RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	MAXIMUM DIVERSION	STAGE
R29-10103	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W PORTNEUF RD INKOM ID 83245	09/01/1970	DOMESTIC	01-01	12-31	0.01 CFS	BENEFICIAL USE

TOTAL DIVERSION RATE: 0.01 CFS
TOTAL DIVERSION VOLUME: 0.00 AFA

SOURCE: SPRING TRIBUTARY: PAPOOSE CREEK

POINT OF DIVERSION:
T07S R35E S26 NENWNE

PLACE OF USE: DOMESTIC
T07S R35E S23 SESE

CONDITIONS OF APPROVAL:

REMARKS: RIGHT NOS. 29-10011A AND 29-10011B ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE AND THROUGH A COMMON CISTERN. THE TOTAL COMBINED RATE OF DIVERSION FOR ALL THREE RIGHTS IS 0.01 CFS.

OTHER RIGHTS: NONE

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	MAXIMUM DIVERSION	STAGE
R29-10011	SPLIT RIGHT X ID 0	04/01/1945	STOCKWATER	01-01	12-31	0.02 CFS	
			DOMESTIC	01-01	12-31	0.02 CFS	
			TOTAL DIVERSION RATE:			0.02 CFS	
			TOTAL DIVERSION VOLUME:			0.00 AFA	

SOURCE: SPRING TRIBUTARY: PAPOOSE CREEK
SPLIT RIGHT

POINT OF DIVERSION:
T07S R35E S23 SWSESE

PLACE OF USE: STOCKWATER
SAME AS: STOCKWATER

PLACE OF USE: DOMESTIC
SAME AS: STOCKWATER

CONDITIONS OF APPROVAL:

REMARKS: SEE NOS. 29-10011A AND 29-10011B.

OTHER RIGHTS: NONE.

OD-5813
AJ5813NP
SELECTION FILE: CLF-SMITH-V-SCOFFIELD-R-RECORD

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION WATER MASTER REPORT
BY WATER SOURCE/PRIORITY DATE

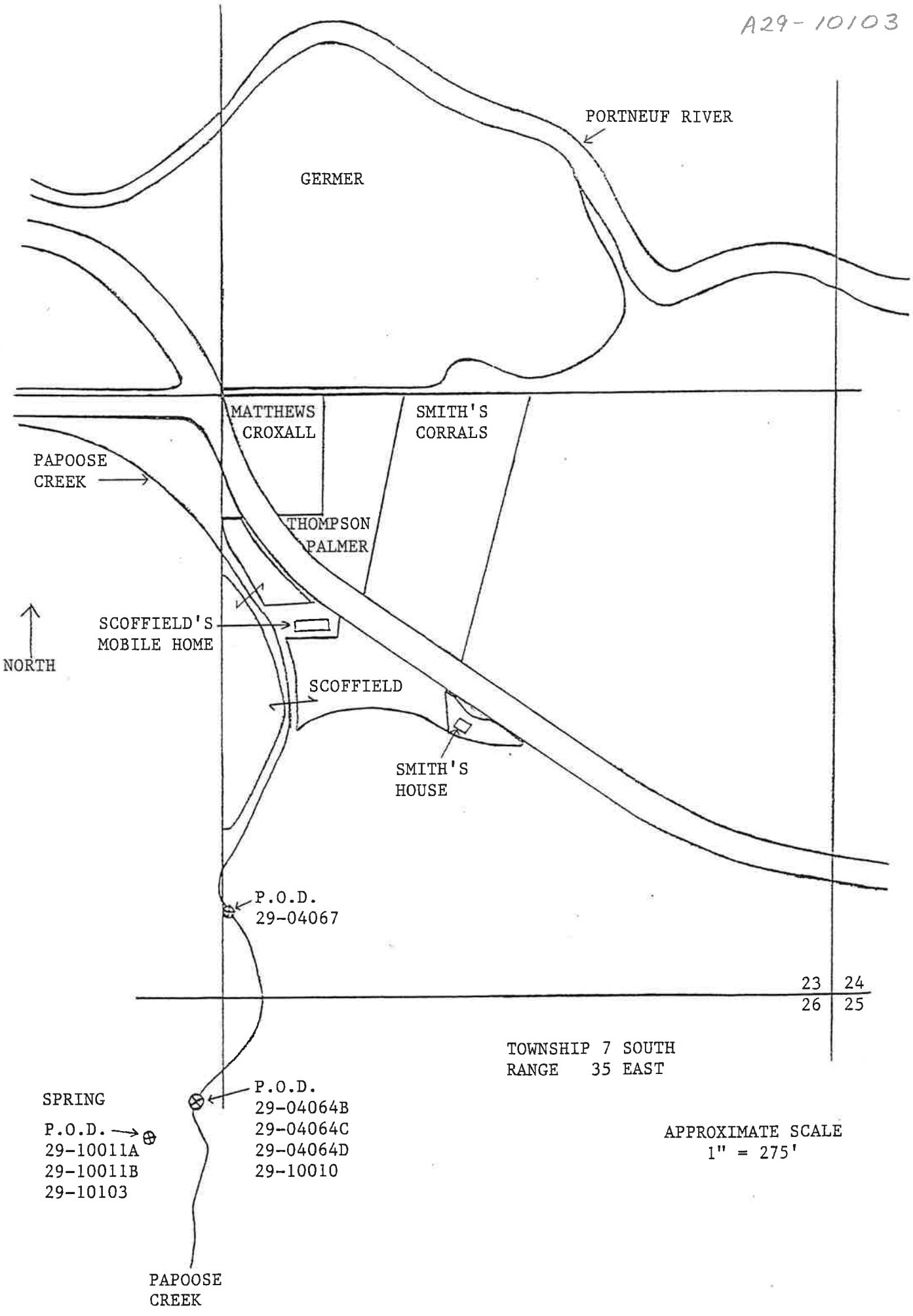
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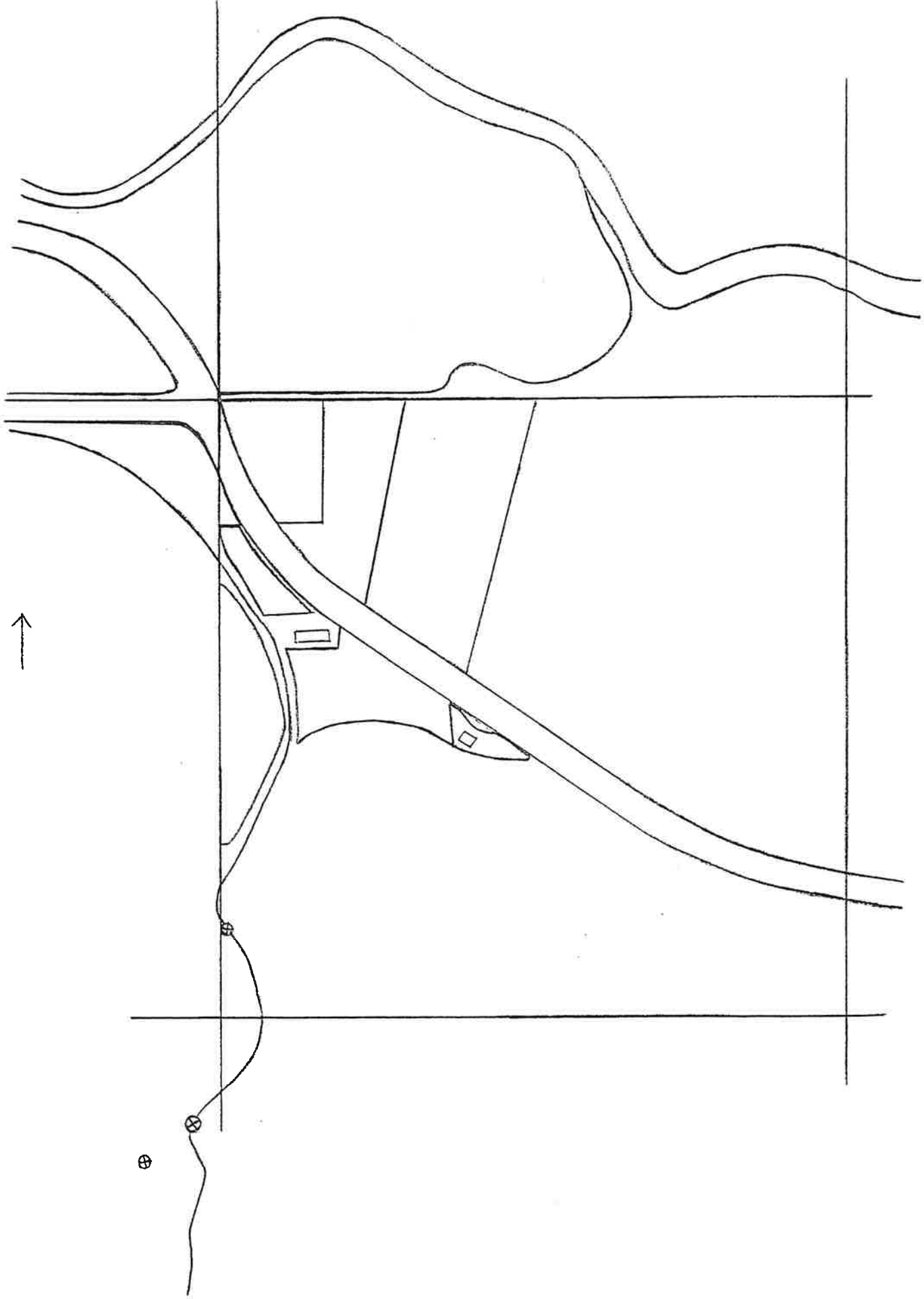
WATER RIGHT NUMBER	CURRENT OWNER NAME	PRIORITY DATE	STG	POINT OF DIVERSION	TOTAL DIVERSION	TOTAL ACRES	WATER USES
WATER SOURCE: PAPOOSE CREEK							
R29-04064B	SCOFFIELD, JR. RONALD J.	05/01/1927	~~S~~ J	07S 35E 26 NENWNE	0.040 CFS	2.0	01
R29-04064C	MATTHEWS JOSEPH	05/01/1927	~~S~~ J	07S 35E 26 NENWNE	0.020 CFS	0.7	01
R29-04064D	THOMPSON TRACY R.	05/01/1927	~~S~~ J	07S 35E 26 NENWNE	0.030 CFS	1.3	01
R29-04067	GERMER VIRGIL T.	04/01/1960	~~S~~ J	07S 35E 23 SWSESE	0.220 CFS	11.1	01
R29-10010	SMITH THERON	01/02/1969	J	07S 35E 26 NENWNE	0.010 CFS	0.3	01
WATER SOURCE: SPRING							
R29-10011A	SMITH THERON	04/01/1945	J	07S 35E 26 NENWNE	0.010 CFS		04
R29-10011B	SMITH THERON	01/02/1969	J	07S 35E 26 NENWNE	0.010 CFS		43
R29-10103	SCOFFIELD, JR. RONALD J.	09/01/1970	J	07S 35E 26 NENWNE	0.010 CFS		43

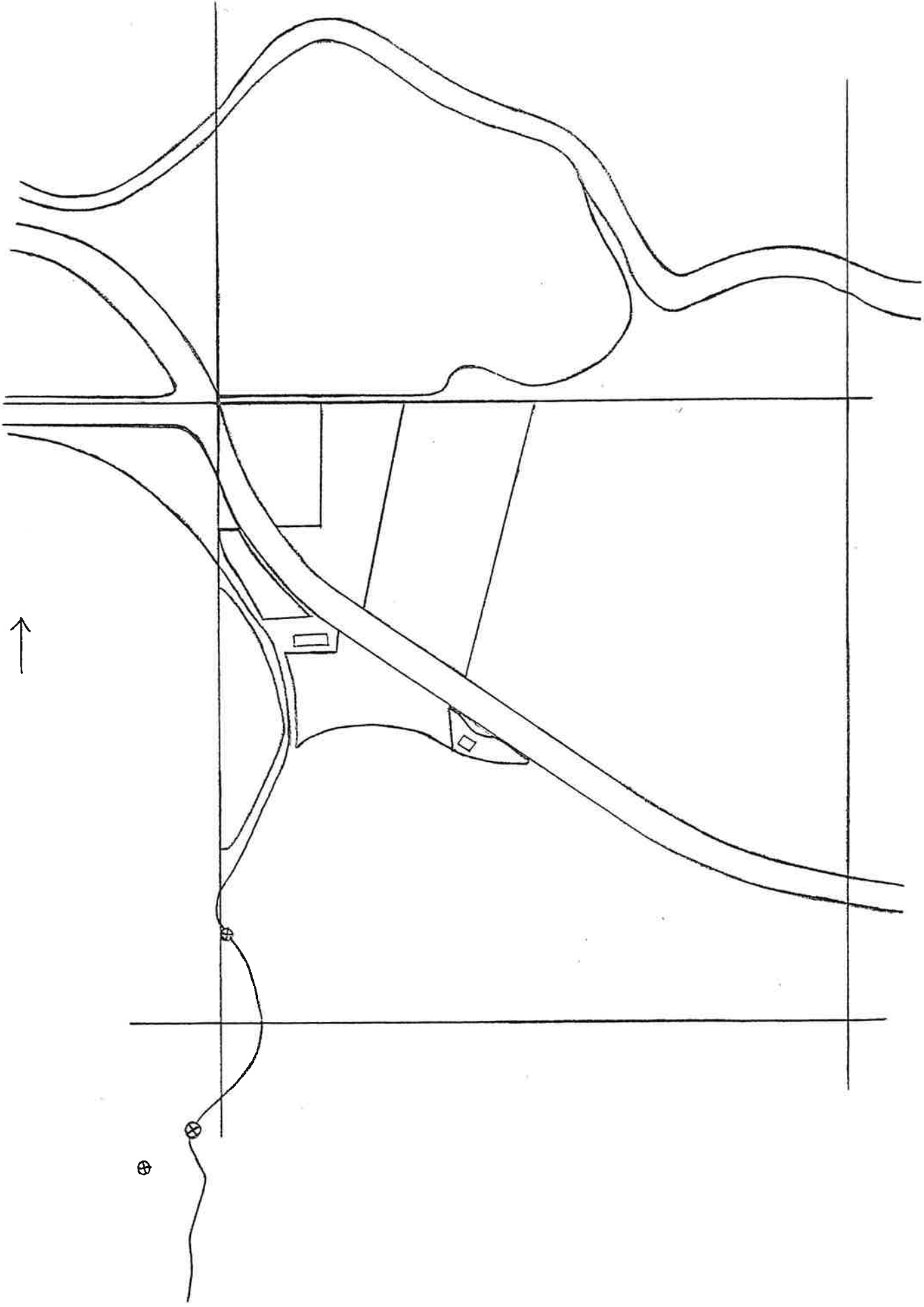
29-04064A Smith 1927/1968 ? 0.020 1.0

Ernie
Idaho Falls

A29-10103


PORTNEUF RIVER
GERMER
MATTHEWS
CROXALL
SMITH'S
CORRALS
PAPOOSE
CREEK
THOMPSON
PALMER
NORTH
SCOFFIELD'S
MOBILE HOME
SCOFFIELD
SMITH'S
HOUSE
P.O.D.
29-04067
23
24
26
25
TOWNSHIP 7 SOUTH
RANGE 35 EAST
SPRING
P.O.D.
29-10011A
29-10011B
29-10103
P.O.D.
29-04064B
29-04064C
29-04064D
29-10010
APPROXIMATE SCALE
1" = 275'
PAPOOSE
CREEK





RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	MAXIMUM DIVERSION	STAGE
A29-10103	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W. PORTNEUF INKOM ID 83245	09/01/1927	DOMESTIC	01-01	12-31	0.02 CFS 0.02 CFS TOTAL 0.00 AFA TOTAL	BENEFICIAL USE

wrong (1945)
1970 according to LK-H 12-9-91

SOURCE: SPRING TRIBUTARY: PAPOOSE CREEK
OTHER RIGHTS: NONE
CONDITIONS OF APPROVAL:

REMARKS: COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

POINT OF DIVERSION:
T07S R35E S26 NENWNE correct

PLACE OF USE: DOMESTIC
T07S R35E S23 SESE correct

- 1927 priority date would possibly be correct - or 1945? / Per Lynne - use 1945-
- .02 cfs ok
- POD correct
- POU correct
- source correct

HOWEVER: 1976 use terminated
1983 use resumed (after mandatory permit statute)
forfeited? or no intervening use defense?

also consider - only domestic source!

Water Right Number - A29-10103 Prefix Translation: ADJUDICATION CLAIM Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER ***		
SCOFFIELD, JR.	RONALD J.	1 - 5195 W. PORTNEUF 2 - 3 - City- INKOM State- ID Zip- 83245 Phone - 208-775-4560
SCOFFIELD	TARA L.	1 - 5195 W. PORTNEUF 2 - 3 - City- INKOM State- ID Zip- 83245 Phone - 208-775-4560

Priority Date	Region	Stage	Status
09/01/1927	15 EASTERN	J - BENEFICIAL USE	

Source	Tributary
SPRING	PAPOOSE CREEK

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County	Stream Index (Blank if no Index Code)
07S	35E	26	NE NW NE			(5) BANNOCK	

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
43	DOMESTIC	01/01	12/31	0.020	

Total Div. Rate	Total Div. Volume	Total Div. Capacity	Total Consumptive Use	KW Usage
0.020			0.0	

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	35E	23	SE SE			43	DOMESTIC	(5) BANNOCK

+ - - Diversion Means - SEE REMARKS

+ - - Non-Irrigation Use - D/1 HOUSE

+ - - Other Rights for Same Use - NONE

Remarks

COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

Old Water Right Numbers

No Old Water Right Numbers found.

Water right number - A29-10103 Prefix Translation: ADJUDICATION CLAIM

Conditions of Approval

No Conditions of Approval found.

Decree Plaintiff

Decree Defendant

Decree Date - 00/00/0000

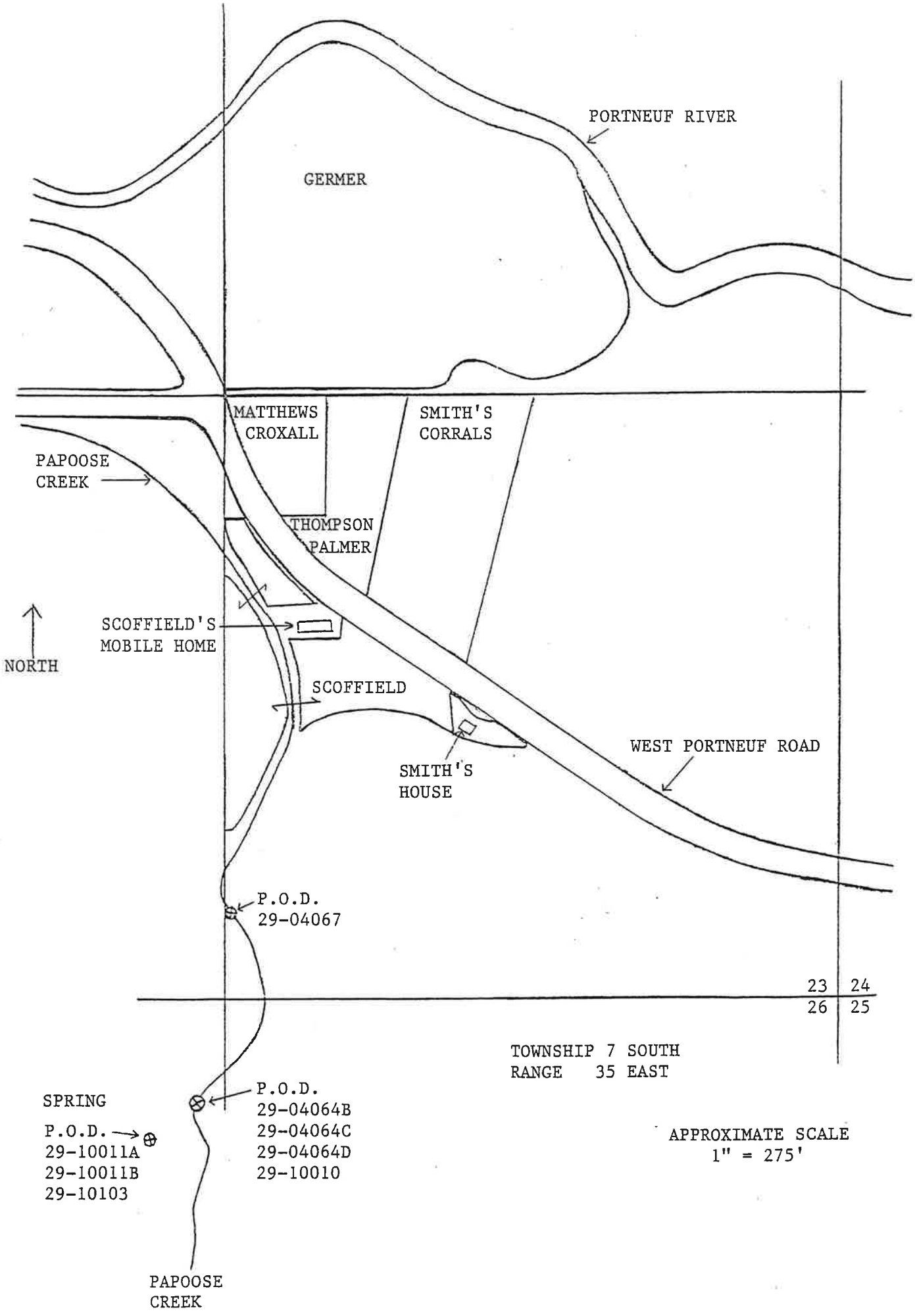
Audit Fields - 11/08/89 OLENICHA

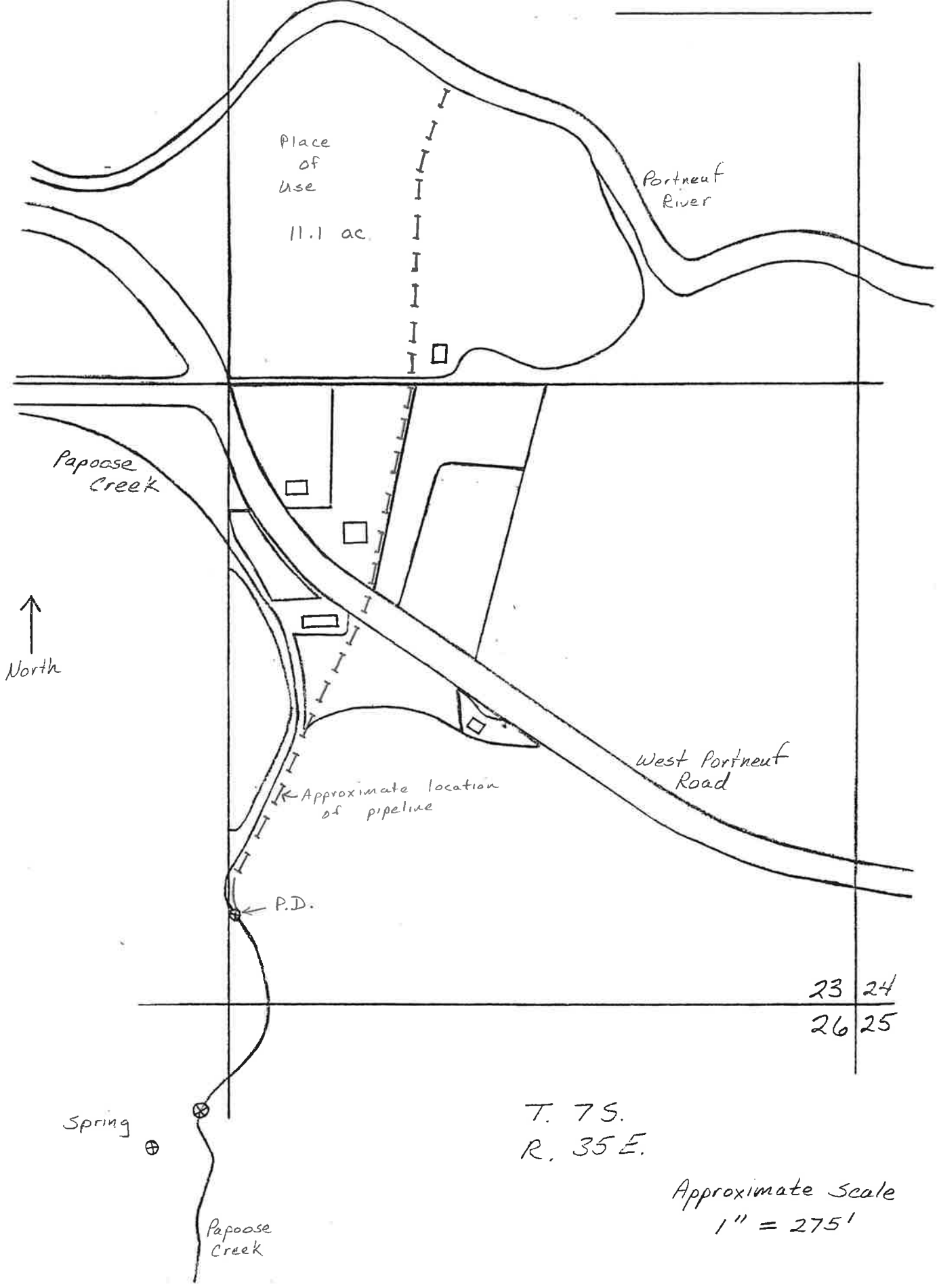
Comments

No Comments Found

Adjudication Rights Dates and Flags Area

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 11/08/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- E011129	Federal/State Indicator	- S
Claims Tape Error Flg	-	POU Ownership Flag	- Y	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	- AND/OR	Notice of Error Flag	-


PORTNEUF RIVER
GERMER
MATTHEWS
CROXALL
SMITH'S
CORRALS
PAPOOSE
CREEK
THOMPSON
PALMER
NORTH
SCOFFIELD'S
MOBILE HOME
SCOFFIELD
WEST PORTNEUF ROAD
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P.O.D.
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23
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TOWNSHIP 7 SOUTH
RANGE 35 EAST
SPRING
P.O.D.
29-10011A
29-10011B
29-10103
P.O.D.
29-04064B
29-04064C
29-04064D
29-10010
APPROXIMATE SCALE
1" = 275'
PAPOOSE
CREEK


Place of Use
11.1 ac.
Portneuf River
Papoose Creek
North
West Portneuf Road
Approximate location of pipeline
P.D.
23
24
26
25
Spring
Papoose Creek
T. 7 S.
R. 35 E.
Approximate Scale
1" = 275'

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THERON J. SMITH and CARMA B. SMITH, husband and wife, Plaintiffs, vs. R. JAY SCOFFIELD and TARA SCOFFIELD, husband and wife, Defendants.	)	Case No. 41456-C

ORAL DEPOSITION OF MARVIN LEE MUMME
Taken on May 24, 1991

APPEARANCES:

For the Plaintiffs: THOMAS J. HOLMES
Jones, Christensen, Jorgensen, Robison, Holmes & Robison
Attorneys at Law
405 West Whitman
Pocatello, Idaho 83204

For the Defendants: (Pro Se) TARA SCOFFIELD
5195 West Portneuf
Inkom, Idaho 83245

Also Present: Theron J. Smith

ORIGINAL

I N D E X

EXAMINATION BY:	PAGE
Mr. Holmes	3
Ms. Scoffield	10

N O E X H I B I T S

BE IT REMEMBERED that on the 24th day of May, 1991, the deposition of MARVIN LEE MUMME, produced as a witness at the instance of the Plaintiffs in the above-entitled action now pending in the above-named court, was taken before Susan P. Israel, CSR and notary public, State of Idaho, at the law offices of Jones, Christensen, Jorgensen, Robison, Holmes & Robison, 405 West Whitman, Pocatello, Bannock County, Idaho.

WHEREUPON, the following proceedings were had:

MARVIN LEE MUMME,

called as a witness at the instance of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HOLMES:

Q Mr. Mumme, would you state your full name and address for the reporter, please?

A Marvin Lee Mumme, I live at 1900 West Quinn, No. 215.

Q Now, when I talk about the property that is the Scoffield property, do you know what I'm talking about?

A I suppose it's the piece of property that I used to own out there, the acre that I had.

Q When you say out there, whereabouts is that?

A In Blackrock.

Q Now, is that an acre or slightly less or more?

A I think the deed said 98 one-hundredths of an acre, more or less.

Q How did you come to own that?

A I bought that from my ex-wife's ex-brother-in-law when he and his wife got divorced.

Q And who was that?

A Marvin Wheeler.

Q And what was your ex-wife's name?

A Her full name is Helen Cindakay Payne now.

Q About when did you buy that?

A I bought that -- I can't remember the month, but I believe it was early in '83.

Q '83 or '73?

A '73.

Q Was there a trailer, a mobile home, on there at that time?

A Wheelers had a mobile home sitting on it. It was repossessed and we moved our mobile home out there. That's the trailer that's out there now.

Q And did you move out there shortly after you bought the property, then?

A Oh, within a month.

Q And how long did you live out there?

A I lived out there from whenever it was we bought it until the 15th of August in '79.

Q And then around that time you were divorced from Cindy?

A I moved out of the house the 15th of August and the divorce was final the 15th of September.

Q Now, during that period of time what was the source of drinking water for the trailer?

A That came from Stan Croxall's well.

Q Where was Stan Croxall's well?

A Down the road, down the street, and across from us.

Q Was there a pipe under the road, then?

A Yeah, they run a three-quarter inch black PVC there.

Q What sort of water was that that you were getting from them, was it from their well?

A Yeah, it was all from the well.

Q Now, do you have any knowledge as to whether or not -- let me back up.

Are you generally familiar with a cistern that's located out there kind of up above this acre that you owned?

A Yes, it was up above my house.

Q And do you know the source of water that flows into that cistern?

A It came off of springs that was up the canyon a ways farther.

Q To your knowledge did any water from that cistern go to your trailer while you were out there?

A No.

Q To your knowledge was your trailer in any way hooked up through some connection with Croxalls to the cistern water?

A No.

Q When you were out there in this period of time from '73 to '79, do you know who used the cistern water?

A Martin told me that the only ones on that cistern water was him and Theron Smith.

Q Did you observe -- when you say Martin, you mean Martin Palmer?

A Martin Palmer.

Q Now, just so we're clear on the record, how was Martin Palmer related to your ex-wife?

A Her grandfather.

Q Is it your understanding, also, that Martin Palmer at one time owned that whole quarter-section out there?

A Yeah.

Q Now, while you were out there, who did you observe using the cistern water, if you recall?

A The only ones that I ever saw on it or knew of on

it was Martin Palmer's house and Tuck's place up until he drilled his well.

Q And do you know what the cistern water was used for in addition to household uses?

A I was thinking it was just culinary water.

Q Now, you mentioned when Tuck drilled his well. What happened then as far as the cistern water?

A Well, as I understand it, I saw a ditch dug from where his well was back over into that line, and my understanding from listening to him and Martin, or Tuck and Martin, was that at that time Tuck tied his well into that line so if anything happened to the cistern or to the spring, Martin and Grace could have water off his well, off Tuck's well.

Q So they kind of interconnected the system, then?

A Yeah.

Q Do you know -- let me ask it a different way.

Did you ever observe anyone working on the cistern up there while you lived out there?

A I went out one day and helped Tuck. I think it was Tuck, Ty, and I don't remember if Stan was there or not.

Q Who's Ty?

A Tuck's boy.

Q Okay.

A And there was, I think, another kid that was

living with Tuck at the time. We were putting a new tank in the spring.

Q Up at the spring itself?

A Up in the spring itself.

Q Now, as far as the line from the spring running down to the cistern, at the time you observed them putting this tank in the spring -- I guess this would be a collection tank?

A Right.

Q What did you observe about the water line running down, if you recall?

A Well, the part up there where it tied into the spring was above ground because we had it seemed like almost 25 foot of it pulled off to the side and tied to a tree with Ty's belt to keep it out of the way while we were working.

Q And so you recall at least 25 feet of it was above the ground?

A Yeah.

Q Now, was Martin up there helping that day, do you remember?

A I don't remember if he was.

Q Now, what was your understanding of the priorities for use of the water out of either the cistern or the creek itself out there, Papoose Creek?

A Martin listed the priorities for use of that creek

as first himself -- well, what he said, it would go to the people in the order in which they bought property from him. It was first Martin, then Stan, then Tuck, then Virgil Germer, then myself.

Q Okay. Did you have any understanding of whose ground the cistern sat on?

A The cistern sat on Stan's ground after he bought it from Martin.

Q And where was this cistern sitting in relation to the fence up there?

A Oh, it's sitting probably within 15, 20, foot of the fence on the upper end of the pasture, I think just east of the fence line.

Q So it would be on what would have been Stan's side of the fence?

A Right.

Q Now, when you moved out there, was there a discussion about you and Cindy drilling a well?

A We had talked about it, and Stan didn't want us drilling the well there, he was afraid that any wells drilled out there would rob water from his well. The way our property was situated, he said you're too close to your septic tank, you're too close to the creek, and if you put a well down where you're far enough from the rest of that, you're going to be too close to my well and I'll fight it, and that was his

words. So I just dropped it.

Q And I take it, then, at that time the plan was that Stan's house or Stan's pump would continue to be the source of water for your trailer?

A That's the way I took it.

Q Was that a satisfactory source of water?

A Yeah, it was good water. We never had any problem.

Q Did you have problems with it freezing up in the winter?

A The only problem I ever had was where the water line comes into my trailer, there's a 55-gallon drum on the back side of the trailer where the water line comes up, and it froze there one time.

Q What about freezing up under the road or down by the road, did you ever have any problems like that?

A I never had any problem at all with that.

Q Did you do anything to keep that from happening?

A No, the only thing we did was put a couple of bales of straw at the back side of the house over where the water came in.

MR. HOLMES: I don't have anymore questions.

EXAMINATION

BY MS. SCOFFIELD:

Q Jeanne said that the cistern was hooked to the

pressure tank in their wellhouse and that water could be accessed from the cistern to the trailer from there. Are you aware of that?

A No, I'm not.

Q Are you aware that the cistern water was also pumped to the workshop there on Stan's property?

A No, there was no water in that shop when I was out there.

