

doth covenant, grant, bargain and agree to and with the said party or parties, heirs and assigns, that at the time of the enrolling and delivering of these presents being well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form afore said; and that the same are free and clear of all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will warrant and 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 presence of J. W. Simmons
Mary E. Simmons

Walter L. Hymas (Seal)
Sarah J. Hymas (Seal)

RECEIVED

JUL 22 2025

DWR/Preston

STATE OF IDAHO)
County of Bear Lake) ss

On this 10 day of August A.D. 1908, before me James W. Simmons a Justice of the Peace in and for said County, personally appeared Walter L. Hymas and Sarah J. Hymas, his wife, personally known to me to be the persons whose names are subscribed to the within instrument, the said Sarah J. Hymas described as a married woman, and the said Walter L. Hymas and Sarah J. Hymas, his wife, each of them, acknowledged to me that they respectively executed the same. And on this 10 day of August, A.D. 1908, before me, the officer above described, personally appeared the said Sarah J. Hymas, known to me to be the person whose name is subscribed to the within instrument, described as a married woman and the wife of the said Walter L. Hymas, and upon an examination without the hearing of her husband, I made her acquainted with the contents of the said instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

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

My commission expires Jan. 1st. 1909. James W. Simmons (Seal)
Justice of Peace

Recorded at the request of Stanley Morgan, May 26, 1931, at 3:30 o'clock P.M.

Sam V. Tunks, Recorder

By [Signature] Deputy.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO
IN AND FOR THE COUNTY OF BEAR LAKE.

C. H. BROWN, D. M. KING, S. W. MATTHEWS, SAMUEL MATTHEWS,)
(SAMUEL MATTHEWS Guardian ad litem for) Anna A. Edna A.)
Alonzo H. Harry K. and Esther S. Matthews, Minors, C. C.)
SORENSEN, CHRISTIAN OLSEN, E. S. MORGAN, and THE OVID)
IRRIGATION COMPANY, a corporation,)

Plaintiffs,

vs.

JOSEPH M. WIXOM, LORENZO WIXOM, MARONI MECHAM, J. T. LYONS,)
OLIVER ORR, JOHN PRESCOTT, CHARLES LYONS, R. C. ORR, THOMAS)
HARRISON, J. H. MILES and JOSIAH ORR,)

Defendants.)

This case was commenced on the 28th. day of January, 1899 and summons therefore duly issued and served upon each and every of the said defendants, all of whom appeared by their attorneys, Budge & White and filed their answers and cross complaints excepting Thomas Harrison, who having failed to appear and answer, or otherwise plead to the plaintiff's complaint within the stipulated time allowed his default was regularly entered, and Josiah Orr duly and regularly executed and filed herein a disclaimer in writing, disclaiming all right, title and interest, in and to the waters which forms the subject matter of this suit.

The plaintiffs were admitted to file an amended complaint. It was stipulated and agreed, by and between counsel in open court that the plaintiff's amended complaint, and the defendant's cross-complaint, for the purpose of pleading, should be regarded as unverified, and the allegations thereof deemed denied. The jury was especially waived by both parties.

On the 5th. day of June, 1900, this cause came regularly on to be heard before the Court, upon the amended complaint of the plaintiffs, and the answer and cross-complaint of the said defendants, John A. Bagley, Esq. appearing as counsel for the plaintiffs, and Messrs Budge and White, appearing as counsel for the defendants.

Witnesses were sworn in behalf of the plaintiffs and documentary evidence introduced and the taking of testimony occupied the time of the Court, to and including the 15th. day of June, 1900, when further consideration of said cause, was by order of the Court, continued for the term.

At the February, 1901, term the taking of testimony was resumed and witnesses were sworn and testified in behalf of both the plaintiffs and defendants, and documentary and record evidence was introduced to and including the 23rd. day of February, 1901.

On the 28th. day of February, 1901, counsel for the respective parties, commenced the arguments of this cause before the court, and on the 2nd. day of March, 1901, said

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[Signature]

oral arguments having been concluded, the Court ordered counsel for the respective parties to file and serve typewritten briefs within 30 days and the case was continued for further consideration for the term.

Now on this 3rd. day of February, 1902, the arguments of counsel having been concluded and the Court being fully advised in the premises and having filed and rendered his decision, herein, makes and files the following findings of facts, and conclusions of law, to-wit:

FINDINGS OF FACT.

