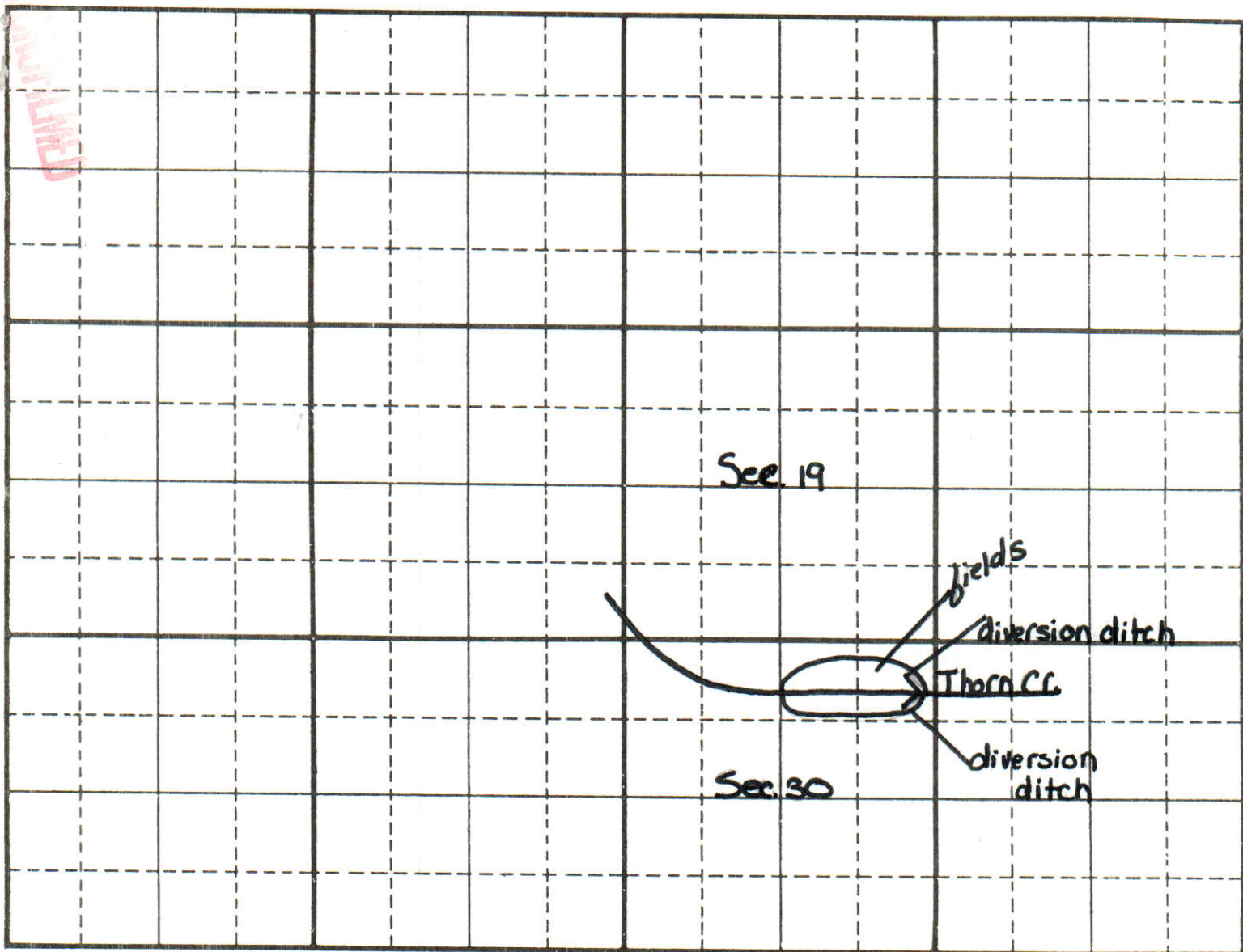


(8) Remarks This water right was commenced pursuant to Idaho Code Title IX, Ch. 1, Sec. 3155 - 3167 (Act of February 10, 1881). See Certified copy of William H. Casner Notice of Water Right (1889), Deposition of John Woods Casner and Ephraim Benton Casner attached hereto.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Ada)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 20th day of May

Barry Marcus
Earl Chapman

(Claimant)

1983.

Margaret Rose Starns
Notary Public
Residing at Meridian

My commission expires _____

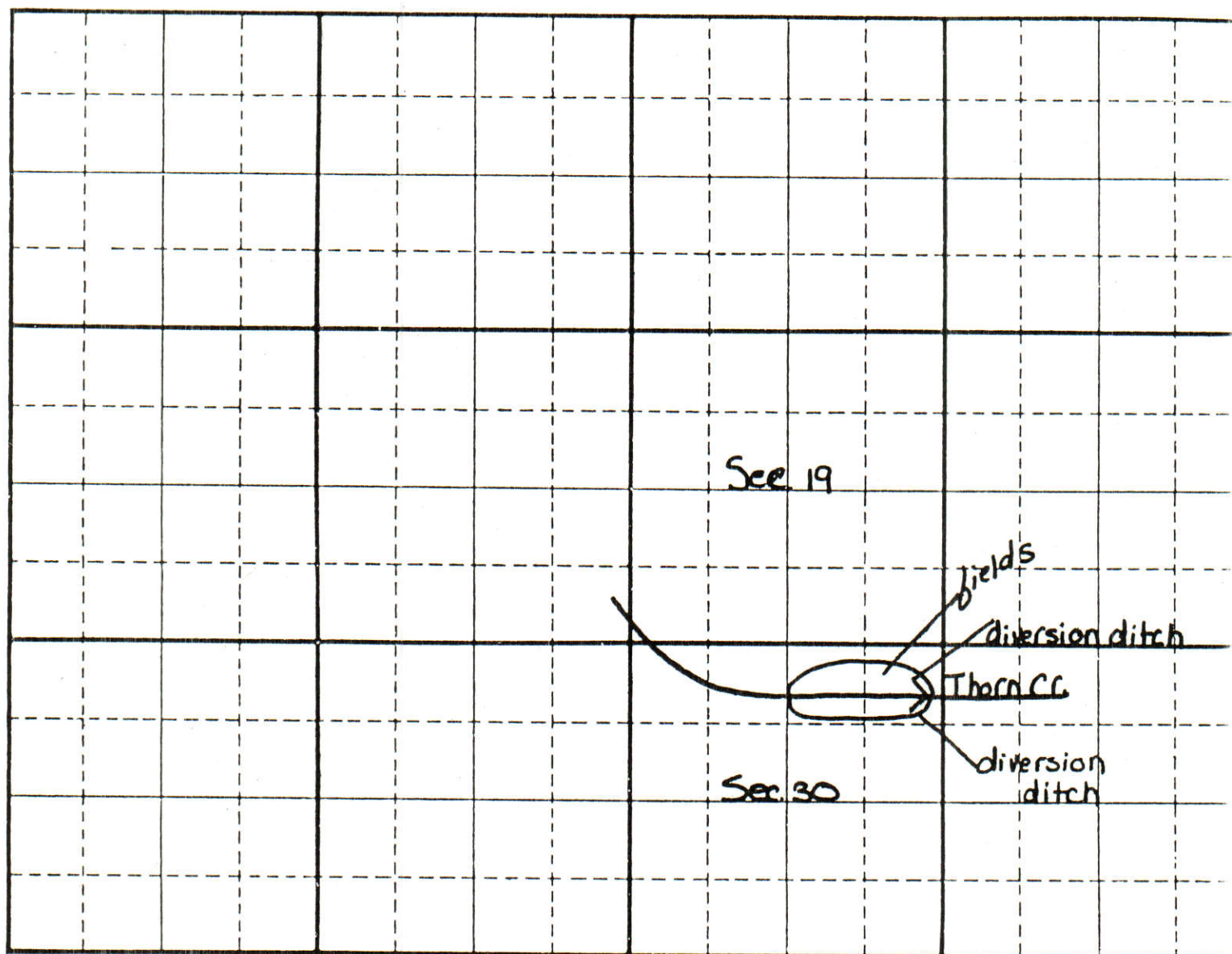
FOR DEPARTMENT USE ONLY

Received by <u>SRC</u>	Date <u>5/26/83</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>GWS</u>	Date <u>6/28/83</u>		claimant by:	
\$30.00 fee received by <u>JP</u>	Date <u>5/27/83</u>	<u>28898</u>		
Published in <u>the Idaho World</u>				
Dates <u>8/24/83 & 8/31/83</u>				

RECEIVED

JUN 6 1983

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State of Idaho)
County of Ada) ss.

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Sworn to before me this 20th day of May 1983.

