

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

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

CIVIL CASE NUMBER: 79576

Claim ID: 11-944

Date Received: 1/21/24

Receipt No: PC00228

Claim Fee: 50.00 By: MB

RECEIVED

JAN 22 2024

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

IDWR/Preston

Please type or print clearly

1. Name of claimant(s) Emmaus Fund Phone () _____
Mailing address 1734 E Millbrook Road Salt Lake City Utah Zip 84106
Street or Box City State
Email address (optional) pdrinkaus@gmail.com
2. Date of priority: (Only one per claim) 4/15/1877 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Bear River
which is tributary to (b) Great Salt Lake
4. a. Location of point of diversion is: Township 14S, Range 46E, Section 29,
SW 1/4 of SW 1/4, Govt. Lot _____, BM, County of Bear Lake (Miller Ditch)
Parcel no. _____
Additional points of diversion, if any: 15S 46E SEC6 NWNE L2 (Nuffer Ditch)
If available, GPS Coordinates _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
5. Description of existing diversion works (dams, reservoirs, ditches, wells, pumps, pipelines, headgates, etc.),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

Water is diverted through both the Miller Ditch and Nuffer Ditch for flood irrigation.

6. Water is claimed for the following purposes:

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

For Irrigation purposes from 4/15 to 7/01 amount 0.90 or _____

For Irrigation purposes from 7/01 to 9/30 amount 0.60 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.90 (cfs) and/or (b) _____ (acre-feet)

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

9. Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	45E	12	12	29	0.2		8.8												50
15S	45E	01		18	30	3.6					4.3			13	2.0	33	28	39	170.9

Parcel no(s). _____ Total number of acres irrigated 220.9

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

11. Do you own the property listed above as place of use? Yes (☒) No (☐)
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.
11-941, 11-942, 11-943, 11-944, and 11-945 share a common place of use. or None (☐)

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

Priority date is per decree. Excerpts of the decree are attached.
Water Rights 11-941, 11-942, 11-943, 11-944, and 11-945 operate together and are owned by the same owner, thus they have been combined into a common place of use. A 6th claim based on beneficial use, submitted as a companion to the 5 decreed claims, increases the decreed acres from 209 to 220.9 acres, an increase of 11.9 acres. Water rights 11-944 and 11-945 have a combined limit of 120 acres and are delivered through the Miller Ditch and Nuffer Ditch. See attached narrative for more details.

