

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE BEAR RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 79576

Claim ID: 11-4219

Date Received: 11/1/24

Receipt No: P000718

Claim Fee: 91.00 By: MB

RECEIVED

JAN 08 2024

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

IDWR/Preston

Please type or print clearly

1. Name of claimant(s) Stephen Wayne Harshberger & Jane Elisa Harshberger Phone (801) 404-0179
Mailing address PO Box 254 Lehi UT Zip 84043
Street or Box City State
Email address (optional) _____
2. Date of priority: (Only one per claim) 5/1/1890 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Unnamed Stream
which is tributary to (b) Bear River
4. a. Location of point of diversion is: Township 11S, Range 43E, Section 11,
NW 1/4 of NW 1/4, Govt. Lot _____, BM, County of Bear Lake
Parcel no. RP11S43E038500 & RP11S43E100000
Additional points of diversion, if any: 11S 43E 10 NENE, 11S 43E S3 SESE (pump)
If available, GPS Coordinates _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
5. Description of existing diversion works (dams, reservoirs, ditches, wells, pumps, pipelines, headgates, etc.),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

Historically, headgates and ditches were used for flood irrigation. In addition, a recent practice has been to allow the water to flow to the lake and redirect it through a portable pump into handlines for irrigation. Both delivery systems are claimed. Generally, the north pasture is sprinkled, the south pasture is flooded.

6. Water is claimed for the following purposes:

(dates are inclusive MM-DD) (cfs) (acre-feet)

For Irrigation purposes from 4/15 to 10/31 amount 0.81 or _____

For Stockwater purposes from 1/01 to 12/31 amount 0.02 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.83 (cfs) and/or (b) _____ (acre-feet)

8. Non-irrigation uses; describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) Stockwater for 100 head of range cattle

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	43E	3																12	12
		10	26			1.1													27.1
		11						1.3	0.1										1.4

Parcel no(s). _____ Total number of acres irrigated 40.5

10. In which county(ies) are lands listed above as place of use located? Bear Lake

11. Do you own the property listed above as place of use? Yes (☒) No (☐)

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (☒)

13. Remarks (Include an explanation of the priority date selected):

Priority date is based upon historical documents, reflecting that the first settler developed irrigation ditches for cultivating this property and providing stockwater. See the attached documents.