Barry Marcus
Earl Chapman
Wanda Chapman (Claimant)

Margaret Rose Storr
Notary Public
Residing at Meridian

My commission expires _____

FOR DEPARTMENT USE ONLY

Received by <u> m </u>	Date <u>6-7-83</u>	Exception filed by:	Forwarded to	Date
Prelim. check by _____	Date _____		claimant by:	
\$30.00 fee received by _____	Date _____			
Published in _____				
Dates _____				



11-11-11

57

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT

RECEIVED
MAY 2 1963

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Horace Chapman, Earl Chapman, Barry Marcus and Craig Marcus
(Name of Claimant)
737 North 7th Street, Boise, Idaho 83702 Telephone No. 342-3563
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) April 26, 1889 - Notice of Water Right

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>1.5 cfs</u>	Use <u>Irrigation & stockwater</u>	Period of Use From <u>April 1</u>	To <u>Nov. 30</u>
Quantity	_____	Use _____	Period of Use From _____	To _____
Quantity	_____	Use _____	Period of Use From _____	To _____
Quantity	_____	Use _____	Period of Use From _____	To _____
Quantity	_____	Use _____	Period of Use From _____	To _____

(4) 1.5 cfs TOTAL QUANTITY USED.
(cfs, af)

(5) A) Point of diversion: (Location of point where water is diverted from its source)
NE ¼ NE ¼, Sec. 30 Twp. 5N. Rge. 5E B.M., County of Boise
 Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Pipe and headgate to ditches (approximately 1/2 mile) to fields. Ditch is approximately 2' x 3'. Prior to 1971 the point of diversion for both ditches was on South side of Thorn Creek in 1971 diversion for 1 ditch changed to North side.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

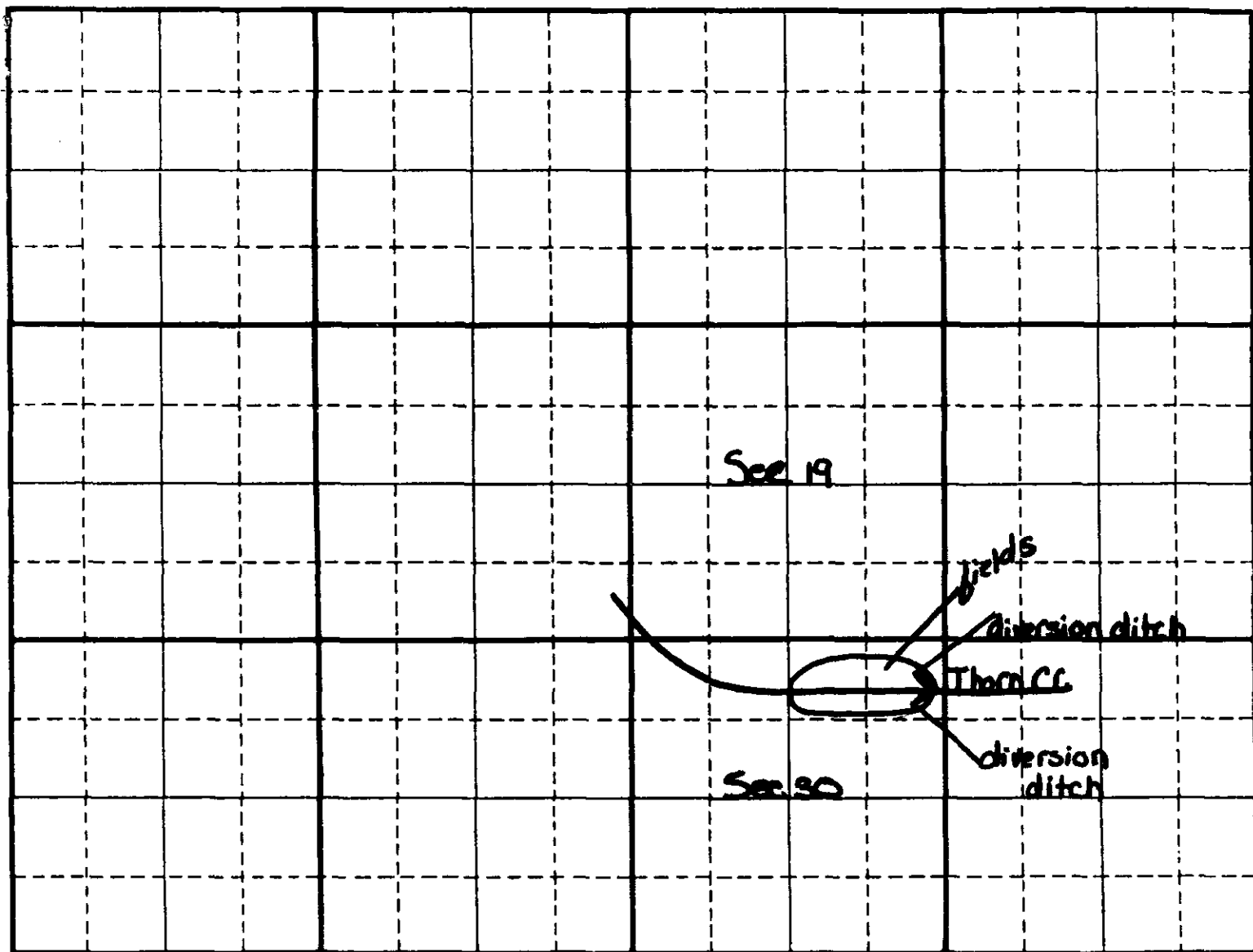
No. of acres 35

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: _____

NOTE: Include here the type and number of stock watered: Cattle - approximately 20 head

(7) If you are claiming water as a member of an organization, list name of organization: _____

(8) Remarks This water right was commenced pursuant to Idaho Code Title IX, Ch. 1, Sec. 3155 - 3167 (Act of February 10, 1881). See Certified copy of William H. Casner Notice of Water Right (1889), Deposition of John Woods Casner and Ephraim Benton Casner attached hereto.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 20th day of May

Barry Marcus
Carl Chapman
(Claimant)

1983

Margaret Rose Stone
Notary Public
Residing at Meridian

My commission expires _____

FOR DEPARTMENT USE ONLY

Received by <u>SRC</u>	Date <u>5/26/83</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>GWS</u>	Date <u>6/28/83</u>		claimant by:	
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Published in <u>The Idaho Miner</u>				
Dates <u>9/24/83</u> & <u>8/31/83</u>				

STATE OF IDAHO)
) ss
COUNTY of Ada)

On this 6th day of June, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared CRAIG MARCUS, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

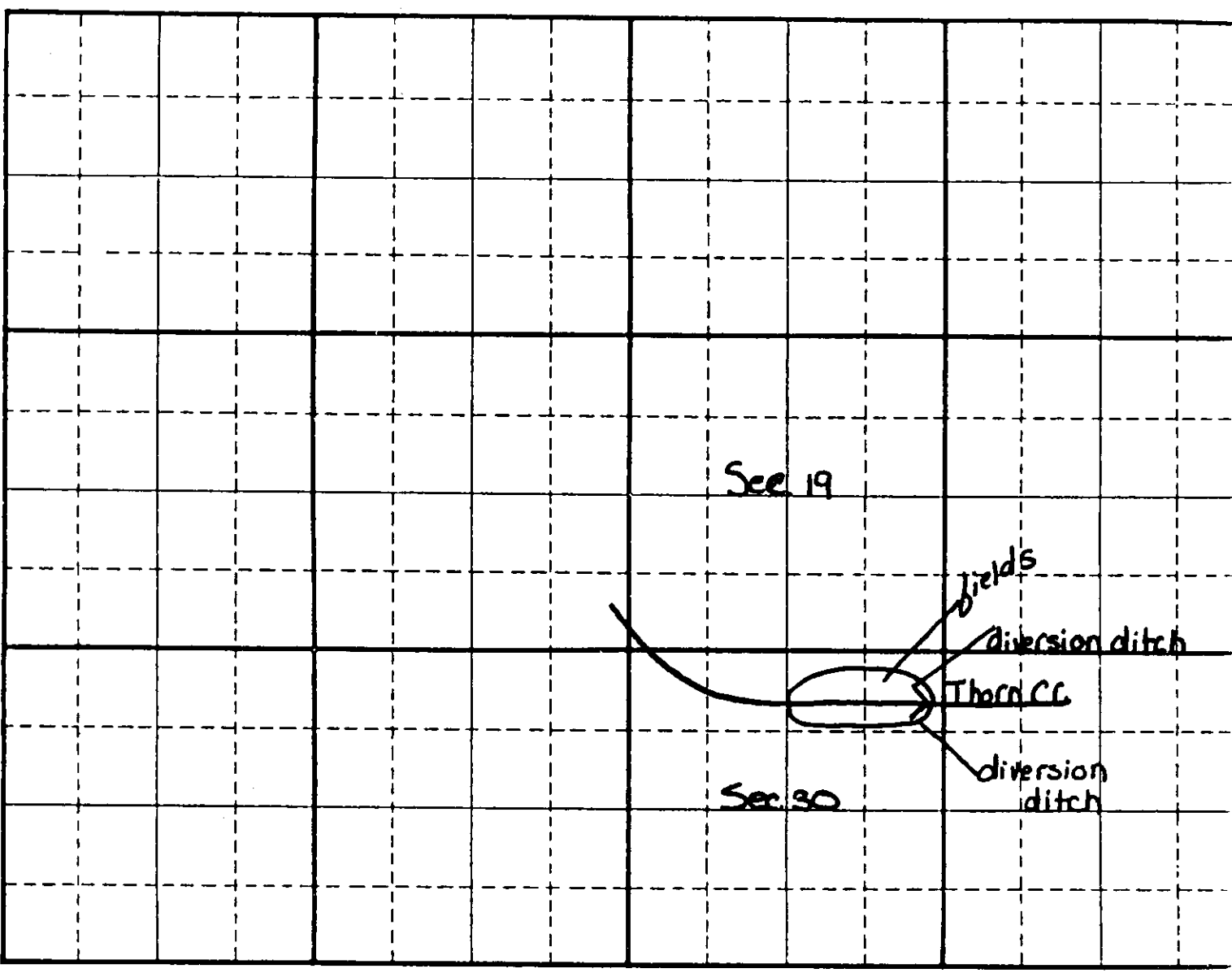
(SEAL)


Notary Public for Idaho
Residing at Boise, Idaho

RECEIVED

JUN 6 1983

Remarks This water right was commenced pursuant to Idaho Code Title 17, Ch. 1, Sec. 3155 - 3167 (Act of February 10, 1881). See Certified copy of William H. Casner Notice of Water Right (1889), Deposition of John Woods Casner and Ephraim Benton Casner attached hereto.



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Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 20th day of May 1983.
Barry Marcus
Earl Chapman
Wm. Casner (Claimant)

Margaret Rose Starns
Notary Public
Residing at Meridian

My commission expires _____

FOR DEPARTMENT USE ONLY

Received by mm Date 6-7-83 Exception filed by: _____ Forwarded to _____ Date _____
Prelim. check by _____ Date _____ claimant by: _____
\$30.00 fee received by _____ Date _____
Published in _____
Dates _____

Thorn Creek

Notice of Water Right
 Notice is hereby given that the undersigned claim (75) seventy five inches of water out of Thorn Creek for this ditch known as the Briggs and Casner ditch.

This ditch is one foot and one half wide and two feet deep. said water being claimed for irrigating purposes and takes the water out of Thorn Creek at the upper end of the Casner Ranch and on the South side of said Creek.