Q When they put in the new tank in the spring, do you recall what year that was?

A Not right off I can't.

Q Do you recall if Martin was sick at the time?

A Martin had been ill for quite a while.

Q So that could possibly be a reason why he wasn't helping, then?

A Yeah.

MS. SCOFFIELD: That's about all I have.

MR. HOLMES: When she's done typing this up, normally we send the deposition to you so you can read it and make any corrections. Are you going to be around sometime in the next week that we could do that or are you going to be leaving before then?

THE WITNESS: No, we are going to leave the 10th and I can't think of anything else that I could be doing.

MR. HOLMES: We'll have it sent to you. Be sure

and sign it and get it back as soon as you can because we will need to use that for trial.

THE WITNESS: As far as that goes, I could come down here and then you don't have to jockey the thing around.

MR. HOLMES: We'll do that, we'll call you.

THE WITNESS: That would be easier for me if I could come down and sign it and have it done with.

MR. HOLMES: Okay, we'll do that.

I don't have any other questions. Do you, Tara?

MS. SCOFFIELD: (Shakes head negatively.)

MR. HOLMES: So we're done.

(Witness excused.)

STATE OF IDAHO)
ss.
County of Bannock)

I, SUSAN P. ISRAEL, CSR and notary public in and for said county and state, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness,

MARVIN LEE MUMME,

to the interrogatories as indicated were made before me by the said witness, after being first duly sworn to testify the truth, and the same were thereafter reduced to typewriting under my direction; that the above and foregoing deposition, as set forth in typewriting, is a full, true, and correct transcript of proceedings had at the time of taking said deposition.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any counsel employed by the parties hereto, or financially interested in the action.

GIVEN UNDER My Hand and Seal of Office on this 27th day of May, 1991.

Susan P. Israel
Notary Public In and For
the State of Idaho

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THERON J. SMITH and CARMA B. SMITH, husband and wife, Plaintiffs, vs. R. JAY SCOFFIELD and TARA SCOFFIELD, husband and wife, Defendants.	)	Case No. 41456-C

ORAL DEPOSITION OF JEANNE CROXALL
Taken on May 23, 1991

APPEARANCES:

For the Plaintiffs: THOMAS J. HOLMES
Jones, Christensen, Jorgensen, Robison, Holmes & Robison
Attorneys at Law
405 West Whitman
Pocatello, Idaho 83204

For the Defendants: (Pro Se) TARA SCOFFIELD
5195 West Portneuf
Inkom, Idaho 83245

Also Present: Theron J. Smith
Virgil Germer

COPY

I N D E X

EXAMINATION BY: PAGE

Ms. Scoffield 3
Mr. Holmes 13
Ms. Scoffield 51
Mr. Holmes 53

E X H I B I T S

Deposition Exhibit No. 1 21
(Diagram)

Deposition Exhibit No. 2 21
(Warranty Deed Dated 12/24/57)

Deposition Exhibit No. 3 21
(Warranty Deed Dated 7/29/85)

Deposition Exhibit No. 4 21
(Warranty Deed Dated 5/11/71)

Deposition Exhibit No. 5 21
(Warranty Deed Dated 10/23/73)

Deposition Exhibit No. 6 21
(Warranty Deed Dated 2/15/78)

Deposition Exhibit No. 7 21
(Quit Claim Deed Dated 8/29/86)

Deposition Exhibit No. 8 21
(Quit Claim Deed Dated 8/29/86)

Deposition Exhibit No. 9 21
(Warranty Deed Dated 8/7/85)

BE IT REMEMBERED that on the 23rd day of May, 1991, the deposition of JEANNE CROXALL, produced as a witness at the instance of the Defendants in the above-entitled action now pending in the above-named court, was taken before Susan P. Israel, CSR and notary public, State of Idaho, at the Bannock County Courthouse, Pocatello, Idaho.

WHEREUPON, the following proceedings were had:

JEANNE CROXALL,

called as a witness at the instance of the Defendants, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. SCOFFIELD:

Q Would you please state your name and current address for the record?

A Jeanne Croxall, 5140 Cole, Chubbuck, Idaho, 83202.

Q And your previous address to that?

A Was 5330 West Portneuf Road -- I said 53, I meant 5230.

Q Did you ever own the property the Scoffields own now?

A Yes.

Q Was that the small parcel where the trailer sits or was that the large six acres?

A No, it was 7 acres that we owned.

Q And does the cistern sit on the 7 acres or does it sit on the smaller portion?

A Well, it set on the 7 acres that we owned.

Q And when did you acquire that property?

A Well, we purchased it from my dad by contract in 1971. And we didn't go through a title company. He drew up the deed himself and he held the deed until we got it paid for, at which time he came in himself and had it recorded and came and give us the deed. And I don't know the year, but it should have been around 1974 that we had it paid for.

Q Can you tell me what properties that the cistern water was used on?

A Well, in the beginning when we moved out there, my father hooked -- he had the cistern water to his house with the pipe going on to his barn. And then after we moved out there, we bought the acre there at 5230 West Portneuf Road in 1958, my father hooked us up to the cistern. And then the next year we drilled a well, at which time he hooked -- he himself, my father, hooked us up, the cistern water, to our pressure tank. That was in 1959. And then maybe I should say, a year later our well went dry, and so we had to use the cistern water as it was hooked up until we could have it redrilled, which was about a year later. But we left it hooked up like that. It was plumbed into our shop and it was

hooked into our pressure tank where we had the valve that we could shut it on and off with.

Q So in 1971 when you bought the property, the cistern was on the property, the larger parcel?

A Yes, it was on the property. It was also hooked to our pressure tank in our -- the cistern was also hooked to our pressure tank. But at that time my daughter -- well, my father gave her an acre across -- it wasn't quite an acre, across the road, and she connected a pipe to our pressure tank. So the cistern actually was connected to the trailer house by opening the valves, whenever she moved out there and put the trailer house in, and I don't know, it was probably 1960, something like that.

Q And then when you sold the property to Payne, was the cistern water ever excluded from that or the cistern itself?

A No, it never was. He understood when he bought the property that he was getting the cistern as his property. It was so stated to him. I don't know if it was in the contract or not. It said everything that is on the property stays, is his. It did say that in the contract.

Q And when was the cistern built and by whom?

A It was built in 1945 by my father, and we helped him, me and my brother and sisters.

Q And who built and installed the catch box from the

spring and the pipe that goes into the cistern?

A My father did in 1945, at which time he put the water from the cistern into his house.

Q Did you have any agreement with Mr. Smith regarding the use of the cistern water?

A We didn't at all. My mother was hooked up to it until she drilled a well. In 1980 she drilled her well.

Q And did you ever convey or imply any cistern rights to Mr. Smith during the time you owned the property?

A No, we did not.

Q And the time you owned the property was from 1971 until when?

A Until we sold it to Mr. Payne. I can't remember the year. It was after my husband got so sick he couldn't work it anymore. Probably maybe '85. I can't remember the year exactly or exact date.

Q Can you tell us about what water lines Mr. Smith has installed to take water from the cistern and from the spring, from the creek, from Papoose Creek specifically?

A What water lines that's there?

Q Yes.

A Well, my father put in -- this isn't about the water, is it? My father put in the water line for the irrigation water out of the canyon in about 1960. I know it was -- my kids were pretty big when he done it.

Q Was the Parcel No. 1 which the Scoffields now own, the larger 7-acre parcel, was that ever sold to Martin Mumme?

A Oh, no, never.

MR. SMITH: And it's Marvin Mumme.

MS. SCOFFIELD: Marvin Mumme, excuse me.

A He never owned anything except that little -- it's not quite an acre that he bought from my other daughter who lives in Idaho Falls.

Q (By Ms. Scoffield) Is it true that you allowed Mr. Smith to use the cistern water so long as he did not run it dry?

A My mother told him that he could water the cows with it, yes, she did.

Q And was it ever known to you that Mr. Smith ever drained the cistern?

A Oh, yeah, frequently, especially when my daughter lived there.

Q And have you ever drained the cistern?

A Well, I can't say that I haven't because I might have.

Q How does that compare to how Mr. Smith has drained it, how many times?

A We only drained it maybe a few times while we were hooked to it through the years. I don't know, maybe I should say in 1976 my husband broke the pipe. The pipe, as far as I

know, when I sold my property last fall, the pipe that hooked me to the cistern was still in the ground, and Mr. Matthews and Mr. Thompson, unless they removed that pipe, it is still there.

Q Has Mr. Smith ever harassed you about the water even after you've sold the property located at 5230 West Portneuf and moved?

A Yes, he was going to take it away from me, he was going to take Harold's water away from him. We didn't deserve it.

Q Has Mr. Smith ever been eager to share the water?

A No, not really. Well, I should say this to keep the facts straight. All the while that I and my husband owned the property that you now own, Mrs. Scoffield now owns, never once did Mr. Smith say anything about the water or how we used it. Not once can I ever recall did he ever say anything about the water. It was only after we sold the property to Mr. Payne.

Q And to the best of your knowledge when did Mr. Smith acquire water rights from Papoose Creek?

A To the best of my knowledge the only water right he acquired from Papoose Creek was in 1978 when he purchased 1.8 acres of land from my mother. Until then, as I understood it, he had no water rights whatsoever to the creek.

Q Have the current owners of your previous property

located at 5230 West Portneuf Road ever called you concerning water and water rights?

A Yes, yes, they have.

Q And can you expand on what they told you?

A Well, they were afraid that they were going to take the water away from them.

Q Who's they?

A They didn't say a name really.

Q Okay.

A And I told them not to worry, that it was recorded on my deed that I had 1.1 miners inches of water out of that canyon.

Q Have you ever been contacted concerning Mr. Scoffield making any improvements to the property that he currently owns located at 5195, such as the removal of cars in the creek ditch, dead fowl in the creek, and water pipes that run through his property?

A I've never been contacted about it.

Q Mr. Germer or Mr. Smith have never come to you and said that they can't take the cars out of there because the valley will flood?

A Well, I myself would say that. If those old cars and things -- see, before 1967 the creek ran in a different direction than it did when we had a terrible flood in 1967, at which time it left a foot of dirt around our property and my

mother's property. And we just took the tractor and scooped the dirt away. But there for over a year or two hardly -- not even grass would grow after this, and that's what deposited all of those rocks down where they are now. I mean, it sounded worse than thunder when the storm was -- actually not even raining, when the flood came out of the canyon, there wasn't rain at the time. But it changed the course of the creek and deposited just tons and tons and tons of rock. And the rocks that are around my property that I owned out there that I sold to Matthews came down in that flood, and it took tractors to move them and we made a fence around there in case it flooded again, it would catch the debris and stop the water from going into the house. But it just took out the -- it just ruined it, just ruined the canyon, it left it nothing but a rocky mess of debris.

Q Did you ever request for Mr. Germer to bury and repair his water lines that run across the Scoffield property?

A Yes, we felt that they should be buried.

Q And was that ever done?

A I don't know.

Q Was that property ever surveyed to the best of your knowledge?

A Well, I can't say. I thought, but I don't know, that my father had it surveyed when he gave us the deed to it, but I don't know this. I can't say for a fact that he did,

but maybe there's a record of it somewhere, I don't know.

Q And at that time that you did purchase the property, you were under the assumption that the cistern was on your property?

A The thought never even entered my mind that it wasn't on it. And I asked my mother and she said the thought never even entered her mind. But that's hearsay because she's not here.

Q When was the fence installed around the property and by whom, the Scoffield property located at 5195 West Portneuf Road?

A Oh, that fence has been there for at least 50 years and it's been patched and repatched, but I can't even remember when it was built. I remember when we had it as a horse pasture, the property that the Scoffields now own, that the gate was where Mr. Smith's house is now and I always thought this was rather dumb because we would have to go from my mother's house up around to where Mr. Smith's house is now to get the horses out of the horse pasture. And after we bought it, my husband did fix a gate where the present gate is now by the mailboxes.

Q Can you give us --

A Or maybe my dad did before. But for years the gate to the horse pasture was where Mr. Smith's house is now.

Q So we are assuming that your father put up the

fence, then?

A I don't know. I guess he did. It's been there as long as I can remember.

Q Has anybody ever objected to those fence lines previous to your --

A Never, not once have I ever known of anyone to object.

Q The BLM did a survey approximately '87, 1988. Did they ever advise you that the cistern wasn't on that property up there?

A No. In '87 we didn't own the property.

Q Okay. To your knowledge did they ever?

A No, to my knowledge they never ever said that the cistern was not -- was on their property.

Q Can you give us some insight about the vegetation and the trees that grow around this cistern?

A Well, they're old trees, they've been there for years and years and years and years and --

Q Did you ever have to clean roots out of the top of the cistern from the tree?

A We had to clean out weeds and moss out of it all the time, but I never -- I didn't clean it, my husband did when we helped clean it.

Q And to the best of your knowledge did Mr. Smith ever threaten to take all of the creek water from anyone?

A From Harold Payne after we sold him the ground. As I understood, that was what the fight was over.

MS. SCOFFIELD: I'm done.

EXAMINATION

BY MR. HOLMES:

Q Mrs. Croxall, my name is Tom Holmes, I'm the attorney for Mr. Smith.

And I would like you to -- we've talked about pieces of ground and it gets very confusing as to what you're talking about. Do you suppose you could just take this large piece of paper in front of you and draw in, just sketch, and all we're asking for is kind of the relationship of items to items. So why don't you draw in the road, maybe figure out which end is north. Let me tell you what I'm going to ask you. I'm going to ask you to draw in where your house is, your property --

A Let's just draw Portneuf Road something like -- it comes around, comes up and goes this way (indicating), and I think probably you put north over here (indicating), I don't know.

Q That's fine.

A And here at the bend, the property that I owned that I sold to Matthews was right here (indicating) -- well, it came up to here (indicating) and then it came over like this (indicating).

Q Now, when you say Matthews, when was that sale?

A Last fall in October.

Q So this was basically your house, then?

A Yes.

Q Could you just label in Croxall slash Matthews and draw where your house is?

A It was about right here (indicating), something like -- I don't know, I can't do this.

Q This is fine, you're doing exactly what we need.

Now, where was your mother's house in relation to this ground?

A It was --

Q When I say her house, I really mean her property and her house.

A It was like (indicating) and the property line come down about like that (indicating).

Q Would you put Grace Palmer up in there?

A I haven't got this right. (Witness complies.) She sold it to Mr. Thompson.

Q And then where is this 1.8 acres that Smith bought from your folks?

A Here's the road (indicating), it's over about like that (indicating).

Q Why don't you put Smith in there?

A (Witness complies.)

Q Smith 1.8.

A And my mother had 1.5 and I had 1.1.

Q Now, across the road, on the south side of this road out there, could you draw in what is now what we call the Scoffield property?

A Well, it goes -- I don't know, I don't know where this line -- if this line comes here (indicating) or not. I don't know. I'm just saying this is the road. I don't know if it comes down here or not (indicating), but it's up in here like that -- or I think it comes over like -- I don't know, something like that (indicating).

Q Now, within this Scoffield property, you talked about -- I got a little confused. You talked about 6 acres, 1 acre, and 7 acres.

A No, we had 7 acres. Somebody else had 6. It was 7 on the deed.

Q And then she said something about Parcel 1, so when we talk about Parcel 1 and Parcel 2 --

A It was what my daughter owned, it wasn't quite an acre, and it was right here where the trailer house sat (indicating).

Q When you say your daughter, who's that?

A Both my daughters owned it at times.

Q Who owned it first?

A My daughter Sharel owned it first, my father gave

it to her.

Q Then who owned it after that?

A My daughter Cinda bought it from Sharel and Marvin Wheeler.

Q And does this end up as where the Scoffield trailer is?

A Yes, here's their trailer (indicating).

Q Why don't you just put a T in the middle?

A (Witness complies.)

Q Go ahead.

A This should come to the road, though, I mean it's not straight.

Q This small ground does abut the road down here (indicating)?

A Yes, it comes onto the road here (indicating), so it shouldn't be up this high.

Q Do you want to just extend it down to the road?

A Well, it should be more like this (indicating) because it abuts onto the road just as it comes around the bend.

Q So the trailer is actually down there a ways?

A Down here (indicating).

Q Why don't you put a T-2 in there so we know that's where you feel the trailer ought to be.

A Okay (witness complies).

Q This was the small piece, and that combined with the large piece made 7 acres, is that correct?

A Well, see, we bought this from my daughter Cinda, I and my husband bought it from her. And then when my husband realized he couldn't take care of this anymore, he sold it, so at that time we owned all of this (indicating).

Q The whole 7 acres?

A The whole 7, 8, acres, whatever it is, we owned it all, and we sold it to Harold Payne.

Q Okay. On the Payne deed it talks about -- and I can get it if you want to see it, it talks about Parcel 1 and Parcel 2.

A Well, that would probably be -- I don't know which would be which.

MS. SCOFFIELD: I have those deeds right here.

A You would have to get the acreage to say which was which.

Q (By Mr. Holmes) Okay, but what you sold Payne is this whole large piece (indicating)?

A All of it.

Q Why don't you put up in the larger piece, just put Payne slash Scoffield so we know what we're looking at.

A (Witness complies.)

Q Now, where is Tuck Smith's house?

A It's over here (indicating), it's down closer to

the road probably right here (indicating).

Q Do you have any idea where his property lines run?

A No, not really.

Q When we talk about Papoose Creek, where does that run on this property? Do you want to draw that in in blue?

A I don't know exactly how it comes. Say it comes down out of the canyon, and now -- see, it used to go right behind my mother's house so that it used to come right down this way (indicating). But now after that flood demolished all this, it comes down around here (indicating) and goes along the side of the hill and under the road down here where Murrays live.

Q Do you want to just write Papoose Creek on that?

A (Witness complies.)

Q Now, where's this cistern?

A It's -- say that's the creek (indicating), and it's -- I don't know where it is now. I haven't been out there.

Q Where did you think it used to be?

A Say this was the property line (indicating), I thought it would be about right here (indicating).

Q Do you want to just put a little C there?

A (Witness complies.)

Q What's on the other side, I guess it would be south of this property line, is that BLM?

A That was BLM.

Q Do you want to write BLM over there?

A (Witness complies.)

Q Now, when you say -- when we started this deposition, you said the cistern was on our property. Now, is it your understanding --

A When do you mean, what time -- at what frame in time do you mean? It was on our property after we bought it, but before then my dad owned it.

Q When you owned this property that we've labeled the Payne/Scoffield property --

A Yes, we understood that the cistern was on our property, because this old fence come up around here (indicating) and was on the other side of it.

Q When you say the fence, is that basically the line there?

A Well, yeah. Like I said, I haven't done it right.

Q But if I asked you to draw the fence in, would that be drawn in any different than what you've drawn here?

A I don't know. I mean, it's so crazy because I can't do this without some kind of a map. The fence, it's not square like that. Say this would be the fence like this (indicating), comes over like that (indicating).

Q So it went south of the cistern then, the fence?

A Yes.

Q So when you say you thought the cistern was on your property, you really were talking in reference to the fence, then?

A Yes, and we understood that we owned the ground --

Q Right.

A -- when we bought it from my dad.

Q Now, you yourselves or to your knowledge your husband never had that line surveyed?

A No, but I think my father did.

Q But that's a recollection?

A Yeah.

Q You don't have a copy of a survey?

A I don't have.

MS. SCOFFIELD: There was a survey done by Northwest Engineering and we can get a copy of that.

MR. HOLMES: Okay.

Q (By Mr. Holmes) Now, Mrs. Scoffield has referred to a survey by Northwest. You don't have a copy of that?

A No, I don't have anything. I threw most of my stuff away when I sold my property. I wasn't -- I thought I was finished with all this BS.

Q So you don't have anything in your possession that really shows where that line is?

A Only the recorded deed that we had.

Q Right.

A I mean, that was recorded.

Q Right.

Let's talk about deeds. Why don't we go off the record and let's start marking some stuff, Sue.

(Deposition Exhibits Nos. 1 through 9 were marked for identification.)

Q (By Mr. Holmes) Mrs. Croxall, I'm going to hand you some deeds and I'll refer to them by the deposition exhibit number so our record is clear.

Now, this map that we've been working on we've marked as Deposition Exhibit 1. Now, it's possible that some of these deeds that I'm going to hand you are not necessarily related to this particular property, but I'm going to ask you and just tell me what you know.

A Okay.

Q I'm handing you first what's been marked Deposition Exhibit 2, which is a December 24, 1957, warranty deed from your parents, Hyrum and Grace Palmer, to you and your husband Stanley.

A Yes.

Q What property this?

A This is where this house -- that's this property (indicating).

Q This is the 1.1 acres that you've labeled Croxall/Matthews?

A Croxall/Matthews, yes.

Q Could you just take this blue pen and just write down here, let's write Deposition Exhibit 2.

A Like that (indicating)?

Q Yes, why don't you put a D-2.

A (Witness complies.)

Q Now I'm handing you what's been marked Deposition Exhibit 3. This is a 1985 deed from Helen Mumme to you and your husband. What property is that?

A This is that little piece right here (indicating).

Q Where the trailer is?

A Yes.

Q Do you want to put D-3?

A (Witness complies.)

Q Now, on this particular trailer property, just so I understand, what was the chain on that again from your parents? Your parents gave it to who?

A They gave it to my daughter Sharel Kune, but her name was Wheeler then, Sharel Wheeler.

Q Was she married?

A She was married to Marvin Wheeler.

Q And then they sold to Cinda?

A To Cinda Mumme.

Q And who was she married to?

A She was married to Marvin Mumme at that time.

Q And then what happened as far as their involvement with the land, what did they do with it?

A Just lived on it.

Q I mean, how did they get rid of it?

A Cinda got it in the divorce decree and then we bought it from her.

Q Now, this deed is from Helen Cindakay Mumme. Is that your daughter?

A That was my daughter, and that was her name at that time when we bought it.

Q So her first name is actually Helen?

A Yes.

Q Now, as far as Marvin Mumme's involvement in this ground out there, did he ever own any other ground or have an interest in any other ground except what you've labeled as D-3?

A No, none whatsoever.

Q Now, during the time that Cinda and Marvin Mumme were occupying this ground you've labeled D-3, who occupied this larger piece of ground that's south of the highway that we've written Payne/Scoffield on it?

A I and my husband owned it.

Q Now, handing you what's been marked Deposition Exhibit No. 4 --

A Do you want to put anything on that?

Q No, not yet.

-- this looks to be a 1971 deed from your folks to you and your husband.

A Yeah, that's that property, that Payne/Scoffield, I guess. I'm not sure.

Q Well, it looks like it's a little smaller than that.

A It was supposed to be -- I understood it was about 7 acres.

MS. SCOFFIELD: This one is the small one, this is the 205 by 260.

MR. HOLMES: So this is the same as 3?

MS. SCOFFIELD: I think so -- no, this is the exception, this (indicating). It runs 205 feet by 260.

A When we bought this (indicating), my dad didn't have it surveyed and he marked it off just with a thing, and when he sold -- I don't know -- he had it surveyed --

MS. SCOFFIELD: This is a wrong deed, this one here (indicating).

MR. GERMER: Can I maybe help you on this for giving you a starting corner, this point right here (indicating) --

THE WITNESS: That's nothing to do with this at all.

MR. GERMER: I'm saying right here is the 116th

parallel line where most all of my deeds and all of them comes more or less from this point right here (indicating).

A Anyway, he gave me one little deed -- I had two deeds to this ground (indicating), one of them was for -- where's the road? -- was for -- well, that curve is not right, it comes up here (indicating) -- for a piece along here (indicating), I think it was 25 feet wide. So I had two deeds to this property.

Q (By Mr. Holmes) That's the D-2 property?

A Yes.

Q So as far as Exhibit 4, you're not real sure what piece that is, you would have to sit and study the legals?

A Yeah, I wouldn't know.

Q Handing you what's been marked No. 5, this is a 1973 deed from your folks to you and your husband, and it does have a piece excepted out. What piece of ground is that?

A What piece is excepted out?

Q Well, see, it says, there's a long legal here, and then it says excepting therefrom, and then it lists this small piece of ground.

A I don't know what small piece of ground that would be.

Q What piece of ground did this deed to you, this Exhibit 5?

A All of this (indicating).

Q Why don't you put 5 up there, D-5.

A (Witness complies.)

MS. SCOFFIELD: I can tell you what this is excepting out. This is excepting out the 150 by 40 of Mr. Smith's property here (indicating) and the parking space there (indicating).

Q (By Mr. Holmes) Handing you what's been marked Deposition Exhibit 6, this is a 1978 deed and it refers to a parcel containing 6.4 acres. Do you know what piece of ground that is?

A And it's deeded when?

Q 1978.

A Well, all the ground I know he sold in 1978 was to Mr. Smith -- or it's the 25 feet that was here (indicating) -- how much ground is it?

Q She's pointed out this is a correction correcting the legal description.

A I don't know what that is.

Q This Exhibit 6 --

MS. SCOFFIELD: This is this piece right here (indicating).

Q (By Mr. Holmes) Why don't you put a D-6 up there.

A (Witness complies.)

Q She's pointed out that this has a phrase that corrects this prior warranty deed, corrects the legal

description.

I'm handing you what's been marked Deposition Exhibit No. 9. Can you identify that for me? It looks like it's a 1985 deed from you and your husband to Mr. Payne.

A It probably is then.

Q It refers on Exhibit A, the legal description, as a Parcel 1 and a Parcel 2. Now, would this have been the deed where you and your husband sold Mr. Payne --

A All this ground (indicating).

Q That would be D-3 and D-5 and D-6?

A Yeah.

Q Now, then, Exhibits 7 and 8 are a couple quit claim deeds. One is from your mother to Harold and one is from your mother to you and your husband. Can you tell me what those deeds are or what they do?

A I don't know.

Q Do you know why they were prepared?

A When were they prepared? Oh, in '86. That's when Tuck was going to take the water away from us, so we went in to your firm.

Q To Mr. Jones?

A Well, it's the same thing, you're altogether.

Q That's before I was there.

A And told him -- and said there was a question in our mind, and he said, well, the water went with the ground,

but he said if it would make you feel better, he would fix these for us, and he did. So they were done by your firm.

Q So then this Exhibit 8, which is from your mother to you and your husband, talks about 1.1 miners inches?

A To clarify the water rights that was recorded with the Water Resource Board.

Q Okay.

And then Exhibit 7 talks about 8.19 miners inches to Mr. Payne, is that correct?

A Um-mm (affirmative). We did that because Harold was upset thinking that he was going to lose the creek, and mother said, no, the water goes with the land and it's so stated by the Water Resource Board. But Harold was upset, and that's why we went into your firm and that's why we contacted the lawyer and he said, well, if it will make you feel better, we will do this, but he said it is not necessary because the water goes with the land.

But why are we discussing all this water for when it's the cistern you're supposed to be talking about? The irrigation water has nothing to do with the cistern except that it is part of Papoose Creek.

Q Well, now, I guess -- let's go back to Exhibit 1.

A What's that, this map?

Q This map.

A Yeah.

Q Now, when you talk about the cistern and Papoose Creek and the water --

A It's all Papoose Creek.

Q Would you explain what portion -- how Papoose Creek gets into the cistern? Does it all get into the cistern? Tell me about that.

A Papoose Creek is composed of many little streams that run out of the rocks down through the canyon, which is Papoose Canyon. There's some here and there's some there. They come out of the rocks, they come out from underneath the trees. In the summertime a lot of them go dry. As I understand it, all these little springs as they go into the one, all of them compose Papoose Creek, they make up the creek. And one little stream, to keep the cattle out of it, it came out of a rock, my dad put it into the cistern so the cattle couldn't stomp in the water and get it dirty because that's what they drank.

Q Let me clarify what you said. You said one little stream I think.

A Yeah, and there's lots of little streams.

Q Are you talking about a spring?

A Papoose Creek is all springs from the head of the canyon down. They come out at different places. But all of them compose Papoose Creek. You can't say this little stream is not part of it, or that little stream is not part of it.

All of it composes it.

Q I understand. What was it your dad did to get drinking water?

A He piped it into a cistern.

Q Piped what?

A Part of Papoose Creek.

Q Did he pipe the creek or did he go up and tap a spring?

A Papoose Creek is springs, it is nothing but springs. He piped in one of those springs.

Q That's what I'm trying to ask.

A Well, that's what I was trying to tell you.

Q From the cistern, then, does all of Papoose Creek go into the cistern?

A No, just one of the springs, just the same as some of the springs don't even go into the irrigation pipe. They seep out around it and down.

Q Again, to try and get it clear, is all that goes into the cistern this one spring?

A I don't know if it all goes in there or if there's more going out into the ground. I know that part of a spring was piped into it and I don't know if it was all of it.

Q Of just one spring?

A I don't know if there's one or more springs up there under those rocks. All I know is that there was one

pipe coming from that into the cistern.

Q One collection point up there?

A Yes.

Q So there was water, then, that did not -- of Papoose Creek that did not run into the cistern?

A Most of it didn't. We're just talking about a minute spring.

Q How was that water that didn't go into the cistern piped? Where was it piped?

A When he built the cistern, it just came down the canyon, the rest of it. But because the canyon is gravel, it would -- in the spring -- or in the summertime Papoose Creek would go dry and the water would never go down past the road, because it used to go underneath the road, underneath a bridge where the mailboxes are there.

Q Let's take a point in time and let's just take this point in time when Tuck Smith moved out there in the late sixties.

A Okay.

Q What sort of piping was done with Papoose Creek, where was the water piped?

A Well, in 1960 my dad put in some old pipe to carry the water down so it would go across the road into his yard because his lawn used to burn up. He didn't even have a lawn until 1960.

Q Does Virgil Germer get any of that water?

A When he sold the property to Virgil Germer, he told him that he could have second water rights to the creek.

Q Now, as I understand it, Germer lives north of the road down there?

A Yes.

Q Roughly where does Germer live?

A Oh, he lives down -- this is his property from here over (indicating), so here (indicating).

Q Do you want to just write Germer in there.

A (Witness complies.)

Q So where did these pipes run? Do you want to just draw a pipeline on there?

A Oh, the pipeline came down the canyon here (indicating) and it went right behind my mother's garage down like this (indicating), and it stopped just about right there (indicating).

Q Do you want to just put pipe, water pipe, on there.

A (Witness complies.)

Q Was that water used for irrigation only?

A Yeah, it wasn't fit for human consumption, there were cattle all along the creek.

Q When it got down here to the north end of the road where it terminates --

A There's a large valve there that you can shut the water pipe off. It's on Mr. Thompson's property now.

Q Did your dad while he was alive use that water that came out of this pipe?

A Well, of course he did.

Q What did he use it for?

A To irrigate his orchard and yard.

Q So he used it on this 1.5 acres?

A Um-mm (affirmative).

Q Did he water any stock with it?

A No -- I mean, I don't know that he watered stock with it. It wasn't piped over to the barn to water stock with it.

Q How did he water stock in the barn?

A Well, during the summertime he had a fence that went from his corral down to the river, and mostly they drank -- when he had cattle, he had his pasture along the river after he bought the river ground. But he had a water trough there, but he sometimes watered his cattle with the cistern, and then -- but year after year after year the water pipe from the cistern down would freeze up in the wintertime, and so my father and mother got into the habit of going to California, and I'd say for the last 12, 10 or 12, years they went to California in the wintertime because that water to their house would freeze up. And this is one reason why my dad put --

hooked this cistern pipe to our pressure tank, so that we could water his cattle with our well. But then he had a heart attack and couldn't do that anymore.

Q Let's just kind of clean up the map here a little bit. So when you talk about the cistern water getting down for use with cattle, that was by a different pipe than what you've labeled here?

A Yes, it was the one that went to his house.

Q Can you draw that pipe in?

A Oh, it just came down from the cistern and just followed it down, went to his house and down to his barn and then over to our house.

Q Where was the barn?

A It was right here -- well, it was down here farther, right here was the barn (indicating).

Q And that barn is on ground, the 1.8 acres, that Smith now owns?

A That Smith now owns. But the water from the cistern was never meant to water cows, it's only supposed to hold 1200 gallons. It was only for household use. But he did use it to water his cattle at times.

Q Your dad?

A Um-mm (affirmative).

Q When was this cistern water -- you show this cistern water going from your parents' house over to your

house.

A My father put that in in 1958 before we drilled our well so we could have water in our house from the cistern.

Q Do you want to just put 1958 on it?

A It has to be about 1958, yeah, because it was the year that we built our house. We didn't have our well drilled. And then the next year our well, after we drilled it, went dry.

Q Now, as far as this other pipe going down to your folks' place, when was that put in?

A Which pipe?

Q From the cistern down.

A In 1945.

Q Do you want to just write 1945 on there?

A (Witness complies.)

Q And when did you say you drilled your well?

A We drilled our well the year after we got the property, so it would have been probably in 1958 that he hooked us up over here (indicating). He himself put it in so he would have water for his cattle in case, but then our dumb well went dry and we had to have it redrilled the next year.

Q When was that?

A It was the year after.

Q Now, when did your daughter Sharel move a trailer in on this D-3 property?

A Oh, I can't remember the exact year. It was when her little boy was about -- it was probably -- I'm not sure of the date. I would have to figure it up. He's 26, and he was 4, so it would have been 22 years ago.

Q So it would be early '71?

A I'd say about 1970.

Q And what was the source of water for that trailer?

A Well, they had just a garden hose hooked onto the irrigation pipe that came down here (indicating), and then we hooked them up to our well because my dad had told Mr. Smith that he could use cistern water until he got his well drilled.

Q As far as hooked up to your well, can you just kind of draw that piping arrangement in?

A Say here's our pumphouse (indicating), and this came over here to our pressure tank from the cistern, and then from the pressure tank it went across the road up to the trailer house. And they mainly used that water. My little grandson got really ill -- we were using the cistern water and my little grandson got really ill, and I took a sample of it from our pipes in to have it tested by the health bureau, and they said it was highly contaminated by surface bacteria, so that was coming from the cistern.

Q When was this pipeline later crossed from your well?

A When they moved their trailer in.

Q Just write a date in there so mostly it will help us identify that.

A Probably 1970.

Q 1970, okay.

So now you show a line going from your property, which is D-2, over to this D-3 trailer?

A Yes, and the cistern water went all the way from the cistern clear down into the trailer house if you opened this valve on our pressure tank.