Attachments: 1) Narrative; 2) Evidence of priority - Homestead Affidavits

Name of claimant(s) Stephen Wayne Harshberger & Jane Elisa Harshberger

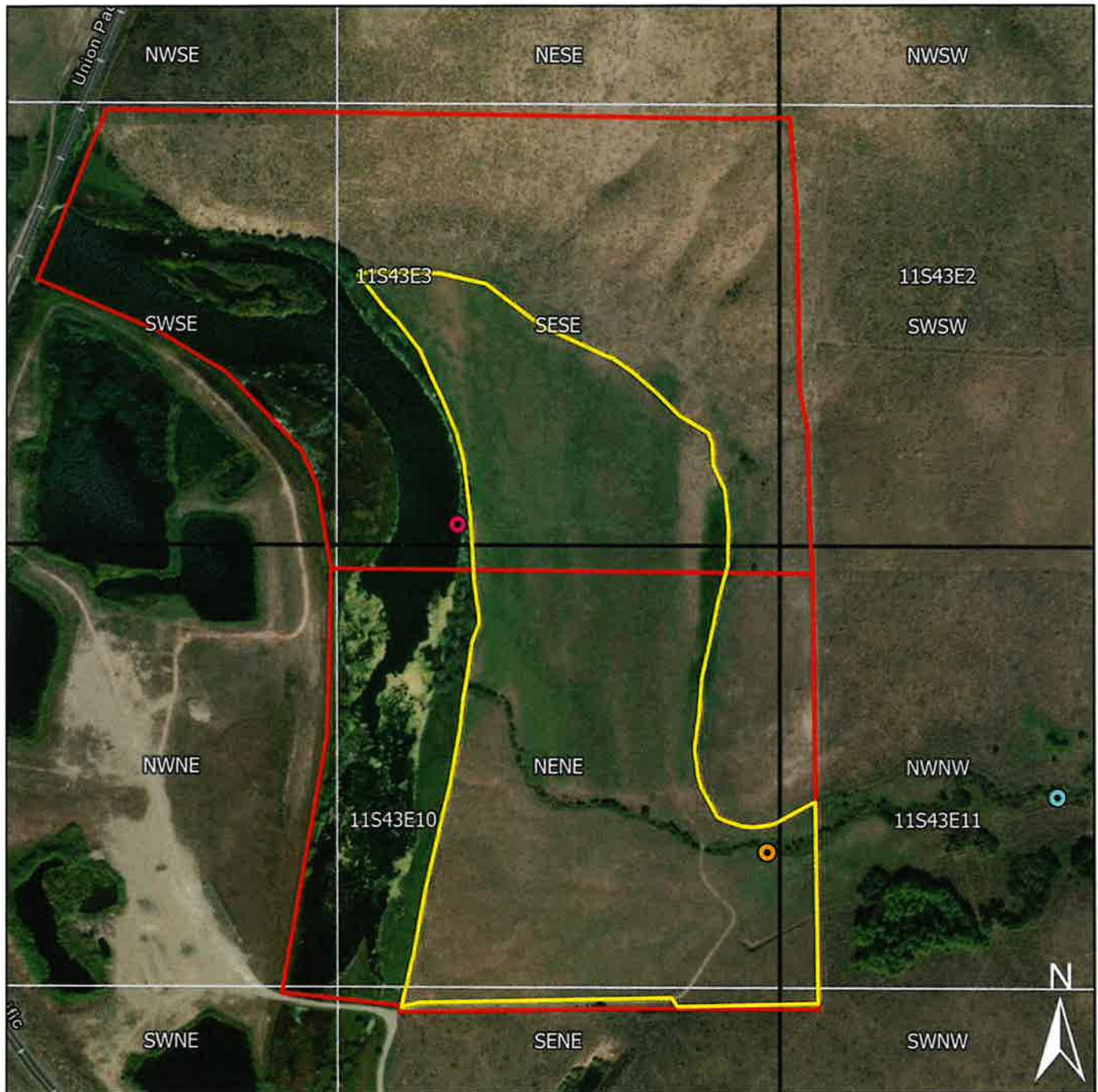
Claim ID _____

Claim Map

Based on WR Number: None (Beneficial Use)

Claimant: Stephen & Jane Harshberger

Claim No: _____



0 250 500 1,000
Feet



Date Created: 11/20/2023

- Legend**
- | | |
|----------------------|-----------|
| POU WR11-4219 | Parcels |
| Upstream Diversion | Twp & Rng |
| Downstream Diversion | Sections |
| Portable Pump | QQs |

Base Map: NAIP 2021

14. Basis of claim (Check one) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 11-4219

15. **Signature(s)**

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Bear River Basin Water System Adjudication."

(b.) I/We do (☐) do not (☒) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 2

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: 1-4-2024

Jane Elisa C. Harshberger

Date: 1-4-2024

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

N/A of _____
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. **Notice of Appearance:**

Notice is hereby given that I, (please print) _____, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address _____

Name of claimant(s) Stephen Wayne Harshberger & Jane Elisa Harshberger Claim ID _____

Attachment 1

Narrative to Accompany BRBA Water Right Claim to Provide Additional Information

Claim based on WR#: 11-4219

Claimant: Stephen Wayne Harshberger & Jane Elisa Harshberger

2. Priority Date. The original statutory claim of 11-4219 identified January 30, 1890 as the priority date. However, homestead affidavits support the claimed priority date, which is later in that year.

3. Source. Although the statutory claim identified this stream as "Spring Creek," the U.S.G.S. Topographic map does not name the stream. For the purposes of this claim, "Unnamed Stream" is used to identify the source, but it may be locally known as "Spring Creek."

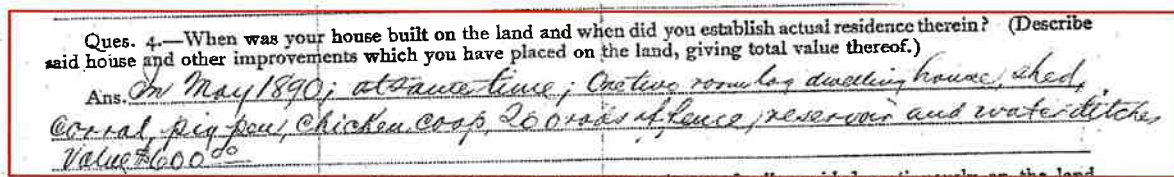
4. Point of Diversion. There have historically been two diversions from the creek that allow delivery of water for flood irrigation to the north pasture and to the south pasture. These points are identified on the claim and on the map. In addition, an accomplished transfer has occurred by a previous land owner in which the creek water was allowed to flow directly to the lake on the property and was redirected through a portable pump. The pump is not currently present, but the location is identified as a point of diversion. Evidence of the location is visible on aerial photography.