Located this 26th day of April 1889.
 Wm H Casner

Recorded at the request of Wm H Casner
 April 29th 1889 at 10 O'clock A M
 Wm Warner
 Recorder

RECORDED

State of Idaho

County of Boise

SS.

I hereby certify that the foregoing instrument is a full true and correct copy of the original recorded in this office.

Dated May 20, 1913
 ARLENE C. KOLAR, Auditor and Recorder

By [Signature]
 Deputy

TITLE IX. WATER RIGHTS AND IRRIGATION.

CHAPTER I. WATER RIGHTS.

SECTION
3155. Rights to water may be acquired by appropriation.
3156. Appropriation must be for a useful purpose.
3157. Point of diversion may be changed.
3158. Water may be turned into natural channels.
3159. First in time, first in right.
3160. Notice of appropriation.

SECTION
3161. Diligence in appropriation.
3162. Completion defined.
3163. Doctrine of relation applied.
3164. Forfeiture.
3165. Ditches, etc., heretofore made.
3166. Rights of present claimant.
3167. Recorder to keep book in which to record notices.

SECTION 3155. The right to the use of running water flowing in a river, or stream, or down a cañon or ravine, may be acquired by appropriation.

Right to water, how acquired. Act Feb. 10, 1881. §3155
Chap. I. Amd'd. Laws '85, pgs. 174, 183, 215.

SEC. 3156. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

Appropriation to be for useful purposes.

SEC. 3157. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe or aqueduct by which the diversion is made, to places beyond that where the first use was made.

Point of diversion may be changed.

SEC. 3158. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

Water may be turned into natural channels.

SEC. 3159. As between appropriators, the one first in time is the first in right.

First in time, first in right.

SEC. 3160. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

Notice of appropriation.

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure, and accurately describing the point of diversion;

2. The purpose for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe or aqueduct in which he intends to divert it; a copy of the notice must, within ten days after it is posted, be recorded in the office of the Recorder of the county in which it is posted.

SEC. 3161. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

Diligence in appropriating.

SEC. 3162. By "completion" is meant conducting the waters to the place of intended use.

Completion defined.

SEC. 3163. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

Doctrine of relation applied.

Forfeiture.

SEC. 3164. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith, except as provided in the next section.

§3165

2 Idaho,
pg. 989Ditches, etc.,
heretofore
made.
11 sec., 268-9.

SEC. 3165. All ditches, canals, and other works heretofore made, constructed, or provided, by means of which the waters of any stream have been diverted and applied to any beneficial use, must be taken to have secured the right to the waters claimed, to the extent of the quantity which said works are capable of conducting, and not exceeding the quantity claimed, without regard to or compliance with, the requirements of this chapter.

Rights of
present claim-
ant.

SEC. 3166. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it and who have not diverted nor applied it to some useful purpose, must, after this Title takes effect, and within ninety days thereafter, proceed as in this Title provided, or their right ceases.

Recorder to
keep book.

SEC. 3167. The Recorder of each county must keep a book, in which he must record the notices provided for in this Title.

CHAPTER II.

RIGHT OF WAY FOR DITCHES.

SECTION

3180. Right of land owners.

3181. Land owners entitled to right of way.

3182. When right of way is refused, to petition County Commissioners.

3183. Oath of appraiser; must hear proofs and make certificates.

3184. Rights of riparian owners.

SECTION

3185. Right of way.

3186. Ditches, etc., to be kept in good repair.

3187. Not to interfere with prior rights.

3188. Insufficiency of supply of water.

3189. Order of right to use of water; repair of ditches.

3190. Use of excess of water.

§3180

Chap. II Amd'd
Laws '95, pgs.
154, 183, 215.Right of land
owners.
11 sec., 269.

SECTION 3180. All persons, companies, and corporations, owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

Land owners
entitled to
right of way.
11 sec., 269.

SEC. 3181. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, or other conduit on his own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owner or claimants are entitled to a right of way through the lands of others, for the purposes of irrigation; *Provided*, That in the making, constructing, keeping up, and maintenance of such ditch, canal or conduit, through the lands of others, the person, company, or corporation, proceeding under this section, and those succeeding to the interests of such person, company, or corporation, must keep such ditch, canal, or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct, for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

To keep
conduit in
good repair.

Damages.

When right
of way is
refused.
11 sec., 269.

SEC. 3182. In case of the refusal of the owners or claimants of any lands through which such ditch, canal, or other works are proposed to be made or constructed, to al-

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IN THE MATTER OF

----- :
JOHN WOODS CASNER and :
EPHRAIM BENTON CASNER, :

Petitioners, :

DEPARTMENT OF RECLAMATION, :

STATE OF IDAHO, :

Respondent. :
----- :

DEPOSITIONS OF

JOHN WOODS CASNER
EPHRAIM BENTON CASNER

Before Wm. E. Rice, Notary Public, at Boise, Idaho,
March 31, 1970.

DISTRICT COURT BOISE COUNTY, IDAHO

Recorded in Book _____ Page _____

Filed APR 22 1970

Rachman M. Engen
CLERK

By _____ DEPUTY

1 JOHN WOODS CASNER and EPHRAIM BENTON CASNER
2 Called for their deposition pursuant to Order, were sworn and
3 testified on their respective oaths as follows:
4

5 DIRECT EXAMINATION

6 By Barry Marcus.

7 Q John, would you state your name?

8 A John Woods Casner.

9 Q How old are you, John?

10 A I'll be 74 the 30th day of July.

11 Q Where were you born, John?

12 A Down here on Mores Creek, at the old toll gate.

13 Q Where is that in relation to where Thorn Creek runs
14 into Mores Creek?

15 A Oh, it ain't very far. About a quarter of a mile up
16 from the mouth of Thorn Creek; maybe not that far.

17 Q What was the date of your birth?

18 A July 30th, 1896.

19 Q Where do you live now, John?

20 A On Thorn Creek yet.

21 Q On Thorn Creek? And have you lived there all of your
22 life?

23 A Most all my life.

24 Q Is Ephraim Benton Casner your brother?

25 A Yes sir.

1 BE IT REMEMBERED, that the depositions of John Woods
2 Casner and Ephraim Benton Casner were taken before Wm. E.
3 Rice, Notary Public, at the Restful Manor at 316 West
4 Washington St. in Boise, Ada County, Idaho at or about the
5 hour of three o'clock p.m. on the 31st day of March 1970.
6 APPEARANCES: Barry Marcus, of the firm of Marcus & Marcus -
7 for the Petitioner.
8 Wm. D. Collins, Assistant Attorney General of
9 Idaho, for the Department of Reclamation, State
10 of Idaho.
11 MR. MARCUS: This deposition is taken
12 pursuant to Order dated March 6, 1970, issued by Honorable
13 Alfred C. Hagan, Fourth District Judge, for perpetuation of
14 testimony. We will have both John Woods Casner and Ephraim
15 Benton Casner sworn and I will examine them both at the same
16 time for the convenience of this deposition. We will have the
17 Petitioners read and sign the deposition before it is filed.
18
19
20
21
22
23
24
25

APPEARANCES

1

1 Q Now Ephraim, would you state your name?
2 A Ephraim Benton Casner.
3 Q Where do you live, Eph?
4 A Thorn Creek.
5 Q Approximately where on Thorn Creek?
6 A About three quarters up the creek.
7 Q Three quarters of a mile up the creek?
8 A Yes, about that.
9 Q Up Thorn Creek from the mouth?
10 A Yes.
11 Q Is John Woods Casner your brother?
12 A Yes.
13 Q And you live together up there on Thorn Creek.
14 A Yes.
15 Q What is the date of your birth?
16 A January 25th, 1891.
17 Q Where were you born?
18 A At the mouth of Thorn Creek and Mores Creek.
19 Q How long have you lived on Thorn Creek?
20 A Oh, off and on all my life. I was over on the
21 Payette River for quite a while.
22 Q How long were you living on the Payette River?
23 A Oh ten, eleven, twelve years.
24 Q But other than that you've lived on Thorn Creek.
25 A Yes. Oh, I've worked in Montana and Oregon.

1 Q Now who was your father, Eph?

2 A William Hill Casner.

3 Q And who was your mother?

4 A Elisabeth Graham. That was her maiden
5 name.

6 Q Now Eph, when did your mother and father come to Idaho?

7 A Oh, my father came way early. He come from Califor-
8 nia in about '52, didn't he? He wintered in Idaho City in '66
9 I think. Silver City early.

10 Q Now when did he settle on Thorn Creek?

11 A I think 1872, didn't he?

12 JOHN CASNER: Yes.

13 Q At that time, Eph, did he homestead?

14 A No, he didn't homestead. He squatted the right he
15 bought out there. Just squatter's right. It wasn't surveyed
16 at that time.

17 Q What was that property known as? Was that known as the
18 Casner Ranch?

19 A Briggs first. I think Pegleg Smith, they said he
20 was one of the original owners.

21 Q And then Briggs owned the property?

22 A Briggs.

23 Q And then your father bought in with Briggs?

24 A Yes, bought in with Briggs and then bought Briggs
25 out.

1 Q But this is what's known as the Casner Ranch?

2 A Yes.

3 Q Now Eph, I am handing you a map showing Thorne Creek in
4 the area around the mouth of Thorne Creek, the confluence of
5 Thorne Creek and Mores Creek.

6 A Yes.

7 Q There is an area there designated in red. Is that the
8 area that's covered by the Casner ranch?

9 A Why I think so. Yes. Yes, that's it.

10 Q Now handing you a letters patent issued by the United
11 States to Nettie Casner. Can you see this, Eph, well enough
12 to read that description?

13 A Yes.

14 Q Now is that a description of part of the land of the
15 Casner Ranch?

16 A Yes.

17 Q Can you read that description, Eph?

18 A Yes. Lots 4 and 5, Section 24, Township 5 North,
19 Range 4 East.

20 Q Is there anything else?

21 A And the Southeast quarter of the Southwest quarter,
22 and the Southwest quarter of the Southeast quarter, and Lots
23 3 and 4, Section 19, in Township 5 North, Range 5 East, of the
24 Boise Meridian, Idaho, containing 150.56 Acres.

