

75-D

1. LAND LIST -- David McNutt, et al. -vs- Thomas Palmer, et al. 75-0051 thru
2. JUDGMENT -- David McNutt, et al. -vs- Thomas Palmer, et al. 75-0082
3. ABSTRACT -- "

MICROFILMED

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JUL 31 1996

RECEIVED

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Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

January 21, 1982

Clerk of the Court
Seventh Judicial District
County of Lemhi
Salmon, ID 83467

Dear Sir:

In reviewing our water right decree on Carmen Creek, our records show an incomplete land description for use of the waters of Carmen Creek as decreed to the parties identified in the decree and named in the arbitrators report. Thomas Pyeatt, James H. Hockinsmith and William Peterson acted as arbitrators concerning a certain agreement with date of June 20, 1900, providing for the construction of an irrigating ditch from Salmon River in consideration for the conveyance of certain rights to the waters of Carmen Creek. The parties involved were identified in the "Second Report" of the above named arbitrators. Among the parties named to receive a conveyance of the rights were Theodore Batson, John Daniels, Robert Martin, and Elwood Clark. It is with these persons that we are trying to identify the lands to which the waters of Carmen Creek were conveyed.

We do have in file the judgment of May 9, 1902, and a description of the lands covered by the allotment of the decree, David McNutt, et al. vs. Thomas Palmer, et al. However, the land list and decree did not identify the lands of Theodore Batson, John Daniels or Robert Martin. Elwood Clark's lands were described only as unpatented.

Any information you can provide us concerning the legal description of the lands of Theodore Batson, John Daniels, Robert Martin or Elwood Clark will be very much appreciated.

Sincerely,

Roberta Garrett

Roberta Garrett
Records Supervisor

cc Dave McFarland, Watermaster

MAILED
JUL 31 1986

Daniels

Instrument No. 6078.

THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, Greeting:

Homestead Certificate No. 1065)

Application 1432)

Whereas There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Hailey, Idaho, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of John Daniels has been established and duly consummated, in conformity to law, for the South East quarter of the South East quarter of Section nine and the west half of the South West quarter of Section Ten in Township Twenty-two North of Range Twenty-two East of Boise Meridian in Idaho, containing one hundred and twenty acres according to the Official Plat of the Survey of the said Land returned to the General Land Office by the Surveyor General:

Now know ye, That there is, therefore, granted by the United States unto the said John Daniels the tract of Land above described: To have and to hold the said tract of Land, with the appurtenances thereof, unto the said John Daniels and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In Testimony Whereof I, ~~Theodore~~ Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

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Given under my hand, at the City of Washington, the seventeenth day of March, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty seventh.

By the President: T. Roosevelt

Seal

By F. M. McKean, Secretary

C. W. Bush, Recorder of the General Land Office.

Recorded Idaho, Vol 49, Page 128.

Recorded at the request of A. E. Daniels Sept. 30th 1907 at 50 minutes past 11 o'clock A.M., in Book R of deeds page 147 Records of Lemhi County, Idaho.

W. C. Smith
County Recorder.

JUL 31 1996

1
January 21, 1982

Clerk of the Court
Seventh Judicial District
County of Lemhi
Salmon, ID 83467

Dear Sir:

In reviewing our water right decree on Carmen Creek, our records show an incomplete land description for use of the waters of Carmen Creek as decreed to the parties identified in the decree and named in the arbitrators report. Thomas Pyeatt, James H. Hockinsmith and William Peterson acted as arbitrators concerning a certain agreement with date of June 20, 1900, providing for the construction of an irrigating ditch from Salmon River in consideration for the conveyance of certain rights to the waters of Carmen Creek. The parties involved were identified in the "Second Report" of the above named arbitrators. Among the parties named to receive a conveyance of the rights were Theodore Batson, John Daniels, Robert Martin, and Elwood Clark. It is with these persons that we are trying to identify the lands to which the waters of Carmen Creek were conveyed.

We do have in file the judgment of May 9, 1902, and a description of the lands covered by the allotment of the decree, David McNutt, et al. vs. Thomas Palmer, et al. However, the land list and decree did not identify the lands of Theodore Batson, John Daniels or Robert Martin. Elwood Clark's lands were described only as unpatented.

Any information you can provide us concerning the legal description of the lands of Theodore Batson, John Daniels, Robert Martin or Elwood Clark will be very much appreciated.

Sincerely,

Roberta Garrett
Records Supervisor

cc Dave McFarland, Watermaster

JUL 31 1986

1895, constructed his irrigating ditch and ~~appropriated and~~ appropriated and continuously used ~~the~~ said date of appropriation, for the irrigation of his said lands, 15 inches of the flow of the waters of the said Carman creek.

-67-

That the defendant Robert Martin, for three years last past before the beginning of this action, has been, and now is, the owner of, in the possession and entitled to the possession of the following described lands, situated in Lemhi County, Idaho, to wit: The N.1/2 of the S.W.1/4 and the S.E.1/4 of the S.W.1/4 and the S.W.1/4 of the S.E.1/4 of section 8, Township 22 N., R.22 east of Boise Meridian.

-68-

Martin
That the said lands of the defendant, Robert Martin, are arid lands, and that the same cannot be successfully used for agricultural purposes without the use of water thereon for the irrigation of the said lands.

-69-

That for the purpose of irrigating the said lands, and while he was so in the possession of the same, the defendant, Robert Martin, in the year of 1895, constructed his irrigating ditch and appropriated, and continuously used since said date of appropriation, for the irrigation of his said lands, 15 inches of the flow of the waters of the said Carman creek.

-70-

That the defendant, E.D. Clark, since 1932, has been, and now is, the owner of, paramount only to the United States Government, in the possession and entitled to the possession of the following described unsurveyed public lands of the United States, in Lemhi County, Idaho, Beginning at the upper forks of the South branch of Carman creek, running thence N.1/2 mile to a ~~stake~~ stake; thence E.1/2 mile to a stake; thence S.1/2 mile to a stake; thence W.1/2 mile to the place of beginning, situated one and one eighth miles northeasterly from the center of section 31, in Township 23 N., R.23 east of Boise Meridian.

-71-

Clark
That the said lands of the defendant, E.D. Clark, are arid lands, and that the same cannot be successfully used for agricultural purposes without the use of water thereof for the irrigation of the said lands.

That for the purpose of irrigating the said lands, and while he was so in the possession of the same, the defendant, E.D. Clark, in the year of 1898, constructed his irrigating ditch and appropriated, and continuously used since said date of appropriation, for the irrigation of his said lands, 60 inches of the flow of the waters of the said Carman creek.

