

STATE OF UTAH)
) SS.
County of Beaver)

William R. Yardley and Hazel Yardley, being first duly sworn, depose and say:

That in the year 1952, they purchased certain premises in Beaver County, Utah, included in which was the 15.2 acres of land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 29 South, Range 7 West, S.L.M., and the 50 acres of land in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said section referred to in award No. 36, to one Juliette Low, in the decree commonly called the Beaver River General Adjudication Decree, together with all water rights appurtenant thereto, and ever since said period they have been and now are the owners thereof, in the possession thereof, and farming and irrigating the said premises; that during all of said times the said premises have been irrigated with the water mentioned in said award, to-wit, from springs tributary to the Greenwood Slough in the NE $\frac{1}{4}$ of said Section 28;

That during the said period when they have owned the said premises the water referred to and mentioned in said award No. 36 has been distributed to them by the water commissioner of the Beaver River System, and diverted at a point presently at the location of a Parshell flume or steel diverting works in the Greenwood Slough and which is the flume referred to by Mr. Lee Strong, Beaver River Water Commissioner, and which point of diversion prior to the installation of said steel flume was located at a wooden gate or diverting works in or immediately adjoining the natural stream bed in the Greenwood Slough, and at a point near where the South Field Ditch Company diverted its water out of the Greenwood Slough;

That prior to making the purchase of the said premises or at the time thereof, affiants inquired of the South Field Ditch Company the status of the water rights claimed under award No. 36, and they were not informed that any claim was being made or would be made

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to the effect that the point of diversion of the water referred to in award No. 36 was other than out of the Greenwood Slough in the natural stream bed in said slough out of which the South Field Ditch Company diverted its water taken from the Beaver River;

That about the year 1952 one Reed Smith, then the secretary of the South Field Ditch Company prepared and gave to the said William R. Yardley and/or Hazel Yardley a written statement showing the water turns and hours which were allotted to various individuals taking and using water from the South Field ditch; that affiants were informed that prior to their purchase the previous owner or owners of the lands and water referred to in award No. 36, had permitted with the knowledge and acquiescence of said South Field Ditch Company the commingling of the spring water referred to in award No. 36, with the direct flow rights of South Field Ditch Company taken from the Beaver River, and to take said spring water upon turns with the stockholders of South Field Ditch Company; that the secretary of the said South Field Ditch Company showed upon the said written statement a 49 hour turn to "Bill Yardley"; that said Bill (William R. Yardley) at that time did not own any stock in said South Field Ditch Company and was not entitled to any water out of the South Field Ditch Company award or water right, and that the said 49 hour turn was made up of the water represented by awards No. 28 and 36, - award No. 28 being made to Juliette Low for the irrigation of 25 acres diverted into the South Field Ditch, and award No. 36 being made to Juliette Low out of said springs tributary to the Greenwood Slough; that none of the said 49 hours of water were represented by any stock holdings in the South Field Ditch Co.

That at the same time one George P. Low was entitled to water as a stockholder in the South Field Ditch Company ~~under award No. 37, to be diverted out of the Greenwood Slough.~~ X

That the said statement handed to William R. Yardley as aforesaid is in the hand-writing of said Reed Smith, secretary of the

South Field Ditch Company, an exact copy of which is attached hereto and marked Exhibit "A" and made a part of this affidavit;

That thereafter and about the years from 1955 to 1958, a second statement of water turns was given to said William R. Yardley or/and Hazel Yardley, upon their request, and which showed that William R. Yardley would get from the South Field Ditch Company a distribution of 51 hours; which included the 49 hours given to him to compensate for the water awarded in awards Nos. 28 and 36, and an additional two hours ^{retained by} ~~procured from~~ one George P. Low; that during the years from 1955 to and including 1958 the said William R. Yardley did not own any stock in said South Field Ditch Company and did not get and was not entitled to any water out of its award, and consequently the only source from which he could or did get water distributed to him by the South Field Ditch Company was water permitted to be commingled with South Field Ditch Co. water and water from awards Nos. 28 and 36 owned by said Yardley;

That the said second statement was given to said Yardley by the then secretary of South Field Ditch Company, an exact copy of which is attached hereto and marked Exhibit "B" and made a part hereof;

That the said Yardley was never entitled to water represented by stock in said South Field Ditch Company until the year 1962 when he transferred and assigned the water represented by award No. 28 in consideration of thirty shares of South Field Ditch Company stock;