Q So you had a way on your pressure tank, then, to mix the cistern water in with your well water and get it over to the trailer?

A Yes, we did, if you wanted to. All you had to do was open the valve. The water from the cistern went into our pressure tank. And we had pumped water from our well up into the cistern with our pump when it was new. You couldn't do it after it got older.

Q Just so I understand, if you opened the valve, if you wanted to, you could then take your pump and run water clear back up through into the cistern?

A Yes, we could. It took 42 pounds of pressure to put it there.

Q When was this water -- when did you normally mix the cistern water in with your well water as far as getting it over to the trailer?

A Not very often. We kept that turned off because we didn't like the cistern water.

Q And why was that?

A Because a lot of times it was dirty. One time a range bull died right on the top of it and we didn't realize it was right on the top of it. And my husband was taking water to the job for the men to drink, 5 gallon, and they all became ill. And then I noticed maggots in the water, and we went up there and the range cow was covered with maggots and they were dripping down into the cistern because it didn't have a good lid on it and it had rained and just washed them all in, and it kind of made me ill.

Q Was that before or after you had the water tested to see if it was contaminated?

A That was before. The health department, we called them then and they told us how to clean out the cistern and sterilize it with Clorox and then not use it for 24 hours, and at that time we were using it in our house.

Q About when was that?

A I don't know the year.

Q Well, just roughly, or relate it to something.

A I just can't give you a year because I just can't remember.

Q About how many years was it after Sharel had moved in out there?

A It was before Sharel moved in.

Q That you had the water tested?

A No, it was when her little boy was about 5 or 6 months old and he had this diarrhea so bad that we was afraid that we was going to have to hospitalize him, and we came to find out that he had eaten some of my philodendron plant, but I had already taken the sample into the health department.

Q And then it came back contaminated?

A Highly contaminated with surface bacteria, as I recall, that was the report.

Q So that would have been in the -- she moved out there in '70 and this kid was 6 months old?

A About 6 months old.

Q So about when would that have been?

A Like I said, he's 26 now, this year he'll be 26, and he was about 6 months old. I don't know exactly what year it was. Does the health department keep records?

Q I'm just trying to place it at a time after she moved out there.

A I don't know what -- when it was.

Q But your recollection is, if he's 26 now, it would have been --

A That was her oldest boy that's 26 now. When she moved out there, her youngest boy was the baby. Well, she lived there twice in her trailer house.

Q Okay.

A And they moved their trailer house, they sold it and bought a bigger one. When they bought the bigger one, they lived in that trailer park out on South Fifth until her little boy was about -- her youngest little boy was about 6 months old. But her -- but she lived there first until her little girl was about -- well, her third little girl was born when they lived in that trailer park on South Fifth, but her first two children when they lived in the trailer house there with us.

Q Let me try it another way.

A Okay.

Q What kid got sick?

A Her oldest boy got sick.

Q And how old was he?

A He was about 6 months old then.

Q When he got sick?

A Um-mm (affirmative).

Q And that's when you had the water tested?

A Yes.

Q Was she living in the trailer then?

A She was living there, but the trailer at that time wasn't here, it was down on our property.

Q So it would have been a few years before?

A It would have been a few years before they moved

their trailer from that trailer park out here.

Q Here's what I'm trying to get at. After you discovered the water was contaminated, the cistern water was contaminated, how often did you mix it with your well water?

A Well, we never mixed it very often, but it was pumped into our -- hooked up to our shop, the plumbing was hooked up into the shop, and I couldn't shut the cistern water off from the shop, my dad had to do that over by the barn, and that would shut it all off, but he never shut it all off until I asked him to.

Q So how often was the cistern water run over into the trailer?

A The trailer was hooked to the cistern water before it came into the pressure tank when they had the trailer on our property. But when they moved it up to here (indicating) --

Q That's what we're talking about.

A I don't know, not very often. We didn't open that hardly ever.

Q Like once a year?

A Oh, probably, once or twice a year. I never thought to keep track of things like that.

Q That's understandable. And why would you run the cistern water over to the trailer once or twice a year, why would you do that?

A Sometimes we would just open that valve up.

Q Just to test it?

A Yeah, to see if that line was okay and stuff. It was just there. But we could always turn it on in our shop, until my husband broke the pipe, and then I had my dad cut it off. And Mr. Smith was there at the time when I went and asked my dad, I said our shop is flooding --

Q Before we move on to that, I just want to get focused here.

So from the -- when Sharel moved her trailer over onto the D-3 property in the early seventies, the main source of water --

A Was our well.

Q -- was your well?

A Yes.

Q Occasionally, once or twice a year, the cistern water --

A It could be turned on at any time. It was there. All you had to do was open a valve and it would mix.

Q But it wasn't done more than once or twice a year?

A I don't know how often it was done. I can't say how often it was done.

Q So the cistern wasn't the main water supply to that trailer?

A No, it wasn't.

Q Now --

A But it was hooked to it, I mean, it could be.

Q I understand that.

Now, you indicated there was a point in time when the cistern water coming to the shop was disconnected.

A Yes, that was in 1976.

Q Now, did that also disconnect it to the trailer?

A It disconnected it so it couldn't go into our pressure tank.

Q And where was this disconnect made?

A It was made over here by the barn. He had a valve that went down into the ground so it wouldn't freeze and it was over here that he could shut it off. But he never ever did it, that's why our shop flooded when my husband -- my husband ran over the pipe with a tractor loaded with rocks and broke this pipe.

Q When you say broke this pipe, that's really right back of your house?

A Yes, right back of our house.

Q And after that, then the water --

A Was not used from the cistern on our property.

Q Was the line just shut off or was it disconnected?

A It was shut off at the time. I don't know what Mr. Smith done with it after he purchased it.

Q And it was shut off over here at the barn because

it was leaking, it was running all over the floor of your trailer?

A No, all over in our shop.

Q Excuse me. I mean your shop.

A Water was in there four inches deep. I didn't know where it was coming from at first.

Q What part of 1976 was that, summer, winter, spring?

A It would have had to have been in the spring because that's why I was building this flower garden, he was hauling the rock with the tractor, that's how come he broke it.

Q Let me just make sure I'm clear. From the spring of 1976 on cistern water could not --

A It couldn't be used past that -- it was never used past this point (indicating) from 1976 when I had my dad shut it off.

Q So from that point on your water line from your pump was the sole source of water for the trailer?

A Yes, it was.

Q Until something else was done?

A Yeah, it was, the sole source -- well, I don't know, I can't say it was the sole source of water to the trailer house because they could hook up the pipe from the irrigation hose in to flush the toilet and things if they

wanted to, and I don't know if they did or not, but I don't think they did.

Q That wasn't cistern water, though, that would be irrigation water from Papoose Creek?

A It would be irrigation water, it was not cistern.

Q From the creek?

A Yes.

Q Now, do you know what year --

Should we take just a little break?

MS. SCOFFIELD: No, she's got to be out of here by at least a quarter after eleven.

A 11:30. I have a dental appointment at 11:30.

Q Let me ask you this. This matter is set for trial in June, are you aware of that?

A Yes, and I'm aware that I won't be here. I've already purchased three tickets to Alaska.

Q So this deposition, then, is being taken in lieu of your testimony?

A Yes.

Q I'm going to have questions that are going to go longer than the time we've got. Could we reschedule? Could you come back later?

A No, I can't, not any other time. I'm going to Alaska. I've got my days down to the hours. If you want to go ahead and try to finish, go ahead. That dentist isn't that

--

MR. HOLMES: Let's go off the record a second.

(Short recess.)

Q (By Mr. Holmes) After the cistern water was shut off from the trailer in 1976, then who continued to use the cistern water?

A My mother in her house. The main use of the cistern was water in her house.

Q And then, let's see, when did she dig a well?

A In 1980.

Q And did she discontinue using the cistern water?

A Yes.

Q In 1980?

A Um-mm (affirmative).

Q At that point who was using the cistern water?

A I don't know. I don't know if Mr. Smith was using it for his cows or not.

Q Now, you've said when this was deeded to Payne, you said it was you and your husband's understanding that the cistern was on your ground.

A Yes.

Q And you didn't realize -- you hadn't surveyed the ground?

A No.

Q Now, by what document, written document, did you

give the cistern to Mr. Payne?

A By the written thing in our contract stating that everything that was on the property went with it. The trailer house, the cistern, the water pipes, that was all in the contract.

Q Now, when you say contract, you're talking about the deed?

A No, the contract that we -- that the title company -- no, it was a lawyer who drew it up. His name was Robison, Jess Robison.

Q Do you still have that deed -- or that contract?

A No. I don't know if they do or not. It was nothing to do with us, I mean, it was their contract.

Q Payne's?

A Um-mm (affirmative), it was Payne's.

Q And do you remember, did you give the deed to Paynes at the time you did the contract or when they paid you off?

A They paid us cash.

Q So you gave them a deed immediately?

A Yes.

MS. SCOFFIELD: Can I ask some questions instead of wasting time?

MR. HOLMES: No, I'm not done yet.

Q (By Mr. Holmes) I believe we -- I'm looking for

their deed to Payne. Do we have that in here? Here it is.

Going back to Exhibit 9, which is a warranty deed from you and your husband to Payne, besides this deed and the contract that we don't have a copy of, was any other document signed between you and Payne?

A No. But in the contract we gave him everything that was on the property, including the trailer house, including the water pipe and the cistern and everything that was there. That was according to the contract, he got everything.

Q Now, were those things -- when you talk about the water pipe --

A The sprinkler water pipe that he sprinkled with.

Q Okay. Were those things itemized out or did you just lump it as all appurtenances or something like that?

A It just more or less stated that everything on the property went to Mr. Payne, everything that was there.

Q So there's no other document, then, other than those two things, the deed and the contract?

A No, there's no other document.

Q Now, this deed doesn't specifically mention --

A It's just for the ground, it's not for the trailer house or the stuff that went with it.

Q Did you give him a separate bill of sale or something for the cistern?

A It went with the property, it was on the property. Everything on the property went to him.

Q Okay. But if the line reveals that the cistern wasn't on the property, then it didn't go to him?

A Well, as we understood it at the time, it was on our property.

Q Okay.

A And by the old survey things, they changed their lines, I guess, when they resurveyed it.

Q But you don't know, do you?

A But I don't know that.

Q Okay.

Do you know how much water was available out of that cistern?

A Well, my father -- I don't know how much was available. My father told me that he estimated that it held 1200 gallons. You could very easily drain it if you opened the pipes wide in just a little while.

Q Do you know as far as in miners inches or c.f.s. or anything how much ran into it?

A No, I don't. A stream ran into it that was about the size of this pen (indicating).

Q A pencil stream?

A Yes.

Q Do you know how much water was in Papoose Creek

that didn't run into the cistern?

A No. It varied so much. You couldn't say how much from spring to fall.

Q In these various -- in some of these deeds, particularly these quit claim deeds that were prepared by Mr. Jones, I believe that's Exhibit 8 and Exhibit 7, there's a reference to miners inches of water. Do you know if that amount of water was available?

A I don't even know what a miners inch of water is.

Q Now, have there been any -- to your knowledge have there been any threats of litigation against you?

A Yes.

Q As a result of failure to deliver enough water?

A I don't know what you mean by deliver enough water.

Q What threats of litigation have been made against you?

A The one that Tuck instigated to get the water out of the creek.

Q Is that the one that got shift over to Twin Falls?

A Yes.

Q Any other threats of litigation?

A Well, that's the only one that I know of that's been ongoing.

Q Has Harold Payne ever threatened to sue you over

the water?

A Yeah, he did, he said when you sold me that ground, he said, the water went with it. And that's why we went into your office, because he was upset. He thought maybe that he could take the water away from him, and that's why we went into your office and talked to Mr. Jones, and he said if it will set your minds at ease, we'll draw up these quit claim deeds.

Q Have there been any threats of lawsuits by Scoffields against you?

A No.

(Discussion off the record.)

MR. HOLMES: I don't have any further questions right now.

RE-EXAMINATION

BY MS. SCOFFIELD:

Q I do real quick.

At what time was the water directly hooked up to the trailer located at the Scoffield property?

A What water?

Q The cistern water. When was it hooked for domestic water?

A When Cindy did it?

Q Whenever it was done.

A I think Cindy did it in 1983 is when she hooked up

to the cistern with the trailer as far as I can recall.

Q And at that point, then, the water from the cistern and the cistern itself was owned by whom?

A Well, it just was there. The water belongs to Papoose Creek.

Q Who owned the property here in Exhibit D-5 and D-6?

A Here (indicating)?

Q Yes, in 1983.

A I and my husband did.

Q So this cistern actually was on this property?

A Yes. In fact, I'm the one that told her to hook up to it.

MR. SMITH: The cistern was in the same place where it was before you moved it.

Q (By Ms. Scoffield) To the best of your knowledge has the cistern water been used continuously from when Cindy hooked it up to the mobile home to today?

A As far as I know it has, when there's been water, when it wasn't run dry.

Q Since the time that someone got sick and you had the water tested and Cindy and Harold had been using that for sole domestic water from the cistern from 1983 until the Scoffields now own it in 1991, has anyone ever gotten sick off the water to your knowledge?

A Not to my knowledge.

MS. SCOFFIELD: That's all.

RE-EXAMINATION

BY MR. HOLMES:

Q When you said your daughter Cindy was hooked directly to the cistern in 1983 --

A Yes, to the cistern pipe.

Q -- who helped her do that?

A I did. I told her to go over and hook up to it.

Q To your knowledge did Mr. Smith have anything to do with that hook-up?

A No. I went over and told him that I didn't want to mess up his pipe, that we was hooking onto it. He was raging mad and he said she can't hook up to that pipe. And I said, well, she's going to. And he went down to my mother and said, I own that cistern, and on and on. And my mother told him, no, you can water your cows, you don't own the cistern, Cindy is going to hook up to it. He said she'll only hook up if I say she can, and he said I say she can, after I am the one that told her to hook up to it.

Q So even though he protested, he did ultimately say as far as he was concerned she could hook up?

A Yeah, because there was nothing else he could do about it. I told her to hook up to it.

Q We forgot to go into this. I think we can do this

briefly. Was there a period of time that Smith used this cistern water around his house?

A I don't think so, only in it. I don't know if he used it around it or not. But if he used it around his house to water the yard, there would have been no water in the cistern.

Q What about using it in the house?

A My father told him that he could use it in the house until he got his well drilled.

Q And do you know when Smith drilled his well?

A No, I don't, but I know for years after he drilled it, that the water solely went to my mother's house, so I assumed he wasn't using it, but I don't know.

Q Do you know for certain that he wasn't?

A No, I don't know if he was or wasn't. I know he wasn't supposed to be, but that don't mean if he was or not.

Q When we're talking about he wasn't supposed to be, we're talking about he wasn't supposed to be using the cistern water in his house?

A After he drilled his well, he wasn't supposed to because my mother -- it would go dry so much. My dad would even leave it on.

Q What would?

A The cistern.

Q It would go dry?

A He would drain it.

Q Who would?

A My dad.

Q Doing what?

A When he would water the cows sometimes and leave it on.

Q So that was something that would happen fairly often?

A At times, yeah. I even drained it at times. But I don't know if he was using it or not. But I know he had no water right to use it if he was.

Q When you say no water right to use it, you're talking about in his house?

A A legal water right to use it.

Q In his house?

A Yes, after the five years. He wasn't supposed to use it.

Q After he drilled his well?

A Um-mm (affirmative).

Q When you say after the five years, you mean the same thing, after he drilled his well?

A My dad just mentioned that figure, but my dad is dead, so what he said don't mean nothing.

Q But, then, as far as your understanding, if Smith used the cistern water in his house after he drilled his well

--

A Then he was stealing.

Q And it would not have been with the permission of you or your mother or your father or your husband?

A I don't think they would have cared, I mean, they're not that way.

Q But to your knowledge they didn't give permission?

A He wasn't supposed to be using it in there. It was supposed to be solely for my mother, and she used it until she drilled her well.

Q When you say solely for your mother --

A Her house.

Q And, additionally, whatever rights he had by virtue of this 1.8 acres, correct, Smith?

A He had no water right actually from the cistern, only to water his cows. Mother told him that he could water his cows with it.

Q So he was able to do that?

A Yeah, I guess, unless it froze up. I don't know. I didn't go over and see.

Q Do you have any knowledge of an agreement between your mother and Tuck?

A No, I don't. I know that we could pump water into their house with our well until they cut the pipe in '76.

Q "Their house" is your mother's?

A And Tuck should have had his well drilled by then.

MR. HOLMES: I don't have any other questions.

THE WITNESS: And the pipe was cut when she drilled the well. Using the cistern water wouldn't go in her house -- I mean, Tuck's well wouldn't go in her house.

MR. SMITH: It did until she dug her well.

MR. HOLMES: We'll deal with that later.

THE WITNESS: We could have put it in there from our pump, too, because we were hooked up, too, in '76.

MR. HOLMES: I'm done.

MS. SCOFFIELD: I'm finished.

THE WITNESS: Well, I just would like to say one thing for the record. That after we sold that property to Mr. Payne, Mr. Smith brought a paper over and wanted my mother to sign it giving him the right to the cistern and the second water rights to the creek. And my mother was very upset. And she understood that the Water Resource Board wanted her to sign this. She was to sign it, have it notarized, and send it to the Water Resource Board. And she was so upset, she said how can I do this when I don't own the cistern and Mr. Germer has the second water rights. So I took her up to the Water Resource Board and she went in and asked them what they wanted -- why should she sign this, because she didn't feel it was legal. And they told her, they said, lady, this did not originate in our office. And they examined the document, they

called in what they said was their lawyer. I don't know who these men were, they worked in the Water Resource Board. And he came in and examined this document and the records and he turned around to my mother and looked her straight in the eye and these were his exact words, he said, "Lady, you would be crazy if you signed that document." And I just want that on the record. They also gave her warnings of other ways that he might try to take the creek away from her.

MR. HOLMES: I don't have any questions as a result of that.

MS. SCOFFIELD: (Shakes head negatively.)

THE WITNESS: This document is a part of the record that went to Burley. I think Tara has a copy of it.

MR. HOLMES: Mrs. Croxall, she can't stop typing until we all agree we're done.

THE WITNESS: Okay.

MR. HOLMES: As long as you keep talking, anything you say we can then ask you questions.

THE WITNESS: That's fine, because I would like to be asked questions about this.

MR. HOLMES: But I'm done asking questions and I think Mrs. Scoffield is done asking questions. So are we done with the deposition?

THE WITNESS: As far as I'm concerned.

MR. HOLMES: Okay.

(Witness excused.)

(By agreement of the parties, the signature of the witness was waived.)

STATE OF IDAHO)
ss.
County of Bannock)

I, SUSAN P. ISRAEL, CSR and notary public in and for said county and state, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers of the witness,

JEANNE CROXALL,

to the interrogatories as indicated were made before me by the said witness, after being first duly sworn to testify the truth, and the same were thereafter reduced to typewriting under my direction; that the above and foregoing deposition, as set forth in typewriting, is a full, true, and correct transcript of proceedings had at the time of taking said deposition.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any counsel employed by the parties hereto, or financially interested in the action.

GIVEN UNDER My Hand and Seal of Office on this 30th day of May, 1991.

Susan P. Israel
Notary Public In and For
the State of Idaho

Warranty Deed

329189

THIS INDENTURE, *Made this* 24th *day of* December *in the year of our Lord One Thousand Nine Hundred and* fifty seven, *between* Hyrum Martin Palmer and Grace Palmer, his wife *of* Pocatello, *County of* Bannock, *State of* Idaho *the part* ies *of the first part, and* Stanley George Croxall and Billie Jeanne Croxall, his wife *of* Pocatello, *County of* Bannock, *State of* Idaho *the part* ies *of the second part:*

WITNESSETH: *That the said part* ies *of the first part, for and in consideration of the sum of* One (1) DOLLARS, *lawful money of the United States of America, to* them *in hand paid by the said part* ies *of the second part, the receipt whereof is hereby acknowledged* and for other good and valuable considerations, *do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said part* ies *of the second part, and to* their heirs *and assigns forever: All th* at *certain lot piece or parcel of land situate, lying and being in the County of* Bannock *State of Idaho, bounded and more particularly described as follows, to-wit:*

Beginning at the SE 1/16 corner of Sec. 23, T7S, R35E, B.M.; thence S.1°-48'E. on East 1/16 line of said Sec. 23 25.0 feet to the TRUE POINT OF BEGINNING; thence continuing S.1°-48'E. 235.0 feet; thence N.88°-06'E. parallel to South 1/16 line of said Sec. 23, 205.0 feet; thence N.1°-48'W. 235.0 feet; thence S.88°-06'W. 205.0 feet, more or less, to the TRUE POINT OF BEGINNING, same being in the SE¼ SE¼ Sec. 23, T7S, R35E, B.M., and containing 1.11 acres; subject, however to right of way for existing County highway.

No internal revenue stamps as this is a gift deed.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, *all and singular, the said premises, together with the appurtenances and privileges thereunto incident unto the said part* ies *of the second part, and to* their heirs *and assigns forever. And the said part* ies *of the first part, and* their heirs *the said premises in the quiet and peaceable possession of the said part* ies *of the second part* their heirs *and assigns against the said part* ies *of the first part, and* their heirs *and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.*

IN WITNESS WHEREOF, *The said part* ies *of the first part have hereunto set* their *hand* s *and seal* s *the day and year first above written.*

Signed, Sealed and Delivered in the Presence of

Hyrum Martin Palmer [Seal]

Grace Palmer [Seal]

[Seal]

[Seal]

DEPOSITION EXHIBIT 2 5-23-91

329189

STATE OF IDAHO,
County of Bannock } SS.

On this 24th day of December in the year 19 57, before me,

ArLene Petty a Notary Public in and for said County and State, personally appeared

Hyrum Martin Palmer and Grace Palmer, his wife

known to me to

be the person s whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

ArLene Petty
Notary Public.

Residence Pocatello, Idaho

329189

NO. 329189
RECORDED AT REQUEST OF
Stanley G. Croxall
Rt 1 South
JAN 30 2 09 PM '58
OFFICIAL RECORD BK. NO. 130
BANNOCK COUNTY, IDAHO
SARAH DEVANEY, RECORDER
FEE 1.50 DEPUTY L.O.

WARRANTY DEED

329189

TO

Dated _____, 19__

STATE OF IDAHO,
County of _____ } ss.

I hereby certify that this instrument was filed for record at the request of

_____

at _____ minutes past _____ o'clock _____ M., this _____ day of _____, A. D. 19__ at my office and duly recorded in Book _____ of Deeds at page _____

Ex-Officio Recorder.

By _____ Deputy.

Fee, $ _____

GEO. PRIMMER & SONS, INC., POCATELLO, IDAHO

33

WARRANTY DEED

754907

754079

For Value Received

Helen Cindakay Mumme

the grantor , do hereby grant, bargain, sell and convey unto

Stanley G. and Billie J. Croxall, husband and wife,
5230 West Portneuf Rd. Inkom, Idaho

whose current address is

5230 West Portneuf Rd. Inkom, Idaho

the grantee , the following described premises, in Bannock County Idaho, to wit:

Commencing at the SE 1/16 corner of Sec. 23, Twp. 7 So. , R. 35 E. B.M; thence S 1° 48' E. on E 1/16 line of said Sec. 23, 260 ft. to the true point of beginning; thence continuing S. 1° 48' E. on said E 1/16 line 260 feet; thence N. 88° 06' E. 205 feet; thence N. 1° 48' W. 100 ft., more or less to a point in the center line of existing Co. Road; thence in a Northwesterly direction along said center line of Co. Road to a point that is 69 ft. more or less East of the point of beginning; thence W. to point of beginning. Excepting therefrom the following described property to wit; Beginning at the SE 1/16 cornerof Sec. 23, Twp. 7 S., R. 35 EBM, thence S 1 48' E. along the West line of SE¼ SE¼ 260 feet to the true point of beginning; thence N. 88 06' E parallel to S1/16line of said Sec. 23, 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the point of beginning.

THIS DOCUMENT BEING RERECORDED TO CORRECT LEGAL DESCRIPTION

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee , heirs and assigns forever. And the said Grantor do hereby covenant to and with the said Grantee , that he the owner in fee simple of said premises; that they are free from all incumbrances

and that he will warrant and defend the same from all lawful claims whatsoever.

Dated:

Helen Cindakay Mumme 7-29-85

NO 754907
PIONEER TITLE CO.
85 AUG 8 3:15
429
FEE 2.00

STATE OF IDAHO, COUNTY OF
On this 29th day of July, 1985, before me, a notary public in and for said State, personally appeared Helen Cindakay Mumme

NOTARY SEAL

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that executed the same.

Notary Public
Residing at Pocatello, Idaho
Comm. Expires Life

754079
Billie J. Croxall
'85 AUG 29 P12:35
428
FEE 2.00

DEPOSITION EXHIBIT
3
5-23-91

WARRANTY DEED

924

770700

For Value Received

HYRUM MARTIN PALMER, and GRACE PALMER, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

STANLEY GEORGE CROXALL and BILLIE JEANNE CROXALL, husband and wife 5230 W. Portneuf Rd. Inkom, ID 83245

the grantees, the following described premises, in Bannock County Idaho, to wit:

REVENUE STAMPS

A parcel of land located in SE¼SE¼ Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian thence S.1°48'E. along the west line of SE¼SE¼ 260 feet to the true point of beginning; thence N.88°06'E., parallel to S 1/16 line of said section 23, 205 feet; thence at right angles South, 25.1 feet; thence in a Northwesterly direction to the point of beginning...

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 11, 1971

Hyrum Martin Palmer

Grace Palmer

STATE OF IDAHO, COUNTY OF Bannock

On this 11 day of May, 1971, before me, a notary public in and for said State, personally appeared

Hyrum Martin Palmer and Grace Palmer, husband and wife

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

NOTARY SEAL

Jenna DeBolt

Notary Public

Residing at Pocatello, Idaho

Comm. Expires

NO. 770700

RECORDED AT REQUEST OF

Billie Jeanne Croxall

'86 APR 30 P2:19

OFFICIAL RECORDS 442

BANNOCK COUNTY, IDAHO

LARRY W. GRAHAM RECORDER

FEE 2.00 DEPUTY jc

DEPOSITION EXHIBIT 4 5-23-91

PENGAD-Bayonne, N.J.

1548

WARRANTY DEED

517842

For Value Received

HYRUM MARTIN PALMER and GRACE PALMER, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife, Route #2, Inkom, Idaho,

the grantees the following described premises, in Bannock County Idaho, to-wit:

A tract of land located in the SESE of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, described as fo

Beginning at the Northwest corner of the SESE of Section 23, Township 7 South, Range 35 East; thence East along the North line of said SESE 546 feet; thence South 9°57' West to the Southerly line of an existing county road (known as Portneuf Road), to the True Point of Beginning; thence South 9°57' West to the South line of said SESE; thence West, along said South line 316 feet, more or less, to the Southwest corner of SESE; thence North, along the West line of said SESE to a point 520 South of the Northwest corner thereof; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet; more or less, to the Southerly line of Portneuf Road; thence Southeasterly along the Southerly line of said road to the Point of Beginning.

EXCEPTING THEREFROM the following described parcel of land;

A tract of land located in the SESE of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, described as follows:

Beginning at the Northwest corner of the SESE of Section 23, Township 7 South, Range 35 East; thence East along the North line of said SESE 546 feet; thence 59°57' West to the Southerly line of an existing county road (known as Portneuf Road), to the True Point of Beginning; thence West, along the Southerly line of said road 40 feet; thence South 9°57 West 150 feet; thence East 40 feet; to a point that bears South 9°57' West 150 feet of the True Point of Beginning; thence North 9°57' East 150 feet to the True Point of Beginning.

Reserving to the Grantor an easement for domestic water pipe and an easement for irrigation pipe over and under said premises.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee heirs and assigns forever. And the said Grantor do hereby covenant to with the said Grantees, that they the owners in fee simple of said premises; that they are f from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: October 23, 1973

Hyrum Martin Palmer

Grace Palmer

Hyrum Martin Palmer

Grace Palmer

STATE OF IDAHO, COUNTY OF

On this 23rd day of October, 1973, before me, a notary public in and for said State, personally appeared

Hyrum Martin Palmer

Grace Palmer

known to me to be the persons whose names subscribed to the within instrument, and acknowledged to me that they executed the same.

NOTARY SEAL

John J. McLaughlin

Notary Public

Residing at Pocatello, Idaho

Comm. Expires

NO. 517842
RECORDED AT REQUEST OF

Hyrum Martin Palmer

JAN 10 9 53 AM '74

OFFICIAL RECORDS NO. 264
BANNOCK COUNTY, IDAHO
TIM ERIKSEN, RECORDER

FEE 1.00 DEPUTY ln

Mail to:

BANNOCK TITLE COMPANY

DEPOSITION EXHIBIT 5 5-23-91

Exception was Smith's home + land on which it's located

what is this ??

wrong description legal expensive

This may have been the deed recorded when Cropelle paid for 1 acre parcel

2-1

WARRANTY DEED

593849

38

For Value Received Hyrum Martin Palmer and Grace Palmer, husband and wife,

the grantor s, does hereby grant, bargain, sell and convey unto

Stanley G. Croxall and Billie Jeanne Croxal, husband and wife,

whose current address is Rt. 2, Inkom, Idaho

the grantees, the following described premises, in BANNOCK County Idaho, to wit:

This deed is being recorded to correct deed 517842 Book 264 recorded in Bannock County Jan 10, 1974

LEGAL DESCRIPTION

H. MARTIN PALMER
REMAINING PARCEL SOUTH OF PORTNEUF ROAD

A PARCEL OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/16 CORNER ON THE SOUTH LINE OF SAID SECTION;
THENCE NORTH 1° 48' 00" WEST ALONG THE EAST 1/16 LINE OF SAID SECTION, 799.25 FEET;
THENCE NORTH 88° 06' 00" EAST, 205.00 FEET;
THENCE NORTH 1° 48' 00" WEST, 70.75 FEET TO THE SOUTHERLY RIGHT OF WAY OF PORTNEUF ROAD;
THENCE SOUTH 59° 36' 27" EAST ALONG SAID SOUTHERLY RIGHT OF WAY, 218.72 FEET;
THENCE SOUTH 09° 57' 00" WEST, 150.00 FEET;
THENCE SOUTH 59° 36' 27" EAST, 40.00 FEET;
THENCE SOUTH 09° 57' 00" WEST, 599.09 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION;
THENCE SOUTH 88° 23' 00" WEST ALONG SAID SOUTH LINE, 271.40 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 6.4 ACRES MORE OR LESS.

DEPOSITION EXHIBIT 6 5-23-91

PERGAD-Bayonne, N. J.

filed to correct error in deed 517842 7 acre parcel

380 2 - 2 593849

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor do hereby covenant to and with the said Grantee, that he the owner in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

2-15-78 Grace Palmer

2-15-78 Horace Palmer

STATE OF IDAHO, COUNTY OF [illegible]
On this 15th day of Feb., 1978, before me, a notary public in and for said State, personally appeared Horace Dustin Palmer and Grace Palmer

NOTARY SEAL

known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that executed the same.

[illegible]
Notary Public
Residing at Pocatello, Idaho
Comm. Expires 4.24.79

No. 593849
RECORDED AT REQUEST
Grace Palmer
FEB 15 2 32 PM '78
315
2.00

Order No. 1089-TA

2-1

1577

779337

QUIT CLAIM DEED

FOR VALUE RECEIVED, GRACE PALMER, a widow, hereby quit claims and conveys to HAROLD G. PAYNE whose address is 5195 West Portneuf Road, Inkom, Idaho, 83245, all her right, title, and interest in the following described water rights, to wit:

All water rights, including 8.190 miner inches of the waters of Papoose Creek, a tributary of the Portneuf River, all of which water rights are appurtenant to the following described real property:

PARCEL 1: A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows: Beginning at the East 1/16 corner on the South line of said Section; thence N1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°48'00" West, 70.75 feet to the Southerly right of way of Portneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East, 40.00 feet, thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL 2: Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property, to wit:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East along the West line of SE1/4SE1/4 260 feet to the true point of beginning; thence North 88°06' East

ISTENSEN, Chartered
405 WEST WHITMAN
O. IDAHO 83204

DEPOSITION EXHIBIT
2
5-23-91
PENGAD-Bayonne, N.J.

parallel to South 1/16 line of Section 23, a distance of 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the point of beginning.

DATED this 29th day of August, 1986.

Grace Palmer
Grace Palmer

STATE OF IDAHO)
)ss
County of Bannock)

On this 29th day of August, 1986, before me the undersigned notary public personally appeared GRACE PALMER, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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

Barbara Fuger
Notary Public
Residing at: Pocatello, Idaho

NOTARY SEAL

NO. 779337
RECORDER AT REQUEST OF
Lamont Jones
'86 SEP -2 P1:33

OFFICIAL RECORD BK. NO. 449
BANNOCK COUNTY, IDAHO
LARRY W. GRAHAM RECORDER
FEE 4.00 DEPUTY JC

and CHRISTENSEN, Chartered
BOX 867 405 WEST WHITMAN
POCATELLO, IDAHO 83204

1576

QUIT CLAIM DEED

779336

FOR VALUE RECEIVED, GRACE PALMER, a widow, hereby quit claims and conveys to STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife, whose address is 5230 West Portneuf Road, Inkom, Idaho, 83245, all her right, title, and interest in the following described real property situate in Bannock County, Idaho, to wit:

A parcel of land located in SE1/4SE1/4 Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence S. 1°48'E. along the west line of SE1/4SE1/4 260 feet to the true point of beginning; thence N. 88°06'E., parallel to S 1/16 line of said Section 23, 205 feet; thence at right angles South, 25.1 feet; thence in a Northwesterly direction to the point of beginning.

Together with all appurtenences and all water and water rights, including 1.1 miners inches of water from Papoose Creek.

This Deed is recorded to clarify the water rights which were conveyed to Grantees by Warranty Deed dated May 11, 1971, and recorded as Instrument No. 770700 in the official records of the County Recorder of Bannock County, Idaho.

DATED this 29th day of August, 1986.