1. That all the lands mentioned in the pleadings herein are arid lands and require water, artificially applied during the irrigating season of each year, in order to successfully raise crops of any kind, that the said lands lie along, and are adjacent to North Creek and its tributaries, a stream in Bear Lake County, and are susceptible to irrigation, with the waters therefrom; that there is no other source from which water could be secured for the irrigation of said lands, or any of them.

2. That from 1/2 to 1 miners inch, measured under a 4 inch pressure, (or its equivalent in second feet) of water is necessary for the proper irrigation of the lands mentioned in the pleadings, and the several amounts which the Court hereinafter finds the said several parties entitled to, is necessary in each respective case, for the proper irrigation of the lands upon which the Court finds it is to be used.

3. The term "second feet" as used in these findings of facts, conclusions of law and the decree, is equivalent to one cubic foot of water per second of time, which is equivalent to 50 miners inches, measured under a four inch pressure.

4. That each of the parties hereto entitled to the use of the waters of North Creek or its tributaries, should have a perpetual flow of water, dating back to their first appropriation thereof in the order of their priority and of the amounts hereinafter specified.

5. Each person using water from North Creek and tributaries should, before he is entitled to use the same, place at the point or points where such water is diverted, a head gate or head gates and box or boxes suitably constructed for measuring water in inches under a four inch pressure or its equivalent in second feet.

6. That all parties using water by the decree in this case should, as soon as the beneficial use thereof has ceased, and within the time within which they are authorized to use said water, return said water to the channel of the creeks.

7. All the parties hereto, to whom water is awarded should be compelled to construct suitable ditches and laterals for the economical distribution and use of such waters.

8. That the Ovid Irrigation Company is a corporation, organized and existing under and by virtue of the laws of the State of Idaho; that the said company was organized for the purpose of diverting the waters of North Creek in Bear Lake County, Idaho, and other waters from their natural channels, to and upon lands, owned by its stock holders, and distributing the same to its stock holders according to the shares of capital stock owned by each, for the purpose of irrigating the lands owned and cultivated by its several stock holders.

9. That in the Month of May, 1864, plaintiff's John Hymas, E. S. Morgan and the grantors and predecessors in interest, C. H. Brown, D. M. King, James McMurray, S. W. Matthews, Fred Alsop, Samuel Matthews, Anna A. Edna A. Alonzo H. Esther S. and Harry K. Matthews, minor children of Anna Matthews, deceased, and represented in this suit by Samuel Matthews, guardian ad litem, C. C. Sorenson and Christian Olsen, were in the possession and actual occupation of certain lands hereinafter described as belonging to each of the aforesaid parties respectively; that at said time the said parties associated themselves together according to the custom of the country at that time as a water company, under a mutual agreement and understanding that they would work jointly in constructing a ditch and diverting waters of North Creek and its tributaries and conducting the same to and upon their respective farms, each one receiving credit for the amount of labor he performed or means expended, in the construction of such ditch, which credit was kept account of by a secretary chosen by them for that purpose, that the waters and the ditch was owned by them jointly as such company, and distributed by the water master elected by them annually for that purpose, according to their agreement, and the local custom of the country, to each one according to the credits he had in the company books; no certificates were issued, the interest of each person was kept on the association books in dollars and cents; transfers were made by the person selling his interest in the company going with the purchaser of that interest to the secretary of the company and requesting the secretary to transfer that amount to the purchaser on the company books.

That said company in May, 1864, constructed a ditch of sufficient size and capacity to carry nine second feet, being 450 miners inches measured under a four inch pressure, from North Creek to and upon the lands of the individuals forming the company and actually diverted the said amount of water and used the same upon their said lands for agricultural, culinary purposes and watering stock, each and every year until the commencement of this suit.

That the said water so appropriated was distributed by the water master of said association, according to their respective interests, each and every year until the 26th. day of March, 1888, when the members of said association selected the plaintiff E. S. Morgan to post notice of the appropriation of said waters and to record the same as their trustees; that said E. S. Morgan afterward posted notice of the appropriation of said waters appropriated by said association, and diverted by means of their said ditch at the head of said ditch on the bank of North Creek and afterwards filed copy of the notice with the County Recorder on the 29th. day of April, 1888, claiming the waters of North Creek, in the County of Bear Lake County, Idaho, to the amount of 450 miners inches, measured under a four inch pressure, to be delivered on the 29th. day of August, 1888, to the plaintiff E. S. Morgan.

