter of the Northwest Quarter and the North Half of the Southwest Quarter of Section 29, Township 19 North of Range 2 East, Boise Meridian.

5: That all of said lands hereinbefore described are arid in their nature, but when irrigated are highly productive and produce valuable crops of hay, grain and pasture, and that all of said lands have appurtenant water rights from the flow

of water from said "Campbell Swamp" based upon appropriation and application thereof to beneficial purposes.

6: That said Thomas Carey and Jeanie Carey be and they are hereby adjudged and decreed to be the owners of and entitled to a water right from said "Campbell Swamp" for beneficial use upon their land as hereinbefore described, to be diverted through the "Mitchell Ditch", for all of the water which now is or shall by them hereafter be diverted into the "Mitchell Ditch" from that portion of said "Campbell Swamp" which lies north of the north bank of the "Dryden East and West Drain" and north of the line thereof extended in its same course and direction, and as said "Mitchell Ditch" and said "Dryden East and West Drain" are platted and made to appear in that said memorandum of agreement made and entered into by all of the parties hereto on the 12th day of August, 1931 and filed for record in the office of the County Recorder of Adams County, Idaho on the 11th day of May, 1932 in Book 1 of Agreements at Page 487, reference to which said memorandum of agreement is hereby made and by this reference the same, together with all plats, maps or diagrams therein contained, is made a part hereof.

That the said George Wilson is hereby adjudged and decreed to be the owner of a water right from said "Campbell Swamp" for beneficial uses upon his lands and premises as hereinbefore described for all of the water which now is or shall by him hereafter be diverted through the "Wilson Ditch" from that portion of said "Campbell Swamp" which lies south of the south bank of the "Dryden East and West Drain" and south of the line thereof extended in the same course or direction, and as said

78-12128

78-12129

78-12-131 "Dryden East and West Drain" and said "Wilson Ditch" are platted and made to appear in that said memorandum of agreement hereinbefore referred to.

That the allocation of water from said swamp aforesaid hereby is made subject to the right of said defendants Howard Dryden and Minnie Dryden to divert from all or any portion of said swamp sufficient water therefrom through said "Dryden North and South Drain", the "Mitchell Ditch", the "Wilson Ditch" and the "Dryden East and West Drain", as platted and shown in said memorandum of agreement before mentioned, for the seasonal irrigation, by gravity flow only, of a tract of land heretofore irrigated from said swamp containing approximately twenty (20) acres and situate in

The Northwest Quarter of the Southwest Quarter of Section 29, Township 19 North of Range 2 East, Boise Meridian

as heretofore has been irrigated from said swamp.

That, except as hereinbefore provided, all priority and rights to use of water from said swamp by the parties hereto shall be of equal date, namely of a priority of June 1st, 1890.

That for the purpose of constructing, repairing, maintaining, extending and rerouting the "Mitchell Ditch", the "Dryden East and West Drain", the "Dryden North and South Drain" and the "Wilson Ditch" and any and all other laterals, drains and ditches, as provided in said memorandum of agreement to be constructed, each of the parties hereto shall have easement in and right of way over, through and across said "Campbell Swamp".

That this action be and the same is dismissed as to the defendant Albert Campbell.

Done in open court at Council, Idaho this 19 day of May, 1932.


District Judge

MEMORANDUM OF AGREEMENT

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THIS AGREEMENT, Made and entered into on this 12th. day of August, 1931 by and between LOYAL E. CAMPBELL and MARY Q. CAMPBELL, husband and wife, and HOWARD DRYDEN and MINNIE DRYDEN, husband and wife, of Meadows, Idaho, as parties of the first part; THOMAS CARREY and JEANIE CARREY, husband and wife, of New Meadows, Idaho, as parties of the second part, and GEORGE WILSON, a bachelor, of New Meadows, Idaho, as party of the third part, WITNESSETH:

THAT WHEREAS the parties of the first part are the owners of the following described lands and premises situate in Adams County, Idaho, to-wit:

East Half of Southwest Quarter of Northwest Quarter; Southeast Quarter of Northwest Quarter and the North Half of the Southwest Quarter of Section 29 in Township 19 North of Range 2 East, (and other lands not herein concerned)

AND WHEREAS there now is, and since prior to 1888 has been, a natural body of water or swamp, formerly called the "Cal White" swamp, and now commonly called the "Campbell Swamp", containing approximately 20 to 25 acres and situate near the center of the before described lands, which such swamp has been and now is the source and supply of a continuous flow of water in an undetermined amount, and which water has been and now is subject to location and appropriation for beneficial uses:

AND WHEREAS the parties of the second part are the owners of the following described lands and premises situate in Adams County, Idaho, to-wit:

The Southeast Quarter of Section 25 in Township 19 North of Range 2 East, B.M.