JUL 31 1996

Batson

The United States of America
To all to whom these presents shall come, Greeting:
Homestead Certificate No. 1147 }
Application 1863.

Whereas There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Idaho Falls, whereby it appears that pursuant to the Act of Congress approved 23rd May, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Theodore K. Batson has been established and duly consummated, in conformity to law, for the East half of the South East quarter and the South West quarter of the South East quarter of Section Thirty-five in Township twenty three North of Range twenty two East of Boise Meridian in Idaho, containing one hundred and twenty acres according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General:

Now know ye, That there is, therefore, granted by the United States unto the said Theodore K. Batson the tract of Land above described: To have and to hold the said tract of Land, with the appurtenances thereof, unto the said Theodore K. Batson and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof J. Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the second day of June in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty eighth.

By the President. J. Roosevelt

By J. M. M^{rs} Keaw, Secretary,

W. H. Cook-Recorder of the General Land Office.

Recorded Idaho, Vol. 51, page 156

Recorded at the request of Theodore K. Batson August 20th 1904 at 20 minutes past 11 o'clock A.M., in Book 2 of Records page 201 Records of Lemhi County, Idaho.

H. C. Smith

V 75-18

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE

IN AND FOR THE COUNTY OF LEMHI.

McNutt, James McNutt, Neal McDevitt,
Birdseye, and Mary J. Birdseye, his wife,
Anna B. Davis, Anna B. Davis, as guardian of the
minor children of Caleb Davis, deceased, N. J.
McGree, Peter McKinney, Noel Sweeney, and Henry
Greber.

Plaintiffs.

-vs-

Judgment.

Thomas Palmer, John Palmer, John F. Ferguson,
Montraville White, Earnest R. Benedict, William
Young, A. J. Mathews, W. W. Slavin, F. P. McCracken,
William Smith, A. C. Mather, William Igou, and
C. L. Igou, partners, Theodore Batson, E. J. Clark,
John Dimock, H. H. Dahle, Robert Martin, John
Daniels, James B. Grant, and The Lemhi Placer
Mining Company, a corporation, Emma White, and Eliza
S. Mather.

Defendants.

This cause came on regularly for trial on the 11th day of October
1901, the parties appearing in person and their respective attorneys, a
jury having been expressly waived; and the Court having heard the
proofs of the respective parties, and the agreements and stipulations
of the parties and the report of Thomas Pyeatt, James H. Hockinsmith
and William Peterson, arbitrators which is a part of said written
agreement and stipulation, and considered the same, and the records
and papers in the Cause, the evidence being closed and agreements of
Counsel had thereon, the cause was submitted to the Court for consider
ation, and decision, and after due deliberation thereon the Court deli
vers, its findings and decision in writing, which is filed, and orders
that judgment be entered in accordance therewith.

Wherefore by reason of the law and the findings aforesaid, all
parties consenting, it is ordered, adjudged, and decreed:

0051

1. That the right and title of the plaintiff, David McNutt in and to

herein, executed and entered into by and between said plaintiffs and said defendants and cross-complainants relative to the delivery to ~~xx~~ said plaintiffs of water from Salmon river for the irrigation of ⁱⁿ ~~this~~ said farms. And said Davit McNutt is hereby ordered and directed to convey to defendants and cross-complainants his right to the use of said 200 inches of the waters of said creek, in accordance with the terms of said contract and the findings and report of James H. Hockensmith, Thomas Pyeatt and William Peterson referees, on file herein.

75 0052

2. That the right and title of the plaintiff Henry Greber in and to 70 inches of the waters of said Carmen creek is hereby quieted his right thereto dating from May 1st, 1882, and he is hereby adjudged to be the owner thereof subject to the rights of the defendants and cross-complainants therein and thereto which they have under and by virtue of said written agreement and the report and findings of said referees and said Henry Greber is hereby ordered and directed to convey to defendants and cross-complainants his right to the use of said 70 inches of the waters of said creek, in accordance with the terms of said contract and the findings and report of said referees.

75 0053

3. That the right and title of the plaintiff, Niel Sweeney in and to 35 inches of the waters of said creek is hereby quieted, his right thereto dating from May 1st, 1882, and he is hereby adjudged to be the owner thereof subject to the rights of the defendants and cross-complainants therein and thereto under and by virtue of said written agreement and the findings and report of said referees. And said Niel Sweeney is hereby ordered and directed to convey to defendants and cross-complainants his right to the use of said 35 inches of the waters of said creek, in accordance with the terms of ~~xx~~ said contract and the findings and report of said referees.

75 0054

4. That the right and title of the plaintiff, Peter McKinney in and to 60 inches of the waters of said creek is hereby quieted, his right ~~xxx~~ thereto dating from May 1st, 1882, and he is hereby adjudged to be the owner thereof subject to the rights of the defendants and cross-complainants therein and thereto and by virtue of said ~~written~~ ^{JUL 21 1896}

agreement and the findings and report of said referees, and said Peter McKinney is hereby ordered and directed to convey to defendants and cross-complainants, his right to the use of said 60 inches of the water of said creek, in accordance with the terms of said contract and the findings and report of said referees.

75 0055 5. That the right and title of the plaintiff, Mary J. Birdseye in and to 100 inches of the waters of said creek is hereby quieted, her right thereto dating from May 1st, 1875, and she and her successors in interest are hereby adjudged to be the owner thereof subject to the rights of the defendants and cross-complainants therein and thereto under, and by, virtue of said written agreement and the findings and report of said referees, on file herein, and said Mary J. Birdseye and her successors in interest are hereby ordered and directed to convey to defendants and cross-complainants her and their right to the use of said 100 inches of the waters of said creek, in accordance with the terms of said contract and the findings and reports of said referees.

75 0056 6. That the right and title of the plaintiff Anna B. Davis individually and as guardian of the minor children of Caleb Davis, deceased, in and to 100 inches of the waters of said creek is hereby quieted, their right thereto dating from May 1st, 1875; and they are hereby adjudged to be the owners thereof subject to the rights of the defendants and cross-complainants therein and thereto under and by virtue of said written contract and the findings and report of said referees, and said Anna B. Davis is hereby ordered and directed to convey to defendants and cross-complainants their aforesaid right to the use of said 100 inches of the waters of said creek, in accordance with the terms of said contract and the findings and reports of said referees.