John Peterson, M. Mathison, Andrew H. Peterson, Oscar Quarsell, Carl Stein Olson, Martha Carlson, Lars Peter Nelson, Andrew Peterson, Lars Nielsen, Jens Olson, David Kunz, James McMurray, John Sorenson, Philemon Lindsay, Peter Johnson, Charles Brown, John Olson, Nels Sorenson, David King, Samuel Mathews, Joseph Olsen, M. Rosenbaum, John Myers Jr. Alma Dunford, Nels P. Nelson are stock holders in the Ovid Irrigation Company.

That said stock holders are the owners in the aggregate of 1700 acres of land, lying along and adjacent to North Creek and its tributaries and susceptible of irrigation therefrom and from no other source, which lands are situated in Section 1-2-3-4-9-10-11-12-13-14-15-16 Township 13, South, and Sections 23-24 Township 13 south, Range 43, east B.M.; that each stock holder owns his land individually; that these said parties, their grantors and predecessors in interest, have been in the possession and occupancy of their respective pieces of land, under claim and title (except as to the United States) since May, 1864; that in May, 1864, the said parties, their grantors and predecessors in interest, associated themselves together according to the custom of the country at that time as a water company, under a mutual agreement and understanding, that they would work jointly in constructing a ditch and diverting the waters of North Creek and its tributaries and conducting the same to and upon their respective farms, each one receiving credit for the amount of labor he performed or means expended, in the construction of such ditch, which credit was kept account of by a secretary chosen by them for that purpose, that the waters and the ditch was owned by them jointly as such company, and distributed by the water master elected by them annually for that purpose, according to their agreement and the local customs of the country, to each one according to the credits he had in the company books; no certificates were issued, the interest of each person was kept on the association books in dollars and cents; transfers were made by the person selling his interest in the company going with the purchaser of such interest, to the secretary of the company and requesting the secretary to transfer that amount to the purchaser on the company books.

That said company in May, 1864, constructed a ditch of sufficient size and capacity to carry nine second feet, being 450 miners inches measured under a four inch pressure, from North Creek, to and upon the lands of the individuals forming the company, and actually diverted the said amount of water and used the same upon their said lands for agricultural and culinary purposes and for watering stock, each and every year until the commencement of this suit.

That in the year 1872, for the purpose of better irrigating said lands, the said company constructed another ditch and diverted said waters of North Creek at a point further up the stream, and have conducted the aforesaid water since that date, through both of the aforesaid ditches, to and upon their lands.

That said water thus appropriated and diverted was distributed among the members of the said association according to their respective interests until the 16th. day of May, 1889, when the parties owning the capital stock of the said company and all the interests therein, by mutual consent and agreement formed the Ovid Irrigation Company, which was on that date incorporated, and by deed duly executed and recorded by the said parties, conveyed the said waters and ditches to the Ovid Irrigation Company, receiving in consideration therefore a certificate of capital stock in an amount equal to the amount owned by such persons in the original company; that since said date the Ovid Irrigation Company have continued to divert the said 450 inches of water from North Creek and its tributaries by means of said ditches, and has distributed the same to its various stock holders according to their shares of stock, for use upon their respective lands, to irrigate the same and for culinary purposes and watering stock.

That the full amount of 450 inches of water is necessary for distribution among the stock holders of the Ovid Irrigation Company for the proper irrigation of their lands.

11. That the aforesaid appropriations of water, made by the plaintiffs were prior to any appropriations made by the defendants.

12. That the several tracts of land herein mentioned, were at the time of the several appropriations of water made for use thereon, owned, possessed and occupied by the several parties mentioned in connection therewith, or their grantors or predecessors in interest, and that the said parties, their grantors or predecessors in interest appropriated heretofore, at the dates mentioned herein, the several amounts respectively of the waters of North Creek, herein stated for a beneficial purpose, and ever since have used the same upon said lands (in the case of the Ovid Irrigation Company, it distributed the same to its stock holders) and are entitled to the use of said waters upon said lands in the order of their priority, in the amount and of the dates as follows, to-wit:

CHARLES H. BROWN, for use upon--

S $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 32 in Tp. 12 S. and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the lot No.1 of Sec. 5 in Tp. 13 S.R. 43 E.B.M. containing 159 acres of land. Also, commence 9 and .63 chains south from the east corner of NE $\frac{1}{4}$ Sec. 32 Tp. 12 S.R. 43 E.B.M. run thence south 10-17/100 chains; thence south 89°36' west 20 chains; thence north 18/100 chains; thence north 61°38' east 22-75/100 chains; to place of beginning, containing 11-86/160 acres.

