

#48096

Revised
(3)

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

It 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:

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.

45-0693

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 ($N\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$)

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✓ 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 01874 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 (S½L2) 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 01880

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 (N½L2) 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 01889 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 (N½NW¼) of section twelve (12) and the south half of the northeast quarter (S½NE¼) 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 use 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 exercise 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, }
County of Cassia } ss.

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 *Burley Ida.*

this *24th* day of *May* A. D. 19*21*

Attest: *B.F. Wilson*

County Recorder.

By

Deputy.

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as counsel for plaintiffs and B.P. Howells Esq., appearing as counsel for defendants, whereupon the following proceedings were had, to-wit:

By stipulation of counsel in open court, with all parties present George A. Adams, is substituted as a party plaintiff in the place and stead of Wiley C. Judd and Joseph B. Alexander, in and to the South Half of Lot Two (S $\frac{1}{2}$) Lot 2) and all of Lot three (3) in Section thirty (30) Township thirteen (13) south, range twenty-two (22) East, Boise Meridian, in Cassia County, Idaho together with the appurtenances, during the pendency of this action

And by stipulation of counsel in open court, with all parties present Orson P. Bates Jr. is substituted as a party defendant in the place and stead of J.J. Simmons, having succeeded to any and all the rights of the said J.J. Simmons, as they may appear, during the pendency of this action.

And by stipulation of counsel for the respective parties hereto, Mr. B.P. Howells having announced that he represented one Lowell Hunter, with all parties present in open court, including the said Lowell Hunter, the said Lowell Hunter, is substituted as the real party in interest in the place and stead of Sarah Bates Marcus, one of the plaintiffs first above named, he having succeeded to all the rights of the said Sarah Bates Marcus hereunder as set forth, and alleged in the complaint herein, during the pendency of this action and *By Mr. B.P. Howells, upon request of counsel for defendant and substitution* being represented, became a party defendant herein; whereupon these further proceedings were had, to-wit: testimony of witnesses duly called and sworn together with documentary evidence was submitted on the part of the respective parties hereto.

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45-56

Alexander et al

Title of Case

Hunter and Simmons

VS

Water Dist. 10 County Cassia

Judicial Dist. 4 Judge Wm. A. Babcock

Source Little Cottonwood Cr. and Oakley Meadows Co. Spring

File No. 10-2

Date of Decree 5-11-20 at Page No. 10-2

Recorded in Book No.

REMARKS: LAND TO BE IRRIGATED, ETC.

AMOUNT INCHES OR FRACTIONS

PRIORITY

SUBDIV.

SEC.

TWP.

RG.

NAME

Hyrum L. Hunter

George A. Adams

Lowell Hunter

Joseph B. Alexander

John L. Alexander

Orson P. Bates, Jr.

Hyrum L. Hunter, Oakley Meadows Co. Spr.

120

50

10

50

50

*120

4-1-76

6-30-81

"

4-1-82

"

4-1-04

5-1-06

First rights above from Cottonwood Creek and Oakley Meadows Creek Spring

All rights "excepting the increase of said spring over and above 20 minor's inches" Except 5-1-06 right gets that increase.

* Right good when flow insufficient to reach lands of prior rights or when prior rights are filled and there is excess water.

Never to impair rights of prior decreed rights.

5³E, NE³SE³ 25-135-21E

5³Lot 2, Lot 3-30-135-22E

N²Lot 2 30-135-22E

SE³SW³, S³SW³SE³ 19-135-22E

NW³SE³, N²SW³SE³ 19-135-22E

NNW³12, S³NE³ 11-145-21E

S³SE³, N²SE³ 25-135-21E Increase over 20" of 1

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3-56

DECREE INDEX

83

It is hereby ordered that

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BY IDAHO

O P L A W

County of Cassia, State

March term of said

an, Esq., appearing

was submitted on the part of the respective parties hereto, when said cause was continued by stipulation by counsel for the respective parties hereto for the taking of further proofs before Emma S. Jones, the duly appointed referee to take the same and which proofs were thereafter before said referee offered and taken and said cause thereafter and on the 16th day of May 1920 finally submitted for the Courts consideration, and the Court thereupon having fully considered the proofs of the respective parties together with the files, records and pleadings in said cause and the arguments of counsel for the respective parties, now finds the following facts.

45-0177 1. That since prior to the first day of August, 1880 and continuously thereafter the above named plaintiff Joseph B. Alexander and his immediate grantor, John L. Alexander, now deceased, has been and said plaintiff now is the owner of and entitled to the possession of the following described farm 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, all in cultivation.

11.