Grace Palmer
Grace Palmer

STATE OF IDAHO)
)ss
County of Bannock)

On this 29th day of August, 1986, before me the undersigned notary public personally appeared GRACE PALMER, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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

NO. 779336
RECORDER AT REQUEST OF
Lamont Jones
'86 SEP -2 P1:33

Barbara Fuger
Notary Public
Residing at: Pocatello Idaho

OFFICIAL RECORDS OF 449.
BANNOCK COUNTY, IDA
LARRY W. WATKINS RECORDER
FEE 2.00 DEPUTY JC

DEPOSITION EXHIBIT 8 5-23-91

NOTARY SEAL

JONES and CHRISTENSEN, Chartered
P O BOX 847 - 405 WEST WHITMAN
POCATELLO, IDAHO 83204

Grantee approval

34 WARRANTY DEED

754908

For Value Received

STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

HAROLD GILBERT PAYNE, an unmarried person

the grantees, whose current address is 5230 W. Portneuf Rd.

the following described premises, in Bannock County Idaho, to-wit:

See attached exhibit "A"

DEPOSITION EXHIBIT 9 5-23-91 PENGAD-Bayonne, N.J.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances except reservations of record, easements of record, taxes and assessments for the year 1985 and subsequent years which are not yet due and payable.

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: August 7, 1985

Stanley G. Croxall
STANLEY G. CROXALL

Billie Jeanne Croxall
BILLIE JEANNE CROXALL

STATE OF IDAHO, COUNTY OF Bannock

On this 7th day of August, 1985, before me, a notary public in and for the said State, personally appeared

Stanley G. Croxall & Billie Jeanne Croxall

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

NOTARY

Notary Public
Residing at Boise, Idaho
Comm. Expires 6/2/87

STATE OF IDAHO, COUNTY OF

I hereby certify that the within instrument was recorded at the request of

754908

NO. ... OF

PIONEER TITLE CO.

'85 AUG -8 P3:16

at ... M., this ... day of ... 19..., in Book ... of Deeds, page 429

Fee: $12.00

By ... Deputy.

Mail

INSTRUMENT No.

35

754908

EXHIBIT "A"

PARCEL I

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the East 1/16 corner on the South line of said Section; thence North 1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°48'00" West, 70.75 feet to the Southerly right of way of Portneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East, 40.00 feet, thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL II

Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property to wit:

Beginning at the SE1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East along the West line of SE1/4 SE1/4 260 feet to the True Point of Beginning; thence North 88°06' East parallel to South 1/16 line of Section 23, a distance of 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the Point of Beginning.

Smith –

file report
accept obj.
no partial decree
rts will be incl in basin report
as decreed rts

report deemed filed today.
obj form not req'd. – in form of pleading

civil no 41798 – descriptive summary in report.

will set scheduling conf after response period.

1/3/92

tcf Reid Larsen - says he thinks all 3 of his clients will not object to Director's Report.

Dec 26-27, 1991

Rene

Clive's comments -

dec. says IDWR will be bound — might be overly broad.

Perhaps say we will be bound same as other parties - to extent decree determines matters between these people, we're bound. ✓

With respect to issues as between these folks & others, we're not. ✓

✓ check latest draft of Bej Lost - other specific provisions as to these rights?

add measuring devices ✓

incidental sw ✓

✓ swith right - in season/dom use

change to in use 1/2 acre. ✓

✓ report includes all rights of these parties to these sources. ✓

We can talk about this tomorrow.

add to Motion

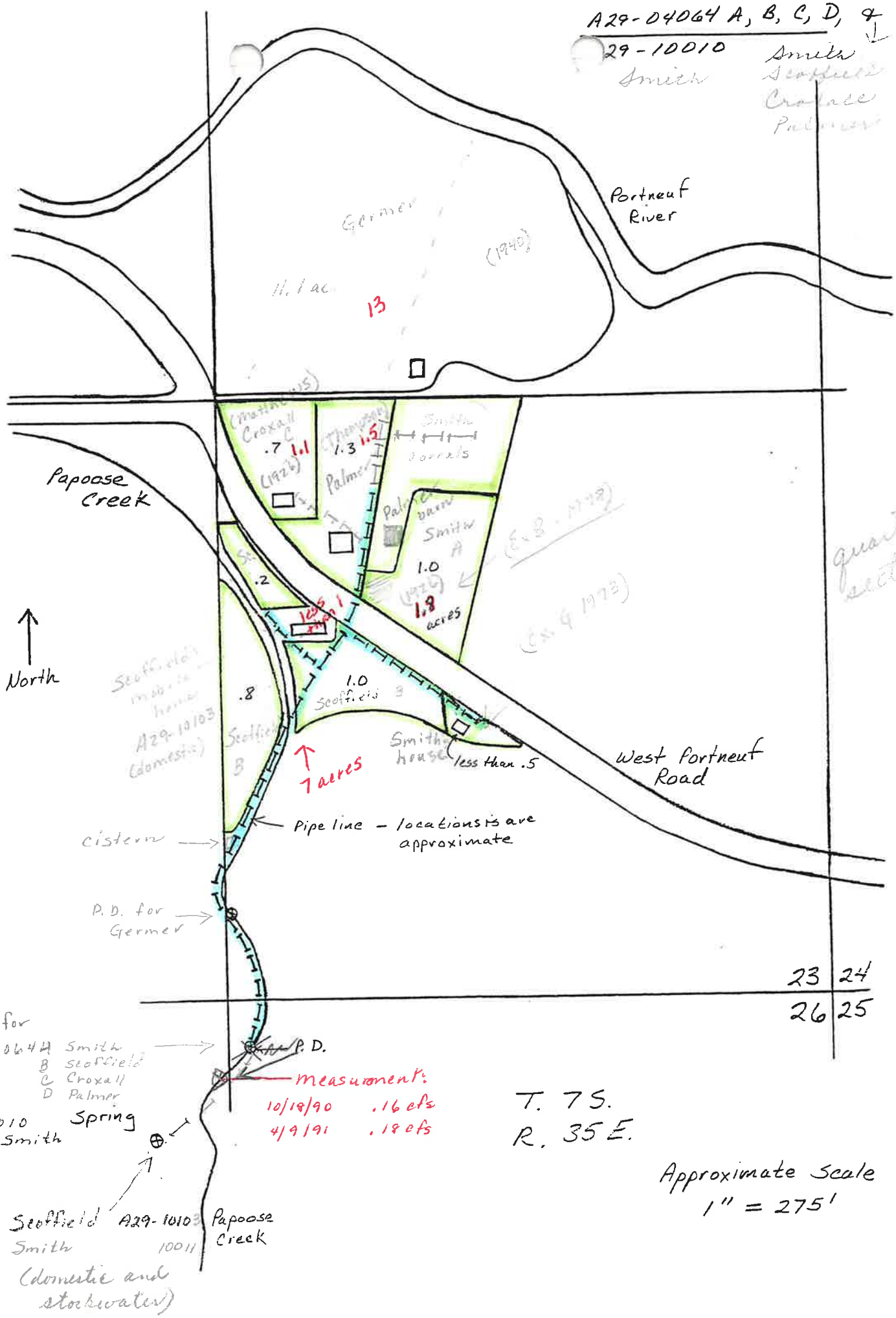
Here's a shot – if you can read it.
L.

It is proposed that the determination of the rights will proceed ~~in the~~ within this case as described in the adjudication ~~statute~~ – filing of objections, filing of responses; entry ~~of partial decree~~ of as many partial decrees as are appropriate to determine the rights in this case, and entry of a final decree of the rights in this case that is binding on all the parties in this case.

It is further proposed that when the Basin 29 report is filed in the SRBA, the rights in this case will be described as determined in the Smith decree, with a basis of decree. ~~The rights determined in the Smith decree would be subject to the general provisions of the Smith Decree~~ Other parties in the SRBA would have an opportunity to object to the Smith ~~Rights~~ Decree rights, but the parties in this case would not, because ~~they would~~ the parties in this care would be barred by the Smith decree.

The rights in the Smith decree, ~~would be~~ upon inclusion in the Basin 29 report, would be subject to the general provisions of the Basin 29 report. The parties in this case ~~would be entitled~~ would have an opportunity to object to these general provisions the same as any other claimant in the SRBA, because the general provisions would not have been previously determined in the Smith Decree. The parties in this case would also ~~be~~ have an opportunity to object to other rights recommended in the Basin 29 report.

The final decree in Smith would therefore be treated the same as any other ~~previous~~ prior decree is treated when IDWR prepares a basin report. ~~It's report.~~ It would not "stand alone" as an SRBA partial decree to be later integrated in the ~~Basin~~ SRBA final decree. This ~~would~~ will enable the parties to proceed to a determination of the rights in this case as between the parties in this case, while assuring due process to ~~other parties in the SRBA~~ claimants in Basin 29 who are not a party to this case.


A29-04064 A, B, C, D, &
29-10010
Smith
Portneuf River
Germer
(1949)
11.1 ac
13
Papoose Creek
Croxall
.7
1.1
(1926)
1.3
1.5
Palmer
Smith
barrels
Palmer
barn
Smith
A
1.0
(1926)
1.9 acres
.2
1.0
Scoffield
3
.8
Scoffield
B
Smith house
less than .5
North
1 acres
West Portneuf Road
cistern
Pipe line – locations is are approximate
P.D. for Germer
23
24
26
25
P.D. for
A29-04064 A Smith
B Scoffield
C Croxall
D Palmer
10010 Smith
Spring
P.D.
measurement:
10/18/90 .16 cfs
4/9/91 .18 cfs
T. 7S.
R. 35E.
Approximate Scale
1" = 275'
Scoffield
Smith
A29-10103
10011
Papoose Creek
(domestic and stockwater)

per Lynne 12/23/91

✓ to file report on sts of these parties to ✓ provide opps for obj & resp. ✓ these sources - proceed to det. of these sts per statutes

expedited consideration at Jan's status conference

At later time we will incl. the sts det. in this action in the sub-b. report - ✓ at that time, other persons not party to this action will have oppor. to file objections - ✓

decree in this case binding on all parties & will det on sts of parties to these 2 sources.

12/23/91

Ev. of Smith's priority date -

~~Exercised~~

Complaint ¶ 14 -

Claimed .02 cfs of water used by Smiths near their residence / Ex G / priority Jan. 2, 1969

Ex G - p. 2 - ~~Deed~~ No. 748621 - deed dated Jan. 2, 1969 - crossed out -

p. 1 - No. 515939 - warranty deed - dated Oct 23, 1973 -

tct assessor's office - Theron Smith put on tax rolls in 1970 (ballpark figure for when house was blt.)

Scoffield's priority

Crapall dep. p. 42 -

1970 Shaul moved trailer onto property - used Crapall well but also cistern

(note - another place p. 5 she said 1960)

(also see p. 42 - early 70's)

Smith v. Scopo
12/17/91

per ct-

- Thompson to inform ct of his appearance - 14 days
- also Matthews

proceed w/motion - attach to Director's Report -

- wants to see proposed form of report -

- ct will rule on motion
  - accept report for filing -
  - obj. period to begin - can't shorten unless parties agree
  - will set sch. conference (when obj. period closes)
  - will proceed w/litigation -

  - will try to expedite hearing - try case next summer & fall -

- ct will consider shortening time periods -

- hearing may be held in Bannock County -

Lindberg v. Collen

①

Freshman property foreclosed (per Tom Holmes) -

March 17 - outside date - for filing report -

stat. time frames

sch. conf. w/in 10 days

SMITH v. SCOFFIELD

ARGUMENT

I. CHRONOLOGY

1. July 12, 1989 - Complaint filed for private adjudication

2. August 9, 1989 - IDWR Answer filed / requested change of venue and consolidation / that report be expedited

3. October 31, 1989 - judge issued "Order to Consolidate" Order

COURT FOUND:

a) consolidation with SRBA will prevent piecemeal and duplicative litigation

b) there are significant issues raised between the parties that require immediate resolution; "unnecessary delay of the resolution of those issues within the context of the SRBA may be properly avoided by entry of an order expediting hearing on those matters"

Where is Basin 29 to be done?

COURT ORDERED:

a) motion to consolidate granted

b) all parties to file claims w/in 90 days (by January 31, 1990)

c) after clm. period over, IDWR to conduct examination and prepare a report of these claims, incl. matters nec. for the adm. of water rts. IDWR - to conduct investigation

d) the procedure for adjudicating these water rt. clms. on an expedited basis w/in the SRBA will be est. at a later date. "The parties are requested to develop and submit a proposed procedure." Procedure

4. January 31, 1990 - IDWR began its investigation / several contacts with all parties; visits to properties of the parties; research; evaluation of information offered by parties as well as new information, Investigation

5. May 23, 1991 - deposition taken of Mrs. Croxall in a related case

6. November 20, 1991 - ct. issued status report order re:

   a) status of case

   b) parties to argue why case should not be dismissed due to consolidation

II. STATUS

1. IDWR has a draft report ready at this time / anticipates report can be filed by next status conference

2. We need the court's permission to file the expedited report in the SRBA

III. REASONS FOR DELAY

1. IDWR has attempted to expedite this matter, but has had to conduct its investigation at the same time as entire basins in an effort to adhere to reporting schedule - preparing other sub-basin reports

2. several visits to sites / requested and obtained further information / evaluation of often conflicting information - IDWR activities

3. determining format of Director's Reports, and approving the same with the court - format of Director's Reports

IV. REASONS TO FILE EXPEDITED REPORT

1. This is an isolated dispute

2. Water source is a discrete spring and stream

3. Parties' feelings toward each other as a result of water dispute are volatile - fighting (police reports)

4. Another related action on hold while this one is pending

5. Parties need a decision as soon as possible

6. IDWR has a draft report ready at this time

V. PROPOSED PROCEDURE (PER THE COURT'S ORDER)

1. IDWR proposes to the court that an expedited Director's Report be filed in this matter by the next status conference and that it be given expedited attention by the court - expedited report be filed

2. That all parties have an opportunity to object to the director's findings on an expedited basis - all parties can object

3. That once the parties to this action have had an opportunity to pursue their objections in this action, the resulting decree binds all parties to this action, incl. IDWR

- decree binds these parties

4. That the decree in this action be included in the Director's Report for Basin 29 at the time that report is filed

- decree incl. in basin report

5. That other parties in Basin 29 have the opportunity to object at the time the Basin 29 report is filed, but the parties to this suit be precluded from doing so

- other parties can object to basinwide report

* * * *

per Cline
12/16/91

Smith -

isolated dispute ✓
discrete spring ✓
can easily be
needs a decision
parties have been fighting ✓
no other pot. users were
aware of.
- date full rec. to file D.R. prep
have a date when report can be filed
have D.R. in ~~[redacted]~~ ✓
give date when it can ✓
be filed -

other disputes (lawsuit) on hold pending this

further info req. from Smith on Nov. 22, 1991

Lundberg - practical reasons -
If none, don't argue position -
we need practical reasons -

He need it's permission to file. ✓

✓ we're expedited but not our first priority

- trying to minimize lit - simplify
costs for Plaintiffs -

why a seperate track -

775-4507
Sabina Matthews
237-0387

1) reasons for delay
2) reasons for expedited report
3) procedure

per Dave
12/16/91

1st report under new format -
has caused delay.
report-form has caused delay -

Smith - ready buy new parties -

Lundberg -
awaiting amended claims/current status

a much more complicated problem
than it orig. appeared -

Chronology

July 12, 1989 - Complaint filed (for Private Adjudication of water rts, inj. relief + damages)
July 29, 1989 - IDWR filed Notice of Appearance
Aug. 9, 1989 - Germer Notice of Appearance
Aug. 9, 1989 - Palmer answer filed.
Aug. 9, 1989 - Stoffield answer filed
Aug. 9, 1989 - Cropall answer filed
Aug. 14, 1989 - Dept. answer filed
- other rts in Papoose Cr. system
- ~~private adj. will result in piecemeal litigation~~
- there are issues in this action that are of immediate concern only the the plaintiffs and known dependants
- venue should be changed to T.F. - and case should be consolidated ~~in~~ w/ SRBA to avoid extra costs + duplicative and piecemeal litigation
- case should be expedited in the SRBA

Oct. 31, 1989 - judge issued "Order to Consolidate"
Findings of Fact -
1) consolidation w/ SRBA will prevent duplicative and piecemeal litigation
2) there are sig. issues raised between the parties that require immediate resolution - "unnecessary delay of the resolution of those issues w/in the context of the SRBA may be properly avoided

by entry of an order expediting hearing on those matters

~~Conclusion of Law~~ ORDER:

1) motion to consolidate is granted

by Jan. 31, 1990 2) all parties are directed to file clms w/in 90 days (+ filing fee)

3) after 90 day clms filing period, IDWR to conduct examination and prepare a report of these claims, incl. matters rec. for the adm. of the water rts.

4) the procedure for adjudicating these water rt clms on an expedited basis w/in the SRBA will be est. at a later date. "The parties are requested to develop and submit a proposed procedure."

Sept. 21, 1990 - Ct issued notice of proposed dismissal

Oct. 3, 1990 - Tom Holmes filed "Affidavit of Retention" (to have case retained)

June 5, 1991 - Ct issued notice of proposed dismissal

June 12, 1991 - tct Carolyn Minder - she said case wouldn't be dismissed

July 3, 1991 - Tom Holmes filed "Affidavit for Retention"

July 22, 1991 - Judge allowed Coffields' atty to withdraw

November 26, 1991 - Ct issued status report order / 1) discuss status
2) argue why matter should not be dismissed

12/12/91

general provisions

how case arose

may need sub-headings

- background of case - introduction
  describe how these issues will be incl. in basin-wide report

- Ct. ordered that we report these issues
- unique
- will later be incl. in basin wide report
  - the issues we address by this report

- subj. to gen. prov of that report
- may be subj. to objs, hypothetical at that time -

- go through generic gen. prov - include ones that directly apply those that apply.

suppl. info

- info supporting rec. incl. here (unique circ. of the case)
- basis as to each issue
  (like conclusions)

~~Intro.~~
~~Conclu.~~

Instrs for using report (& appro.)
gen prov that apply to all issues
list of rec. water rts.

Intro.
Gen. Prov (findings & concl.)

Map.

sources -
section lines & quarter sections
points of div.
parcels -

Smith v. Scoffield (note - order of consolidation - 10/31/89)

parties: (see cert. of mailing re order setting status conf.)

(1) Theron J. & Carma B. Smith
c/o Tom Holmes

(2) Jay Scoffield & Sara Scoffield, pro se
5195 W. Portneuf Rd.
Inkom, ID 83245

their atty withdrew 7/22/91 - J. ordered them to file a written notice as to how they would rep themselves

(3) Grace Palmer, pro se
5208 W. Portneuf Rd.
Inkom, ID 83245

Mr. & Mrs Thomas R. Thompson - succ. in interest

(4) Virgil R. & Laura Germer
c/o Reed Larsen
attys at law
P.O. Box 1391
Pocatello, ID 83204-1391

(5) ~~[illegible]~~ Billie Jeanne Crofall, pro se
5230 W. Portneuf Rd.
Inkom, ID 83245

↓

Joseph & Johna Matthews, succ. in interest

(6) IDWR

Get R record for Smith 1ts.

Print in form for report. (A records) -

~~Et~~ Make changes in R records.

Talk to Dave about map.

Conclusions

✓ 1. The rights of the named parties to this action are recommended to be decreed as described in the List of Rec'd Water Rights. The LRWR is attached hereto & inc'd herein by this reference.

✓ 2. Info available to IDWR was not sufficient to support a ~~conclusion~~ finding that water from Papoose Creek has been beneficially used in place of use claimed under 29-4064A. Claim is therefore rec'd for disallowal.

✓ 3. Info avail to IDWR supports a ~~conclusion~~ conclusion that — cfs of water from Papoose Creek was app'd by b/u commencing in 1927, for irrigation of 2 acres. This appropriation is designated 29-4064B, and is more fully described in the LRWR.

✓ 4. 29-4064C — similar to 29-4064B

✓ 5. 29-4064D - similar to 29-4064B

✓ 6. 29-4067 - similar to 29-4064B

✓ 7. Info avail to IDWR supports concl. that — cfs of water from Papoose Creek was app'd by B/U, commencing in 1969, for outdoor domestic use for one home. ~~(same as 3)~~ (Cont'inue ~~same~~ similar to 29-4064B) 29-10010

✓ 8. Info avail to IDWR supports concl that .02 cfs of water from spring has been app'd by b/u, commencing in 1969, for SW and indoor use for one home. (..cont sim to 29-4064B)

✓ 9. Altho info avail to IDWR indicates that water from spring may have been used for domestic purposes,

commencing in 1970, or the PU described in decision no 29-10703, any right established thereby has been forfeited by a continuous period of nonuse in excess of five years.

10. Rights ~~not~~ in ~~List of~~ CRWR includes all rights of named parties to waters of Papoose Creek & spring tribs to Papoose Creek.

Smith

¶ 21. Ask Carter if Thompsons have filed change in ownership to Mrs. Palmer's property.

~~¶ 23. Check statutory ctns no.~~

~~¶ 30. Last sentence?~~

also see ¶ 34. ← ¶ 38. 1960 priority date for Gurneys? Where does 1940 date come from for Papoose Cr. water?

~~¶ 53. Check add'l phrase re "no overland flow".~~

~~¶ 54. Check number of irr. days.~~

~~¶ 51-58. Need volume.~~

¶ 52. NOTE: 52 is new. OK?

~~¶ 30. Add't lang. at end.~~

¶ 53. Is this where Lynne wanted drought condition lang, or #54?

spring is trib. to stream, but no sign of overland flow of water from spring to stream.

¶ 57 - vol. of diversion - dom. use lang. from supplement - (get sp. no. out of suppl.)

~~¶ 58 vol~~

¶ 56 - vol for irr. - get lang from supplement - leave blank for no. (let Dave plug in)

add to report

11/22/91

Smith - & Letter to Holmes -
affidavit -

✓ where the 1976 break occurred
provide map -

✓ how was flow from cistern
shut off in 1976 as result of
break

✓ when was water rest. to corrals
after break

✓ was Sm. able to get water to his
home while pipe was broken

✓ when did Sm. drill well

✓ 1983 - Crozall daughter connected
to system - where it was
reconnected - how

✓ How was Smyth house connected
from cistern
in 1969 - location of what
kind of connection (pipe type of
fittings if he can provide)

X also from cistern to mobile home
in 1983 -

Smith

per Carter
11/7/91

- where did pipe break
- how was it shut off?
  at cistern or end of pipe
- when was cross (pipe fitting) put in to get water to trailer & Smith corals - (probably in 1983, but we need more info.) - unless its were transferred
- more info on Smith's use - when he hooked up - he may have had spec. use for many yrs.
- What about being told he couldn't use cistern for dom. after he drilled well.

Cropall dep. talks about systems different from what he found.

When pipe was broken, might have cut off Smith's stockwater.

Per Lynne's sugg. - I asked Carter to contact Mrs. Cropall to try to get this info. 11/8/91



Papoose Creek

1927 - 04064A - Smith - forfeited
04064B - Scoffild - .04 cfs (limited)
04064C - Cropall - .014 cfs (limited)
04064D - Palmer - .026 cfs (limited)

1969 - 10010 - Smith domestic - .02 cfs ~~out of use~~ for one domestic

1940 (surplus) 04067 - Germer - ~~.22~~ .10 cfs
.32 cfs

Unnamed Stream / Cistern

1945 both fld
10011 - Smith - .02 cfs
10103 - Scoffild - forfeited?
but note: no other dom. source

Note: Carter measured flow of Papoose Cr.:

10/19/90	.16 cfs	could [illegible] cfs as domestic + adjacent .06 cfs supplies to [illegible]
4/9/91	.18 cfs	

Springs:

4/9/91 .003 cfs not enough to cover entire [illegible]

Papoose Creek

1940 or 1960 ??

1927 - ✓ 04064A - Smith - forfeited
✓ 04064B - Scoffield - .04 cfs (limited)
✓ 04064C - Crosall (Matthews) - ~~.04 cfs~~ .02 cfs (limited)
✓ 040640 - Palmer - ~~.026 cfs~~ .03 cfs (limited)

1969 - 10010 - Smith - .02 cfs domestic - remark - outdoor use for 1 domestic

needs a condition here → when Port. R right & groundwater are determined needs to be updated

~~1940 (surplus)~~ excess probably 1960 → 04067 - Germer .22 cfs

Unnamed Stream / Cistern

1945 10011 - Smith - .02 cfs forfeited? cutoff?
10103 - Scoffield - forfeited?
but note: no other dom. source

Note: Carter measured flow of Papoose Cr.:

10/19/90 .16 cfs
4/9/91 .18 cfs

could cover all rts as limited w/ about .06 cfs surplus to Germer

Spring:

4/9/91 .003 cfs / not enough to cover even Smiths' clm.

04064 -

1927 Palmers est. rt 4064 in SE¼SE¼

(1958) Cropall - 1.1 acre parcel
(1969) Smith - 1 acre parcel
(1970) Thuler - 1 acre
(1973) (Mumme)
(1985) (Cropall)

(1971) Cropalls - 7 acres
(1978) Smith - 1.8 acre parcel
(1985) Payne - 7 acres
(1987) Scoffields - 7 acres

priority date

1927 Cropall A29-04064C 1.1 acre (1958) (now Matthews)

1927 Palmer A29-04064D 1.5 acre (1927) (now Thompsons)

1927 Smith A 29-04064B 1.8 acre (1978)

1927 ~~Scoffield~~ 1.0 acre (1970) (also owned by Thuler, Mumme Cropall)

1927 Scoffield 04064B 7 acres (1987) (also owned by Cropalls & Paynes)

1927 Smith 10010 1 acre (1969)

1969?

1940 Germer 13 acres (1970)

1927 - Palmers purchased land in SE¼ SE¼ / used water from P. Creek
1940 - Palmers purchased Germers' land
1945 - Palmers built cistern
- Palmers' dom. use began from spring connected to their house & also their barn on 1.8 acres
1958 - Palmers sold 1.1 parcel to Cropall - their dom. use from cistern began
1960 - Palmers installed gravity flow irr. system for better efficiency - excess to go to Germers' land
1969 - Palmer sold Theron Smith lace parcel - ~~on~~ built his house - hooked Smith up to cistern - Smiths' irr. from Papoose Cr. for this parcel began -
1970 - Palmers sold Germers 13-acre parcel - ~~and~~ reserved water rts kept for excess
1976 - Shard Wheeler moved in mobile home - connected to cistern for dom. use.
1971 - Palmers sold 7 acres to Cropalls
1973 - Shard Wheeler sold one-acre parcel to Linda Mumme
1976 - Cropall broke pipe - Cropalls' use of cistern water terminated - also Mummes' - Palmers cont'd -
1978 - Palmers sold Smith 1.8 acre Parcel

1980 – Palmers drilled well - ended cistern use
1983 – Mumme resumed use of cistern water in mobile home
1985 – Mumme sold to Crofalls 1-acre parcel where trailer located
1985 – Crofalls sold 7-acre parcel to Harold Paynes.
1986 – dispute began
1987 – Paynes' sold both 7 acre & 1 acre parcel to Scoffields

unnamed spring -

↓

1945 Palmers 1st pt. (built cistern) (dom + stockwater on 1.8 acres)

↓

1958 Cropalls connected to cistern

↓

1969 Smiths connected to cistern

↓

1970 Shard Wheeler connected to cistern (1973 - Mumme purch. property)

↓

1976 Cropalls' broke pipe -
Cropalls' use terminated
Mumme's use terminated
(Palmers' continued)

↓

1980 Palmers drilled well -
discontinued cistern

↓

1983 Mumme resumed using cistern water

---

clm no:
A29-1001A - Smith - unnamed stream for dom. + stockwater use - 1945 priority date (as claimed) - POD may not be right.

Only Smiths + Scoffields are claiming a pt. to spring water

Note:

- Smiths in their complaint alleged that in 1981 Mrs. Palmer conveyed all rts to spring, head box & cistern to them - .02 cfs - they're used for dom. & stockwater

- Palmer's answer - she says not true - Mr. Palmer was alive in 1981 "& would also have been req'd to sign" - died of heart attack Oct. 2, 1982

  note Ephibit "A" - doc. not signed -
  1.8 ~~cfs~~ miner's inches conveyed to Smith -
  + Mrs. Palmer's "right, title, & interest in the cistern & spring".

- sold land where cistern located to Crofalls in 1972

- Says Smiths are not entitled to the add'l .02 cfs they claim

- Palmer says she moved there in 1927 - water was used on Stoffields' 8 acres more than on any area of the farm - pasture for Palmers' work horses & other livestock - all farm work done w/horses from this pasture in the 20's & 30's

- 1940- Palmers purchased land adj. Portneuf R. in 1940 (Germers) (from S.J. Palmer & Nora I. Palmer) Ex. C.

- Land where Smiths' house is located never watered from Papoose Cr. before 1969 & was not incl. in ExB. (statutory clm.) ??

- Sold Smith 1.8 acres in 1978

Scoffield answer:

- Smith does not water 1.8 acres

Cropall answer:

- When Scoffields purchased property, water from cistern had been used for grs in trailer house - Scoffields merely put in a new pipe

- pipes are rusted & broken - much of Papoose Cr. water is going to waste

- ground ~~to~~ owned by Scoffields was used as a horse pasture - flood irrigated (since 1957)

Portneuf R. decree:

2nd decree

lists as defendant: S. T. Palmer
trial Sept. 26, 1931
order Aug. 6, 1932

Palmers not listed among those enjoined

note: decree lists irr. season from Apr. 15 to Sept. 15 - 152 days

orig. decree: June 29, 1921

Note: Dept. letter says Union Grain determined rts to upper Portneuf R.

NOTE: See map - this may be a different part of the river

1st decree

No. 2203 - dated Jan. 29, 1921
- covers part of stream lying wholly w/in Bannock County

10/3/91

per Gary Spackman:

Find order that created water district -

Ch. 6 - water districts -

Gary said that the McCammon decree does not cover Smith v. Scoffield area of the river -
probably no watermaster in this area

TIME LINE PER MUMME AND CROXALL DEPOSITIONS RE DOMESTIC USE OF WATER FROM CISTERN

1945 - Palmers domestic & stockwater

1945 - Cistern built by Palmer; Palmer put in pipe from cistern so that water would go to Palmers' house

NOTE: Palmers sometimes watered cattle from cistern; cistern holds approx. 1200 gallons - intended for dometic use (some stockwatering)

1958 - Croxall dom. use begun on their land (1 acre)

1958 - Croxall bought 1 acre from Palmers (5230 W. Portneuf R., where Croxall land now located, recently sold to Matthews) - hooked up to cistern for domestic use; Croxalls built their house this same year (See Depo. Ex. 2, deed, Palmer to Croxall, 1.11 acres, 12/24/57, also see Depo. Ex. 4)

1959 - Croxalls drilled well; Mr. Palmer hooked up the cistern to their pressure tank

1960 - Croxall well went dry; had to use cistern water for a year

may not have hooked up 1970

- Mr. Palmer gave Croxalls' daughter (Sharel Wheeler) an acre "across the road" (must be area where Scoffield trailer is now located, 5195 Portneuf Rd.) -

✳ Wheeler connected a pipe to Croxalls' pressure tank see depo. pp. 5, 36

unclear whether she moved trailer in 1960 or 1970 - probably 1970

1961 - Croxall well redrilled, but cistern left hooked up; plumbed into Croxalls' shop, hooked into pressure tank; could be turned on and off

(NOTE: Croxalls could mix well and cistern water once they got a pump, but didn't like cistern water because it was dirty)

1967 - Before this time, creek ran a different course; a bad flood this year deposited rock and debris and changed course of creek

1969 - see p. 2 Ex G - possible sale from Palmers to Smiths

1970 - Palmers to Gaumers - water rts. res. except surplus (See Ex H from Complaint)

1970 - Sharel Wheeler moved trailer onto property; at this time main domestic source was Croxall well, however, cistern was still hooked up (See depo. p. 36) may have been on 1960.

1970 - Wheeler (Scoffield) dom. use begun (no stockwater)

1971 - Croxalls bought 7 acres from Palmers; at that time cistern hooked up to Palmers' house and barn (cistern located on Croxalls' property) (See depo Ex. 8) (& depo. Ex. 4)

1973 - Palmers' dom & stockwater use cont'd.

(1973) NOTE: Depo. Ex. 5, deed, Palmers to Croxalls, 7 acres, dated Oct. 23, 1973 (Also see Depo. Ex. 6, to correct legal description) - Palmers reserved easement for dom. water pipe and irr. pipe

note: this is when Croxalls paid it off. depo p. 4.

✳ ~~See Ex. F - Complaint - 1970? (same property? 1971)~~

1973 - Palmers to Smiths (no mention of water rts.) - land where residence is located (Complaint Ex G) (but see 1969 above)

NOTE: County assessor says Smith home b/t about 1970.

(Scoffie stated that exception li d in deed is the property on which Smiths' home is now located)

1973 - Mummes (Cinda Mumme Payne) bought 1 acre from Sharel Wheeler; Wheelers had had a mobile home on the property which had been repossessed; Mummes put their trailer on the property, which is now Scoffields' trailer

1976- Croxall dom. use ended

1976 - Mr. Croxall broke pipe to cistern accidentally, so cistern water to Croxall shop disconnected; couldn't get to pressure tank; after that, cistern water not used on Croxall property

Scoffield trailer dom use ended

NOTE: From this time on, Croxall well was only source of water for trailer; after 1976 when cistern water shut off from trailer, Mrs. Palmer continued to use cistern water

Palmer use cont'd

1978 - Smith purchased 1.8 acres from Palmers; obtained rights to Papoose Creek (See Ex B- Complaint)(Deed states "plus existing water rights and rights of way")

1979 - Mummes got a divorce and moved from the property; Mumme stated that during the time he and Cinda lived on property, sole source of domestic water for trailer was Croxalls' well; there was no connection to cistern water

disagrees w/ Croxall- 1973-1976

(Mrs. Palmer told Mumme that the only homes hooked up to the cistern water during this time were Palmers and Smiths)

(Smiths had a well which they allowed Palmers to hook up to as a backup to the cistern)

NOTE: Unknown when Smith drilled well; Palmers had told him he could use cistern water until he got his well drilled; after he drilled it, water from cistern should have gone exclusively to Palmer; Smith no longer had any permission to use it; Smith's only right to cistern water was to water his cows

(Mummes wanted to drill a well, but Croxalls resisted)

Palmers' dom. use ceased

1980 - Palmers drilled a well (apparently for domestic use); Palmers discontinued using cistern water at this time

Complaint ¶ 6

Smith cont'd stockwater use

(Smith may have continued using cistern water for cows) * 1981 *

1983 - Cinda Mumme (Payne) again hooked up cistern water to trailer; Croxall told Cinda to hook up to cistern; Smith protested, but she hooked up anyway; cistern water has been used in trailer since this time

1983- Scoffield use resumed

NOTE: Smith claimed he owned the cistern. WHY???????