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75 0057 7. That the right and title of George L. Shoup, M. M. McPherson, A. J. Macnab and Wm. H. Shoup as successors of the plaintiff N. J. McGree in and to 55 inches of the waters of said creek is hereby quieted, their right thereto dating from May 1st, 1882, and they are hereby adjudged to be the owners thereof subject to the rights of the defendants and cross-complainants therein and thereto under and by virtue of said

written contract and the findings and report of said referees, and said George L. Shoup, M. M. McPherson, A. J. Macnab and Wm. H. Shoup are hereby ordered and directed to convey to said defendants and cross-complainants their aforesaid right to the use of said 55 inches of the waters of said creek, in accordance with the terms of said contract and the findings and report of said referees.

8. That the defendant and cross-complainant, Frank P. McCracken is entitled ^{75 0058} to have, and is hereby awarded the use of 30 inches, continuous flow, of the waters of Carman creek in Lemhi County, for the irrigation of his land described in the findings of fact, and that his right dates from May 1st, 1869, and the further right to the use of 15 ^{75 0059} inches of the waters of said creek, for domestic use and the irrigation of his land, described in said findings of fact, and that his right thereto dates from May 1st, 1896,

9. That the defendant and cross-complainant, Emma White as administratrix of the estate of Montraville White, deceased, is entitled ^{75 0060} to have, and is hereby awarded the use of 70 inches of the waters of said creek, for domestic use and the irrigation of the land described in the findings of fact, as having been left by Montraville White at his death, for the benefit of the heirs of said Montraville White and that the right thereto dates from May 1st, 1874.

10. That the defendant and cross-complainant, Emma White, is entitled ^{75 0061} to have and is hereby awarded, in her own right, the use of 20 inches, continuous flow, of the waters of said creek, for the irrigation of her land, described in the findings of fact, and that her right thereto dates from May 1st, 1874.

11. That the defendant and cross-complainant, A. C. Mather is entitled ^{75 0062} to have and is hereby awarded the use of 125 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 2nd, 1882.

12. That the defendant and cross-complainant, William Smith is entitled ^{75 0063} to have and is hereby awarded the use of 80 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto

dates from May 1st, 1884.

13. That the defendant and cross-complainant, John F. Ferguson is entitled to have and is hereby awarded, for the use of Mary R. Lund his grantee, the use of 75 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of her land, described in the findings of fact, and that the right thereto dates from May 1st, 1874,

14. That the defendant and cross-complainant, Hillard H. Dahle is entitled to have and is hereby awarded the use of 75 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and the right thereto dates from the 1st, day of May 1885.

15. That the defendant and cross-complainant, Wallace W. Slavin is entitled to have and is hereby awarded the use of 75 inches, continuous flow of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 1st, 1885.

16. That the defendant and cross-complainant, John Dimock is entitled to have and is hereby awarded the use of 50 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 1st, 1885.

17. That the defendant and cross-complainant, Eliza Mather is entitled to have and is awarded the use of 70 inches, continuous flow, of the waters of said creek, for the irrigation of her land, described in the findings of fact, and that her right thereto dates from May 1st, 1896.

18. That the defendant and cross-complainant, Thomas Palmer is entitled to have and is hereby awarded the use of 20 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 1st, 1888; and the further use of 30 inches continuous flow, of the waters of said creek, for the irrigation of his said land, and that his right thereto dates from May 1st, 1892.

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19. That the defendant and cross-complainant, John Palmer is entitled to have and is hereby awarded the use of 100 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 1st, 1888.

20. That the defendant and cross-complainant, Albert J. Mathews is entitled to have and is hereby awarded the use of 10 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, and that his right thereto dates from May 1st, 1890; and the further right to the use of 40 inches, continuous flow, of the waters of said creek, for the irrigation, of his said land, and the right thereto dates from May 1st, 1897.

21. That the defendant and cross-complainant, Peter McKinney is entitled, to have and is hereby awarded the use of 50 inches, continuous flow, of the waters of said creek, for the irrigation of his land, known as his "Desert Lot" his right thereto dates from May 1st, 1896. and the further right to the use of 15 inches, continuous flow, of the waters of said creek, for the irrigation of that part of the S.W. 1/4 of the N.E. 1/4 lying above the "Carman creek" ditch so called, now under cultivation, and the right to convey said water to said land through his ditch which conveys water from said creek to his said desert lot. His right to the use of said 15 inches of water dates from May 1st, 1882.

22. That the defendant and cross-complainant, Earnest R. Benedict is entitled to have and is hereby awarded the use of 180 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, his right thereto dates from May 1st, 1882; and the further right to the use of 70 inches, continuous flow, of the waters of said creek, for the irrigation of his said land, and his right thereto dates from May 1st, 1892.

23. That the defendant and cross-complainant, Elwood D. Clark is entitled to have and is hereby awarded 15 inches, continuous flow, of the waters of said creek, for domestic use and the irrigation of his land, described in the findings of fact, his right thereto

JUL 31 1896

dates from May 1st, 1898; and to the further right to the use for domestic and irrigation purposes of all water furnished by springs on his said land.

24 18. That the defendant and cross-complainant, Ora L. And William L. Igoe
75 0079
are entitled to have and are hereby awarded the use of 70 inches continuous flow, of the waters of said creek, for domestic use and the irrigation of their land, described in the findings of fact, their right thereto dates from May 1st, 1885; and the further right to the use of 100 inches, continuous flow, of the waters of said creek, for the irrigating of their land, their right thereto dates from May 1st, 1892.
75 0080

25. That the defendant and cross-complainant, The Lemhi Placer Mining
75 0081
Company is entitled to have and is hereby awarded the use of 500 inches, continuous flow, of the waters of said creek, for the working and washing of that portion of its placer mining ground lying near the two east forks of said Carman creek. Its right thereto dates from the year 1889. And to the further use of 2000 inches, continuous flow, of the waters of said creek, for the working and washing of its placer mining ground that lies and is situated on Kirtley creek in said County of Lemhi; said last named amount of water to be used from the 15th, day of October of each ~~year~~ and every year until the 15th, day of April of the succeeding year. The date of the appropriation for such use is October 15th, 1892. In case there is a surplus of water in said creek beyond the allotment to the other defendants and cross-complainants herein, then said rights shall not be limited to the dates above named but said company shall have the right to divert and use said 2000 inches of water at all times when such surplus of water may be flowing in the east branches of said creek, but in no case shall it interfere with the parties herein in their use of the waters hereby awarded to them.
75 0082
JUL 31 1996

26. That the dates aboved named are the dates of appropriation of said several amounts of water by the parties aforesaid and their grantors, And in case the amount of water in said creek at any time of the year be less than 2000 inches then the first appropriators shall have and are hereby given the first right to the use of the waters

then in said creek to the amount herein allotted to them; the first in time of appropriation having the first right to such use.

