

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

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MAR 14 1968

Department of Reclamation

April 7, 1964

Re: Permit No. 15001
North Side Canal Co.

H. C. Eagle, Watermaster
Water District No. 36
Box 697, Idaho Falls, Idaho

Dear Mr. Eagle:

The Certificate of Completion of Works was issued under Permit No. 15001 for 1260 c.f.s. The Proof of Beneficial Use of the water was made January 11, 1932.

The file shows that the proofs were evidently satisfactory, however there was a question as to the amount of fees which should be collected. Originally the proof of completion of works was due November 8, 1925, and three extensions of time advanced the date to November 8, 1931.

It seems that the Woodville Decree mentions the permit as being in fact and any rights obtained under the permit are not limited.

The Water License could probably be issued, if the North Side Canal Co. made the request.

The question as to obtaining a decree is entirely a legal question. We see no reason why the decree could not be obtained. Evidently the extensions of time allowed for completion of works were entirely legal, as I find no question raised in that matter.

Very truly yours,

Ralph W. Thomas

RALPH W. THOMAS, Deputy
State Reclamation Engineer

RT:ew

cc: Clifford E. Fix -
Attorney at Law -
Twin Falls, Idaho -

PARRY, ROBERTSON & DALY
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15001
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Idaho Falls, Idaho
April 6, 1964

Mr. Carl E. Tappan
State Reclamation Engineer
State House
Boise, Idaho

Dear Mr. Tappan:

Can you inform me as to the status of Permit No. 15001. This permit was listed in an abstract of permits dated August 1927. The North Side Canal Company had applied for 1,500 cfs of the waters of Snake River with a priority date of August 6, 1920. Proof of completion of Works was due by Nov. 8, 1927. Proof of Beneficial Use was due by Nov. 8, 1933.

Was this proof made and if so for how much water? We have been showing in our mimeographed decree book a figure of 1,260 cfs and have been regulating the North Side diversions on that basis. I would assume that proof was probably made for the 1,260 cfs.

Plans are in progress to obtain supplemental decrees for several canals with an April 1, 1939 priority. This procedure was approved in connection with the signing of Palisades Contracts. The question has been raised as to whether it would be advisable to obtain a decree for the North Side Canal for this 1920 priority at the same time action is taken on the 1939 decrees.

Your advice on the above matters would be appreciated.

Very truly yours,

H. C. Eagle
Watermaster

cc: Clifford Fix,
Twin Falls

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15001
01-2034

AFFIDAVIT FOR CHANGE OF POINT OF DIVERSION OF
WATER RIGHT.

Permit No. 15001.

- - -

STATE OF IDAHO, }
County of Jerome) ss.

HARVEY W. HURLEBAUS, being first duly sworn, deposes and says: That he is the Secretary-Treasurer of North Side Canal Company, Limited, an Idaho corporation, that its post-office address is Jerome, Idaho. That it is the owner of and using a certain water right, for 1500 cubic feet per second of the water of Snake River flowing through the State of Idaho, obtained by virtue of Permit to appropriate the public waters of the State of Idaho, No. 15001, issued by the Commissioner of Reclamation, dated November 8, 1920, bearing date of priority of November 8, 1920, for the purpose of irrigating the following described lands, situate, lying and being in Water District No. 36 (formerly 61), in the Counties of Jerome, Gooding, and Elmore, State of Idaho, to-wit:

All lands now entitled or hereafter to be entitled to water from the system of the North Side Canal Company, Limited, not exceeding a maximum of 185,000 water shares, each share representing a water right for one acre of land, all to be used on lands drawing water from the canal system of said company in Jerome, Gooding and Elmore Counties, which said lands are more particularly described in the amended permit on file in the office of the Department of Reclamation.

That North Side Canal Company, Limited, has become the owner thereof in the following manner: by assignment from R. E. Shepherd, the original owner.

15001

That the said waters are now diverted from said stream at, and the diversion point described in the original application for permit is the diversion works of the main canal of the North Side Canal Company, Limited, which is located at a point which bears south 2364.8 feet distant from the Northeast corner of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) ^{E. B. M.} and which is in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) ^{E. B. M.} in the County of Jerome, Idaho, through the said main canal of the North Side Canal Company, Limited, as per map filed herewith and of this affidavit made a part.

That affiant desires to change the point of diversion of said water so that 150 cubic feet per second shall be diverted at the said diversion point immediately above described, and described in the original application for permit, and to divert the balance of the water available under this permit through diversion works which are located at a point which bears south 0°29' west 2035.2 feet from the Northeast corner of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) E. B. M., and which is on the section line between Sections Twenty-nine (29) and Twenty-eight (28) in said Township Ten (10) South, Range Twenty-one (21) E. B. M., as per the map above referred to.