AND WHEREAS The party of the third part is the owner of the following described lands and premises situate in Adams County, Idaho, to-wit:

West Half of Northeast Quarter; and the Southeast Quarter of Section 30 in Township 19 North of Range 2 East, B. M. (containing 240 acres, more or less)

AND WHEREAS, The said parties of the first part have or claim a water right from said swamp sufficient for the irrigation of all that part of the Northwest Quarter of the Southwest Quarter, Section 29, Township 19 North of Range 2 East, B. M., which lies Westerly and Southerly from such swamp and which is capable of being irrigated from such swamp by waters conducted by gravity flow in open ditches, the area of such land capable of being so irrigated being herein estimated at approximately _____ acres:

AND WHEREAS, The parties of the second part have and claim a water right from such swamp, in an undetermined amount, for the supplemental irrigation of their said lands and premises, and heretofore have diverted water from such swamp by means of what is known as the "Mitchell Ditch" which runs from East to West across the Northerly edge or portion of such swamp, and by means of certain laterals or drains leading from such ditch out and into such swamp:

AND WHEREAS: The party of the third part has or claims a water right from such swamp, in an undetermined amount, for the supplemental irrigation of his lands and premises, before described, and has heretofore diverted water from such swamp by means of a ditch, hereinafter called the "Wilson Ditch" which leads into such swamp on its westerly side and intersects or taps a certain drain or lateral running from near the Northwest corner of said swamp in a southeasterly direction, which was constructed about 1925 by said Loyal E. Campbell, and which is hereinafter referred to as the "Campbell Ditch", at a point on said lateral 338 feet East and 87 feet South of the

Southeast corner of the West Half of the Southwest Quarter of the Northwest Quarter, said Section 29, Township 19 North of Range 3 East, B. M. (the same being the Southeast corner of the Jeff Luce premises):

AND WHEREAS: The said first parties desire to have such swamp drained so far as practical, and for that purpose have just constructed a drain or lateral commencing on the said Campbell Ditch at a point thereon 50 feet southerly of the point where the said Wilson Ditch intersects the Campbell ditch, and running thence in an Easterly direction 337 feet, which drain or lateral is hereinafter referred to as the "Dryden East and West Drain", and which drain, at a point 337 feet East of said Campbell Ditch connects with a drain or lateral just constructed by first parties which heads near the South bank of the Mitchell ditch near the Northeast corner of such swamp and runs thence south or southwest along the Easterly edge of such swamp so as to connect with the East end of said Dryden East and West Drain, and is from that point continued in the same general direction so as to intersect the Campbell Ditch or drain further to the South and above the Wilson Ditch, which such drain just described is hereinafter referred to as the "Dryden North and South Drain":

AND WHEREAS The water, and the right to the use of the water from such swamp has never been adjudicated or allocated to the parties hereto, or to their lands, or to any persons or land, and the rights and priorities of the parties in and to such water and to the use thereof, and their right to ditches for drainage or diversion of such water, is not a matter of record and has never been determined, either by court decree, mutual agreement or otherwise:

AND WHEREAS, From time to time differences have arisen between the parties hereto as to their respective rights to drain such swamp, to divert and use the waters therefrom and as to other matters and things in connection with such swamp and the flow of water therefrom:

AND WHEREAS All of the parties hereto are now mutually desirous of adjusting and settling all of such differences and desire to fix and determine the rights of each of the parties hereto in and to the use of the waters of such swamp, and to adjust, determine and settle their respective rights of diversion and application of such water:

NOW, THEREFORE, In order that such swamp may be drained so far as the same can be reasonably done, and for the purpose of determining the respective rights of each of the parties hereto to the use of the flow of water from such swamp, and of their respective rights to enter into and upon the same for the purpose of constructing works of drainage and diversion therein,

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

(1) That there is attached hereto a sketch or plat of said Campbell swamp, upon which is designated, among others, the following particulars, to-wit: the "Mitchell Ditch"; the "Campbell Ditch or Lateral"; the "Wilson Ditch"; the Dryden East and West Drain"; the "Dryden North and South Drain" and a proposed change in the location of the Mitchell Ditch and certain drains into such swamp, to be hereafter constructed by the second parties hereto, IT BEING DISTINCTLY UNDERSTOOD AND AGREED That the said appended plat or sketch is not an official or exact survey of such swamp or of such ditches and drains therein, but the same is in-

cluded herein for the sole purpose of showing the general course and direction of the various ditches and drains used in connection with such swamp; the names of such ditches and drains as herein used, and to make this agreement more definite, certain and understandable, and subject to such limitations hereinbefore mentioned, such appended sketch or plat is by this reference made a part of this agreement.