25 Q Now who was Nettie Casner?

1 A Sister.

2 Q She was your sister?

3 A Yes.

4 Q And she homesteaded that part of the Casner Ranch.

5 A Yes.

6 Q Which had been occupied by your parents prior to her

7 homesteading it.

8 A Yes.

9 Q Now Eph, I hand you what is another letters patent issued

10 by the United States, to Alexander G. Casner; does that patent

11 cover the rest of the Casner Ranch?

12 A Yes, that covers the other half.

13 Q And could you read that description to us?

14 A Lots 1 and 2, the Northeast Quarter of the Northwest

15 quarter, and the North half of the Northeast quarter of Section

16 30, Township 5 North, Range 5 East, of the Boise meridian,

17 Idaho, containing 163.47 acres.

18 Q Now Eph, who is Alexander G. Casner?

19 A Brother.

20 Q Your brother?

21 A Yes.

22 Q And he homesteaded this part of the Casner Ranch?

23 A Yes, the upper part.

24 Q And this upper part of the Casner Ranch was occupied by

25 your parents prior to the homesteading?

1 A Yes, prior.

2 Q Now Eph, this map which we will designate as Exhibit No.

3 1, is a map of the entire Casner Ranch, and it covers those

4 areas that are described in the patent. We will mark this as

5 Exhibit 1. Now Eph, you said your parents settled on the

6 Casner Ranch about 1872.

7 A Yes.

8 Q Where did they establish their residence?

9 A Right there out in front of this trailer house.

10 There was a house there.

11 Q Approximately how far up from the mouth of Thorn Creek?

12 A About a mile.

13 Q Is that known, does that have a name, that area?

14 A Yes, it was the Casner Ranch station.

15 Q I mean where the house was, was that called the Casner

16 House, or Halfway House, or something?

17 A Well, that road come right by there, you know, went

18 up over to Idaho City. That's the old stage road.

19 Q It came by right in front of the --

20 A Right in front of the house there.

21 Q In front of the house.

22 A Where the car is settin'.

23 Q Now what was the property of the Casner Ranch used for?

24 A What do you mean?

25 Q Some of it was farmed?

1 A Oh yes.

2 Q And grazed?

3 A Grazed.

4 Q Now what part of it was farmed?

5 A It was the bottom part there.

6 Q The bottom part?

7 A Yes. All of those bottom lands were farmed. All up

8 and down Thorne Creek there is where it was farmed.

9 Q Now looking at that map, on which side of Thorne Creek?

10 A Both sides.

11 Q On both sides of Thorne Creek?

12 A Yes, both sides.

13 Q Approximately how many acres were farmed? A, it would

14 be pretty hard for me to say. There must have been 60, 70 or

15 80 acres there, wasn't there?

16 JOHN CASNER: About that.

17 Q Between 60 and 80 acres, John?

18 JOHN CASNER: Yes.

19 Q It was farmed on both sides of Thorne Creek?

20 JOHN CASNER: Both sides of the

21 creek.

22 Q Now Eph, this area that was farmed, where was the

23 boundary? Where was the western boundary of the area that

24 was farmed?

25 A It went up the line, clear through there.

1 Q Did it adjoin the Mores Creek --

2 A It went clear up there to the section line, clear
3 down to Mores Creek.

4 Q Which section line, Eph, was this? Do you mean this
5 side of the section (indicating on the map)?

6 A Yes, both sides. It's on both sides of Thorne
7 Creek.

8 Q On both sides of Thorne Creek, Eph?

9 A Yes.

10 Q And you are talking about Section 30?

11 A Yes.

12 Q And you are talking about the east section line of
13 Section 30?

14 A Yes.

15 Q That represented the eastern boundary of the farmed area?

16 A Yes.

17 Q And that's Township 5 North, Range 5 East.

18 A Yes.

19 Q Now the western boundary of the farmed area, was what,
20 Eph? Was that Mores Creek? Did it run all the way down to
21 Mores Creek?

22 A Yes, it went to Mores Creek, but it went clear on --

23 Q O.K. Now so that, let me get this straight here. The
24 eastern section line of Section 30 represented the eastern
25 boundary of the farm?

1 A Yes.

2 Q And Mores Creek represented the western boundary of the
3 farmed area.

4 A Yes.

5 Q Now how far south of Thorne Creek did the farmed area --

6 A Not on the bottom. On up further across -- on up
7 it was farmed.

8 Q On the south side of Thorne Creek?

9 A Yes.

10 Q About where from your house, from the residence?

11 A Right across the creek when we lived on Mores Creek.

12 Q Let me ask this to you again, Eph: The farmed area --
13 now we are talking about south of Thorne Creek -- where did
14 the farmed area begin as you're going up Thorne Creek?

15 A Going up, above that section corner as you went
16 around that --

17 Q Just on the point?

18 A Yes.

19 Q How far up from the mouth of Thorne Creek is that?

20 A Oh, must have been three-eighths, wasn't it?

21 JOHN CASNER: What?

22 EPH: How far did this run, on this other side? Three-eighths
23 of a mile?

24 JOHN CASNER: About a half or three
25 quarters.

1 EPH CASNER: Little over a half.

2 Q You'd go up Thorn Creek from the mouth about half a mile,

3 Eph, before you hit the farmed area on the south side of

4 Thorn Creek?

5 JOHN CASNER: Yes.

6 EPH CASNER: Yeah, that's right.

7 Q OK. And then, Eph, from that point that the area of the

8 farm begins, on the south side of Thorne Creek, how far up the

9 creek --

10 A It went clear on up.

11 Q Clear up to the eastern section line?

12 A Yes, practically.

13 Q O.K. Now how far south of Thorne Creek did this farmed

14 area go?

15 A South?

16 Q Yes, south of the creek. In other words, how wide was

17 the farmed area?

18 A Oh, there was patches, you know, wider and narrower.

19 Some was ten acres and some fifteen acres.

20 Q Does it pretty much follow the road, where the roadway is

21 now? Would that represent the southern boundary of the farmed

22 area?

23 A Yes, where the road is now.

24 Q Where the road is now is pretty much the southern boun-

25 dary of the farmed area, south of Thorne Creek.

1 A Yes.

2 Q And the road that we are talking about is the Thorne
3 Creek road, the dirt road.

4 A Yes. On the north side is another road.

5 Q Well, where did the farmed area begin on the western
6 boundary? Did it start at Mores Creek? In other words, did
7 you farm down there -- (witness here cut in).

8 A I don't know. That's too long ago.

9 Q Well, I'm talking about the beginning when --

10 A Yes, they farmed there.

11 Q And that would be north of Thorne Creek and east of
12 Mores Creek, in the corner.

13 A Yes.

14 Q About how many acres are in that corner there, east of
15 the farm?

16 A Oh, what would it be, about five or six acres,
17 wouldn't it?

18 JOHN CASNER: Yes.

19 Q Who owns that now?

20 A DeRousse, I think.

21 Q DeRousse?

22 A Yes.

23 Q That's the property DeRousse owns?

24 A Yes, and then there's other patches washed down
25 above there, you know, clear on up.

1 Q Now as we come east of DeRousse's property -- and we are
2 talking about Vernon DeRousse -- as you come east of DeRousse's
3 property, north of Thorne Creek, where did the farming area
4 begin?

5 A Down at the mouth of Thorne Creek there.

6 Q O.K., Eph., so that the area north of Thorne Creek was
7 farmed all the way from Mores Creek?

8 A Yes.

9 Q How far up the creek?

10 A Went clear up the line, practically; might have
11 been little bare spots in it, but it was pretty near all
12 farmed.

13 Q All farmed clear up to the eastern section line of
14 Section 3?

15 A Yes.

16 Q Is there any natural feature that we can look to for the
17 boundary of that?

18 A Yes, there's a fence up there on the section line.

19 Q I mean on the north side of Thorne Creek.

20 A North side?

21 Q Yes. It would represent the northern boundary of the
22 farmed area? Is there a road?

23 A Well that road would be pretty close to you. It's a
24 forest road.

25 Q Forest road?

1 A Yes. That's where you're wanting?

2 Q Yes, I -- what I wanted is to find the northern boundary
3 of that farmed area.

4 A Yes.

5 Q There's a forest road?

6 A Forest road is just about. I wouldn't say exactly
7 but it's close.

8 Q It's close to the northern boundary?

9 A Yes.

10 Q Now does that forest road run the entire length of the--
11 runs on the north side?

12 A Yes, on the north -- on the east side -- the south
13 side.

14 Q I'm talking about the other side side; the same side that
15 your house is on.

16 A Well there's that road there going up to -- about
17 the boundary.

18 Q Going up to your house?

19 A Yes, going up to the house and then ==

20 Q O.K. Now that road takes off of the Thorn Creek road
21 and crosses Thorn Creek, about how far up from the mouth of
22 Thorn Creek?

23 A About a quarter or a little more.

24 Q A quarter of a mile?

25 A Yes.

1 Q And then it runs north up to the house that you are living
2 in now?
3 A Yes.
4 Q The house that you are living in now is about how far
5 from the mouth of Thorne Creek?
6 A Half a mile from that culvert.
7 Q Now that culvert, you mean --
8 A Where the road crosses.
9 Q Now this road that we are talking about that goes up to
10 the house that you live in now, when it hits the house it's at
11 the northern part of that farmed area, isn't it?
12 A Yes, they went back and they farmed all of that
13 through there.
14 Q In other words, the northern boundary of the farmed area
15 would be pretty much where the hill comes down to the flat
16 part of the creek bed.
17 A Yes.
18 Q So that summing it up, Eph, the farmed area on Thorne
19 Creek was bounded by Mores Creek on the west.
20 A Yes.
21 Q By Thorne Creek road on the south; by the east section
22 line of Section 30, on the east.
23 A Yes.
24 Q And by the base of the mountain on the north.
25 A Yes.

