

T1710 NEELEY RANCH

FREMONT-MADISON IRRIGATION DISTRICT

ST. ANTHONY, IDAHO 83445

March 4, 1976

BOARD MEMBERS

LORIN C. YOUNG
JAMES MAX MORTENSEN
EMERY DAVIS

BOARD MEMBERS

LEIGH CHANTRILL
R. WILLIS WALKER
NORMAN HILLAM
LARUE FRANSEN

Watermaster District 1
P.O. Box 1099
Idaho Falls, Idaho 83401

Mr Larsen:

Some of the things I have listed below might help to make a decision for Stevens and Neeley.

Several years ago Mr Neeley purchased two parcels of land in South Leigh Canal in the Teton Basin, he immediately sold the land and retained the storage rights, one parcel was divided into lots and the other was irrigated by a well according to Art Wilson, the two lands had 55 acre-feet of storage which has been idle since he purchased it and was'nt until very recently he asked to annex to lands in Sec. 18 Twp 6 Rge 43. Mr Stevens with Mr Neeley have a late filing which will give them equal rights, it is possible that Mr Stevens can rent some of the Canyon Creek Storage inasmuch they only used about one third last year and this year seems to parallel last years operation.

Hope you can set some rules they both will have to live by.

Andy



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

IDAHO FALLS, IDAHO 83401

August 5, 1975

RE: J. Wayne Stevens

Mr. Arthur Larson, Watermaster
Water District 01
Box 1099
Idaho Falls, Idaho 83401

Dear Art:

It has been brought to my attention that J. Wayne Stevens is still pumping water from Canyon Creek but it is not clear to me under what right Mr. Stevens is now appropriating water. I was previously led to believe that he was pumping water for the irrigation of lands that have decreed rights in the Canyon Creek Canal.

If, in fact, the lands that are presently being irrigated are not within the boundaries of the Fremont-Madison Irrigation District then Mr. Stevens must still be pumping under a 1974 priority. If Canyon Creek water does not reach the Teton River, then his 1974 priority may still be in effect. However, if Canyon Creek water is now needed to fill prior downstream rights then Mr. Stevens must discontinue pumping.

Please let me know the status of this right to help me answer questions we have received concerning Mr. Stevens' right to the continued use of Canyon Creek water.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ronald D. Carlson".

RONALD D. CARLSON
District Engineer

RDC:cw

cc: Blair Grover

Law Offices
LEE, RIRIE & GROVER
Chartered Professional Association

T. HAROLD LEE
JAMES A. RIRIE
BLAIR J. GROVER

P.O. Box 36
Rigby, Idaho 83442
(208) 745-6653

330 Shoup Ave.
Room 201
Idaho Falls, Idaho 83401
(208) 524-2650

Rigby, Idaho 83442

August 1, 1975

Mr. Arthur Larson
Water District No. 1
Federal Building
Idaho Falls, Idaho 83401

Mr. Ronald Carlsen
State of Idaho
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Mr. Andy Anderson
Executive Secretary
Fremont-Madison Irrigation Dist.
115 East Main Street
St. Anthony, Idaho 83445

In re: Judd Neeley

Gentlemen:

As you know, the undersigned represented Mr. Judd Neeley during the Fall and Winter of 1974 in the application to transfer the point of diversion and place of use of certain water rights. At or about the same time, Mr. Neeley had made application to divert certain water from Canyon Creek. Just prior thereto, Mr. Stevens had made similar applications. In February, 1975, the Director of the State of Idaho Department of Water Resources, approved all of the transfers and applications.

During that same period of time, Mr. Neeley, through the undersigned, filed a Petition with the Fremont-Madison Irrigation District to annex some of his land to said district. That Petition was neither permitted nor denied, but Mr. Neeley was informed that there were numerous similar applications and no action would be taken until it was more certain what kind of water would be available from the Teton Dam.

Page 2

Mr. Arthur Larson
Mr. Ronald Carlsen
Mr. Andy Anderson
August 1, 1975

Mr. Neeley has 55 acre feet of storage water in the Island Park Reservoir and has leased another 70 feet. There was some discussion of pursuing an annexation based on the storage water, but the Irrigation District discouraged continuing with that application and Mr. Neeley did not do so.