That the reasons for desiring to make such change are as follows: That the owner of this permit has, in order to make an adequate water supply available at all times for all the lands served by its canal system, and in order to make for more

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MILNER
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efficient operation of said system, and in order to protect itself against canal breaks and to have in part a duplicate canal system, caused to be constructed a new diversion canal from Snake River which diverts water from said stream at the point last above mentioned, and at which a part of the water available under this permit is now to be diverted, which said new canal simply parallels the older canal and allows the owner of this permit to return the water diverted through it to the older canal at a point about three miles down the said canal from the diversion works; and that the change in the point of diversion is only a few hundred feet and makes no change whatsoever in the manner of taking the water from said stream, nor the place to which it is used, and does not, or can not, affect any other water user on said stream in any manner whatsoever.

That no one will be injured by such change and that such change will be made at affiant's own risk.

Harvey W. Hurlbauer
Affiant.

SUBSCRIBED AND SWORN to before me this 7th day of.

November, 1930.

Geo. D. Blair
Notary Public,
Residing at Jerome, Idaho.



Exhibit 1-16
61

Admitted in Evidence
FEB 5 - 1931
J. C. Conner, Reporter

Permit No. 15001

CERTIFICATE OF COMPLETION OF WORKS

To All Whom It May Concern:

This is to certify that the NORTH SIDE CANAL COMPANY, LIMITED, of Jerome, County of Jerome, and State of Idaho, the holder of Permit No. 15001, issued upon Application No. 21164, bearing date of priority of August 6, 1920, authorizing the diversion of 1500 second feet of the waters of SNAKE RIVER, County of Jerome, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 1260 second feet of the waters of SNAKE RIVER; that the points of diversion of said waters are:

(a) South 2364.8 feet distant from the Northeast corner of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) East, Boise Meridian, and which is in the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4} NE\frac{1}{4}$) of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) East, Boise Meridian, for the diversion of 150 second feet; and,

(b) South $0^{\circ} 29'$ West 2035.2 feet from the Northeast corner of Section Twenty-nine (29), Township Ten (10) South, Range Twenty-one (21) East, Boise Meridian, and which is on the section line between Sections Twenty-nine (29) and

15001
01-2036

Twenty-eight (28) in said Township Ten (10) South, Range
Twenty-one (21) East, Boise Meridian, for the diversion
of 1110 cubic feet per second;

and that the lands proposed to be irrigated by the use of said water
are described in the list hereto attached, being all of the lands
lying under and deriving their water supply from the canal and irri-
gation system owned and operated by said NORTH SIDE CANAL COMPANY,
LIMITED.

WITNESS my hand this 3d day of January, A. D. 1931.

G. H. Carter
Commissioner of Reclamation

15001
01-2036

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10 a. m. on the 11th day of January, 1932,
at Jerome, County of Jerome, State of Idaho,
before Wayne A. Barclay, Notary Public, proof will be submitted
of the application to beneficial use of Twelve Hundred Sixty (1260) cubic feet per second of the
waters of Snake River in accordance with the terms and conditions of
Permit No. 15001 heretofore issued by the Department of Reclamation
of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are.....

North Side Canal Company, Limited, Jerome, Idaho.

The use to which said water has been applied is irrigation and domestic purposes.

The amount applied to beneficial use is Twelve Hundred Sixty (1260) second feet.

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) : All lands under the irrigation system of North Side Canal Company, Limited, now entitled or hereafter to be entitled to the use of water from said system, in Jerome, Gooding and Elmore Counties, not exceeding a maximum of 185,000 shares, each share representing a water right for one acre of land, all as more particularly described in the amended permit on file in the office of the Department of Reclamation of the State of Idaho, to which list reference is made for detailed description.

The name of the canal or ditch or other works by which said water is conducted to such place of use is North Side Canal Company, Limited, canal and irrigation system

The right to take water from such works is based upon Permit No. 15001

The source of supply from which such water is diverted is Snake River

The date of the priority which said user is prepared to establish is August 6th., 1920.

R. W. FARIS

Commissioner of Reclamation.

15001

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 15001.....

This proof is for... Completion of Works

In Water District No.

1. Name of applicant: NORTH SIDE CANAL CO.
2. Source of water supply: Snake River
3. Location of point of diversion: Is in the (See Remarks) of Section.....
T..... R..... County of

4. Describe works as they exist, giving dimensions and capacities of same:

The works consist of what is locally named the "Gooding Canal," an extension of the Minidoka Project of the United States Bureau of Reclamation, in which canal the holder of this permit has, by contract and purchase, acquired a 37% share of the canal's maximum carrying capacity.