Also, commence at the NW corner of the SW $\frac{1}{4}$ Section 4 Tp. 13 S.R. 43 E.B.M. run thence east 9-47/100 chains; thence south 12° east 18-16/100 chains; thence south 75°52' west 11-89/100 chains; thence north 10-89/100 chains to the place of beginning, containing 11-89/100 acres.

Also, lot No. 1 as platted in Bear Lake County plat Book "B" on page 79 and further described as follows, to-wit: Commence 12 chains north 89°38' west from NW corner of SE $\frac{1}{4}$ Section 5 Tp. 13 S.R. 43 E.B.M. run thence south 89°38' east 12 chains; thence south 11 chains and 38 links; thence south 75°30' west 7 chains and 7 links to the center of North Creek; thence up the channel of said creek, following its windings to place of beginning, containing 14 acres. May 15th. 1864. 3 second feet, 150 inches.

D. M. KING for use upon--

NW $\frac{1}{4}$ Section 4 Tp. 13 S.R. 43 E.B.M. containing 160 acres, excepting 58 acres sold to E. S. Morgan. May 15th. 1864. 26/50 second feet. 26 inches.

JOHN HYMAN for use upon--

James McMurray
W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and W $\frac{1}{2}$ of the SE $\frac{1}{4}$ Section 9 Tp. 13, S.R. 43 E.B.M. containing 160 acres of land. May 15th. 1864. 26/50 second feet. 26 inches.

S. Mathews for use upon--

SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and E $\frac{1}{2}$ of the SE $\frac{1}{4}$ Section 9, SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ Section 10 Tp. 13 S.R. 43 E.B.M. containing 160 acres of land, saving and excepting therefrom 90 acres which he has sold; also 40 acres and 135 square rods bought from James McMurray being part of the 120 acres heretofore described as having been sold by James McMurray, described as follows to-wit: May 15th. 1864. 32/50 second feet, being 32 inches.

Fred Alsop for use upon--

35 acres of land. (no description given). May 15th. 1864. 33/50 second feet, being 33 inches.

S. W. MATHEWS for use upon--

NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 9 and W $\frac{1}{2}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 10 Tp. 13 S.R. 43 E.B.M. containing 160 acres of land. May 15th. 1864. 45/50 second feet, being 45 inches.

A. H. ANNA A. EDNA A. HARRY AND ESTHER S. MATHEWS for use upon--

Commence 4 chains 44 links north 14' west from the NE corner of NW $\frac{1}{4}$ Section 9 Tp. 13 S.R. 43 E.B.M. run thence north 14' west 21 chains 23 links; thence south 19°30' west 19 chains 54 links; thence south 53°30' east 7 chains 22 links; thence north 20°25' east 1 chain 75 links to place of beginning, containing 7 acres and 18 rods of land.

Also, commence 33 and 90/100 chains north 14' west from the NE corner of the NW $\frac{1}{4}$ Section 9, Tp. 13 S.R. 43 E.B.M. run thence north 14' west 6-10/100 chains; thence E. 12-84/100 chains; thence S. 20°8'W. 9.50 chains; thence north 70° west 10-9/100 chains to place of beginning, containing 8 acres 148 rods of land. May 15th. 1864. 7/50 second feet being 7 inches.

C. C. SORENSON for use upon--

Commence 4-44/100 chains north 14' west from the NE corner of NW $\frac{1}{4}$ Sec. 19, Tp. 13 S.R. 43 E.B.M. run thence north 20°8' east 37-60/100 chains; thence east 18-56/100 chains; thence south 34°21' west 48-45/100 chains; thence west 98 links; thence north 52°4' west 3-83/100 chains; thence north 14' west 2-11/100 chains to place of beginning, containing 50 acres of land. May 15th. 1864. 7/50 second feet, being 7 inches.

CHRISTIAN OLSEN for use upon--

Commence 7 chains south from NE corner SE $\frac{1}{4}$ Sec. 9 Tp. 13 S.R. 43 E.B.M. run thence north 45°10' west 7 chains 10 links; thence south 11°50' west 18 chains 47 links; thence south 56° east 8 chains 75 links; thence north 9° east 9 chains 50 links; thence north 8 chains 70 links to place of beginning and containing 15 acres 89 rods of land, and 10 acres more, description not now known. May 15th. 1864. 13/50 second feet, being 13 inches.