27. The waters herein allotted shall be measured to the parties aforesaid, at the place of diversion, under a four inch pressure, And in case any of the parties hereby declared to be entitled to the use of the waters of Carman creek shall disagree in the measurement or diversion of said water, the Court or Judge thereof shall appoint a Commissioner for the purpose of measuring and regulating the diversion, of such water.

28. That each of the parties hereto to whom a right to the use of the waters of Carman creek is herein decreed be and they are hereby perpetually enjoined from using said water in any manner different or to any greater extent than herein found and declared, and a disobedience of this order shall be a contempt of Court and subject the party disobeying to punishment as for a contempt upon the application of any party injured by such acts of disobedience.

Each of the parties hereto shall pay his or her own costs in this action.

Dated May 9th, 1902.

Joseph C. Rich

Dist. Judge,

JUL 31 1905

75-8

David McNutt et al,

vs

Thomas Palmer et al

The following described land is the land covered by
the allotment of Decree dated May 9, 1902.

Land of David McNutt,

S 1/2 SW 1/4, SW 1/4 SE 1/4, Section 29, NW 1/4 NW 1/4 Section 22, Township 23 North,
of Range 22 East of Boise Meridian, Also that certain lot pease or parcel of land
Beginning at the NE corner of that certain 40 acre tract of land described as the
NW 1/4 of ^{NE 1/4} Section 32, in Township 23 North of Range 22 East of Boise Meridian, and
running thence S. 11 rods and 24 links; Thence S. 84° W. 160 rods and 20 links;
Thence N. 27 rods and 12 links to the Section line between Sections 29 and 32 in
said Township; and thence east, along said Section line 160 rods to the place of
beginning.

Lemhi County, Idaho.

Land of James McNutt,

NW 1/4 NW 1/4, Section 29, SE 1/4 SE 1/4, Section 19, NE 1/4 NE 1/4, and Lot 6,
Section 30, Township 23 North, of Range 22 East of Boise Meridian, Lemhi County, Idaho.

Land of Neil McDevitt,

S 1/2 NW 1/4, N 1/2 SW 1/4, Section 29, Township 23 North, of Range 22 East of
Boise Meridian, Lemhi County, Idaho.

Land of Mary J. and J. W. Birdseye,

Beginning at a point 35 rods and 16 links South of the N. W. corner of Section 32,
Township 23, North of Range 22 East of Boise Meridian, and running thence N. 84° E.,
241 rods and 6 links to the east line of the N. W. 1/4 NE 1/4 of said section 32,
Thence S. 168 rods and 1 link, to a point 20 rods S. of the NE corner of the NW 1/4
of said section 32; Thence west 285 rods more or less to the Salmon River; Thence
down the Salmon River to the N. W. Corner of Lot No. 6 in Section 31, in said
Township; Thence E. to the N. E. corner of said lot No. 6; and thence N. along the
west line of the NW 1/4 NW 1/4 of said section 32, 44 rods and 9 links to the place
of beginning, Lemhi County, Idaho.

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Land of Anna B, Arthur, Edna,

Estella and Fred Davis,

Beginning at a point on the East line of the NW 1/4 of the SE 1/4, of Section 32, Township 23 North of Range 22 East of the Boise Meridian, 20 rods S. of the NE Corner of said NW 1/4 of the SE 1/4, of said Section 32, and running thence South 140 rods more or less to the S. E. corner of the SW 1/4 of the SE 1/4 of said Section 32; Thence west 350 rods more or less, to the Salmon River; Thence in a northerly direction along the Salmon River 140 rods more or less to a point thereon due west from the place of beginning being the S. W. corner of a tract of land owned by Mary J. Birdseye; Thence East along the south line of said tract of Mary J. Birdseye 280 rods more or less to the place of beginning.

Land of N. J. McGree,

SE 1/4 SE 1/4, and Lot No. 14 of Section 6, and the S 1/2 SW 1/4, of Section 5, Township 22 North of Range 22 East of the Boise Meridian, Lemhi County, Idaho.

Land of Peter McKinney,

SW 1/4 NE 1/4 S 1/2 NW 1/4, Section 5, SE 1/4 NE 1/4, Section 6, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

Land of Henry Greber,

Lots 2, 3 & 4, Section 5, Lot 1, Section 6, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho

Land of Neal Sweeney,

N 1/2 SW 1/4, Section 5, and the NE 1/4 SE 1/4 and Lot 12, Section 6, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

RECORDED
JUL 31 1996

✓ Land of Peter McKinney,

W 1/2 SE 1/4, Section 5, NW 1/4 NE 1/4, Section 8 Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Thomas Palmer,

S 1/2 NE 1/4, NE 1/4 SE 1/4, Section 3, and the SW 1/4 NW 1/4, Section 2, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of John Palmer,

E 1/2 NW 1/4, NE 1/4 SW 1/4 and NW 1/4 NE 1/4, Section 10, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

J. F. ?

✓ Land of F. J. Ferguson,

E 1/2 NE 1/4, Section 9, and the NW 1/4 NW 1/4, Section 10, Township 22 North, Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Montraville White,

SE 1/4 NW 1/4, SW 1/4 NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 Section 9, Township 22 North Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Emma White,

NE 1/4 SE 1/4, Section 9, Township 22 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Ernest R. Benedict,

SW 1/4, Section 24, W 1/2 NW 1/4 Section 25, E 1/2 NE 1/4 and SE 1/4, Section 26, and the NE 1/4 Section 35, Township 23 North, Range 22 East Boise Meridian, Lemhi County, Idaho.

✓ Land of Albert J. Matthews,

S 1/2 NE 1/4, NE 1/4 NE 1/4. Section 17, and the SE 1/4 SE 1/4, Section 8, Township 22 North of Range 22 East, Boise Meridian, Lemhi County, Idaho.

JUL 27 1996

✓ Land of Wallace W. Slavin,

E 1/2 NW 1/4 and Lot 2 and NW 1/4 NE 1/4. Section 17, Township 22 North, Range 22 East Boise, Meridian, Lemhi County, Idaho.

✓ Land of F. P. McGracken,

W 1/2 NW 1/4 Section 17, Township 22 North Range 22 East of Boise Meridian and the SW 1/4 SW 1/4, Section 8, and Lots 10 and 12 Section 7, Township 22 North of Range 22 East Boise Meridian, Lemhi County, Idaho.

✓ Land of William Smith,

NW 1/4 Section 8, Township 22 North, Range 22 East of Boise Meridian, Lemhi County Idaho.