(2) That the said Thomas Carrey and Jeanie Carrey, the said second parties herein, shall be and are entitled, for beneficial use upon their said lands and premises as hereinbefore described, to all of the water which now is or which by second parties can hereafter be diverted from that portion of the said Campbell Swamp which lies North of the North bank of said "dryden East and West Drain, and North of the line thereof, extended in the same course or direction; and except as hereinafter limited, the said first parties have granted and do hereby grant unto second parties the right to enter into and upon such portion of such swamp and construct and maintain therein such drains and other works of diversion as may be proper and necessary to divert such water into their (the Mitchell) ditch, and as will most effectually serve to drain such portion of such swamp.

(3) That the said George Wilson, the third party herein, shall be and is entitled, for beneficial use upon his said lands and premises, hereinbefore described, to all of the water which now is or which by third party can hereafter be diverted from that portion of said Campbell Swamp which lies South of the South bank of said Dryden East and West Drain, and South of the line thereof extended in its same course or direction: and except as hereinafter limited, the said first parties have granted and do hereby grant unto the third party the right to enter into and upon such portion of said swamp and construct and maintain therein such drains and other works of diversion as may be proper and necessary to divert such water into his (the Wilson) ditch, and as will most effectually serve to drain such portion of said swamp.

PROVIDED, HOWEVER, That there is hereby excepted from such allocation of water, and such grant of right of way for drains and works of diversion, so made and given to the Second and Third parties, and there is hereby expressly reserved unto the First Parties, their heirs, successors and assigns, for use on the following described lands, to-wit:

Northwest Quarter of the Southwest Quarter of Section 29 in Township 19 North of Range 2 East, B. M.

a sufficient amount of the flow of water from said swamp, to be diverted jointly from said Dryden North and South Drain and said Campbell and Wilson Ditches, and drained and taken from any part or portion of such swamp drained by said ditches, for the proper and necessary irrigation of such portion of said land as can be irrigated by gravity flow from such swamp, it being herein expressly understood and agreed that for that purpose the first parties herein, the heirs, successors and assigns, shall have a prior right and preference over both second and third parties in and to the use of such water for irrigation as shall be reasonably required in the irrigation of such portion of said land; and it is further expressly understood and agreed that first parties shall be entitled to such water only for the irrigation of such land, and none other, and when such water is not reasonably required for irrigation thereon, it shall be allowed to flow into and along the ditches and drains of said Second and Third parties for use on their lands as herein described.

(4) For the purpose of making effective the terms and conditions of this agreement, and to make available to second parties the water herein allocated to them, the said first parties have given, and by these presents do hereby give, grant, and convey unto the second parties, their heirs, successors and assigns, a right, privilege, easement and right of way for the construction and maintenance of the following ditches, drains and works of diversion, to-wit:

(A) Right of way for the relocation of the Mitchell Ditch, so the same may be diverted from its present location in the Northeast portion of such swamp and re-located along the line of a regular curve from near the Northeast corner of such swamp South so that the same will follow, as nearly as may be, the lowest portion of such Northerly portion or edge of such swamp, and thence curving to the Northwest so that the same will be brought into the present line of such ditch opposite the Northwest corner of such swamp:

(B) Right of way for a drain, with permission to tap and take the flow of water (subject to the use herein-before reserved unto first parties) from the Dryden North and South Drain, which drain shall be constructed at the point where the Dryden North and South Drain and the Dryden East and West Drain intersect in such swamp, and from that point running in a Northwesterly direction across such swamp so as to connect, either directly with the Mitchell Ditch, or, with the Campbell Drain below the Wilson Ditch, and from that point on to the Mitchell Ditch through such portion of the Campbell Ditch;

(C) Right of way for a drain, commencing on the North side of the Mitchell Ditch at a point opposite or East of the Dryden North and South Drain, and running thence in a general Northerly direction to the North edge of such swamp;

(D) Right of way from the present or proposed line of said Mitchell Ditch for drains leading out into said Swamp in a southeasterly direction from the South side of such ditch and in such manner and in such location as will most likely serve to effectively drain that portion of such swamp.

