

INTER-DEPARTMENT MEMO — 1

FROM Roberta Garrett

DATE 10-12-84

TO Decree File

SUBJECT Licenses No. 01-2012, formerly No. 2718

Paragraph XII in the case of The Palisade Irrigation Co., et al., vs. Lynn Crandall references water right No. 2718 (now 01-2012, two licenses). Review of the licenses and decree cannot confirm that the decree supersedes the licensed rights.

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OCT 29 1982

Department of Water Resources
Eastern District Office

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT.

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The Palisade Irrigation Company,
a corporation, J. L. Higham,
Richard A. Beam, Ivan Weeks,
Thomas M. Weeks, John B. Miller,
M. E. Toliver, Shurtleff Bros.,
a partnership, Elizabeth Beam,
David H. Peterson, Jess L.
Peterson, Henry Goettsche,
Weeks Bros., a partnership,
Luther Smith, Harry Bitton,
Francis Stoltenberg, Henry McCabe
and Joe Kruse,

Plaintiffs,

vs.

Lynn Crandall, Water Master,
Water District No. 36 of the
State of Idaho,

Defendant.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

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Department of Water Resources
J. A. Stone

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This cause came regularly on for hearing before the Court sitting without a jury at the Court Room of said Court in the Court House at the City of St. Anthony, Fremont County, Idaho, pursuant to notice given and published. The plaintiffs appeared by one of their attorneys, Gilbert C. St. Clair, and the defendant appearing not, and it appearing that the default of the defendant having been heretofore entered herein, it was ordered that said default of the defendant be and is hereby confirmed. And after hearing the evidence offered by the plaintiffs in support of their claim, the Court being fully advised in the premises, makes its findings of fact, conclusions of law and judgment as follows, to-wit:

FINDINGS OF FACT

I.

That the plaintiff, The Palisade Irrigation Company, since the 6th day of September, 1919, has been and now is a corporation organized and existing under the laws of the State of Idaho.

II.

That since on or about the 1st day of March, 1930, the defendant, Lynn Crandall, has been and now is the duly elected, qualified and acting Watermaster of Water District No. 36 of the State of Idaho, which includes within its boundaries the counties of Bonneville and Fremont of said State.

III.

That the waters of the Snake River and its tributaries were heretofore decreed in this Court in the action entitled Rexburg Irrigation Company, et al., plaintiffs, vs. Teton Irrigation Canal Company, et al, defendants, and judgment therein was made and entered

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The Document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office. Being filed and recorded in my office on 10-22-82. 1982
C. J. [Signature], Clerk of the District Court of the Seventh Judicial District in and for Fremont County, Idaho.

under date of December 16th, 1910, and appears of record in Book B. of Judgments at Page 449, records of Fremont County, Idaho. That the plaintiffs were not parties to the said action and did not appear therein.

IV.

That under date of June 25th, 1929, in the District Court of the United States for the District of Idaho, Eastern Division, a decree was entered under title of Woodville Canal Company, a corporation, plaintiff, vs. Clark & Edwards Canal & Irrigation Company, a corporation, et al., defendants, Decree 661, in which the flood or high water rights in the Snake River were adjudicated. That the plaintiffs herein were not parties to the said action and did not appear therein.

V.

That the plaintiff, The Palisade Irrigation Company, was organized for the purpose of acquiring water rights and transporting water for the benefit of its stockholders, and that the lands described in Paragraph IX of the Complaint and hereinafter described, for a long time hitherto and now are irrigated from the canals of the plaintiff corporation, and said lands lie within the boundaries of water District No. 36, and all of said lands are situated within the County of Bonneville, State of Idaho.

VI.

That at the time the said action of Woodville Canal Company, plaintiff, vs. Clark & Edwards Canal & Irrigation Company, et al., defendants, was commenced for adjudication and decreeing the rights and priorities in and to the use of said flood waters of Snake River, in which judgment was entered as heretofore described, the plaintiffs herein and the individual members of The Palisade Irrigation Company, plaintiff, did not understand the purpose of the suit or that it might in any way affect their rights to any of the waters of the Snake River, and these Plaintiffs were not, nor were any of the stockholders of The Palisade Irrigation Company, served with process in said water suit, and had no realization of the importance and necessity of securing an adjudication of the water rights then and there appurtenant to the aforesaid lands and used for beneficial purposes prior to the date of the making and entering of said decree, and no person who used water on any of said lands was made a party to the said action and did not become a party thereto.

VII.

That on or about the 6th day of September, 1919, The Palisade Irrigation Company, a corporation, and the respective land-owners under its canal system appropriated and diverted from Palisade Creek four thousand eight hundred ninety (4,890) miners inches or 97.8 second feet of water, conducted the same through their canal system, and applied the same to beneficial uses for agricultural and domestic purposes on the lands heretofore described, and said waters have been continuously and uninterruptedly used for beneficial purposes during all of the time from said 6th day of September, 1919, until the present time; that individual stockholders of The Palisade Irrigation Company, a corporation, held priorities to the aforesaid water for a long time prior to September 6th, 1919, the date of incorporation, that is to say prior to 1902.