✓ Land of A. C. Mather,

S 1/2 SW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4, Section 35, Township 23 North of Range 22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Ora L. and William M. Igou,

N 1/2 SW 1/4, SW 1/4, SW 1/4, SW 1/4 NW 1/4, Section 30, and the W 1/2 NW 1/4, Section 31, Township 23 North of Range 23 East of Boise Meridian, and the SE 1/4 SE 1/4, Section 25, Township 23 North of Range 22 East of Boise Meridian. SE 1/4, SW 1/4, SW 1/4, SE 1/4, Section 30, the NE 1/4 NW 1/4, NW 1/4 NE 1/4, Section 31, Township 23 North of Range 23 East, Boise Meridian, Lemhi County, Idaho.

✓ Land of Elwood D. Clark Unpatented.

✓ Land of James B. Grant and the Lemhi Placer Mining Company a corporation, Placer mining ground situated on or near the East Forks of Carman Creek, Lemhi County, Idaho.

JUL 31 1996

✓ Land of Eliza S. Mather,

SE 1/4 SE 1/4, Section 34 Township 23 North of Range 22 East of Boise Meridian,
and the lots 3 and 4 of Section 2 and Lot 1, of Section 3 Township 22 North of
Range 22 East of Boise Meridian, all in Lemhi County, Idaho.

✓ Land of John Dimock,

S 1/2 SW 1/4, NW 1/4 SW 1/4, SW 1/4 SE 1/4, Section 9, Township 22 North of Range
22 East of Boise Meridian, Lemhi County, Idaho.

✓ Land of Hillard H. Dahle,

W 1/2 SE 1/4, S 1/2 SW 1/4, Section 3, Township 22 North of Range 22 East of Boise
Meridian, Lemhi County, Idaho.

RECORDED

JUL 31 1996

State of Idaho,)
County of Lemhi,) ss

I, W. C. Smith Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for Lemhi County, do hereby certify that the within and foregoing, described land is the land covered by and for which water was allotted by Decree Dated May 9th, 1902, as shown by the findings of fact and conclusions of law filed herein in the above entitled action.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 24th day of June A. D. 1904.

/s/ W. C. Smith

Clerk

JUL 21 1905

TITLE
OF
CASE

DAVID McNUTT, et al

VS

THOMAS PALMER, et al

Abstract revised February 1982

SOURCE Carmen Creek and tributaries

PAGE 1

WATER DIST. 75-D

COUNTY Lemhi

JUDICIAL DIST.

JUDGE Joseph C. Rich

DATE OF DECREE May 9, 1902

RECORDED
IN BOOK NO.

AT PAGE NO.

FILE NO.

P.N.	D.N.	DECEDED OWNER	NAME	PRESENT OWNER	AMT. INCHES SEC. FT.	PRIORITY	DIVERSION				REMARKS, LAND TO BE IRRIGATED, ETC.	C.T.
							SUBDIV.	SEC.	TWP.	RG.		
75	0058	Frank P. McCracken			0.60	05-01-1869					W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 8, Lots 10 & 12 Sec 7 T22N-R22E	
75	0060	Montraville White Est.			1.40	05-01-1874					SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 9 T22N-R22E	
75	0061	Emma White			0.40	05-01-1874					NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 9 T22N-R22E	
75	0064	John F. Ferguson			1.50	05-01-1874					E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec 9 NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 10 T22N-R22E	
75	0051	Exchange Rights			8.00	05-01-1875					to be distributed among the users marked with an asterisk (*)	
75	0057	Exchange Rights			4.40	05-01-1882					to be distributed among the users marked with an asterisk (*)	
75	0075	Peter McKinney		*	0.30	05-01-1882					Portion of SW $\frac{1}{4}$ NE $\frac{1}{4}$ above Carmen Creek Ditch Sec 5 T22N-R22E	
75	0076	Ernest R. Benedict		*	3.60	05-01-1882					SW $\frac{1}{4}$ Sec 24. W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 25, E $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Sec 26, NE $\frac{1}{4}$ Sec 35 T23N-R22E	
75	0062	A. C. Mather		*	2.50	05-02-1882					S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 35 T23N-R22E	
75	0063	William Smith		*	1.60	05-01-1884					NW $\frac{1}{4}$ Sec 8 T22N-R22E	
75	0065	Hillard H. Dahle		*	1.50	05-01-1885					W $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 3 T22N-R22E	
75	0066	Wallace W. Slavin		*	1.50	05-01-1885					E $\frac{1}{2}$ NW $\frac{1}{4}$, Lot 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 17 T22N-R22E	
75	0067	John Dimock		*	1.00	05-01-1885					S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 9 T22N-R22E	
75	0079	Ora L. & William L. Igou		*	1.40	05-01-1885					N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 30, W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 31 T23N-R23E	
											SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 25, T23N-R22E; SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 30, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 31 T23N-R23E	
75	0069	Thomas Palmer		*	0.40	05-01-1888					S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 2 T22N-R22E	
75	0071	John Palmer		*	2.00	05-01-1888					E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 10 T22N-R22E	
75	0081	Lemhi Placer Mining Co.		*	10.00	1889					Near two East Forks of Carmen Creek	
75	0072	Albert J. Mathews		*	0.20	05-01-1890					S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 17, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 8 T22N-R22E	
75	0070	Thomas Palmer		*	0.60	05-01-1892					See place of use for right 75-0069 above.	

JUL 31 1986

Water Dist. No. 75-D

[illegible]