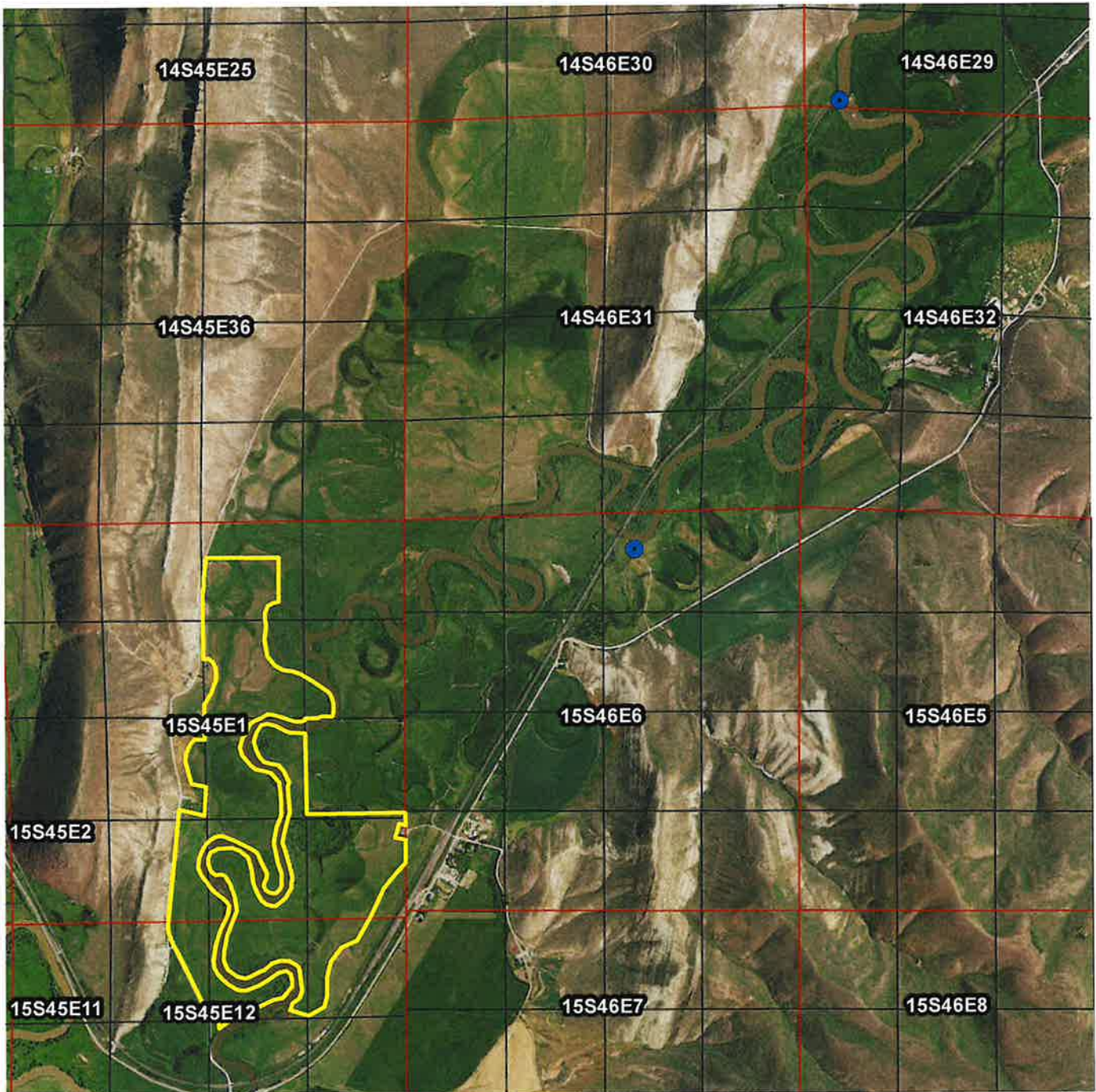
Name of claimant(s) Emmaus Fund Claim ID _____