45-0178

That since prior to the first day of August 1880 and continuously thereafter the above named plaintiff John L. Alexander and his immediate grantor, John L. Alexander, now deceased, has been and said plaintiff now is the owner of and entitled to the possession of the following described farm 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 southwest quarter (N $\frac{1}{2}$ 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, all in cultivation.

111.

45-0177 That since the 30th day of June 1881, and continuously thereafter the above named plaintiff George A. Adams and his immediate grantors and predecessors in interest have been and the said plaintiff George A. Adams is the owner of and entitled to the possession of the following described farm lands situate in the County of Cassia, State of Idaho, to-wit:

The south half of lot two (2) (S $\frac{1}{2}$ Lot 2) and all of lot three (3) of Section thirty (30) Township thirteen (13) South, Range twenty-two (22) East, Boise Meridian, containing seventy (70) acres of land, more or less fifty acres of which is in cultivation.

lv.

45-0180 That since the 30th day of June 1881 and continuously thereafter the above named defendant Lowell Hunter and his immediate grantors, and predecessors in interest have been and the said defendant now is the owner of and entitled to the possession of the following described lands, situate in the County of Cassia, State of Idaho, to-wit:

The north half of lot two (N $\frac{1}{2}$ Lot 2) of Section thirty (30) Township thirteen (13) South, Range twenty-two (22) East, Boise Meridian, containing twenty (20) acres of land more or less, ten acres

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45-0176 That since on or about the first day of April 1876 and continuously thereafter the above named defendant Hyrum L. Hunter and his immediate grantors and predecessors in interest have been and the said defendant now is the owner of and entitled to the possession of the following described lands, situate in the County of Cassia, State of Idaho to-wit:

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 (21) East, Boise Meridian, containing, One hundred twenty (120) acres of land, all in cultivation.

VI

45-0181 That since on or about the first day of January 1904 and continuously thereafter the said defendant, Orson P. Bates and his immediate grantors, and predecessors in interest have been and the said defendant now is the owner of and entitled to the possession of the following described lands, situate in the County of Cassia, State of Idaho, to-wit:

The north half (N $\frac{1}{2}$) of the northwest quarter (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 east (21), Boise Meridian containing one hundred sixty (160) acres of land.

VII

That all of the above described lands of the above named plaintiffs and defendants are in the arid region are arid in character and require the application of water thereto by artificial means for the irrigation thereof in order to produce growing crops thereon, and one miner's inch of water measured under a four-inch pressure continuous flow for the

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irrigation season, or while the same remains in the streams hereinafter mentioned, and described, per acre of land, is a necessary and proper water duty for the irrigation of said lands, and for the production of crops thereon.

VIII.

45-0176
That since on or about the first day of April 1876 and continuously thereafter the said defendant Hyrum L. Hunter, by himself or his predecessors in interest has used for the irrigation of the crops growing on his said lands above described, one hundred twenty miner's inches of water measured under a four-inch pressure in each irrigating season.

LX

45-0177
That since on or about the first day of April, 1882, the said plaintiff, Joseph B. Alexander, by himself or his predecessors in interest has used for the irrigation of the crops growing on his said lands above described fifty miner's inches of water measured under a four-inch pressure, in each irrigating season, excepting only as the same has been interrupted or interfered with subsequent to on or about the first day of May 1915.

X

45-0178
That since on or about the first day of April 1882 the said plaintiff, John L. Alexander, by himself or his predecessors in interest has used for the irrigation of the crops growing on his said lands above described fifty miners inches of water measured under a four-inch pressure in each irrigating season, excepting only as the same has been interrupted or interfered with subsequent to on or about the first day of May 1915,

XI

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45-0119

That since on or about the 30th day of June 1881, the said plaintiff, George A. Adams himself or his predecessors in interest has used for the irrigation of the crops growing his said lands above described fifty miner's inches of water measured under a four-inch measure, in each irrigating season, excepting only as the same has been interrupted or interfered with subsequent to on or about the first day of May 1915.

XII.

45-0180

That since on or about the 30th day of June 1881 the said defendant Lowell Hunter by himself or his predecessors in interest has used for the irrigation of the crops growing his said lands above described, ten miner's inches of water measured under a four-inch measure in each irrigating season.

XIII.