1 Q The base of the mountains being where the mountains come
2 down and meet the flat area that joins Mores Creek.
3 A Yes.
4 Q And pretty much all of that area that we just described
5 in there was farmed by your parents.
6 A Yes.
7 Q Was that farmed by Briggs before your parents?
8 A Yes, Briggs, he was there, and DeRousse was there
9 and farmed pretty much that area.
10 Q What kind of farming did they do in the area?
11 A Oh, they raised vegetables, cabbage, and potatoes,
12 and hay.
13 Q And hay?
14 A Yes.
15 Q All right now, Eph, was that area irrigated?
16 A Yes, it was all irrigated.
17 Q How was it irrigated?
18 A Out of ditches out of Thorn Creek.
19 Q How many ditches were there out of Thorn Creek?
20 A Four.
21 Q Four ditches?
22 A I think so.
23 Q That took off from Thorn Creek?
24 A Yes.
25 Q Now starting at the mouth of Thorn Creek and going

1 upstream, could you tell us about where the ditches took off
2 from Thorn Creek?

3 A Yes, it was right there below that culvert a little
4 ways. That was just below the section line. How far would
5 it be? A quarter? It would be right in front of Weaver's
6 house.

7 Q Weaver presently owns that house?

8 A Yes.

9 Q And that is about -- is that about approximately a
10 hundred yards downstream from the site of the old Thorn Creek
11 house?

12 A Yes.

13 Q In other words, the old Casner residence, about a hundred
14 yards down?

15 A Yes.

16 Q And it's about three fifths of a mile upstream from where
17 Mores Creek and Thorn Creek come together?

18 A Yes.

19 Q Now what was that ditch called? Was that called the
20 Briggs ditch?

21 A I don't know that. All I remember is putting water
22 in it and cleaning the ditches.

23 Q Do you know who built that ditch?

24 A No, it was in the early days.

25 Q Did Briggs use it?

1 A Yes.'

2 Q And your parents used it?

3 A Yes.

4 Q All right, now which side of the creek did this ditch
5 take off from? Which side of Thorn Creek.

6 A It came off on the north side.

7 Q On the north side?

8 A Yes.

9 Q And so the ditch flowed north from Thorn Creek.

10 A Yes.

11 Q About how wide was the ditch?

12 A Oh, about 18, 20 inches.

13 Q About two feet wide?

14 A Yes.

15 Q Approximately two feet wide?

16 A Yes.

17 Q About how deep was it?

18 A Oh, 18, 20 inches, two feet; two feet wide.

19 Q Could you estimate how many inches of water the ditch
20 carried?

21 A How many inches?

22 Q Yes.

23 A Oh, they'd put a big head in it and then, you know,
24 and turn it out. I would hold a hundred inches, 150 maybe.

25 Q A hundred, hundred and 50 inches?

1 A Yes.

2 Q Now what area did that ditch irrigate?

3 A Down at the lower end there where the DeRousse
4 property is.

5 Q Now how many acres were down there?

6 A What was there, five or six there, and on above
7 there, and what was sold to Weavers was four or five acres.

8 Q How many acres were irrigated altogether in there by
9 that ditch?

10 A Oh, must have been 10, 15 acres.

11 Q 10 or 15 acres?

12 A Ten acres anyhow.

13 Q Now did that irrigate any other land? Did that ditch
14 irrigate any other land?

15 A No, not on that.

16 Q In other words, did the water from that ditch go any
17 place but those 10 or 15 acres?

18 A No, that's all it went.

19 Q What did you grow on those 10 or 15 acres?

20 A Oh, they'd grow potatoes and hay and --

21 Q Now during what months of the year did you irrigate?

22 A Started in April, and went till fall.

23 Q April until when? October?

24 A 30th of October, and maybe later, on cabbages.

25 Q November?

1 A Yes.

2 Q Some of this water was used for pasture too?

3 A Oh yes, if we needed it.

4 Q All right, now Eph you say that this land was irrigated

5 before your parents came, by Briggs?

6 A Yes.

7 Q And by use of that ditch?

8 A Yes.

9 Q And your parents used that ditch to irrigate the same

10 area?

11 A Yes.

12 Q And who had it after your parents were gone from there?

13 A Nettie Casner.

14 Q When was she in there first?

15 A I don't know. You'd have to see on that deed when

16 she went. She was there before that ditch.

17 Q Your parents were there in 1872?

18 A Yes.

19 Q And then she patented it in 1919?

20 A Yes. She used that until she proved up on the

21 claim.

22 Q In other words, she was there before 1919.

23 A Yes.

24 Q Now you said that area is in what is now the DeRousse

25 property in that land that was irrigated by that ditch. Has

1 that been irrigated continuously?

2 A Yes, pretty near; sure it's continuously.

3 Q Up until the present time by that ditch?

4 A Yes.

5 Q In the same, approximately the same amount of water was

6 used on it, approximately the same area of land?

7 A Yes.

8 Q Now you know -- have you been acquainted with that land

9 in the Casner Ranch all of your life?

10 A Yes.

11 Q And even though you might have lived down on the Payette

12 River for a while, nevertheless you were around there --

13 A Oh yes, in '22 there.

14 Q Continuously all your life.

15 A Yes.

16 Q Now Eph, going upstream from that ditch, what is the

17 next ditch?

18 A It's across the creek.

19 Q It's on the south side of Thorn Creek?

20 A Yes, on the south side.

21 Q Approximately how far upstream from the mouth of Thorn

22 Creek?

23 A Oh, it would be about three quarters, I guess.

24 Q Three quarters of a mile?

25 A Yes.

1 Q And the ditch takes off on the south side?
2 A South side.
3 Q What area was irrigated by that ditch?
4 A Oh, that's all that down in below there. It's all
5 washed out, leveled off again, but --
6 Q All of the area south of Thorne Creek?
7 A Yes, it was all irrigated by that ditch.
8 Q How far did the irrigated area go up Thorne Creek, on
9 the south side?
10 A Across below the house there, that ditch came out.
11 Q Did it irrigate all of this area up to the section line?
12 A Yes, on the south side of Thorne Creek.
13 Q On the south side of Thorne Creek. So the second ditch,
14 the one we are talking about now, that --
15 A That came out below the house, that first one.
16 Q This ditch that we are talking about, which came off of
17 Thorne Creek on the south side, right about across the creek
18 from the Thorne Creek house --
19 A Yes.
20 Q and about three quarters of a mile up from the mouth of
21 Thorne Creek, irrigated the entire farmed area south of
22 Thorne Creek?
23 A Yes.
24 Q How many acres were involved in that? Could you estimate?
25 A Oh, there must have been 25 acres, I should say.

1 Q 25 acres?
2 A Yes. It's pretty hard to --
3 Q Approximately 25 acres?
4 A Yes.
5 Q Could have been 30 acres?
6 A No, that's about the top, I think.
7 Q That's about the top, 25 acres.
8 A Yes.
9 Q How wide is that ditch?
10 A About the same as those others; two foot ditch.
11 Q About two feet wide and two feet deep?
12 A Yes.
13 Q And carry a head of how many inches?
14 A It would carry 150 inches.
15 Q 150 inches; was that much water needed?
16 A Well sometimes.
17 Q Sometimes?
18 A Yes sir.
19 Q Was the irrigating season about the same?
20 A About the same.
21 Q April to in November?
22 A Yes.
23 Q And what kind of crops were grown down there?
24 A A little of everything. There was potatoes over the
25 full length of the creek.

1 Q Vegetables?

2 A Vegetables.

3 Q Grazing? Was any of it used for grazing?

4 A Yeah, irrigated some out there for grazing.

5 Q Now, has any of this property been sold off, Eph?

6 A Yes, some of it. There ^{is} Spring's, Thomases, and I
7 don't know what that preacher's name was. Do you?

8 JOHN CASNER: No.

9 Q Anybody else you can think of?

10 A The Decker's place, and Hawkins.

11 Q Harry Hawkins?

12 A Yes.

13 Q Now Eph, going back a minute to that first piece of
14 ground that we are talking about where DeRousse owns, does
15 anybody else own in there?

16 A Yes, there's --

17 Q Weaver?

18 A Weaver, and Laysiere. Roy Laysiere.

19 Q Anybody else in there?

20 A And Ryder.

21 Q Now Eph, going up Thorne Creek from the second ditch, what
22 was the third ditch?

23 A It came out just pretty near at the line, section
24 line; just a little below it. Just right there.

25 Q Which section line?

1 A The upper end of the fields. The upper end there at the--
2 Q Up here at the east section line, Section 30?
3 A Yes, at the east end.
4 Q So it took off of Thorn Creek right about the eastern
5 boundary of the Casner Ranch?
6 A Yes.
7 Q Which side of the creek did it take off from?
8 A It was on the south side.
9 Q On the south side?
10 A Yes.
11 Q And about how big was that ditch?
12 A That was the same size as most of those ditches, two
13 feet deep.
14 Q About two feet deep and two feet wide?
15 A Yes.
16 Q And it flowed south? South of Thorne Creek?
17 A Yes.
18 Q Which direction did it go? Did it head west then?
19 A Yes.
20 Q And down stream?
21 A Down stream.
22 Q What area did that irrigate?
23 A On the south side there, down to that head of the
24 other ditch.
25 Q To the other ditch?

1 A The ditch went clear through there.

2 Q So it irrigated the same area, south of Thorne Creek?

3 A Not the same area. It was further on up.

4 Q Further on up?

5 A No, not further above the ditch.

6 Q I'm a little confused right now, Eph. Let's go back.

7 A It came clear down here, you know, to the head of

8 the other ditch.

9 Q Which area did it irrigate?

10 A The south side.

11 Q The south side?

12 A Yes. There was a flume across, that we nt across to

13 the other side, on the north side .

14 Q Now, in other words t hese two ditches that took off from

15 the south side of Thorne Creek irrigated the whole area south

16 of Thorne Creek?

17 A Yes.

18 Q That was farmed; and then part of the third ditch, water

19 went back across the creek?