All of the above drains and ditch changes to be made by second parties at their sole cost and expense and as soon as may reasonably be done. It is understood and agreed that if said drains and works of diversion, as hereinbefore specified, shall fail to properly divert the water from such portion of the swamp or shall fail to properly drain the same, other drains and laterals may be constructed by second parties in that portion of the swamp hereby allocated to them; the same to be located by mutual agreement between first and second parties, and in case of a disagreement as to location, then the location to be determined by some competent and disinterested third party to be selected by first and second parties.

(5) There is hereby given and granted unto the Third Party and to his heirs, successors and assigns, right of way for the construction and maintenance of such ditches, drains and other works in his said portion of said Swamp as may be required to properly divert the waters therefrom, to be located and constructed in such manner as may hereafter be determined and agreed upon by and between said first and third parties.

(6) This agreement, when executed and acknowledged by the parties hereto, or their duly authorized agents or attorneys, shall have the force and effect of a decree of a court of competent jurisdiction, so far as the allocation of the water, and the right to use and divert water from said swamp for beneficial uses, are

concerned.

(7) This agreement, when signed and acknowledged by the parties hereto, or their duly athorized agents or attorneys, shall have the force and effect of a Deed of Conveyance from first parties to second and third parties, so far as easement and rights of way are concerned for the construction of the ditches, drains and works of diversion, and the maintenance thereof, as herein agreed and provided for.

(8) This agreement, when signed and acknowledged by the parties hereto, or their duly authorized agents or attorneys, shall run with the lands and premises herein described, and the water, and the right to divert and use the water of such swamp, as herein provided and agreed, shall become^{an}/appurtenance of the lands and premises of the parties hereto, as herein provided, and this agreement shall be binding upon, and all the rights and privilliges herein given, granted or taken, shall inure to the heirs, executors, administrators, successors and assigns of each and every of the parties hereto.

(9) The sketch or plat following this page, and which is numbered -10- is the 1-plat or sketch herein before referred to, which is appended hereto for the uses and purposes, only as hereinbefore mentioned.

IN WITNESS WHEREOF The parties to this agreement have hereunto set their hands and seals the day and year in this agreement first before written.

Loyal E. Campbell (Seal)
Mary Campbell (Seal)
Minnie Dryden (Seal)
Howard Dryden (Seal)
Thomas Carrey (Seal)
Jeanie Carrey (Seal)
George Wilson (Seal)
By _____
His _____

State of Idaho) ss
County of Adams

On this 12th day of August, 1931, before me, Carl H. Swanstrom, a Notary Public for Idaho, personally appeared Howard Dryden, Minnie Dryden, Thomas Carrey and Jeanie Carrey, to me/to be four (4) of the individuals whose names are subscribed to the foregoing instrument and acknowledged to me, each for himself and not one for the other, that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first before written.

(NOTARIAL SEAL)

Carl H. Swanstrom

Notary Public for Idaho residing at Council,
Idaho.

State of Idaho) ss
County of Adams

On this 26 day of December, 1931, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Loyal E. Campbell and Mary O. Campbell, to me known to be two (2) of the individuals whose names are subscribed to the within and foregoing instrument and acknowledged to me, each for himself and not one for the other, that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first before written.

(NOTARIAL SEAL)

Geo. S. Mitchell

Notary Public for Idaho residing at
New Meadows, Idaho.

State of Idaho) ss
County of Adams

On this 21 day of Dec. 1931, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared George Wilson, to me known to be one of the individuals whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first before written.

(NOTARIAL SEAL)

Carl H. Swanstrom

Notary Public for the State of Idaho
Residing at Council in State and County
aforesaid.

Recorded at the request of Carl H. Swanstrom at 40 minutes past 4 o'clock
P. M. this 11 day of May, 1932.
Fees \$7.80

Matilda Moser, Recorder.

NORTH

W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$

E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$

SE $\frac{1}{4}$ NW $\frac{1}{4}$

PROPOSED ROUTE MITCHELL DITCH

MITCHELL DITCH

PROPOSED DRAINS CARREY

WEST

338

337

WILSON DITCH

DRYDEN EAST AND WEST DRAIN

EAST

DRYDEN NORTH AND SOUTH DRAIN

LOYAL E. CAMPBELL DRAIN, 1925

NW $\frac{1}{4}$ SW $\frac{1}{4}$

NE $\frac{1}{4}$ SW $\frac{1}{4}$

APPROXIMATE LINE CAMPBELL SWAMP

SECTION 29, TOWNSHIP 19 NORTH OF RANGE 2 EAST, BOISE MERIDIAN

SOUTH

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