45-0181

Any use of said waters made by the said Orson P. Bates Jr. or his grantors is since the first day of April 1904 and the only lawful use of any of the waters of said Little Cottonwood Creek made by the said Orson P. Bates Jr., or his grantors and predecessors in interest such use as was made of the said waters when the flow of the said Little Cottonwood Creek, was insufficient in volume to reach the lands of the said Hyrum L. Hunter or at such other times as there was sufficient of said waters flowing in the said Little Cottonwood Creek to flow down to the lands of all of the other parties thereto to fully satisfy their prior rights and leave an excess in the volume of said waters, that could be taken out and diverted by the said Orson P. Bates, or his grantors, without diminishing or impairing the free flow of such of said waters as was necessary to flow down to the said lands of the other parties hereto to fully satisfy their prior rights.

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That the waters so appropriated by the above named respective parties on the above named dates and used continuously thereafter by said parties for irrigation purposes as aforesaid, were of the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Springs, excepting the increase of said spring as hereinafter found, both situate in Cassia County State of Idaho the said Little Cottonwood Creek having its rise or source to the south and west of section eleven (11) township fourteen (14) south of range twenty-one (21) east of the Boise Meridian, and the said Oakley Meadow Creek Spring having its rise or source in the northwest quarter of the northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section thirty six (36) Township thirteen (13) south of range twenty-one (21) East Boise Meridian, both said streams flowing northerly and easterly the said Little Cottonwood Creek Flowing in volume to the extent of two hundred seventy miner's inches of water measured under a four-inch pressure, and varying with the seasons and continuing in such flow or a lesser flow for a period of three weeks in four months, and the said Oakley Meadow Creek Springs flowing in volume approximately forty three miner's inches constantly the excess over and above twenty miner's inches measured under a four-inch pressure of said Oakley Meadow Creek Spring not being included in the appropriation of the other said parties hereto excepting the said defendant, Hyrum L. Hunter who has from time to time since the year 1906 developed and increased the flow of said Oakley Meadow Creek Spring approximately twenty-three miner's inches, which he has appropriated and used exclusively in the irrigation of lands within the northwest quarter of the southeast quarter of section twenty-five, township thirteen south, range twenty one east of

or priority the first day of April 1876 and also the right to use exclusively the excess of the waters of said Oakley Meadow Creek Spring above said twenty miners inches, for the irrigation of the lands described as the lands of the said defendant, in the findings of fact herein.

That the said plaintiff, Joseph B. Alexander is entitled to the use of fifty/ches miners of the combined waters of Little Cottonwood Creek, and Oakley Meadow Creek Spring, excepting the excess over and above twenty miners inches of said Spring, for the irrigation of his said lands described in the findings of fact herein, bearing date of appropriation or priority the first day of April 1882.

That the said plaintiff, John L. Alexander is entitled to the use of fifty miners inches of the combined waters of Little Cottonwood Creek, and Oakley Meadow Creek Spring, excepting the excess over and above twenty miners inches of said Spring, for the irrigation of his said lands described in the findings of fact herein, bearing date of appropriation or priority the first day of April 1882.

That the said plaintiff, George A. Adams, is entitled to the use of fifty miners inches of the combined waters of Little Cottonwood Creek, and Oakley Meadow Creek Spring, excepting the excess over and above twenty miners inches of said Spring for the irrigation of his said lands described in the findings of fact herein bearing date of appropriation or priority the thirtieth day of June 1881.

That the said defendant Lowell Hunter is entitled to the use of ten miners inches of the combined waters of Little Cottonwood Creek, and Oakley Meadow Creek Spring, excepting the excess over and above twenty miners inches of said Spring for the irrigation of his said lands described in the findings of fact herein bearing date of appropriation or priority the thirtieth day of June 1881.

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the combined waters of Little Cottonwood Creek and Oakley Meadow Creek Spring, excepting the excess over and above twenty miners inches of said Spring, for the irrigation of his said lands described in the findings of fact herein, bearing date of appropriation, or priority as of the thirtieth day of June, 1881.

That the said defendant, Orson P. Bates, Jr., is entitled to the use of the waters of said Little Cottonwood Creek only, when there shall not be sufficient water flowing in said stream to reach the lands of the said defendant Hyrum L. Hunter, or the said plaintiffs, Joseph B. Alexander or John J. Alexander, or George A. Adams, or the said Defendant, Lowell Hunter and the said Orson P. Bates Jr. is also entitled to the right to the use of any excess waters flowing in said Little Cottonwood Creek over and above the volume necessary to satisfy the prior rights of the other parties hereto to the extent of one hundred twenty miners inches when the same may be diverted by him without impairing such prior rights,

Dated this ____ day of May 1920.

District Judge.

Received copy above conclusions of law this 8th day of May 1920.

B.P. Howells, Attorney for defendants
Filed for record at the request of W.L. Dunn at 10:37 A.M. May 5th, 1920.

B.F. Wilson, County Recorder.