That in the year 1961, the officers of South Field Ditch Company advised these affiants that they must either trade the water represented by awards Nos. 28 and 36 for stock in South Field Ditch Company, or take the water represented by such awards as their own steady stream rather than on turns with the South Field Ditch water; and at that time and at no time prior thereto had the officers or stockholders of South Field Ditch Company ever claim or contend that the water referred to in award No. 36 could not be

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diverted from the place where it had been for many years so diverted or claim or contend that the water referred to in award No. 36 was ~~not~~ water which should have been diverted elsewhere;

X That in the year 1958 the said Yardleys were informed by directors of South Field Ditch Company that they would either take a reduction of 49 hours out of the present diversion or take a steady stream at the place where they were diverting their water, in lieu of continuing to commingle their water with the South Field Ditch Company water and taking their water on turns; and at that time the said Yardleys did not own any water rights by virtue of stock in said South Field Ditch Company. That in order to retain the situation as it was, said Yardleys accepted a reduction from 49 hours down to 45 hours, and a change in turns to fourteen days in lieu of the previous 16 day turn.

That said Yardleys have never received any water referred to in award No. 36 for the irrigation of the premises therein mentioned from any place other than where they received the same out of the Greenwood Slough immediately above where the South Field Ditch diverts its water out of the Greenwood Slough.

That the first time the said South Field Ditch Company made any claim to the effect that these affiants had no right to take their spring water awarded under award No. 36 from the place where it had previously been diverted, was in March, 1962, after some directors and/or stockholders of said South Field Ditch Company had been to the State Engineer's office in Salt Lake City and determined that the description of the point of diversion as set forth in the decree was in error if construed strictly as therein set forth; and if such point of diversion is in error the error was made in the year 1931 or prior thereto by the State Engineer in setting up an erroneous description in said decree, which error was and is an unintentional and inadvertent one.

That such error, if one there be, has been known or should have been known for the past thirty two years, and during such thirty two years has been entirely disregarded and ignored, and the actual and proper place of diversion and right to the use of such water has been recognized and accepted by said South Field Ditch Company, the owner and predecessors in interest of award No. 36, and by the State Engineer and his water commissioners.

William R. Yardley

Hazel B. Yardley

Subscribed and sworn to before me this 26th day of August, 1963.

Barbara L. Clark
Notary Public

EXHIBIT "A"

Ernest Joseph	5	April 1-5 a.m.	5 hr
Bill Yardley	49	AApril 1-10 a.m.	49:15
Joe Greenwood	5	April 3-11:15 a.m.	6
Ella Nowers	13.5	April 3-5:15 p.m.	13:35
Woodrow G	47.75	AApril 4-6:50 a.m.	47:55
R. S. Smith	17	April 6-6:45 a.m.	17:05
S. A. Smith		April 6-11:50 p.m.	26:10
John Nowers Est	8	April 8-2:00 a.m.	15:00
Elmer R.		April 8-5:05 p.m.	21:05
Owen A Est		April 9-2:05 p.m.	24:05
Delvin Smith		April 10-2:10 p.m.	22:05
Jim Low		April 11-12:15 p.m.	20:05
Hafgehs		April 12-8:20 A.M.	18:00
Waldo Y.		April 13-2:20 a.m.	9:45
Geo Low		April 13-12:05 noon	25:00
Albert T		April 14-1:05 p.m.	34:55
John A take every 16 days		April 15-midnight	30:05

Exhibit "B"

For 1955 and 1958

Ernest Joseph	5	April 1-5 a.m.	5 hr
Bill Yardley plus Low	51	April 1-10 a.m.	51:15
Joe G	5	April 3-1:15 p.m.	6
Burt N	13.5	April 3-7:15 p.m.	13:35
Woodrow G	47.75	April 4-8:50 a.m.	47:55
R S	17	April 6-8:45 a.m.	17:55
S.A.S.	33½	April 8-1:50 a.m.	33:40
John N	15 c	April 8-11:30 a.m.	15:00
Elmer R	21	April 9-2:30 a.m.	21:05
Owen A	24	April 10-11:40 p.m.	22:05
Jim L	20	April 11-9:45 p.m.	20:05
Hofheins	31½	April 12-5:50 p.m.	31:30 plus 2
Yardley	9 3/4	April 14-3:20 a.m.	9:45
A T S	35	April 14-1:05 p.m.	34:55
John A	30	April 15 midnight	30:00

April 6-22 - May 8-24 June 9-25
 July 11-27 - Aug 12-28 - Sept 13-29

Take each 16 days