6. Purpose/Quantity. Both Irrigation and Stockwater have been used from this stream since the property was settled. Historical practices, however, only indicate that water is diverted during the irrigation season for both uses. Diversions do not occur outside of the irrigation season.

13. Remarks.

The current owner obtained this property in 2019. To better understand the historical use on this property in the 5 years prior to the beginning of the SRBA on June 14, 2021, the previous owner was interviewed to understand historical irrigation practices. The previous owner is Mike Robison and he owned the property from 2013 through 2019. During this time period, the entire place of use was irrigated, either through flood irrigation or through portable pump and handlines, as described above. The south side of the creek could only be flood irrigated when the water was high in the creek. Once water levels drop, it is too low for the headgate and cannot be diverted. The north pasture was flood irrigated or sprinkled, depending on the water levels in the creek. Sprinkling of the north pasture was occurring before 2013.

Flood irrigation of the north pasture relies heavily on an irrigation reservoir that was located upstream. According to the homestead documents, Figure 1, the original settler William Black indicated that he had developed a reservoir.



Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. In May 1890; at same time; One line rooming dwelling house, shed, corral, pig pen, chicken coop, 26 rods of fence, reservoir and water ditch.

Value \$600.00

Figure 1. Excerpt from William Black Homestead Proof-Testimony of Claimant

Mike Robison indicated that in order to flood irrigate the north pasture, the reservoir had to be used in conjunction with the irrigation ditch. The infrastructure for the reservoir has washed out in recent years

and has not been useable, but it is visible on the topographic map (Figure 2) and the berm is visible on aerial photos. The full reservoir was not captured in aerial photography that was reviewed during the preparation of this claim. However, the topo map suggests it was about 0.15 acres in surface area. Visual inspection of the berm suggests it was no deeper than 5 feet when full. It may have a volume of approximately 0.03 - 0.75 acre-feet, depending on topography and actual depth. It would take approximately 0.4 cfs or less of flow to fill this reservoir in 24 hours, making it qualify for the 24-hour rule. Since water was only stored when irrigating, it is not claimed as a storage component on this claim, but it is recorded herein to be part of the irrigation system. Repair of the infrastructure would allow the reservoir to be used again for flood irrigation.