1986 - Palmer assignment to Smith of .036 cfs for use on 1.8 acres- part of claim 29-4064 (Exc. of Complaint)

when did Scoffields buy property?

1987- quitclaim deed- Payne to Scoffield- (Ex D-Complaint - ¶ 16)

* Smith Complaint alleges that in Sept. 1981, Grace Palmer conveyed its to spring + cistern to Smiths/ dom. + stockwater

1985 - Croxalls sold 7 acres to Harold Paynes (daughter Cinda Mumme ?? Payne); property included the cistern (See Depo. Ex. 3, 7/29/85 warranty deed, Mumme to Croxall - small piece of property where trailer is (rest of property already owned by Croxalls) (See Depo. Ex. 9, Croxalls to Paynes, parcels 1 and 2) 8/7/85

(During time Croxalls owned 7 acres, 1971-1985, no water right from cistern to Smiths)

(Smiths never complained to Croxalls about water while Croxalls owned 7 acres; started when property sold to Paynes)

(Smith threatened to take all the water from Paynes after Croxalls sold Paynes the property)

1986 - Depo. Ex. 7 - Quitclaim deed from Palmer to Payne

Depo. Ex. 8 - Quitclaim deed from Palmer to Croxall (1.1 acres)
Ex B-Complaint- Palmer assign of water rts to Smiths
(Croxall stated that 1986 was when Smith was trying to take away their water right so they went to Tom Holmes' firm and had quitclaim deeds drawn up)

Complaint - ¶8 - Aug. 1988 - Scoffields tapped into cistern and have been using water

1990 - Croxall sold her home to Matthews; pipe to cistern is probably still there

Mrs. Palmer's rt - priority as probably when the first purchased property - no evidence of use before that time

note:
depo. p. 11 - gate to Palmers' horse pasture used to be where Smith's house is now
31 - atty said Smith moved "out there" in late 60's
33 - how Palmer watered cattle from cistern
34 - Palmer barn was on 1.8 acres that Smith now owns - Palmer occ. used cistern water for cattle
36 - sounds like Smiths' house was in by 1970
54 - Palmer told Smith he could use cistern water in house until he got his well drilled - after he drilled well he wasn't supp to use in house
56- Smith had water rt from cistern only to water his crops
57- Croxall "hooked up" in 1976 (?)

- Name Carter to explain Smith diversion system for 10011 - how is domestic delivered?
- When was Smith's pipe put in for domestic?

B.M., purportedly pursuant to recorded deed 614649. The claim reflected by said assignment was designated as No. 29-4064A by IDWR.

27. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Mr. Harold G. Payne .1638 cfs or 8.190 miner's inches of claim No. 29-4064 for use on 8.190 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M., listing tax parcel numbers for said property as R4013990 and R401309802. The claim reflected by said assignment was designated as No. 29-4064B by IDWR.

28. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Stanley G. or Billie J. Croxall .022 cfs or 1.1 miner's inches of claim No. 29-4064 for use on 1.1 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M., listing a tax parcel number for said property as R401304100. The claim reflected by said assignment was designated as No. 29-4064C by IDWR.

29. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to D. Grace Palmer .0316 cfs or 1.58 miner's inches of claim No. 29-4964 for use on 1.58 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7; S., R. 35 E., B.M., listing a tax parcel number for said property as R4013039800. The claim reflected by said assignment was designated as No. 29-4064C by IDWR.

30. IDWR has assigned the number 29-4064E to all rights originally owned by Mr. and Mrs. H. Martin Palmer remaining after the assignments listed in paragraphs 26 through 29 above.

31. IDWR's files contain an "Abstract of Title" No. 9312 to

Lynne said to delete this info

the SE 1/4 SE 1/4 of Section 23 and SW 1/4 SW 1/4 of Section 24, T. 7 S., R. 35 E., B.M., consisting of approximately 80 acres, prepared by the Bannock Title-Abstract Company, which includes in pertinent part the following title documents relating to said lands:

(a) A patent from United States of America to Martin Kizehue, dated April 30, 1925 and filed January 25, 1927 as Instrument No. 128768, whereby Mr. Kizehue (also spelled Kidzehue in other documents), an Indian of Fort Hall Reservation, was allotted said land in accordance with provisions of an Act of Congress of February 23, 1889;

(b) A document entitled "Deed Noncompetent Indian Lands" dated November 30, 1923 and filed January 25, 1927 as instrument No. 128769, whereby Martin Kidzehue conveyed said lands to Samuel J. Palmer;

(c) A warranty deed dated November 19, 1927 and filed December 2, 1927 as instrument No. 134504, whereby Samuel J. Palmer and Nora I. Palmer, his wife, conveyed said lands to Hyrum Martin Palmer.

32. (PORTNEUF R. DECREES HERE? THEY DON'T APPEAR TO COVER THE RIGHT STRETCH OF THE RIVER. BUT NOTE THAT S. J. PALMER IS A PARTY TO THE SECOND ONE.)

History of Land Ownership and Water Use

Based on records of IDWR and its further investigation into this matter, as well as evidence presented by the parties to this action, the following factual findings are made, with specific evidentiary items relied upon listed in parentheses:

33.

When was Smith Scoffield land purchased by Palmers?

SE¼SE¼ Section 23, T. 7S., R. 35 E.
south of N. Portneuf Rd.

(get legal descr.)

call recorder
Grantor & Grantee index

deeds to Palmers - dates -

9/26/91
tct Recorder's offc: (LuAnn)
card files only go back to 1957-

assessor's offc. -

doesn't show Scoffields as owners of land -

↓ spelling in clerk's offc.
Jay Schoffield - property

517842 error
513168 Marvin & Helen Mumme
Melvyn Mumme Divorced 7/38

2 deeds Scoffields
793931-32 510435 Wheeler
754908
593849

242322 Bert & Nora Palmer
252332 Nora Palmer
purchased from Indian

* 134504 Hyrum M. Palmer - Indian Land
* 184324 S. W. Palmer

S.J. Palmer

44785 S.J. Palmer

↑

Book 29 p. 632

228201 Nora Palmer

242322 Robt C. Palmer

9/19/91
per. Lynne

✓ Palmer - dom. use 1945 - 1980

✓ 1958 - Cropalls ~~got~~ use - quit in 1976

1970's. (or 1960?)
- Scoffield - mobile home

did forfeture occur 1976 - 1983?

was there an intervening appropriation?

1983 - resumed dom use for trailer

when was Smiths' house built
how & when cistern hooked up to it -
when Smith's house built? call assessor's off.
what is basis for Smith's clm that Palmer deeded him dom. water rt? when was Smith's well drilled?
Smith may have 1945 clm to cistern for stockwater only?
- Here barn + corrals on land when Smith bought it?
ask Holmes (If yes, could support stockwater rt for 1945.)

Sounds like -
1945 stockwater rt to Smith
1960 or 1970 Scoffield for mobile home
domestic | forfeture 1976-1983

9/24/91

Act to Bannock County assessor's off -
(Phyllis)

Theron J. Smith
5137 W. Portneuf Rd, Poky

↓

put on rolls in 1970 (she says it's a ballpark figure for when house was built)

but note - Ex G from Complaint - ~~deed~~ deed from Palmers to Smith - Oct. 23, 1973 (~~also~~ also see p. 2 1969)

See ¶ 7 of Complaint - Grace Palmer conveyed all rts to spring, headbox & cistern to Smiths - Sept. 1981

Marvin Mumme deposition

- used to own 1 acre of property now owned by Stoffield (.98 of an acre)
- bought it from ex-wife's ex-brother-in law when they got divorced (ex-wife Helen Linda Payne - sister is Sheryl Wheeler
- bought it in 1973
- Wheelers had a mobile home on property - repossessed - Mummes put their trailer there - same trailer Stoffields live in now
- lived ~~there~~ there from 1973 until Aug. 15, 1979 when he + Linda got a divorce
- during that time, source of drinking water for trailer was Stan Crofall's well (down the road and across from property)
- there was a 3/4" black PVC (pipe) under the road
- dom. water was all from this well
- ? - cistern was above Mumme's house - water in cistern was from spring.
- no water from cistern went to the trailer while Mummes were there - there was no connection to Crofall's cistern water -
- Mr. Palmer told him that the only ones hooked up to cistern water were Palmers + Smiths
- No uses to cistern water beyond culinary

- Smith had a well which he allowed Palmers to hook up to so if the cistern didn't supply, Palmers could use Smiths' well.
- priorities as told by Mr. Palmer-
  - Palmers
  - then the order that property was sold - Crofall, Smith, Germer, Mumme (Payne - Crofall)
- cistern located on Crofall's land
- Crofall didn't want Mummes to drill a well - thought it would injure his well - too close to septic tank & creek - Mummes decided not to.
- Mummes cont'd to use Crofall's well

Jeanne Cropall Deposition

~~- 1958 - Cropall bought 1 acre (5230 W. Portneuf Rd.)~~

p. 4 ~~- Cropall bought 7 acres from father (Palmer)~~ in 1971

~~- 1971 - Palmer had cistern water hooked up to his house & barn~~

- 1958 - Cropalls had bought 1 acre from father (5230 W. Portneuf Rd.) - Palmer hooked them up to cistern.
- 1959 - Cropalls drilled well - father hooked up cistern to their pressure tank
- 1960 - Cropall well went dry - had to use cistern water for a year ~~ooooo~~
- 1961 - Cropall well redrilled - but cistern left hooked up - plumbed into Cropall's shop - hooked into pressure tank - could be turned on and off -

5 - 1971 - Cropall bought 7 acres from Palmer - at that time cistern was hooked up to Palmer's house & barn - cistern was located on the property

note: on p. 35 she says it was 1970 when they moved their trailer in. ?? ↓ 1960

- ~~1960~~ - Cropall's daughter Shared Wheeler was given an acre "across the road" - Wheeler connected a pipe to Cropall's pressure tank

6 - 1985 Cropall sold 7 acres to Payne - property included the cistern

- 1945 - cistern built by Palmer - water from cistern went to Palmer house
- Mrs. Palmer hooked up to cistern until they

drilled a well in 1980.
- During time Cropall owned property (1971-1985) no water it from cistern to Smith
6 - 1960- Palmer put in water line for irr. water out of the canyon
- 7 acre parcel now owned by Scoffields was never owned by Marvin Mumme- he owned the one-acre parcel bought from Wheeler
- Mrs. Palmer told Smith he could use cistern water for his cows - Smith frequently drained the cistern
- 1976- Mr. Cropall broke pipe to cistern -
- Oct 1990- Cropall sold her property (house) to Matthews- pipe to cistern is prob. still there
8 - Smith never complained to Cropalls about water while they owned 7 acres- started when property sold to Payne
- 1978- Smith purchased land (1.8 acres) from Mrs. Palmer- obtained its to Papoose Cr.
- Someone has recently threatened to take water away from Matthews -
- Scoffields' address- 5195 Portney Rd.-
- before 1967 creek ran in different direction - 1967 there was a terrible flood - deposited dirt & rocks around Cropall & Palmer property - changed course of creek
- Cropalls asked Germer to bury his pipe - don't

know if he ever did

11 - fence around Stoffield property - been there for at least 50 yrs - used to be a horse ~~pasture~~ pasture - (belonged to Palmers)

12 - BLM survey in 1987 - or 1988 (acc. to Stoffield)
- Cropalls had to clean moss + weeds out of cistern often.

13 - Smith threatened to take all the water from Harold Payne after Cropalls sold Payne the property

14 - Palmer sold her property to Mr. Thompson

17 - Cropalls sold Paynes the whole 7 acres -

20 - Cropall thinks a survey done by father - Stoffield said Northwest Eng. did one

21 - Ex 2 - Deed - Palmer to Cropall - 1.11 acres - 12/24/57

22 - Ex 3 - warranty deed - Mumme to Cropall - 1985 - small piece of property where trailer is.
(Palmers gave property to Sharel Wheeler - Wheelers sold to Linda Mumme Payne Mumme sold to Cropall)
- at this time Cropall already owned the rest of the acres (now Stoffield property)

24 - Ex 4 - 1971 warranty deed - Palmers to Cropalls - 5230 W. Portsmouth Rd.
(Cropall thinks this deed is for same property as Ex 2 - 1.1 acres)

Cropall
(4)

25 - Ex. 5 - 1973 - Palmers to Cropalls - the 7 acres -
(Scoffield said the Smith ~~property~~ property
is excepted from deed)
- deed states: reserving to the
- ~~deed~~ Grantor an easement for domestic
water pipe and an easement for
irr. pipe over and under said
premises

- Ex 6 - Palmers to Cropalls - 1978 - 6.4 acres
(to correct deed 517842 - the 1973 deed)

- Ex 7 - 1986 Quitclm deed - Palmer to Paynes - 8.19 miners' inches

interesting... - Ex 8 - 1986 Quitclm deed - Palmer to Cropall - 1.1 acres
- Cropall said that 1986 was when Smith
was trying to take away their water so they
went to Tom Holmes' law firm (Mr. Jones)

- Ex 9 - deed Cropalls to Paynes - 1985 - parcels 1 & 2
(sold land D-3, D-5, & D-6)

30 - Mr. Palmer tapped one of the springs flowing
into Papoose Cr. - put it into cistern for dom. use

31 - 1960 - Palmer put in pipe for irr. for his yard from P. Cr. -
they didn't have a yard before that

32 - Palmer gave Germer surplus rts to irr. when he bought
property

33 - Palmer sometimes watered cattle from cistern
- Palmers went to Calif. last 10-12 yrs because water to their house would freeze up during winter -

34 - cistern holds 1200 gallons - intended for dom. use - some stockwatering had been done -

35 - 1958 - Palmer put in pipe to Crofalls' house so they could get water from the cistern - Crofalls built their house that same yr.

- 1945 - pipe put in from cistern to Palmers' house
p. 37 - Crofalls could mix well & cistern water once they got a pump, but didn't like cistern water because it was dirty

42 - in 1970 when Shaul moved trailer onto property - the main dom. source was Crofall well - cistern wasn't main source of supply for Shaul's trailer - but it was hooked up

43 - 1976 - cistern water to Crofall shop disconnected - couldn't get to pressure tank - after that, water from cistern not used on Crofall property

- from 1976 on, Crofall well was only source of water for trailer

46 - after 1976 when cistern water shut off from trailer, Mrs. Palmer cont'd to use it in her house

- 1980 - Mrs. Palmer dug well & discontinued using cistern water -

- Smith may have used cistern water for cows

51 - 1983 - Linda Mumme Payne hooked up cistern water to trailer - (cistern was on Crofall property at that time)

52 - Crofall told Linda to hook up to cistern
- cistern water has been used at trailer since that time

53 - Smith ~~hit~~ blew up when Crofall told him she was hooking up Linda to the pipe - Smith said he owned the cistern

?? ??

54 - Palmer had told Smith he could use cistern water until he got his well drilled - after he drilled it, water went to Mrs. P's house exclusively (she's not sure) - he had no permission to use it -

56 — Smith had no water rt from cistern, except to water his cows - Mrs. Palmer had told him he could water his cows from the cistern

Was cistern moved? See p. 52- Comment by Smith.

- is there any use from spring prior to when cistern put in '45 -
- prior use to spring - when?
- non-use of Scoffield mobile home - '76-'83

was there use from spring prior to 1945 when cistern was built -

How did Smith get his right? Whose priority?

- 1930's Palmers purchased land
  one domestic
  15 acres irrigation
(verify) - from stream

if true, no right til 1983 - couldn't because of mandatory permit statute → between 1976-1983 - water not used by Scoffields

- looks like another dom was added on w/daughter - 1958 (2nd dom - Cropall)

bought 1 acre in 1958

- 1959 - Palmers drilled well - quit dom. use - Palmers cont'd dom. use - for a year, 2 dom. opp cistern (Palmers & Cropalls)

1971 - Cropalls bought 6 acres -

1960 - ~~3rd~~ domestic - ~~granddaughter~~ granddaughter - trailer house -

dom. clms based on their use -

1960 Payne put in trailer now used by Scoffields -

* Looks like Scoffield's at is 1960 - granddaughter's mobile home -

Smith's priority is when purchased 1973 land (assuming he built house - when did he build house?)

Call assessor.

Lynne
9/19/91

Palmer

1958 IAC Croxall → Payne → ~~Scaffold~~ Smith's

TAC Croxall 1971

1971 (or 1960?) 3rd domestic

9/19/91

per Lynne - stream:

- 1930 priority - Palmer purchased land
  assume 15 acres inv.
  conveyed in acc. w/ deeds
- to extent acres support the st.
  we'll recommend -

Evidence Submitted

① A29-04064A - Smiths' - .04 cfs - 1889 - 1.8 acres irr. Papoose Cr.

(docs in Complaint) -

a) Ex A - deed from Palmers to Germers - 12/1/70 - "grantor reserves all water rts from Papoose Cr." - grantee entitled to surplus waters from Papoose Cr.

Field chan - place of use covered w/ farm equip - looks like 5 yrs - however, Germer stated that land had been irr w/in 5 years. Question of how much land could receive water. 2 risers ~~and headgates~~ to access mainline located on Mrs. P's land. Only about 1 acre irrigated. The rest hilltop or corrals. Oct. 18, 1990 - no veg. seen on land. States he plans to reseed land into pasture.

b) Ex B - warranty deed from Palmers to Smiths - 12/11/78 - 1.8 acres - + all existing water rts & rights of way .036 cfs

c) Ex C - assignment of water rt for 1.8 acres from Mrs. Palmer to Smiths - 4/21/86

d) Ex D - quitclaim deed from Payne to Scoffield - 2 parcels of land + .1638 cfs water of Papoose Cr. appurtenant to property

e) Ex E - SE¼SE¼ Section 23 w/ exceptions -
- conveyance to Smith 614649
- conveyance to Germer 475246
- conveyance to Cropall 770700
- conveyance to Smith 515939
- conveyance to Cropall 593849
- conveyance to Payne & from Payne to Scoffield 793931
- conveyance to Cropall 329189 (water rts not mentioned)

f) Ex F - warranty deed from Palmer to Cropall - 5/11/71

g) Ex G - warranty deed - Palmer to Smith - 10/23/73 - water rts not mentioned

h) Grace Palmer's affid. dated 12/5/90 - said land reserved as Indian land 5/1/1889 - water from Papoose Cr. used since that time - Palmers bought property in 1926 - water from Papoose Cr. has been used for irr., stockwater & "beneficial use" from 1926 - 1990

i) See Palmer's Stat. Clm (1976) for .30 cfs

Carter says this may include a poss. expansion or 2nd b/u (?) water rt. Needs div. rate & C.U.

ask him what evidence

② A29-04064B - Stoffields - .164 cfs - 1889 - 8.2 acres

a) Jara Stoffield's affid. ~~dated~~ rec'd 12/20/90 - says water used for irr. on this property since 1889 - says yrs ago creek was dammed at night to allow enough build up to irr. Stoffield's prop. - creek has changed over yrs - now flows yr. round - water from spring watered this land almost exclusively until 20 yrs. ago when Palmers "piped it for sprinklers" & "divided it & conveyed it for irr. use on several parcels of ground"

b) quitclm deed from Palmers to Paynes - + .1638 cfs - 2 ~~parcels~~ parcels - 8/29/86

c) quitclm deed from Paynes to Stoffields - 2 parcels + .1638 cfs

Other rts - A29-10103 for domestic; none for irr ??

Field exam - priority date claimed indicates initial irr. was by a ditch or ditches from Papoose Cr. Former POD may be same as 29-04061 (Germer). No land west of P.C. could be watered from this POD. Topography suggests more than 1st exists for this land - because land irr. by Stoffields could only have been irr from P. Cr. after est. pressurized sprinkler system. Also, creek has changed course. Orig. stat Palmer clm includes some lands never irr - some of that is incl. ~~excepted~~ w/this clm. Stoffield clmd 3 fields were irr. w/ system - little rocky reg. seen. Only 2 acres presently capable of irr. w/ this system. SEE CARTER'S REPORTS. Several leaks in pipe.

??

Mrs. Palmer's daughter

③ A29-04064C ~~Billie~~ Jeanne Crofall - .02 cfs - 1889 - 1.1 acres irr.

a) Mrs. Palmer's affid. - land was reserved Indian land in 1889 - water from Papoose Cr. used on that land since that time - Palmers purchased land in 1926 - have used water for irr. + "benef. use" from 1926 - 1990

b) letter from Fahna Matthews - dated 12/10/90 - says she + husband purchased Billie Crofall's home + property - includes - warranty deed - Crofall to Matthews - 2 parcels -

System: water piped from Papoose Cr. to concrete box covered w/trash screen - from there water is piped to lands of Sheffield, Crofall, Palmer, + Smith Water is piped from Palmer's land to Crofalls'.
Field exam: Mrs. Crofall must cross her mother's land (Mrs. P) to gain access to main line from Papoose Cr. Mr. Smith stated that while Mrs. P. lived he wouldn't let Mr. Crofall have access to the system. [How would he know that?] Carter says forfeiture should be looked at.
Approx. .7 acres of Crofall's land can be irr. w/ this system.
other pts: A29-10101 for domestic (well) 1958 .04 cfs

④ A29-04064D - Palmer - .031 - 1889 - 1.5 irr. acres

Field exam: Mrs. P's land contains "two rises" from mainline that Mrs. Crofall & Mr. Smith must have access to in order to irr. w/Papoose Cr. waters. This land is the most developed of those under 29-04064. Approx. 1.3 acres of Mrs. P's land can be irrs. w/this system. / Same POD as A, B, C, & A29-10010

other wts: A29-10102 for domestic (groundwater)-

Per Carter: Rt clmd as irr - however, less than ½ acre of lawn & garden irr. was found. Should he recommend irr.? Needs diversion rate + c.u.

Lynne says rec. ½ acre irr.

③ A29-10010 - Smith - .02cfs - 1969 - 1.0 acre irr. Papoose Cr.
↓ this is prob. when he bought property

(see Ex A - G w/ Complaint)

a) Grace Palmer affid. - dated 12/15/90 - says water from Papoose Cr. has been used here for irr. from 1969-1990.

Field exam: Water used for irr. lawn & some fruit trees (6). Total amt of land irr. is less than .5 acre - lawn appears red in HAP photo dated 8/1/80 - however, area east of house where fruit trees are located appears gray.

Same pod/ as A29-04064A, B, C, + D and pipeline

Other rts: A29-10011 domestic well.

⑥ A29-04067 - Germer - .26 cfs - 1945 - 13 acres - Papoose Cr.

a) Grace Palmer affid - 12/4/90 - says water used on these acres since 1940 - water from Papoose Cr. used on property since 1960 - ~~it~~ to use excess water on this property from 1960 to present -

- says Palmers purchased property in 1940 - water pumped from Portneuf to irr. it since that time - Papoose Cr. water was used by Palmers on adj. land to south - In 1960 installed an irr. pipe to carry water from Papoose Cr. - excess water allowed to flow to 13 acres - all excess so used from 1960 to 1990.

check this!

b) Kepum Palmer - stat. clm - filed 8/30/76 - priority 1938 - field exam - irrigates 11.1 acres / Point of div. may have been the orig. one for all of Palmer's irr. use of Papoose Cr. - it looks like in the past, southern portion irr. from Papoose Cr. & northern by Portneuf - after excess sprinkler system installed & pump from river moved to present location, entire field could be irr. from either source. (May be more than one water rt both to Papoose Cr. and to river.) A29-10698 appears to be a rt to the river. Germer ~~could~~ can pump groundwater into this system.

also see: A29-07659 - groundwater license - 1982 - one home - 10 cattle & 3 horses
A29-07658 - groundwater - .15 cfs - irr., fire protection - 1982
A29-10698 - .26 cfs - Portneuf R. - irr. 13 acres - pump to sprinkler system - 1928

⑦ A29-10011 – Smiths – source is spring – .02 cfs – 1945 – domestic + stockwater

– affid. of Grace Palmer (w/ Carma Smith affid. – says water was piped from spring in 1945 for stockwater + "heney. use" + has been used since that time

Diversion system – pod is spring – underground pipeline to cistern – 2 pipelines leave cistern – one pipeline supplies water to Smith home + corrals – the other to Stoffuld's mobile home. Buried 55 gal drum is collector at spring – Smith has a well for dom. use, but if it fails, spring can be used in house. Pipe ties from Smith's home to Stoffulds' mobile home.

Field exam: Smith uses water from spring as backup for dom. well for in-house use, + to supply stockwater to corrals. Smith said he quit using water for culinary purposes when he found a dead animal in the cistern. (Pipelines are underground.)

Other pts: A29-10010 (dom. well)

NOTE: Crobell's affid. cistern installed in 1945. p.5.

(8) A29-10103 - Scoffield - .02 cfs - 1927 - dom., stock. source is spring (only source of water for mobile home)

a) Jara Scoffield affid. ~~dat~~ rec'd 12/20/90. Water from spring used for domestic water since 1889. Could only trace back to '30s when Palmer purchased land. Palmers use spring only for domestic, then a few years later piped the spring water to a storage tank at the top of their property." In early 1980's Palmers sold this prop. to their granddaughter [redacted] and ran another pipe for domestic water to her mobile home. Shortly afterward, Palmers drilled a well & conveyed all their rts to the spring, pipe & cistern to their granddaughter & her husband, Helen & Harold Payne. In 1987 Scoffields purchased this property & its water rt. Spring has been the only source of domestic water for this property and Palmers' property (until they drilled a well in 1981).

Field exam: Water used for domestic purposes in a mobile home - Priority date claimed indicates this water rt. may have been transferred from another location. (?) System is shared w/Smith - however, Smith uses this system only as a backup for a dom. well. Scoffield's mobile home serviced by 2 pipelines from cistern - one line connects off Smith's to corrals & house - this line operated between March & Oct., 1990. Pipe to Scoffield's mobile home had been partially flattened - Scoffields said Palmers' home was orig. dom. place of use for this right - stock were watered from spring where Scoffields' mobile home is now.

other rts: 29-04064B for irrigation.

b) quitclm deed - Palmer to Payne - 2 parcels + .1638 cfs

c) quitclm deed - Payne to Scoffield - (same)

9/18/91

2 diversion systems from Papoose Creek
- both are gravity pressured pipelines for sprinkler irrigation

① uppermost diversion/delivery system is shared

Sup:

	cfs	claimed priority	acres	found acres
Smith - A29-040644A	.04	5/1/1889	1.8	1.0 X
(less acres irrigated then clmd) consider forfeiture poss. per Carter's report Stoffield - A29-040643 (property purchased by Matthews)	.164	"	8.2	2.0 X
Crofall - A29-040644C	.022	"	1.1	0.7
[redacted]				
Palmer - A29-040640	.031	"	1.5	1.3
(farm machinery, etc. on place of use) Smith - A29-10010	.02	1969	1.0	.5
	(.255)			

Palmer says Smith not entitled to this

open channel meas. above point of diversion - .16 cfs

- system is rusty, leaky - leaks water back into Papoose Creek

② downstream point of diversion -

- gravity pressured pipeline to sprinklers (better maintained system)

[redacted]

	cfs	claimed priority	acres	found acres
Gurner A29-04067	.26	1945	13	11.1

note: priority probably 1960 is

(sprinklers on this system can also be operated w/water pumped from Portneuf R. (A29-10698) or from groundwater source (A29-07658).

↓ Carter found 11.1 acres irrigated.

(3) water diverted ~~from~~ from spring:
- single pipe from spring to cistern -
2 pipes from cistern - one pipe from cistern to Stoffield's mobile home - the other pipe runs south of Portuney Rd where it branches into 3 lines:
  - to Smiths' house
  - to Smiths' corrals
  - to Stoffelds' mobile home (this line excavated between March 15 & Oct 15, 1990) (Stoffield said Smith tried to hammer the line shut).

domestic and stockwater

Mrs. Palmer says pipe was put in Papoose Cr. for domestic use.

claim #29-10011 - Smith - .02 cfs - 1945 - .02 cfs
field exam found both domestic & stockwater use - this spring is a secondary source for the home - primary source is groundwater - spring water is used when power outages make well inoperable - stockwater used in corrals on north side of Portuney Rd.

claim #29-10103 - Stoffield - .02 cfs - 1927 - dom., stock. - only source of water for mobile home. - spring

Smiths trying to prove:

- no water from Papoose Creek on Stoffild land prior to 1970 for use of 1.8 acres
- Smiths ~~[illegible]~~ entitled to .036 cfs for use of property conveyed to them 12/11/78 by Palmers - see EX B - also by assignment - EX C. - Apr. 21, 1956 -
- Smiths entitled to .02 cfs for use of land ~~[illegible]~~ near residence - EX G. - conveyed by Palmers 10/23/73 - priority is 1969 -
- Stoffilds' rts to Papoose Cr. (for use on lands in EX D) inferior to rts of Smiths, Palmers, & Copall
- Stoffilds have interfered w/use of Smiths, Palmers & Copall

Complaint

(1) Hyrum & Grace Palmer owned land in SE¼SE¼ of Section 23, T. 7 S., R. 35 E.
- water rts to a spring on BLM ground 4/1/45
- water rt. to Papoose Creek
dom. & stock water used at Palmers' residence

(2) Aug 1980 Palmers drilled well for dom. & stock

(3) Sept 1981 - Grace Palmer conveyed all rts to spring, headbox & cistern to Smiths (rts) for .02 cfs dom. & stock water use

(4) Aug 1988 - Stoffids, w/out permission of Smiths, tapped into cisterns

- There is insuff. water to met needs of both Smiths & Stoffilds

(5) Remainder of water in Papoose Cr. flows down - ~~Stoffids~~ a portion flows into a 4" pipe - this water is used for irrigation by Crosall, Palmer, & Stoffild

(6) all waters beyond 4" in pipe are regarded as "surplus waters" and claimed by Grimes based on a deed from Hyrum & Grace Palmer (Instr. No. 475246)

(7) of the water flowing into 4" pipe -
- .036 cfs is claimed by Smiths for use of property conveyed to them on Dec 11, 1978 by Palmers (see Ex B) - SE¼SE¼ Sect. 23, T. 7S, R. 35E
(+ existing water rts + rights of way)

- also by virtue of assignment - (Ex. C) - Mrs. Palmer assigned to Mr. Smith April 21, 1986
- 29-4064 .036 cfs for use one 1.8 acres (recorded deed - Ex. B.)
- priority date is 5/1/1889

- .02 cfs used by Smiths on land "south of county road near Smiths' residence" (Ex G) - See Deed - Palmers to Smiths - Oct. 23, 1973 - SE¼SE¼ Sec. 23 - No. 515939 - priority date is 1/2/69

- all remaining waters used on land owned by Palmer (Ex. E) - + Cropall - priority date believed to be 5/1/89

(8) May 1987 - Scoffield acq. 2 parcels of land near Smiths + other defendants - (Ex O) (Payne to Scoffield - + .16 cfs waters of Papoose Cr.)

- no water from Paposa Cr. - on Scoffield land prior to 1970.

(9) Scoffields rts to Paposa Cr. (for use on lands on Ex D) are inferior to rts of Smiths, Palmers & Cropall

- Scoffields have interfered w/use by Smiths, Palmers & Cropall

- Smiths want rts to Paposa Cr. & spring adjudicated as follows:
  - .036 cfs - 5/1/1889 for use on real estate (Ex. B) - deed dated 12/11/78
  - .0536 cfs - 5/1/1889 - for land of Palmer (Ex E) & Cropall (Ex F)
  - .02 cfs - 1/2/69 - Smiths' lands - 1 acre south of county road near their residence (Ex G)
  - .04 cfs - 5/1/70 Scoffields land - 2 acres so. of county road - Parcel 2 on Ex. D.
  - surplus waters beyond that flowing into 4" pipe - priority Dec. 1, 1970 - for Germer (Ex A) - (Palmers to Germer 12-1-70 + surplus waters from Paposa Cr.)

these don't really match w/claims.

Smiths want:
- the above adjudication of rts
- permanent inj. against Scoffield
- damages

Palmers -

Ex A — 12/1/70 sold land to Germers + surplus waters of Papoose Cr. (475246)

Ex B — 12/1/78 sold land to Smiths "existing + water rts. (614649) + rt of ways" - 1.8 acres

Ex C — 4/21/86 assignment by Palmer to Smiths of .036 cfs for use on 1.8 acres (614649)

Ex D — 5/1/87 Quitclaim deed - Raynes to Scoffields - conveyed their water rts (.16 cfs) to certain lands (793932) - 2 parcels

Ex E - (prepared by whom? what is it?)
it looks like Palmers' sales to
other parties

Ex F - Palmers to Crofalls - sale of land -
5/11/71 - (770700) - waters rts not mentioned

Ex G - Palmers to Smiths - Oct 23, 1973 (515939)

(Warranty Deed - Palmers to Crofalls
gift deed -)

IDWR's Answer

- Papoose Cr. is trib. to Portneuf R.
- originates in Sec. 2, T. 8 S., R. 35 E.
- IDWR Records -

a) 29-4064 Hyrum Palmer - .30 cfs from Papoose Cr., irr. use 4/1 - 11/1 - priority 5/1/1889 - pod NW¼NW¼ Sec. 26, T7S, R. 35E, gravity flow pipeline & sprinkler system - irr. of 15 acres Sec 23

is there from both springs + creek?