That the following named plaintiffs have appropriated from Rainey Creek water in miners inches and second feet in the

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amounts set opposite their names, as follows:

J. L. Higham	120	2.4
Richard A. Beam	360	7.2
Ivan Weeks	160	3.2
Thomas M. Weeks	200	4.
John B. Miller	240	4.8
Shurtleff Bros.	880	17.6
Elizabeth Beam	150	3.
David H. Peterson and Jess L. Peterson	100	2.
Henry Goettsche	312	6.24

Weeks Bros., a partnership, has appropriated out of Lower Rainey Creek (below sinks) 135 miner inches, or 2.7 second feet. Luther Smith has appropriated out of Lower Rainey Creek (below sinks) 160 miner inches, or 3.2 second feet.

M. E. Toliver has appropriated out of Pritchard Creek and Garden Creek 800 miner inches, or 16 second feet, in amounts of approximately 350 inches and 450 inches respectively.

The following named plaintiffs have appropriated out of Snake River and Brandywine Slough, in miners inches or second feet in amounts set opposite their names as follows, to-wit:

Harry Bitton	160	3.2
Francis Stoltenberg	210	4.2
Joe Kruse	120	2.4

Henry McCabe has appropriated out of Sqaw (Indian) Creek 150 miners inches, or 3 second feet.

VIII.

That at all times herein mentioned, the aforesaid lands have been and now are dry and arid in character in their natural state, and required, and require, the artificial application of water for the purpose of producing profitable agricultural crops thereon; that all of the Plaintiffs have appropriated flood waters in amounts equal to the amounts in miners inches or second feet as set out hereinbefore, said appropriation taking place in the early spring at a time when the creeks take the run-off from the melting of snow, and that each plaintiff or his or its predecessor in title, has appropriated said flood waters and applied said waters to beneficial uses since the time when their priorities were established, and that they have beneficially used said waters continuously and uninterruptedly from the aforesaid dates until the present time.

IX.

That the said water rights or appropriations have never been denied and have never lapsed for any reason whatsoever, and said rights have never been decreed or adjudicated, and that certain difficulties arise or are likely to arise regarding the distribution to the plaintiff company and its stockholders and the individual plaintiffs of the waters appropriated, diverted and used, and, as a matter of fact, plaintiffs' position in respect to securing an adjudication of their water rights should be corrected and a summary decree secured therefor.

X.

That there are many users of water from the Snake River and its tributaries whose rights are subsequent in time and inferior to the rights of the plaintiffs, and that there are certain other water users from said South Fork of Snake River who assert and claim prior and superior rights to the rights of the plaintiffs; and plaintiffs allege that as to the said 4,890 miners inches or 97.8 second feet of The Palisade Irrigation Company, a corporation, and 3,790 miners inches or 75.4 second feet for the remaining plaintiffs, that all rights and claims of every person or persons whosoever are subject to and interfere to the respective rights of the plaintiffs as of the date of priority of January 22, 1916.

XI.

Plaintiffs allege that the findings of fact and conclusions of law upon which the decree of June 25, 1929, were made and

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are based are final and binding upon said plaintiffs, and that said decree and the adjudication of said rights are binding upon the landowners and stockholders of said plaintiff, The Palisade Irrigation Company, and that all of said plaintiffs accept the provisions thereof; that plaintiffs' rights were not determined by said decree.

XII.

That Harry Bitton has a water right under State of Idaho Reclamation Permit No. #2718 for 160 miners inches of water appropriated out of Snake River and Brandywine Slough with a priority date of March 21, 1909. That such right has never been granted by decree of this or any other Court in the State of Idaho.

XIII.

That all the allegations contained in the plaintiffs' verified complaint are true, and that no interested party has pleaded to or answered said complaint, and that the default of the defendant has been entered herein.

CONCLUSIONS OF LAW

I.

From the foregoing findings of fact the Court finds as conclusions of law that the plaintiffs are entitled to a judgment herein granting to it a summary decree and adjudication of the water rights in the amount and with the date of priority January 22, 1916, prior and superior to all appropriators and users of water with dates of priority subsequent to the date indicated, and debarring the defendant and all interested parties from asserting any right, claim or claims to the use of water under priority date subsequent to January 22, 1916.

II.

That Harry Bitton, one of the plaintiffs in the action, is entitled to a decree awarding him 160 miners inches of water out of Snake River & Brandywine Slough with a priority date of March 21, 1909.

JUDGMENT

I.