The hydraulic elements of the first section of this canal are: Base, 25 feet; side slopes, 1/4 to 1; depth of water, that which will be afforded by an 11-foot gage in the forebay of the Milner dam. It is estimated that the maximum carrying capacity of the canal will be 3,030 cubic feet per second.

Suitable headwork structures, consisting of large radial gates, equipped with suitable hoisting devices, have been installed. The entire canal and diversion works are constructed in first-class, workmanlike manner.

In addition to the aforementioned canal capacity, the applicant herein will be afforded an additional 150 cubic feet per second of capacity in its existing main canal, upon which proof has been filed and certificate has heretofore been issued. Such increase in capacity will be afforded by reason of the fact that what is locally known as the "controlling works," located some 3 1/4 miles downstream from the main canal headgates, regulating the flow from Snake River, can be eliminated, thereby increasing the velocity of the water over that which obtains with the said "controlling works" check in operation.

5. Water is used for: Irrigation6. State whether or not water has been turned into works of diversion: Yes.

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation):

The list of lands to which the water under this permit will be applied is on file with amendment to said permit, filed December 15, 1930, and regularly recorded upon the permit. Said land list involves 185,000 acres of land, more or less.

8. What large stream would the water here appropriated finally reach? Columbia River.

Remarks: Points of Diversion as follows: 150 second feet to be diverted at a point which bears S. 2364.8 ft. from the NE corner of Sec. 29, T. 10 S., R. 21 E., B. M., and is in the SE 1/4 NE 1/4 of said Section 29; balance of water available to be diverted at a point which bears S. 0°29' W. 2035.2 ft. from NE cor. of Sec. 29, T. 10 S., R. 21 E., B. M., on section line between Secs. 29 and 28, in said T. 10 S. R. 21 E., B. M.

Note: Examination of these works was made upon several occasions during the course of construction, so that the undersigned is entirely familiar with the entire canal system and has observed water being carried therein.

15001



BUREAU OF WATER RESOURCES
MAINS H. COFFIN
DIRECTOR
ASSISTANT COMMISSIONER

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

R. W. FARIS, COMMISSIONER
BOISE

April 6, 1932

RE: PERMIT NO. 15001

Mr. R. E. SHEPHERD, General Manager
North Side Canal Company,
Jerome, Idaho

My dear Mr. Shepherd:

I have not yet had an opportunity to check up the maps and data furnished by your engineers, covering the new work under the above mentioned permit, but have no reason to suspect that the dimensions and carrying capacity of the canals and various works will not check out all right. However, whatever my conclusion may be as to a general examination, I shall want to make some further examination with reference to the canal beyond Wilson's Lake and the distribution system generally, and would appreciate it if you will advise me as to when the roads and weather conditions are favorable for such an inspection.

With reference to the main question as to whether or not a fee should be charged under the above mentioned permit, it seems clear to me that the intention of the Legislature, in passing the 1923 amendment, was to relieve the permit holder from the payment of an additional fee where a fee had already been paid, and where no fee had been paid this amendment could not be considered applicable.

I would also appreciate Mr. Parry's advice and construction of that portion of Sec. 5569, C. S., wherein the amount of water to be allowed shall not exceed five acre feet of stored water, or one second foot for each fifty acres of land to be irrigated.

With kindest personal regards to you all, I am

Very truly yours,

Commissioner of Reclamation

RWF/mt

cc - R. P. PARRY, Attorney
Twin Falls, Idaho

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JEROME, IDAHO

15001
01-2036

WALTERS, PARRY AND THOMAN
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
TWIN FALLS, IDAHO

H. A. WALTERS
R. P. PARRY
J. P. THOMAN
J. R. KEENAN

June 19, 1933.

Mr. Harvey W. Hurlbaeus,
Secretary,
North Side Canal Company,
Jerome, Idaho.

My dear Harvey:

Replying to your letter of the 13th, in which you stated that the Board of Directors desire a letter giving the present status of Permit No. 15001 with particular relation to the fees.

This matter still stands in the same way that it did when I last discussed it with the Board.

In other words, we have made all of our proofs with reference to both completion of works and application of water to beneficial use, and taken all of the legal steps necessary to get this permit. It is my understanding that all our proofs have been accepted by the Department, and the one remaining question is the fee claimed by the Department.