Scoffields say Smiths do not water their property.

b) 29-4064A - (partial assignment of stat clm 29-4064) from Mrs. Palmer to Mr. Smith, .036 cfs - 1.8 acres SE¼SE¼ Sec. 23

c) 29-4064B (partial assign. of 29-4064) from Mrs. Palmer to Harold Payne (pred. in interest to Scoffields - .16 cfs for use on 8.19 acres in SE¼SE¼ Sec. 23

d) 29-4064C (partial assign of 29-4064) from Mrs Palmer to Crapalls, .022 cfs for use on 1.1 acres - SE¼SE¼ Sec. 23

e) 29-4064D (partial assign of 29-4064) from Mrs. Palmer to D. Grace Palmer - .0316 cfs - use on 1.58 acres - SE¼SE¼ Sec. 23

not claimed in SRBA? .050 cfs?

f) - 29-4064E - the part of 29-4064 not assigned - 2.33 acres ?

g) - 29-4067 - stat claim in name of Hyrum Palmer - for .26 cfs water from Papoose Cr., irr. use from 4/1 - 11/1 - priority of 5/1938 - pod SE¼ SE¼ Sec. 23 - 13 acres concrete box in creek w/screen & pipeline

h) an assignment of stat. clm. no 29-4067 to Germers

Crofall answers:

- doesn't believe Grace conveyed all 4 ts to spring to Smith - Mr. Palmer alive at time - she could not legally ~~have~~ have done so.
- most water from cistern does not flow into 4" pipe - rusted & broken -
- Germers have 4 to surplus water
- in 1976, Palmers made filing w/ IDWR - all waters made appurtenant to certain lands - Smiths had no claim to water
- 1978 - Smiths purchased 1.8 acres from (Palmers?) - then had clm to 1.8 miners inches (.0036 cfs)

- ~~too~~ land now owned by Stoffields was used as a horse pasture for many yrs. & was flood irrigated - since 1957 -

---

Stoffield answers:

these doesn't matter

- cistern to spring is located on Stoffield property

rights to spring doesn't matter

- Mrs. Palmer had already sold property on which cistern is located to her daughter Croxall, & had no rts to convey to Smith
- Smiths are using Stoffields' dom. water for their stock, leaving Stoffields w/out water
- Germers entitled to surplus water - Stoffields want Germer to bury his pipe
- Smiths do not ~~use~~ water the property desc. in Ex B (.036 cfs)
- Stoffield property (E & E) formerly belonged to Palmer & Croxall -
- Stoffields bought their property from Croxall's daughter (Payne) who bought it from her mother (Croxall) who bought it from her mother (Palmer)

Palmer Croxall Payne Stoffield

- Stoffields have never interfered w/ use of water - at top of gravity flow system - always last to get water pressure - Smith leaves taps open & causes everyone to run out of water

- Scoffields believe they have a rt to .1638 cfs from Papoose Cr
- they are entitled to domestic water from cistern (carrier excepted from any warranty deed)
- Martin Palmer owned orig. rt - divided as follows:

Smith	.036
Palmer	.03
Crapell	.022
Scoffield	.1638
Germer	all surplus

- Smith has no water rt to property on which his home sits
- Palmer let Smith use water from cistern until he could drill a well -
- Scoffields have no way of running anyone out of water - last to opt water - Smith leaves water on in corrals & empties cistern - runs everyone else out of water -

Palmer answer:

- she did not convey all rts to spring, headbox, & cistern to Smith in Sept of 1981 - Mrs. Palmer was alive then & did not sign - he died of a heart attack Oct. 2, 1982
- Smith has been allowed to use water
- April 1986 - Smith brought paper for her to sign conveying water line & cistern to him - (see Ex. A.)
- could not legally have given him cistern in 1981 -
- sold land where cistern is located to Cropalls in 1972 - reserved right of way to run water lines through property but did not reserve land containing cistern -
- Smith leaves water running in canal & drains the cistern
- 1976 clm filed w/IDWR - 15 acres - water appurtenant to those acres - water allocated according to acreage when sold -
- Smiths entitled to .036 cfs - not to an add'l .07 cfs
- water used on 8 acres across the road from Indian times - Smith argues otherwise
- channel of Papoose Cr. has changed over time
- land where Smith's house located - never watered from Papoose Cr. before 1969 - not included in land sold from orig. Palmers to Hyrum & Grace.

6/6/91

tct Tom Holmes re Landsburg / he referred to Smith case

now in dist. ct fighting over water delivery systems

deposed daughter Cropall - she drew a map -

will send us her depo tr. - should be very helpful

Docs. in File

re Germer
(1) Affidavit of D. Grace Palmer - dated 12/11/90 - A 29-04067
(includes Grace Palmer affid.)
re Smith A29-10010
(2) Affidavit of Carma D. Smith - dated 12/19/90 - A29-04064A
includes Grace Palmer affid.
A 29-10011
(3) Letter (notarized) from Sara L. Stoffell ~~A29-04064~~ rec'd 1/4/91
A29-04064B - says water from spring used to irr. this ground since 1889 - years ago creek dammed at night to water Stoffields' prop. - creek route has changed, flows up. stand - water used to be used only for irr of this land until 20 yrs ago when Palmers piped for sprinklers + flooded
(4) Letter (~~re~~ notarized) from Sara Stoffell - rec'd 12/20/90 + unsigned land
A 29-10103 ~~A29-04064B~~
(5) Intelm Deed from Grace Palmer to Harold Payne (Stoffell) - A29-04064B
(6) Intelm Deed from Harold Payne to Stoffields
A29-04064B
(7) Grace Palmer notarized stmt re Cropall dated 12/4/90 - A29-04064C

(8) Letter from Jahna Matthews - rec'd 1/2/91 - re purchase of Cropall property
(9) Warranty Deed dated Oct. 25, 1990 - sale of Cropall property to Matthews

Answers:

(1) Cropall - pro se
(2) Stoppild - pro se
(3) Grace Palmer - pro se
- includes Ex. A - unsigned doc. re conveying 1.8 miner's inches to Smith 12/11/78
- Ex B - Palmer's notice of pubd. of Am to 1.46 cfs + .3
- Ex C - 4/1/40 - real estate agreement - purchase of Palmer property
Ex D - photos
(4) Germer - notice of appearance by atty

Parties & Rights

Grace Palmer

Reed Larsen Germer A29-04067

Thomas Holmes Smith A29-10010; A29-04064A; A29-10011

Stoppelli A29-04064B; A29-10103

Cropali A29-04064C

(may be other rts to these waters) - see IDWR's records - IDWR says there is one; may be others

- re rights to Papoose Creek and an unnamed tributary to Papoose Creek -

See: Dept's Answer re IDWR's records as to rts of parties

Complaint

(for private adjudication, injunctive relief and damages)

Alleged:

(1) Grace & Nyrum Palmer (deceased) owned tract of land - SE¼ of SE¼ of Sec. 23, Township 7, R. 35 E.B.M., Bannock County

(2) water rts to a spring located on BLM land were appurtenant to Palmer's land

(3) spring has head box piping water to a cistern

(4) cistern has served domestic & household ~~purposes~~ & stockwater purposes since 4/1945

(5) domestic & stockwater orig. used by Palmers at their residence

(6) Palmers drilled well for dom. & stockwater purposes in 1980.

(7) 9/81 - Grace Palmer conveyed all rts to the spring, head box & cistern to Smiths who have used water for dom. & stockwater purposes - .02 cfs

(8) 8/88 Scoffields w/out permission tapped into cistern & have been using water for pers. use

(9) Scoffields rt is junior to Smiths' - insuff. water to serve both needs

(10) Remainder of water in Papoose Creek flows down & into a 4" pipe - which flows down & irrigates lands owned by Crodall, Palmer, & Scoffield

(11) waters from Papoose Creek not flowing into 4" pipe are considered surplus waters & claimed by Hermes based on deed from Palmers (attached as Ex A)

(12) of water flowing into 4" pipe., .036 cfs is claimed by Smiths for irrig on property (described Ex B) ~~to~~ based on assignment (Ex C)

(13) ↓ water rt has priority of May 1, 1889

(14) .02 cfs of water flowing into 4" pipe is used by Smiths on SE¼ of SE¼ Sec 23 T. 7S Range 35 EBM, real estate described on Ex G- priority date is 1/2/69

(15) all remaining waters flowing into 4" pipe ~~&~~ pipe have prev. been used upon land owned by Palmer (Ex E) & Crozall (Ex E) w/ priority date of 5/1/~~1870~~ 1889.

(16) May 1987, (Ex D) Stoppilds acquired land near Smiths & other defendants

(17) no water from Papoose Creek applied to Stoppild lands prior to 1970

(18) Stoppilds rts junior to Smiths, Palmer, Crozall

(19) Stoppilds have injured rts to Smith, Palmer, Crozall

(20) Dir. a nec. party

(21) others may clm an interest in Papoose Cr. ~~Water~~

Prayer for Relief

- (1) for private adjudication
(2) the rts as they see them:
  - .036 cfs priority 5/1/~~59~~ 1889 for real estate on Ex B
  - .0536 cfs priority 5/1/1889 - Palmer's land (Ex E) + Cropall (Ex F)
  - .02 cfs priority 1/2/69 - for use on 1 acre near Smith's residence (Ex G)
  - .04 cfs priority 5/1/70 - 2 acres of Stoppelds' land (Ex D)
  - all surplus waters beyond that flowing into 4" pipe w/ priority date of 12/1/70 (or earlier if Germer can establish) for use on Germer's land (Ex A)
  - .02 cfs w/priority of 4/1/45 for Smiths
(3) all waters are appropriated
- (4) for injunctive relief -
  - that Stoppelds be enjoined from using extra water
- (5) for damages

Ex A - sale of land by Palmers to Germers 12/1/70 - reserves water rts to Papoose Cr. - all surplus waters to Papoose Creek

Ex B - Palmers sale of land to Smiths - + water rts - 12/11/78

Ex C - assign. of clm to water rt. - Mrs. Palmer to Smiths - clm. no. 29-4064 - .036 cfs or 1.8 miner's inches for use on SE¼ SE¼ Sec 13 T 7S R. 35 E

4/21/86

Ex D- quitclaim deed - ~~Pearce~~ Payne to Scoffield 5/1/87
Ex E - (?) SE¼ SE¼ Section 23, T 7S, R. 35 E.B.M.
except for: Exceptions 1 through 8
Ex F - deed - Palmer to Crofall - 5/11/71
Ex G - deed - Palmer to Smith - 10/23/73

Adjudication Claims Filed

1.1 acres	Crofall -	A29-04064C	5/1/1889	irrig. 4/1 - 11/1	.02
13.0 acres	Germer -	A29-04067	4/1/1945	irrig. 4/1 - 11/1	.26
1.5 acres	Palmer -	A29-04064D	5/1/1889	irrig. 4/1 - 11/1	.03
8.2 acres	Scofield -	A29-0406413	5/1/1889	irrig. 4/11 - 11/1	.16 cfs
		A29-10103	9/1/1927	domestic 1/1 - 12/31 (spring)	.02
1.8 acres	Smith -	A29-04064A	5/1/1889	irrig. 4/11 - 11/1	.04 cfs
1.0 acres	"	A29-10010	1/2/1969	irrig 4/1 - 11/1	.2 cfs
		A29-10011	4/1/1945	(spring) 1/1 - 12/31 domestic + stockwater	.02

Field Examiner's analysis

Smith - 10010 - irrig. includes lawn + 6 fruit trees east of house; looks like less than .5 acres - fruit trees area is gray on HAP photo.

Smith - 10011 - water used as backup for domestic well for in-house use - no longer used for culinary purposes - dead animal in cistern - pipelines underground.

Smith - 04064A - place of use - farm mach. + misc. stored - looks like longer than 5 yrs. - he plans to reseed + use for pasture - Germer stated ~~to~~ Smith had irrig. land w/in 5 yrs. - question though as to how much land exposed - in 1980 HAP photo, a portion of land appears irrigated - looks like only 1 acre could be reasonably irrig. for pasture - rest of land bldgs + corrals - Oct 18, 1990 - no vegetation present on land - machinery stored - clm. 29-4064 filed w/ Dept 5/5/76 .30 cfs

May 1, 1889 - 15 acres

Scoffield - 10103 (spring) - water used for domestic purposes in mobile home - priority date indicates water may have been transferred from another location - system shared w/ Smith (who uses it as a backup for his domestic well - Oct 18, 1990 - 2 pipelines from cistern to mobile home - line running from Smith's excavated between March & October 1990 - pipe partially flattened but some water could still get through - Scoffield stated Palmer's home was orig. domestic place of use for this rt. - stock were watered from spring where mobile home is now - no other source of water for Scoffields' mobile home -

Scoffield - irrig. 04064B - priority date shows must have orig. been by a ditch from Papoose Creek - only place suitable looks like P/D for 04067 (Germer) - topography looks like more than 1 right may exist - questions - looks like Papoose Cr. has been rechanneled - 3 fields to be irrig. - little veg. visible - looks like dry land - looks partially irrig. in 1980 photo - Oct 18, 1990 - .16 cfs measured - entire flow diverted into pipeline - extensive leakage from pipeline - flow at concrete box .03 cfs - balance of water returning through leaks in pipe to Papoose Creek - said he could only get enough water to irrig for 2 wks last summer

3 horses in pasture - says he intends to irrig. add land once it's leveled + debris removed.

Crofall - 04064C - Crofall (Palmer's daughter) must cross Palmer's land to gain access to mainline from Papoose Creek - Smith said that while Mr. Palmer was living, would not let Mrs. Crofall (his son-in-law) have access to the system. - look at possibility of forfeiture - .7 acres can be irrigated

Palmer 04064D - Mrs. Crofall + Smith must cross Palmer lands to access water - this land most developed under 04064 water system - 1.3 acres can be irrigated w/this system - pasture, orchard + lawn -

Germer - 04067 - P/D must have been orig PD for all lands Palmer irrig. from Papoose Creek - remains of old ditch are visible - orig. irrig half from Portneuf R. + half from Papoose Cr. - after installation of pressurized sprinkler system, could be irrig. from either source - may be more than one water rt from Papoose Cr. for irrig of these lands - (may be more than one from the river, also) - Germer also holds right no. 21-07658 (groundwater) for irrig. + fire protection
elm. to water rt. 4067 - .26 cfs - filed 3/21/79 - 13 acres
buy Palmer

Substance of Docs Submitted:

① Affidavit of Grace Palmer re Germer
- water used on Germer's 13 acres since 1940
- water from Papoose Cr. since 1960
- property has had rt to use xcess water from Papoose Creek since 1960
- Germer property purchased by Palmers in 1940
  - water pumped from Portneuf R. since that time for irrig purposes
- also owned adj. land where water from Papoose Cr. used
- 1960 Palmers installed a gravity flow irrig pipe to carry water from Papoose Cr. thus conserving water; ~~alle~~ xcess water allowed to run down to 13 acres

② Affidavit of Carma Smith
- purchased property from Palmers; contacted Grace re water rts
- Palmer's affid:

04064A: - property reserved as Indian land 5/21/1889
- water from Papoose Creek beneficially used on property since then
- purchased property in 1926 - water from Papoose Cr. has been used since then - irrig, stockwater, benef. use

10010: - water from Papoose Cr. used here for irrig since 1969

10011: - water piped from stream trib. to Papoose Cr. since 1945 for stockwater & benef. use

040648 (3) Jara Scoffield - notarized letter

- water from this spring used for irrig. on this property since 1889
- years ago Papoose Cr. did not flow enough to reach any other ground & was ~~dammed~~ dammed at night to build enough water to flood the property
- creek has changed last few years & flows almost year round
- water from spring watered Scoffield's ground exclusively until 20 years ago when Palmers piped it for sprinklers & divided & conveyed it for irrig. use on several parcels of land
  - quitclm deed - Palmer to Payne.
  - " " Payne to Scoffield

10103 : (4) Jara Scoffield - notarized letter

- water from spring used for domestic since 1889
- can only trace to 1930's when Palmer's purchased
- Palmers used water for domestic - then later piped water to a storage tank
- early 1980's - sold property to grand Payne daughter ran a pipe for domestic water to her mobile home
- later Palmers drilled well & conveyed r+s to spring, pipe & cistern to Payne

1987 - Stoffields purchased property along with water rt
- spring only dom. water for this property & Palmers' prop. until they drilled a well in 1981
- exhibits: quitclm Palmer to Payne
Payne to Stoffield

04064C:(5) (Cropall) Grace Palmer affid.
- land reserved Indian land in 1889 - water from Papoose Cr. used on this land since then
- Palmers purchased land in 1926 - have beneficial used water from Papoose Cr. (irrig.) since then

(6) letter from Tahna Matthews
- purchased Cropall property Oct 25, 1990

Answers filed:

① Cropall: (daughter of Palmers)

- all Papoose Cr. water rts orig appurt. to Palmer land
- one spring piped to a cistern
- Grace Palmer could not have conveyed all spring rts to Smith - Mr. Palmer still alive & did not sign (consent)
- when Scoffields bought property water had been used for years in trailer house - they merely put in a new pipe
- not all P. Cr. water goes into 4" pipe - at least ½ water sinks into gravel
- there should be plenty of water for both parties if pipe repaired
- all surplus & excess waters go to Germers ~~Palmers~~
- 1976 - Palmers allotted certain waters rts to certain acres - publ. in newspaper - recorded w/ IDWR - no water given to ~~only~~ dry land owned by the Smiths -
- 1978 Smith purchased 1.8 acres w/water rt.
- Scoffields' ground used as horse pasture for many yrs. & was flood irrigated - no access to the river (?) - water used only for horses - 32 yr. old horse always kept there

disagrees w/ P's assertion that no water to Scoffields' prop. before 1970

② Scoffields -

- cistern on Scoffield prop.
- Grace Palmer could not have conveyed all its to spring to Smiths in 1981 - she had already sold prop. on which cistern located to Smiths
- Sc. ran new water line (old one corroded) - they "ran a new line to cistern as their property's dom. water always came from cistern -
- Smiths use Scoffield's dom. water for their stock & leave Scoffields w/out. ✓
- they agree w/ Germers' #s but want them to bury their pipe
- Smiths do not water property (.036 cfs claimed - purchased from Palmers in 1978) ✓
- Scoffields could not have interfered w/ others' ~~use~~ use of water - they are "at top of a gravity flow water system" & always last to get water pressure. Smiths always have water taps open so have everyone w/out. ?
- Scoffields believe they have .164 cfs from Papoose Cr. - that dom. water from cistern "has never been an exception from any warranty deed" ✓

Palmer ↓ Crozall ↓ Payne ✓

- Scoffields' view of water rts: (per Palmer)

Smith 1.8 miner's inches	.036 cfs
Palmer 1.5	.03 cfs
Croxall 1.1	.02 cfs
Scoffield 8.19	.164 cfs.
Germer surplus water	

- Smith got no water rt. to property where home sits - Palmer let them use water until he could drill a well - still continues, but serious problems - Grace Palmer)

(3) ~~[illegible]~~

- Mr. Palmer died 10/2/82
- she did not convey "all rts to spring, headbox and cistern" to Smith in 1981 - Mr. Palmer alive & did not sign
- Mr. Smith allowed to use waters only)
- Smith tried to get her to sign doc. in 1986
- sold land where cistern is to Crofalls in 1972 - reserved rt of way for water lines.
- Smiths have left water running in canal
- Palmers clmd water rts May 1976 - 1.76 cfs priority - 1926 & ~~1988~~ 1889
- Smiths portion is .036 - not add .02 cfs they clm.
- disagrees w/ Smiths that water not used on property until 1970 - horse pasture - no access to Portneuf R. until 1940

- land where Smiths' house is located not watered by P. Co. until 1969 - sold this land to them in 1978 -

- deed Palmers to Hyrum + Grace Palmer 5/4/40

Germer - no answer

per Lynne

Prepare report

① Findings of Fact / Silverstein - sample - definitions - start w/ Code - then reports - then Lynne

findings re initiation of action - how we got to this point

findings re claims - notice of clms filed w/ Dept.

findings re field exam -

findings - gen descr of area - springs - where arise - where flow into, etc.

gen. findings - define water rt. i.e. period of use, std rate of flow (cfs) - rate of diversion for ~~dom~~ dom -

see Silv. finding of fact 31 - 38 for samples

② Describe points of diversion + place of use - for each rt. - uses made of water

For each clm
- Dept's water rt records - notice of clm -

- finding of fact to support ~~all~~ each element of water rt. (info. from field reports)

§ 42-140

people sharing div. system could be the problem - Carter to do more field work

are they? if not, in file in vault question: did Grace Palmer convey water rts. she represents she did?

§ 42-243-7 statutory clm - water rts described, filed - objs could be filed - all it did was record test.

→ late 1910's -

[findings - describe use rec. + duty stds for each element of each clm.

Conclusions of Law:

use 3 of Silverstein -

any rts claimed after 71 - use #4

re: effect of statutory clms

#8 - Silverstein

#9 -

#10 -

- need concl. to support anything we do to their clm (pick through Silv.)

- application of above legal principles to facts

- It is concluded that - describe each of water rts.

- to what extent there is a rt for each use -
if deed describes rt - it's some evidence but go to statutory clm.

start w/ use now - work backwards

To what extent does field exam support Clm ?

elements of it
prior date
source
point of div. etc.

/ from statute

/ most is factual

* Complicating - if change of use made - from orig. it.

Recommendations -
findings + conclusions
list elements
any conditions that go w/ them -

A (adj.) - record / shows it as claimed

R (rec.) - record / it. as recommended -

Map will be req'd

3/18/91

(Germer)

Evidence:

① Affidavit of Grace Palmer - Dec. 11, 1990
- sold property to Virgil Germer - water put to beneficial use
- water used on Germer 13 acres since 1940
- water from Papoose Creek has been used on Germer property since 1960
- Germer's property has had right to use excess water from Papoose Cr. from 1960

- Palmer's purchased Germer's 13 acres in 1940 - water pumped from Portneuf R. to irrigate this land until that time
- Palmers also owned land adj. on the south which was Indian land where they used water from Papoose Cr.
- 1960 - Palmers installed a gravity flow irr. pipe to carry water from Papoose Creek to conserve water - access water was allowed to run down to 13 acres -
- all access water used here from 1960 - 1990

* (1) Germer - statutory clm - ev. of priority date req'd -

~~[illegible]~~

- see appl of Grace Palmer

04064C (2) Cropall - statutory clm - ev. of priority date req'd -

3/18/91

② affidavit of Carma B. Smith
- she contacted Grace Palmer re water rts on property purchased from Palmers

4064A
- Grace Palmer's affid: 12/15/90
- property reserved as Indian land 5/21/1887
- water from Papoose Creek has been used for benef. use since that time
- Palmers purch. property in 1926 -
- water from Papoose Cr. has been used for "irrig., stock water, & benef use" from 1926 to 1990

on this particular land?

How old is she?

↓

10010
- water from Papoose Creek has been used here for irr. from 1969 to 1990

↓

10011
- water was piped from a spring, tributary to Papoose Creek, 1945 for stockwater and benef. use & has been used since that time

3/18/91

04064B (3) (Scoffield irr.)

Affidavit of Sara L. Scoffield

- water from "this spring" has been used for irrig. on this property since 1869
- years ago ~~the~~ Papoose Cr. "did not flow enough to reach any other ground" and was "dammed at night to build enough water to flood the property we now owned
- Creek has changed the last few years and now flows almost year round
- used spr. for Scoffield's property up to about 20 yrs. ago, when Palmers piped it for sprinklers & divided it for irrig. used for several parcels of ground

- includes quitclm deed dated Aug. 29, 1986 - from Grace Palmer (widow) to Harold Payne - includes all water rights, incl. 8.190 miner inches of Papoose Cr. -

  - parcel 1 - SESE ¼ Sec. 23, T7S, R35E

  - parcel 2 - 1/16 corner S23, T7S, R35E

note 2nd page of quitclm deed absent →

- quitclm deed from Harold Payne to Jay + Sara Scoffield - same property Palmer conveyed to Payne

3/18/91

10103 > (4) Affidavit of Sara L. Scoffield

Scoffield domestic

- water used for dom. purposes since homesteaded in 1889 from this spring
- she could only trace back to the 30's when Palmers purchased the ground
- Palmers used the water from this spring only for domestic - a few years later piped the spring water to a storage tank at the top of their property
- early 1980's - sold this property to their granddaughter & ran another pipe for domestic to her mobile home
- then Palmers drilled a well & conveyed their rts to this spring, pipe & cistern to their granddaughter & her husband, Helen & Harold Payne -
- Scoffield's purchased property in 1987 along w/ water rts.
- spring was only source of domestic water for this ~~prop~~ property and Palmers (until they drilled a well in 1981)

-attached quitclaim deed from Palmer to Payne -

note: p. 2 missing

-attached quitclaim deed from Payne to Scoffield

3/15/91

04064C (5) Crofall - Grace Palmer affid.-
Crofall
irr.

- this land was reserved Indian land in 1889. water from Papoose Creek has been used on this land since that time.
- Palmers purchased land in 1936 - have used water from Papoose Creek for irrig + hsehg. use from 1936 through 1990

NOTE: * [Joseph + Iawna Matthews purchased Crofall property October 25, 1990 - they want to file a clm for the water rts.

Complaint:

Smiths v. Scoffields, Grace Palmer, Billie Crofall, Farmers, in IDWR

alleged:

(1) Palmers owned land SE¼ of the SE¼ of Section 23, Township 7 South, Range 35 E.B.M. Bannock County, Idaho
(2) ground had appurtenant water rts. - spring located on BLM land and to Papoose Creek
(3) spring has a head box piping water to a cistern
(4) cistern has served domestic, household, and stock water purposes since Apr. 1, 1945
(5) domestic & stock ~~water~~ watering used by Palmers at their residence
(6) Palmers drilled a well for domestic & stock purposes in August 1980
(7) Sept. 1981 - Grace Palmer conveyed all rts to spring, head box, & cistern to Smiths who have used the water for dom. and/or stock water (.02 cfs)
(8) August 1988 - Scoffields w/out permission & contrary to Smith's rts, tapped into the cistern & have been drawing off water for pers use
(9) Scoffields are jr. users & there is not sufficient water to serve both needs

(10) Remaining water of Papoose Creek flows down & into a 4" pipe - which irrigates land owned by Cropall, Palmer, & Scopfield

(11) All waters not flowing into the 4" pipe are claimed by Gerners by virtue of a deed from Palmers (see Ex A)

(12) Of the water flowing into the 4" pipe, Smiths clm. .036 cfs for irrig. on property (Ex. B.) sold by Palmers to Smiths (12/11/78) - (see assignment of clm for water rts. from Mrs. Palmer to Smiths. - .036 cfs or 1.8 miners inches

(13) priority date is 1889

(14) .02 cfs of water flowing into 4" pipe is used by Smiths on their property (Ex. G - warranty deed. 1973) - priority date is Jan. 2, 1969

?

(15) "All remaining waters" flowing into the 4" pipe from Papoose Creek have been used on land owned by Palmer (Ex E) & Cropall (Ex E) w/ priority date of 5/1/1889..

(16) May 1987 - Scopfield 2 parcels of ground near Smiths' (Ex D)

(17) no water from Papoose Creek applied to Stoffields' new parcels prior to 1970
(18) Stoffields' rts junior to Smiths, Palmer, + Cropall
(19) Stoffield has interfered w/ rts of Smiths, Palmer, Cropall

Smiths want an adjudication of rts. to Papoose Creek + springs
Smiths' allegation as to the rts:

(1)	Ex B (Smith) (Palmer + Cropall)	.036 cfs	May 1, 1989
(2)	Ex E + F - Smith	.0536 cfs	May 1, 1889
(3)	Ex G	.02 cfs	Jan. 2, 1969
(4)	Ex D (Stoffields)	.04 cfs	May 1, 1970
(5)	Ex A (Germer)	surplus waters over what flows into 4" pipe -	Dec. 1, 1970
(6)	to Smiths	.02 cfs	spring water April 1, 1945

Injunction against Stoffields

(1) Cropall answer:

- Palmers' daughter
- Grace Palmer could not have conveyed all water rts to Smith because Mr. Palmer still alive at the time
- When Scoffields purchased property, water from cistern had been used for years in trailer house - Scoffields only put in a new pipe
- Much of Papoose Creek does not flow into 4" pipe - pipes are rusted out & broken - at least ½ of Papoose Cr. sinks into gravel or goes on to Portneuf R - no one will fix pipe - piping system should give enough water to all parties
- all surplus water not used by others goes to Germers
- 1976 - Palmers applied to IDWR to record water claims.
- 1978 - Smiths purchased 1.8 acres & a water clm for 1.8 miner's inches -
- Disputes ¶ 17 of Complaint - Property now owned by Scoffields was used as a horse pasture for many yrs. and was flood irrigated. - since 1957 - She has a 32 year old horse who used that pasture all of his life.

② Scoffield Answer -

- cistern is on Scoffield property
- Grace Palmer had sold ~~for~~ property on which cistern is located to daughter & son-in-law Crofall, so no rts to convey to Smiths
- Scoffields ran a new water line - cistern used only for domestic water for Scoffields' property (~~for~~ for many yrs prior) - Scoffields did not tap in to cistern - simply "ran a new line" for their domestic water
- Smiths are using Scoffields' domestic water for their stock & leaving Scoffields w/out water
- Germers & Scoffields have had problems - Scoffields asked Germers to bury the pipe - Germers did not respond
- Smiths do not water property purchased in 1978
- Scoffield property belonged to Palmer & Crofall
- Scoffield bought property from Crofall's daughter Helen Payne who bought it from her mother (Crofall) who bought it from her mother Palmer

Palmer
↓
Crofall
↓
Payne
↓
Scoffield

- Palmers had all water rts to Papoose Cr. - divided up as they sold parcels of land

(Scoffield, 2)

- They are at the top of a gravity flow system - couldn't interfere w/ others' water rts - always the last to get water pressure - Smiths system leave water taps open, which "runs everyone out of water"

Scoffields -

- believe they have 8.19 miner's inches from Papoose Creek
- Scoffields' dom. water from cistern has never been an exception from a warranty deed - nor has property where cistern sits
- Martin Palmer owned 15 miners' inches to Papoose Creek which he ~~deed~~ divided as follows:
  1. Smith 1.8 miner's inches
  2. Palmer 1.5
  3. Croyall 1.1
  4. Scoffield 8.19
  5. Gerner all surplus water

- Smith rec'd no water rt to property on which his home sits / Palmer let Smith use water from cistern until he could drill a well - this use has cont'd - caused problems -

- Cistern water has always had priority for domestic - Smith could use surplus cistern water for his cows - Smith often leaves water on in corrals & empties cistern - often on a daily basis
- Scoffields have largest share of waters of Papoose Creek, but are the last to get water - Scoffields legally own cistern & the ground on which it sits

Palmer Answer

- did not convey all rts to spring, headbox & cistern to Smith in 1981 - Mr. Palmer still alive & did not sign - he died Oct. 2, 1982
- told Smith he could use water
- April 1986 - Mr. Smith brought her a paper to sign conveying water line & cistern to him (Ex A) - 1.8 miner's inches per the land conveyed to Smith Dec. 11, 1978 - also, cistern & spring

(4064)

1.8 acres

She didn't sign?

note: doesn't mention Ex A - assignment of claim to Smith - .036 cfs or 1.8 miners inches per acre on 1.8 acres April 21, 1986

- July 23, 1989 - Smith came to her "ranting & raving" saying cistern belonged to him because she'd given it to him - she says she could not have done so in 1981 -
- sold land where cistern located to Copalis in 1972 - reserved rt of way to run water lines through property, but not land containing cistern

- implied that Smiths leave water running in corral
- All 15 acres (Ex B) has same priority date - water allocated as they sold off parcels - Smiths - .036 cfs - not entitled to the .02 cfs

Palmer (2)

8 acres - Palmers used water from 1927 when they moved there - pasture for work horses - they flood irrigated - time has changed channel of the creek bed

Smiths land never watered from Papoose Creek before 1969 - not included in Ex. B.

?

3/18/91

General

- 1 cfs = 50" of water .02 cfs = 1"
- Silverstein v. Carlson 797 P.2d 856 (Idaho 1990)

how do you confirm?

- statutory clm - beneficial use at that was not recorded w/the Dept. but not confirmed. Therefore, proof is req'd.

-proof is req'd if-

(1) clm is based on beneficial use
(2) clm is not a domestic and stockwater clm.

