

T1939 GROVER

Transfer No. 1939

Application No. 31-0176

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant Blaine Grover Phone 374-5254
Post office address Dubois, Idaho 83423 Box 236

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to Oregon Short Line Railroad Company
(Name)
in case of Ernest Sauve vs W. H. Abbott, et. al.
dated 11-01-30 in U.S. District Court
Eastern Division county of Bannock
(Name of court)
- b. License No. issued by the Idaho Department of Water Resources
- c. Claim No. on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
Quit Claim Deed
3. Source of water Beaver Creek tributary to Mud Lake
4. Date of priority Sept. 1, 1879
5. Water is used for the following purposes:
amount 0.37 for Irrigation purposes from Apr. 1 to Nov. 1
amount for purposes from to
amount for purposes from to
(month/day - both dates inclusive)
6. Total amount of water under right: a. 0.37 cubic feet per second
&/or
b. acre feet per annum
7. Location of original point of diversion is NE ¼ of SW ¼ of Section 21
Township 10N Range 36E, B.M., in Clark County
Additional points of diversion, if any

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
10N	36E	28							30										30

Total number of acres to be irrigated 30

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County _____
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

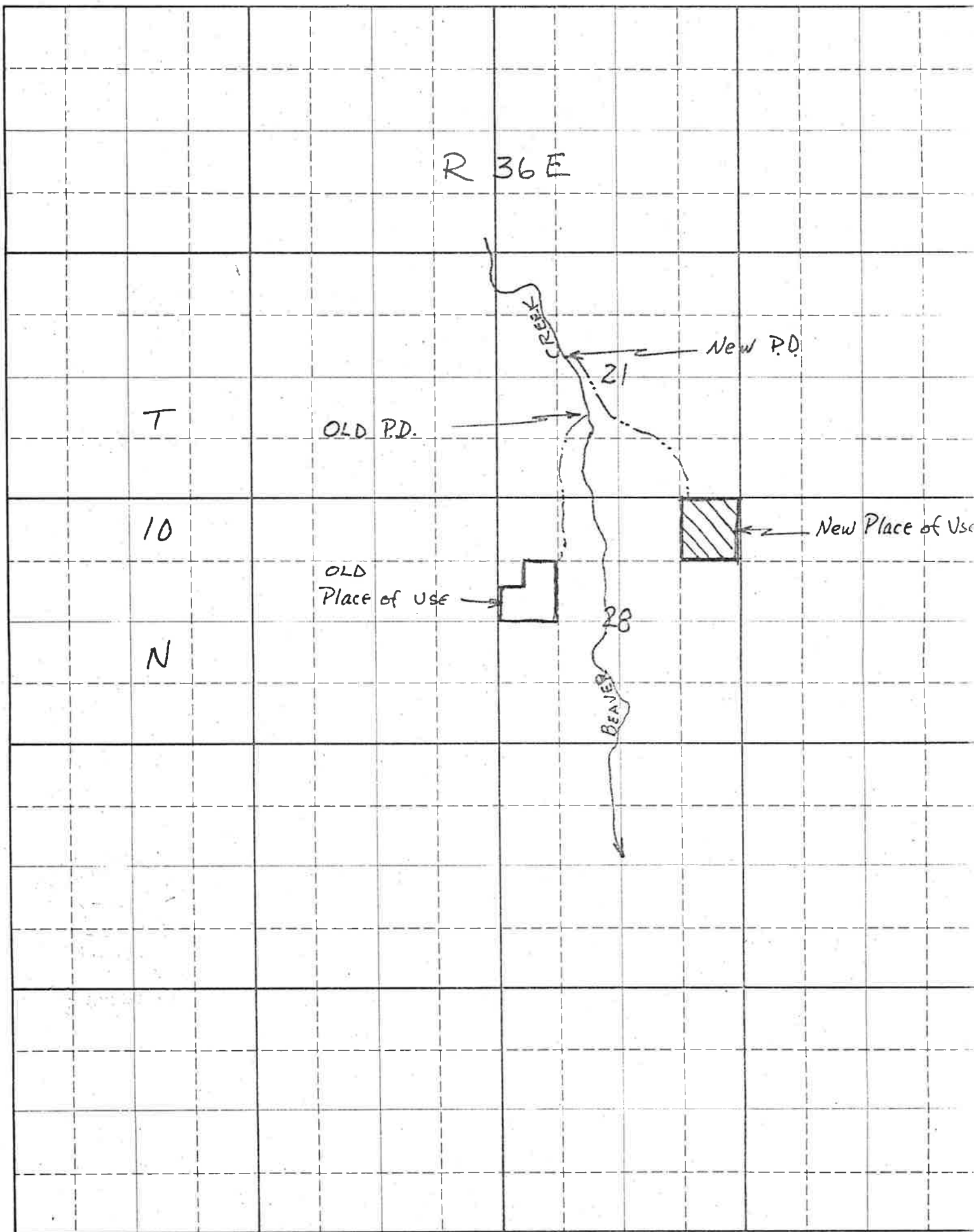
1. Change in point of diversion
- a. Amount of water to be diverted 0.37 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion SE ¼ NW ¼, Section 21 Township 10N
Range 36E, B.M., Clark County _____
Additional points _____
- c. Description of diverting works Existing diversion ditch with headgate and weir.
- d. Describe the reasons for applying for a change in the point(s) of diversion _____

2. Change in place of use

- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
10N	36E	28	30																30

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

3. Remarks NOTE: Right transferred from Oregon Shortline to irrigation many
years ago. Old point of diversion and place of use as used by Harn & Thomas.