Claim Map

Based on Water Right Nos. 11-944 & 11-945

Claimant: Emmaus Fund

Claim No: _____



1,900 950 0 1,900 Feet

- POU
- POD
- PLSS Section
- QQ

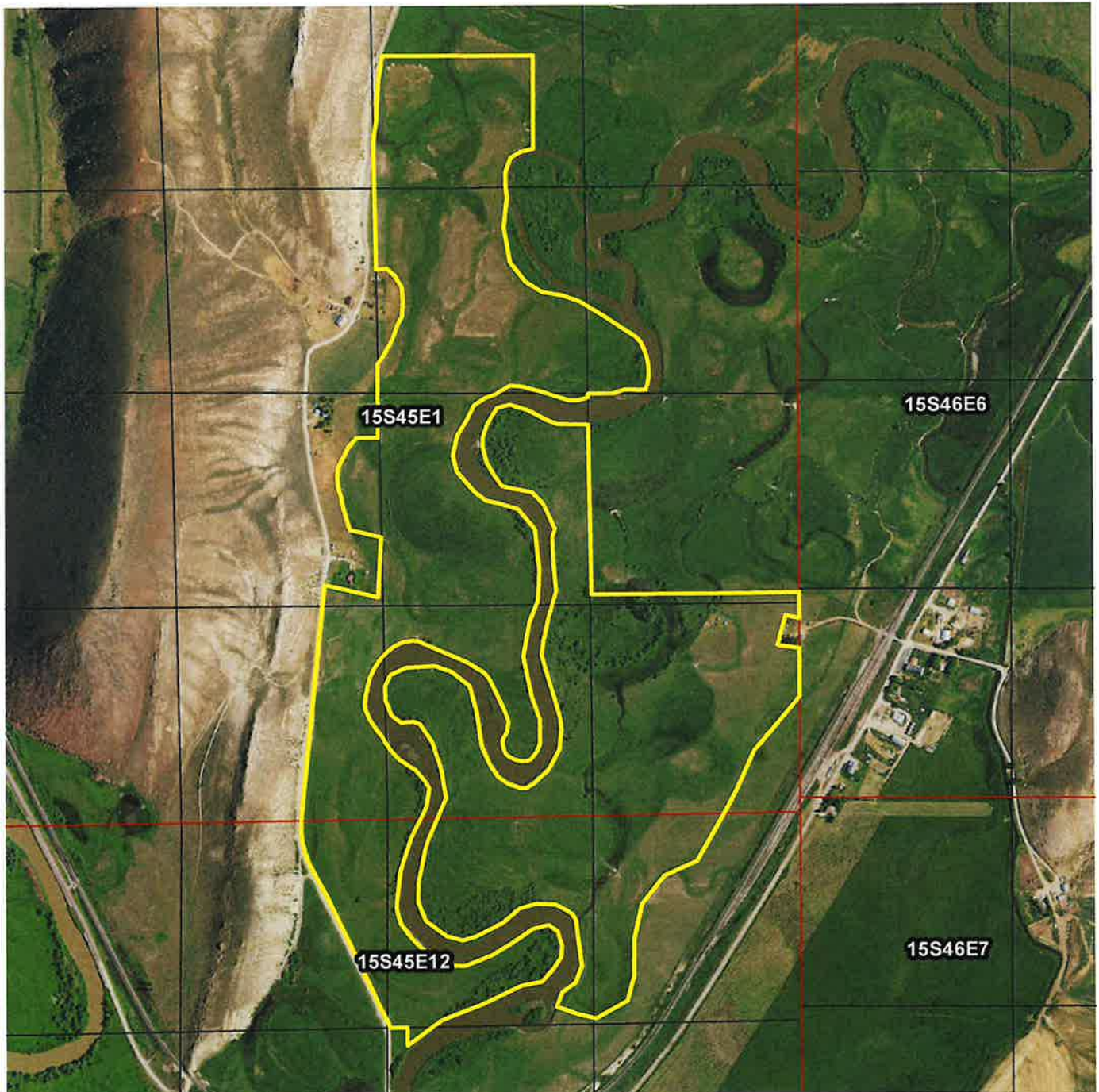


Claim Map - Place of Use

Based on WR Number: 11-941,11-942,11-943,11-944, & 11-945

Claimant: Emmaus Fund

Claim No: _____



975 487.5 0 975 Feet

- POU
- POD
- PLSS Section
- QQ



Name of claimant(s)	Emmaus Fund	Claim ID
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Narrative to Support Bear River Basin Adjudication Claim

Based on Water Right #s: 11-941, 11-942, 11-943, 11-944, 11-945, & One Beneficial use Claim

Priority Date

For rights 11-941, 11-942, 11-943, 11-944, and 11-945, priority dates are per decree.

The beneficial use claim to capture the additional acres has a claimed priority date of 4/15/1976. This priority date is based upon review of historical imagery. The 1976 aerial photo obtained from the USGS is the first year of imagery in which the additional acres, south of Section 1, appear to have the same growth and irrigation patterns as the lands within the original decreed POU (within Section 1). In addition, the ditches appear consistent with today's pattern of conveyance system. Every aerial image since 1976 is consistent with today's patterns, suggesting that historical practices match current practices. Additional information may be provided to the claim file to support the priority date. This claim makes no assertion that irrigation did not occur prior to 1976, but at this time, no documentation is available to support an earlier date. If additional information is obtained that supports an earlier priority date, the claim may be amended.

Figure 1 shows the claimed place of use overlaid on the 1976 aerial.

Place of Use

The original places of use for rights 11-941 through 11-945 were on two adjacent, non-overlapping. Rights 11-941, 11-942, and 11-943 pertained to property only on the West side of the river, whereas 11-944 and 11-945 straddled the Bear River. After splits, which were verified by IDWR, decreed acres remaining and appurtenant to the claimant's property are as follows:

11-941, 11-942, 11-943	89 acres
<u>11-944, 11-945</u>	<u>120 acres</u>
Total Acres	209 acres

The two separate places of use are operated together, and have been for many years. They are now indistinguishable from one another, with the exception that a portion of 11-944 and 11-945 is diverted through a separate diversion to irrigate the lands on the east side of the Bear River.