"some evidence" of the year of priority claimed is sufficient - Conclusive ev. is not req'd -

Documentation in any form of - should show that water was used:

(1) - for the purpose claimed
(2) in the yr. claimed as priority date AND
(3) on the land claimed as the place of use or by the owner of that land

Types of docs -

- affidavits of someone w/ personal knowledge of when beneficial use first made (neighbor or previous owner (personal observation of use, not hearsay)
- for irrig. clms - crop reports, tax docs. showing income from sale of crops, property tax doc showing property was taxed as irrigated agriculture

- for ground water rts - report of well driller who drilled the well, if a report was filed w/ IDWR
- pump test records
- sales receipts for equip. or materials used in the water system
- records re sale, installation, or construction of the diversion works
- electric bills for diversion equipment
- homestead docs. - at county recorder's office or the National Archives
- aerial photography

↓

- if none of this is avail., personal affid. can be furnished explaining basis of priority claimed -

statutory clms - ev. of beneficial use only as to when clm was filed

If evidence of priority is not submitted, IDWR will not recommend the clm to be decreed by the court - if proof is submitted supporting ~~of~~ a later priority, then the later priority date will be recommended

#25

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 SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-10103
Date Received: 11/08/1989
Receipt No: E011129
Received By: TO

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: RONALD J. SCOFFIELD, JR. 208-775-4560
   Address: 5195 W. PORTNEUF
   INKOM, ID 83245
   AND/OR
   Name: TARA L. SCOFFIELD 208-775-4560
   Address: 5195 W. PORTNEUF
   INKOM, ID 83245

2. Date of Priority: SEP 01, 1927

3. Source: SPRING Trib. to: PAPOOSE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
07S	35E	26	NE NW NE		BANNOCK

5. Description of diverting works:
   SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.020		

7. Total Quantity Appropriated is:
   0.020 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
   D/1 HOUSE

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
07S	35E	23	SE	SE		DOMEST	

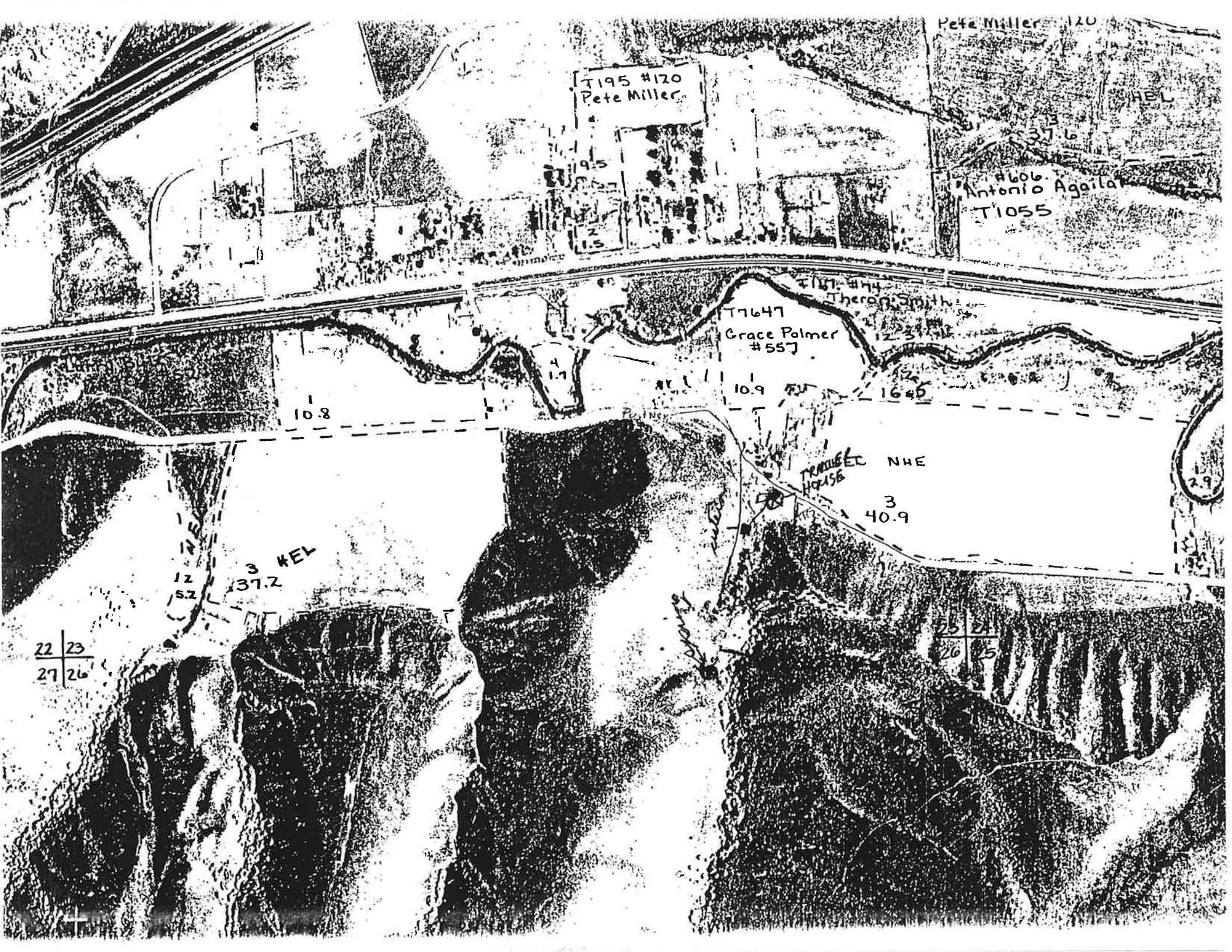
11. Place of use in counties: BANNOCK

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

15. Basis of Claim: BENEFICIAL USE


Pete Miller 120
T195 #120
Pete Miller
HEL
#606
Antonio Agaila
T1055
T1647
Grace Palmer
#557
#74
Theron Smith
10.8
10.9
1646
TRAILER HOUSE
NHE
3
40.9
3 KEL
37.2
22 23
27 26
25 24
26 25

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin 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: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: 11-8-89

_____ Date: _____

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 8th day of November 19 89

_____
Notary Public

Seal

Residing at Idaho Falls

My Commission Expires 9/12/1994

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water Right Number - R29-10103 Prefix Translation: RESEARCH Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER *** SCOFFIELD, JR.	RONALD J.	1 - 5195 W PORTNEUF RD 2 - 3 - City- INKOM State- ID Zip- 83245 Phone - 208-775-4560
SCOFFIELD	TARA L.	1 - 5195 W PORTNEUF RD 2 - 3 - City- INKOM State- ID Zip- 83245 Phone - 208-775-4560

Priority Date: 09/01/1970
Region: 15 EASTERN
Stage: J - BENEFICIAL USE
Status:
Source: SPRING
Tributary: PAPOOSE CREEK

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County
07S	35E	26	NE NW NE			(5) BANNOCK

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
43	DOMESTIC	01/01	12/31	0.010	

Total Div. Rate: 0.010
Total Div. Volume:
Total Consumptive Use: 0.0
KW Usage:

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	35E	23	SE SE			43	DOMESTIC	(5) BANNOCK

Total Acres:

Diversion Means - SPRING, PIPE TO CISTERN, PIPE TO MOBILE HOME.

Non-Irrigation Use - DOMESTIC, 1 HOME

Other Rights for Same Use - NONE

Remarks

RIGHT NOS. 29-10011A AND 29-10011B ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 0.01 CFS.

ready to verify
CR 12-10-91

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water right number - R29-10103 Prefix Translation: RESEARCH

Old Water Right Numbers

Old Water Right Numbers

No Old Water Right Numbers Found

Conditions of Approval

No Conditions of Approval found.

Decree Plaintiff

Decree Defendant

Decree Date
00/00/0000

Comments

No Comments Found

Audit Fields
12/10/91 FRITSCHL

Adjudication Rights Dates and Flags Area

Court Report Filing	- 00/00/0000	Field Inspection Made	- 03/15/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 11/08/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- E011129	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:24:37
11/29/91

QUICKLOOK INFORMATION

CLAIM NUMBER: A29-10103

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	Y	CA 11-29-90	CA 3-15-91	Y	6	CA 12-10-91	CA 12-10-91	
POINT OF DIV	Y		CA 3-15-91	N	5			
SOURCE	Y		CA 3-15-91	N	5			
PLACE OF USE	Y		CA 3-15-91	N	5			
DIV. AMOUNT CFS/VOLUME	Y		CA 4-9-91	Y	5			
CONSUMPTIVE USE	-		CA 3-15-91	N	N.A.			
PURPOSES	Y		CA 3-15-91	N	5			
PERIOD OF USE	Y		CA 3-15-91	N	5			
BASIS OF CLAIM	Y		CA 3-15-91	N	6			
REMARKS	Y			Add Standard				

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ	= 1
ASCS MAP	= 2
WATERMASTER RECORDS	= 3
NAPP PHOTOS	= 4
FIELD EXAM	= 5
OTHER (SEE REMARKS)	= 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:24:37
11/29/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A29-10103

LAST: SCOFFIELD, JR. FIRST: RONALD J.
ADDRESS: 5195 W/ PORTNEUF RD
CITY: INKOM STATE: ID ZIP: 83245
PHONE NUMBER: 208-775-4560

OWNER CODE: C

LAST: SCOFFIELD FIRST: TARA L.
ADDRESS: 5195 W/ PORTNEUF RD
CITY: INKOM STATE: ID ZIP: 83245
PHONE NUMBER: 208-775-4560

OWNER CODE: C

	DATABASE	FIELD EXAMINER
FIELD EXAM REQUIRED?		
VERIFICATION REQUIRED DUE TO REMARKS?	Y	

CLAIM REMARKS: COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

FIELD EXAMINATION INFORMATION

CLAIM NUMBER: A29-10103

CONTACT PERSON: Ronald "Jay" Scoffield, Jr.

PHONE NUMBER: (208) 775-3604

DATE OF FIELD EXAM: 3/15/90

APPOINTMENT MADE: Y(✓) N(___)

TIME: 2:00 A(___) P(M)

ACCOMPANIED BY: Jay Scoffield

PHONE NUMBER: (___) ___-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

5795 W. Portneuf Rd.

PRIORITY DATE REVIEW PAGE

CLAIM NUMBER: A29-10103

A. AJ CLAIM: # A29-10103 PRIORITY DATE: 09-01-1927 STAGE: J

B. WR RECORD: NO WATER RIGHT RECORD TO MATCH THIS AJ CLAIM

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE Y FIELD EXAMINER Y CA

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y(X) N(__)
IF YES EXPLAIN.

REMARKS: Evidence supports a 1970 priority date for domestic use. See Oral Deposition of Joanne Croxall taken May 23, 1991 pages 35 and 36.

RECOMMENDED PRIORITY DATE:
9-1-1970

REVIEWED BY CA DATE 12-9-91

POINT OF DIVERSION REVIEW SHEET

CLAIM NUMBER: A29-10103

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A29-10103	07S	35E	26	NE	NW	NE		BANNOCK

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX: NONE

R PREFIX: NONE

WR RECORDS IN SAME 40 ACRE TRACT

29-04064A
29-04064B
29-04064C
29-04064D
29-04064E

SOURCE: SPRING

TRIB: PAPOOSE CREEK

B. WR POINT OF DIVERSION AND SOURCE:

THERE IS NO WATER RIGHT RECORD WITH THE SAME CLAIM NUMBER

SOURCE: NO SOURCE FOR RECORD

TRIB: NO TRIBUTARY FOR RECORD

C. FIELD EXAM REQUIRED?

		DATABASE	FIELD EXAMINER
DUE TO POD DISCREPANCY?	(Y/N)	Y	N CA
DUE TO SOURCE DISCREPANCY?	(Y/N)	Y	N

REMARKS:

P.D. appears correct as claimed

POINT OF DIVERSION REVIEW SHEET CONTINUED

CLAIM NUMBER: A29-10103

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
7S	35E	26	NE	NW	NE	—	Bannock
—	—	—	—	—	—	—	

SOURCE: Spring TRIB: Papoose Creek

REVIEWED BY: CF DATE: 12-9-91

PLACE OF USE REVIEW SHEET

CLAIM NUMBER: A29-10103

A. ROOT WATER RIGHT NUMBERS: A29-10103

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	35E	23	SE	SE		SCOFFIELD, JR. , RONALD J.	A29-10103 /	- /	13.0		
			SE	SE		SMITH , THERON	A29-04064A / 1.8	29-04064A / 2.0			
			SE	SE		THERON , SMITH	A29-04065 /15.0	29-04065 /25.0			
			SE	SE		SMITH , THERON	A29-10010 / 1.0	- /			
			SE	SE		SMITH , THERON	A29-10011 /	- /			
			SE	SE		SCOFFIELD, JR. , RONALD J.	A29-04064B / 8.2	29-04064B / 8.0			
			SE	SE		CROXALL , BILLIE J.	A29-10101 /	- /			
			SE	SE		PALMER , GRACE	A29-10102 /	- /			
			SE	SE		MATTHEWS , JOSEPH	A29-04064C / 1.1	29-04064C / 1.0			
			SE	SE		THOMPSON , TRACY R	A29-04064D / 1.5	29-04064D / 2.0			
			SE	SE		PALMER , HYRUM MARTIN		29-04064E / 2.0			
			TOTAL ACRES			A29-10103			13.00		

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y( ) N(X)
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE	FIELD EXAMINER
Y	

PRESUMPTION FLAG:

REMARKS:

P.U. correct as claimed

==========

RECOMMENDATIONS:

TOTAL ACRES: Domestic use only

REVIEWED BY: PL DATE: 12-9-91

==========

PURPOSES REVIEW SHEET

CLAIM NUMBER: A29-10103

A. AJ CLAIMED USES:

	PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A29-10103	DOMESTIC	FROM 01-01 TO 12-31	.020 CFS
	TOTAL DIVERSION RATE/VOLUME CLAIMED		.020 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	Y	N
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)	Y	~~N~~ CA
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)	Y	N

D. PERIOD OF USE:

RECOMMEND AS CLAIMED? Y(X) N(___)

RECOMMEND TO WR STANDARDS OR OTHER? Y(___) N(___) Explain in remarks, below.

REMARKS:

Use is year-round

DIVERSION AMOUNT REVIEW SHEET

CLAIM NUMBER: A29-10103

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y(___) N(X)

AJ TOTAL CLAIMED DIVERSION RATE: 0.020 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?	DATABASE	FIELD EXAMINER
DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)	Y	Y

B. FLOW MEASUREMENT

MEASUREMENT METHOD 5 gal bucket & stop watch SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y(__) N(__) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A29-04064A	PAPOOSE CREEK	SMITH , THERON	0.040	0.022		
A29-04064B	PAPOOSE CREEK	SCOFFIELD, JR. , RONALD J.	0.164	0.020		
A29-04064C	PAPOOSE CREEK	MATTHEWS , JOSEPH	0.022	0.020		
A29-04064D	PAPOOSE CREEK	THOMPSON , TRACY R	0.031	0.020		
A29-04065	PORTNEUF RIVER	THERON , SMITH	1.460	0.020		
A29-10010	PAPOOSE CREEK	SMITH , THERON	0.020	0.020		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY		RATE	VOLUME
A29-10011	DOMESTIC	SMITH , THERON	FROM 01-01	TO 12-31	.020 CFS	
A29-10011	STOCKWATER	SMITH , THERON	FROM 01-01	TO 12-31	.020 CFS	

CLAIM NUMBER: A29-10103

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES _____ x 0.02 CFS/ACRE = N.A. CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(___) N(___)

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y(__) N(__) ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE N.A. AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME N.A. AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y(____) N(____)

1b. CALCULATIONS

Spring flow measured at 0.003 cfs (5 gal in 3 min 44 sec.)

recommend 0.01 cfs

See attached measurement

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

N.A.

CLAIM NUMBER: A29-10103

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM	REC. PERIOD TO	REC. DIV RATE CFS DATABASE	REC. DIV RATE CFS EXAMINER	REC. DIV VOL. AF/A DATABASE	REC. DIV VOL. AF/A EXAMINER	REC. CONS. USE DATABASE	REC. CONS. USE EXAMINER
Domestic	1-1	12-31		0.01		N.A.		N.A.
TOTAL FOR THIS RIGHT				0.01		N.A.		N.A.

REVIEWED BY: CT DATE: 12-9-91

BASIS OF CLAIM REVIEW SHEET

CLAIM NUMBER: A29-10103

A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP	(X)	( )
FORFEIT/ABANDON	(X)	( )
ADDITIONAL DIV. AMOUNT	(X)	( )

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 29-10103

TOTAL DIVERSION RATE OF WR SPLITS — DATABASE — EXAMINER N.A. — CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A29-10103	0.020	-		-	
	TOTAL CFS	0.020				

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N) — DATABASE N — FIELD EXAMINER N.A.

IF NO, is the written review sheet attached? (Y/N)

REMARKS:

EO7 29-10011A and 29-10011B --- 0.01 cfs

AUTHENTICATION:

SIGNATURE: Carter Fritschle DATE: 12-10-91

NAME OF FIELD EXAMINER: Carter Fritschle TITLE: Sr. W.R. Agent

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

PROFILE REPORT

CLAIM NUMBER: A29-10103

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	RONALD J. SCOFFIELD, JR.	09/01/1927	DOMESTIC	01-01	12-31	0.02 CFS	
C	TARA L. SCOFFIELD 5195 W. PORTNEUF INKOM ID 83245 (208) 775-4560				TOTAL DIVERSION:	0.02 CFS	

Water Source: SPRING Tributary to: PAPOOSE CREEK Stage: BENEFICIAL USE

Point(s) of Diversion: T07S R35E S26 NENWNE BANNOCK County

Place of use Legal Description for: DOMESTIC

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
07S	35E	23																D

Other Rights: NONE

Other Water Rights Listing Overlapping Place(s) of use:
A29-04064A A29-04064B A29-04064C A29-04064D A29-04065 A29-10010

Non-Irrigation Use: D/1 HOUSE

Remarks: COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

Dates: Exam Made Date: Verified Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Claim
~~Permit~~ No. A29-10103

1. Owner: Ronald J. and or Tara L. Scoffield Phone No. 775-3604
   Current Address: 5195 W. Portneuf, Inkom, ID 83245
2. Accompanied by: Ronald "Jay" Scoffield, Jr. EXAM. DATE: 3-15-90
   Address: _____ Phone No. _____
   Relationship to Permit Holder: Claimant
3. Source: Spring tributary to Papoose Creek

B. OVERLAP REVIEW

1. Other water rights with same place of use: A29-04064B for irrigation
   _____ ☐ Copies Attached
2. Other water rights with same point of diversion: A29-10011
   _____ ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☒ Alternative diagram attached

Scale: 1" = _____.

2. ☒ Copy of U.S.G.S. Quadrangle Attached
   Showing location(s) of point(s) of diversion and place(s) of use (required).
   ☐ Aerial Photo Attached
   (required for irrigation of 10 acres or more).
   ☒ Photo of Diversion and System Attached
   (required for all but single household domestic groundwater, and stockwater.

System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

The system has a developed spring with an underground pipeline to a cistern. Two pipelines leave the cistern. One pipeline supplies water to the Scoffield's mobile home, and the other pipeline supplies the Theron Smith ~~home~~ property. The entire system is gravity flow. A buried 55 gallon drum is used as a collector at the spring. The distance from the spring to the cistern is approximately 600' and from the cistern

☒ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	N. A.				

**Code to correspond with No. on map and aerial photo*

5. **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NE	NW	NE	26	7S	35E	Bannock	O.R.

6. **Place(s) of Use:** Indicate Method of Determination _____

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7S	35E	23																D	

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
5 gallon bucket					5gal	
Stopwatch						

2. **Measurements:**

No measurements were made.
Flow from spring measured 4-9-91 as 0.003 cfs. CA

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes:

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)
Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)
Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)
Meter Input HP: (6) x 1.34 = _____ (7)
Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Ampsx .001732 = _____ (6)
Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = _____

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = _____

2. Volume Calculations for Other Uses:

H. REMARKS AND OVERLAP REVIEW ANALYSIS

to the mobile is over 600'. There is no other source of domestic water for Scoffield's mobile home.

* Additional information obtained 10-18-90 revealed a pipe teeing off the line to Mr Smith's home runs to an outside faucet under the Scoffield's mobile home.

CF 10-24-90

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Domestic, 1 home	1-1	12-31	0.003	
		Totals:	0.003	

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None

☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name: Carter Fritschle

Signature: Carter Fritschle

Certification Date:

Field Report Preparation Date: 3-16-90

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

CLAIMANT(S): Ronald J. and/or Tara Scoffield

SUPPLEMENTAL INFORMATION

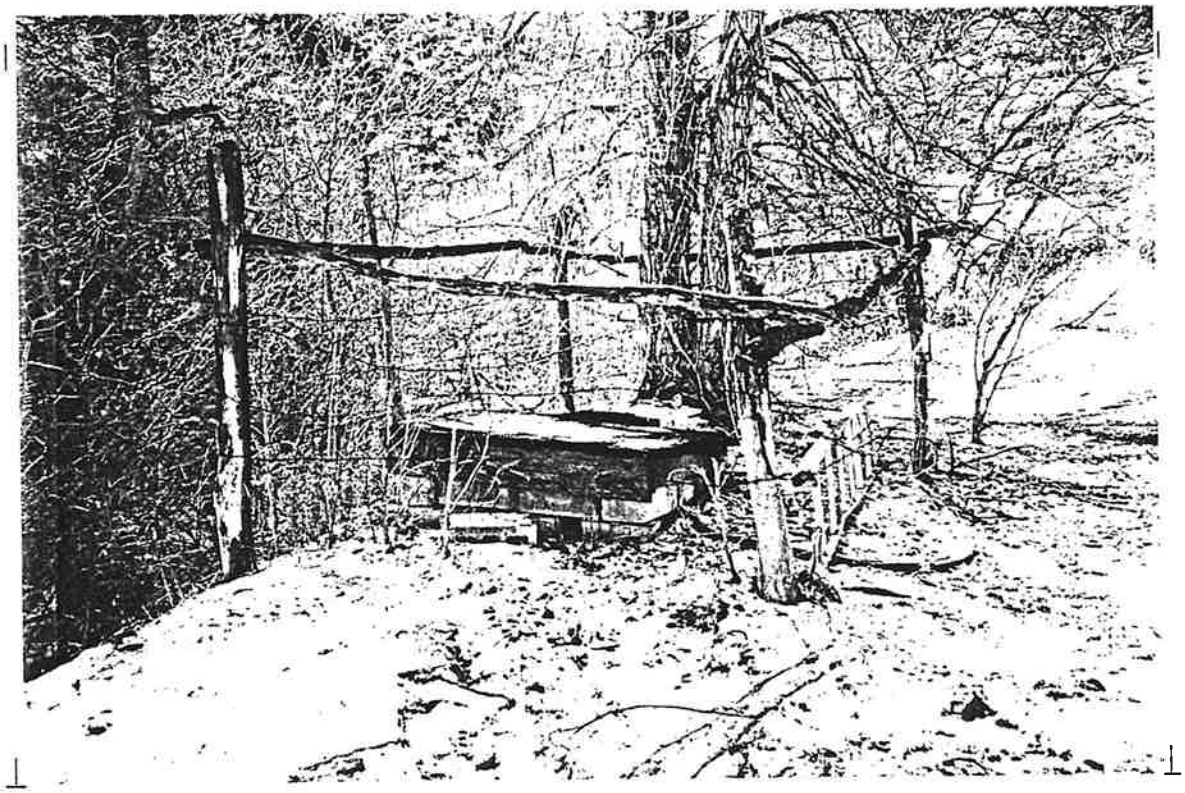
Additional information about this right was obtained on October 18, 1990. The Scoffield's mobile home is serviced by two pipelines from the cistern. There is a line that tees off from the line running to Mr. Smith's corrals and house. The area of the tee had been excavated sometime between March 15, 1990 and October 18, 1990. The pipe running to Scoffield's mobile home had been partially flattened, however some water could still flow through the line. Mr. Scoffield stated that Mrs. Palmer's house was the original domestic place of use for this right, and stock were watered from the spring in the area where the Scoffield's mobile home is now situated.

CLAIMANT(S): Ronald J. and/or Tara Scoffield

ANALYSIS OF THE WATER USE

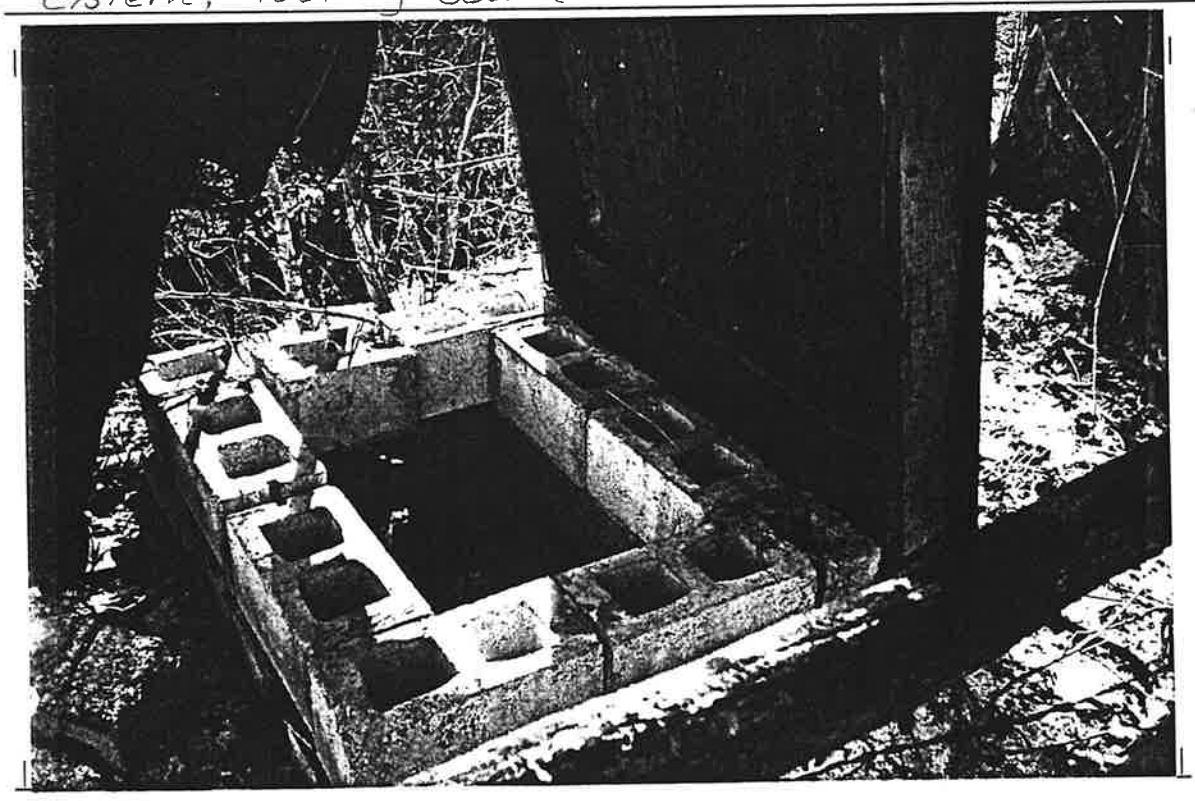
The water is used for domestic purposes in a mobile home. The priority date claimed would indicate that this water right may have been transferred from another location to the present location. The system is shared with Theron Smith, however Mr. Smith uses this system only as a backup to his domestic well.

Claim Identification No. A29-10103



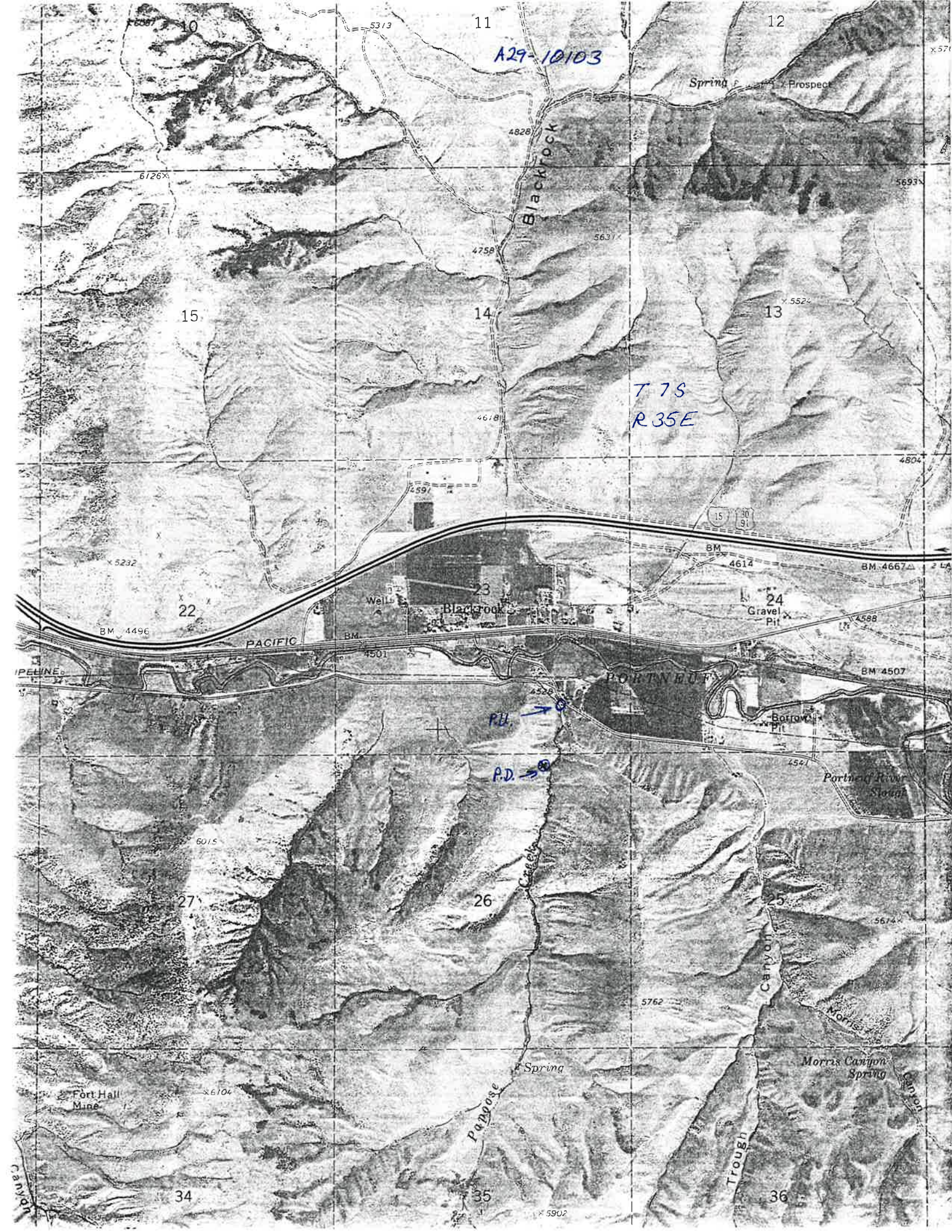
CLF

Cistern, looking south 3-15-90

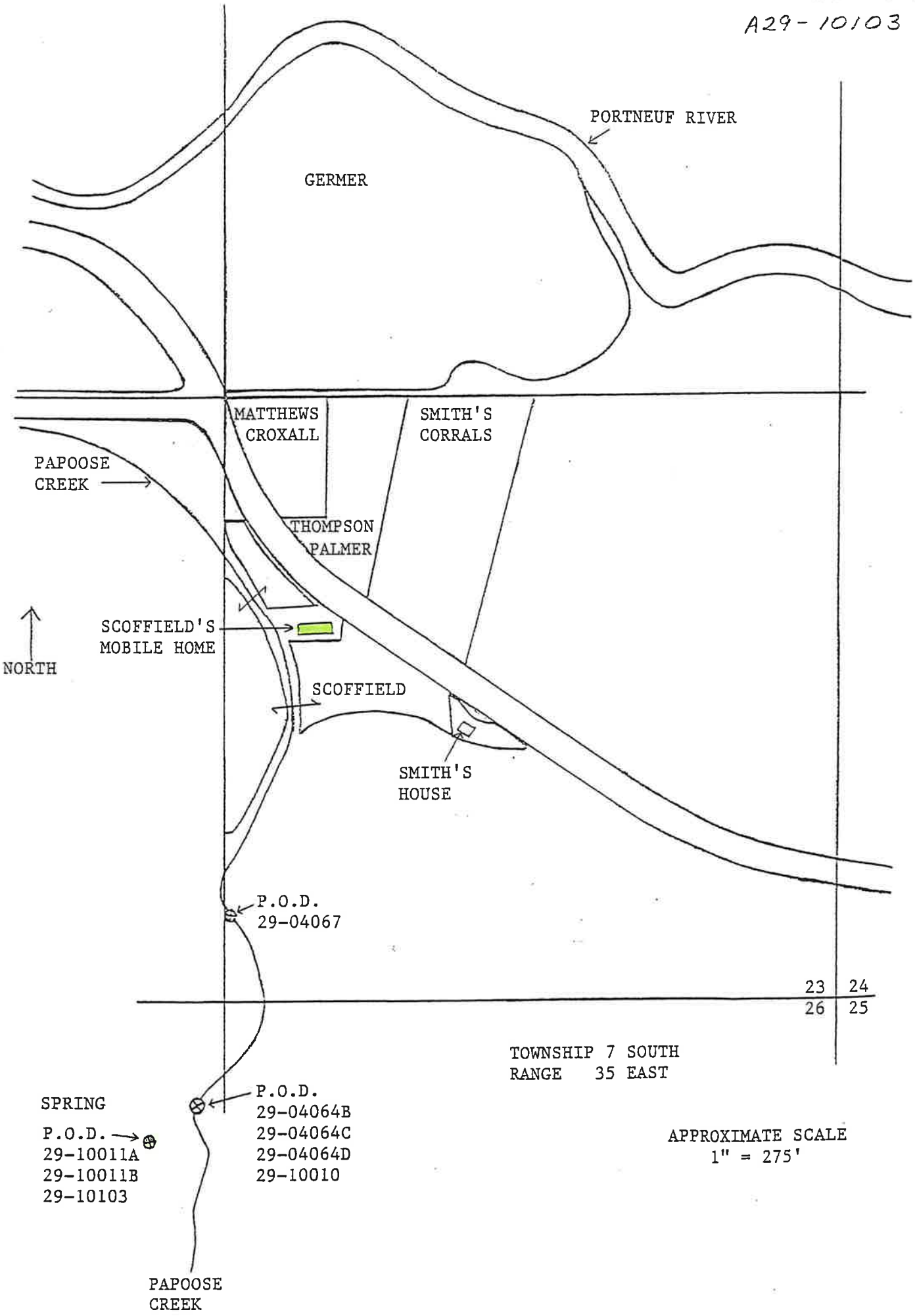


CLF

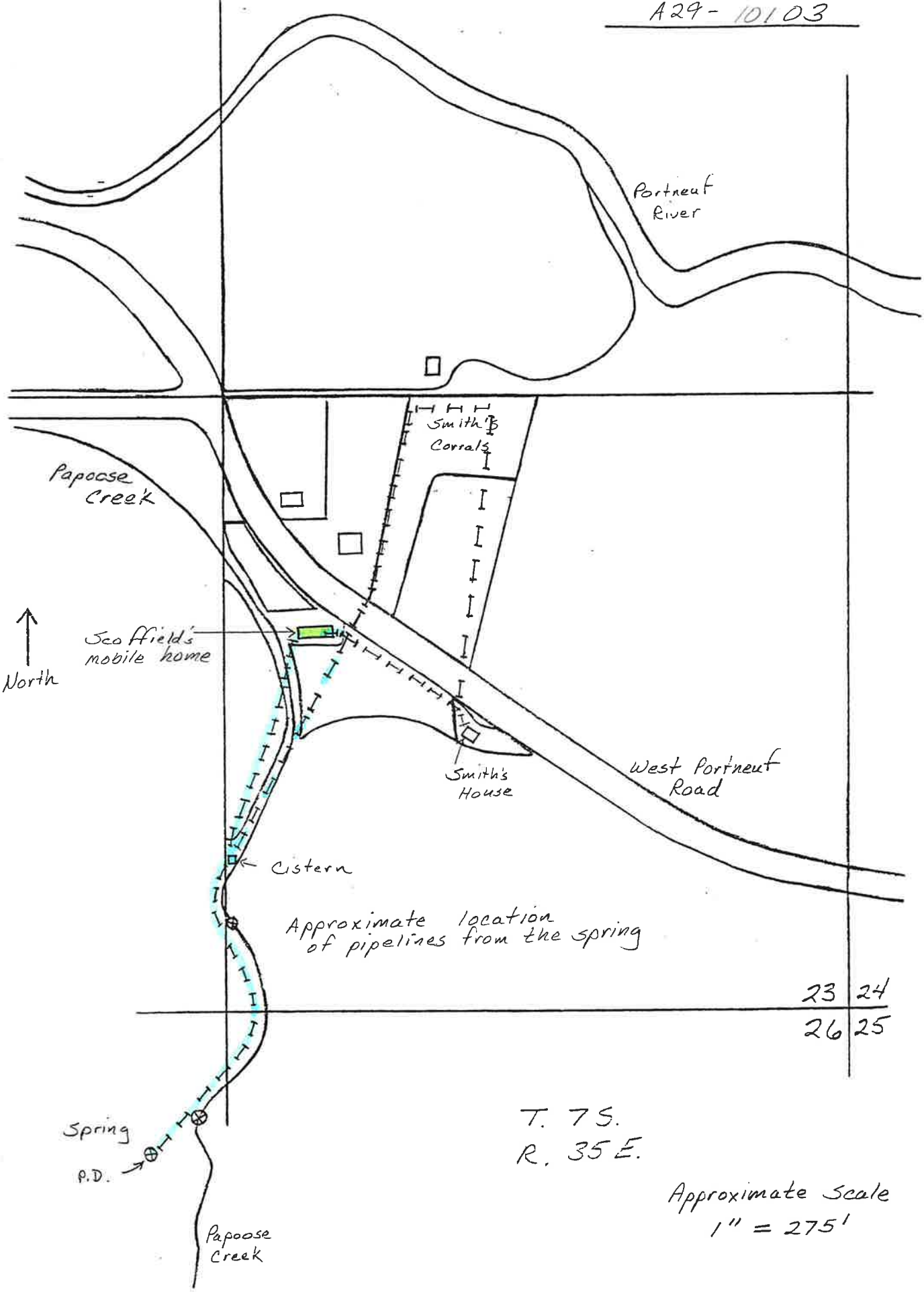
Interior of cistern 3-15-90


A29-10103
10
11
12
15
14
13
23
22
24
Spring
Prospect
Blackrock
Blackrock
Well
Gravel Pit
T 7S
R 35E
BM 4614
BM 4667
BM 4496
BM 4501
PACIFIC
PORTNEUF
BM 4507
P.U.
P.D.
Borrow Pit
Portneuf River Slough
27
26
25
Canyon
Morris
Morris Canyon Spring
Canyon
Spring
Pamoose
Fort Hall Mine
Trough
Canyon
34
35
36
4828
6126
5693
5631
4758
5524
4618
4804
4591
5232
4598
4528
4541
6015
5762
5674
6104
5902
5313