CLAIMS TO A WATER RIGHT ON

Carmen Creek & Tributaries

Lemhi

CO., IDAHO

February

19 82 Revised

Water Dist. No. 75-D

IDENTIFICATION NUMBER	NAME	AMT. cfs	Date of Filing or Priority	Point of Diversion				PLACE OF USE, REMARKS, ETC.
				Subdiv.	Sec.	Twp	Rge.	
75 - 4002	Stanley C. Daniels	1.7	8-30-1893	NENW	2	22N	22E	Carmen Creek-Irrig 65.3 acres SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 9 W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 10 T22N-R22E
		0.8	4-07-1902	NENW	2	22N	22E	
75 - 4005	Morgan DeBoard	1.5	6-13-1912	NESE	36	23N	22E	Freeman Creek-Irrig 115.2 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 2 T22N-R22E; E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 35, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 36 T23N-R22E
		1.7	6-01-1948	NESW	31	23N	23E	
		0.3	5-01-1959	NESW	31	23N	23E	
75 - 4087	Erin G. Robie	0.2	9-14-1968	NWNW	2	22N	22E	Unnamed springs-Irrig & stock-9 acres N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 2 T22N-R22E
75 - 4098	Erin G. Robie	0.2	9-14-1968	NWNW	2	22N	22E	Carmen Creek-Irrig & stock-9 acres N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 2 T22N-R22E
75 - 4124	Duane Halverson	1.75	5-25-1928	NWSE	32	23N	23E	Golway Gulch-Irrig 65 acres S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 31 T23N-R23E
75 - 4132	Pete Walchy	3.2	4-01-1936	NESE	25	23N	22E	Davis Canyon Creek-Irrig 160 acres NW $\frac{1}{4}$ Sec 36 T23N-R22E
				NWNE	36	23N	22E	
75 - 4186	Michael & Kathleen Zanutto	0.15	2-09-1901	SWNW	2	22N	22E	Unnamed spring-Irrig 7.5 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 3 T22N-R22E
75 - 4204	Jack F. Ellis	0.8	5-01-1948	NWNE	5	22N	23E	Freeman Creek-Irrig 10 acres S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 5, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 6 T22N-R23E
				NENE	6	22N	23E	
75 - 4205	Jack F. Ellis	3.0	5-01-1915	SESE	30	23N	23E	Smout Creek-Irrig 91 acres S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 30, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 31 T23N-R23E
				SWNE				
				NWNE	31	23N	23E	
75 - 4206	Jack F. Ellis	2.0	5-01-1918	NWSE				Golway Gulch-Irrig 66 acres SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 31, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 32 T23N-R23E; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 5, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 6 T22N-R23E
				SESW	32	23N	23E	
				NWNW	5	22N	23E	

JUL 31 1996

TITLE
OF
CASE

DAVID McNUTT, et al

vs.

THOMAS PALMER, et al

SOURCE CARMON CREEK

WATER DIST. 3 N.

JUDICIAL DIST. 5

DATE OF DECREE 5-9-02

COUNTY Lemhi

JUDGE Joseph C. Rich

RECORDED
IN BOOK NO. 1

AT PAGE NO. 403

FILE NO. 3N-1

PAGE 1

15-B

P.N.	D.N.	DECEED OWNER	NAME	PRESENT OWNER	AMT. INCHES 350 FT.	PRIORITY	DIVERSION				REMARKS, LAND TO BE IRRIGATED, ETC.	C.T.
							SUBDIV.	SEC.	TWP.	RG.		
	1	Frank P. McCracken			30	5-1-69 ¹⁸					W $\frac{1}{2}$ NW $\frac{1}{4}$ 17; SW $\frac{1}{4}$ SW $\frac{1}{4}$ 8; Lots 10, 12-7-22N-22E.	
	2	Montraville White Est.			70	5-1-74 ¹⁸					SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ 9-22N-22E.	
	2	Emma White			20	"					NE $\frac{1}{4}$ SE $\frac{1}{4}$ 9-22N-22E.	
	2	John F. Ferguson			75	"					E $\frac{1}{2}$ NE $\frac{1}{4}$ 9; NW $\frac{1}{4}$ NW $\frac{1}{4}$ 10-22N-22E.	
	3	Peter McKinney			15	5-1-82					Portion of SW $\frac{1}{4}$ NE $\frac{1}{4}$ above Carmon Creek Ditch 5-22N-22E	
	3	Ernest R. Benedict			180	" "					SW $\frac{1}{4}$ 24; W $\frac{1}{2}$ NW $\frac{1}{4}$ 25; E $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ 26; NE $\frac{1}{4}$ 35-23N-22E.	
	4	A. C. Mather			125	5-2-82					S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, 35-23N-22E.	
	5	William Smith			80	5-1-84					NW $\frac{1}{4}$ 8-22N-22E.	
	6	Hillard H. Dahle			75	5-1-85					W $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ 3-22N-22E.	
	6	Wallace W. Slavin			75	"					E $\frac{1}{2}$ NW $\frac{1}{4}$, Lot 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 17-22N-22E.	
	6	John Dimock			50	"					S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ 9-22N-22E.	
	6	Ora L. & William L. Igou			70	"					N $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ 30; W $\frac{1}{2}$ NW $\frac{1}{4}$ 31-23N-23E	
	7	Thomas Palmer			20	5-1-88					SE $\frac{1}{4}$ SE $\frac{1}{4}$ 25-23N-22E; SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ 30; NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 31, 23N-23E.	
	7	John Palmer Lemhi			100	"					S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ 3; SW $\frac{1}{4}$ NW $\frac{1}{4}$ 2-22N-22E.	
	8	Placer Mining Co.			500						E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 10-22N-22E.	
	9	Albert J. Mathews			10	5-1-90					Near two East Forks of Carmon Cr.	
	10	Thomas Palmer			30	5-1-92					S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ 17; SE $\frac{1}{4}$ SE $\frac{1}{4}$ 8-22N-22E.	
	10	Ernest R. Benedict			70	"					See No. 7	
	10	Ora L. & Wm. L. Igou			100	"					See No. 3	
	11	Lemhi Placer Mining Co.			2000	10-15-92					See No. 6	
											On Kirtley Creek - from Oct. 15 to Apr. 15 except the water can be used when there is excess over irrigation rights.	

JUL 31 1996

LEGEND

P.N. : PRIORITY NUMBER

D.N. : DEGREE NUMBER

C.T. : CUMULATIVE TOTAL

TITLE
OF
CASE

SOURCE CARMEN CREEK

PAGE 2

WATER DIST. 3 N.

COUNTY Lemhi

JUDICIAL DIST. 5

JUDGE Joseph C. Rich

DATE OF DECREE

RECORDED

IN BOOK NO. AT PAGE NO.

