

COPY

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

Ivan K. Rigby)
Pegram, Idaho)

ORDER GRANTING CHANGE
OF POINT OF DIVERSION

For a Change of Point of Diversion on)
Bear River, Bear Lake County, Idaho)

No. 223

WHEREAS, On the 9th day of June, 1954, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, the application of Ivan K. Rigby, of Pegram, Idaho, for a change of point of diversion on Bear River, came on regularly for hearing, pursuant to published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that more economic use of the water will be obtained by such change, and that no other water user will be injured thereby;

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be, and the same is hereby granted, and that a Certificate of Change of Point of Diversion be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I Have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 3rd day of September, 1954.

MARK R. KULP
State Reclamation Engineer

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

CERTIFICATE OF CHANGE OF POINT OF DIVERSION OF DECREED WATER RIGHT
No. 223

THIS IS TO CERTIFY That Ivan K. Rigby of Pegram, Idaho, is the owner of and using 1.5 cubic feet per second of the water of Bear River with priority of April 15, 1877, and 1 cubic foot per second of the water of Bear River with priority of August 15, 1885, said water rights being decreed to Ole Transtrum by decree of Judge Robert M. Terrell of the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Bear Lake, in the case of

Preston-Montpelier Irrigation Company

Plaintiff

vs.

Dingle Irrigation Company

Defendant,

said decree bearing date of March 7, 1924, and the water being appurtenant to the following described lands, to-wit:

NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, Township 14 South, Range 46 East B.M.

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho, at Boise, Idaho, in Volume 4 of Decrees, beginning at Page 650.

That said Ivan K. Rigby has become the owner of said water rights by purchase.

And that now, upon the application of Ivan K. Rigby of Pegram, Idaho, for Certificate of Change of Point of Diversion of 1.5 cubic feet per second of the waters of Bear River with priority of April 15, 1877, and 1 cubic foot per second of the waters of Bear River with priority of August 15, 1885, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to change such point of diversion is HEREBY GRANTED.

That said change of point of diversion shall not modify in effect said decreed water right, or place of use. Said water is to be limited at any given time to an amount actually and beneficial used for such purposes and shall not exceed the following amounts, to-wit:

1.5 cubic feet per second with priority of April 15, 1877
1 cubic foot per second with priority of August 15, 1885

That said water rights are appurtenant to the lands above described.

Microfilm

That the water rights hereby described have heretofore been diverted from Bear River, with point of diversion in the SE $\frac{1}{4}$ Section 31, Township 14 South, Range 46 East, B.M.

That the water right above described will hereafter be diverted from Bear River, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, Township 14 South, Range 46 East B.M.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be hereunto affixed at Boise, Idaho, this 3rd day of September, 1954.

MARK R. KULP
State Reclamation Engineer

THE NEWS-EXAMINER

MONTPELIER, IDAHO

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,)
County of Bear Lake,) ss.

A. M. Robinson

being first duly sworn, deposes and says
he is Publisher and Foreman of the
News-Examiner; that the said News-Examiner
is a weekly newspaper published at Montpelier,
County of Bear Lake, State of Idaho, of general
circulation in said County and State.

That the notice attached was published in
the said News-Examiner, and not in a supple-
ment, for two
successive weeks, commencing with the issue
dated May 20, 1954,
and ending with the issue
dated May 27, 1954.

Publisher and Foreman.

to a Department Convention of the
American Legion and served as
District Adjutant of the American
Legion.

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION OF WATER RIGHT

Notice is hereby given that Ivan
K. Rigby, of Pegasus, Idaho, has ap-
plied to the State Reclamation En-
gineer of the State of Idaho, for a
certificate authorizing him for a
right of an additional point of Di-
version, of the waters of Bear
River. The amount of Water right
is 1.5 cubic feet per second with
priority of April 15, 1877, and 1.0
cubic feet per second with priority
of August 15, 1885; the place of
use of said water right is NE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 32, Township 14 So., Range
46 East. The present point of di-
version is SE $\frac{1}{4}$ Section 31, Town-
ship 14 South, Range 46 East and
is to be changed to the NE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 32, Township 14 South,
Range 46 East.