Review of historical aerial photography suggests that the decreed place of use has been irrigated jointly since at least the 1970s, in addition to some additional acres that have been folded into the place of use. The current place of use is calculated to include 220.9 acres, with an increase of 11.9 acres of irrigation above the decreed acreage. A beneficial use claim is submitted with the 5 decreed claims to capture the additional irrigation.

Points of Diversion and Diversion Quantities

Two ditches serve the place of use. The Miller ditch diverts in Section 29, T14S R46E and delivers water to the west side of the Bear River. The Nuffer Ditch diverts in Section 6, T15S R46E and delivers water to the east side of the Bear River. Rights 11-941, 11-942, and 11-943 are only delivered through the Miller

Ditch, which is consistent with the Terrell Decree. Rights 11-944 and 11-945 have been delivered through both ditches since the decree was issued, although, the distribution of the water right to each ditch is inconsistent throughout the water right record. Transfer 619 (filed in 1941) attempted to correct the distribution to each ditch, but appears to still have been an inaccurate representation. In 2001, Jeff Peppersack reviewed this issue and included a Memorandum in the water right file that discusses the distribution of water rights to each ditch. This memorandum assumes that the ownership would be split as the property was owned by two separate owners at the time of Transfer 619. As of the date of this claim, the entirety of the water right is owned by the claimant, as well as all of the underlying land, and the entirety of rights 11-944 and 11-945 are being claimed herein.

Based on the review by Peppersack, it appears that the portion of 11-944 and 11-945 that should be delivered through the Nuffer Ditch is 0.45 cfs of 11-944 and 1.35 cfs of 11-945 for the irrigation of the east parcel and a portion of 0.45 cfs of 11-944 and 1.35 cfs of 11-945 for the irrigation of the west parcel, some of which is on the east side of the Bear River and would be irrigated from the Nuffer Ditch. Below is an excerpt from Peppersack's 2001 memo.

The results of the transfer are as follows for each right:

East 60 Acres of Decreed Parcels

11-944 0.45/0.30 cfs from Nuffer Ditch

11-945 1.35/0.90 cfs from Nuffer Ditch

POU is T15S R45E Sec. 1 SE1/4 for 60 acres

West 60 Acres of Decreed Parcels and Transferred POU

11-944 0.45/0.30 cfs from Miller Ditch and Nuffer Ditch

11-945 1.35/0.90 cfs from Miller Ditch and Nuffer Ditch

POU is T15S R45E Sec. 1 NWSE, SWSE, NESW, and SESW

The record is unclear how much water should be diverted through each ditch. Despite the quantities determined by Transfer 619 and the Peppersack memo, this claim asserts that no restrictions are required and that the rights be deliverable through either ditch as determined to be viable by the water master on an as-needed basis.

Figure 1. 1976 USGS Historical Aerial



990 495 0 990 Feet



Date Created: 12/7/2023

 Claim POI



Base Map: 1976 USGS Single Frame Aerial Photo

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

PRESTON-MONTPELIER IRRIGATION
COMPANY, a corporation,

Plaintiff,

vs.

DINGLE IRRIGATION COMPANY, a cor-
poration; Grinnett-Black Otter
Irrigation Company, a corporation;
Peg Leg Island Irrigation Company, a
corporation; West Fork Irrigation
Company, a corporation; Ream-Crockett
Irrigation Company, a corporation;
Fugaire Livestock & Land Company, a
corporation; Continental Life Insur-
ance Company, a corporation; Ole
Transtrum; Carrie Hill; J.A.O. Nielson;
John A. Jensen; Oron Quayle; Thomas
Quayle; George Parker; Edw. LaRocco;
John O. Miller; Ezra J. Phelps; George
A. Sparks; Hyrum Esterholdt, and Joseph
Esterholdt,