I hereby assert that no one will be injured by such change and the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

Blaine Horne
(Signature of applicant)

Subscribed and sworn to before me this 17th day of February, 19 76

Wayne H. Smith
(Notary public)

My commission expires 12-5-76

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 31-0176 (1939),
and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions:

Pursuant to Memorandum Decision and Order of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 30 day of March, 19 76

R. Keith Higginson
R. KEITH HIGGINSON, Director

FOR DEPARTMENT USE ONLY

Received by CW Date 2-18-76

Prelim. check by LHJ Fee \$30.00

Received by CW Date 2-18-76

Published in Enterprise-Argonaut #15625

Pub. dates Feb. 26 + Mar. 4, 1976

Watermaster recommendation requested on WD 31

Wm. Thornton 2-12-76 rec'd. 3-05-76

Protest filed by _____

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial
by Det

Copy Made.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Application for Transfer)
of Water Right No. 31-0176 in the name)
of BLAINE GROVER)
_____)

MEMORANDUM DECISION
AND ORDER

On February 18, 1976, Blaine Grover filed an application with the Department of Water Resources to change the point of diversion and place of use of Beaver Creek water originally decreed to the Oregon Short Line Railroad Company in the case of Ernest Sauve vs. W. H. Abbott, et al, dated November 1, 1930. The right, bearing priority of September 1, 1879, is for 0.37 cubic feet of water per second from Beaver Creek with point of diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, Twp. 10 N, Rge. 36 E, B.M., Clark County, for railroad use at Dubois, Clark County, Idaho. Title to the right was acquired from the railroad company by H. R. Harn and Benjamin H. Thomas, who have irrigated 30 acres of land within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, Twp. 10 N, Rge. 36 E, B.M., for over forty years.

Title to the right was obtained on January 31, 1976, by the applicant, Blaine Grover, who proposes to transfer the point of diversion to a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp. 10 N, Rge. 36 E, B.M., and the place of use to 30 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, Twp. 10 N, Rge. 36 E, B.M.

The transfer now under consideration involves no apparent expansion of the water right, and no protests have been received. There are questions, however, concerning the validity of the right to be transferred.

The issues of concern are:

- (1) Has the decreed water right which is proposed to be transferred been forfeited by previously changing the place of use without obtaining an approved transfer; and
- (2) Was the change from railroad uses to irrigation uses an expansion of the right?

FINDINGS OF FACT

- (1) The type of use was changed from railroad uses to irrigation uses around 1930. Since that time, the 30 acres listed as belonging to Harn and Thomas have been supplied water by authority of the right in question.

(2) The extent and consumptive use of the originally decreed railroad right cannot be determined.

CONCLUSIONS OF LAW

(1) The Idaho Code, Section 42-108, states in part:

" . . . After the effective date (May 26, 1969) of this act, no person shall be authorized to change the point of diversion or place of use of water unless he has first applied for and received approval of the Department of Water Resources under the provisions of Section 42-222, Idaho Code."

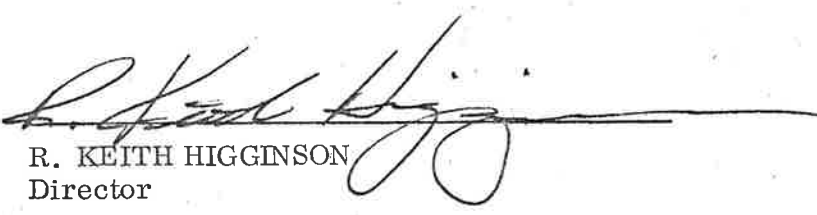
Prior to the effective date of the amendment of Section 42-108, it was possible that the place of use of an existing water right could be changed by effecting such, as long as there was no injury to existing water rights. Since the change of use was made over 40 years ago, and no action has been taken against such use, it can be assumed that other existing rights on Beaver Creek were not injured.

(2) The periods of use of the water for railroad purposes may be different from those for irrigation purposes. However, due to lack of data, it is not possible to compare such periods and determine any change in the consumptive use of water.

ORDER

IT IS, THEREFORE, ORDERED and Application for Transfer of Water Right No. 31-0176 is hereby APPROVED subject to the condition that a measuring device of a type approved by the Director of the Department of Water Resources be permanently installed and maintained as part of the diverting works at the new point of diversion from Beaver Creek. Approval of this transfer is for point of diversion and place of use only and no determination has been made of the legality of a change from railroad to irrigation use.

Dated this 30th day of March, 1976.


R. KEITH HIGGINSON
Director