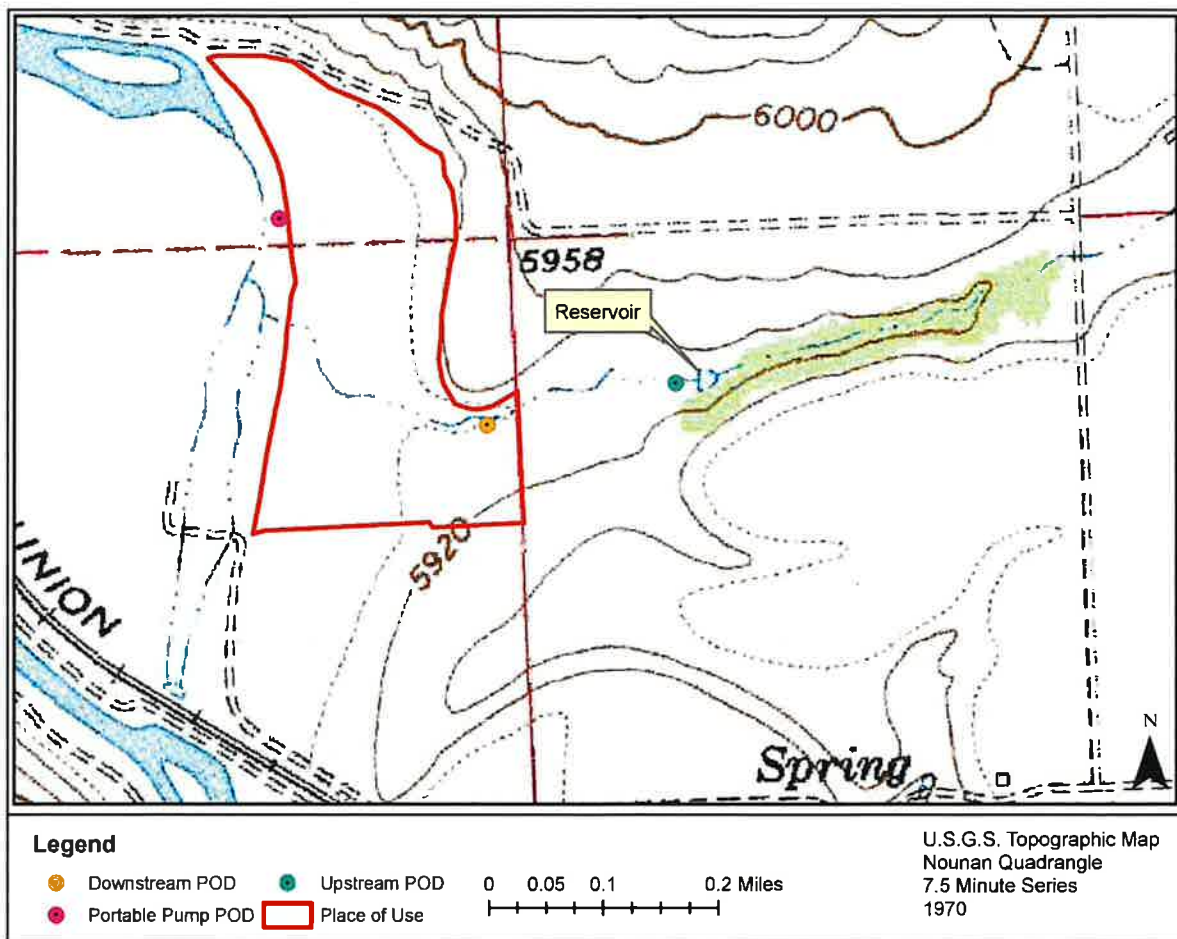


Figure 2. Topographic Map illustrating historical reservoir on source used for flood irrigation.

The 1969 USGS Single Frame Aerial image shows the historical irrigation and the reservoir. Figure 3 shows the 1969 image with the current POU and POD identified. Since 1969, the POD to the south pasture has been changed through an accomplished transfer. Many of the historical ditches are still used today.



Figure 3. 1969 Aerial Image of POU and POD, showing reservoir berm and historical ditches for delivery of irrigation water.

Attachment 2

(4-369.)

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

David Bantdull, being called as witness in support of the Homestead entry of William Black for Sec 3, T. 46 N., R. 156 E., Sec 10, T. 46 N., R. 156 E., testifies as follows:

Question 1.—What is your name, age, and post-office address?

Answer. David Bantdull, 29 years, Georgetown, Bear Lake Co. Idaho

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes; Yes; Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No; No; No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Farming and grazing land

Ques. 5.—When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. In May 1890, at the same time

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes, except from Dec. 1st to March 1st every winter, when he moved to Georgetown to send his children to school

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. None, except as above stated.

Ques. 8.—How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. About 50 acres; 7 seasons

Ques. 9.—What improvements are on the land and what is their value?

Ans. Dwelling house, shed, corral, pig pen, chicken coop, 200 rods of fence, mow and ditch, value about \$600.00

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No; Yes.

(Sign plainly with full christian name.)

David Bantdull

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 19th day of June, 1897, at my office at Paris, in Bear Lake County, Idaho

[SEE NOTE ON FOURTH PAGE.]

Sproul
Clerk of the District Court 2nd Judicial District of the State of Idaho, in and for Bear Lake County.

(The testimony of witnesses must be taken at the same time and place, and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

(4-369.)

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Francis Bacon, being called as witness in support of the Homestead entry of William Black for SW 1/4 Sec 3, T 7 N 6 E, R 10 W 11 E, S 13 E, testifies as follows:

Question 1.—What is your name, age, and post-office address?

Answer. Francis Bacon, 1634 eus, Georgetown, Bear Lake Co. Idaho.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes; Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No; No; No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Draining & hay land

Ques. 5.—When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

Ans. In May 1890; at same time.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes except that he moved into Georgetown during the months of Dec. Jan & Feb of each winter to allow the children to attend school.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. None except as above stated

Ques. 8.—How much of the homestead has the settler cultivated and for how many seasons did he raise crops thereon?

Ans. About 50 acres, 7 seasons

Ques. 9.—What improvements are on the land and what is their value?

Ans. Dwelling house, shed, corral, pig pen, chicken coop, 200 rods fence, reservoir and water ditches, value about \$400.00

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No; Yes.

(Sign plainly with full christian name)

Francis Bacon

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 19th day of June, 1894, at my office, at Pais, in Bear Lake County, Idaho

[SEE NOTE ON FOURTH PAGE.]

Sproungberg
Clerk of the District Court 5th Judicial District of the State of Idaho, in and for Bear Lake County.

(The testimony of witnesses must be taken at the same time and place, and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

(4-369.)

HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

William Black, being called as a witness in his own behalf in support of homestead entry, No. 2556, for D206 Dec. 3; 7276 Dec. 10, 7p. 11 d. 9. 436, testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. William Black, 64 years, Georgetown, Blaine Co. Idaho

Ques. 2.—Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

Ans. No, I am naturalized citizen by virtue of my father's naturalization, who was naturalized before I became of age, and I have ever since resided in the United States.

Ques. 3.—Are you the identical person who made homestead entry, No. 2556, at the

Blackfoot, Idaho land office on the 13th day of

May 1890, and what is the true description of the land now claimed by you?

Ans. Yes, D206 Dec. 3; 7276 Dec. 10, 7p. 11 d. 9. 436.

Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. In May 1890; at same time; One five room log dwelling house, shed, corral, pig pen, chicken coop, 20 acres of fence, reservoir and water ditch, Value \$600.00

Ques. 5.—Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife and six children; yes except from Dec. 1st to March 1st every winter when I moved into Georgetown to send my children to school.

Ques. 6.—For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. None, except as above stated

Ques. 7.—How much of the land have you cultivated each season and for how many seasons have you raised crops thereon?

Ans. 500 acres, 7 seasons

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No; No; No

Ques. 9.—What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Farming and grazing; sandy soil; most valuable for farming

Ques. 10.—Are there any indications of coal, salines, or minerals, of any kind, on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No,

Ques. 11.—Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12.—Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No

Ques. 13.—Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14.—Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral,) made by you since August 30, 1890.

Ans. None

William Black

(Sign plainly with full christian name.)

* (In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

I HEREBY CERTIFY that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 19th day of June, 1897, at my office at Paris, Blaine Lake County, Idaho.
[SEE NOTE BELOW.]

Spongberg
Clerk of the District Court 5th Judicial
District of the State of Idaho, in and for
Blaine Lake County.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX.—CRIMES.—Chapter 4.

Sec. 5392.—Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

(4-300.)

HOMESTEAD PROOF.

LAND OFFICE AT

BLACKFOOT, IDAHO.

Original Application No. 2556

Final Certificate No. 2226

Approved: Geo. H. Brown Register.

Howden Receiver.

FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANTS.

SECTION 2291 OF THE REVISED STATUTES OF THE UNITED STATES.

I, William Black, having made a Homestead entry of the SW 1/4 Sec 3
N 27 E 4 Section No. 10 in Township No. 11 S.
of Range No. 43 E. subject to entry at Blackfoot, Idaho
under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto
by virtue of section No. 2291 of the Revised Statutes of the United States; and for that
purpose do solemnly swear that I am a naturalized citizen
a citizen of the United States; that I have made actual settlement
upon and have cultivated and resided upon said land since the 1st day of May, 1890,
to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised
Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government
of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead
laws of the United States, except and that owing to the long distance and expense I am unable
to make the affidavit at the District Court office
(Sign plainly with full christian name.) William Black

I, Spongberg, Clerk of District Court in and for Blaine Lake County, State of Idaho
do hereby certify that the above affidavit was subscribed and sworn to before me this 19th day of
June, 1897, at my office at Paris, in Blaine Lake County,
Idaho.

Spongberg
Clerk

RECEIVED

JAN 08 2024

IDWR/Preston
January 8, 2024



Rocky Mountain
ENVIRONMENTALSM
ASSOCIATES, INC.

RMEA 23-0150

Idaho Department of Water Resources
Preston Field Office
325 East 600 South, Ste 300
Preston, Idaho 83263-4921

Re: Bear River Basin Adjudication Claims – Stephen Harshberger & Jane Elisa Harshberger

Dear Ms. Marion Beck,

This letter accompanies a check for two Adjudication claims for Stephen Wayne Harshberger & Jane Elisa Harshberger, which were transmitted electronically. The fees for the claims are determined as follows:

11-4219	\$50 base fee + \$41 (for 40.5 acres) = \$91
11-New Claim	\$25 base fee (for <i>de minimis</i> stockwater)

In addition to responses to be provided to the claimant, please copy Rocky Mountain Environmental Associates, Inc. (RMEA) at kristin.rmea@gmail.com with a copy of the receipt and copies of the first pages of each claim, showing the numbers assigned by IDWR.

An extension request was submitted by mail on October 19, 2023. RMEA does not have a copy of the approved extension, but it is likely in IDWR records.

Please contact our office with any questions regarding these applications.

Thank you,

A handwritten signature in blue ink that reads "Kristin Moore".

Kristin Moore
Senior Water Rights Analyst

Enclosures: Check