20 A Yes.

21 Q And was used on the north side of Thorne Creek?

22 A Yes.

23 Q O.K., what area north of Thorne Creek did that irrigate?

24 A Oh, it irrigated quite a lot. It went clear down to

25 Bigerts' place there, Gene Bigerts.

1 Q Now Eph, how many acres north of Thorne Creek was
2 irrigated by that ditch?
3 A 20 acres, I guess, or more; thirty maybe.
4 Q Between 20 and 30 acres?
5 A Yes. Pretty hard to guess.
6 Q Yes, I know it is. Between 20 and 30 acres were
7 irrigated north of Thorne Creek?
8 A Yes.
9 Q By this third ditch that we are talking about.
10 A Yes.
11 Q That took off from the south side of Thorne Creek at
12 approximately the eastern boundary of the Casner Ranch?
13 A Yes.
14 Q And this ditch carried about the same amount of water?
15 A About the same.
16 Q What was the area north of Thorne Creek that was
17 irrigated by this ditch used for? Vegetables?
18 A Yes, some of it. Potatoes, hay.
19 Q Grazing?
20 A Grazing.
21 Q Now was there any other ditch? You mentioned four ditches.
22 A Well, there's another ditch on up yet.
23 Q Oh, on up above?
24 A No, in below that one that comes out on this side.
25 But it heads on the other side.

1 Q Now Eph, it took off from Thorne Creek upstream from the
2 edge of the property line?
3 A No, not above the property. Down below it; the one
4 on the north side.
5 Q Oh, it took off on the north side of Thorne Creek?
6 A Yes.
7 Q Which area did it irrigate?
8 A Down the north side there, clear a way on down.
9 They had a flume that dropped it down and put it around --
10 Q All the way down to the DeRousse property?
11 A Yes.
12 Q How big was that ditch?
13 A About the same size.
14 Q And it carried about the same amount of water as the
15 other ditches?
16 A Yes.
17 Q And all of the land that it irrigated was used for
18 growing vegetables and potatoes and hay?
19 A Yes.
20 Q Were there any other ditches that took off?
21 A There was a ditch in there. How big was that?
22 JOHN CASNER: Where?
23 EPH CASNER: That other ditch in
24 above the first one. How big was that?
25 Q Now Eph, going back, the fourth ditch that we talked

1 about took off on the north side of Thorne Creek.

2 A Yes.

3 Q About how far from the property line was that ditch?

4 A Two or three hundred yards.

5 Q So it was about two or three hundred yards west?

6 A Yes.

7 Q Of the easterly boundary?

8 A Maybe a hundred yards is all.

9 Q Approximately one hundred yards west of the eastern

10 boundary of the Casner Ranch?

11 A Yes.

12 Q All right, now going back to the fifth little ditch that

13 you talked about; what side of the creek did it take off from?

14 A On the north side.

15 Q North side? approximately how far up stream from the

16 first ditch?

17 A Oh, 400 yards.

18 Q About 400 yards upstream from the first ditch?

19 A Yes.

20 Q And it diverted water from -- on the north side of

21 Thorne Creek?

22 A Yes.

23 Q Which area did it irrigate?

24 A It irrigated that, not too much. Two or three acres

25 there is all.

1 Q By the house?
2 A No, in above DeRousse's.
3 Q In other words, just east of what is now the DeRousse
4 property?
5 A Yes.
6 Q How big was that ditch?
7 A That was a ditch about two feet--
8 Q The same size?
9 A The same size as the others.
10 Q And carried about the same amount of water?
11 A Same amount of water.
12 Q Now all of these ditches were built by either Briggs or
13 his predecessors?
14 A Yes.
15 Q And they were used and maintained b y Briggs and by your
16 parents? Is that true, Eph?
17 A Yes.
18 Q And by everyone who has occupied the land?
19 A Everyone since.
20 Q Everybody since; continuously?
21 A Yes.
22 Q In other words, those ditches have been used continuously
23 to divert approximately that much water onto this area that
24 we've talked about, up to the present time.
25 A Yes.

1 Q Now Eph, you say that Nettie Casner, your sister,
2 homesteaded about one half of the Casner Ranch?
3 A Yes.
4 Q And Alexander Casner, your brother, homesteaded the other
5 half.
6 A The other half.
7 Q Can you tell me what happened to Nettie's half of the
8 property from the time that she acquired it? In other words,
9 who --
10 A He got that half.
11 Q So John Woods Casner obtained the half that Nettie had?
12 A Yes, she got it from his mother.
13 Q And how about the other half, the half that Alexander --
14 A Well, he bought that. That's the one I owned up
15 there for a little while.
16 Q And then John Woods Casner eventually purchased it.
17 A Yes.
18 Q Now John, you have heard Eph's testimony on all these
19 different questions. Is that true, to the best of your
20 recollection?
21 A To the best of my knowledge, yes.
22 Q Do you have anything that you would add to his testimony,
23 John?
24 A No.

25

MR. MARCUS: O.K. I think that just

1 about covers it. Do you have anything?

2

3

CROSS EXAMINATION

4

By Mr. Collins.

5

Q Did you ever use any water from Mores Creek?

6

A (Eph) Not on that Thorn Creek.

7

Q Do you use any water from Mores Creek on the Casner

8

Ranch?

9

A On the north side of Mores Creek where they owned

10

that, there was Billy Johnson, they had water there out of

11

Mores Creek.

12

13

REDIRECT EXAMINATION

14

By Mr. Marcus.

15

Q Eph, who owned that property?

16

A We owned that first. The folks did.

17

Q Did they ever take water out of Mores Creek?

18

A They did for that, there on the -- across Mores

19

Creek. On the highway side of Mores Creek they took water out.

20

Never none went on Thorn Creek.

21

Q In other words, you didn't use any water from Mores

22

Creek to irrigate this Casner Ranch we are talking about.

23

A No.

24

Q But your parents did divert water from Mores Creek to

25

irrigate property on the west side of Mores Creek?

1 A On the north side.

2 Q Well, the northwest side?

3 A Yes, northwest side.

4 Q Did they have property over there, Eph?

5 A Yes.

6 Q How many acres did they have over there that they

7 irrigated?

8 A I couldn't tell you. Mostly garden stuff.

9 Q How much water do you think they took out of Mores Creek?

10 A Maybe, 50, 60 inches.

11 Q 50 or 60 inches of water?

12 A Yes, maybe a hundred.

13 Q Somewhere between 50 and a hundred inches that they took

14 out of Mores Creek to irrigate?

15 A Yes.

16 Q Do you remember about how many acres were irrigated?

17 A There wasn't too many. It's garden; that takes lots

18 of water.

19 Q Can you rough estimate the acreage?

20 A Oh, it must have been not over seven or eight acres,

21 I don't think. Approximately 7 or 8 acres.

22 Q Now where was the point of diversion for that water --

23 for that ditch?

24 A It was below that quarter section corner on the other

25 side there.

1 Q So it would be upstream from the mouth of Thorne Creek?
2 A Upstream about a quarter.
3 Q About a quarter mile?
4 A Yes.
5 Q And the point of diversion was on the northwest side of
6 Mores Creek?
7 A Yes.
8 Q About how big was the ditch?
9 A About like those others.
10 Q Were there any other ditches that they took water out of
11 Mores Creek?
12 A Not there.
13 Q Any other places?
14 A No.
15 Q So that was the only point that they took water out of
16 Mores Creek.
17 A Yes.
18 Q Now who has used that -- has that ditch been in use since
19 that time?
20 A No, not now.
21 Q It's not in use now?
22 A No.
23 Q Does anybody divert water for that little area?
24 A No, not that I know; unless they pump it.
25 Q How about below, below where Thorn Creek runs in, did

1 they take water out of Mores Creek for any of those areas?

2 A Yes, but that's all abandoned now.

3 Q How long has it been since the water was used?

4 A I don't know how long.

5 Q And nobody is taking water out of Mores Creek?

6 A Not now.

7 JOHN CASNER: No.

8 MR. MARCUS: That's all.

9

10 RE CROSS EXAMINATION

11 By Mr. Collins:

12 Q Not in the last ten years, anyway.

13 JOHN CASNER: Not in the last ten
14 years.

15 Q Did you have any cattle on your farm? Any animals? Or
16 hogs or chickens, or -- on the ranch, on the Casner Ranch.
17 Did you have any cattle or any livestock at all on the ranch
18 when you were farming?

19 A (Eph) Oh, they had livestock there. They had a bunch of
20 cattle at one time.

21 Q Did you water those cattle from the creek too?

22 A Yes.

23 Q What did you use for domestic water for the kitchen?

24 A Wells.

25 Q How deep were your wells? Do you remember?

1 A Oh, they weren't too deep. 12, 14 feet. Down to
2 bed rock.

3 Q And you just put those wells down ~~there~~ on the flat; you
4 didn't catch any spring water from up on the hill, or anything?

5 A No. There's spring water in there at Bigger's place
6 now. All of those places below get spring water.

7

8 REDIRECT EXAMINATION

9 By Mr. Marcus.

10 Q Did you ever use any spring water, though, Eph, you or
11 any of the family ever use any spring water on the ranch?

12 A Well, there was a spring house below the old Briggs
13 house there.

14 Q Did you use it?

15 A Yes, they used it.

16 Q Have they used it since then?

17 A No.

18 Q Where was that house?

19 A That's down below where Birds live there.

20 Q About how far up the creek from the mouth is it?

21 A Oh, it's three quarters, I guess.

22 Q Three quarters of a mile?

23 A Approximately.

24 Q On which side of Thorr Creek?

25 A North side.

1 Q On the north side? Has that spring water been used by
2 anyone in the last ten years?
3 A Not there, no.
4 Q There isn't any spring there?
5 A No.
6 Q But you or any of your family didn't use any other spring
7 water that exists now?
8 A No.
9 Q On the Casner Ranch?
10 A Emerson uses spring water up there now. He comes
11 down to that spring, he comes across the road.
12 Q When was the first time that that spring water was used?
13 A Oh, it's a long time. I used to use it all the time.
14 Q Oh, you did?
15 A Not for his house. You used it for going by, if you
16 wanted to fill a water bag, or anything.
17 Q For domestic use, in other words?
18 A Yes.
19 Q Who first started that? Did your parents use it for that
20 purpose?
21 A Yes.
22 Q So pretty much everybody that's lived up there, has he
23 used it for that purpose?
24 A Yes, just go by, for drinking water. Cold water.
25 Q And that's where Emerson lives now?