FILE NO. 3N-1

P.N.	D.N.	DECEED OWNER	NAME	PRESENT OWNER	AMT. INCHES SEC. FT.	PRIORITY	DIVERSION				REMARKS, LAND TO BE IRRIGATED, ETC.	C.T.
							SUBDIV.	SEC.	TWP.	R.G.		
	12	Frank P. McCracken			15	5-1-96					See No. 1	
	12	Eliza S. Mather			70	"					SE $\frac{1}{4}$ SE $\frac{1}{4}$ 34-23N-22E; Lots 3,4-2; Lot 1-3-22N-22E.	
	12	Peter McKinney			50	"					Desert Lot W $\frac{1}{2}$ SE $\frac{1}{4}$ 5, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 8-22N-22E.	
	13	Albert J. Mathews			50 40	5-1-97					See No. 9	
	14	Elwood D. Clark		Sprgs.	all 15	5-1-98					Springs on own land No land description in decree.	
		Rights below deeded to above water users. An exchange of Carmen Cr. water for Salmon R. Water to irrigate the lands below										
		David McNutt		75-0051	200	5-1-75					Part of NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ 32;	
		Mary J. Birdseye		75-0055	100	"					S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$ 22-23N-22E	
		Anna B. Davis		75-0056	100	"					SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and portions of NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ 32- portions of NE $\frac{1}{4}$ SE $\frac{1}{4}$ 31 23N-22E	
		Henry Greber		75-0052	70	5-1-82					{ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ and portions of NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ 32; and part of NE $\frac{1}{4}$ SE $\frac{1}{4}$ 31-23 No-22E. SE $\frac{1}{4}$ SE $\frac{1}{4}$ 31 Lots 2,3 & 4-5; Lot 1-6-22N-22E.	
		Niel Sweeney		75-0053	35	"					N $\frac{1}{2}$ SW $\frac{1}{4}$ 5; NE $\frac{1}{4}$ SE $\frac{1}{4}$ Lot 12-6-22N-22E.	
		Peter McKinney		75-0054	60	"					SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ 5; SE $\frac{1}{4}$ NE $\frac{1}{4}$ 6-22N-22E.	
		George L. Shoup, M. M. McPherson									Lot 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$ 6; S $\frac{1}{2}$ SW $\frac{1}{4}$ 5, 22-N-22 E.	
		A. J. Macnab, Wm. H. Shoup		75-0057	55	"						

L E G E N D

P.N. = PRIORITY NUMBER

D.N. = DECREE NUMBER

C.T. = CUMULATIVE TOTAL

JUL 8-1-1996

LAW OFFICES
FUREY, FUREY & BENNETTS
ATTORNEYS AT LAW

JACK B. FUREY
JAMES R. BENNETTS
CHALLIS, IDAHO

August 4, 1964

SHERMAN F. FUREY, JR.
SALMON, IDAHO

Department of Reclamation
State House
Boise, Idaho

RECEIVED
AUG 7 1964

Department of Reclamation

Gentlemen:

Mr. Archie McFarland, Watermaster of Carmen Creek, has asked me to write you about certain water rights which are usually referred to as "exchange" water rights. On page 2 of the Decree sheet for Carmen Creek, you refer to them as follows:

"Rights below deeded to above water users.
An exchange of Carmen Creek water for Salmon
River water to irrigate the lands below"

As you may know, many years ago the ranchers at the lower end of Carmen Creek on what is referred to locally as the "Big Flat" transferred their Carmen Creek rights to upstream users in exchange for the building of a ditch which made it possible for the lower users to use Salmon River water. About 620 inches of this water was transferred.

At Mr. McFarland's request, I have examined the old file in the case of David McNutt, et al, plaintiffs, vs. Thomas Palmer, et al, defendants, and have noted the following:

1. The Judgment which was entered in this case on May 9, 1902, provides in the early paragraph for the quieting of title to water in various amounts in David McNutt and others (being the Big Flat people), and in each paragraph involving these rights, the following additional language appears:

"and he (McNutt) is hereby adjudged to be the owner thereof subject to the right of the defendants and cross-complainants therein (the upstream people) and thereto, under and by virtue of said written agreement and the findings and report of said referees.

JUL 31 1964

Department of Reclamation
August 4, 1964
Page 2

And said (McNutt and the others) is hereby ordered and directed to convey to defendants and cross-complainants his right to the use of said _____ inches of the waters of said creek in accordance with the terms of said contract and the findings and report of said referees."
(parenthasized material added)

The old case file includes, among other things, a "Second Report of the Undersigned Arbitrators", in which the arbitrators list the upstream users among whom the 620 inches of exchange water was to be divided. I enclose a copy of this document, which was made from the original in the case file, and refer you particularly to paragraph 5, page 4, thereof.

The oldtimers say that this exchange water was divided into shares of 45 inches each; that of the 15 people named in paragraph 5, 13 have always been understood to be entitled to one full share of 45 inches, and the two remaining users, to one-half share each. This would make 14 shares of 45 inches, which comes to 630 total inches, which accounts for the 620 inches except the 10 inch discrepancy.

This information is forwarded to you because Mr. McFarland said that someone from your office at one time expressed interest in any information which would throw light on how these exchange water rights were to be distributed.

If we can furnish any other information, please don't hesitate to let us know.

Very truly yours,


Sherman F. Furey, Jr.

SFF:lg
Enclosure
cc: Mr. Archie McFarland

JUL 31 1966

SECOND REPORT OF THE UNDERSIGNED ARBITRATORS.

WHEREAS, by a certain agreement, in writing, bearing date the 26th day of June, 1900, made and entered into by and between Ernest E. Benedict, A.C. Mather, Eliza Mather, Ora L. Igou, William Igou, Elwood B. Clark, Theodore Batson, Thomas Palmer, John Palmer, Willard B. Doherty, Henry Lund, Mary Lund, Montreville White, John Dimock, Albert J. Matthews, John Daniels, Wallace T. Slavin, Frank P. McCracken, William Smith and Robert Martin, parties of the first part, designated as the Cerman Creek people, and David McMutt, Mary J. Birdseye, and J.W. Birdseye, her husband, Anna B. Davis, Henry Grieser, Neil Sweeney, George L. Shoup, by H.E. Phareson, his attorney in fact, Burdock H. Matherson, A.J. Macneab, William H. Shoup and Peter McKinney, parties of the second part, designated as the "Big Flat people", providing for the construction of an irrigating ditch from Salmon River in Lemhi County, Idaho, to a point intersecting a ditch known as "the Cerman Creek ditch" owned by McMutt, Birdseye and Davis, in consideration for the conveyance of certain rights in the waters of Cerman Creek, it was agreed to refer the following matters and subjects, with reference to said ditch and conveyance of water, to the award and determination of the undersigned, to wit: to award, order and determine the following:

- a To determine whether the river ditch is completed according to the above named specifications, and whether low enough to admit at the head thereof, two feet of water at low water season.
- b To decide and determine by whom said ditch shall be maintained.
- c If it is determined that the Cerman Creek people shall maintain said ditch, then to decide and determine how long they shall so maintain it.
- d To determine how many inches of the waters of Cerman Creek each of said Big Flat people heretofore appropriated and used, and are entitled to convey.