E. S. MORGAN for use upon--

Commence 10 chains 50 links east from SW corner Section 4 Tp. 13 S.R. 43 E.B.M. run thence east 20 chains 78 links; thence north 19°30' east 27 chains 19 links; thence north 14' west 5 chains 35 links; thence south 40° west 23 chains 10 links; thence north 52°20' west, 6 chains 10 links; thence north 46°10' west 9 chains 65 links; thence south 62° west 9 chains 30 links to center of North Creek, thence down said creek following its windings to place of beginning containing 58 acres and 34 square rods of land. May 15th. 1864. 1-9/50 second feet, being 59 inches.

OVID IRRIGATION COMPANY, a corporation:

For distribution among its stock holders to irrigate the lands owned by them respectively and for culinary purposes. May 15th. 1864. 9 second feet, being 450 inches.

DEFENDANTS.

JOSEPH M. WIXOM for use upon--

160 acres of land (no description given) May 15th. 1879. 2 second feet, being 100 inches.

LORENZO WIXOM for use upon--

160 acres of land (no description given) May 15, 1892. 30/50 second feet, being 30 inches.

MARONI MECHAM for use upon--

160 acres of land (no description given) May 15, 1892. 25/50 second feet, being 25 inches.

J. T. LYONS for use upon--

80 acres of land (no description given) May 15, 1891. 15/50 second feet, being 15 inches.

OLIVER ORR for use upon--

80 acres of land (no description given) May 15, 1895 40/50 second feet, being 40 inches.

100 acres of land (no description given) May 15, 1893. 30/50 second feet, being 35 inches.

CHARLES LYONS for use upon--

160 acres of land (no description given) May 15, 1893. 30/50 second feet, being 30 inches.

R. C. ORR for use upon--

SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 29, Township 12 south, Range 43 E.B.M. containing 160 acres. May 15, 1884. 2 second feet, being 100 inches.

J. H. MILES for use upon--

80 acres of land (no description given) May 15th. 1891. 20/50 second feet, being 20 inches.

13. That the said parties to this action, at the time of making the aforesaid appropriations of water, constructed and have since maintained canals and ditches of sufficient size and capacity to carry the said several amounts of water from North Creek to their lands.

14. That the defendants when they made their several respective appropriations of water, made such appropriations from the unappropriated waters of North Creek and its tributaries, without the intention of appropriating or interfering with any of the waters theretofore appropriated by the plaintiffs.

15. That said defendants, since their said several appropriations in diverting and using water from North Creek have intended to divert and use only such water as was appropriated by them respectively, and such diversion and use have not been with the intention of diverting, or in any way interfering with the waters of North Creek theretofore appropriated and used by the plaintiffs.

16. That the defendants, during the three years immediately preceding the commencement of this suit, placed dams and obstructions in North Creek and its tributaries and diverted the waters therefrom and prevented a free flow thereof down to and into the ditches owned and used by the plaintiffs, with the intention of diverting the waters which they had appropriated only, and with no intention of diverting the waters theretofore appropriated by the plaintiffs.

17. The defendants have not diverted and used the waters appropriated by the plaintiffs, adversely to their interest under title or claim of right so to do, continuously, openly or notoriously for five years next preceding the commencement of this action.

18. That the appropriation of water from North Creek and its tributaries made by the plaintiffs and all of them are prior to the appropriations of the water from the said stream by the defendants.

19. That the plaintiffs, their grantors or predecessors in interest, appropriated the aforesaid amounts of water on the 15th. day of May, 1864, and have used the same continuously, each and every year to the commencement of this suit, for beneficial purposes and the whole thereof is necessary for such purposes and water therefore cannot be supplied from any other source.

20. That the said plaintiffs or their grantors or predecessors in interest or any of them, have not at any time abandoned said waters or any of it or their right to use the same or any part of it.

22. That each party to this action should pay his own costs and disbursements.

CONCLUSIONS OF LAW.