01-0364/23-0088

It is ordered, adjudged and decreed that the plaintiff, Harry Bitton, is awarded the right to the use of 160 miners inches of water for the purpose of irrigating the following described lands with a priority date of March 21, 1909, and for the purpose of manufacturing power and other purposes, to-wit:

Lots 2, 3 and Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), Section 2, Township 1 North, Range 43, East Boise Meridian.

II.

It is further ordered, adjudged and decreed that the following awards shall be for use only on lands which have been heretofore irrigated from the waters of the Snake River and its tributaries and shall not be subject to transfer to any lands not heretofore irrigated, and if the owners or their successors in interest shall attempt to transfer the same to lands not heretofore irrigated, such

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23-0096 It is further Ordered, Adjudged and Decreed that the plaintiffs, David H. Peterson and Jess L. Peterson, have the right to divert from Upper Rainey Creek and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$),
Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$),
East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$), Section
Thirty-three (33), Township Two (2), North, Range
Forty-four (44), East of the Boise Meridian.

23-0097 It is further Ordered, Adjudged and Decreed that the plaintiff, Henry Goettsche, has the right to diver from Upper Rainey Creek and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

South Half of the North Half (S $\frac{1}{2}$ N $\frac{1}{2}$), North Half of
the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$), Section Five (5),
Township One (1) North, Range Forty-four (44), East
of the Boise Meridian.

23-0098 It is further Ordered, Adjudged and Decreed that the plaintiff, Weeks, Bros., a partnership, has the right to divert from Lower Rainey Creek and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

Southeast Quarter (SE $\frac{1}{4}$), Section One (1), Township One
(1) North, Range Forty-three (43), East of the Boise
Meridian.

23-0099—TRANSFER # 3605
It is further Ordered, Adjudged and Decreed that the plaintiff, Luther Smith, has the right to divert from Lower Rainey Creek and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), less Tract
one (1), Section One (1), Township One (1); Southeast
Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$), less one (1)
acre, Section Thirty-five (35), Township Two (2); South
Half of the Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$), Section Thirty-six
(36), Township Two (2); Northeast Quarter of the North-
east Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), South Half of the Northeast Quarter
(S $\frac{1}{2}$ NE $\frac{1}{4}$), North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$),
Section Two (2), Township One (1), all North Range Forty-
three (43), East of the Boise Meridian.

01-0365/23-0100 It is further Ordered, Adjudged and Decreed that the plaintiff, Harry Bitton, has the right to divert from Snake River and Brandywine Slough and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

Lots Two (2) and Three (3), the Southeast Quarter of
the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Northeast Quarter of
the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), Section Two (2), Town-
ship One (1) North, Range Forty-three (43), East of
the Boise Meridian.

01-0366/23-0101 It is further Ordered, Adjudged and Decreed that the plaintiff, Francis Stoltenberg, has the right to divert from Snake River and Brandywine Slough and use said quantity of water with the said priority date for irrigating and domestic purposes upon the

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3 acres in Northeast corner of Southeast Quarter of Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 20, Township 1 North Range 44, East of the Boise Meridian.

Tract 2, Section 20, Township 1 North, Range 44, East of the Boise Meridian.

Tract 3, Section 20, Township 1 North, Range 44, East of the Boise Meridian.

Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), less 1.03 acres in west side Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 20, Township 1 North, Range 44, East of the Boise Meridian.

1.03 acres on west side Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 20, Township 1 North, Range 44, East of the Boise Meridian.

1 acre in Northwest corner of Northeast Quarter of Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 20, Township 1 North, Range 44, East of the Boise Meridian.

Northeast Quarter of Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), Southeast Quarter of Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 21, Township 1 North, Range 44, East of the Boise Meridian.

Southwest Quarter of Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), North Half of Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$), Section 22, Township 1 North, Range 44, East of the Boise Meridian.

Southwest Quarter of Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Northwest Quarter of Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$), Section 22, Township 1 North, Range 44, East of the Boise Meridian.

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It is further Ordered, Adjudged and Decreed that the plaintiff, M. E. Toliver, has the right to divert from Pritchard Creek and Garden Creek and use said quantity of water with the said priority date for irrigating and domestic purposes upon the following described lands, to-wit:

Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$), Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$), Lot Five (5), Section Nineteen (19); Lots Four (4), Five (5) and Six (6), North Half (N $\frac{1}{2}$), East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$), Section Thirty (30); Northeast Quarter (NE $\frac{1}{4}$), North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$), Section Thirty-one (31); South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$), the Southwest Quarter (SW $\frac{1}{4}$), Section Thirty-two (32), all in Township Two (2) North, Range Forty-three (43), East of the Boise Meridian.

V.

It is further Ordered, Adjudged and Decreed that this summary adjudication of water rights is made under authority and in accordance with the terms of Section 42-1405, Idaho Code, 1949 official edition, and that the plaintiffs pay their own costs incurred herein.

Dated

January 16, 1951.

Henry S. Martin
District Judge.

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