And that on the 9th day of June,
1954, at 10 o'clock a. m. at Room
107, State House, Boise, Idaho, be-
fore the State Reclamation En-
gineer, or his authorized agent, the
opportunity will be given to any
and all persons to appear and be
present, for his consideration any
reason or reasons why a certificate
should not be issued authorizing
such transfer, or change of point of
diversion.

MARK R. KULP

State Reclamation Engineer

(m-20/27)

Subscribed and sworn to before me this 10th day of June, 1954

Roger D. Burroughs
Notary Public.
Residing at Montpelier, Idaho
My commission expires 12/3/55.

MICROFILMED

Affidavit for Change of Point of Diversion of Decreed Water Right

RECEIVED
MAY 14 1954
Department of Reclamation

STATE OF IDAHO,

County of Bear Lake

ss.

Ivan K. Rigby, being first duly sworn, deposes and says: That his postoffice address is Perham Idaho that he is the owner of and using a certain water right, bearing date of priority of April 15, 1877 August 15, 1885, for 1.0 Agr. cubic feet per second of the waters of Bear River, County of Bear Lake, State of Idaho, decreed to Carry Hill by decree of Judge Robert M. Farrell, of the 5th Judicial District of the State of Idaho, in and for the County of Bear Lake, in the case of Montpelier Pr. & Irrigation Co. vs. Other Users said decree bearing date of March 7, 1924, for the purpose of irrigating the following described lands, situate, lying and being in Water Dist. No. 5, in the County of Bear Lake, and State of Idaho, to-wit: 50 Acres in ne 1/4 of the S E 1/4 Sec. 32 Twp. 15 S. R. 10 E. B. 1

That he is the person (or representative of the corporation) to whom such right was issued, (or has become the owner thereof in the following manner: Purchased along with land in 1937 from Fed. Land Bank who had obtained same from Hill Bros. Sons of Carry Hill

That said waters are now diverted from said stream in the 1/4 SE 1/4 of Sec. 32 other lands owned by the affiant Twp. 15 S Range 10 E, and conducted to the above described lands through the Nuffer ditch, as per map filed herewith and of this affidavit made a part;

That affiant desires to change the point of diversion of said water from the point above described to a point located in NE 1/4 of SE 1/4, Sec. 32, Twp. 15 S, Range 10 E B. 1, and thereafter conduct same to the above described land through the Taylor ditch, as per map above referred to:

That his reasons for desiring to make such change are as follows: This 2.5 Sec. Ft. of water was originally Decreed & Diverted to the above described 50 acre by use of a water wheel which was washed out some years ago & water transferred to the Nuffer Ditch. The affiant now desires to install a pump & again use the Taylor ditch
That no one will be injured by such change and that such change will be made at affiant's own risk.

Ivan K. Rigby
Affiant.

Subscribed and sworn to before me this 7th day of May, 1954.

RUTH ALAND
Notary Public
Montpelier, Idaho
Commission Expires
March 6, 1956

Ruth Aland

NOTE:—If this water right has heretofore been carried jointly in a ditch with other water, affiant should secure written consent of other owners or users to removal from its original carrier and file such consent with this affidavit.

I, here by Approve this Affidavit for Change of Point of Diversion

April 28, 1954

Russell D. Stokun
Watermaster Dist. #5

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MAY 14 1954

CONSENT FOR TRANSFER, ACCOMPANYING AFFIDAVIT OF REGISTRATION
OF POINT OF DIVERSION

We, the following owners of water rights, from Bear River in Water District 5, which water is carried, in in which is described as the Nuffer Canal, in the Decree issued by Judge Robert M. Terrell March 7, 1924, in the District Court of the Fifth Judicial District, hereby give our free consent to the establishment of an additional point of diversion of water owned by Ivan K. Rigby from Bear River by adding a pumping installation to pump water from Bear River at a point located on the Rigby property.

Signed:

Leslie C. R. Nates-----1954
Walter L. Mansberger-----1954
Grant E. Stupoldt-----1954
-----1954

MICROFILMED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE.

PRESTON-MONTPELIER IRRIGATION
COMPANY, a corporation,

Plaintiff,

vs.