And as conclusions of law from the Findings of Facts the Court finds:

1. That the Ovid Irrigation Company is a corporation, organized and existing under and by virtue of the laws of the State of Idaho.
2. That the present stock holders of the Ovid Irrigation Company and their grantors and predecessors in interest, that appropriated the waters of North Creek in May, 1864, and constructed the Ovid canals, and diverted the same to and upon their lands, was an unincorporated joint stock company, rendered necessary by the circumstances, wants and necessities of the people who were then settling a new country, and organized according to the advice of the leading men and the rules and regulations adopted at meetings held by settlers, and according to the custom of the inter-mountain region.
3. That the plaintiffs, E. S. Morgan and John Hymas and the grantors and predecessors in interest, C. H. Brown, D. M. King, James McMurray, S. W. Mathews, Fred Alsop, Samuel Mathews, Anna, Edna A. Alonzo H. Esther S. and Harry K. Mathews, minor children of Anna Mathews, deceased, and represented in this suit by Samuel Mathews, guardian ad litem, C. C. Forenson and Christian Olsen, who appropriated the waters of North Creek in May, 1864, and constructed a canal to divert the same to their lands, were associated together as an unincorporated stock company, rendered necessary by the circumstances, wants and necessities of the people who were then settling a new country, and organized according to the advice of the leading men and the rules and regulations adopted at meetings held by the settlers, and according to the custom of the inter-mountain region.
4. That the shares of capital stock owned and held by the members of the said unincorporated joint stock company, were personal property and transferable upon the books of the company without a written conveyance.

21. That the defendants, their grantors or predecessors in interest, or any of them have not diverted or used any of the waters of North Creek or its tributaries, heretofore appropriated by the plaintiffs, their grantors or predecessors in interest, or any of them, adversely, openly, notoriously, continuously, or under claim of title or right so to do.

Plaintiffs
(A)

Charles Brown for use upon the land described in the Findings of Facts. May 15th. 1864. 3 second feet, being 150 inches.

(B)

D. M. King for use upon land described in complaint and finding of facts. May 15th. 1864. 26/50 second feet, being 26 inches.

(C)

John Hymas for use upon land described in complaint and Findings of Facts. May 15th. 1864. 1-2/50 second feet, being 52 inches.

(D)

James McMurray for use upon land described in complaint and findings of facts. May 15th. 1864. 26/50 second feet, being 26 inches.

(E)

S. W. Mathews for use upon land described in complaint and the findings of facts. May 15th. 1864. 32/50 second feet, being 32 inches.

(F)

Fred Alsop for use upon land mentioned in the complaint and the findings of facts. May 15th. 1864. 33/50 second feet, being 33 inches.

(G)

S. W. Mathews for use upon land described in the complaint and the findings of facts. May 15th. 1864. 45/50 second feet, being 45 inches.

(H)

A. H. Anna A. Edna A. Harry & Esther S. Mathews for use upon land described in complaint and findings of fact. May 15th. 1864. 7/50 second feet, being 7 inches.

(I)

G. C. Sorenson for use upon the land described in the complaint and the findings of fact. May 15th. 1864. 7/50 second feet, being 7 inches.

(J)

Christian Olsen for use upon the land described in complaint and the findings of facts. May 15th. 1864. 13/50 second feet, being 13 inches.

(K)

E. S. Morgan for use upon the land described in complaint and the findings of facts. May 15th. 1864. 1-9/50 second feet, being 59 inches.

(L)

T The Ovid Irrigation Company, a corporation--For distribution among its stock holders to irrigate the lands owned by them respectfully and for culinary purposes. May 15th. 1864. 9 second feet, being 450 inches.

DEFENDANTS:

That the defendants are entitled to the following amounts of water flowing in North Creek and its tributaries from the following dates, to-wit:

(A)

Joseph M Wixom for use upon 160 acres of land, (no description given.) May 15th. 1879. 2 second feet, being 100 inches.

(B)

Lorenzo Wixom for use upon 160 acres of land. (no description given) May 15th. 1892. 30/50 second feet, being 30 inches.

(C)

Maroni Mecham for use upon 160 acres of land (no description given). May 15th. 1892. 25/50 second feet, being 25 inches.

(D)

J. T. Lyons for use upon 80 acres of land (no description given) May 15th. 1891. 15/50 second feet, being 15 inches.

(C)

Oliver Orr for use upon 80 acres of land (no description given) May 15th. 40/50 second feet, being 40 inches.

(F)

Charles Lyons for use upon 160 acres of land (no description given) May 15th, 1893
30/50 second feet, being 30 inches.