Thereafter, both Mr. Neeley and Mr. Wayne Stevens pumped water from Canyon Creek onto land which had not been irrigated on any prior occasions. As we understand, some two (2) weeks ago all 1974 and 1975 water rights were terminated and Mr. Neeley's pump was shut down by order of Water District No. 1. He has honored that Order. However, at the same time Mr. Stevens continues to pump water out of Canyon Creek. As we understand:

(a) He has not petitioned the State of Idaho Department of Water Resources for a change in point of diversion or place of use of any water he owns through the Canyon Creek Canal Company.

(b) The land he is currently pumping the water on from Canyon Creek has not been annexed into the Fremont-Madison Irrigation District. Thus, we do not know how it could legally authorize any changes of water. Aside from the legalities, however, the District indicated it would not approve such an exchange for transfer for Mr. Neeley and we would expect it would take that same position with regard to everyone similarly situated.

(c) There is no water in Canyon Creek based on the 1974 and/or 1975 applications.

Consequently, Mr. Neeley has asked us to determine why Mr. Stevens is permitted to pump water from Canyon Creek, while his pump is silent. Will you please contact the undersigned at your earliest convenience on Monday, to discuss what is happening.

Yours very truly,

LEE, RIRIE & GROVER



BG:pa.
cc: Judd Neeley

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

IN THE MATTER OF APPLICATION FOR TRANSFER NO.)

22-0610B in the name of O. J. NEELEY RANCH, INC.)

MEMORANDUM DECISION
AND ORDER

On September 26, 1974, O. J. Neeley Ranch, Inc., filed with the Department of Water Resources an application to transfer the waters of Pony Creek to a new point of diversion on Canyon Creek located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 19, Twp. 6N, Rge. 43E, B.M. On October 9, 1974, the Department received a protest against approval of said application from J. Wayne Stevens. On October 21, 1974, the Department received an additional protest from Mary Smith, Attorney at Law, on behalf of Fremont-Madison Irrigation District. A hearing on the matter was held on November 22, 1974, in St. Anthony, Idaho.

Owen J. Neeley was present on behalf of the applicant, O. J. Neeley Ranch, Inc., and was represented by Blair Grover, attorney at law. The protestant, Fremont-Madison Irrigation District was represented by R. Willis Walker, Chairman of the Board of Directors, and Mary Smith, Attorney at Law. The protestant, J. Wayne Stevens was present and represented by Ray Rigby, Attorney at Law.

During the pre-hearing conference, Fremont-Madison Irrigation District withdrew their protest, but the protest by J. Wayne Stevens could not be resolved. A hearing was held to resolve the matter and testimony and evidence in behalf of the applicant and protestant was received into the hearing record. The Department, having reviewed all testimonies and evidence offered for each of the parties, and reviewing all pertinent information in the Department's official records, and based upon the Director's understanding of the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

(1) The protestant J. Wayne Stevens, is holder of approved Permit No.'s 22-7069, in the amount of 2.0 cfs; No. 22-7103, in the amount of 8.0 cfs; and Application for Permit No. 22-7114, in the amount of 20.0 cfs; all for the diversion and use of water from Canyon Creek.

(2) Mr. Stevens irrigated 55 acres during 1974 with water pumped from Canyon Creek.

(3) Pony Creek is an intermittent stream which generally ceases to reach

22-0610B

Canyon Creek during the month of June.

(4) Canyon Creek is a continuously flowing stream and becomes intermittent only because of the diversions that are made.

(5) Both Canyon Creek and Pony Creek tend to exhibit diurnal fluctuations in flow.

(6) The proposed point of diversion from Canyon Creek is less than 1/4 of a mile below the confluence of Pony and Canyon Creeks.

(7) The applicant proposes to use water beneficially during the month of May under this transfer.

(8) The applicant has filed with the Department of Water Resources on December 5, 1974, an Application for Permit No. 22-7118 to appropriate 8.0 cfs of water from Canyon Creek at the same point of diversion proposed by this transfer.

Conclusions of Law

(1) The protestant, J. Wayne Stevens, has the right to appropriate the unappropriated waters of Canyon Creek under authority of permits approved by the Department of Water Resources.

(2) The protestant has not completed his project, and therefore, has not used beneficially all of the water requested in his applications to the Department of Water Resources.

(3) The applicant will not interfere with prior water rights during the period of the year that Pony Creek water is flowing into Canyon Creek.

(4) It is possible for water to be beneficially used during the season requested.

Order

IT IS, THEREFORE, ORDERED and Application for Transfer No. 22-0610B is hereby APPROVED subject to the following conditions:

1. That the right being transferred be subject to all prior rights.
2. That the applicant shall install and maintain a measuring device of a type approved by the Department at or near the mouth of Pony Creek. In addition, totalizing measuring devices of a type approved by the Department shall be installed and maintained at both points of diversion listed in the application.
4. This right is subject to the control of the watermaster.