JUL 31 1906

To decide and determine when said Big Flat people shall convey their aforesaid right, title and interest in and to said waters of Garman Creek, to said Garman Creek people.

and to determine who of the Garman Creek people, are entitled to a conveyance from the Big Flat people of their interests in the waters of Garman Creek, after completing said River ditch.

Now, we the said Arbitrators, or Referees, having taken upon ourselves, the burden of said reference, and having examined the premises, and heard and duly considered all the allegations and evidence of the said parties, of, and concerning the said matters of difference and subjects so referred as aforesaid, do make and publish this our decision in writing of and concerning said matters, as follows:

1. That E.R. Benedict, Theodore Batson, Elwood D. Clark, Willard H. Dale, John Dimock, John Daniels, Ora L. Igou, William Igou, Albert J. Matthews, Robert Martin, Peter McKinney, A.C. Mather, Thomas Palmer, John Palmer, Wallace Slavin and William Smith, engaged in the work of constructing a ditch from Salmon River in Lemhi County, to a point on the Big Flat, where the same will intersect the Garman Creek ditch, now owned by McMutt, Elmore and Davis, and completed a ditch from said Salmon River, to said point on the Garman Creek ditch aforesaid, strictly according to the terms of said contract, to wit: said ditch terminates at the point intended by said contract: is six feet wide on the bottom: ten feet wide on top: two feet deep, and on an even grade of five feet to the mile, and low enough at the head, to admit water, two feet in depth at low water season, and has a suitable head gate.

2. To decide and determine, that the aforesaid "Garman Creek people", to wit: those who engaged in the construction of said ditch, shall maintain said ditch, in its present form, for a period of *one year* from this date, and at the expiration of one year from this date, said ditch shall belong to, and be the property of said "Big Flat people" to be maintained hereafter, at their own expense, except as to Elmore and Davis, who shall be relieved from the expense of maintaining

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said ditch, by said persons, who constructed the same, for a period of five years, according to the terms of a contract, existing between them

3. To decide and determine, that the Big Flat people appropriated and used 620 inches of the waters of Carman Creek, as follows:

David McNutt, 200 inches, appropriated May 1st 1875,

Mary J. Birdseye, 100 inches, appropriated May 1st 1875.

Anna B. Davis, and her children, 100 inches, appropriated May 1st 1875.

Henry Griebner, 70 inches, appropriated May 1st 1882

Neil Sweeney, 35 inches, appropriated May 1st, 1882

George L. Shoup

H.M. McPherson

James Macnab, and

William H. Shoup

} 55 inches, appropriated May 1st 1882

Peter McKinney, 60 inches appropriated May 1st 1882,

and they are entitled to convey the same to the aforesaid individuals who constructed said River ditch, according to the terms of said contract.

4. That said David McNutt, Henry Griebner, Neil Sweeney, George L. Shoup, H.M. McPherson, J.J. Macnab, William H. Shoup, Peter McKinney, shall, at the expiration of one year from this date, convey to the aforesaid persons, who constructed said River ditch, the following number of inches of the waters of Carman Creek, heretofore used by them, to wit :

David McNutt, 200 inches

Henry Griebner, 70 inches

Neil Sweeney, 35 inches

Peter McKinney, 60 inches

George L. Shoup, H.M. McPherson

James Macnab, and William H. Shoup

} 55 inches

Provided that said river ditch is kept in repair as herein provided.

And that Mary J. Birdseye and Anna B. Davis, their heirs or assigns, shall at the expiration of five years from this date, convey to said persons who constructed said river ditch, the following number of inches of the waters of Carman Creek, heretofore used by them, to wit:

Mary J. Birdseye, 100 inches

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area B. Davis, 100 inches

Provided that said river ditch is kept in such repair, for five years from this date, that it will deliver 200 inches of water from Salmon River, to the point where said river ditch intersects said German Creek ditch, -in accordance with the terms of the private contract, entered into between said parties, of date June 20, 1900.

5. We hereby find and determine that the following named persons have paid their full share, or portion of the cost of construction of said river ditch, to wit: E. B. Benedict and Wallace W. Slavin, and that the following named persons are in arrear in the payment of their share or portion of the cost of construction of said river ditch, to the amounts set opposite their respective names, to wit:

Theodore Betson	\$10.31
Elwood M. Clark	30.92
William H. Doble	13.56
John Dimock	32.00
John Daniels	206.22
Gr. L. and Miller Inou	3.54
Albert J. Mathews	13.56
Robert Martin	1.32
Peter McKinney	.51
E. C. Mather	1.09
Thomas Palmer	26.53
John Palmer	12.55
William Smith	.51

6. That said E. B. Benedict, Wallace W. Slavin, Theodore Betson, Elwood M. Clark, William H. Doble, John Dimock, John Daniels, Gr. L. and Miller Inou, Albert J. Mathews, Robert Martin, Peter McKinney, E. C. Mather, Thomas Palmer, John Palmer and William Smith, are entitled to a conveyance of the waters of said German Creek, so appropriated and owned by said "Big Flat people" provided that all of said persons, except said Benedict and Slavin, pay the aforesaid sums, so due and owing by them, with

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thirty days, fixed by the contract, first herein referred to.

7. That the persons, named in paragraph 6 of this report, are each entitled to a conveyance from said David McHutt, Mary J. Birdseye, Anne H. Davis, Henry B. Griebner, Neil Sweeney, Peter McKinney, George L. Shoup, J. J. McPherson, J. J. Macnab, and William H. Shoup, of the 620 inches of the waters of Canyon Creek, in accordance with the terms of said contract the right to the use of said water, dating from the times above stated, to the date of the original appropriation.

8. We also find and determine that the benefit to the William Smith, derived from the construction of said river ditch, is so much greater than the trifling amount of damage inflicted, that we award no damage to the owner thereof.

All of which is respectfully awarded and reported.

Dated October 24, 1901.

J. H. Wickenman
Thomas Yeatt
William Peterson } referees.

Our charges for Services:

<i>James H. Wickenman</i>	<i>11 days at \$3.00</i>	<i>\$33.00</i>
<i>Thomas Yeatt</i>	<i>12 days at \$3.00</i>	<i>\$36.00</i>
<i>William Peterson</i>	<i>12 days at \$3.00</i>	<i>\$36.00</i>

File

2^d Report of Referees

In the Court of the Fifth
Judicial District of the State of
Idaho, in and for Latah County.

David McNeill et al

PLAINTIFFS,

Thomas Palmer

et al

DEFENDANTS.

October 8th 1901

J P Lough

JUL 31 1996

2nd Report of Referee

David M. Quett et al

Thomas Palmer

et al

October 8th 1901

J. P. Colson

JUL 31 1996