DINGLE IRRIGATION COMPANY, a cor-
poration; Grinnett-Black Otter
Irrigation Company, a corporation;
Peg Leg Island Irrigation Company, a
corporation; West Fork Irrigation
Company, a corporation; Ream-Crockett
Irrigation Company, a corporation;
Pugnire Livestock & Land Company, a
corporation; Continental Life Insur-
ance Company, a corporation; Ole
Transtum; Carrie Hill; J.A.C. Nielson,
John A. Jensen; Oron Quayle; Thomas
Quayle; George Parker; Edw. LaRocco;
John O. Miller; Ezra J. Phelps; George
A. Sparks; Hyrum Esterholdt, and Joseph
Esterholdt,

Defendants

DECREE

SCANNED

FEB 14 2007

This cause came on regularly for trial on the 4th
day of August, 1923, John A. Bagley, Esquire, and D. G. Kunz,
Esquire, appearing as attorneys for the plaintiff Preston- Montpelier
Irrigation Company, a corporation, and John A. Bagley, Esquire, appearing
as attorney for Oron Quayle, Thomas Quayle, George Parker, Edw. LaRocco,
John O. Miller, Ezra J. Phelps, and George A. Sparks, defendants and cross-
complainants; and D. G. Kunz, Esquire, appearing as attorney for the
Continental Life Insurance Company, a corporation, Ole Transtrum, Carry
Hill, J. A. C. Nielson and John A. Jensen, defendants and cross-complain-
ants; and A. B. Gough, Esquire, appearing as attorney for Dingle Irrigation
Company, a corporation, Peg Leg Island Irrigation Company, a corporation,
Grinnett Black Otter Irrigation Company, a corporation, and the Pugnire
Livestock & Land Company, a corporation, defendants and cross-complainants;
Ross W. Bates, Esquire, appearing as attorney for the Ream-Crockett Irriga-
tion Company, a corporation, defendants and cross-complainants; and Jesse P.
Rich, Esquire, appearing as attorney for the West Fork Irrigation Company,
a corporation, defendants and cross-complainants and Darwin Haddock, Esquire,
appearing as attorney for Hyrum Esterholdt and Joseph Esterholdt, defendants
and cross-complainants. Whereupon, the respective parties proceeded to
negotiate a settlement and adjustment of the issues raised by the complaint.

MAY 14 1996

All of said waters to be diverted from Bear River by means of the Taylor Ditch located at or near the Southeast corner of the Northeast Quarter of the Southeast Quarter of Section 32, Township 15 South, Range 46 East of the Boise Meridian, to be used on 50 acres of land described as follows, to-wit:

NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 32, Tp. 15 South Range 46.45

0933 1880- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st, 3 cubic feet per second

July 1st - September 30th, 2 cubic feet per second.

0934 April 15th, 1885- What is designated in this decree as an "Agricultural Right".

1 cubic foot per second.

All of said waters to be diverted from Bear River by means of the Nuffer Ditch located at or near a point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian, intersects Bear River, to be used upon 150 acres out of the following land, described as follows, to-wit:

S $\frac{1}{2}$ of the SE $\frac{1}{4}$ Section 31, N $\frac{1}{2}$ of the NE $\frac{1}{4}$, N $\frac{1}{2}$ of the NW $\frac{1}{4}$, S $\frac{1}{2}$ of the NW $\frac{1}{4}$ N $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ Section 3, Township 15 S. Range 46

0935 1885- April 15th, What is designated in this decree as an "Agricultural Right". 1 cubic foot per second.

All of said waters to be diverted from Bear River by means of the Taylor ditch located at or near the Southeast Corner of the Northeast Quarter of the Southeast Quarter of Section 32, Township 15 South, Range 46 East of the Boise Meridian, to be used on 50 acres, described as follows, to-wit:

NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 32, Township 15 South, Range 46 E.B.M.

0936 J. A. G. NIKLSON: 1877- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st, 4.5 cubic feet per second.

July 1st - September 30th, 3.0 cubic feet per second.

0937 1880- April 15th, What is designated in this decree as a "Meadow Right".

April 15th - July 1st, 2.5 cubic feet per second.

July 1st - September 30th, 1.7 cubic feet per second.

0938 1885- April 15th, What is designated in this decree as an "Agricultural Right".

.8 cubic ft. per second.