Dated this 25 day of February, 1975.


R. KEITH HIGGINSON
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval)
of Application for Transfer of Water Right)
No. 22-0610B in the name of O. J. NEELEY)
RANCH, INC.)

NOTICE OF CONFERENCE
AND/OR HEARING

On September 26, 1974, O. J. Neeley Ranch, Inc. filed with the Department of Water Resources an application to transfer the waters of Pony Creek. On October 9, 1974, the Department received a protest against approval of said application from J. Wayne Stevens. On October 21, 1974, the Department received an additional protest from Mary Smith, Attorney at Law, on behalf of Fremont-Madison Irrigation District.

The Department has set the matter of protests for conference and/or hearing for Friday, November 22, 1974, at 3:00 p.m., in the Community Room, Valley Bank, St. Anthony, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestants may allow the Department without prejudice to dismiss the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 5th day of November, 1974.

1- 350 H.P. Pump } 1800 GPM
1- 250 H.P. " } 3200 G.P.M. = 400 inches
1400 GPM

Loren O. Holmes
LOREN O. HOLMES

Assistant to the District Engineer

RECEIVED
FEB 28 1975

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
Department of Water Resources
Eastern District Office
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO.)
22-0610B in the name of O. J. NEELEY RANCH, INC.)

MEMORANDUM DECISION
AND ORDER

On September 26, 1974, O. J. Neeley Ranch, Inc., filed with the Department of Water Resources an application to transfer the waters of Pony Creek to a new point of diversion on Canyon Creek located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 19, Twp. 6N, Rge. 43E, B.M. On October 9, 1974, the Department received a protest against approval of said application from J. Wayne Stevens. On October 21, 1974, the Department received an additional protest from Mary Smith, Attorney at Law, on behalf of Fremont-Madison Irrigation District. A hearing on the matter was held on November 22, 1974, in St. Anthony, Idaho.

Owen J. Neeley was present on behalf of the applicant, O. J. Neeley Ranch, Inc., and was represented by Blair Grover, attorney at law. The protestant, Fremont-Madison Irrigation District was represented by R. Willis Walker, Chairman of the Board of Directors, and Mary Smith, Attorney at Law. The protestant, J. Wayne Stevens was present and represented by Ray Rigby, Attorney at Law.

During the pre-hearing conference, Fremont-Madison Irrigation District withdrew their protest, but the protest by J. Wayne Stevens could not be resolved. A hearing was held to resolve the matter and testimony and evidence in behalf of the applicant and protestant was received into the hearing record. The Department, having reviewed all testimonies and evidence offered for each of the parties, and reviewing all pertinent information in the Department's official records, and based upon the Director's understanding of the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

- (1) The protestant J. Wayne Stevens, is holder of approved Permit No.'s 22-7069, in the amount of 2.0 cfs; No. 22-7103, in the amount of 8.0 cfs; and Application for Permit No. 22-7114, in the amount of 20.0 cfs; all for the diversion and use of water from Canyon Creek.
- (2) Mr. Stevens irrigated 55 acres during 1974 with water pumped from Canyon Creek.
- (3) Pony Creek is an intermittent stream which generally ceases to reach

Canyon Creek during the month of June.

(4) Canyon Creek is a continuously flowing stream and becomes intermittent only because of the diversions that are made.

(5) Both Canyon Creek and Pony Creek tend to exhibit diurnal fluctuations in flow.

(6) The proposed point of diversion from Canyon Creek is less than 1/4 of a mile below the confluence of Pony and Canyon Creeks.

(7) The applicant proposes to use water beneficially during the month of May under this transfer.

(8) The applicant has filed with the Department of Water Resources on December 5, 1974, an Application for Permit No. 22-7118 to appropriate 8.0 cfs of water from Canyon Creek at the same point of diversion proposed by this transfer.

Conclusions of Law

(1) The protestant, J. Wayne Stevens, has the right to appropriate the unappropriated waters of Canyon Creek under authority of permits approved by the Department of Water Resources.

(2) The protestant has not completed his project, and therefore, has not used beneficially all of the water requested in his applications to the Department of Water Resources.

(3) The applicant will not interfere with prior water rights during the period of the year that Pony Creek water is flowing into Canyon Creek.

(4) It is possible for water to be beneficially used during the season requested.