Defendants

DECREE

This cause came on regularly for trial on the 4th
day of August, 1923, John A. Bagley, Esquire, and D. C. Kunz,
Esquire, appearing as attorneys for the plaintiff Preston- Montpelier
Irrigation Company, a corporation, and John A. Bagley, Esquire, appearing
as attorney for Oron Quayle, Thomas Quayle, George Parker, Edw. LaRocco,
John O. Miller, Ezra J. Phelps, and George A. Sparks, defendants and cross-
complainants; and D. C. Kunz, Esquire, appearing as attorney for the
Continental Life Insurance Company, a corporation, Ole Transtrum, Carry
Hill, J. A. O. Nielson and John A. Jensen, defendants and cross-complain-
ants; and A. B. Gough, Esquire, appearing as attorney for Dingle Irrigation
Company, a corporation, Peg Leg Island Irrigation Company, a corporation,
Grinnett Black Otter Irrigation Company, a corporation, and the Fugaire
Livestock & Land Company, a corporation, defendants and cross-complainants;
Ross W. Bates, Esquire, appearing as attorney for the Ream-Crockett Irriga-
tion Company, a corporation, defendants and cross-complainants; and Jesse P.
Rich, Esquire, appearing as attorney for the West Fork Irrigation Company,
a corporation, defendants and cross-complainants; and Darwin Haddock, Esquire,
appearing as attorney for Hyrum Esterholdt and Joseph Esterholdt, defendants
and cross-complainants. Whereupon, the respective parties proceeded to
negotiate a settlement and adjustment of the issues raised by the complain-

JOSEPH ESTERHOLDT

(Miller Ditch & Nuffer Ditch)

11 0944 1877- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st .9 cubic feet per second
July 1st - September 30th, .6 cubic feet per second

11 0945 1880- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st 2.7 cubic feet per second.
July 1st - September 30th, 1.8 cubic feet per second.

All of said waters to be diverted from Bear River, water for 15 acres of the following described land being diverted from Bear River by means of the Miller ditch, the point of diversion of which is about 150 yards east from the Northeast corner of Section 31, Township 14 South, Range 46 East of the Boise Meridian; and water for 108 acres of the following described land being diverted from Bear River by means of the Nuffer Ditch at or near a point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian intersects Bear River; said water to be used on a total of 120 acres of land, described as follows, to-wit:

Beginning at a point on the South line of Section one (1) Township fifteen (15) South of Range forty-five (45) East of Boise Meridian, 825 feet West of the Southeast corner of Section one (1) where the West line of Oregon Short Line right-of-way intersects section line, running thence West 1425 feet; thence North 2640 feet; Thence East 330 feet; Thence South 1225 feet; Thence East 1320 feet; Thence South 348 feet, more or less to intersection with West boundary line of the O. B. L. Railway right-of-way; thence Southwesterly (S. 20 degrees 45') 648 feet, more or less, to jog in right-of-way fence; thence Southwesterly at right angles 335 feet to right-of-way; thence Southwesterly along right-of-way fence 304 feet to place of beginning, containing in all sixty acres more or less.

Together with all water rights thereunto belonging.

Also, commencing at a point sixteen hundred and fifty (1650) feet West from the Southeast corner of Section one (1), in Township fifteen (15) South of Range forty-five (45) East of the Boise Meridian and running thence West nine hundred and ninety (990) feet, more or less, to the Southwest corner of the Southeast Quarter of said Section one; thence North twenty-six hundred and forty (2640) feet; thence East nine hundred and ninety (990) feet; thence South twenty-six hundred and forty (2640) feet to the place of beginning and containing sixty acres of land, more or less, together with all water rights thereunto belonging and water and ditches used in the irrigation of said land.

EZRA J. PHELPS

(Phelps Canal)

11 0946 1877- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st, 4.8 cubic feet per second.
July 1st - September 30th, 3.2 cubic feet per second.

11 0947 1885- April 15th, What is designated in this decree as an "Agricultural Right". 2 cubic feet per second.

All of said water to be diverted from Bear River, at a point described as follows:

and to be used on 260 acres of land, described as follows, to-wit:

The NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T. 14 S. R. 45 East Boise Meridian.