(G)

R. C. Orr for use upon the land described in his cross complaint and the findings of facts. May 15th. 1884, 2 second feet, being 100 inches.

(H)

J. H. Miles for use upon 80 acres of land (no description given) May 15th. 1891.
20/50 second feet, being 20 inches.

7. That the said plaintiffs or their grantors or predecessors in interest or any of them, have not, at any time abandoned the water of North Creek or its tributaries theretofore appropriated by them or any part of it, or their right to use the same or any part thereof.

8. That the defendants, their grantors or predecessors in interest or any of them have not obtained the right to use any of the water appropriated by the plaintiffs, their grantors or predecessors in interest, from North Creek or its tributaries by prescription adverse possession or adverse use thereof.

9. That the cause of action set forth in the complaint against the defendants and each of them is not barred by the statutes of limitations of the State of Idaho.

10. That the several parties to this action whose rights to the use of the waters of said North Creek are of even date, are entitled, whenever the amount of water flowing in the channel of said stream is insufficient in quantity to supply the amount of water herein awarded, to share in the use of said water in proportion to the several quantities awarded as of the same date as each party bears to the whole amount of water flowing in said creek at such time of scarcity, not, however, to interfere with the rights of an earlier or prior date.

11. That each of the parties hereto to whom water is awarded shall place and maintain at the point or points where each party diverts said water from the channel of said stream, a head gate or head gates, and a box or boxes, suitably constructed for measuring water in inches, under a four inch pressure, or its equivalent in second feet.

12. That each of the several parties hereto, who are entitled to the use of the said waters of said North Creek, is entitled to have a continual flow of the waters of said stream, dating back to the first appropriation thereof by each of said parties, in order of their priority and of the amounts herein specified. That each and every of the parties hereto, their agents, attorneys, employees and privies and their successors in interest, should be enjoined and restrained from interfering in any manner, with the waters of said stream, except as provided in the Judgment herein, and as distributed to them respectively by the water master elected or appointed, to take charge of the water of said stream, pursuant to said judgment.

14. That the costs and disbursements of each party herein and hereto shall be paid by such party.

Let judgment be entered accordingly.

Dated this 5th. day of February, 1902.

Joseph C. Rich, Dist. Judge.

DECREE.

And now this case coming on to be heard the Court having duly considered all the evidence, agreements, stipulations and admissions made during the trial and at the various hearings of said cause, and having heard the arguments of the respective counsel, the said cause having been submitted for judgment and the Court having signed and filed his decision in writing, and having made and filed its findings of facts and conclusions of law, and the court having found that the several parties hereinafter mentioned and their predecessors in interest, have been from the several dates hereinafter mentioned as the dates of the respective water rights and are now in the possession, and the owners as against the whole world (except the United States) of the respective tracts of land described in the amended complaint of the plaintiffs and the cross complaints at the several dates hereinafter respectively mentioned, diverted and appropriated of the waters of North Creek and its tributaries, the same being situated in Bear Lake County, Idaho, the several amounts of water respectively hereinafter mentioned and decreed to said ~~to said~~ several different parties, and that they have used the same for beneficial purposes, to-wit: agricultural and culinary, from the date of the said appropriation continuously until the commencement of this suit, and having found all other facts necessary to support this decree and no facts inconsistent therewith and the Court being fully advised of and concerning the premises:

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, That the waters of North Creek and tributaries in Bear Lake County, State of Idaho, be and the same are hereby distributed and decreed to the several parties to this suit, for beneficial purposes and uses, in amounts and of the dates, with priority of rights in accordance with said dates as follows to-wit:

PLAINTIFFS.

1. To Charles H. Brown, 150 inches, dating from May 15th. 1864.
2. To D. M. King, 26 inches, dating from May 15th. 1864.
3. To John Hymas, 52 inches, dating from May 15th. 1864.
4. To James McMurray, 26 inches, dating from May 15th. 1864.
5. S. Matthews, 32 inches, dating from May 15th. 1864.
6. Fred Alsop, 33 inches, dating from May 15th. 1864.
7. S. W. Matthews, 45 inches, dating from May 15th. 1864.
8. A. H. Anna A. Edna A. Harry & Esther S. Mathews, 7 inches dating from May 15th. 1864.

11. E. S. Morgan, 59 inches, dating from May 15th. 1864.
12. Ovid Irrigation Company, 450 inches dating from May 15th. 1864.
It is further ordered, adjudged and decreed that the defendants be awarded the use of the amounts of water and of the dates hereinafter set forth, from the said stream, to-wit:

DEFENDANTS.