Order

IT IS, THEREFORE, ORDERED and Application for Transfer No. 22-0610B is hereby APPROVED subject to the following conditions:

1. That the right being transferred be subject to all prior rights.
2. That the applicant shall install and maintain a measuring device of a type approved by the Department at or near the mouth of Pony Creek. In addition, totalizing measuring devices of a type approved by the Department shall be installed and maintained at both points of diversion listed in the application.
4. This right is subject to the control of the watermaster.

Dated this 25 day of February, 1975.


R. KEITH HIGGINSON
Director

Identification No. 22 0630
22 0610

Transfer No. 1710

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

APPROVED

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

1. Name of Right Holder O. J. Neeley Ranch, Inc.
Post office address P.O. Box 425, Rexburg, Idaho 83440

2. Right obtained by:

a. Decree to O. J. Neeley & Myrtle Neeley in Case of O. J. Neeley & Myrtle Neeley
his wife -vs- (Name) Phebe Browning his wife and Morris Slaymaker & Thelma Slaymaker,
vs. George Browning & , Dated 5/21/54 in 9th Judicial District
his wife (Name of Court)
Court. County of Madison

b. License No. _____ issued by the State of Idaho, Department of Reclamation.

3. Source of water Pony Creek tributary to _____
(Name of stream or source)

4. Date of Priority June 15, 1900

5. Amount of water a. 8.7 c.f.s. and/or
b. _____ acre feet/annum

6. Water is used for Irrigation from May to July
(Month, Day) (Month, Day)

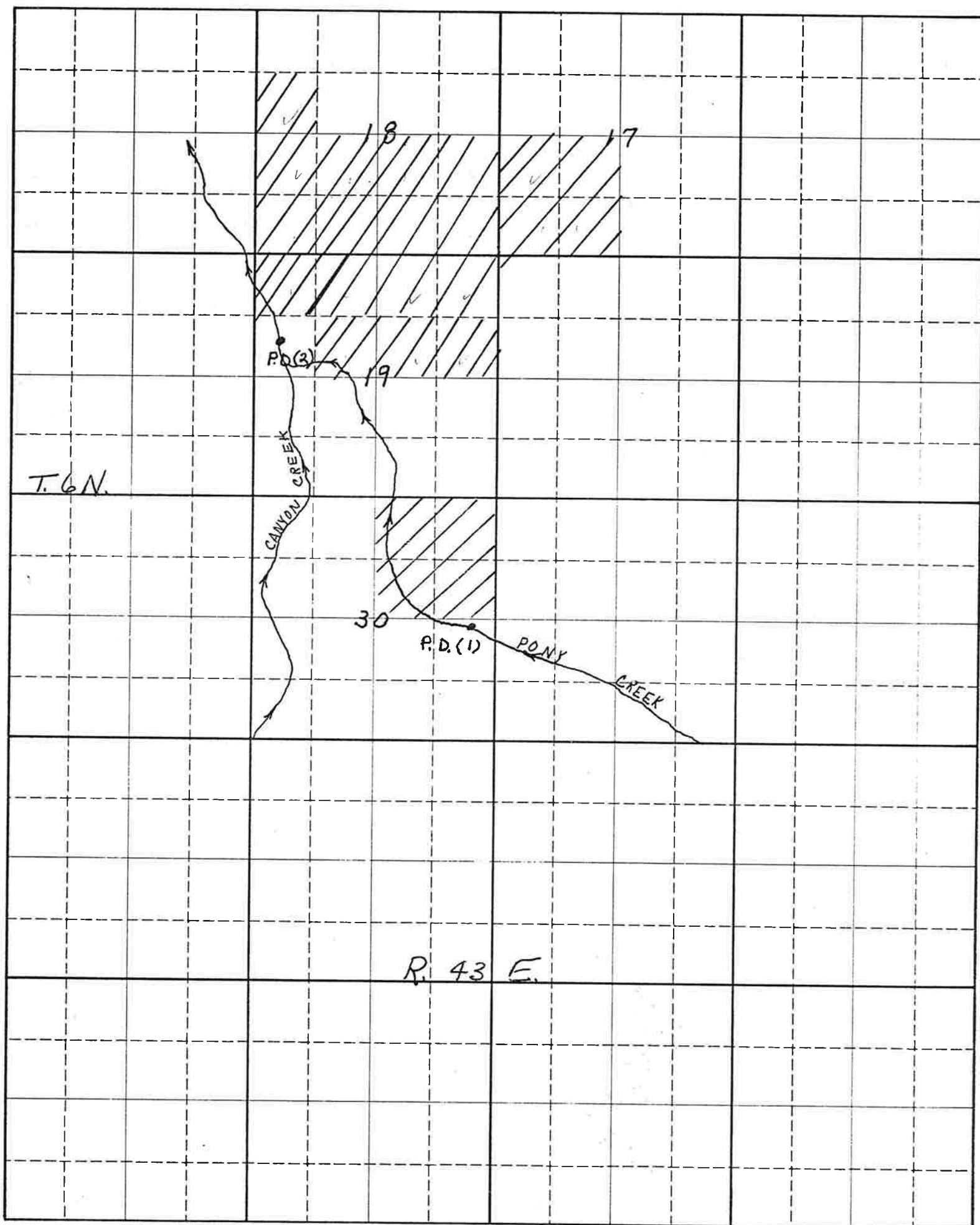
7. Original location of point of diversion is SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
Township 6N, Range 43E, B.M., in Teton County;