All of said waters to be diverted from Bear River by means of the Nuffer ditch at or near the point where the South line of the Southeast Quarter of Section 31, Township 14 South, Range 46 East of the Boise Meridian intersects Bear River, to be used upon 275 acres of land, described as follows, to-wit:

The northwest quarter and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 12, Lots 1 and 2, Section 7, Township 15 South, Range 46 East Boise Meridian.

JOHN H. JENSEN:

0939 1877- April 15th, what is designated in this decree as a "Meadow Right".

April 15th - July 1st, 7.5 cubic feet per second.

July 1st - Sept. 30th, 5 cubic feet per second.

0940 1885- April 15th, what is designated in this decree as an "Agricultural Right" .8 cubic feet per second.

All of said waters to be diverted from Bear River by means of a cut or ditch out of said river at or near the northwest corner of the southeast quarter of the northeast quarter of Section 26, Township 14 South, Range 45 East of the Boise Meridian, to be used upon 290 acres, described as follows, to-wit:

MAY 14 1996

to supply said 6012.25 acres of said agricultural lands to the full extent of their decreed rights.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the Court shall retain jurisdiction, and jurisdiction is hereby reserved for a period of five years from the date hereof for the purpose of correcting said decree if it shall be made to appear to the court that there are errors in the description or amounts of land to which water has been decreed under this decree

IT IS FURTHER ORDERED, ADJUDGED AND DECREED , That each party pay his own costs herein.

Dated this 7th day of March, 1924.

ROBERT M. TERRELL
District Judge.

S T A T E O F I D A H O
C O U N T Y O F B E A R L A K E

I, J. S. Peterson, Clerk of the District Court of the Fifth Judicial District of Idaho, in and for Bear Lake County, do hereby certify that the within and foregoing is a full and true copy of the original Water Decree in the case of Preston-Montpelier Irrigation Company vs. Dingle Irrigation Company, et al duly filed in my office on the 7th day of March, 1924.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Paris, Idaho, this 8th day of July, 1924.

(SEAL)

J. S. PETERSON
Clerk

MICROFILMED

MAY 14 1996

September 29, 1954

Mr. Ivan K. Rigby
Pegram
Idaho

Dear Mr. Rigby:

We return Certificate of Change of Point of Diversion No. 223 on which we have affixed the official seals.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll
Enc.

MICROFILMED

September 13, 1954

Mr. Ivan K. Rigby
Pegram
Idaho

Dear Mr. Rigby:

It has come to our attention that Certificate for Change of Point of diversion No. 223, sent you on September 3, 1954, did not bear the official seal of this department.

Will you please return same in order that the seal may be affixed.

We are sending a copy of this letter to Mr. Russell D. Stoker, watermaster, with the same request.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll
cc

Mr. Russell D. Stoker

RECEIVED

September 3, 1954

Mr. Ivan K. Rigby
Pegram
Idaho

Dear Mr. Rigby:

We enclose Certificate of Change of Point of Diversion No. 223 as applied for by you, together with departmental receipt No. 26384 for the \$1.00 recording fee.

By this same mail we are sending a copy of this Certificate to Mr. Russel D. Stoker, Watermaster, for his information.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A:hl
Enc.
cc Mr. Russel D. Stoker

RECEIVED

July 1, 1954

Mr. Ivan K. Rigby
Pegram
Idaho

Dear Mr. Rigby:

There seem to have been no protests against the application of yourself for change in point of diversion of your decreed water right from Bear River.

Upon receipt of the affidavit of publication in the Montpelier News Examiner and the \$1.00 recording fee, a Certificate for Change of Point of Diversion can be issued.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll

MICROFILMED

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION OF WATER RIGHT.

Notice is hereby given that Ivan K. Rigby, of Pogram, Idaho, has applied to the State Reclamation Engineer of the State of Idaho, for a certificate authorizing him for a right of an additional point of Diversion, of the waters of Bear River. The amount of Water right is 1.5 cubic feet per second with priority of April 15, 1877, and 1.0 cubic foot per second with priority of August 15, 1885; the place of use of said water right is NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, Township 14 S., Range 46 East. The present point of diversion is SE $\frac{1}{4}$ Section 31, Township 14 South, Range 46 East and is to be changed to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, Township 14 South, Range 46 East.