1 A Yes.

2 Q Which Emerson. Ralph?

3 A Ralph Emerson.

4 Q And that's about how far up from the mouth?

5 A Oh, it's three quarters, I guess.

6 Q Three quarters of a mile up the north side of Mores

7 Creek?

8 A Yes.

9 Q Is there a name for that spring?

10 A No.

11 Q Eph, have you always had cattle there on the Casner Ranch?

12 A Yes, in the early days they always had cattle.

13 Q And horses?

14 A Cattle and horses.

15 Q What was that house? Was there a Halfway House there,

16 where your parents lived?

17 A Up on the Thorn Creek?

18 Q Yes.

19 A Yes, up on that road.

20 Q Did they have a bar in there?

21 A No, I don't think so. Do you know?

22 JOHN CASNER: Had a bar down where

23 the -- where he was born.

24 Q Down on Mores Creek?

25 JOHN CASNER: At Tollgate.

1 Q Did they keep people over night there on Thorne Creek?

2 A Yes.

3

4

RECROSS EXAMINATION

5 By Mr. Collins.

6 Q When your folks moved there, first went there, was there
7 any road down Thorne Creek, from the summit on down to Mores
8 Creek?

9 A Yes, down to Mores Creek, but no road down Mores
10 Creek.

11 Q And the only way to come -- the road went down Mores
12 Creek -- or went down Thorne Creek till it got to Mores Creek
13 and went up then to Idaho City.

14 A No, it went over the hill in the early days. Come
15 out there at Johnnie Woods Gulch.

16 Q But there was a road from Idaho City down Mores Creek
17 down to Thorne Creek, wasn't there? Was there a road down
18 Mores Creek at all?

19 A Not at that time there wasn't a road there, when
20 they first went there.

21

22

REDIRECT EXAMINATION

23 By Mr. Marcus.

24 Q Where did the road go from Thorne Creek, Eph?

25 A It went right up that, right there where the trailer,

1 where you wvre on it there, went right on over and down
2 Johnnie Woods, down lower and then the other way it went from
3 Thomases over onto Mineha, across the high flat, down onto
4 Smith's Creek, down by Mother Gulch, and --

5 Q In other words, the road didn't go down to Mores Creek
6 at all.

7 A Not at that time.

8 JOHN CASNER: Not until '78

9

10 RECROSS EXAMINATION

11 By Mr. Collins.

12 Q The railroad went on the Thorn Creek side, didn't it?

13 A (Eph) Yes.

14 Q On that side of Mores Creek; the Thorn Creek side of
15 Mores Creek?

16 A Yes, the road went up there. Went on up Thorn
17 Creek.

18 Q Went up Thorn Creek and then cut back, down Thorn Creek
19 and then --

20 A Went down again, then on to Idaho City.

21 Q You said there were some flumes across the creek; some of
22 the ditches had flumes across Thorn Creek, carrying water
23 down. Are those flumes still there?

24 MR. MARCUS: This one ditch.

25 A Yes, it's still there.

CASNER - RX

40

1 Q It's still there?

2 A Yes.

3 Q Are all the ditches, the five ditches still there pretty
4 much the way they've always been there?

5 A Yes, practically.

6 Q Now as I recall, there's some brush along Thorn Creek
7 and occasionally there's clumps of trees down on the flat and
8 what not. Does that condition pretty much exist like it is
9 today like it used to exist as you remember it?

10 A Yes.

11 Q When your folks farmed all of that land, and they raised
12 potatoes and what not, did they sell the vegetables themselves.

13 A Yes, they sold them at Idaho City.

14 Q Did they have kind of a commercial establishment there;
15 they raised vegetables for sale?

16 A Yes, we had some for sale. Fed stock, kept lodgers.

17

18 REDIRECT EXAMINATION

19 By Mr. Marcus.

20 Q Did you feed the lodgers?

21 A Lodgers. Not loggers.

22 Q I mean lodgers.

23 A Yes.

24 Q They gave meals there, did they?

25 A Yes, they served meals there.

RECROSS EXAMINATION

By Mr. Collins.

Q As I went up there today and saw the land that had been irrigated, and what not, is that pretty much the way it has always been for years and years?

A Yes, just about.

Q Was there more land irrigated -- used to be more land irrigated?

A Well there was more then, I should think.

Q There was probably more than there is now.

A Well it was washed out. Water spouts came down. But it's been filled over again and leveled out, and --

Q Did the highway cut across some of the land that used to be farmed?

A No -- you mean the Thorn Creek highway.

Q No, the Idaho City highway.

A No.

Q That's the one that crosses Thorn Creek.

A Yes.

Q You farmed just down about where the highway is now then.

A Yes, down to the mouth.

Q Was there ever any mining up there on the creek? Did your folks do any mining or Briggs do any mining up there on the creek?

A Oh, up in those gulches, yes.

1 Q You didn't do any down there on the flat, did you?

2 A No, nothing on the flat. We mined up on top of the
3 hill.

4 Q Have there been any real changes in the amount of land
5 you have irrigated, that's been irrigated on the old Casner
6 Ranch in the last ten years? Have the people that have come
7 in there in the last ten years made any real changes in the
8 land that they've irrigated?

9 A I don't think there's much, no.

10 Q So if we went up there today, or if we went up there ten
11 years ago, it would be about the same amount of land that you
12 used to irrigate?

13 A Yes, just about the same.

14 Q Did you ever measure the water at all?

15 A No.

16

17 REDIRECT EXAMINATION

18 By Mr. Marcus.

19 Q Eph, what have you done during your lifetime? What kind
20 of occupations have you engaged in?

21 A Oh, mined a little, logged a little, trapped a
22 little.

23 Q Run cattle?

24 A No, I never buckarooed.

25 Q Did you work that property up there yourself? I mean,

1 did you clean out the ditches, and --
2 A Yes, I worked when I was a kid. I think all kids do.
3 Q John, what have you done?
4 A (by John Casner) What have I done?
5 Q Yes, your occupations that you have engaged in up there.
6 A Well I've herded sheep and buckarooed cattle.
7 Q Did you do any of the farming down there?
8 A Yes I done the farming.
9 Q So you've got a pretty good idea of how much water was in
10 those ditches and the use of the water? John?
11 A What?
12 Q You are well enough acquainted with the farming that took
13 place down there and the watering of the cattle and use of the
14 water around the house to know about how much water was used
15 from those ditches?
16 A There wasn't too much water in any of the ditches. You
17 had to scout around sometimes to get water to all of them.
18 Q You mean after it reached the area that was irrigated?
19 A Yes.
20 Q Now Eph, going back to the people who own parts of the
21 Casner Ranch now.
22 A (Eph Casner) Yes.
23 Q We mentioned Layshuure?
24 A Roy Layshuure?
25 Q I've got an assessment map here and that's spelled

1 L-a-a-y-s-h-u-u-r-e. And Hopewell?

2 A JOHN CASNER: He don't own anything

3 there.

4 A No, he don't own anything there.

5 Q Oh, he doesn't own that now. How about Homer Ross?

6 A He owns something there. That's his place on the

7 hill.

8 Q And how about Ruther?

9 A Who?

10 Q Ruther. R-u-t-h-e-r.

11 A Ryther?

12 Q Larry Ryder? And Drake?

13 A Drake, yes.

14 Q What is Drake's first name?

15 A What's Drake's first name?

16 JOHN CASNER: He's dead now. I don't

17 know what his first name is.

18 Q Did DeRousse own the Drake property?

19 A (Eph) No, Drake got the property above it there. That came

20 off of that first place.

21 MR. MARCUS: O.K. I don't have any

22 more questions.

23 MR. COLLINS: I don't have any either

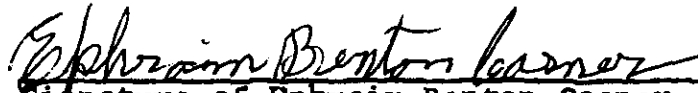
24 MR. MARCUS: Eph, the first road that

25 came over from Idaho City came from Minneha Creek?

1 EPH CASNER: Yes.

2 THE END

3
4 
5 Signature of John Woods Casner.

6
7 
8 Signature of Ephraim Benton Casner.

9
10 AFFIDAVIT OF JOHN WOODS CASNER

11 STATE OF IDAHO:
12 : ss.
13 County of Ada :

14 I, John Woods Casner, being first sworn, state as follows:

15 That I have read the Court Reporter's transcript of the
16 deposition given by myself and my brother Ephraim Benton
17 Casner at Boise, Idaho March 31, 1970 and believe that all of
18 the contents thereof are true and correct except as may now be
19 shown as changed by me in the transcript in my own handwriting,
20 where in each and every instance I have also placed the date
21 of making the change, and my own initials.

22 In compliance with the Rules of Civil Procedure, each
23 change that I have made in the transcript has also been listed
24 on the page next after this page, showing page number and line
25 number and the change made and the reason for the change.

AFFIDAVIT OF JOHN WOODS CASNER

46

[illegible][illegible]

1 There are no other changes I wish to make in the
2 deposition.

3 John W Casner
4 Signature of John Woods Casner.

5
6 Subscribed and sworn to before me this 20th day of
7 April, 1970.

8 Barry L. Marcus
9 Notary Public.
10 Residing at Boise, Idaho

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AFFIDAVIT OF JOHN WOODS CASNER

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AFFIDAVIT OF EPHRAIM BENTON CASNER

STATE OF IDAHO :
 : ss.
County of Ada :

I, Ephraim Benton Casner, being first sworn, state as follows:

That I have read the Court Reporter's transcript of the deposition given by myself and my brother John Woods Casner at Boise, Idaho March 31, 1970 and believe that all of the contents thereof are true and correct except as may now be shown as changed by me in the transcript in my own handwriting, where in each and every instance I have also placed the date of making the change, and my own initials.

In compliance with the Rules of Civil Procedure, each change that I have made in the transcript has also been listed on the page next after page 46 and before page 47, showing page number and line number and the change made and the reason for the change.