And that part of NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$, of Section 23, that lies North and East of the Old West channel of Bear River.

And that part NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 14, T. 13 S. R. 45 E. B. M. which lies West of the Phelps Canal and below said canal.

Containing in all 260 acres and all being in Bear Lake County, State of Idaho.

Cannot locate

All of said waters to be diverted from Bear River by means of a Dam known as the Ezra J. Phelps Dam located at or near the Southeast corner of the Southeast Quarter of Section 23, Township 14 South, Range 45 East of the Boise Meridian, to be used on 260 acres of land, described as follows, to-wit:

GEORGE A. SPARKS:

90-2 (Sloyd Ditch)

11 1948 1897- May 1st, What is designated in this decree as an "Agricultural Right". 3 cubic feet per second.

~~All of said water to be diverted from Bear River at a point described as follows, and~~

~~S1/2, NW1/4, Section 23, NE1/4, Section 26, Township 14 South, Range 45 East Boise Meridian in Bear Lake County, State of Idaho, and to be used on 160 acres of land described as follows, to-wit:~~

All of said waters to be diverted from Bear River by means of a Dam known as the Ezra J. Phelps Dam located at or near the Southeast corner of the South East Quarter of Section 23, Township 14 South, Range 45 East, of the Boise Meridian, to be used on 160 acres of land, described as follows, to-wit: S1/2, NW1/4, Section 23; and, NE1/4, Section 26, Township 14 South, Range 45 East, B.M., in Bear Lake County, State of Idaho, containing 160 acres.

JOHN O. MILLER:

84-2

11 1949 1877- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st 4.5 cubic feet per second
July 1st - September 30th 3.0 cubic feet per second.

11 1950 1880- April 15th, What is designated in this decree to be a "Meadow Right".

April 15th - July 1st 4.5 cubic feet per second.
July 1st - September 30th 3.0 cubic feet per second.

11 1951 1885- April 15th, What is designated in this decree to be an "Agricultural Right". 3.6 cubic feet per second.

All of said waters to be diverted from Bear River by means of the Miller Ditch, the point of diversion of which is about 150 yards East from the Northeast corner of Section 31, Township 14 South, Range 45 East of the Boise Meridian, to be used upon 420 acres of land described as follows:

E1/2, NE1/4, S1/2, and SW1/4, Section 31, Township 14 South, Range 45 East Boise Meridian.

And E1/2, Section 36, Township 14 South, Range 45 East B. M., all in Bear Lake County, State of Idaho.

11 1952 IT IS FURTHER ORDERED, ADJUDGED AND DECREED That there shall be allowed to pass by the Wardboro Dam in Bear River five cubic feet per second of water at all times for the use of the West Fork Irrigation Company for culinary and domestic purposes; and it is further understood and agreed that said West Fork Irrigation Company is to have a riparian right, inferior to the irrigation rights herein decreed, for forty cubic feet per second of water to be run through the canal at all times during the year except when needed for irrigation purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That all of the above described lands are arid in character and require irrigation for their proper cultivation and for the profitable raising of crops thereon, and that the duty of water shall be fixed and determined at one and one-half (1 1/2) miners inches per acre of water from April 15th to July 1st of each year, and at one (1)

NOTE
DATE 12
After 8042
Lands to
be used on
total 260 acres
Bear Lake
Springs.

and from the
Bear Lake
Springs.

miners inch per acre from July 1st to September 30th of each year for the lands designated as meadow lands, and for the lands designated as agricultural lands, it is agreed that the duty shall be one miners inch per acre through the irrigation season, except that it is ^{adjudged & decreed} stipulated that 600 acres of agricultural lands under the canal of the Dingle Irrigation Company and 400 acres of agricultural lands under the Preston-Montpelier Irrigation Company's Canal, and 400 acres of land under the Ream-Crockett Ditch have a gravelly sub-soil and require one and one-fourth ($1\frac{1}{4}$) miners inches per acre for their proper irrigation, which amount is to be decreed to said lands; it being further decreed that if within five years it is determined that said gravelly land does not need $1\frac{1}{4}$ miners inches per acre the same shall be reduced which in no event shall it be reduced ^{so as} to give it less than one (1) miners inch per acre to such land, the Court retaining jurisdiction of this cause for said purpose.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the lands herein classified as meadow lands or rights are understood to mean those lands along Bear River producing what is commonly called "wild hay" or "natural meadow grass", which lands must be flooded in order to produce crops, the water running over said lands and back into Bear River, which said meadow lands shall be subject to rights hereinafter specified in this decree.