And that on the 9th day of June, 1954, at 10 o'clock A.M. at Room 107 State House, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and be present, for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer, or change of point of diversion.

MARK R. KULP
State Reclamation Engineer

UNRECORDED

NOTICE OF PROPOSED CHANGE IN POINT OF DIVERSION OF WATER RIGHT.

Notice is hereby given that Ivan K. Rigby, of Pegram Idaho. has applied to the State Reclamation Engineer of the State of Idaho, for a certificate authorizing him for a right of an additional point of Diversion, of the water of Bear River, The amount of Water right is 1.5 cubic feet per second with priority of April 15, 1877 and 1.0 cubic feet per second with priority of August 15, 1885, The place of use of said water right is NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32 Twp. 14.S. R. 46.E. The present point of diversion is SE $\frac{1}{4}$ Section 31, Twp. 14.S. R. 46.E. and is to be changed to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, Twp. 14.S. R. 46.E.

10-A.M. June, 9, 1954

The News Examiner

ROBINSON & TAYLOR

Publishers - Commercial Printing

MONTPELIER, IDAHO

May 17, 1954

State of Idaho
Department of Reclamation
Boise, Idaho

Gentlemen:

We have received the notices for publication for Ivan K. Rigby of Pegray, Harry Taylor of Tremonton, Utah and C. R. Nate and Leslie Nate of Dingle.

These will be published issues of May 20 and May 27.

Very truly yours,
The News-Examiner
By Burt Taylor

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MAY 18 1954
Department of Reclamation

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BEN B. JOHNSON
ATTORNEY AND COUNSELOR AT LAW
FIRST SECURITY BANK BUILDING
PRESTON, IDAHO

April 28, 1954

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APR 29 1954
Department of Reclamation

Mr. Mark V. Kulp
State Reclamation Engineer
State of Idaho Reclamation Department
Boise, Idaho

Dear Sir:

Enclosed herewith are two Affidavits for Additional Point of Diversion along with two Consents of Transfer.

Kindly file these for both parties. They would like to have this change of point of diversion approved for both of them.

Kindly advise what filing fee would be.

Sincerely yours,

Ben B. Johnson
N.F.

Ben B. Johnson

BBJ:nf

Encl.

MICROFILMED

March 23, 1954

Mr. Ivan K. Rigby
Pegram,
Idaho

Dear Mr. Rigby:

We wish to acknowledge your letter of March 16th, in which you request if it would be permissible to pump some water direct from the river for the reason that your canal cannot carry the full amount of water for your use and you request to know what procedure you would have to go through in order to pump from Bear River direct.

We think before you apply for a second point of diversion for your water right and install your pumping equipment, that an inspection should be made either by the watermaster of your district or by someone from this Department.

You can apply for permission to divert a part of your water right by pumping from Bear River which would necessitate applying to this Department for an additional point of diversion. We are enclosing a blank form for this purpose which you may fill out and return to this office. However, before submitting said application to this Department it should be approved by the watermaster of Water District No. 5, Mr. Russell D. Stoker.

You also state that there is a canal from Bear River that has never had a headgate in it and is washing wider every year and is gradually changing the course of Bear River and you request to know if the owner of the Canal is required by law to put in a control gate.

The State statutes, also the Bear River Decree, states that no water can be diverted from said stream without having a control gate. This condition will be looked into by either the watermaster of Bear River or someone from this Department during the early part of the season.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:br
CC: Russell D. Stoker

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MAR 18 1954

Department of Reclamation

Pegram Idaho.

Mar. 16 1954

State Water Supervisor
Boise Ida

Dear Sir.

The last 2 or 3 years we have had a hard time trying to get water through our canal. I would like to know if it is permissible to pump some water from the river when our canal won't carry it. and what procedure would I have to go to?

all so there is a canal that was dug some years ago, and has never had a head gate in it. it is washing wider every year, and is gradually changing the course of Bear river. Is the party that owns the canal required by law to put in a controll gate?

The canal I refer to is pump out of is the Muffer canal at Pegram Idaho.

Yours Very Truly.

Ivan R. Ogilby.

Pegram Ida

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