1 There are no other changes I wish to make in the
2 deposition.

3 Ephraim Benton Casner
4 Signature Ephraim Benton Casner.

5 Subscribed and sworn to before me this 22nd day of
6 April, 1970.

7 Barry L. Marcus
8 Notary Public.

9 Residing at Boise, Idaho

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AFFIDAVIT OF EPHRAIM BENTON CASNER

42

1 CERTIFICATE OF NOTARY PUBLIC AND COURT REPORTER

2 STATE OF IDAHO :
3 : ss.
4 County of Ada :

5 I, Wm. E. Rice, certify that I am a Notary Public
6 within and for the State of Idaho, and am a Certified
7 Shorthand Reporter;

8 That the deposition of John Woods Casner and Ephraim
9 Benton Casner, at which both of said deponents were examined
10 in a single deposition for both of them, was taken before me
11 as Notary Public, and prior to being examined and giving their
12 deposition, John Woods Casner and Ephraim Benton Casner were
13 sworn by me to tell the truth, the whole truth, and nothing
14 but the truth;

15 That all of the proceedings of record were taken down by
16 me in shorthand and have since been transcribed by me on the
17 typewriter;

18 That the foregoing pages numbered 1 to 46 inclusive
19 contain a true and correct record of all of the deposition.

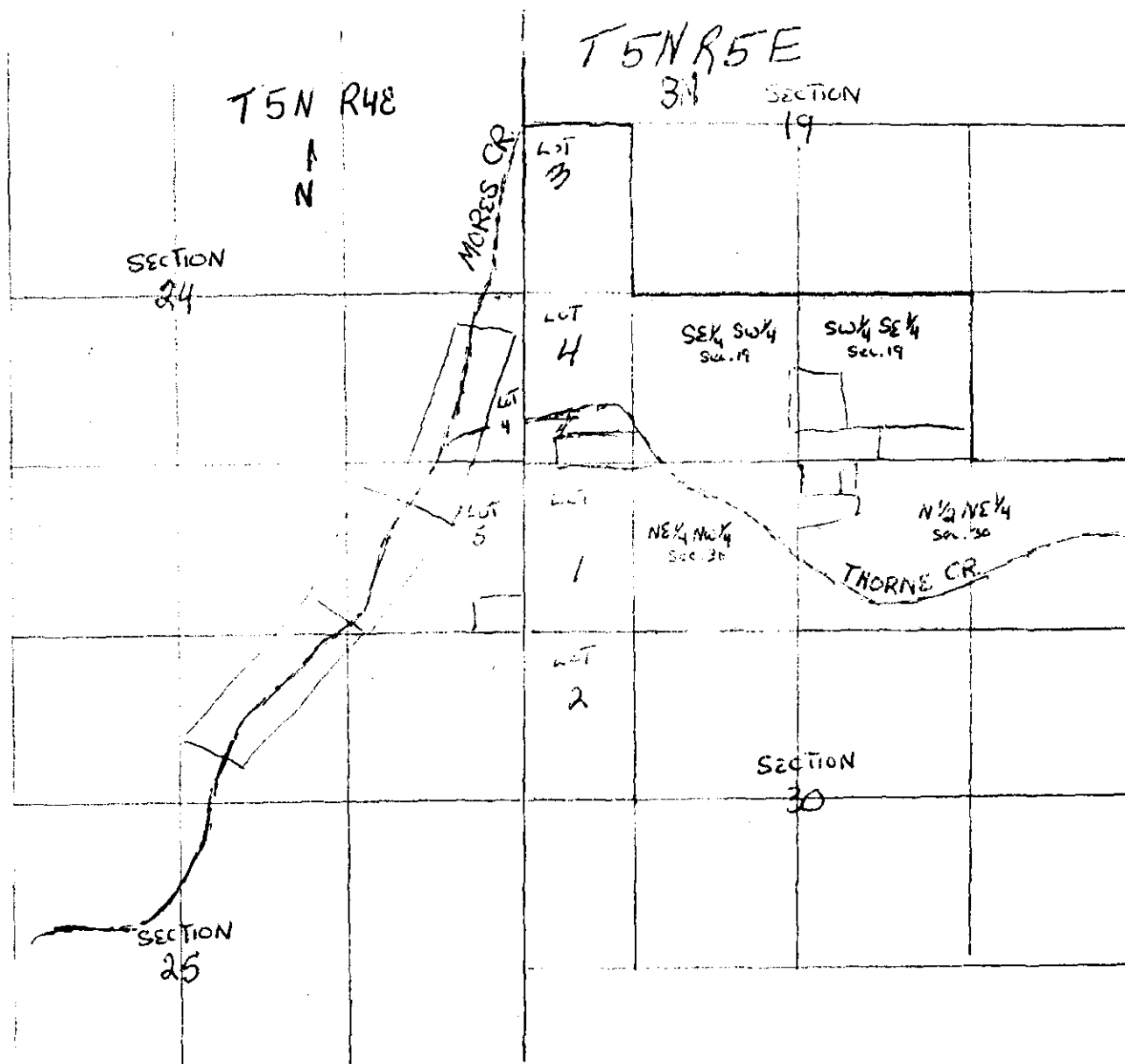
20 I further certify that I am not of counsel or attorney
21 for either of the parties hereto or in any way interested in
22 the event of this cause, and that I am not related to either
23 of the parties hereto.

State of Idaho }
County of Boise } ss.
I hereby certify that the foregoing instru-
ment is a full true and correct copy of the
original on file in this office.

Dated: May 20, 1973
25 ARLENE C. KOLAR, Clerk
By [Signature]
Deputy

Witness my hand and seal this 10th day of April, 1970.
[Signature]
Notary Public
Certified Shorthand Reporter

EXHIBIT
#1





211-115-000-117

STATE OF IDAHO,
County of Boise

Candace Jennings being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy-eight weeks past previous to the first publication of this notice. Such notice was published in the issue beginning with

8-24 19 8-3 and ending with the issue of 8-31...

19 8-3

Subscribed and sworn to before me this 21st day of Sept. 1983

... *Kris Hayman* ...

NOTICE OF CLAIMS TO WATER RIGHTS
The following claims have been filed on water rights created by diversion and beneficial use:

63-5108

CHAPMAN, HORACE &/or EARL
C/O IDAHO CITY STAGE, BOISE, ID 83706
Source: STAR GULCH CREEK trib. to MORES
CREEK SPRING trib. to STAR GULCH CREEK
Priority Date: 02/26/1887
Diversion Pt: SWNE Sec 11 T 04N R 04E
Use: IRRIGATION (0.02 CFS)
STOCKWATER (0.02 CFS)
DOMESTIC (0.04 CFS)
In: NWNE Sec 11 T 04N R 04E FOR 10 ACRES

63-5109

CHAPMAN, HORACE &/or EARL
MARCUS, BARRY &/or CRAIG
287 NORTH 7TH ST., BOISE, ID 83702
Source: THORN CREEK trib. to MORES
CREEK
Priority Date: 4/26/1889
Diversion Pt: NENE Sec 30 T 05N R 05E
Use: IRRIGATION (1.50 CFS)
STOCKWATER (1.50 CFS)
In: NENE Sec 30 T 05N R 05E NWNE Sec 30 T 05N R 05E FOR 35 ACRES

63-5122

U.S. DEPT. OF AGRI.
FOREST SERVICE, FEDERAL BLDG., 324
25TH ST., OGDEN, UT 84401
Source: SILVER SAGE SPRING trib. to ROBIE
CREEK NORTH FORK
Priority Date: 07/01/1960
Diversion Pt: SENW Sec 10 T 04N R 03E
Use: DOMESTIC (0.01 CFS)
In: SENW Sec 10 T 04N R 03E

63-5123

U.S. DEPT. OF AGRI.
FOREST SERVICE, FEDERAL BLDG., 324
25TH ST., OGDEN, UT 84401
Source: GROUNDWATER
Priority Date: 07/01/1955
Diversion Pt: NWNW Sec 33 T 04N R 06E
Use: DOMESTIC (0.01 CFS)
In: NWNW Sec 33 T 04N R 06E

63-5141

BRASSEY, JON
P.O. BOX 2603, BOISE, ID 83701
Source: TRAIL CREEK trib. to BOISE RIVER
PETERSON CREEK trib. to BOISE RIVER
Priority Date: 01/01/1863
Diversion Pt: NWSW Sec 26 T 07N R 04E
Use: IRRIGATION (0.40 CFS)
STOCKWATER (0.0550 CFS)
In: NWSW Sec 26 T 07N R 04E FOR 20 ACRES

Exceptions to a claim may be filed with the Director, Dept. of Water Resources, Western Region, Statehouse, Boise, Idaho 83720.
KEN DUNN, Dir.
Published in the Idaho World in Idaho City, Idaho on August 24 and 31, 1983.

59

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: CHS

Right Number ✓ 63-5109 Applicant Chapman & Marcus

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. 9/6/83
- ☒ Claim published correctly. the Idaho world 30/28939 8-25/9-1
- ☒ Exceptions processed.

By DBS Date 11/27/83

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By SC Date 11-30-83



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region

Statehouse
Boise, Idaho 83720
(208) 334-2190

SEPTEMBER 3, 1983

HORACE CHAPMAN
EARL CHAPMAN
BARRY MARCUS
CRAIG MARCUS
737 NORTH 7TH ST.
BOISE

ID 83702

RE: Claim No. 63-5109

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

DAVID B. SHAW
Western Region Supervisor

Enclosure

63-5109

CHAPMAN, HORACE &/or EARL
MARCUS, BARRY &/or CRAIG

737 NORTH 7TH ST., BOISE, ID 83702

Source: THORN CREEK trib. to MORES CREEK

Priority Date: 04/26/1889

Diversion Pt: NENE Sec 30 T 05N R 05E

Use: IRRIGATION	(1.50 CFS)
STOCKWATER	(1.50 CFS)

In: NENE Sec 30 T 05N R 05E NWNE Sec 30 T 05N R 05E FOR 35 ACRES

1450