The agricultural lands or rights as herein classified are intended to mean those lands which have been cultivated and irrigated for the production of crops. The acreage of said agricultural lands are hereby decreed and designated as follows: Preston-Montpelier Irrigation Company, 2200 acres; Dingle Irrigation Company, 1781 acres; Peg Leg Irrigation Company, 866.8 acres; Ream-Crockett Irrigation Company, 861 acres; Kent-LaRocca Ditch, 365 acres; It being adjudged and decreed that this is the number of acres designated as agricultural lands under this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That if at any time between the 17th day of June and the 4th day of July of any year there shall not be sufficient water in Bear River to supply the above designated agricultural lands consisting of 6012.25 acres, then and in that event, there shall be taken from the lands or rights herein designated as meadow rights pro rata a sufficient amount of water so that ^{said} 6012.25 acres of agricultural land shall receive 75 per cent of the full amount of water herein decreed to said agricultural lands, and if after July 4th of any year there is not sufficient water in Bear River to supply said 6012.25 acres with the full amount of their decreed water right, then, and in that event, there shall be taken from the said meadow lands or rights a sufficient amount of water

to supply said 6012.25 acres of said agricultural lands to the full extent of their decreed rights.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED; That the Court shall retain jurisdiction, and jurisdiction is hereby reserved for a period of five years from the date hereof for the purpose of correcting said decree if it shall be made to appear to the court that there are errors in the description or amounts of land to which water has been decreed under this decree

IT IS FURTHER ORDERED, ADJUDGED AND DECREED , That each party pay his own costs herein.

Dated this 7th day of March, 1924.

ROBERT M. TERRELL

District Judge.

S T A T E O F I D A H O

C O U N T Y O F B E A R L A K E

I, J. S. Peterson, Clerk of the District Court of the Fifth Judicial District of Idaho, in and for Bear Lake County, do hereby certify that the within and foregoing is a full and true copy of the original Water Decree in the case of Preston-Montpelier Irrigation Company vs. Dingle Irrigation Company, et al duly filed in my office on the 7th day of March, 1924.

IN WITNESS WHEREOF, I have herewith set my hand and affixed the seal of said Court at Paris, Idaho, this 8th day of July, 1924.

(SEAL)

J. S. PETERSON

Clerk

RECEIVED
JAN 26 2024
IDWR/Preston



Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.

January 22, 2024

RMEA 23-0009

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

Re: Bear River Basin Adjudication Claims – Emmaus Fund

Dear Ms. Marion Beck,

This letter accompanies a check for ten Adjudication claims for Emmaus Fund, which were transmitted electronically. The fees for the claims are detailed on the attached summary sheet.

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

Please contact our office with any questions regarding these applications.

Thank you,

A handwritten signature in cursive script that reads "Kristin Moore".

Kristin Moore
Senior Water Rights Analyst

Enclosures: Check

RECEIVED

Free Summary for Claims Submitted

IDWR/Preston Emmaus Fund

Claim ID	\$ for Claim	Notes
11-941	\$271.00	\$50 claim fee + 221 acres @ \$1/ac
11-942	\$50.00	Acres paid under 11-941
11-943	\$50.00	Acres paid under 11-941
11-944	\$50.00	Acres paid under 11-941
11-945	\$50.00	Acres paid under 11-941
11-AAAA	\$50.00	Acres paid under 11-941
11-7682	\$83.00	\$50 claim fee + 33 acres @ \$1/ac
11-7684	\$50.00	Acres paid under 11-7682
11-7686	\$50.00	Acres paid under 11-7682
11-BBBB	\$25.00	Domestic for 1 Home
Total	\$729.00	