The Board will recall that in 1923, an amendatory law was passed, providing "that in case of water used for irrigation, where the right sought is additional to an existing right, and where the Department of Reclamation is not required to make an examination of the ditches or the lands", that the fee should not be required to be paid. It has been our contention that this amendment applied to our case. However, Mr. Faris raised the point that because no fee had ever been paid on the original North Side water rights, for the reason that they were obtained by the Foster Decree and not by license, that we should have to pay this fee.

I took the matter up with the then attorney general of the state, and on March 8, 1932, the attorney general rendered an opinion that we were not obligated to pay the fee. However, on April 6, 1932, Mr. Faris advised Mr. Shepherd, as General Manager of the Canal Company, sending me a copy, which indicated that he was still of the opinion that a fee should be charged. He also stated that he desired to make some examination with reference to the Canal beyond Wilson's Lake.

It is my understanding that the matter there stands now, so far as the permit itself is concerned. It would probably be advisable that the Board delegate either Mr. Shepherd or

01-2036
15001

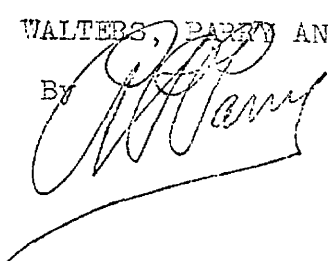
#2. 6/19/33.
H. W. H.

myself to again discuss this with Mr. Faris and see if he has not weakened in his resolve to compel us to pay this fee. If he still has the same position, then it will be up to the Canal Company to determine whether to pay the fee or to bring action against the Commissioner to compel him to issue the license without the fee. The Board should, however, understand that on January 14, 1932, we obtained a decree in a suit brought against the watermaster, for the 1260 feet, the maximum amount we could divert under the so-called 1500 foot permit. In other words, insofar as the records go, we are in just as good a position as we would be if the Commissioner gives us our license, as we have requested. Unless and until someone attacks this decree, we do not have any real need of the Commissioner's license, and his failure to give it to us does not hurt us in any way. The point that he has never actually given us our license would only become material if, at some future date, someone might attack our decree and ask to have it set aside on the ground that we had never received any license. This is a point that has never been fully decided, and is a matter open to debate. I have always felt that in order to be as safe as possible, we should get the license from Mr. Faris if we possibly can.

And in this same connection, it is my recommendation that this year, during the flood season and before the river goes under regulation, the North Side Canal Company should make, at least for a short time, as large a simultaneous diversion as it is possible to make. By a simultaneous diversion, I mean diversion of the gross capacity of the main canal and of our capacity in the Gooding Canal at the same time. I think this should be done in order to forestall any point ever being raised that we have in any way abandoned any part of our decreed rights. I trust this makes the present situation clear to the Board.

Very truly yours,

WALTERS, BARRY AND THOMAN

By 

RPP:N.

01-2036
15001

November 8, 1933

Re: Permit No. 15001
North Side Canal Co., Ltd.

MR. WHEELER O'HARROW
Jerome,
Idaho

Dear Sir:

In answer to the questions contained in your letter of October 31st, we wish to advise you of the following: The date of filing of the application for the above permit was August 6, 1920. It was made by R. E. Shepherd of Jerome, Idaho. On September 9, 1925, Mr. Shepherd assigned all of his interest in this permit to the North Side Canal Company, Limited. The canal company is the present owner. The permit holder offered proof of Completion of Works for 1260 second feet of water and a Certificate of Completion of Works was issued for that amount. On January 11, 1932, final proof of the application of the water to beneficial use was offered for 1260 second feet of water. Due to a number of questions which have not yet been definitely settled, final action has not been taken on this proof and for that reason a license has not been issued.

In reply to your question, "Has Permit No. 15001 ever been converted into a decreed right?" I wish to quote from what is known as the Woodville Decree, tried before Judge Cavanah in the United States District Court on the 25th day of June, 1929:

"It is further stipulated and agreed that nothing herein contained shall be deemed to in any way waive, limit, change or vary any right or rights that the North Side Canal Company, Limited, may obtain under that certain permit No. 15001, with a priority date of August 6, 1920, for the diversion of 1500 cubic feet per second of time of the waters of Snake River at or near Milner Dam, (which said permit is claimed to be a valid and subsisting permit at this time), if, as and when actual diversions are made thereunder or proofs are submitted thereunder or license issued thereon, in conformity with the Statutes of the State of Idaho."

Thus, it seems to me that Permit No. 15001 has been decreed conditionally, with the understanding that the canal company fully comply with the laws of the State of Idaho in order to obtain a license from this department.

Very truly yours,

15001

R. W. FARRIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:RG