Additional points of diversion, if any _____

8. Lands presently irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
6N	43E	32	25	35	40	40			36	40									216
		19	40	40	40	40	40	40	40	40									320
		31						40											40
		30	40	25		25					40			20	35	15	30	40	270

Total number of acres presently irrigated 846



SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

9. If applicant was not the original holder of this right explain how it was acquired: _____

Acquired with purchase of property from Morris Slaymaker & George Briggs Estate

10. CHANGE IN POINT OF DIVERSION Right to be diverted at two points:

- (1) 1.35
a. Quantity to be diverted at new point: (2) 7.35 c.f.s. and/or _____ acre feet
NE SE 30
b. New point of diversion: SW ¼ NW ¼, Section 19, Township 6N
43E, Range Madison, B.M.

- c. Description of method of diversion and conveyance from new points of diversion: (1) 75 Hp pump & water winch (2) 600 Hp motor and pump to underground main to three pivot sprinkler systems, one water winch, & 4 wheel lines.

- d. Is water to be conveyed to the lands previously irrigated? Yes ☒ No _____

If not, the place of use should be changed below.

- e. Describe the reasons for applying for a change in the point of diversion:

To make better & more efficient use of
the water

- f. Do you intend to make the transfer permanent? _____ Yes

- g. Do you intend to abandon completely the old point of diversion? _____ Yes

- h. Indicate on the above plat the new point of diversion and lands to be irrigated.

11. CHANGE IN PLACE OF USE

- a. Describe the new lands on which you wish to use your right.

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	43E	19	40	40	40	40	40	28		34									262
		30	40	25	10	25													100
		18							28		40	28	28	40	40	40	40	40	324
		17									40	40	40	40					160

Total number of acres to be irrigated 846

- b. Do you intend to make the transfer permanent? Yes
- c. Are you completely abandoning the lands previously irrigated by this right? If not, explain your plans:
Lands in N $\frac{1}{2}$, Sec. 19 & NE $\frac{1}{4}$, Sec. 30, T. 6N, R. 43E, will still be irrigated.
- d. Describe any other water rights that you claim for the new ground upon which you wish to transfer this right: None
- e. Indicate on the above plat the new land to be irrigated and the point of diversion.

I hereby assert that no one will be injured by such transfer and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

C. J. Nickley
(signature of applicant)

Subscribed and sworn to before me this 26th day of September, 19 74

Ernest R. Butler
(notary public)

My commission expires Aug. 16, 1977

**ACTION OF STATE RECLAMATION ENGINEER
AND CERTIFICATE OF TRANSFER**

This is to certify that I have examined Application for Transfer of Water Rights No. 22-0610B,
and said application is hereby APPROVED.

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

Pursuant to the Memorandum Decision and Order of February 25, 1975.

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

Witness my hand this 25 day of February, 19 75

Richard L. ...
~~XXXXXXXXXXXXXXXXXXXX~~
DIRECTOR

FOR DEPARTMENT USE ONLY

Received by MB Date 9-26-74
Prelim. check by JF Date 9-26-74
Fee received by MB Date 9-26-74 Fee \$ 30.00
Approved for publication by MB 10-15-74 # 13075
Published in Register-Gazette Dates Oct 3 & 10, 1974
Hearing held _____
Watermaster Recommendation sent W.D #01 (not Larson)

Protest filed by:	Date
<u>J. Wayne Steward</u>	<u>10-9-74</u>
<u>Therese - Madison</u>	<u>10-21-74</u>
<u>Aug. Dist.</u>	