A29-10103


PORTNEUF RIVER
GERMER
MATTHEWS
CROXALL
SMITH'S
CORRALS
PAPOOSE
CREEK
THOMPSON
PALMER
NORTH
SCOFFIELD'S
MOBILE HOME
SCOFFIELD
SMITH'S
HOUSE
P.O.D.
29-04067
23
24
26
25
TOWNSHIP 7 SOUTH
RANGE 35 EAST
SPRING
P.O.D.
29-10011A
29-10011B
29-10103
P.O.D.
29-04064B
29-04064C
29-04064D
29-10010
APPROXIMATE SCALE
1" = 275'
PAPOOSE
CREEK

A29- 10103

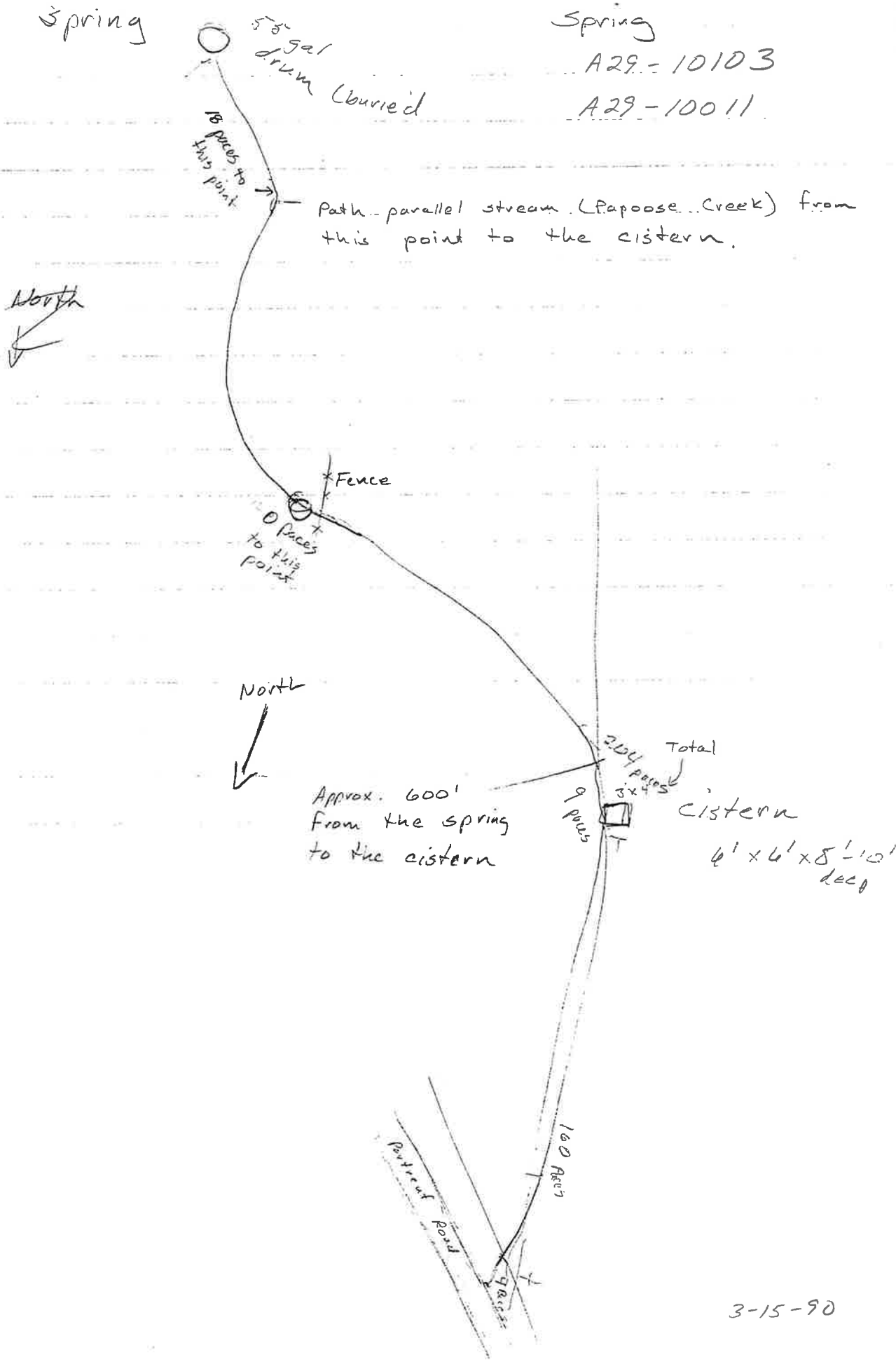

Portneuf River
Smith's Corrals
Papoose Creek
North
Scofield's mobile home
Smith's House
West Portneuf Road
Cistern
Approximate location of pipelines from the spring
23 24
26 25
Spring
P.D.
Papoose Creek
T. 7S.
R. 35E.
Approximate Scale
1" = 275'

Smith + Scoffield

Spring

A29-10103

A29-10011



3-15-90

A29-10011
A27-10103

Measurements made for Smith v. Scoffield 4-9-91

5 gallons in 3:45 — 1st measurement

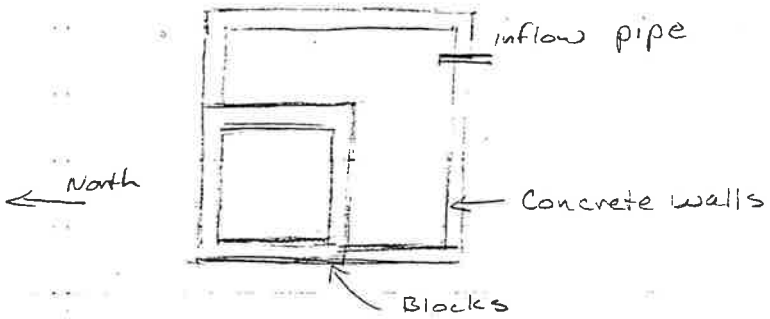
5 gallons in 3:43 — 2nd measurement

3:44 Ave

$$\frac{5 \text{ gallon}}{3:44} = \frac{5 \text{ gallon}}{3 \text{ min} + (\frac{44}{60} \text{ min})} = \frac{5 \text{ gal}}{3.73 \text{ min}} = 1.34 \frac{\text{gal}}{\text{min}}$$

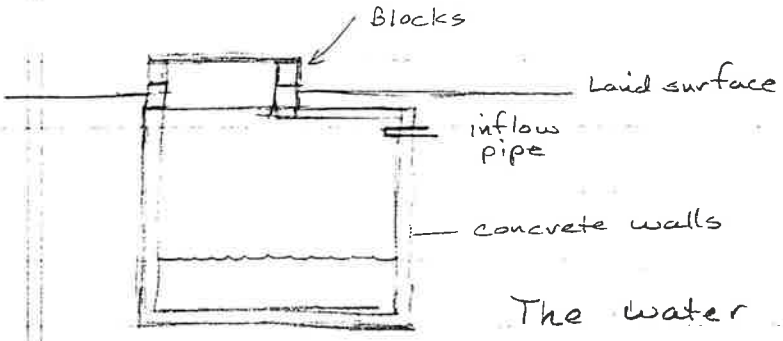
$$1.34 \text{ gpm} \times \frac{1 \text{ cfs}}{448.8 \text{ gpm}} = 0.003 \text{ cfs}$$

The cistern was drained to allow the filling of a 5 gallon bucket from the inflow pipe



Plan view

Cistern



cross section (looking east)

The water in the cistern was approximately 18" deep.

The inflow pipe is accessed by using a ladder to go down into the cistern.

4-9-91

4-8-91 Scoffield 775-4560

OK for 1:00 p.m. on 4-9-91

Ronald Scoffield 775-4560 A29-04064B
Tara Scoffield A29-10103

No Answer 12:40 P.M. 3-13-90
~~Tentative~~ appt. 2:00 p.m. 3-15-90
Trailer just before Smith's place.
5195 W. Portneuf

No Answer 8:50 AM 10-17-90
busy 5:45 p.m. 10-17-90
busy 6:00 p.m. 10-17-90
busy 6:15 pm. 10-17-90

6:00 pm. Mrs. Scoffield said they would have the system operating.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

November 20, 1990

A29-10103

A29-04064B
RONALD J. SCOFFIELD, JR.
5195 W. PORTNEUF

INKOM ID 83245

RE: Evidence of priority date for Notices of Claim to a Water Right filed in the Snake River Basin Adjudication (SRBA).

Dear Claimant(s):

The claims identified with the numbers shown above your name have been filed in the SRBA. The claims indicate the water usage is based on beneficial use. Beneficial use rights are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date the water was first put to use, known as the priority date, has not been confirmed by a license, decree or permit. Please note that certain beneficial use rights are identified as "Statutory Claims". A Statutory Claim is a beneficial use right that was recorded with the Department, but was not confirmed. Since the priority date of a beneficial use water right cannot be confirmed by a field examination, proof must be provided supporting the priority date.

Printouts of your claims are enclosed for your reference, as well as the pamphlet entitled **"Evidence of Priority"**. The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to read all of the pamphlet, I direct your attention to the two sections entitled **"What Kind of Evidence is Required"** and **"Some Examples of Documents Which May Be Evidence of the Priority Date"**.

It is the goal of the Department to recommend the historical water rights within the Snake River Basin as accurately as possible. A field examination to verify other items of the claims has been conducted. Since the Department cannot confirm the priority date the way other elements of the water right are confirmed by field examination we are asking for evidence of the priority shown on the Notice to make the record complete before recommending a beneficial use water right to the court.

The Department will not recommend the claims be decreed by the court as claimed if no evidence of a priority date is submitted.

Please submit the required evidence supporting the priority date to the address shown below by **December 20, 1990**, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Sincerely,

Carter Fritschle

Carter Fritschle
Senior Water Resource Agent
Adjudication Bureau

Please submit documents to:

Idaho Department of Water Resources
Adjudication Bureau
1301 N. Orchard
Boise, ID 83706-2237

Enclosures:
"Evidence of Priority"
"Adj. Listing of Water Rights"

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

Date: March 7, 1990

Jay Scoffield
Tara Scoffield
5195 W. Portneuf Road
Inkom, ID 83245

Identification no. A29-10103 & A29-04064B

RE: Field examination of a water right claimed in the Snake River Basin Adjudication

Dear Claimant:

We are planning to conduct water right field examinations in the vicinity of your water right claim on March 14 and 15, 1990. A field examination is needed to verify your water use.

The field examiner will be visiting your property to obtain information necessary for the verification process. If you, or someone with knowledge of your water system could be available at the time of the field examination, it would be appreciated.

You will be contacted by telephone to schedule a time for the field examination. If you have any questions regarding the field examination, you may contact this office at (208) 327-7862.

Sincerely,

Carter Fritschle

Carter Fritschle
Senior Water Resource Agent
Adjudication Bureau

MEMO

TO: File
FROM: Lynne Krogh-Hampe
DATE: February 12, 1990
RE: Smith v. Scoffield

I. CLAIMS (to Papoose Creek or spring trib to Papoose Creek)

A. Smith

A29-4064A* 1889, .04 cfs to irr 1.8 A (shows lot N of rd.)
A29-10011 1945, .02 cfs for D/1, S/100 (shows same lot, source spring)
A29-10010 1969, .02 cfs to irr 1 A (shows lot S of rd.)
Also has two claims (A29-4156 and A29-4215) from Portneuf River for irr of lands in different section.
Also has one claim (A29-4065) from Portneuf River for irr of same lands as A29-4064A.

B. Scoffield

A29-4064B* 1889, .164 cfs for irr of 8.2 A, plus incidental stock
A29-10103 1927, .02 cfs for D/1 (source spring)

C. Croxall

A29-4064C* 1889, .022 cfs for irr of 1.1 A
Also has one claim (A29-10101) from GW for D/1

D. Palmer

A29-4064D* 1889, .031 cfs for irr of 1.5 A
Also has one claim (A29-10102) from GW for D/1

E. Germer

A29-4067 1945, .260 cfs for irr of 13 A

*These claims are all part of one statutory claim for which there are assigments in IDWR files.

II. Notes

The report on these parties claims will include only the claims to Papoose Creek and the spring tributary to Papoose Creek.

The first step is to do the field work to review the claims, and to provide a fairly detailed report of the results of the field work, including a diagram (from which a map can later be made if necessary) of the diversion works and uses of water.

We also need to get some supporting information on the priority dates claimed, since they all have a basis of beneficial use or statutory claim. A29-10010 and 10103 qualify as small D&S which would normally come under the proposed policy that no supporting information is required for the priority date, but here, all the claims are small and we know there is a current dispute so we probably ought to seek supporting information as to all of them. Note that the statutory claim is evidence of the priority date only as of the date the claim was filed (8/30/76 for 29-4067, and 5/3/76 for 29-4064).

A29-4064A, A29-4064B, A29-4064C and A29-4064D are portions of A29-4064 that are claimed consistent with the assignments in IDWR files. A29-4064E, which is the remainder that was not conveyed away, was not claimed, and this should be checked out. A29-4067 is claimed consistent with the statutory claim, except that a later priority date is claimed in the adj claim.

From: DWR70::THOMPSON 2-JAN-1991 15:05:28.07
To: DWR03::FRAZEE
CC: THOMPSON
Subj: A29-10103

SAL,

BY GOSH!! HAPPY NEW YEAR TO YOU TOO!!

A2910103 WAS FILED BY RONALD J AND/OR TARA L SCOFFIELD 11-08-89 (TONY OLIENCHAK) TONY HELPED THEM. DOES THIS HELP?

JO

RECEIVED
JAN 0 . 1991
Department of Water Resources
Eastern District Office

From: DWR03::FRAZEE 2-JAN-1991 13:57:47.49
To: DWR70::THOMPSON
CC: FRAZEE
Subj: A29-10103

HAPPY NEW YEAR, JO! WOULD YOU KINDLY LOOK AT THE ORIGINAL CLAIM IN YOUR FILE AND TELL ME UNDER WHOSE NAME IT IS FILED? I JUST DID A CHANGE IN OWNERSHIP, BUT THE ORIGINAL CLAIMANT WAS OBLITERATED.... WELL, IT'S A LONG STORY, EASIER BY PHONE, IF YOU WANT TO KNOW THE GORY DETAILS!

(I HOPE THE ORIGINAL OWNER IS A D. GRACE PALMER...)

THANX FOR YOUR HELP. ...SAL

TO: Idaho Department of Water Resources

RECEIVED
DEC 20 1990
Department of Water Resources

spring right - Scoffields

E: Claim # A29-10103

The water from this Spring has been used for Domestic water since 1889 when the Groundwas homesteaded But I could only trace Back to 1930's when palmer purcashed the ground. the palmers continued to use the water from this spring only for Domestic and a few years Later piped the the spring water to a Storage tank at the top of their property. In the Early 1980's they Sold this property to their grand Daughter and ran anobther pipe for Domestic water to her mobile home. Shortly after this time the palmers Drilled a well and conveyed all of their Rights to this Spring, pipe & cistern To thier grandaugter ~~Hell~~ and her husband Hellen & HarOld Payne. In 1987 the Scoffield's purcashed this property and water Right was then conveyed to us. this Spring has

has been the only Domestic water for this piece of property and Palmer's property (until they Drilled a well 1981)

Notary Brad Carpenter
Commission expires 4-17-96
Bannock County
Idaho

Tara L. Scoffield
5195 W. Portneuf Rd.
INKom, Idaho 83245

2-1

1577

779337

QUIT CLAIM DEED

FOR VALUE RECEIVED, GRACE PALMER, a widow, hereby quit claims and conveys to HAROLD G. PAYNE whose address is 5195 West Portneuf Road, Inkom, Idaho, 83245, all her right, title, and interest in the following described water rights, to wit:

All water rights, including 8.190 miner inches of the waters of Papoose Creek, a tributary of the Portneuf River, all of which water rights are appurtenant to the following described real property:

PARCEL 1: A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows: Beginning at the East 1/16 corner on the South line of said Section; thence N1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°48'00" West, 70.75 feet to the Southerly right of way of Portneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East, 40.00 feet, thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL 2: Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property, to wit:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East along the West line of SE1/4SE1/4 260 feet to the true point of beginning; thence North 88°06' East

STENSEN, Chartered
405 WEST WHITMAN
O, IDAHO 83204

parallel to South 1/16 line of Section 23, a distance of 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the point of beginning.

DATED this 29th day of August, 1986.

Grace Palmer
Grace Palmer

STATE OF IDAHO)
)ss
County of Bannock)

On this 29th day of August, 1986, before me the undersigned notary public personally appeared GRACE PALMER, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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

Barbara Fuger
Notary Public
Residing at: Pocatello, Idaho

NOTARY SEAL

NO. 779337
RECORDER AT REQUEST OF
Lamont Jones
'86 SEP -2 P1:33

OFFICIAL RECORD BK NO. 449
BANNOCK COUNTY, IDAHO
LARRY W. GHAN RECORDER
FEE 4.00 DEPUTY JC

BOX 967 - 405 WEST WHITMAN
POCATELLO, IDAHO 83204

p. 1 ex. missing

QUIT CLAIM DEED

FOR VALUE RECEIVED, HAROLD PAYNE and HELEN PAYNE, husband wife, as Grantors, do hereby quit claim and convey to JAY FFIELD and TARA SCOFFIELD, husband and wife, as Grantees, whose address is 5195 West Portneuf Road, Inkom, Idaho, 83245, all their right, title, and interest in and to the following described water rights, to wit:

All water rights, including 8.190 miner inches of the waters of Papoose Creek, a tributary of the Portneuf River, all of which water rights are appurtenant to the following described real property:

PARCEL 1: A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows: Beginning at the East 1/16 corner on the South line of said Section; thence N1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°48'00" West, 70.75 feet to the southerly right of way of Portneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East 40.00 feet, thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL 2: Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property, to wit:

JONES and CHRISTENSEN, Chartered
P. O. BOX 967 · 405 WEST WHITMAN
POCATELLO, IDAHO 83204

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	MAXIMUM DIVERSION	STAGE
A29-10103	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W. PORTNEUF INKOM ID 83245	09/01/1927	DOMESTIC	01-01	12-31	0.02 CFS	BENEFICIAL USE
						0.02 CFS TOTAL 0.00 AFA TOTAL	

SOURCE: SPRING TRIBUTARY: PAPOOSE CREEK
OTHER RIGHTS: NONE
CONDITIONS OF APPROVAL:

REMARKS: COLLECTION TANK/PIPELINE TO 6' X 6' X 2' CISTERN. PVC PIPE FROM CISTERN TO HOUSE.

POINT OF DIVERSION:
T07S R35E S26 NENWNE

PLACE OF USE: DOMESTIC
T07S R35E S23 SESE

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 4

To Carter Fritschle	From Jo Thompson
Co. IDWR	Co. IDWR
Dept.	Phone #
Fax #	Fax #

1-2

10: Idaho Department of Water Resources

RECEIVED
DEC 20 1990
Department of Water Resources

RE: Claim # A29-10103

The water from this Spring has been used for Domestic water Since 1889 when the Groundwas homesteaded But I could only Trace Back to 1930's when Palmer purchased the ground. the palmers continued to use the water from this Spring only for Domestic and a few years Later piped the the Spring water to a Storage tank at the top of their property. In the Early 1980's they Sold this property to their grand Daughter and ran another pipe for Domestic water to her mobile home. Shortly after this time the palmers Drilled a well and conveyed all of their Rights to this Spring, pipe & cistern to thier grandaugter ~~Hell~~ and her husband Hellen & HarDld Payne. In 1987 the Scoffields purcashed this property and water Right was then conveyed to us. this Spring has

RECEIVED
JAN 0 1991
Department of Water Resources
RECEIVED
DEC 20 1990
Department of Water Resources

TO: Idaho Department of Water Resources

RE: claim # A29-04064B

The water from this Spring has been used for Irrigation on this property since 1889. years ago the creek (papoose) Did not flow enough to Reach any other ground and was Damed at night to build enough water to flood the property we (scoffield's) now own. The creek has changed considerable over the Last few years and flows almost year round. water from this spring almost exculsively watered the ground we (scoffields) own up until about 20 yrs ago when the palmers piped it for sprinklers and Divided and Conveyed it for Irrigation use on several parcels of ground

Tara L. Scoffield
5195 W. Portneuf Rd
Inkom. Idaho 83245

Notary Public Carpenter
Commission exp 4-17-96

A 29-10103
2-2

has been the only Domestic water for this piece of property and Palmer's property (until they Drilled a well 1981)

Notary Brad Carpenter
Commission expires 4-1796
Bannock County
Idaho

Tara L. Scoffield
5195 W. Portneuf Rd.
INKom, Idaho 83245

From: Joe & Tahna Matthews
5230 W. Portneuf Rd
Inkom, Idaho 83245

A29-04064C

Dec. 10, 1990

RECEIVED
JAN 02 1991
Department of Water Resources
Eastern District Office

To: Idaho Department of Water Resources
Adjudication Bureau
1301 N. Orchard
Boise, Idaho 83706-2237

To whom it may concern,

We purchased the home on 5230 W. Portneuf Inkom, Idaho 83245 from Billie J. Croxall. We need now to file a claim for the water rights.

I have enclosed a copy of the warranty deed stating proof of the purchase of the home. Also I have enclosed the print out of the adj. listing of the water rights, and on that print out there is a letter of proof of use of the water from Papoose Creek.

Please let me know if any further information is needed.

Here is our address and phone numbers where we may be reached.

Joseph & Tahna Matthews
5230 W. Portneuf Rd.
Inkom, Idaho 83245
Home phone # 775-4507
Tahna work #(208) 237-0327

Sincerely,

Tahna Matthews

Tahna J. Matthews

Claim Identification No. A29-10103



CLF

Point of diversion, area of spring is fenced 3-15-90



CLF

Mr. and Mrs. Scoffield's mobile home, looking S.E. 3-15-90

Clerk
Re: Water Right
Department of Water Resources
301 N. Orchard
Boise, Idaho

83706

POCATELLO, ID
26 SEP 1991
PM

POCATELLO
ID
SEP 29 1991

INSTRUMENT NO. 252332

PRIMM & SONS, POCATELLO, IDAHO 2276

WARRANTY DEED

This Indenture, Made this 1st day of November in the year of Our Lord One Thousand Nine Hundred and Forty six, between

BERT L. PALMER and DOROTHY E. PALMER, his wife,

of Pocatello, County of Bannock, State of Idaho, the parties of the first part, and

MRS. S. J. PALMER, also known as Nora I. Palmer, a widow

of Pocatello, County of Bannock, State of Idaho, the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of

ONE AND NO/100

DOLLARS,

lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said party of the second part, and to her heirs and assigns forever: All that certain lot, piece or parcel of land situate, lying and being in the County of Bannock, State of Idaho, bounded and more particularly described as follows, to-wit:

All that portion of the NE quarter of the SW quarter of Section 23, Township 7, Range 35, E.B.M. lying south of the Oregon Short line Railroad right of way; also all that portion of the NW quarter of the SE quarter of Section 23, Township 7, Range 35 E.B.M. lying south of the Portneuf River to where the river intersects with the County road, hence westward along the southern boundary of the County Road to the 1/2 16th quarter section line of Section 23 or to where the county road intersects with the Railroad right of way.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof:

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, and to her heirs and assigns forever. And the said parties of the first part, and their heirs and assigns warrant the said premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns against the said parties of the first part, and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

T. H. Gathe, Jr.

Bert L. Palmer (SEAL)

Dorothy E. Palmer (SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO, }
County of BANNOCK } ss.

On this 6th day of November, in the year 1946, before me, Theodore H. Gathe, Jr. a Notary Public in and for said County and State, personally appeared

BERT L. PALMER and DOROTHY E. PALMER, husband and wife,

known to me to be the person s whose name s subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL)

Theodore H. Gathe, Jr. Notary Public

My Commission expires Feb. 15, 1950.

Residence: Pocatello, Idaho

I hereby certify that this instrument was filed for record at the request of Mrs. S. J. Palmer Route 1 So.
at 20 minutes past 1 o'clock P. M., this 9 day of Apr. 11 A. D. 1947.
In Book 99 of Deeds, Page 525.

Anna Keefe By
Fee, 1.00 Ex-Officio Recorder. Deputy.

INSTRUMENT NO. 44785.

THIS INDENTURE. Made this 16th day of February in the year of our Lord one thousand nine hundred and sixteen between Peter Anderson, a widower, of Lago County of Bannock State of Idaho the party of the first part, and Leonard S. Sorensen of Lago County of Bannock State of Idaho the party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Thirty five hundred ($3500.00) Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs, and assigns forever, all the following described real estate, situated in Bannock County, State of Idaho, to-wit:

The Southeast quarter of the northwest quarter of Section Thirty (30) Township eleven (11) south of range forty one (41) east B. M.
also beginning at the south east corner of lot numbered two in said section thirty (30) thence running north forty (40) rods; thence west eighty (80) rods; thence south forty (40) rods; thence east eighty (80) rods to place of beginning Containing sixty (60) acres of land.
It is further understood and agreed by the parties herein that the party of the first part shall retain a building spot consisting of 1/2 acre of land along the west bank of Trout creek and shall absolute and free use of said land as long as he shall live and upon his death said land shall revert to the party of the second part together with all improvements thereon.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the revision and revisions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part:

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever. And the said party of the first part, and his heirs, the said premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said party of the first part haas hereunto set his hand and seal the day and year first above written.

Peter Andersen, (Seal)

Signed, Sealed and Delivered in the Presence of
Wm. H.Mendenhall,
Neoma Mendenhall,

$3.50 I.R.S. attached and cancelled.

State of Idaho,)
) ss.
County of Bannock,)

On this 16th day of February, in the year 1916, before me, Wm. H. Mendenhall a Notary Public in and for said County, personally appeared Peter Anderson, a widower known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the

1930 - Toston to S.J. Palmer

INSTRUMENT NO. 134894

PRIMBS & SONS, POCATELLO, IDAHO 2431

WARRANTY DEED

what is this?

This Indenture, Made this 27th day of September, in the year of Our Lord One Thousand Nine Hundred and thirty, between SALLIE F. TOSTON, a single woman, of Pocatello, County of Bannock, State of Idaho, the party of the first part, and S. J. Palmer, of Pocatello, County of Bannock, State of Idaho, the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One and no/100 DOLLARS, lawful money of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and other good and valuable considerations, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto the said party of the second part, and to his heirs and assigns forever: All those certain lots, piece s or parcels of land situate, lying and being in the County of Bannock, State of Idaho, bounded and more particularly described as follows, to-wit:

North half of the Southeast Quarter, and the Northeast Quarter of the Southwest Quarter of Section Twenty three (23), Township Seven (7) South, Range Thirty five (35), E. B.. M, save and except a tract consisting of two acres heretofore deeded to School District #65, and also a tract containing 1.08 acres heretofore conveyed to the Utah-Idaho Cement Company, also less right of ways for public roads. Also excepting the following:

Beginning at the East 1/16 corner of Section 23, Township 7 South, Range 35, East of the Boise Meridian, and running thence East a distance of 370 feet; thence at right angles South a distance of 19½ rods, more or less to a point which is 80 feet north of the North line of the Oregon Short Line Railroad Right of way; thence at right angles west and following the north line of the Oregon Short Line Railroad right of way a distance of 410 feet; thence at right angles North to last described line a distance of 19½ rods; more or less, to a point which is 36 feet west of the East 1/16 corner of said section; thence at right angles East a distance of 36 feet to the place of beginning. Also excepting:

Commencing at the Northwest corner of the Northeast Quarter of Southwest Quarter of Section Twenty-three (23), in Township seven (7) South, Range Thirty-five (35) East Boise Meridian, in Bannock County, Idaho, and running thence East along the North line of said NE¼ SW¼ for a distance of 636.6 feet to the place of beginning of this Survey; thence continuing East along the North line of said NE¼SW¼ for a distance of 416.4 feet; thence South 2° 00' East for a distance of 405.62 feet to the North line of the Old Oregon Trail Highway; thence in a Westerly direction along the North line of the Oregon Trail Highway for a distance of 417.25 feet; thence North 2° 00' West for a distance of 431.72 feet to the place of beginning, the above description being otherwise known as Tract Four (4), Black Rock Subdivision, Bannock County, Idaho, as the same is platted on the official Plat thereof on file in the office of the County Recorder of Bannock County, Idaho.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining, and the rents, issues and profits thereof:

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and her heirs the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against the said party of the first part, and her heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these premises forever defend.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Paul Bistline — Sallie F. Toston (SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO, County of Bannock } ss.

On this 27th day of September, in the year 19 30, before me, the undersigned a Notary Public in and for said County and State, personally appeared Sallie F. Toston, a single woman, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Paul Bistline
Notary Public
Residence Pocatello, Idaho

(SEAL)

I hereby certify that this instrument was filed for record at the request of A & T G Co. at 10 minutes past 11 o'clock A M., this 1st day of May A. D. 1936..., in Book 73 of Deeds, at page 66

Fee, $1.40 Anna Keefe Ex-Officio Recorder. By Deputy.

INSTRUMENT NO. 134504

Geo. Primbs & Sons, Mfg. Stationers, Pocatello, Idaho

Warranty Deed

This Indenture, Made this 19th day of November in the year of our Lord One Thousand Nine Hundred and Twenty - seven, between Samuel J. Palmer and Nora I. Palmer, his wife of Pocatello, County of Bannock, State of Idaho, the parties of the first part, and Hyrum Martin Palmer of Pocatello, County of Bannock, State of Idaho, the party of the second part:

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One

DOLLARS,

lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and for other good and valuable considerations, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto the said party of the second part, and to his heirs and assigns forever: All those certain lots, pieces or parcels of land situate, lying and being in the County of Bannock, State of Idaho, bounded and more particularly described as follows, to-wit:

The Southwest Quarter of the Southwest Quarter of Section Twenty-four; and the southeast quarter of the southeast quarter of Section Twenty Three; in Township Seven (7) South, Range Thirty-Five (35) East of the Boise Meridian, and containing 80 acres, more or less. Together with all water, water rights, privileges and franchises belonging to or with the said lands, or any part or parcel thereof, for the irrigation of the same or for domestic or culinary purposes thereon, and all dams, ditches, flumes, reservoirs, aqueducts, or other works used for the storage, diversion or distribution of any such waters or in conveying the same to, upon or over the said lands, or any part or parcel thereof.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining and the rents, issues and profits thereof:

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against the said parties of the first part, and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Paul Bistline

Samuel J. Palmer (SEAL)

Nora I. Palmer (SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO, County of Bannock } ss.

On this 19th day of November, in the year 19 27, before me, Paul Bistline a Notary Public in and for said County and State, personally appeared Samuel J. Palmer and Nora I. Palmer, his wife known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Paul Bistline
Notary Public.
Residence Pocatello, Idaho

(SEAL)

I Hereby certify that this instrument was filed for record at the request of H. M. Palmer, at 40 minutes past 1 o'clock P.M. this 2 day of Dec. A. D. 19 27, in Book 57 of Deeds, at page 275.

Fee, $ 1.00 Lillian Bjorngberg Ex-Officio Recorder. By A. Smyth Deputy.