1. To Joseph M. Wixom, 100 inches, dating from May 15th. 1879.
2. Lorenzo Wixom, 30 inches, dating from May 15th. 1892.
3. Maroni Mecham, 25 inches, dating from May 15th. 1892.
4. J. T. Lyons, 15 inches, dating from May 15th. 1891.
5. Oliver Orr, 40 inches, dating from May 15th. 1895.
6. John Prescott, 35 inches, dating from May 15th. 1893.
7. Charles Lyons, 30 inches, dating from May 15th. 1893.
8. R. C. Orr, 100 inches, dating from May 15th. 1884.
9. J. H. Miles, 20 inches, dating from May 15th. 1891.

That the several amounts of water above decreed be measured and distributed to the said parties at their several points of diversion, from the natural channel of North Creek and the tributaries thereof, respectively.

That the said waters be measured under the weir system, in cubic feet per second of time, fifty inches of water as herein decreed being equal to one cubic foot of water per second of time, or one second foot.

That each of said parties to this suit construct and maintain at their several points of diversion respectively, substantial and uniform boxes, headgates and weirs for the measurement of their said water.

That the parties to this suit and their assigns annually elect a water master, at the time and in the manner prescribed by law, whose duties shall be to distribute the waters of North Creek and its tributaries, to the respective parties according to this decree and the priority thereof, which water master shall take the oath of office and give a bond in the sum as the Court may order from time to time, and he shall at all times be subject and amenable to the order of the Court and the Judge thereof, and may be removed by order of the Court or the Judge thereof.

It is further ordered, adjudged and decreed that none of the parties hereto, or their successors in interest, shall have the right to the use of the waters of said North Creek herein awarded except for a beneficial purpose; and that whenever the beneficial use ceased such party shall turn the waters of said stream used by them, back into the channel of said stream.

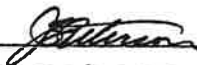
That each of the parties to this action shall pay his costs and disbursements.
Dated this 5th. day of February, 1902.

Filed:
Feb. 5th. 1902.
James E. Hart, Clerk.

Joseph C. Rich, Dist. Judge.

(Recorder's note: This document was not recorded at the time it was rendered, due to the fact that the record in the case shows the fees to have been unpaid. The same have now been paid, the said document duly recorded)

Sam V. Tunks, Recorder

By  Deputy.

No. 35840 IN THE PROBATE COURT OF BEAR LAKE COUNTY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE)

GEORGE J. DAVIS,)

Deceased.)

DECREE ESTABLISHING THE TIME OF DEATH OF GEORGE J. DAVIS AND DETERMINING THE HEIRS OF SAID DECEASED, THEIR DEGREE OF KINSHIP AND THE RIGHT OF DESCENT OF REAL PROPERTY BELONGING TO SAID DECEASED.

The hearing on the petition of Charles Nate, praying for a determination of the time of death of George J. Davis, and a determination of the heirs of said deceased, their degree of kinship, and the right of descent of real property of which said George J. Davis died seized, came on regularly to be heard on this 10th. day of June, 1931, Charles Nate appearing by and through his attorney, D. E. Haddock, of Paris, Idaho, and no one appearing in person or for any other party, and it appearing to the court that on the 1st. day of May, 1931, said Charles Nate, who was the owner in fee of the property hereinafter described, having derived his interest from Tryphena L. Davis, widow and heir of said deceased, filed said petition in the above entitled court, and on the same day the judge of this court fixed the 10th. day of June, 1931, at 10 o'clock A.M. of said date at the court room of said court in Paris, Bear Lake County, Idaho, as the time and place of hearing said petition; that thereafter, due and proper notice of the time and place of said hearing was given to all persons interested in said estate, both creditors and heirs, and in the form and manner prescribed by law, and it further appearing from the evidence adduced at said hearing that the allegations of said petition are true and correct and that no creditor or creditors having a valid or subsequent claim against the estate of said George J. Davis, deceased, has appeared to object to said proceedings:

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED that George J. Davis died intestate at Maywood, in the state of California on the 14th. day of November, 1928, and that at the time of his death was a resident of said Maywood, State of California: That upon his death he left certain estate in Bear Lake County, State of Idaho, consisting of the following described real property, to-wit: