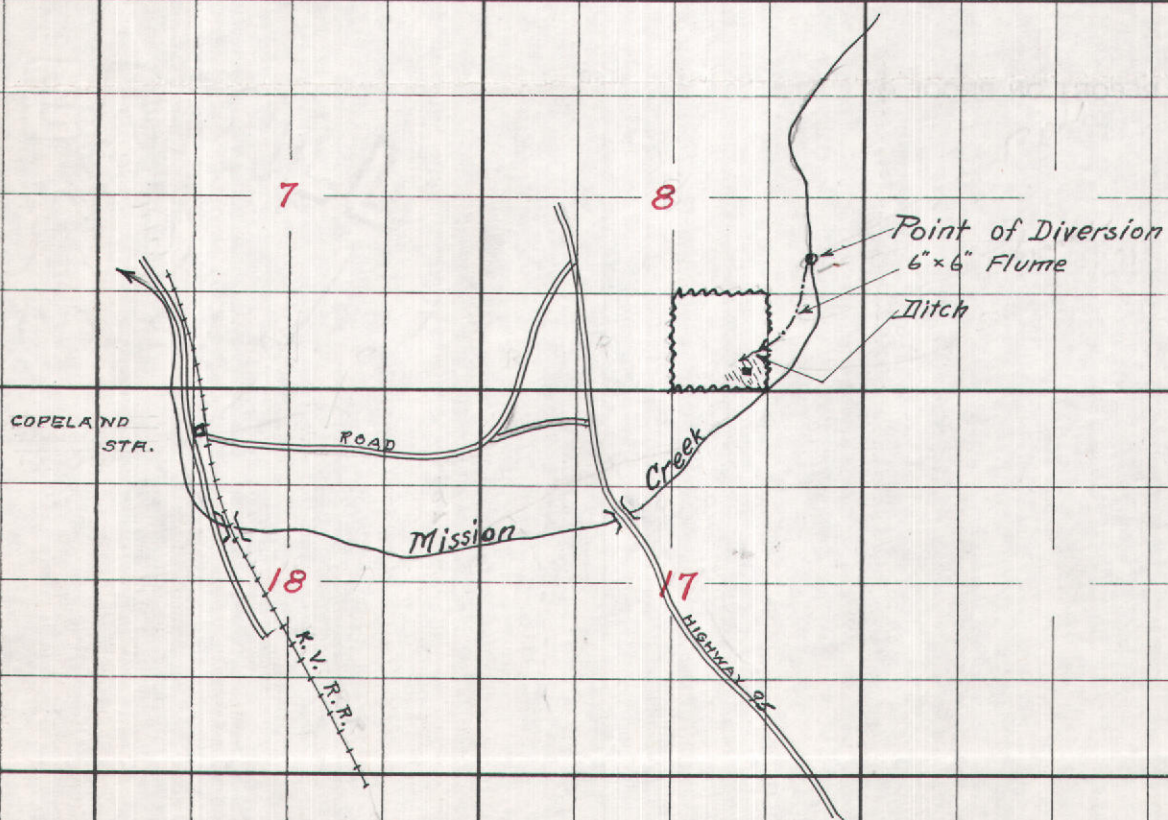


STATE OF IOWA
DEPARTMENT OF RECLAMATION
REPORT OF ENGINEER



July 20, 1945

Re: Permit No. 17199

Mrs. Christine Dehlbom Lundeen
Copeland, Idaho

Dear Mrs. Lundeen:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, and full consideration will be given same before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

A

Duplicate filed with history

17199

July 18, 1945

Re: Permit No. 17199

Mr. Peter DeBoer
Bonners Ferry, Idaho

Dear Mr. DeBoer:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, which will be given full consideration before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

A

Duplicate filed with Notary

17199

July 18, 1945

Re: Permit No. 17199

Mr. George H. Bothwell
Bonners Ferry, Idaho

Dear Mr. Bothwell:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, and full consideration will be given same before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

A

Duplicate filed with Notary

17199

July 18, 1945

Re: Permit No. 17199

Messrs. Wernette & Crowley
Old National Bank Bldg.
Spokane, 8, Washington.

Gentlemen:

We acknowledge receipt of your letter of July 16th, enclosing protest of Fred Ahlborn and wife in connection with the above numbered permit on Mission Creek.

This will be given full consideration, and no final action will be taken, or license issued, until after a field examination has been made by a member of this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

17199

Duplicate filed with notary

October 6, 1932

Re: Permit No. 17199
Geo. W. Ellis

Mr. Fred Ahlborn
Bonners Ferry, Idaho

Dear Sir:

Reference is made to your letter of the 6th inst. In checking over the stream index we find that the only permit that has been granted for the waters of Mission Creek other than the permit issued to you is in the name of Geo. W. Ellis.

Mr. Ellis's permit claims 2.0 cubic feet per second, and was filed October 25, 1929. The point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 64 N., R. 1 E. B. M.

Very truly yours,

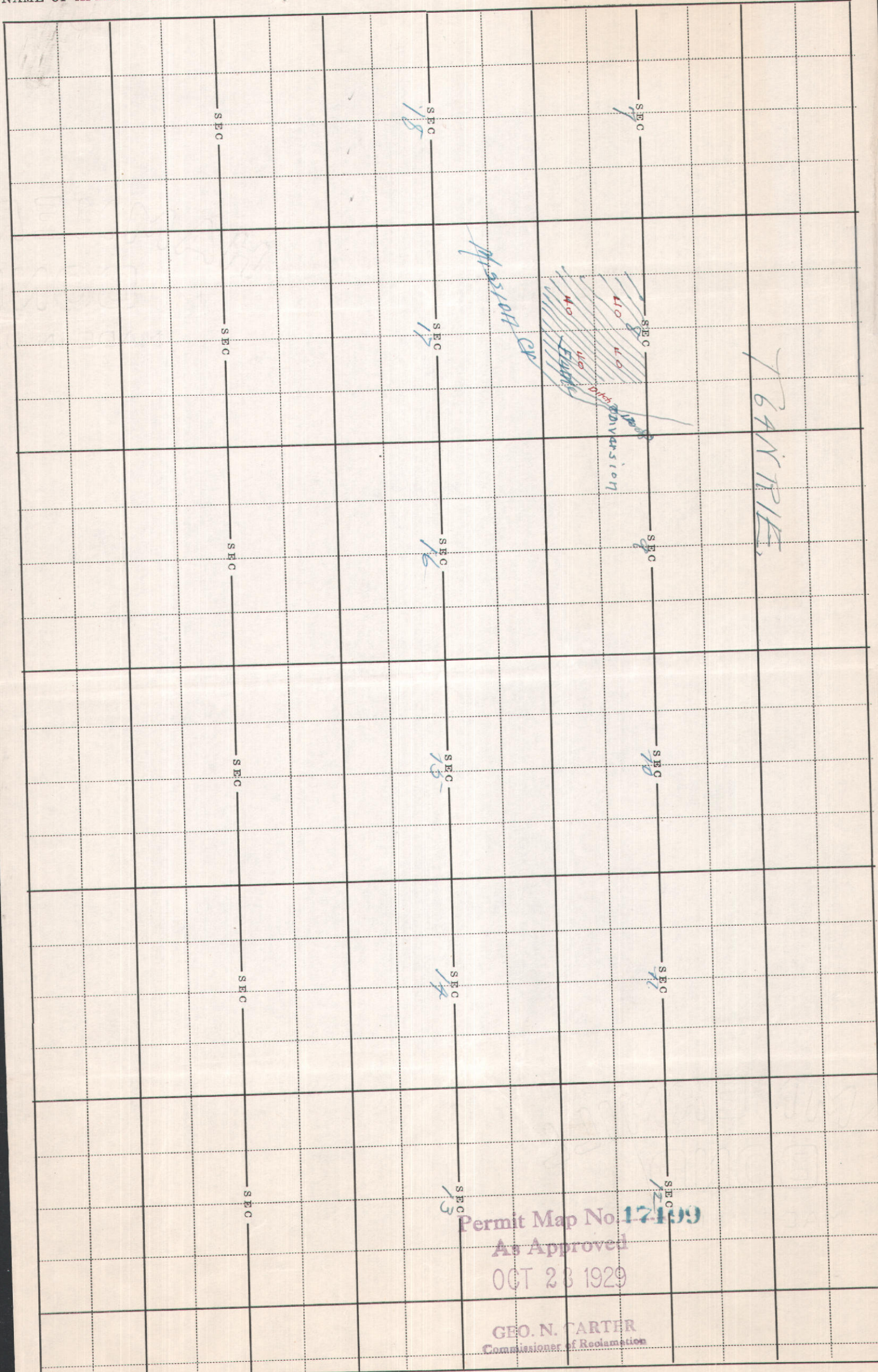
R. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:MC

17199

NAME OF APPLICANT _____



SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

17199

746

R. Lee Wallen & Fred Ahlborn

FORM No. O

Outlet of reservoir is N 1660' W 1750' from S.E. cor. Sec. 5. S. 64 N. 1 E.
and is in NW₄ Sec. 5. S. 64 N. R 1 E.

Point of Canal diversion is located NW, 1200' from SW corner of T64N. R1E. and is in SW₄ Sec 4 T64N. R1E. - Canal size 3 cfs. 4 acres = high 2'

4 acres = high water line.

Hand-drawn map of a river system on grid paper. The river flows from the top right towards the bottom center. Key features include:

- Point of return:** Marked with a dot and arrow at the bottom.
- Point of use:** Marked with a circle and arrow further up.
- R. outlet:** Located at the top left.
- Cut:** A break in the river line.
- Red handwritten notes:**
 - 19597 PA of diversion and 3 ft. Power.
 - 19569 irrigation
- Blue handwritten notes:**
 - 1320' (with an arrow pointing left)
 - 415' (near the Point of use)
- Dashed line:** A dashed line on the left side of the map.

Water to be returned to Mission Creek S. 650 W 475
feet from NE corner Section 8 Twp. 64 N. R. 18. in
the NE, NE₄, Sec 8 Twp. 64 N. R. 18.

Point of diversion to SW₁ SW₄ Sec 4 to point of return
in NE₄ NE₄ Sec 8 = approx. 2010 feet.

4cfs in addition to storage - probably refers to 195978-19569

No lake indicated on map.

map does not agree with legal description.

EQUAL 1 MILE. DRAW PLAN IN INK

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK.

T-711

98-2037

STATE OF IDAHO
MISCELLANEOUS EXPENDITURE VOUCHER

No.

FOR USE OF DIVISION
OF ACCOUNTS ONLY

5396

From Department Reclamation

No.

FOR USE OF DEPARTMENT

95

Sub-Division Reclamation Administration

Appropriation Reclamation Administration
Account Title

PAY TO:

CODE NO.

Bonnets Ferry Herald

Bonnets Ferry, Idaho

ACCOUNT CODES					
FUND	FUNCT'N	SUB DIV	APPR.	OBJECT	COST CODES
1	6	11	1-411	240	\$8.85
COMPUTATIONS CHECKED BY:				PRE-AUDITED BY:	
INCLUDED IN DAILY SUMMARY NO.				POSTED TO BUDGET CONTROL LEDGER	

DATE

EXPLANATION

AMOUNT

LEAVE
BLANK

Printing legal notice on proposed transfer of
water right - Mission Creek - as listed on
attached affidavit of publication and certified
statement

\$8.85

INSTRUCTIONS TO ISSUING DEPARTMENT

If this claim is to apply against an approved miscellaneous encumbrance requisition, reference to the number thereof must be made in the lower right hand corner of this form.

TO THE STATE AUDITOR:

Request is hereby made that a warrant be authorized and drawn in payment of item or items described hereinabove. I hereby certify that the items described were ordered by proper authority; that they are necessary in the public service; that the items have been received and properly accounted for, and that the account as stated is correct and just.

Date 8/14/47.

Mark R. Fulp
Head of Department or Institution.

AUDITOR'S CERTIFICATE

I hereby certify that the above account is in proper form; that totals carried hereon are correct; that receipts when required by law or regulation of the State Board of Examiners covering items for which reimbursement is asked are submitted herewith; and that there are funds in the state treasury and balances in appropriation accounts out of which the same may be lawfully paid.

T-711 State Auditor.

98-2037

ENCUMBRANCE
LIQUIDATION

\$ 8.85

WARRANT NUMBER

3477

DATE PAID

8/18/47

MISCELLANEOUS
ENCUMBRANCE
REQUISITION

NO. 0005

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 711

THIS IS TO CERTIFY THAT MISSION CREEK WATER ASSOCIATION, INC., through its president, Clarence Guthrie, of Copeland, Idaho, is the owner of and using a certain water right in Mission Creek, in the amount of 0.1 cubic feet per second bearing date of priority of July 17, 1938, by virtue of License No. 17199 issued to Mission Creek Water Association, Inc., by the State Reclamation Engineer, dated February 15, 1947, and being appurtenant to the following described land to-wit:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8
Township 64 North, Range 1 East, B.M.

That said license has been entered in the records of the Department of Reclamation of the State of Idaho in Volume 7 of License 1, Page 4328.

And that now, upon the application of Mission Creek Water Association, Inc., of Copeland, Idaho, for the transfer of 0.1 of a cubic foot per second of said water, made before the State Reclamation Engineer, of the State of Idaho and said application having been granted, the right to the use of 0.1 of a cubic foot per second of the waters of Mission Creek, upon the above described land is hereby abandoned, and the lands upon which said water right is to be used:

And to which the water right HEREBY CONFIRMED, shall become appurtenant by this Certificate, for irrigation and domestic purposes are described as follows to-wit:

E $\frac{1}{2}$ Section 34; Sections 35 and 36
Township 65 North, Range 1 East, B.M.

NE $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 31
65 North, Range 1 East, B. M.

SW $\frac{1}{4}$ and NE $\frac{1}{4}$, Section 1;

NE $\frac{1}{4}$ Section 2;

NE $\frac{1}{4}$ Section 3;

Part of East-half, Section 12, situate East of Kootenai River;
Sections 6 and 7;

NE $\frac{1}{4}$ and SE $\frac{1}{4}$, Section 8
Section 17

NE $\frac{1}{4}$ and SW $\frac{1}{4}$ Section 18

E $\frac{1}{2}$ Section 19

Section 20

W $\frac{1}{2}$ Section 28

Section 29

E $\frac{1}{2}$ Section 30

Sections 32 and 33

Township 64 North, Range 1 East, B. M.

T-711

92-2037

(2)

That the amount is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

0.1 cubic feet per second, bearing date of priority of July 17, 1938.

That the water right hereby transferred has heretofore been conducted from Mission Creek to the first above described land, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East, B. M.

That the water right hereby transferred will hereafter be conducted to the last above described lands with point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, Township 64 North, Range 1 East, B. M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described, 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 7th day of June, A. D., 1947.

MARK R. KULE
State Reclamation Engineer

T-711

98-2037

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

MISSION CREEK WATER ASSOCIATION)
of Copeland, Idaho)

ORDER GRANTING PARTIAL TRANSFER
by the State Reclamation Engi-
neer.

For a Transfer in Point of Diversion and)
Place of Use of 0.35 cubic foot per second)
of the waters of Mission Creek, a tributary)
of the Kootenai located in Boundary County.)

WHEREAS, On the 8th day of February, 1947, the Mission Creek Water Association, of Copeland, Idaho, made application for change in point of diversion and place of use of 0.35 of a cubic foot per second of water from Mission Creek, from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B. M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 North, Range 1 W., B. M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M. SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6, and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

WHEREAS, Notice was published in the Bonners Ferry Herald, as required by law, on the days of February 27 and March 6, 1947; and,

WHEREAS, Protest was legally made by Fred and Mary Ahlborn; and,

WHEREAS, A field examination was proper and lawfully made and,

WHEREAS, A decision regarding this transfer was made by the State Reclamation Engineer in this matter

NOW THEREFORE, IT IS HEREBY ORDERED as follows: First the application, as it pertains to License No. 17199, is allowed and the change in point of diversion and place of use as requested is so ordered, to-wit:

Amount 0.1 cubic foot of water per second.

Change in point of diversion from NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 N, Rge. 1 E., B. M. to NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 64 North Range 1 E. Change in place of use from SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, Twp. 64 N. Rge. 1 East to--E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B. M., NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M., SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

Second, the Application as it pertains to License No. 19562 is denied, and the change is not ordered.

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 19th day of May, A. D., 1947.

Mark R. Kulp
MARK R. KULP
State Reclamation Engineer

T-711

92-2037

State of Idaho

License and Certificate of Water Right

Water License No. 17199

Amount 0.1 second foot

Water District No.

Priority July 17, 1938

THIS IS TO CERTIFY that GEORGE W. ELLIS

of Copeland, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated October 25, 1929; that Permit No. 17199 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 2 second feet, was issued thereunder on April 22, 1935, showing that said works were completed on the 19th day of April, 1935; and that on the 20th day of July, 1945,

MISSION CREEK WATER ASSOCIATION, INC., Assignee,

of Bonners Ferry, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of Mission Creek, a tributary of , for the purpose of irrigation and domestic use, under Use Permit No. 17199 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 7

of Licenses at page 4328, on the 15th day of February, 1947;

The right hereby confirmed dates from July 17, 1938;

The Point of Diversion is located 1200 ft. Southwest from the East 1/4 corner Section 8, and in the NE 1/4 SE 1/4, Sec. 8, Tp. 64 N., R. 1 E., B. M., Boundary County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 0.1 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
64 N.	1 E.	8	SW 1/4 SE 1/4	40	5
			NW 1/4 SE 1/4	40	-
			NE 1/4 SW 1/4	40	-
			SE 1/4 SW 1/4	40	-
			Number of acres actually irrigated		5

Trans #711

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 15th day of February, 1947.

Mark R. Euld

State Reclamation Engineer

(Seal)

98-2037

APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

Application No. 24224
Permit No. 17199
District No.

1. Name of Applicant: George W. Ellis

Postoffice address: Copeland, County: Boundary, State: Idaho.

I. If applicant is a corporation, give: no

(a) Date and place of incorporation:

(b) Amount of capital stock:

(c) Amount paid in:

(d) Names and addresses of directors:

II. The financial resources of the applicant are:

(a) Cash on hand:

(b) Treasury stock:

(c) Bonds to be issued:

(d) Other resources:

2. Quantity of water claimed: two cubic feet per second.

3. Source of water supply: Mission Creek which is a tributary of Kootenai River.

4. Location of point of diversion: 1200 in Southwesterly direction.
/feet distant from the East $\frac{1}{4}$
corner of Section 8, T. 64 N, R. 1 E., B. M., and is in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$
of Section 8, T. 64 N., R. 1 E., B. M., County of Boundary.

5. Water is to be used for: Irrigation and Domestic use.

6. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water: feet distant from corner of Section

T., R., B. M., in the of Section, T., R., B. M.

(b) Amount of power generated: H. P., under feet head.

(c) Water is to be returned to at a point feet

distant from the corner of Section, T., R., B. M., in the
of Section, T., R., B. M.

7. Estimated cost of works: \$ 500.00

8. Kind of works: Rock Dam.

9. Height of dam 3 feet; length of dam at top 50 feet; length of dam at bottom 25

feet; material used in dam: Rock.

10. Size of headgate: Width one feet; height one feet.

11. Ditch: Width at bottom 2 feet; width at water line 3 feet; depth of water 1/2

feet; dimensions of flume 6" x 12" high

Diameter of pipe inches; length of conduit 1800 ft.

Average grade per mile 4 feet.

12. The time required for the completion of such work is three years.

13. The time required for the complete application of the water to the proposed use is two additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. (a) Is reservoir to be used? No. If so, fill in (b) and (c) below.
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

BE IT KNOWN THAT The undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Geo. W. Ellis Applicant.

By Agent.

Date of first receipt at Department of Reclamation: 9:00 A. M. October, 25, 1929.

Returned to applicant for correction:

Corrected application received:

APPROVAL OF COMMISSIONER OF RECLAMATION

The number of this permit is 17199
Recorded in Book 62 Page 17199 Approved October 28, 1929.
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Bond in the sum of \$ to be filed on or before
Work to begin on or before December 27, 1929 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before April 28, 1931.
The whole of said work to be completed on or before October 28, 1932.
Beneficial use of water appropriated in accordance herewith, to be made on or before October 28, 1934. 10-28-34

Witness my hand this 28th day of October, 1929.

GEO. N. CARTER
Commissioner of Reclamation.

Remarks:

14.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

64 N	1 E	8									40			40		40	40		160
------	-----	---	--	--	--	--	--	--	--	--	----	--	--	----	--	----	----	--	-----

PERMIT NO.17199
EXTENSION OF TIME

Upon proper request of the holder of the above numbered permit, I have this 24th day of October, 1932, extended the time for completion of works thereunder to the 28th day of October, 1934.

R. W. FARIS
Commissioner of Reclamation

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Reinstatement)
of Permit No. 17199, Under the)
Provisions of Section 41-311, Idaho)
Code Annotated.)
.....)
ORDER REINSTATING PERMIT

WHEREAS, Permit No. 17199 lapsed through failure of the holderto make proof of completion of the works of diversion within the time specified in the Permit, to-wit: October 28, 1934; and,

WHEREAS, On the 20th day of February, 1935, notice to show cause why said permit should not be canceled, under the provisions of Section 41-311, Idaho Code Annotated, was duly served on the holder of said permit; and,

WHEREAS, On the 18th day of March, 1935, the holder filed notice of appearance to offer proof to show that the works of diversion under said permit were fully completed within the time required; and,

WHEREAS, On the 22nd day of April, 1935, depositions of the holder and two witnesses were received at the Department of Reclamation showing that the said works of diversion were completed within the time required in the permit; and,

WHEREAS, After examination of the said depositions, the Commissioner of Reclamation of the State of Idaho, is fully satisfied that the works of diversion were completed as required under the terms of said Permit No. 17199,

and that the holder has acted in good faith;

IT IS, THEREFORE, Hereby Ordered that said Permit No. 17199 be, and the same is, hereby re-instated, and that a certificate of completion of works be issued to the applicant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Department, at Boise, Idaho, this 22nd day of April, 1935.

(SEAL)

R. W. FARIS
Commissioner of Reclamation

PERMIT NO. 17199

CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that GEORGE W. ELLIS of Copeland, County of Boundary, and State of Idaho, the holder of Permit No. 17199, issued upon Application No. 24224, bearing date of priority of October 25, 1929, authorizing the diversion of 2 second feet of the waters of Mission Creek, County of Boundary, 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 2 second feet of the waters of Mission Creek; that the point of diversion of said waters is 1200' in a Southwesterly direction from the East $\frac{1}{4}$ corner of Section 8, T. 64 N., R. 1 E., B. M., and is in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 8, T. 64 N., R. 1 E., B. M., County of Boundary, and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ & SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, T. 64 N., R. 1 E., B. M., 160 acres.

Witness my hand this 22nd day of April, A. D. 1935.

R. W. FARIS
Commissioner of Reclamation

Proof of Completion of Works made April 19, 1935.
Certificate of Completion of Works issued April 22, 1935.

IN THE PROBATE COURT OF THE COUNTY OF BOUNDARY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)
(ASSIGNMENT AND CONVEYANCE OF WATER RIGHT
GEORGE W. ELLIS, DECEASED)

For and in consideration of the agreement of the Mission Creek Water Association, Incorporated, to furnish water for domestic and household purposes to the land hereinafter described, and for other good and valuable consideration and pursuant to the Order of the Probate Court dated the 10th day of May, 1945, I hereby assign all the right, title and interest of the said George W. Ellis, deceased, and of his estate in and to permit to appropriate the public water of the State of Idaho, No. 17199, to Mission Creek Water Association, Inc., and hereby grant and convey all the riparian water rights and privileges of every kind, character, and description which belong or in any manner appertain to the following described land situate in Boundary County, State of Idaho, to-wit:

Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) and Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) Section Eight (8), Township Sixty-four (64) North, Range One (1) East, B.M., and the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$), and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) Section Eight (8), Township Sixty-four (64) North, Range One (1) East, B.M., Containing 160 acres.

RAY ELLIS
Administrator of the Estate of
George W. Ellis, Deceased

STATE OF IDAHO)
County of Boundary) ss.

On this 26th day of May, 1945, before me W. J. Nixon, a Notary Public for the State of Idaho, personally appeared Ray Ellis, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as Administrator of the Estate of George W. Ellis, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

W. J. NIXON
Notary Public for State of Idaho
Residing at Bonners Ferry, Idaho

LICENSE ISSUED FOR 0.1 SEC. FT.
P. 4328

A S S I G N M E N T

assigns

FOR VALUE RECEIVED, The Mission Creek Water Association, Inc., hereby/all its right, title, and interest in and to Water License No. 17199, Priority July 17, 1938, for 0.1 second foot of the Public Waters of the State of Idaho to Class "A" School District No. 101 of Boundary County., Idaho.

MISSION CREEK WATER ASSOCIATION, INC.

BY Clarence Guthrie, President
Russell B. Dillin, Secretary.

STATE OF IDAHO)
 : ss.
County of Boundary)

On this 14th day of August, 1948, before me, the undersigned Notary Public in and for the State of Idaho, personally appeared Clarence Guthrie and Russell B. Dillin, known to me to be the President and Secretary of the corporation that executed the foregoing assignment and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

W. J. Miller
Notary Public for the State of Idaho
Residing at Bonners Ferry, Idaho

LAND LIST ATTACHMENT

Description and location of place of use: *A*

[illegible]

Total number of acres irrigated _____

September 4, 1938

Re: Permit No. 17199

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We have duly recorded the assignment of Permit No. 17199 from the Mission Creek Water Association, Inc. to Class "A" School District No. 101, Boundary County, Idaho, and return same to you herewith.

The fee for recording this assignment is \$.50 for which please send us your check.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A/gt

R-20929

17199

W. J. NIXON

ATTORNEY AT LAW

BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 88-J

August 16, 1948

OFFICES
COURTHOUSE



Mr. Mark R. Kulp
State Reclamation Engineer
State House
Boise, Idaho

Dear Mr. Kulp:

I am enclosing herewith assignment of water license No. 17199 from the Mission Creek Water Association, Inc., to Class "A" School District No. 101, Boundary County, Idaho.

This was formerly the water held under permit by George W. Ellis.

If there is a fee for filing this assignment, please bill me and I will see that it is paid.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "W. J. Nixon".

W. J. Nixon

WJN/nt

Enc.

17199

17199

June 10, 1947

Mr. W. J. Nixon
Attorney at Law
Bonanza Ferry, Idaho

Dear Mr. Nixon:

We enclose certificate of transfer No. 711, for 0.1 of a cubic foot per second of water from Mission Creek issued in accordance with the decision of the State Reclamation Engineer, a copy of which was sent you under date of May 21, 1947.

We also enclose departmental receipt No. 19877 in the amount of \$3.50 which includes \$2.00 fee for license No. 17199, \$0.50 fee for recording the assignment of Permit No. 19582 and \$1.00 recording fee for transfer No. 711.

Since your check enclosed in your letter of February 8, 1947, was in the amount of \$4.50 there is a refund of \$1.00 which we enclose in currency.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

Encl.
CC. to W. N. Young.

17199

17199

C. A. Robins

February 20, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We enclose herewith License and Certificate of Water Right issued under Permit No. 17199, confirming the right of the Mission Creek Water Association, Inc., to the use of 0.1 second foot of the water of Mission Creek, with priority of July 17, 1938, for use on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 N., Range 1 E., B.M.

We also enclose the assignment of License No. 19582 from Peter DeBoer to the Mission Creek Water Association, Inc., which has been duly recorded

Notice of hearing to be held on March 14, 1947, on the application of the Mission Creek Water Association, Inc., for transfer of place of use and change of point of diversion of these water rights, has been sent to the Bonners Ferry Herald, with instructions to publish same once a week for two consecutive weeks prior to that date, and to send to the Association, in your care, affidavit of publication, together with statement of costs.

This affidavit is to be transmitted to this department, and if there are no protests, the application will be duly approved and Certificate of Transfer issued.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encls.

17199

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 88-J

February 8, 1947



Mr. Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

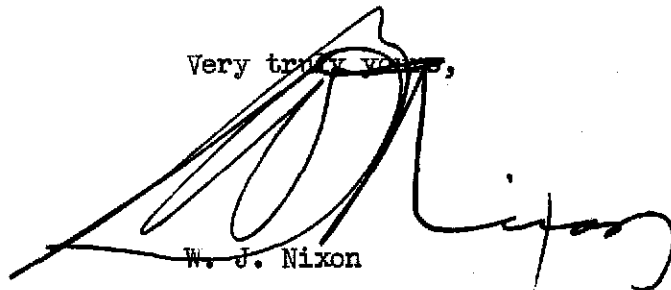
Dear Mr. Kulp:

This will acknowledge receipt of your letter of February 5 and in compliance therewith I am enclosing my check in the amount of \$4.50 to pay the fees you mention. *sent*

I have also inserted the name of the assignee which was, by mistake, left out of the assignment.

This may be your authority to have the notice published in the Bonners Ferry Herald at our expense. Our publication date is on Thursday of each week.

Very truly yours,



W. J. Nixon

WJN/nt

Enc.

17199

17199-19582 ✓

February 6, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We acknowledge receipt of your letter of February 3rd, 1947, enclosing application for change of points of diversion on Permit No. 17199, assigned to the Mission Creek Water Association by George W. Ellis, and on License No. 19582, assignment for which from Peter De Boer is also enclosed.

However, this assignment is not complete, in that it does not give the name of the assignee, which we assume to be the Mission Creek Water Association. We are returning it herewith for correction or completion.

A check of the records on Permit No. 17199 discloses that beneficial use proof has been made, and on January 24, 1946, you were advised that a license would be issued upon receipt of the statutory fee of \$2.00.

When this has been paid, and license issued, the application for change of points of diversion can be acted on in the manner provided by Section 41-108, I. C. A., as amended by Chapter 53 of the 1943 Session Laws. This, you will note, requires publication once a week for two consecutive weeks in a county newspaper, after which, if there are no protests, a certificate of change of point of diversion will be issued.

There is a fee of 50 cents for recording the assignment of License No. 19582, and there is also a fee of \$1.00 each for recording the change of points of diversion. If you wish you may include these amounts with the \$2.00 license fee of Permit No. 17199.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

A
Encl.

17199

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Proof of)
Application to Beneficial Use)
Permit No. 17199)

DECISION OF
STATE RECLAMATION ENGINEER

Application for Permit to appropriate the Public Waters of the State of Idaho, No. 24224, was filed October 25, 1929, and approved on October 28, 1929. Permit No. 17199 was issued to George W. Ellis, to appropriate Two (2) cubic feet per second of the waters of Mission Creek, in Boundary County, for irrigation and domestic purposes, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., and place of use described as the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

Proof of completion of works was made on April 19, 1935, and certificate of completion of works issued.

On May 26, 1945, Permit No. 17199 was assigned to Mission Creek Water Association, Inc., Bonners Ferry, Idaho, by Ray Ellis, administrator of the estate of George W. Ellis, deceased.

Mission Creek Water Association, Inc., notified the Department of Reclamation that they were prepared to furnish proof of beneficial use of water under Permit No. 17199, on July 20, 1945. Notice was published and proofs were offered at the time and place specified.

Protests against the proofs and against the issuance of a license were filed by Vernie Stockton, Fred Ahlborn, Walter W. Winters, Peter deBoer, Christine Dehlborn Lundeen, John L. Smith and George H. Bothwell.

On October 5, 1945, the Field Engineer of the Department of Reclamation made an inspection.

After careful consideration of the proofs, protests, and report of the Field Engineer, it is the decision of the State Reclamation Engineer, that:

1. Water from Mission Creek has been beneficially used under Permit No. 17199.
2. The holder of Permit No. 17199 is entitled to a License for One tenth (0.1) of a cubic foot per second of the water of Mission Creek, with a priority date of July 17, 1938.
3. License for One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek will be issued, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., for domestic and irrigation purposes, on, and appurtenant to, five (5) acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., with priority of July 17, 1938.

Any one feeling himself aggrieved by reason of this decision may appeal therefrom to the District Court of Boundary County within sixty days.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 24th day of January, A. D., 1946.

Mark R. Kulp
MARK R. KULP

State Reclamation Engineer

17199

January 24, 1946

Re: Permit No. 17199

Mr. W. J. Nixon,
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We are enclosing herewith the Decision of the State Reclamation Engineer in the matter of the proof of beneficial use under Permit No. 17199, in the name of the Mission Creek Water Association, Inc.

A similar copy is being sent to the several protestants therein.

Upon receipt of the statutory fee of \$2.00 a license will be issued in accordance with this decision.

Very truly yours,

MARK R. KULP

State Reclamation Engineer

A
CC to H. G. Haight

17199

After 5 days, return to
DEPARTMENT OF RECLAMATION,
State House,
BOISE, IDAHO.

RETURNED TO
WRITER
REASON: CHECKED
Unclaimed. Refused
Unknown
For better address
Moved. Left no address
No such office in state

Mr. Walter W. Winters
Bonners Ferry
Idaho

JAN 23 1946



JAN 28 1946



17199

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Proof of)
Application to Beneficial Use)
Permit No. 17199)

DECISION OF
STATE RECLAMATION ENGINEER

Application for Permit to appropriate the Public Waters of the State of Idaho, No. 24224, was filed October 25, 1929, and approved on October 28, 1929. Permit No. 17199 was issued to George W. Ellis, to appropriate Two (2) cubic feet per second of the waters of Mission Creek, in Boundary County, for irrigation and domestic purposes, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., and place of use described as the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

Proof of completion of works was made on April 19, 1938, and certificate of completion of works issued.

On May 26, 1945, Permit No. 17199 was assigned to Mission Creek Water Association, Inc., Bonanza Ferry, Idaho, by Ray Ellis, administrator of the estate of George W. Ellis, deceased.

Mission Creek Water Association, Inc., notified the Department of Reclamation that they were prepared to furnish proof of beneficial use of water under Permit No. 17199, on July 20, 1945. Notice was published and proofs were offered at the time and place specified.

Protests against the proofs and against the issuance of a license were filed by Vernie Stockton, Fred Ahlborn, Walter W. Winters, Peter Gabeer, Christine Dahlborn Lundeen, John L. Smith and George H. Bethwell.

On October 5, 1945, the Field Engineer of the Department of Reclamation made an inspection.

After careful consideration of the proofs, protests, and report of the Field Engineer, it is the decision of the State Reclamation Engineer, that:

1. Water from Mission Creek has been beneficially used under Permit No. 17199.

2. The holder of Permit No. 17199 is entitled to a License for one tenth (0.1) of a cubic foot per second of the water of Mission Creek, with a priority date of July 17, 1938.

3. License for One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek will be issued, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., for domestic and irrigation purposes, on, and appurtenant to, five (5) acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., with priority of July 17, 1938.

Any one feeling himself aggrieved by reason of this decision may appeal therefrom to the District Court of Boundary County within sixty days.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 24th day of January, A. D., 1946.

17199

MARK A. KILP

State Reclamation Engineer



STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

~~CHARLES S. COBBETT~~
GOVERNOR
ARNOLD WILLIAMS
GOVERNOR

January 24, 1946

Re: Permit No. 17199

Mr. Walter W. Winters
Bonners Ferry, Idaho

Dear Mr. Winters:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By *Jeannie L. Anderson*
Chief Clerk

A
Encl.

17199

After 5 days, return to

BOISE, IDAHO.

BOISE, IDAHO.

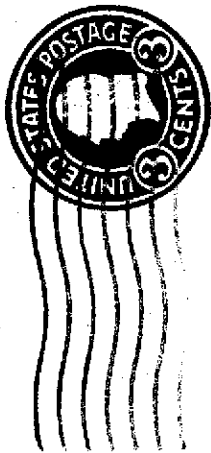


REASON CHECKED
Undelivered V. ✓ Refused
Unknown
For better address
Moved, Left no address
No such office in state

Mr. John L. Smith

Bonner Ferry

Udaho



JAN 28 1945



STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Proof of)
Application to Beneficial Use)
Permit No. 17199)

DECISION OF
STATE RECLAMATION ENGINEER

Application for Permit to appropriate the Public Waters of the State of Idaho, No. 24324, was filed October 25, 1929, and approved on October 26, 1929. Permit No. 17199 was issued to George W. Ellis, to appropriate Two (2) cubic feet per second of the waters of Mission Creek, in Boundary County, for irrigation and domestic purposes, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., and place of use described as the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

Proof of completion of works was made on April 19, 1938, and certificate of completion of works issued.

On May 26, 1945, Permit No. 17199 was assigned to Mission Creek Water Association, Inc., Bonners Ferry, Idaho, by Ray Ellis, administrator of the estate of George W. Ellis, deceased.

Mission Creek Water Association, Inc., notified the Department of Reclamation that they were prepared to furnish proof of beneficial use of water under Permit No. 17199, on July 20, 1945. Notice was published and proofs were offered at the time and place specified.

Protests against the proofs and against the issuance of a license were filed by Vernie Stockton, Fred Ahlborn, Walter W. Winters, Peter DeBeer, Christine Dehlborn Lundeen, John L. Smith and George H. Rothwell.

On October 5, 1945, the Field Engineer of the Department of Reclamation made an inspection.

After careful consideration of the proofs, protests, and report of the Field Engineer, it is the decision of the State Reclamation Engineer, that:

1. Water from Mission Creek has been beneficially used under Permit No. 17199.
2. The holder of Permit No. 17199 is entitled to a License for one tenth (0.1) of a cubic foot per second of the water of Mission Creek, with a priority date of July 17, 1938.
3. License for One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek will be issued, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., for domestic and irrigation purposes, on, and appurtenant to, five (5) acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., with priority of July 17, 1938.

Any one feeling himself aggrieved by reason of this decision may appeal therefrom to the District Court of Boundary County within sixty days.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 24th day of January, A. D., 1946.

MARK A. KULP

State Reclamation Engineer

17199



STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

ARNOLD WILLIAMS
GOVERNOR

January 24, 1946

Re: Permit No. 17199

Mr. John L. Smith
Bonners Ferry, Idaho

Dear Mr. Smith:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Jeane L. Anderson
Chief Clerk

A
Encl.

17199

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Proof of)
Application to Beneficial Use)
Permit No. 17199)

DECISION OF
STATE RECLAMATION ENGINEER

Application for Permit to appropriate the Public Waters of the State of Idaho, No. 24224, was filed October 25, 1929, and approved on October 25, 1929. Permit No. 17199 was issued to George W. Ellis, to appropriate Two (2) cubic feet per second of the waters of Mission Creek, in Boundary County, for irrigation and domestic purposes, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M., and place of use described as the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

Proof of completion of works was made April 19, 1938, and certificate of completion of works issued.

On May 26, 1945, Permit No. 17199 was assigned to Mission Creek Water Association, Inc., Bonners Ferry, Idaho, by Ray Ellis, administrator of the estate of George W. Ellis, deceased.

Mission Creek Water Association, Inc., notified the Department of Reclamation that they were prepared to furnish proof of beneficial use of water under Permit No. 17199, on July 20, 1945. Notice was published and proofs were offered at the time and place specified.

Protests against the proofs and against the issuance of a license were filed by Vernie Stockton, Fred Ahlborn, Walter W. Winters, Peter DeBoer, Christine Dohlborn Lundeen, John L. Smith and George H. Bethwell.

On October 5, 1945, the Field Engineer of the Department of Reclamation made an inspection.

After careful consideration of the proofs, protests, and report of the Field Engineer, it is the decision of the State Reclamation Engineer, that:

1/ Water from Mission Creek has been beneficially used under Permit No. 17199.

2. The holder of Permit No. 17199 is entitled to a license for One tenth (0.1) of a cubic foot per second of the water of Mission Creek, with a priority date of July 17, 1938.

3. License for One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek will be issued, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., for domestic and irrigation purposes, on, and appurtenant to, five (5) acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., with priority of July 17, 1938.

Any one feeling himself aggrieved by reason of this decision may appeal therefrom to the District Court of Boundary County within sixty days.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho herewith affixed, at Boise, Idaho, this 24th day of January, A. D. 1946.

MARK R. KULP

State Reclamation Engineer

17199



STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL
BOISE

FRANK LANGLEY
ATTORNEY GENERAL

January 23, 1946

Mr. Mark R. Kulp
State Reclamation Engineer
B U I L D I N G

Dear Mr. Kulp:

This is in reply to your letter of January 21 addressed to the Attorney General. From your letter it appears that on October 28, 1929 Permit No. 17199 was issued to one George W. Ellis to appropriate two (2) cubic feet per second of the waters of Mission Creek for domestic and irrigation purposes. Subsequent thereto on April 19, 1935 a certificate of completion of works was issued, but no proof of beneficial use was made until sometime later. At the time of the filing of the intention to make proof of beneficial use it appears that the water had been put to beneficial use for a number of years - from the date of the filing of the application up to and including 1942, but was not actually being used in the year 1945 at the time that the proof was offered of the beneficial use for the reason that the transmission works were not in a good state of repair.

You ask the opinion of this office as to whether under the provisions of Section 41-213 of the I. C. A. which reads in part as follows:

"Upon receipt by the department of reclamation of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.****"

Should the user who is making proof of beneficial use be, actually at the time of making such proof, using the water beneficially at the place claimed and for the purpose for which it was originally intended.

17199

Mark R. Kulp

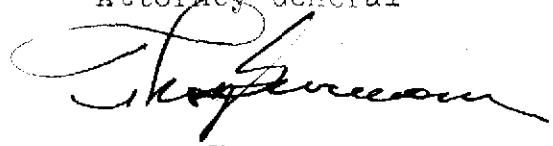
- 2 -

January 23, 1946

It is my opinion that if the department of reclamation is satisfied that the applicant has put the water to a beneficial use at the place claimed and for which it was originally intended and through some unforeseen condition the water is not being actually used at the time the proof is made, but there is sufficient evidence that it will be as soon as the condition is corrected making the use possible, the appropriator has made sufficient showing to entitle him to his license confirming use. In other words, unless there is a clear showing that the applicant has abandoned his use of the water, the mere fact that he is failing to put it to beneficial use at the time proof was submitted would not preclude him from receiving his license.

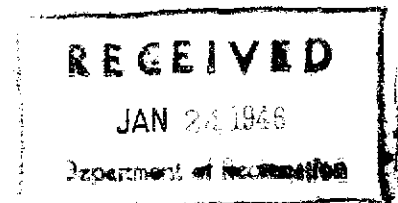
Very truly yours,

FRANK LANGLEY
Attorney General



THOS. Y. GWILLIAM
Asst. Attorney General

TYG:dg



17199

17199

January 21, 1946

Hon. Frank Langley
Attorney General
Building

Dear Mr. Langley:

We have a situation on Mission Creek, in Boundary County, on which we request your opinion:

On October 28, 1929 Permit No. 17199 was issued to George W. Ellis, to appropriate two (2) cubic feet per second of the waters of Mission Creek for domestic and irrigation purposes.

Proof of completion of works was made on April 19, 1935, and a certificate of completion of works was issued.

Proof of beneficial use was not made on or before the date set in the permit for such proof.

A loan from the Farm Security Administration was requested by a group of farm residents, to provide domestic water. A necessary pre-requisite for the loan was a water right.

Permit No. 17199 was purchased by The Mission Creek Water Association, and the assignment recorded in this office.

Proof of beneficial use was offered under Sections 41-211 and 41-213, I. C. A. Intention to make proof was advertised, and a number of protests were filed, and a field examination was made by the Department of Reclamation.

Claims of applicants and protestants were conflicting; but it seems that water had been actually appropriated and used up to and including 1942, but was not actually being used in 1945, when the proof was offered, due to the bad state of repair of the transmission works.

The wording of Section 41-211 is "... that such water has been beneficially applied ...", and the wording of Section 41-213 "...that the water is being used at the place claimed...".

Your opinion is requested as to whether the "is" in Section 41-213 should be construed literally, or is there discretion on the part of the Department of Reclamation to issue a license on the ground that except for a breakdown of the flume that carries the water from the point of diversion to the place of use, the water could and would have been used in 1943-44-45.

Very truly yours,

KIA

17199

MARK R. KULP
State Reclamation Engineer

RE: PROOF OF BENEFICIAL USE

PERMIT NO. 17199

A F F I D A V I T

STATE OF IDAHO) :ss.
County of Boundary)

Clarence Guthrie, being first duly sworn on oath, deposes and says: That he is President of the Mission Creek Water Association, Inc.; that he has lived near the mouth of Mission Creek in Boundary County, Idaho, practically all his life and since the year 1906; that the Mission Creek Water Association was organized for the purpose of furnishing domestic water to approximately thirty-five families living in the vicinity of Mission Creek in Boundary County, Idaho; that it is the plan of the Mission Creek Water Association to obtain money through the Farm Security Administration to construct a good water system; the main line will be constructed of pipe and each farmstead will be allowed two thousand gallons of water per day, and meters will be installed to measure the water at each farmstead; that in order to obtain the money from the Farm Security Administration it is necessary that the Association have an established water right, and the officers of said association have made an investigation of the George Ellis water right and are satisfied that there was a beneficial use of water under the George Ellis permit and that the water right has been established by usage since the year 1929; that the prospective users of water from the Mission Creek Water Association are without any other source of water, and at the present time fourteen of the prospective users are now hauling water from Mission Creek for household use; that

17199

one-quarter second foot of water is ample to furnish the required amount of water for the Mission Creek Water Association; that Affiant is familiar with all the usage of water from Mission Creek at the present time and for the past twenty-five years and says that the total amount of water used for domestic purposes and irrigation by the protestants who have filed protests herein does not exceed two miners inches; that there has always been a large amount of water go to waste in Mission Creek even during the dry season of the year; that Affiant has been informed by H. G. Haight, regional engineer for the Farm Security Administration, that he made an estimate of the flow of Mission Creek at the County Bridge six miles upstream from the highway crossing in August and September, 1944, and estimated the flow at said point in August to be eight cubic feet per second and in September to be 7.5 cubic feet per second; he also estimated the discharge at the highway crossing for the same months at six cubic feet per second; that the years 1944 and 1945 have been exceedingly dry seasons in Boundary County and the flow of all streams are far below the average;

That Affiant is informed and believes that Fred Ahlborn instigated the protests which were filed herein, not because there was any real shortage of water for irrigation and domestic purposes but because he did not want to see certain members of the Mission Creek Water Association obtain water; that Fred Ahlborn has agreed to sell certain members of the Mission Creek Water Association water for the sum of \$125.00 each and has agreed to sell the Mission Creek Water Association water providing that it would not be piped to the farms in the Kootenai Bottom; that he has no real use for the water which was obtained under permit

No. 17621 and permit No. 17844; that he has an antiquated power system which can only be operated to advantage during extreme high water; that he buys electricity from the Northern Idaho Rural Electrical Rehabilitation Association and only irrigates a small garden of approximately one-fourth acre; that the Ira Parker and W. B. Pace water was abandoned years before Fred Ahlborn came to the county; that in Affiant's opinion Fred Ahlborn is only using the water of Mission Creek as a dog-in-the-manger proposition; that the following is taken from the Findings of Fact in the case of Fred Ahlborn against Chester Wagner, which was tried in the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Boundary:

"12. That the volume of water flowing in Mission Creek is approximately 16 cubic feet per second except during the months of July and August of each year, and during the months of July and August the volume is approximately 8 cubic feet.

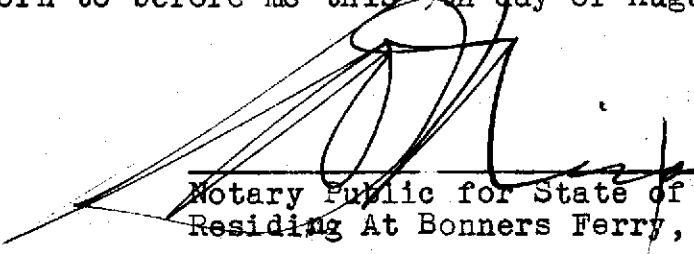
"14. That prior to the diversion in 1933 water was sufficient to cover both permits." (referring to permit No. 17621 and permit No. 17844)

That Affiant has been upon the George Ellis property on Mission Creek many times and saw water being used for domestic purposes and irrigation there during the year 1942; that the soil where the water is used on the George Ellis place is sand and gravel soil and requires more water than average land to produce a good crop.

Further Affiant Sayeth not.

Clarence Guthrie

Subscribed and sworn to before me this 9th day of August, 1945.


Notary Public for State of Idaho
Residing At Bonners Ferry, Idaho

RE: PROOF OF BENEFICIAL USE

PERMIT NO. 17199

A F F I D A V I T

STATE OF IDAHO)

:ss.
County of Boundary)

Ray Ellis, being first duly sworn on oath, deposes and says: That he is the Administrator of the estate of George W. Ellis, deceased, now in process of administration in the Probate Court of Boundary County, Idaho; that George W. Ellis died intestate in Boundary County, Idaho, on the 2nd day of November, 1939, and the estate of George W. Ellis and Martha A. Ellis, the surviving spouse of George W. Ellis, deceased, are the owners of the following described lands in Boundary County, State of Idaho, to-wit:

Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) and Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) Section Eight (8), Township Sixty-four (64) North Range 1 East B. M., and the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$), Section Eight (8), Township Sixty-four (64), North Range 1 East B.M., containing 160 acres.

That Affiant is the son of George W. Ellis, deceased, and Martha A. Ellis and that since the death of the said George W. Ellis, Affiant has operated and lived upon the farm hereinabove described; that the Ellis family have lived continuously upon said property since the year 1908; that Affiant is familiar with the construction which was made in 1929 to apply the waters of Mission Creek to beneficial use for domestic purposes and irrigation on the above described property; that his father, George W. Ellis, employed J. C. Vernon, the County Surveyor, and a licensed engineer to survey the ditch and flume under the water permit No. 17199; that after the survey was made the flume and ditch were constructed in accordance with the survey, and that Affiant

was informed by the surveyor that the construction would convey approximately one and one-fourth cubic feet of water from the point of diversion to the land hereinabove described and that the fall was .500 feet to 100 feet; that between the point of diversion and the place of use there is approximately two thousand feet of flume which was constructed of new tamarac lumber; that the bottom boards of said flume are 2 x 6 inch lumber and the sides are 1½ x 8 inch; that the boards are doubled over the joints and each joint is set upon substantial timbers or rock; that from the year 1930 until the year 1943, both years inclusive, the flume was used to convey the water of Mission Creek to the land hereinabove described and the water was used to irrigate a large garden and orchard, shade trees and shrubbery, approximately three acres of alfalfa land, and the overflow and waste water was used to irrigate pasture; that the total acreage irrigated is estimated to be between five and six acres; that during said period of time said water was also used for household purposes and for watering approximately fifteen head of cattle and horses; that the land upon which said water was applied is a very porous sand, and gravelly soil and is on a slope facing the South and requires a great deal of water to raise a good crop;

That Affiant did not repair the flume in 1944 for the reason that it would be necessary to replace a great deal of lumber in the flume, particularly the bottom boards, and Affiant is of the opinion that pipe would be more practical; that he has not been able to buy the pipe for the past two years and has an understanding with the Mission Creek Water Association whereby they will furnish water for domestic purposes; that the deal with the Mission Creek Water Association has been pending since 1942 and that if the Mission Creek Water Association is ^{not} allowed to furnish the water, the Affiant intends to rebuild the flume or put in pipe to convey the water within the next year;

That Affiant has lived on Mission Creek practically all his life and for the past 42 years; that he is familiar with all of the water rights and water uses on said creek, and that at the present time, with the exception of the water that is being diverted from Mission Creek by the Wallen Ditch, which was constructed in 1945 and the Fred Ahlborn power use, the total amount of water put to beneficial use from Mission Creek by all the users would not exceed four miners inches, not taking into consideration the Ellis right which is not being used this year;

That Affiant has read the protest affidavit of George Bothwell and says in reply thereto that the only water put to beneficial use by George Bothwell is dipped from the creek by a bucket and windlassed up to his house by a rope; that he has no stock and irrigates no land; that at the time the George Ellis ditch and flume were constructed, and for some time thereafter, the Bothwell property was owned by Boundary County through tax deed;

That Vernie Stockton, who is at present living upon his land, has not resides there for a number of years; that he has no stock, no garden, and no cultivated land which is irrigated;

That John Smith's place is located between the mouth of Mission Creek and the Kootenai River, and that the only water he ever used from Mission Creek has been carried in a bucket, with the exception of drinking water for possibly one cow;

That Christine Dehlbom Lundeen lives at the mouth of Mission Creek on the Kootenai River, and that the only water used from Mission Creek at that household is carried in a bucket; that the livestock would have access to water if Mission Creek were completely dry;

That Pete DeBore has an electric pump with one-inch intake pipe and is only using water for household purposes and a very small garden;

That the only beneficial use of the waters of Mission Creek by the Walter Winters farmstead is for irrigating approximately one-half acre of garden and household purposes;

That the only domestic use of water by Fred Ahlborn is for irrigating approximately one-fourth acre of garden and household use; that he has not operated his saw mill for the past two years, and prior to that only periodically; that the Ira Parker and W. B. Pace power rights were abandoned for years before Fred Ahlborn came to this country;

That in all protests filed herein the facts are greatly exaggerated. It would appear from reading these protests that there is danger of Mission Creek going dry; that great quantities of water are being used from said creek; that the George Ellis flume is nearly twice as long as it actually is; that it only has one-half the fall that it actually has; that the flume is all rotted, washed away, and smashed up with fallen timber, whereas in truth and in fact there is only one tree across the flume and fifty per cent of the lumber is as solid as the day it was sawed; that if all the water ever used from Mission Creek for irrigation and domestic purposes were taken out at one place one would not be able to notice the difference in the amount of water above and below the diversion.

Further Affiant sayeth not.

Ray Ellis
Subscribed and sworn to before me this 9th day of August, 1945.

17199
[Signature]
Notary Public for State of Idaho
Residing at Bonners Ferry, Idaho

PERMIT NO. 17199

A F F I D A V I T

STATE OF IDAHO) :ss.
County of Boundary)

Chester Logan.

Clarence Guthrie

Russell Dilline

Subscribed and sworn to before me this 9th day of August, 1945.

~~Notary Public for State of Idaho~~
~~Residing at Bonners Ferry, Idaho~~

12199.

A F F I D A V I T

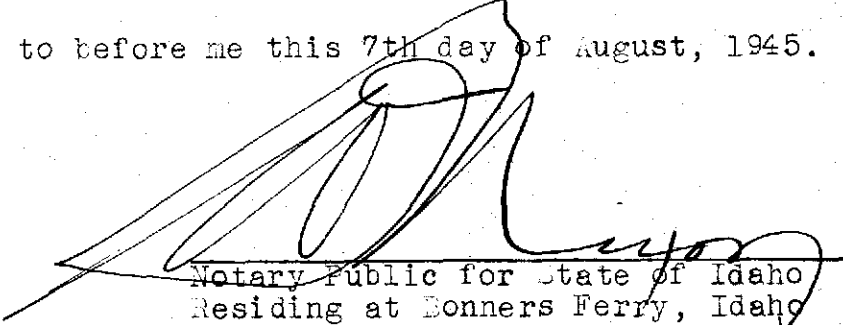
STATE OF IDAHO)
:ss.
County of Boundary)

Allen Sheldon, being first duly sworn on oath, deposes and sa ys: That he is maintenance man for the Northern Idaho Rural Electrical Rehabilitation Association; that for the past five years to his knowledge Fred Ahlborn has been using electricity from the Northern Idaho Rural Electrical Rehabilitation Association, line.

Further Affiant sayeth not.

Allen Sheldon

Subscribed and sworn to before me this 7th day of August, 1945.


Notary Public for State of Idaho
Residing at Bonners Ferry, Idaho

17199

January 24, 1946

Re: Permit No. 17199

Messrs. Wernette & Crowley
Old National Bank Bldg.
Spokane, Washington

Gentlemen:

We are enclosing herewith copy of the
Decision of the State Reclamation Engi-
neer in the matter of the proof of bene-
ficial use under the above numbered permit,
in the name of the Mission Creek Water
Association, Inc.

A similar copy is being sent to each of
the protestants therein.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

✓
January 24, 1946

Re: Permit No. 17199

Mr. Fred Ahlborn
Bonners Ferry, Idaho

Dear Mr. Ahlborn:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1944

Re: Permit No. 17199

Mr. John L. Smith
Bonners Ferry, Idaho

Dear Mr. Smith:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1946

Re: Permit No. 17199

Mr. Vernie Stockton
Bonnere Ferry, Idaho

Dear Mr. Stockton:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1946

Re: Permit No. 17199

Mrs. Christine Dehlborn Lundeen
Copeland, Idaho

Dear Madam:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit, in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1946

Re: Permit No. 17199

Mr. George H. Bothwell
Bonners Ferry, Idaho

Dear Mr. Bothwell:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit, in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1946

Re: Permit No. 17199

Mr. Peter deBoer
Bonners Ferry, Idaho

Dear Mr. deBoer:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit, in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 24, 1946

Re: Permit No. 17199

Mr. Walter W. Winters
Bonners Ferry, Idaho

Dear Mr. Winters:

We are enclosing herewith, for your information, a copy of the decision of the State Reclamation Engineer in the matter of the proof of beneficial use under the above numbered permit in the name of the Mission Creek Water Association, Inc.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

17199

January 22, 1946

Re: Permit No. 17199

Mr. Fred Ahlborn
C/o Mission Creek Service Station
Bonners Ferry, Idaho

Dear Mr. Ahlborn:

Answering your letter of November 20th:

The Ellis right is still being considered,
and is now awaiting an opinion from the
Attorney General.

Very truly yours,

MARK R. KULP

K:A

State Reclamation Engineer

17199

January 23, 1946

Re: Permit No. 17199

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

In reply to your letter of January 5th, in
regard to Permit No. 17199.

I have requested an opinion from the Attorney
General on the statutes regarding permits
and licenses, and will not be able to render
a decision until the opinion is returned.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

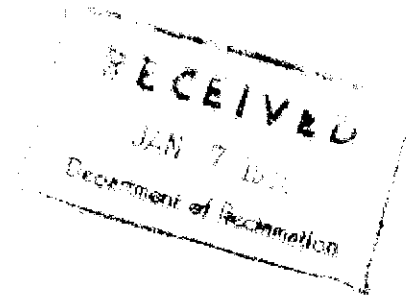
K:A

17199

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE No. 73
RESIDENCE TELEPHONE 88-J

January 5, 1946



Mark Kulp
State Reclamation Engineer
Boise, Idaho

Dear Mr. Kulp:

Re: Permit No. 17199

I have had a number of inquiries from members of the Mission Creek Water Association as to when they can expect a decision upon the Ellis water right proof. They are anxious to start their project so that they will have water this summer.

They have had a proposition offered them from Fred Ahlborn, the contestant, which is not at all satisfactory and is not being considered. I believe that when I was in Boise you stated that you had had correspondence from Mr. Ahlborn to the effect that he had made the Mission Creek Water Association a proposition to furnish water. Since the Mission Creek water users only desire enough water for domestic purposes, I am sure that the small amount that they will use will not effect Mr. Ahlborn's power right in any way.

I would appreciate an early decision in this matter, if possible.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "W. J. Nixon".

W. J. Nixon

WJN:lc

17199

MISSION CREEK SERVICE STATION
BONNERS FERRY, IDAHO

December 29, 1945

RECEIVED

JAN 2 1946

Department of Reclamation

Copy
Mission Creek Water Association
Bonners Ferry, Idaho

Gentlemen:

We feel that until an amicable adjustment is made with regard to the use of the water on Mission Creek with all of the parties who are attempting to use or claiming some right to the waters thereof, there will be an endless amount of friction, animosity and litigation at costly expense to everybody concerned and after all probably the majority of the parties will not be satisfied. Consequently we believe that a solution to the entire problem regarding the waters of Mission Creek should be available so as to eliminate all of the trouble and avoid costly litigation and so that the interested parties will all have an opportunity to obtain water satisfactory to everyone concerned. Consequently the undersigned have the following proposition to make to you.

As you probably all know, the undersigned, Lee Wallin and Fred Ailborn, have a permit for a water right on Mission Creek and also a permit from the State to make from a small lake on the Wallin property, a storage reservoir for the purpose of storing water to be utilized at the time when the creek is low so that there will be sufficient water available for all. A ditch has already been constructed from the creek to the lake and an outlet from the lake back into the creek, the ditch into the lake now having a capacity of 6 cubic feet per second of time and for a comparatively small cost, comparatively speaking, the ditch into the lake can be increased so that it will be able to carry 10 cubic feet of water per second of time. As long as the creek is high, there is ample water for all, but it is only during the low water period of the creek that there is not sufficient water for everybody concerned without storage, or at least there is a reasonable probability that there would not be a sufficient amount of water for everyone concerned.

It is contemplated by the undersigned to construct a dam at the outlet of the lake so as to raise the water approximately 10 feet above its normal low water stage. Later if it became necessary, this dam probably could be increased in height, but if so, it would have to be permitted under State and Government regulations. We would be willing to permit the Mission Creek Water Association to obtain water for domestic purposes not exceeding the number of 40 users, each to receive not to exceed 2000 gallons per day, to be used for domestic purposes. This water would have to be measured above the place where the water is taken out of the main pipe line for use by a master meter. The Mission Creek Water Association would have to arrange to have meters installed for each particular user of water so that each one of the users would receive their equitable distributive share of the water for domestic purposes not exceeding 2000 gallons per day for each user. We would be willing to have the water taken out and placed into the pipe line from the ditch that runs from the creek into the lake. However, we believe that that would be in-

17199

practicable for the reason that the ditch might freeze up entirely for a short period of time the same as the creek has heretofore frozen over and then there would not be any water available for domestic purposes to anyone. Consequently we believe that the water should be taken out of the reservoir created by the lake augmented by the flow of the creek that runs from the ditch that is already constructed from the creek into the lake, and in that regard, probably it would be advisable and satisfactory to everyone concerned to have the intake of the pipe placed immediately below where the water from the ditch from the creek runs into the lake or the water could be taken from the reservoir through the dam by reason of the fact that the water of the creek continuously runs into the reservoir. The water would be kept fresh as the only water that would be taken out would be that which is used and the balance would go over the spillway and the dam and return to the creek.

The cost of obtaining the pipe and the installation of the pipe line would have to be born by the respective users of the water for that purpose. At the present time one of the undersigned has 1800 feet of 6 inch concrete pipe on hand stored close by the place where the same would have to be used and that pipe would have to be taken off the hands of the undersigned at the same price that it cost the undersigned in obtaining the same. The balance of the pipe would have to be acquired and probably a 3-inch pipe for the balance of the pipe to where it is to be distributed to the respective users would be ample in view of the fact that there is approximately 500 foot head in elevation. The respective users would have to pay for their own pipe from the main pipe line to the point where the users propose to use the same and pay for the installation.

The undersigned have a water right from this storage reservoir for 4 cubic feet per second of time for power, irrigation and domestic purposes and they would be willing to have the intake of the pipe for domestic purposes installed so that the same would be at least a foot below the intake of the pipe which would carry the water for power and irrigation purposes. That would leave, in any event, one foot of water over the entire area of the reservoir above the minimum water level that would be available for domestic purposes for the Mission Creek Water Association, including the two undersigned who would also use the water for domestic purposes out of said reservoir, but it would be understood that as far as Lee Wallin is concerned and Fred Ahlborn that they would not be required to become members of the Mission Creek Water Association in order to obtain water where the water would be used for domestic purposes on their places, available from the said reservoir, but in the event the said Fred Ahlborn desired to use said water through said pipe for domestic purposes at his place where he lives at the highway, then he would be required to become a member of the said Association on the same basis as the other members in order to obtain domestic water for that place for his home at the State Highway. It is to be understood that this arrangement is not to interfere with the water rights of either of the undersigned or both except that both the undersigned agree to the proposition above enumerated to allow the water of said creek and said reservoir to be used for domestic purposes as above stated; and it is to

17199

be further understood that there should be a sufficient amount of water allowed to go down the creek or through the reservoir and back into the creek as long as there is any water available to furnish domestic water for those living on the creek below this project who have prior water rights for domestic purposes.

The Association would be required to pay to the undersigned the sum of \$2000.00 for the purpose of cleaning the lake of logs, stumps, brush and similar material so as to make the same more adaptable as a storage reservoir for domestic water purposes. In addition, for the consideration of said \$2000.00, the said undersigned would place a fence around the said reservoir, at their own cost, consisting of 3 barbed wires substantially constructed, with the privilege, however, to the said Association if they desire a different or better fence to place a woven wire fence around the said reservoir at their own cost. It might be advisable for the Association to put the woven wire fence around the reservoir and that the undersigned put the 3 barbed wires on top of the woven wire fence in order to keep out the deer. In the event the water users for domestic purposes desire to have the ditch fenced on the Wallin property which runs into the storage such fence would have to be constructed at the expense of the water users with suitable gates and bridges so that the Wallins could go back and forth to the land on each side of the ditch. For said \$2000.00, the undersigned would also complete the construction of the 10-foot dam at the bottom of the lake for the purpose of creating the reservoir. It is to be understood that while the dam at the present time would only be a 10-foot dam, the foundation for the same will be constructed suitable for a 25-foot dam in height.

The users of the water from the said pipe line would be required to pay the sum of \$250.00 per year for the maintenance cost of the ditch that runs into the reservoir, the maintenance of the dam and the ditch from the dam back into the creek. The maintenance of the pipe line itself would have to be born by the users. For the said \$250.00, the undersigned would keep and make the necessary repairs on the said ditch and dam as above mentioned and as far as the head gates and control work of the head gates of the dam and ditch are concerned, that work would have to be done by the undersigned and without expense to the other water users except that the right to control the head gates would have to be left to the undersigned with the understanding, however, that sufficient water would be permitted to go into the pipe line as above provided. The organization expense for the purpose of putting this proposition into force and effect by way of any engineering cost, legal work, etc., would have to be born by the respective users of the water for domestic purposes from the said pipe line. These latter costs just mentioned would be only those incurred from and after the date of the acceptance of this proposition.

It would have to be agreed and understood that the Association would be given a right-of-way over the lands of the undersigned without any additional expense for the purpose of putting in the pipe line with the understanding, however, that the

pipe line would have to be put in in a place as nearly practicable as reasonably possible, taking into consideration not to do any more damage than is reasonably necessary to the lands and premises of the undersigned over which the said pipe-line is placed. It is also to be agreed and understood that the users of the water for domestic purposes from said pipe line are not to have any rights to the said lake for any purpose except for the purposes herein stated.

If the above proposition is satisfactory to you, we would be glad to meet with you and the attorney of your selection for a conference in order to put into force and effect the above proposition and iron out the various details that would be required in order to put the above proposition into force and effect.

R Lee Wallin

Fred Ahlborn

P.S. It is to be understood that this is a compromise proposition in order to avoid trouble and litigation and unless settlement is made between the parties having controversy, then this letter and proposition submitted is not to be used in any litigation or before the Department of Reclamation of the State of Idaho as against Fred Ahlborn and Lee Wallin or either of them.

17199

Mr. Tolman:

There have been numerous protests filed against the issuance of a license under this permit- which was originally in the name of George Ellis.

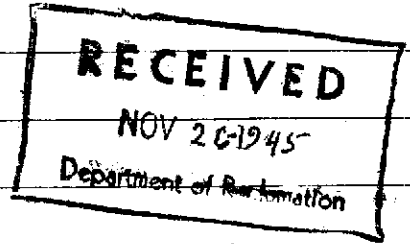
It might be well for you to look these protests over before you make the examination, so you may be familiar with the entire situation.

J L A

MISSION CREEK SERVICE STATION
BENDERS FERRY, IDAHO

Nov 20 1945

Department of Reclamation
State House
Boise Idaho
Mr. Kuhl
Dear Sir,



In regards a difference over water
rites on a stream known as Mission
Creek. Boundary County, Idaho,
and pertaining to the rite of a Mr
Ray Elitz & Mission Creek Water
Association and my own.

I have spent the past week
going over a plan so that
~~there from~~ the Mission Creek
Water association members and
others that are not members of the
association can get water
under gravity flow ~~and~~
~~all~~ then a storage plan
and from the storage that
is under the permit of Fred
A. Horn & Lee Wallen, and by
so doing will not interfere
with ~~the~~ other rite on Mission
Creek.

as you suggested such a plan when
you were here

as soon as I have more sound
information I will send some as
well as a map of the works.

It is my expectation that work
will begin soon on the project,
and all of the Members of the Ass.
are being offered a plan to obtain
water under a gravity flow
without the use of the Ellis
site.

~~and~~ are you at this time
able to tell me what has taken
place regards the Ellis site.

as it does have a bearing on
my now proposed plan.

I might say the ~~plan~~ project
not cost nearly as much as that
set by the Government men, whom
designed the project for the
Mission Creek Water association

Yours truly
Frederick Chalmers

It is further suggested as in paragraph C, where Fred Ahlborn retain the right to become a member of the Mission Creek Water association. That others may also become members that now own land on or adjoining Mission Creek and also those living along the State Highway #1 and within 1 mile in either direction of Mission Creek.

The undersigned request an answer to this letter within 10 days as of Dec 29 1945

If this plan is not accepted within 20 days then this offer is null & void.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 17199

This proof is for Beneficial use In Water District No. _____

1. Name of applicant Mission Creek Water Ass'n., Clarence Guthrie, Pres., Copeland, Idaho
2. Source of water supply: Mission Creek
3. Location of point of diversion: Is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8
T. 64 N. R. 1 E. County of _____ Boundary _____
4. Describe works as they exist, giving dimensions and capacities of same: The Point of Diversion is washed out, and no evidence of control works remain at the heading of a 6"X 6" rough board flume, which is now considerably above available water, and the adjacent creek bed filled with deposited logs, brush, etc.
5. Water is used for: Irrigation and domestic purposes
6. State whether or not water has been turned into works of diversion: Presumably 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): SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M.

(Submit map on attached plat, showing location and details of above description.

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

Remarks:

The Flume and its supports are down in many places, and evidence of recent use is lacking.

Stream flow at this date was 0.37ft. over a 4ft. Cippoletti Weir, or 3.03 Second Feet.

This examination was made on the 5th. day of October, 1945.

(Signed)

E. A. Johnson
Examiner.

17199

Mission Creek Water Ass'n.
 Clarence Guthrie, President
 Copeland, Idaho
 Permit No. 17199

Examination for Beneficial use

County.....Boundary.....

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make a plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.

10/5/45
 Proposed system to
 use 3" pipes if on 5% Gr.
 " 4 " " 4% "
 " 4 " " 4% "
 Pipes line to be about
 7 to 10 miles long
 with N x S branches from
 24 in. supply reservoir on
 Geo Ellis place.
 Flume (old) is 6 x 6
 25 to 35 prospective more-
 now pump by hand 12-14'
 fr. Minnie Cr. & head.

0.37 ga cu 4' weir =
 stream flow

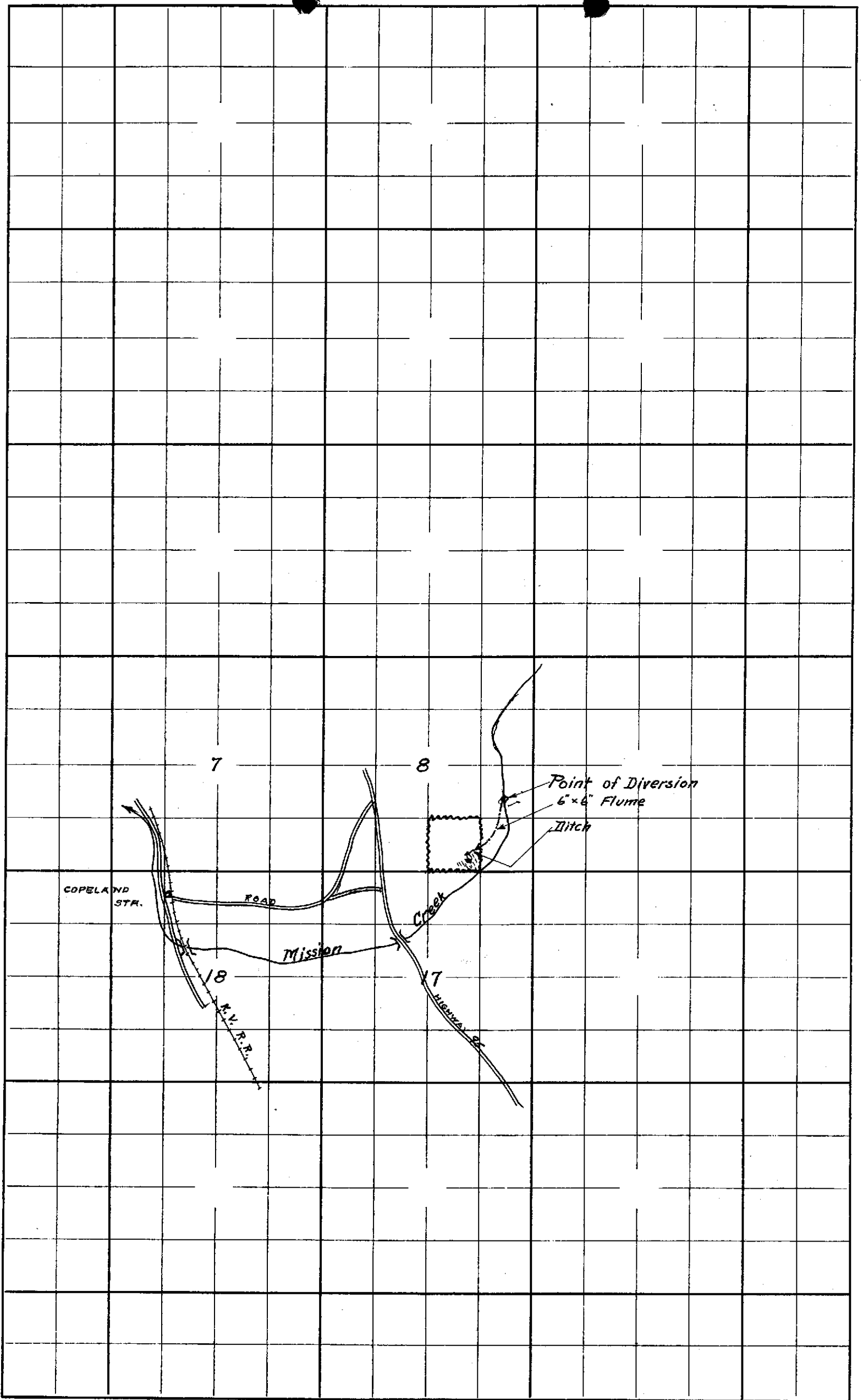
Flume supports installed on
 trees, or supported by piers.
 all in broken down state of
 abandonment. No head control
 works. Flume to P.S., in above
 water connection, and creek at
 this place is a source of flood
 debris (logs, brush etc)
 this debris would mean liberal
 allowance on any previous use
 of water.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. 17199

REPORT ON PROOF OF Beneficial use



W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 88-J

August 21, 1945

Mark Kulp
State Reclamation Engineer
Boise, Idaho

Dear Mr. Kulp:

Re: Permit No. 17199

I received today from Wernette and Crowley copy of Affidavit from Fred Ahlborn, the original of which no doubt has been mailed to you. This, I believe, will wind up the papers which will be filed in connection with this matter. Many more Affidavits could be secured but I believe that they would only clutter your files.

If you find that an examination of the premises is necessary, we would be very glad to have you make the inspection. If you do not come to North Idaho and desire further engineering data, I am sure that James Haight, Regional Engineer, Farm Security Administration, will give you any information he can, and he is quite familiar with the situation on Mission Creek.

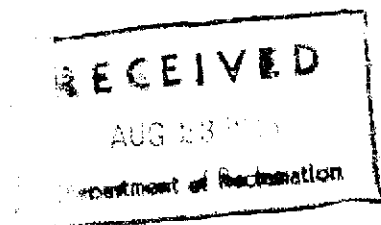
Very truly yours,

W. J. Nixon

W. J. Nixon

WJN:lc

17199



August 20, 1945

Re: Permit No. 17199
Mission Creek Water Association

Mr. Owen Critchfield
Notary Public
Bonners Ferry, Idaho

Dear Mr. Critchfield:

We acknowledge receipt from you of the deposition of the holder and two witnesses, also the affidavit of publication from the Bonners Ferry Herald, all in connection with beneficial use proof under the above numbered permit.

Also the following affidavits in protest against the issuance of a license under this permit:

Vernis Stockton
Fred Ahlborn
Walter W. Winters
Peter deBoer
Christine Dehlborn Lundeed
John L. Smith
George H. Bothwell

Also various affidavits in reply to these protests.

These instruments have all been placed on file, but no action will be taken in the matter until after a thorough examination and report by a Field Engineer from this Department.

Thanking you for your cooperation in this matter, we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Chief Clerk

A

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Ass'n.

Mr. Clarence Guthrie, President,
Mission Creek Water Association,
Copeland, Idaho

Dear Mr. Guthrie;

Mr. Owen Critchfield, Notary Public at Bonners Ferry, Idaho, has submitted the depositions of yourself and two witnesses, and also the affidavit of publication from the Bonners Ferry Herald, all in proof of beneficial use under the above numbered permit.

He has also submitted various protests filed against the issuance of a license under this permit, as well as the affidavits of yourself and others in answer to said protests.

These instruments have all been placed on file, but no action will be taken in the matter until after an examination has been made by a field engineer from this department, and his report thereon carefully considered.

We cannot tell just when this examination will be made, but Mr. Tolman, Field Engineer for this Department, will try and contact you at the time he makes the examinations, so that you may arrange to show him over the grounds.

Very truly yours,

MARK E. KULP
State Reclamation Engineer

A
CC to W. J. Nixon

By

Chief Clerk

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Association

Mrs. Christine Dehlborn Lundeed
Copeland, Idaho

Dear Mrs. Lundeed:

In reference to the protest filed by you in connection with beneficial use proof made by the Mission Creek Water Association, will state that no action will be taken in this matter until an examination and report has been made by a field engineer from this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By
Chief Clerk

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Association

Mr. George H. Bothwell
Bonners Ferry, Idaho

Dear Mr. Bothwell:

In reference to the protest filed by you in connection with proof of beneficial use made by the Mission Creek Water Association, will state that no action will be taken on this matter until after an examination has been made by a field engineer from this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By
Chief Clerk

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Ass'n.

Mr. Vernie Stockton
Bonners Ferry, Idaho

Dear Mr. Stockton:

Mr. Owen Critchfield, Notary Public, has transmitted to us your protest against the issuance of a license under the above numbered permit in the name of the Mission Creek Water Association.

This has been duly placed on file, but no action will be taken in the matter until after a field examination by an engineer from this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Chief Clerk

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Association

Mr. Peter deBoer
Bonners Ferry, Idaho

Dear Mr. DeBoer:

In reference to the protest filed by you in connection with beneficial use proof made by the Mission Creek Water Association, will state that no action will be taken until after an examination and report has been made by a field engineer from this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

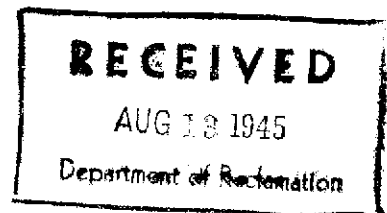
Chief Clerk

17199

Enclosed you will find the material
on the Mission Creek Water Rights. Permit #17199

I trust everyting is in order and that
you may be able to give them some report.

Owen Cutlerseed



17199

Affidavit of Publication

Notice For Publication Notice of Proof Application of Water to Beneficial Use

Notice is hereby given that at 10:00 A. M. on the 20th day of July, 1945, at Bonners Ferry, County of Boundary, State of Idaho, before Owen Critchfield, proof will be submitted of the application to beneficial use of 1 cubic feet per second of the waters of Mission Creek in accordance with the terms and conditions of Permit No. 17199 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 Mission Creek Water Association, Inc., Bonners Ferry, Idaho.

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

The amount applied to beneficial use is one cubic foot.

The place where said water is used Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) Section Eight (8) Township Sixty-four (64) North Range One (1) East Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is none.

The right to take water from such works is based upon Permit No. 17199.

The source of supply from which such water is diverted is Mission Creek.

The date of priority which said user is prepared to establish is July 17, 1938.

MARK R. KULP,
State Reclamation Engineer.
June 28-July 19—4t.

STATE OF IDAHO }
County of Boundary } ss.

being first duly sworn upon his oath, deposes and says: That he is the

proprietor of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the

hereto attached notice; that the advertisement of *Mark R. Kulp*

Culps, State Reclamation Engineer

a *Notice for Publication-Notice of*

Proof Application of Water to Beneficial Use
Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for *four*

consecutive issues, commencing with the issue dated *June 28,*

194*5*, and ending with the issue dated *July 19,* 194*5*.

Owen Critchfield
Proprietor
Foreman

Subscribed and sworn to before me this *20* day of

July, 194*5*
Minnelly
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

17199

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Permit No. 17199

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Clarence Guchie, Copeland, Farmer
Copeland, Idaho

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Mission Creek Water Association, Copeland, Idaho
President, as President

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. #17199, Oct 25, 1929, July 17, 1938.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Same, Mission Creek. NE 1/4 SE 1/4 Sec 8 - T64 R1E

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Wooden Flume 195 ft long, 6x6 inches wide.
1 1/4 Second Feet - no name

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Household, Stock, Irrigating garden pasture & hay.
and orchard. SW 1/4 SE 1/4 Sec 8 - T64 N R1E, 5 or 6 acres.
Cultivated land - some pasture by own flow

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. none

17199

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. 1 1/4 Second Feet.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. Purchase or assignment

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. First used Oct 25 1929. Used all water up to 1943.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. none

(Sign) Clarence Guthrie

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Bannock, County of Bannock, State of Idaho, on this 20 day of July, A. D. 1945

Ernest C. Caldwell

My commission expires _____

Notary Public for the State of Idaho
residing at Bannock Ferry, Idaho.
My Commission Expires Aug. 10, 1947.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 17199

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Bryce Chapen, 50, Bonners Ferry,
Bonners Ferry Idaho

Ques. 2. Are you acquainted with Clarence Gosthrie, the holder of Permit No. 17199? How long have you known him and where does he reside?

Ans. Since 1910. Coatsland, Idaho.
also Geo. Ellis original holder of permit

Ques. 3. Have you read or heard read said Permit No. 17199, and are you familiar with its provisions and conditions?

Ans. no

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use. Mission Creek.

Ans. Do not know legal description
Kept put in fence.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Saw fence running field. Do not know amount.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Domestic and Irrigation. on Ellis place.
Don't know southeast corner of Ellis place. 506 acres.
could irrigate 40 acres. Cultivated. 506 acres.
some pasture. Sandy soil needs water

17199

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. none.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation. Sand soil.

Ans. Flume feed, as flume is now constructed. Flume is 6 in.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. none

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Since 1929. Each summer. Irrigation.
Repair flume 1943.

(Signed) Bryce Chapin

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Donner Ferry, County of Boundary, State of Idaho, on this 20 day of July, A. D. 1945.

Owen Cuttelfield
Notary Public.

My commission expires.....

Notary Public for the State of Idaho,
residing at Donner Ferry, Idaho.
My Commission Expires Aug. 10, 1947.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 17199

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Earl Avery, 34, Copeland Farmer.

Star R.R. Bonanza Ferry Idaho.

Ques. 2. Are you acquainted with Clarence Guthrie, the holder of Permit No. 17199? How long have you known him and where does he reside?

Ans. Since 1923. Copeland Idaho

also George Ellis since 1921 -

Ques. 3. Have you read or heard read said Permit No. 17199, and are you familiar with its provisions and conditions?

Ans. no.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use. Mission Creek.

Ans. NE 1/4 SE 1/4 Sec 8 T64N R1E

Wooden Flume 6x6 inches inside meas.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Possibly 1 1/2 Second feet. Flume requires level feet.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use. Irrigation & domestic use.

Ans. SW 1/4 SE 1/4 Sec 8 T64N R1E - 506 acres on

cultivated land. Pasture land 203 acres. ~~irrigated~~

Increase hay crop 1/3. Also makes possible pasture on pasture land.

17199

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. *not used for power*

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. *Light sandy soil, some gravel.*

at least 15 miner inches.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. *none whatever*

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. *1942. Irrigating garden & hay land.*

*On place number 7 times. Saw garden and
potatoes irrigated in 1942 land. ^{overflow used on pasture}*

(Signed) *Earl Avery*

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in *Donner Ferry*, County of *Boundary*, State of Idaho, on this *20* day of *July*, A. D. 19*45*.

Owen Cutcliffe
Notary Public.

My commission expires _____

*Notary Public for the State of Idaho
residing at Donner Ferry, Idaho.
My Commission Expires Aug. 10, 1947.*

August 20, 1945

Re: Permit No/ 17199
Mission Creek Water Association

Messrs. Wernette & Crowley
Old National Bank Building
Spokane, 8, Washington

Attention- Mr. N. D. Wernette

Gentlemen:

We acknowledge receipt of your letter of August 18th, enclosing reply affidavit of Fred Ahlborn in connection with beneficial use proofs submitted on the above numbered application.

We had previously received from Mr. Owen Critchfield, the Notary Public, other papers in this matter, including several protests, and affidavits in connection therewith.

No further action will be taken in the matter until after a field examination and report by an engineer from this department.

Reference is also made to previous letters from you, enclosing protests from Fred Ahlborn, and Walter W. Winters and others.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A

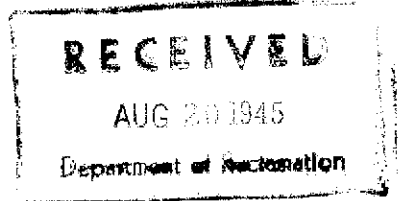
17199

WERNETTE & CROWLEY

ATTORNEYS AT LAW
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

N. D. WERNETTE
EDWARD J. CROWLEY

August 18, 1945



Department of Reclamation
State House
Boise, Idaho

Re: Permit No. 17199
Mission Creek Water Association

My dear Sir:

I am enclosing herewith reply affidavit of Fred Ahlborn pertaining to the proofs that were submitted with reference to the beneficial use under permit No. 17199.

This hearing was held before Mr. Owen Critchfield at Bonners Ferry some time ago and it was stipulated between Mr. Nixon, the applicants and myself, as attorney for the protestants, that the protestants could have 15 days within which to file affidavits and that the applicants would then have 5 days within which to file affidavits in reply to any showing that we made. It took Mr. Nixon more than the 5 days to prepare, serve and file his affidavits, and we are not making any objection as to that. However, in the affidavits that he filed, there was quite a number of new matters injected into the issue that we felt should not be left unchallenged in view of the facts and consequently I got in touch with my clients as soon as I could, resulting in the reply affidavit of Fred Ahlborn, the original of which I am enclosing herewith.

I am assuming that Mr. Critchfield has already forwarded the other original papers, including but not limited to the affidavits that were filed at Bonners Ferry, and for that reason, I am sending this affidavit directly to you. A copy of this affidavit has been forwarded to Mr. Nixon, the attorney for the applicants.

Kindly acknowledge receipt.

Respectfully yours,

WERNETTE & CROWLEY

N. D. Wernette
By

NDW mk
Enc.

County of BOUNDARY

SS

No. 17199.

That he has heretofore filed a protest with the Department of Reclamation of the State of Idaho, protesting and showing that the Mission Creek Water Association, Inc., have not put to beneficial use the waters of Mission Creek in said County under permit No.17199, and requesting that no license or order be issued that the said water association or its predecessors have put to beneficial use waters of Mission Creek under Permit No.17199, as provided by the laws of the State of Idaho or otherwise. That said protest sets forth the land owned by affiant, by and through whom the same has been acquired, the dates of the respective water rights showing that Affiant has use of the waters of said Mission Creek, and how and in what manner the same had been put to beneficial use by affiant. That Affiant makes reference to said Protest as to all facts therein stated and by reference thereto hereby makes said Protest and all the facts stated therein, a part of this affidavit the same as if said facts were specifically set forth at this place.

That Affiant has been the owner of said land and premises where he and his family reside for a period of over ten years; that he acquired title to said property during the year 1929, and has lived there continuously since said time. That his predecessors

17199

in interest acquired water writes on said Mission Creek for power and domestic purposes dating back as early as the year 1900, and the water has been used for domestic and power purposes continuously since said time, and Affiant has also acquired additional water rights on said Mission Creek as set forth in said Protest, and Affiant has been using the waters of Mission Creek ever since his additional water rights has been acquired for beneficial use, and for more than ten years last past has been operating a store and service station where he resides, and is also living on said premises in the building where the store and service station is being operated.

That for the present time and for many years last past, to-wit more than ten years, the power generated from the power plant that has been installed under said water rights heretofore acquired by affiant, as set forth in said protest, has been used in the operation of a large saw mill until within the last year or two. That Affiant has already made arrangements to install a new and modern planer which will be run from the power of said power plant, and as soon as the same is installed, the same will be continuously operated from the power generated by the water power installed by affiant and his predecessors on said creek under the water rights acquired by affiant and his predecessors. That Affiant also for many years has used the electrical power generated from said power plant for lighting, refrigeration, cooking and all other domestic purposes, at affiant's home, said store, and service station, and has been so continuously used for a period of many years.

Affiant has also used the waters of said Mission Creek under said water permit or permits for the purpose of irrigating a garden spot of about an acre in area, and said water has been continuously used for said purposes, and was also used by his predecessors; and

in addition to all of said purposes the water from said Mission Creek under said permits was used by affiant for said domestic purposes in his said home and in his said business.

That Affiant has been thoroughly familiar with the flume in question through which said Mission Creek Water Association Inc., and its predecessors in interest are claiming that they have used the water of said Mission Creek and placed the same to beneficial use; that for more than ten years last past Affiant has gone up the Creek from where he resides and saw and inspected the flume in question several times a year and is thoroughly familiar during all of said time as to ~~its~~ condition, the manner in which it was constructed and as to whether or not the same was being used for the purpose of putting water to beneficial use; and that Affiant has been making said trips and inspecting said flume during the summer and dry season of the year when the waters from said Mission Creek would be used for irrigating and domestic purposes if at all, and that at no time during the ¹⁰ years last past to the knowledge of this Affiant has said flume been used for the purpose of fluming water to the Ellis place for irrigation ^{or domestic} purposes. That if said flume had been used for the purpose of fluming water as claimed by said water association for the last ten years, your Affiant would have known it because he has been vitally interested in knowing whether the water was being used; and he had a special interest in the waters of said Mission Creek, and made such trips for the purpose of knowing what was being done in the use of said flume for the flowing of water through it for beneficial use.

Affiant states that said flume originally was poorly constructed and was sort of a makeshift to start in with; that it was constructed of rough lumber, the inside diminsions of said flume being not more than 6in x 6in., and at some places less than that; that the joints on said flume are poorly connected, part of the flume being

constructed on the ground and at other places above the ground, and the props holding the same are of poor material and not constructed in a substantial manner; that the flume was constructed very irregularly and there are considerable dips in said flume.

That the water running through said flume is not under pressure, and the drop of said flume toward the mouth is about 4 feet to 2000 feet; that the flume is approximately 3600 feet in length. That where the flume had sagged or was constructed with dips in it, the water overflowed in great quantities and in places washed out large ditches in the hillside, and washed out large boulders and even substantial trees. That the said flume, for the most part, after it leaves the creek runs along the hillside where the terrain is rough.

That when said flume was new and at its best it would not and could not carry water to excess of three or four inches in depth at the mouth; that since said flume was erected it has become in disrepair and badly rotted and in many places the props that was holding the flume up are either rotted out or knocked off or have become loosened by the elements, and in some places the logs or stones on which the props were set became dislodged so that the flume is entirely out of repair. That for many years last past places in said flume at the joints where the same became disconnected, and at the bottom where the boards have rotted out, you can stick the fingers of your hand through. That in many places, for many years, entire sections of the flume have broken out and disappeared and are no longer there. At other places trees have fallen across the flume crushing and breaking it, and said trees have remained across said flume for a number of years. That said flume has not been in fit condition so that water could be carried through the same in any appreciable quantity for a period of over five years, and Affiant states that if the owners of Permit No. 17199 at any time had any water rights the same have been abandoned, for the reason

the same has not been used for a period of over five years and the water has not been put to beneficial use.

Affiant has also recently been at the mouth of said flume, which is a considerable distance from the house on the Ellis place and the garden spot and small patch of alfalfa mentioned by the witnesses for the Applicants; that there are no signs of any ditches of any consequence where the water could have been taken from the mouth of the flume to the garden or to the alfalfa patch to carry the water to beneficial use, and at frequent times Affiant was at said flume during the last ten years and there were no indications or signs that any water had been or was being used and put to beneficial use under said Permit No.17199.

That your affiant has made large investments in money, time and effort in putting said water to beneficial use for power and domestic purposes and irrigation of said garden patch, and his right and permit to use said water, and the water rights which he has established through the use of said water, and placing the same to beneficial use as above set forth, and set forth in his said Protest, became fixed and vested long prior to any attempt which said Mission Creek Water Association Inc., and its predecessors, was made to use any of said waters of Mission Creek, and if Affiant should lose the use of said water it would cause him great and irreparable injury and damage, and destroy his use of ^{his} said property. That there are many other users of water on said Mission Creek who are using the waters of said creek for domestic purposes and irrigation of patches of ground for garden purposes, and who have been using said waters long prior to the time when said Mission Creek Water Association and its predecessors attempted to use said water under Permit No.17199.

That as the timber is being cut and removed from the watershed of said Mission Creek, during the dry season of the year, on frequent occasions the waters get especially low, and that has been the fact during the years 1943 and 1944, and Affiant states that as and when

additional timber is being removed, in all probability the water of said Mission Creek during the dry season of the year will become less than it has heretofore and if said Mission Creek Water Association Inc is permitted to use one second foot of water from the waters of said Mission Creek, or any substantial part thereof, it would seriously interfere with the rights of those whose rights were prior to that of the Mission Creek Water Association Inc., and its predecessors.

Affiant has been informed by reliably authority, and upon such information and belief alleges the fact to be that if said flume had been so constructed that it would have carried the full flow of water it could not and would not carry to exceed 41 miners inches at the mouth; but that the way said flume actually was constructed, and because of its irregularity, and the kind of material with which it was constructed, at no time could the said flume carry to exceed three or four inches in depth at the mouth. But since the year 1935 the said flume was never in good condition, was badly out of repair, and also allowed to go to rack and ruin, and was not capable of carrying any appreciable amount of water sufficient to be used for irrigation or domestic purposes.

Affiant states that said water has not been put to beneficial use by said association and its predecessors, and said water right has been abandoned, if it ever had one, for the reason said water has not been put to any beneficial use, in good faith or otherwise, for a period of over five years last past.

Affiant invites an investigation of the physical facts before any action is taken by the Department of Reclamation, and Affiant honestly believes that the physical facts will demonstrate and prove that the waters of Mission Creek has not been put to beneficial use as claimed by said Mission Creek Water Association Inc.

WHEREFORE, affiant prays that any order or license be denied said Mission Creek Water Association Inc., for the reason that said water has not been put to beneficial use under Permit No.17199.

Fred Ahlborn

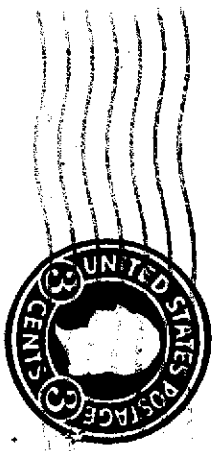
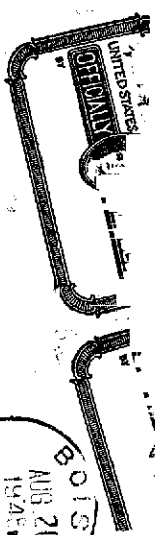
Subscribed and sworn to before me this the 2 day of August 1945.

Joe C. [Signature]
Notary Public in and for the State of Idaho
Residing at Bonners Ferry, Idaho
Notary Public for the State of Idaho
Residing at Bonners Ferry, Ida

After 5 days, return to
DEPARTMENT OF RECLAMATION,
State House,
BOISE, IDAHO.

opened by mistake by John L. Smith

REASON CHECKED
Unknown
For better address
Moved. Left no address
No such office in state



Mr. John L. Smith

Bonniers Ferry

Idaho

AUG 23 1945

STATE OF IDAHO)
) SS. AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
County of BOUNDRY) AND SHOWING MADE THAT WATERS OF MISSION
) CREEK IN BOUNDRY COUNTY IDAHO HAD BEEN
) PUT TO BENEFICIAL USE UNDER PERMIT
) No. 17199.

VERNIE STOCKTON being first duly sworn on oath deposes and says that he is a resident and citizen of Boundry County, Idaho, and has been for many years last past. That he is the owner of part of the East Half of the Northwest Quarter and of the Northwest Quarter of the Northeast Quarter of Section 17, Township 64 North, Range 1 East B.M.; that said property^{is} contiguous to Mission Creek in said Boundry County; that Affiant has owned said property since the year 1939 and has leved on the same with his family ever since said date and he is now living there.

Affiant states that he uses the waters of said Mission Creek exclusively for domestic purposes, that is to say, for all water used in the house and out buildings, and at the present time for watering ten head of cattle; and has always had some cattle, varying in number, from time to time ever since he first moved on said place, and has used the waters of said Mission Creek for watering the same.

That in addition to all domestic purposes he has also ever since living on said place, irrigated approximately one acre of land on said premises for garden and other purposes, and the use of said water for said purposes has been continuous since the year 1939, and he has a water right, by reason of his use thereof, on said Creek since the time he first moved on said place in 1939.

Affiant states that he is familiar with the flume through which the said Mission Creek Water Association Inc., and its predecessors in interst are attempting to show that the waters of Mission Creek have been put to beneficial use under Permit No. 17199.

That Affiant knows of his own knowledge that during the year 1939 the said Flume was in a bad worn-out and delapated condition; that Affiant could see in the first instance that said flume was a sort of makeshift flume, poorly constructed, which runs for a distance of approximately thirty-six hundred feet on a sidehill. That the intake of said flume is located in the creek on the land of George H. Bothwell, and runs along the sidehill, and from the intake ~~xx~~ of the flume to the mouth thereof it only has a drop of approximately .25 of a foot to 100 feet; that part of the flume is constructed on the ground and part in the air held up by props of poor material and very insecurely constructed. That during the year 1939 he helped Mr. Ellis try to repair said flume so as to run water through it but after having worked on the same for some-time, when they thought it had been repaired so as to be able to run water through it, there was barely a trickle of water running out the mouth of the flume; in fact what was running out was less than one inch in depth in said flume at the mouth thereof.

That affiant also helped harvest hay on the Ellis place where it is claimed said water is being put to beneficial use, during the year 1940; that the hay in said field was not irrigated that year and Affiant was unable to see any ditches of any kind in said hay field, indicating that the same had been irrigated in any previous years.

Affiant states that knowing the condition of said flume as he did as early as 1939, he was of the opinion then and now that that said flume was in such condition that no water of any appreciable quantity could have been run through said flume then or since by reason of the delapated condition of the flume; that unless the flume had been substantially reconstructed it was impossible to so repair the same with ordinary repairs so that water could be run through the same in 1939 and thereafter, so as to have any water

of any consequence to be put to beneficial use at the mouth of said flume; that the only source of water Affiant has for domestic and irrigation purposes is the waters of Mission Creek, and without said water Affiant's ranch would be practically valueless.

That Affiant has filed a Protest herein and refers to the same by reference thereof, and makes the same a part of this Affidavit as if specifically set forth at this place.

Affiant states that as the timber from the watershed is being removed there is less water in said creek every year, especially during the summer season, and probably will continue to get less as time goes by and said timber is being further removed. That if said Mission Creek Water Association Inc., is permitted to take one second foot of water or any substantial part thereof from said creek it will be above from where Affiant takes his water from the creek under his water right it may so deplete the said stream during the dry summer season that there would be insufficient water in said Creek for the uses to which Affiant has placed said water, and has used the same since 1939.

Affiant is informed and believes and so states the fact to be, that the right to the use of said water under permit No. 17199 is and has been abandoned for a period of more than five years, and has not been put to beneficial use for a period of over five years.

WHEREFORE, Affiant prays that any order or license be denied said Mission Creek Water Association Inc., for the reason that said water has not been put to beneficial use under Permit No. 17199.

Wernie Storkson

Subscribed and sworn to before me this the 28 day of July
1945.

17199

J. M. Nally
Notary Public for the State of Idaho
Residing at Worrell, Idaho

Test

July 20th 1945

X

State of Idaho } ss.
County of Boundary }

Vernie Stockton being first duly sworn on oath states that he is the owner of part of NE 1/4 the NW 1/4 and part of the NW 1/4 of sec 17 Twp 64 N R 1 E. T4M. Boundary Co. Idaho that he has a water right on Mission Creek since 1922 for all domestic purposes on said land and irrigation of about 1 acre of said land.

That the Mission Creek Water Assn. Inc. does not and is not putting to beneficial use any of the waters of Mission Creek under permit No. 17199. and the undersigned protests the right of said Association to prove that it has placed said water to beneficial use under said permit.

Vernie Stockton

Subscribed and sworn to before me
this 20th day of July 1945

Quentin L. Field
Notary Public for the State
of Idaho.

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho.
My Commission Expires Aug. 10, 1947.

17199

July 17, 1945

Mr. Owen Critchfield
Bonners Ferry, Idaho

Dear Sir:-

I wish to protest the diversion of water from Mission Creek under permit no. 17199.

Mission Creek flows through my land in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 12 Twp 64 N. Range 1 west B.M.

We have made continuous use of this water for domestic purposes since Dec. 1, 1907.

We have every reason to believe that we will be deprived of sufficient water if the diversion is allowed.

We have 50 head of cattle that must have water too.

Respectfully

Mrs. Christina Diklorn Lundeen

17199

STATE OF IDAHO)
)
County of BOUNDRY) AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
) AND SHOWING MADE THAT WATERS OF MISSION
) CREEK IN BOUNDRY COUNTY IDAHO HAD BEEN
) PUT TO BENEFICIAL USE UNDER PERMIT
) No.17199.

CHRISTINE DEHLBON LUNDEEN being first duly sworn on oath deposes and says that she is a resident and citizen of Boundry County, Idaho, and has been such for many years last past; that she is the owner of the Southeast Quarter of the Southeast Quarter of Section 12, Township 64 North, Range 1 W.B.M. Boundry County Idaho; that said land is located in the Kootenai valley; that she has ~~owned and has~~ been living on said place ever since the year 1907, and ever since said date she has been using exclusively the waters of Mission Creek in Kootenai County, Idaho for all domestic purposes, including all water for the house, and for the watering of cattle and horses on said ranch, and that at the present time they have fifty-five head of stock and on an average they have had from ~~20~~ to 50 head of stock on said ranch every year for the last ten or fifteen years.

That said land is a very valuable piece of property, with the right of the use of said water from said Mission Creek, and without the use of said water from Mission Creek for all domestic purposes the ranch is worth very little except for someone who would be in position to farm it without living on the place and raising cattle.

That from year to year after the timber is being cut from the from the watershed of said Mission Creek the waters in said Creek has become less each year during the low water season, and the water has been exceptionally low during the years 1943 and 1944; and Affiant has reason to believe that as time goes by there will be other dry seasons when said water will be exceptionally low in Mission Creek, and in all probability lower than it has ever been, by reason of the fact that said timber is being cut and removed.

17199

That the water from said Creek is being used by Affiant for domestic purposes at a place not far distant from where said creek empties in the Kootenai River, and if one second foot of water is allowed to be taken by the Mission Creek Water Association Inc., out of said Creek it is reasonably probable that the waters of said Creek will be so depleted and diminished that there will not be sufficient water in said creek when it reaches the said place owned by Affiant so that there will be sufficient water for said domestic purposes.

Affiant has been informed and believes and so states the fact to be that the said Association and its predecessors in interest have not used the waters of said creek under Permit No.17199 for a period of over five years, and have abandoned the same, and have not placed the waters of said creek to beneficial use under said permit, for a period of over five years last past.

WHEREFORE, affiant prays that any order or license be denied said Mission Creek Water Association Inc., to the effect that said water has been put to beneficial use under permit No.17199.

Christine Dehlman Lundeen

Subscribed and sworn to before me this the 2 day of
August, 1945.

Joe C. Curran
Notary Public for the State of Idaho
Residing at Bozeman, Montana

17199

STATE OF ^{Wash} IDAHO)
County of ^{Spokane} BOUNDARY) SS

AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
AND SHOWING MADE THAT WATERS OF MISSION
CREEK IN BOUNDARY COUNTY IDAHO HAD BEEN
PUT TO BENEFICIAL USE UNDER PERMIT
No.17199.

WALTER W. WINTERS being first duly sworn, on oath deposes and says that he is one of the co-owners of the South Half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 18, Township 64 North, Range 1 East, B.M. Boundry County, Idaho. That the other co-owners of said land are his brother and two sisters; that said land was inherited by Affiant and his co-owners from their mother and father's estate, his father having died on the 19th day of April, 1934; that his father and mother became owners of said property during the year 1919, and ever since that time his mother and father and their successors in interest, including this Affiant and his brothers and sisters, have used the waters of Mission Creek exclusively for domestic purposes and irrigating a small garden patch of about one-half acre in area, and that the water was not only used at the home and outbuildings but was also used for watering stock that was kept on said place from time to time.

That Affiant filed a protest herein to which reference is hereby specifically made, and by reference said protest is hereby made a part of this Affidavit as though specifically set forth at this place.

That the waters of said Mission Creek, for many years prior to 1919, when Affiant's father became the owner of said property, was used for domestic purposes by the owners and occupants of said land up to the year 1919, and there is no other or different water supply for domestic purposes or for irrigating said garden spot except the waters of Mission Creek.

17199

That a pump was installed in order to pump water out of Mission Creek so as to irrigate said garden spot.

Affiant knows that as the timber is being removed from the watershed of said Mission Creek the flow of said Creek is becoming less year after year and probably will continue to decrease in volume as time goes by and more timber is being removed. That during the years 1943 and 1944, the waters of Mission Creek was especially low during the dry season, and if said Mission Creek Water Association is permitted to take one second foot of water or any substantial part thereof from the waters of said Mission Creek above the place where Affiant's property is located which it is attempting to do, it might and probably would seriously curtail the water in said creek so there might not be sufficient water for domestic purposes and irrigating said garden spot on Affiant's said premises.

That Affiant examined the flume in question and went from one end of the flume to the other on the 19th day of July, 1945; that it is a flume approximately 3600 feet in length and it is in a very bad and delapidated condition. In fact, for long stretches there isn't any flume at all. Part of said flume is rotted out, and it is sagged in various places, and it would require the construction of a new flume in order to carry water to the Ellis place; and the physical facts on the ground show that said flume has not been and could not have been used to carry any water for many years to the place where it is claimed the water was being put to beneficial use.

The general character of the flume and the manner in which it was constructed, and the fact that there was very little fall from the point of the intake of said flume to the point where the water leaves the flume, would preclude said flume from carrying full capacity of water, and only a small fraction thereof, even though it were in good condition.

17199

The physical facts show that said flume was flimsily constructed and was nothing more than a makeshift to start with; and Affiant is informed and believes, and so states the fact to be that whatever right, if any, the said Mission Creek Water Association, or its predecessors had, if any, has been abandoned by reason of the fact that said water has not been used or placed to beneficial use through said flume for a period of over five years.

That on said date when Affiant went to the land in question where water was supposed to be put to beneficial use, there was no indication of any ditches, pipes, or anything else to show that any hay field was irrigated in recent years or that the garden had been irrigated, or that the water had been placed to domestic use through said flume; and Affiant invites a thorough investigation by the Department of Reclamation of the physical facts, which Affiant believes will demonstrate and show that the water has not been put to any beneficial use as contemplated or required under the law, through said flume within the last five years.

WHEREFORE, Affiant prays that any order or license be denied said Mission Creek Water Association Inc., for the reason that said water has not been put to beneficial use under permit No. 17199

Walter W Winters

Subscribed and sworn to before me this the 30th day of July
1945.

W D Wernette
Notary Public for the State of Idaho
Residing at Spokane, Wn

17199

P R O T E S T

TO THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO AND TO THE MISSION CREEK WATER ASSOCIATION, INC.:

Now comes Walter W. Winters who files this protest for and on his behalf and on behalf of Charles E. Winters, Bessie F. Winters and Mrs. Evelyn Gray, and is authorized so to do. That protestants are the owners of the South-Half ($S\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) and the Southeast Quarter ($SE\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Eighteen (18), Township Sixty-Four (64), Range One (1), East of Boise Meridian, Boundary County, Idaho. That protestants and their predecessor in interest, James F. Winters, who was the father of protestants, have been the owners of the said above described land ever since during the year, 1919. That ever since said James F. Winters, now deceased, became the owner of said above described land, he and his successors in interest, to-wit, your protestants, have used the water of Mission Creek which runs through said land exclusively for domestic purposes and for the purpose of irrigating approximately one-half ($1/2$) acre of garden. That from the time said James F. Winters first became the owner of said land, there was a dwelling house and outbuildings constructed upon said lands and the said James F. Winters and his family have resided thereon for many years and until about the time of his death which occurred on or about the 19th day of April, 1934; and ever since the time of the death of the said James F. Winters, your protestants have had possession and the right to possession of said land and either resided on the same themselves or the same was occupied by their tenant or tenants; and ever since the year 1919 and during the year 1919, said James F. Winters and his successors in interest and their tenant or tenants have continuously used the water from said Mission Creek exclusively for all domestic purposes in the house and in the watering of their stock and for irrigating their garden, as stated above, every year and said James F. Winters and his successors in interest, including your protestants, have not had any other water supply for domestic purposes including the watering of the stock and the irrigating of said garden except from the water of said Mission Creek.

In the event these protestants are not permitted to continue to use the water for all domestic purposes and for the irrigating of said garden on said above described lands and for the watering of the stock, they will not have any water at all for domestic purposes or for irrigating said garden or for watering said stock, and such loss will cause irreparable loss and injury and will cause said land and property to become much deteriorated in value and practically worthless.

That said Mission Creek at all times during the year, except during the summer and early fall months, has a large flow of water, but during the summer and early fall months of the year and during the dry season, the flow of water in said Mission Creek becomes quite low and does not exceed one cubic foot per second of time. That the use of the water and the right of the use of the water by the said James F. Winters and his successors in interest and these protestants existed since during the year, 1919, and continuously ever since and still exists, and the water was used as above stated long prior to the date when Permit No. 17199 was issued by the Department of Reclamation of the State of Idaho and said James F. Winters and these protestants have had a valid and existing water right long prior to the time that said Permit No. 17199 was issued.

That these protestants are informed and believe and so state the fact to be that the applicant or applicants to whom said Permit No. 17199 was issued by the Department of Reclamation of the State of Idaho, or their successors in interest, never put said water in question to beneficial use as stated in the application for said permit and for which said permit was issued, nor did the assignee or assignees of said permit or anyone else claiming any right under said permit put said water from said Mission Creek to beneficial use under said Permit No. 17199.

That protestants are informed and upon such information allege and state that the Mission Creek Water Association claim some right under said permit by reason of having purchased the same or in some other form or manner acquired rights thereunder. That such rights, as protestants were informed, were acquired from George W. Ellis or his successors in interest. That said George W. Ellis or his successors in interest, Ray Ellis or the Mission Creek Water Association, Inc., have

not put said water from said Mission Creek to beneficial use at any time pursuant to the terms of said permit or otherwise, and the rights of these protestants to the water of said Mission Creek for the purpose for which the same have been used by said protestants and their predecessor in interest are prior to and superior to any rights of the said Mission Creek Water Association, Inc. or anyone else that would preclude these protestants of the use of said water for all domestic purposes and the irrigating of said garden on said above described land owned by said protestants. That if said Mission Creek Water Association were permitted to take one cubic foot per second of time of water from said Mission Creek during the summer and early fall months or during the dry season of the year, it would take practically the entire flow of water in said Mission Creek and preclude these protestants from the water for which they are rightfully entitled to for said domestic purposes and irrigation purposes and would destroy their water right which is long prior to that of the said Mission Creek Water Association, Inc.

That notice has been published by the State Reclamation Engineer that on the 20th day of July, 1945, at 10 o'clock A.M. at Bonners Ferry, County of Boundary, State of Idaho, before Owen Critchfield, proof will be submitted of the application to beneficial use of one cubic foot per second of the waters of Mission Creek in accordance with the terms and conditions of said Permit No. 17199.

That these protestants hereby file and make protest to any finding or order to the effect that such water has been put to beneficial use and these protestants respectfully ask that they be given an opportunity to be heard at the time of the submission of said proof, and that the right of said one cubic foot per second of the waters of Mission Creek by said Mission Creek Water Association, Inc. be denied and that a specific finding be made that no beneficial use of said water has been made pursuant to said Permit No. 17199, and that no order or decree or finding be made by the Department of Reclamation or by anyone for and on its behalf that will in any way or manner interfere with the rights of these protestants to the continued use of the waters of Mission Creek for domestic and irrigation purposes as above set forth, which right was established in 1919 and has ever since continued.

17199

and that these protestants have such other and further relief at said hearing and before the Department of Reclamation as is provided by law and that any rights or relief prayed for by said Mission Creek Water Association, Inc. be denied.

DATED this 13 day of July, 1945.

Walter W Winters

Wright & Coady
Attorneys for said protestants

17199

PROTEST

TO THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO AND TO THE MISSION CREEK WATER ASSOCIATION, INC.:

Now comes Walter W. Winters who files this protest for and on his behalf and on behalf of Charles E. Winters, Dessie F. Winters and Mrs. Evelyn Gray, and is authorized so to do. That protestants are the owners of the South-East (SE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) and the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Eighteen (18), Township Sixty-Four (64), Range One (1), East of Boise Meridian, Boundary County, Idaho. That protestants and their predecessor in interest, James F. Winters, who was the father of protestants, have been the owners of the said above described land ever since during the year, 1919. That ever since said James F. Winters, now deceased, became the owner of said above described land, he and his successors in interest, to-wit, your protestants, have used the water of Mission Creek which runs through said land exclusively for domestic purposes and for the purpose of irrigating approximately one-half (1/2) acre of garden. That from the time said James F. Winters first became the owner of said land, there was a dwelling house and outbuildings constructed upon said lands and the said James F. Winters and his family have resided thereon for many years and until about the time of his death which occurred on or about the 19th day of April, 1934; and ever since the time of the death of the said James F. Winters, your protestants have had possession and the right to possession of said land and either resided on the same themselves or the same was occupied by their tenant or tenants; and ever since the year 1919 and during the year 1919, said James F. Winters and his successors in interest and their tenant or tenants have continuously used the water from said Mission Creek exclusively for all domestic purposes in the house and in the watering of their stock and for irrigating their garden, as stated above, every year and said James F. Winters and his successors in interest, including your protestants, have not had any other water supply for domestic purposes including the watering of the stock and the irrigating of said garden except from the water of said Mission Creek.

17149

In the event these protestants are not permitted to continue to use the water for all domestic purposes and for the irrigating of said garden on said above described lands and for the watering of the stock, they will not have any water at all for domestic purposes or for irrigating said garden or for watering said stock, and such loss will cause irreparable loss and injury and will cause said land and property to become much deteriorated in value and practically worthless.

That said Mission Creek at all times during the year, except during the summer and early fall months, has a large flow of water, but during the summer and early fall months of the year and during the dry season, the flow of water in said Mission Creek becomes quite low and does not exceed one cubic foot per second of time. That the use of the water and the right of the use of the water by the said James F. Winters and his successors in interest and these protestants existed since during the year, 1919, and continuously ever since and still exists, and the water was used as above stated long prior to the date when Permit No. 17199 was issued by the Department of Reclamation of the State of Idaho and said James F. Winters and these protestants have had a valid and existing water right long prior to the time that said Permit No. 17199 was issued.

That these protestants are informed and believe and so state the fact to be that the applicant or applicants to whom said Permit No. 17199 was issued by the Department of Reclamation of the State of Idaho, or their successors in interest, never put said water in question to beneficial use as stated in the application for said permit and for which said permit was issued, nor did the assignee or assignees of said permit or anyone else claiming any right under said permit put said water from said Mission Creek to beneficial use under said Permit No. 17199.

That protestants are informed and upon such information allege and state that the Mission Creek Water Association claim some right under said permit by reason of having purchased the same or in some other form or manner acquired rights thereunder. That such rights, as protestants were informed, were acquired from George W. Ellis or his successors in interest. That said George W. Ellis or his successors in interest, Ray Ellis or the Mission Creek Water Association, Inc., have

17199

not put said water from said Mission Creek to beneficial use at any time pursuant to the terms of said permit or otherwise, and the rights of these protestants to the water of said Mission Creek for the purpose for which the same have been used by said protestants and their predecessor in interest are prior to and superior to any rights of the said Mission Creek Water Association, Inc. or anyone else that would preclude these protestants of the use of said water for all domestic purposes and the irrigating of said garden on said above described land owned by said protestants. That if said Mission Creek Water Association were permitted to take one cubic foot per second of time of water from said Mission Creek during the summer and early fall months or during the dry season of the year, it would take practically the entire flow of water in said Mission Creek and preclude these protestants from the water for which they are rightfully entitled to for said domestic purposes and irrigation purposes and would destroy their water right which is long prior to that of the said Mission Creek Water Association, Inc.

That notice has been published by the State Reclamation Engineer that on the 20th day of July, 1945, at 10 o'clock A.M. at Bonners Ferry, County of Boundary, State of Idaho, before Owen Critchfield, proof will be submitted of the application to beneficial use of one cubic foot per second of the waters of Mission Creek in accordance with the terms and conditions of said Permit No. 17199.

That these protestants hereby file and make protest to any finding or order to the effect that such water has been put to beneficial use and these protestants respectfully ask that they be given an opportunity to be heard at the time of the submission of said proof, and that the right of said one cubic foot per second of the waters of Mission Creek by said Mission Creek Water Association, Inc. be denied and that a specific finding be made that no beneficial use of said water has been made pursuant to said Permit No. 17199, and that no order or decree or finding be made by the Department of Reclamation or by anyone for and on its behalf that will in any way or manner interfere with the rights of these protestants to the continued use of the waters of Mission Creek for domestic and irrigation purposes as above set forth, which right was established in 1919 and has ever since continued.

and that these protestants have such other and further relief at said hearing and before the Department of Reclamation as is provided by law and that any rights or relief prayed for by said Mission Creek Water Association, Inc. be denied.

DATED this 13 day of July, 1945.

Walter W. Winter

Wernette & Crowley
Attorneys for said protestants

17199

STATE OF WASHINGTON,)
COUNTY OF SPOKANE,) ss

WALTER F. WINTERS, being first duly sworn, upon oath deposes and says: That he is one of the protestants above named and makes this protest for and on his own behalf and for and on behalf of the other protestants above named. That he has read the above and foregoing protest, knows the contents thereof and believes the same to be true.

Walter F. Winters

WALTER F. WINTERS

Subscribed and sworn to before me this 13 day of July, 1945.

Edward J. Crowley

Notary Public in and for the State
of Washington, residing at Spokane

17199

STATE OF WASHINGTON,)
COUNTY OF SPOKANE,) ss

WALTER W. WINTERS, being first duly sworn, upon oath deposes and says: That he is one of the protestants above named and makes this protest for and on his own behalf and for and on behalf of the other protestants above named. That he has read the above and foregoing protest, knows the contents thereof and believes the same to be true.

Walter W Winters

Subscribed and sworn to before me this 13 day of July, 1945.

Edward J. Country
Notary Public in and for the State
of Washington, residing at Spokane



CHARLES C. GOSSETT
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Ass'n.

Mr. John L. Smith
Bonners Ferry, Idaho

Dear Mr. Smith:

Mr. Owen Critchfield, Notary Public, has transmitted to us your protest against the issuance of a license to the Mission Creek Water Association, under the above numbered permit.

This has been placed on file, but no action will be taken in the matter until after a field examination has been made by an engineer from this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By *Jeanne L. Anderson*
Chief Clerk

A

17199

August 20, 1945

Re: Permit No. 17199
Mission Creek Water Ass'n.

Mr. John L. Smith
Bonners Ferry, Idaho

Dear Mr. Smith:

Mr. Owen Critchfield, Notary Public, has transmitted to us your protest against the issuance of a license to the Mission Creek Water Association, under the above numbered permit.

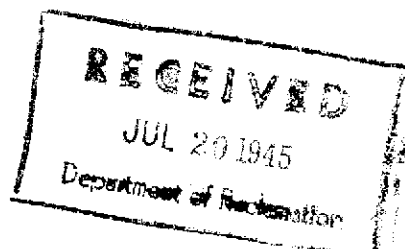
This has been placed on file, but no action will be taken in the matter until after a field examination has been made by an engineer from this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By
Chief Clerk

17199



July 17, 1945

Department of Reclamation
Boise, Idaho

Gentlemen:-

I wish to protest the diversion of water from Mission Creek under permit No. 17199.

Mission Creek flows through my land in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 12 Twp 64 N. Range 1 west B.M.

We have made continuous use of this water for domestic purposes since Dec. 1, 1907.

We have every reason to believe that we will be deprived of sufficient water if the diversion is allowed.

We have 50 head of cattle that must have water too.

Respectfully

Mrs Christie Dehlbom Lundén

17199

Bornes Ferry Ida July 14 1945

I Peter De Boer and wife wish
to protest application for water
right no 17199 as it has not been
in use the last several years
and in low water stage it
damages several of ~~the~~ land
over forming the creek
I have been using water from
Mission Creek since 1935 in 1935
we put in a hydraulic ram in
Creek and pumped water that
way in 1943 I put in an electric
pumping plant at considerable
expense now if they take 1 cu
sec foot in low water stage it
will render my plant useless
I have a water right no 19382
claiming $\frac{1}{4}$ of 1 cu. ft. of water
of Mission Creek on my land
on S $\frac{1}{2}$ of S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of S.E. 17-T64
R.I.E. B.M. Boundary County
Your truly Peter De Boer

Bonniers Ferry Ida July 14-1943-

I Peter De Boer and wife wish
to protest application for water
right no 17199 as it has not been
in use the last several years
and in low water stage it
damages several of the land
owners forming the creek
I have been using water from
Mission Creek since 1935 in 1931
we put in a hydraulic ram in
creek and pumped water that
way in 1943 I put in an electric
pumping plant at considerable
expense now if they take 1 cu
sec foot in low water stage it
will render my plant useless
I have a water right 41019582
claiming $\frac{1}{4}$ of 1 cu. ft. of water
of Mission Creek on my land
on S $\frac{1}{2}$ of S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of Sec 17-T64
R.1.E. B.M. Boundary County
Your truly Peter De Boer
17199

STATE OF IDAHO
County of Boundry

)
) SS
)

AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
AND SHOWING MADE THAT WATERS OF MISSION
CREEK, BOUNDRY COUNTY IDAHO, HAD BEEN
PUT TO BENEFICIAL USE UNDER PERMIT
No.17199.

PETER DE BOER being first duly sworn, on oath deposes and says that he is a resident and citizen of Boundry County Idaho, and has been for many years last past; that ten years ago he purchased that part of the South Half of the Southeast Quarter of the Northwest Quarter, and the Northeast Quarter of the Southwest Quarter of Section 17, Township 64 North, Range 1 East B. M. south and west of the State highway as now constructed, containing forty-five acres, all situated in Boundry County, Idaho. That ever since he bought said place he and his family have lived on said premises and made the same their home.

Affiant states that he purchased said land primarily because of the fact it is adjacent to Mission Creek in Boundry County, and that he would be in position to use the waters of said creek for domestic purposes and irrigate a small patch of ground.

That he first started to use said water byhauling the same as his buildings are on considerably higher elevation of ground than the creek; and during the years of 1937 and 1938 he used the water right by pumping the water from the creek up to his buildings, and in 1938 he installed an electric pump so as to pump the water to his buildings and premises, and at all times since he has had the place he used all water necessary for domestic purposes from said creek, including water used in his home and buildings as well as for watering his said stock; and after he placed a dam in said creek and used the electric pump he used said water not only for domestic purposes but also for irrigating one acre of ground for garden and fruit trees and a small lawn in front of his house.

That ever since he purchased said home he has been quite familiar with the flume through which the Mission Creek Water

17199

Association Inc. and its predecessors in interest claim they have been taking the water from said Mission Creek and placing the same to beneficial use.. In fact, Affiant, every year since 1935, except the last two years, has made one or two trips up the creek and along the flume in question, at which time he saw what condition the flume was in and what was being done with the same, and such trips were being made by affiant during the dry season of the year when the waters of Mission Creek would be used for irrigating and domestic purposes, if at all, and at no time during which he made such trips and saw and inspected said flume, was there any water in the flume, and in fact Affiant saw personally that said flume on each occasion when he went up the creek and saw and inspected said flume, that the same was in especially bad condition and would not and could not carry any water.

Affiant could see that when said flume was originally constructed that it was not substantially constructed and was made of materials of the cheapest variety ; that it was partially rotted out, sagged at various places to such an extent that water couldn't possibly flow through the flume, and at various places parts of the flume was broken out. That said flume was constructed in such manner and fashion that even if it had been substantially constructed, by reason of the fact that it only had a slight drop from the place of the intake to the place where water flowed out of the flume, it sagged at various places and it would have been impossible to run water through the flume in full capacity at the mouth.

That affiant has been informed and believes, and so states the fact to be that during the last two years, at which time affiant was not along the flume which is a considerable distance up the creek from where Affiant lives, that said flume has been in worse condition than it was previously, in that the same has not been used to flume

water to the Ellis place or anywhere else, and the flume is not in such condition that it could be used for the purpose of fluming water.

Affiant further states that during the year 1942, he assisted Mr. Ellis on the Ellis place to harvest his hay where part of the water of Mission Creek was supposed to have been placed to beneficial use under Permit No.17199. Affiant states that the hay field or anypart of it was^{not} irrigated during the year of 1942, nor were there any signs of irrigation ditches to indicate that any water had been previously used to irrigate any part of the hay field in previous years.

That from the facts, Affiant knows of his own personal knowledge, in addition to the facts he has ascertained on information and belief, that the waters from Mission Creek, through the flume in question, has not been put to beneficial use under permit No.17199 for more than five years last past. In fact, not since Affiant moved on his said place in 1935, and that the said water right, if any, under said Permit No.17199, has been abandoned.

Affiant has filed a Protest herein to which reference is hereby made, and by reference said Portest is hereby made a part of this affidavit the same as though specifically set forth at this place.

Affiant states that since the timber from the watershed of Mission Creek is being removed the flow of the water in said creek is becoming less every year, especially during the dry season, and Affiant believes that as time goes by and the timber is removed, the water supply in Mission Creek during the dry season will become still less.

Affiant states that he takes his water under his water right, and he is using it for domestic and irrigation purposes; that the water which he uses comes from below the place of the intake of said flume in question, and in the event said Mission Creek Water

Association Inc., would become entitled to use one second foot of water for which it claims to have made beneficial use it might, during the dry season of the year so deplete the flow of said stream so as to destroy the flow and limit the use of wather to which Affiant is entitled and which he has been using covering a period of ten years.

Affiant honestly believes that the physical facts on the ground in question will show that this water right, if any, has been abandoned, and that the water has not been put to beneficial use under Permit No.17199, as the physical facts show that for a period of more than five years the Claimants did not intend to and did not ~~actually~~ put said water to beneficial use.

WHEREFORE, Affiant prays that any order or license be denied said Mission Creek Water Association Inc., for the reason that said water has not been put to beneficial use under Permit No.17199.

Peter DeBoer

Subscribed and sworn to before me this the 2 day of August 1945.

Joe C. Harrison
Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires on August 1, 1947
Residing at Boise, Idaho

17199

✓
July 23, 1945

Re: Permit No. 17199

Mr. Owen Critchfield
Notary Public
Bonners Ferry, Idaho

Dear Mr. Critchfield:

We acknowledge receipt of your letter of July 21st, in regard to proofs of beneficial use submitted before you in connection with the above numbered permit of the Mission Creek Water Association.

It will be all right for you to hold the papers for the fifteen days mentioned, and then forward same to this department with the affidavits on the protests.

The matter of your fees is between yourself and the applicant, from whom they are to be collected.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

K:A

17199

JUL 19 1945

BOISE, IDAHO

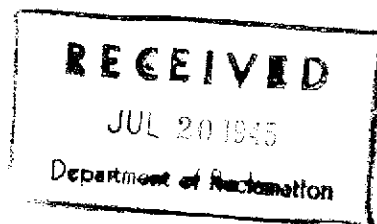
Bonniers Ferry Ida June 16, 1945
To whom it may concern.

I am entering a protest against the diversion of the waters of Mission Creek, as has been applied for by the Mission Creek Water Co. Inc., Under the terms and conditions of Permit 17199.

I make grounds that they are not now and have never used the 1 cu. foot of water per second as claimed.

I claim a users right, and Priority of use since May 21, 1932.

Geo. H. Bolthwell
Bonniers Ferry,
Idaho.



17199

Protest

July 20th 1945

X

The undersigned hereby enters a protest to the application of the Mission Creek Water Association Inc. to prove that it has put to beneficial use the waters of Mission Creek under permit no 17199. for the reason that said water has not and is not being put to beneficial use under said permit.

The undersigned has a water right on Mission Creek since 1937 for all domestic purposes in connection with his farm described as Lot 4 and part of Lot 3 less right of way. Sec 7 Twp. 64 N R 1 E T 3 M. Boundary County Idaho.

John L Smith

State of Idaho } ss
County of Boundary }

John L Smith being first duly sworn on oath says that the above and foregoing statements and Protest is true.

John L Smith

subscribed and sworn to before me this
20th day of July 1945

Oscar C. Cuthbert
Notary Public in and for the
State of Idaho

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho.
My Commission Expires Aug. 10, 1947.

17199

STATE OF IDAHO)
) SS
County of BOUNDRY)

AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
AND SHOWING MADE THAT WATERS OF MISSION
CREEK, BOUNDRY COUNTY IDAHO, HAD BEEN
PUT TO BENEFICIAL USE UNDER PERMIT
No.17199.

JOHN L. SMITH, being first duly sworn, on oath deposes and says that he is the owner of Lot 4 and part of Lot 3 less right-of-way, Section 7, Township 64 North, Range 1 East B.M, Boundry County, Idaho. That he and his family have lived on said above described land, owned and farmed the same, since the year 1937.

That ever since he acquired said property and lived on the same, he has used the waters of Mission Creek in Boundry County, Idaho, exclusively for all domestic purposes, including the water used in the house and outbuildings, as well as the watering of his cattle and horses, and he has not had any other source of domestic water supply on said ranch since 1937, except the waters of said Mission Creek.

That Affiant has a good valuable ranch, but if said domestic water supply from said Mission Creek is taken away the said ranch will be practically worthless; that as the years go by it seems that the waters of Mission Creek become lower each year during the dry season, and has been especially low during the 1943-1944 season. That if one second foot of water were taken out of said creek above where Affiant resides there will not be sufficient water or any water for domestic purposes for affiant on his said place.

That Affiant is informed and believes, and so states the facts to be that the Mission Creek Water Association Inc., and its predecessors in interest, have not in good faith used the waters of Mission Creek under Permit No.17199, and have abandoned whatever right they have to the said waters and have not, during the last

five years put said water to beneficial use. That if said Association were permitted to use the waters of said Mission Creek the same would be taken out of said Creek above the place on said creek from where Affiant uses said water from said Creek for said domestic purposes.

That Affiant has filed a Protest herein protesting against any findings, license, or decree by the Department of Reclamation that the waters of Mission Creek have ^{been} put to beneficial use under Permint No.17199, and Affiant refers to said Protest and makes the same a part hereof by reference thereto, the same as though specifically set forth at this place.

WHEREFORE , affiant prays hat any order or license be denied said Mission Creek Water Association Inc., to the effect that said water has been put to beneficial use under permit No.17199.

John G. Smith

Subscribed and sworn to before me this the 2 day of August 1945.

Joe C. Herman
Notary Public in and for the State of Idaho
Residing at Bannock Ferry, Idaho
My Commission Expires April 10, 1947
Notary Public for the State of Idaho
Residing at Bannock Ferry

STATE OF IDAHO)
) SS
County of BOUNDRY)

AFFIDAVIT IN OPPOSITION TO AFFIDAVITS
AND SHOWING MADE THAT WATERS OF MISSION
CREEK, BOUNDRY COUNTY IDAHO, HAD BEEN
PUT TO BENEFICIAL USE UNDER PERMIT
No.17199.

GEORGE H. BOTHWELL, being first duly sworn on oath deposes and says, that he is a resident and citizen of Boundry County, Idaho, and ever since the year 1932 he has been and now is the owner of the East Half of the Southeast Quarter, and the South Half of the Northeast Quarter of Section 8, Township 64 North, Range 1 East B.M. Boundry County, Idaho.

That he and his family have lived on the above described property continuously since, to-wit, the year 1932, and are now residing there.

That affiant filed a protest with the Department of Reclamation protesting the claim of the Mission Creek Water Association Inc., that the water of said Mission Creek had been put to beneficial use under said Permit No.17199, on which a hearing was had at Bonners Ferry Idaho before Owen Critchfield on the 20th day of July, 1945, and your affiant hereby refers to and makes a part of this affidavit said protest filed by affiant the same as though the facts therein stated were specifically set forth at this place.

That affiant was present at the time of said hearing and heard the testimony of Clarence Guthrie, Bryce Chapin, and Earl Avery which was placed in affidavit form, with reference to said water of said Mission Creek having been put to beneficial use. That ^{has} affiant lived at his said home since 1932 with his family and has used and appropriated waters of said Mission Creek ever since he started to live on said place exclusively for all domestic purposes in the home, and for his cattle and horses, and has no other source of water supply except the waters from said Mission Creek.

17199

That said Mission Creek runs through said land owned and occupied by Affiant; that the flume through which said Mission Creek Water Association Inc., and its predecessor in interest claim that the waters of said Mission Creek have been put to beneficial use under said Permit No. 17199 runs for a considerable distance over Affiant's land, and the intake of said flume is located in the creek on Affiant's land, and Affiant has been thoroughly familiar with the said flume and the manner in which it has been attempted to use the water of Mission Creek through said flume ever since the year 1932.

Affiant says that he is thoroughly familiar with the nature of the construction of said flume, and the manner and extent to which it has been attempted to use said flume and the use of said water. That affiant has been at and along said flume its entire distance a great many times and has been at and along said flume, at least the substantial parts thereof, quite a number of times each year since the year 1932; that said flume in the first instance was more or less a makeshift. That said flume is approximately thirty-five or thirty-six hundred feet long, and the inside measurement of said flume does not exceed six inches by six inches, and at some places said measurement of said flume is less than that, and does not exceed six inches by five and a half inches inside measurement. That Affiant is informed, and from such information states that said flume was originally constructed during the year 1929 or 1930.

Affiant states that part of said flume was constructed on the ground and at other places it is constructed above the ground with light insecure and unsubstantial props holding the same up, which props are setting on slabs of stone or on the ground. That for the most part, said flume runs along the side of the hill, and that the drop of elevation of said flume from the intake to the mouth of the flume is approximately .25 of a foot to 100 feet.

That ever since Affiant has known said flume there never has been any dam where the intake of the flume is located but that the said flume is merely built into the creek so that the waters of the creek will flow through it; that the said flume was constructed with ordinary lumber about twelve to fourteen feet long, and the joints on said flume at no time have been securely fastened or securely adjusted so that the water could not leak out, and at the present time, and for many years last past, parts of said flume have been practically rotted out, large sections of the flume have been broken out and off entirely so that there are gaps in said flume for a distance of many feet where there is no flume at all; that the joints are loosened so that you can put the fingers of your hand through, and there are large places at the bottom of said flume that are so rotten and decayed that you can stick the fingers of your entire hand through. At other places trees have fallen across the flume which have smashed and broken the same down entirely, and the trees so falling across said flume have been there for a number of years; and in many places the props of the flume are entirely gone and the flume has sagged, and affiant honestly believes and so states the fact to be, that said flume is utterly useless for the purpose of fluming any water, and has been such for a good many years; and if any attempt were made to put water to beneficial use through said flume as claimed, under said permit Number 17199, an entire new flume would have to be constructed or other methods adopted to put said water to beneficial use.

That ever since Affiant has been living at his said home on said place there never was a time when the water of Mission Creek could be flowed through said flume to its full capacity; that the most water that affiant ever saw in said flume at its mouth, and he saw it frequently, was a depth of about two or three inches, and that was when said flume was practically new, and prior to the year 1935.

That during the time when the said predecessors of said Mission Creek Water Association were attempting to use said flume prior to the year 1935, there were so many low places in said flume that the water would run over the top and run down the hillside where the water washed out ditches and undermined big boulders and even trees, and very little or any water ever got to the mouth of the flume.

That the last time that Affiant knew that any attempt was made to use said water through said flume was the year 1939, and at that time barely a trickle of water reached the mouth of the flume. That the mouth of the flume as originally constructed was a considerable distance from the Ellis home, and the garden on which it is claimed the water was being used, and also quite a distance from the Alfalfa patch; that ever since Affiant has been living at his said home there never has been any substantial ditches, pipe, or any other method in existence to carry the water from the mouth of the flume to the place where it is claimed the same is used; that Affiant has been there on many occasions and was never able to see any means to carry the water to said place, and had there been any there he would have seen them.

That the present owners of said Permit No. 17199 and their predecessors have not in good faith used said water of said Mission Creek under said Permit No. 17199 for a period of over five years; and if they ever had any right to the use of said water, the same has been abandoned, they not having used the same or placed the water to beneficial use for a period of five years or more.

Affiant is informed and believes, and so states the fact to be that the said Mission Creek Water Association Inc., does not intend to use said water under said permit No. 17199 if a license is issued, for any quantity of water by the Department of Reclamation on the Ellis Land, nor do they intend to use the rotten delapidated flume

which is absolutely worthless now, in carrying the water to said Ellis land but that it is the intent of said Association to furnish water, for the most part, to people who are not living alongside the creek but a considerable distance from the creek, and it is intended to pipe the water or use some other method other than said flume in carrying the water to the place where the same is to be used.

Affiant further states that said water association has no right-of-way on Affiant's land, nor did its predecessors in interest have any right-of-way over Affiant's land; that said Association, if it attempts to go upon Affiant's land or remove said water from the place where it runs into the intake of said flume, would be trespassing upon Affiant's land.

That during the summer dry months of the year the flow of the water in said Mission Creek becomes quite low and it became especially low during the years 1943 and 1944. It seems that since the timber is being cut and removed from the watershed of said Mission Creek, that the waters of the same become lower each year during the dry season of the year. That if said Water Association is permitted to take one second foot of water or any substantial part thereof from Mission Creek from the place where it contemplates taking the same, it may and probably will seriously interfere with the amount of water which affiant must take from said creek for domestic purposes as above stated, which is his only means of domestic water supply.

Affiant invites an Engineer of the Department of Reclamation, or its representative, to make a thorough examination of the physical facts pertaining to said permit No. 17199, and your Affiant honestly believes that such examination will definitely show that said water right, if any was ever had, has been abandoned, and that the water has not been put to beneficial use; and the physical facts speak louder than words.

WHEREFORE, affiant prays that any order or license be denied said Mission Creek Water Association Inc., to the effect that said water has been put to beneficial use under permit No.17199.

George H Botwell

Subscribed and sworn to before me this the 2 day of August 1945.

Joe C. Hanson
Notary Public for the State of Idaho
Residing at Blaine, Ark.

STATE OF IDAHO)
 : ss.
County of Boundary)

Personally appeared before me this 20th day of July,
1945, Geo H. Bothwell, and acknowledged to me that the
within attached is true .

George H Bothwell

Subscribed and sworn to before me this 20th day of July,
1945.

[Signature]

Probate Judge.

17199

RE: PROOF OF BENEFICIAL USE

PERMIT NO. 17199

STATE OF WASHINGTON,)
County of Spokane,) ss

REPLY AFFIDAVIT

FRED AHLBORN, being first duly sworn upon oath, deposes and says:
That he is a resident and citizen of Boundary County, State of Idaho. That he has heretofore made an affidavit relative to the proof of beneficial use under Permit No. 17199. That he reincorporates all the facts stated in the affidavit heretofore made, served and filed herein. That he has read the affidavits of Clarence Guthrie, Ray Ellis, Chester Logan, Russell Dillon and Allan Sheldon which were made, served and filed in reply to the affidavits and showing made by the protestants as against the proof of beneficial use under said Permit No. 17199. That as to the affirmative matters set forth in said affidavits filed by said above named parties in support of said proof of beneficial use, affiant denies, alleges and states:

That he has been informed by some of the members in charge of the Farm Security Administration mentioned in said affidavit of said Clarence Guthrie that before the said Farm Security Administration would loan any money to the Mission Creek Water Association that it would be necessary for said Mission Creek Water Association to show and prove that it had a first and prior right to the water on said Mission Creek to the exclusion of everybody else and affiant positively states that there are a large number of beneficial users of water on said Mission Creek that have permanent water rights on said Mission Creek, including the water right of your affiant, that are prior to and paramount to the right of the said Mission Creek Water Association or said Ellis water right.

That said Clarence Guthrie states in his affidavit that the George Ellis permit has a right to the water and that it has been established by usage since the year, 1929. That by their notice of submission of proof the date of priority which said user is prepared to establish is July 17, 1938 and not 1929.

Affiant denies that the total amount of water used for domestic and ir-

17199

rigation purposes by the protestants does not exceed 2 miners inches and affiant denies that there has also been a large amount of water going to waste in Mission Creek, especially during the dry season of the year and affiant states that during the year, 1935, at the time when the case of Fred Ahlborn against Chester Wagner was tried in the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Boundary, during the month of September, the entire flow of Mission Creek at the highway where affiant lives, did not exceed 2.9 feet per second of time. That at the present time, there is only flowing in said Creek at the highway where affiant's power plant is constructed, approximately $3\frac{1}{2}$ feet per second of time. While on the 29th day of July, 1945, there was flowing in said Creek approximately 5.87 cubic feet per second of time and the extreme low water season of the year, 1945, has not as yet been reached and probably will not be reached until some time during the month of October, 1945.

Affiant denies that he was the one that instigated the protests that have been filed herein, but admits that he filed his own and was interested in the water of Mission Creek but that the other protestants were also interested and filed their protests and affidavits voluntarily themselves for the reason that they did not want their water rights taken away from them by the Mission Creek Water Association whose right, if any they have at all, is subsequent to and inferior to the rights of the said protestants. Affiant denies that he attempted or was willing to sell water to the various members who are interested in the said Mission Creek Water Association at \$125.00 each as mentioned in said affidavit of Clarence Guthrie. He does admit that he negotiated with the various members of the Mission Creek Water Association and others regarding the water of Mission Creek and was willing to sell his water right for \$1500.00; provided that the water of Mission Creek would be adjudicated by a Court of competent jurisdiction and that those people who could take water from below the pen stocks of affiant's water power plant would get their water from that place, then that he would be willing to sell his water right and not otherwise. That a large number of people who are attempting to obtain water from the Mission Creek Water Association and to whom the said Association would furnish water, if successful in this controversy, are living

17199

on the flat of Kootenai Valley and all of such people so living on the flat of the Kootenai Valley could obtain water by gravity flow from said Mission Creek by taking the water out of Mission Creek below the power plant of affiant, and by doing so, they would only interfere with the water right of Walter Winters and his associates who are protestants herein which said Winters' water right would be and is prior to any right of the said Mission Creek Water Association or any new water right that might be filed on said Creek.

That since said proposition of sale has been made by affiant to sell his water right as above stated, affiant has expended in excess of \$2500.00 on his said water right in the way of improvements so as to make continuous operation of his plant available and to furnish water for his domestic and irrigation uses.

Affiant denies that he has an antiquated power system or that it can be operated only during extremely high water. Affiant admits that he was purchasing electricity from the North Idaho Rural Electrical Rehabilitation Association and admits that he was one of the parties that organized and brought said Association into being; that he entered into a contract to purchase said power from said Association so that he would have power available which is necessary in order to carry on his operations in the event the water in Mission Creek froze up during the winter season or in the event he would not have sufficient water for power purposes in the dry season.

With reference to the construction and condition of the flume in question, affiant merely states that the flume or parts of it is still there, which is the best evidence as to its condition and use, and affiant invites the representative to an inspection of the same which will tell the story. Affiant calls attention to the statement in the affidavit of Ray Ellis, from which it appears that the Mission Creek Water Association is not the owner of the Ellis water right at all. That if certain things do not happen the way they would like the same to have happened, then Ray Ellis still claims he is the owner of the water right and expects to use it and rebuild the flume as is shown in the affidavit. Affiant also denies that the total amount of water put to beneficial use from Mission Creek by the protestants for domestic and irrigation purposes does not exceed 4 miners inches and alleges that it exceeds said amount. Affiant denies that the said Ira Parker and/or W. B. Pace power rights were abandoned for years before affiant came to Mission Creek in Boundary County or that the same were ever

abandoned.

Affiant, in conclusion, further states that affiant has a first and permanent water right on Mission Creek and any claims made by said Mission Creek Water Association are in conflict with and interfere with affiant's right.

That the right or permit under which it is claimed by said Association that the water has been put to beneficial use has been abandoned and the water has not been used for a period of over 5 years as heretofore stated in affiant's affidavit and the affidavits of the other protestants filed herein.

Frederick Albom

Subscribed and sworn to before me this 17th day of August, 1945.

W. W. Wernette
Notary Public in and for the State
of Washington, residing at Spokane

17199

Office of
DOLLIE BRUCE

Clerk of District Court
Ex-Officio Auditor and Recorder
Clerk, Board of Commissioners



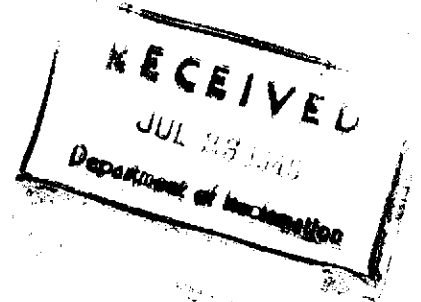
COUNTY COMMISSIONERS

Charles E. Schauer, Chairman
Joe Anderson
W. O. Brockway

County of Boundary

BONNERS FERRY, IDAHO

July 21, 1945



Mark Kulp
State Reclamation Engineer
Boise, Idaho

Dear Mr. Kulp:

Re: Permit No. 17199

The hearing was held in this matter pursuant to notice given, and the witnesses were sworn and made the depositions.

Mr. W. J. Nixon was present and represented the Mission Creek Water Association, Inc., and N. D. Wernette Attorney at Law, Spokane, Washington, was present and represented certain protestants. Mr. Nixon and Mr. Wernette stipulated that all papers be held here for a period of fifteen days, during which time the protestants could file affidavits of protest and after the affidavits were filed Mr. Nixon would have a reasonable time to file counter affidavits. If this meets with your approval, I will hold all papers here until the affidavits are filed and then forward everything to you.

I am in receipt of the affidavit of publication of notice from the Bonners Ferry Herald, and will mail that with the other papers.

From whom do I collect my fee, and what is my charge in this matter?

Very truly yours,

Owen Critchfield

Owen Critchfield

lc

17199

✓
July 30, 1945

Re: Permit No. 17199

Mrs. Christine Dahlben Lundeen
Cepeland, Idaho

Dear Mrs. Lundeen:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, and full consideration will be given same before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

HAIR R. KILP
State Reclamation Engineer

Superintendent filed with Tolson

17199

Notice For Publication
Notice of Proof Application of
Water Beneficial Use

Notice is hereby given that at 10:00 A. M. on the 20th day of July, 1945, at Bonners Ferry, County of Boundary, State of Idaho, before Owen Critchfield, proof will be submitted of the application to beneficial use of 1 cubic feet per second of the waters of Mission Creek in accordance with the terms and conditions of Permit No. 17199 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 Mission Creek Water Association, Inc., Bonners Ferry, Idaho.

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

The amount applied to beneficial use is one cubic foot.

The place where said water is used Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) Section Eight (8) Township Sixty-four (64) North Range One (1) East Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is none.

The right to take water from such works is based upon Permit No. 17199.

The source of supply from which such water is diverted is Mission Creek.

The date of priority which said user is prepared to establish is July 17, 1938.

MARK R. KULP,
State Reclamation Engineer.
June 28-July 19—4t.

July 18, 1948

Re: Permit No. 17199

Mr. Peter DeBoer
Bonners Ferry, Idaho

Dear Mr. DeBoer:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, which will be given full consideration before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

A

17199

July 18, 1945

Re: Permit No. 17199

Mr. George H. Bothwell
Bonners Ferry, Idaho

Dear Mr. Bothwell:

We acknowledge receipt of your protest in connection with proof of beneficial use under Permit No. 17199, and full consideration will be given same before a license is issued.

A field examination will be made by a member of this department before final action is taken.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

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17199

Bonniers Ferry, Ida.

July, 16. 1945.

To whom it may concern.

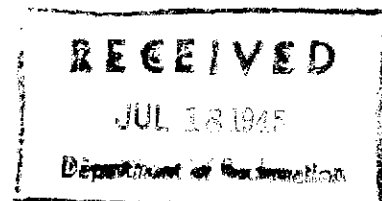
I am entering a protest, against diversion of the water of Mission Creek, As applied for by the Mission Creek Water Co. Inc. Under the terms and conditions of Permit no 17199.

On the grounds that they have never used 1 cu. foot of water ^{per sec.} as claimed.

I claim a users right, and Priority of use since May 21, 1932

Geo. H. Bothwell
Bonniers Ferry,
Ida.

17199



Bonniers Ferry, Ida.

July, 16, 1945

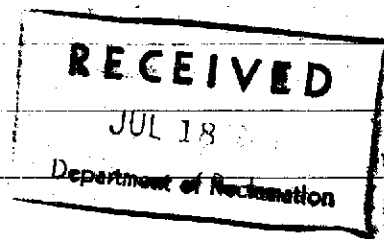
To whom it may concern

I am entering a protest, against diversion of the water of Mission Creek, as applied for by the Mission Creek Water Co. Inc. Under the terms and conditions of Permit no 17199.

On the grounds that they have never used 1 cu. foot of water ^{per sec} as claimed.

I claim a users right and Priority of use since May 21, 1932.

Geo. H Bothwell
Bonniers Ferry,
Ida.



17199

July 18, 1945

Re: Permit No. 17199

Messrs. Wernette & Crowley
Old National Bank Bldg.
Spokane, 8, Washington.

Gentlemen:

We acknowledge receipt of your letter of
July 16th, enclosing protest of Fred Ahlborn
and wife in connection with the above numbered
permit on Mission Creek.

This will be given full consideration, and no
final action will be taken, or license issued,
until after a field examination has been made
by a member of this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

17199

WERNETTE & CROWLEY

ATTORNEYS AT LAW
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

⑧

N. D. WERNETTE
EDWARD J. CROWLEY

July 16, 1945

Department of Reclamation
Boise, Idaho

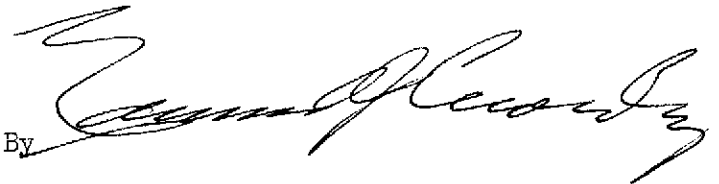
Gentlemen:

We are enclosing a protest on behalf of Fred Ahlborn and wife with respect to the hearing to be held in Bonners Ferry on July 20 concerning the waters of Mission Creek. Kindly acknowledge receipt of the same.

Yours very truly,

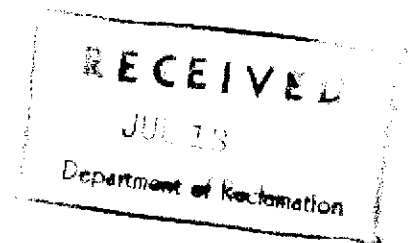
WERNETTE & CROWLEY

By



EJC mk
Enc.

17199



P R O T E S T

TO THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO AND MISSION CREEK WATER ASSOCIATION, INC.:

Now comes Fred Ahlborn and files this protest for and on his behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do.

That the protestants are the owners of the following described property, to-wit:

The North Half ($N\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

The Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho

except approximately eight acres thereof conveyed to Fred Brackebusch by a deed, dated August 4, 1941, and recorded in Book 20 at Page 560 of the deed records of Boundary County, Idaho.

That one of the predecessors in interest of the protestants, namely, Ira Parker, filed a notice of water right, dated April 7, 1900, which was recorded on April 9, 1900 in Book 1 of Water Rights at Page 55 of the water records of Kootenai County, Idaho, part of which is now Boundary County, Idaho, which water rights are now of record in the recorder's office of Kootenai County, Idaho in Book 1 of Water Rights at page 55 of said County records. That by the terms of said notice of water rights, the said Ira Parker, the predecessor in interest of these protestants, claimed that he had the legal right of the use, possession and control of 200,000 inches of the waters of Commission Creek, which is now Mission Creek, measured under a four-inch pressure and flowing at the point of diversion which was and is as follows in Township Sixty-Four (64) North, Range One (1) East, when the same is surveyed and about one hundred sixty (160) yards below where the County road crosses said creek and about one hundred (100) feet above the main cataract in said creek. That the said Ira Parker appropriated and took said water on April 4, 1900. That said notice of water right is a matter of

17199

public record in the records of Kootenai County, Idaho, at Book 1 of water rights, page 55 of the records of said county and reference to said record is hereby made for full and complete information as to said notice of water right filed by the said Ira Parker as aforesaid.

That the said Ira Parker and one William Peters also on or about April 23, 1900 filed a notice of water right in Book 1 of Water Rights at Page 53 of the water right record of Kootenai County, Idaho, part of which Kootenai County, Idaho is now Boundary County, Idaho, which notice of water right, dated April 23, 1900 and filed on April 26, 1900 in said book of water rights at page 53, claim three thousand (3000) Miners inches of the waters of Commission Creek, now Mission Creek, measured under a four-inch (4) pressure and flowing at a point of diversion at a point in said creek about $\frac{3}{4}$ mile above where the Bonners Ferry and Porthillbench County road crosses said Commission Creek, now Mission Creek, which notice of water right stated that it was intended to be used for irrigation and farming use and that said water was appropriated on April 16, 1900, reference to said notice of water right by said public record being hereby expressly made as though set out verbatim at this place. That the predecessors in interest of these protestants, namely, Ira Parker, William Peters and W. B. Pace and Mary Pace, his wife, have actually appropriated, used and asserted all rights claimed by said water right notices filed and recorded as aforesaid and your protestants have likewise appropriated, used and claimed all rights that were claimed under said notices of water rights ever since they have had any interest in and to said lands above described. That your protestants and predecessors in interest, namely, Ira Parker, William Peters and W. B. Pace and Mary Pace, his wife, have at all times claimed and used said water under said claim and have never abandoned same and the said protestants and their predecessors in interests have not had any other water supply for domestic purposes or for irrigating the garden of protestants on said lands and for power use subsequent to April 7, 1900.

That your protestant, Fred Ahlborn, heretofore and to-wit, prior to August 23, 1933, made an application for permit to appropriate the public waters of the State of Idaho, under Application No. 24685 and Permit No. 17621, which application

for permit was filed on August 23, 1933 in Book 1 at Page 20 of the public records of Boundary County, Idaho, reference to said public records being hereby specifically made for full and complete information as to said application for permit filed as aforesaid; which application for permit and permit granted pursuant thereto as hereinafter alleged provided that the applicant, Fred Ahlborn, was entitled to use for domestic purposes water from said Mission Creek in the amount of eight (8) second feet. That pursuant to said application for permit, there was issued by the State Reclamation Commissioner, under date of April 2, 1936, a certificate of completion of works authorizing the diversion of eight (8) second feet of the waters of Mission Creek, County of Boundary, for power and domestic purposes to Fred Ahlborn, the undersigned, which certificate of completion of works is recorded in Book 64 of Permits at Page 17621, reference thereto being hereby made. That thereafter and under date of June 19, 1944, the State Reclamation Engineer issued a license and certificate of water right for eight (8) second feet of water under Water License No. 17621 to the undersigned, Fred Ahlborn, authorizing the said Fred Ahlborn to use the waters of Mission Creek for the purpose of domestic use and for power under said Permit No. 17621 at a point of diversion in the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17), Township Sixty-Four (64) North, Range One (1) East Boise Meridian, Boundary County, which license and certificate of water right was recorded in Book 7 of Licenses, at Page 4225 and which permit was recorded in Book 1 of Water Rights at Page 34 of the water right records of Boundary County, Idaho, reference to said records being hereby specifically made and by such reference said license and certificate of water rights and certificate of completion of works being hereby incorporated herein as though fully set forth at this place.

That the predecessors in interest and your protestants at all times claimed, used and appropriated all rights claimed and given by said certificate of completion of works, application for permit, license and certificate of water rights. That heretofore and to-wit, by a decree of the District Court of the Eighth Judicial District of the State of Idaho in and for the County of Boundary, which decree and judgment became final, there being no appeal therefrom which decree is recorded in Book 6 at Page 537 of the county records of Boundary County, which reference is hereby

made and by such reference said decree is hereby expressly incorporated herein, the undersigned Fred Ahlborn, in a suit instituted against Chester Wagner, was awarded and adjudged to be entitled to eight (8) cubic feet per second of water from Mission Creek under said Application No. 24685 and Permit No. 17621. That said decree restrained and enjoined the said defendants, his agents, servants, representatives, contractors and employees from diverting any of the waters of Mission Creek at a point or in the manner specifically set forth in said decree.

That there was further issued by the State Reclamation Commissioner to the undersigned, Fred Ahlborn, under Permit No. 17844, a certificate of completion of works, dated February 2, 1939, which certificate of completion of works is recorded in Book 64 of Permits at page 17844. That thereafter and to-wit on or about the 8th day of June, 1944, there was issued under said water license No. 17844, a license and certificate of water right by the State Reclamation Engineer which license and certificate of water rights is recorded in Book 7 of Licenses at Page 4224, reference to said public records being hereby expressly made and by such reference said certificate of completion of works and license are hereby incorporated herein as though fully set forth at this place, which certificate and license granted to your protestants eight (8) second feet additional of the waters of Mission Creek, all of which is shown by said instruments last above referred to.

That your protestants are also the owners of the following described real property, to-wit:

The North Half ($N\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section Eight (8) in Township Sixty-Four (64) North, Range One (1) E.B.M., Boundary County, Idaho

and have the right to use, occupy and claim water rights under the following described real property which is owned by R. Lee Wallen, to-wit:

The South Half ($S\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section Five (5) in Township Sixty-Four (64) North, Range One (1) E.B.M., Boundary County, Idaho.

That heretofore and to-wit, under application for permit No. 27068 under which Permit No. 19569 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. 19569 which is recorded in Book 70, at page 19569,

which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place. That heretofore and to-wit, under application for permit No. 27119 under which Permit No. 19597 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. 19597 which is recorded in Book 70, at page 19597, which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place. That heretofore and to-wit, under application for permit No. 27120 under which Permit No. R-746 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. R-746 which is recorded in Book R-3 at page 764, which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place.

That your protestants have at all times since the issuance of said three permits last above described appropriated, used and claimed all rights pursuant thereto on the waters of said Mission Creek. That in the event these protestants are not permitted to continue the use for domestic purposes and irrigating said garden on said lands and for power purposes as authorized by said permits and rights above set forth, they will not have any water at all for domestic purposes, for such irrigation and for power purposes and said loss will cause irreparable damage and injury to your protestants and will cause said land and property to become deteriorated in value and practically worthless.

That George W. Ellis and Ray Ellis; his mother, Angely Ellis, have not taken any steps to complete or perfect any water right that they may claim and for many years last past the flume through which they attempted to divert the waters of said Mission Creek has been permitted to deteriorate and rot so that it is of no use for conveying water. That the said George W. Ellis, who is now deceased, and Ray Ellis and Angely Ellis are predecessors in interest of said Mission Creek Water Association, Inc.

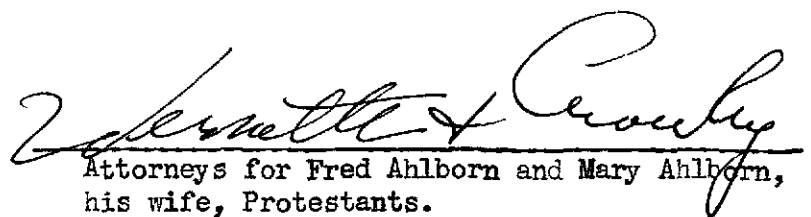
That during the summer months if one cubic foot of water was taken from said Mission Creek, it would so deplete the waters in said Mission Creek that it would not be fit for human consumption and would injure and destroy the proper-

ty of protestans through which said creek flows.

That these protestants are informed and believe and so state the fact to be that the applicant or applicants to whom Permit No. 17199 was issued or their successors in interest, have never put said water in question to beneficial use as required in the application and said permit, nor the assignee or assignees of said permit or anyone else claiming any right under said permit by said water from said Mission Creek to beneficial use under said Permit No. 17199.

That these protestants hereby file and make protest to any finding or order to the effect that any waters from Mission Creek have been put to beneficial use by the Mission Creek Water Association or any of its predecessors in interest and hereby protest and object to any such finding of beneficial use being made at a hearing on July 20, 1945 at 10 A.M. at Bonners Ferry, Boundary County, Idaho before Owen Critchfield or at any other time and place and hereby pray that the application made by the said Mission Creek Water Association, Inc. be denied and that a specific finding be made that no beneficial use of said water has been made under and pursuant to permit No. 17199 and further pray and request that no order or decree or finding be made by the Department of Reclamation or by anyone for and on its behalf that will in any way or manner interfere with the rights of the undersigned protestant to the continued use of the waters of said Mission Creek for domestic, irrigation and power purposes as above set forth. The undersigned protestants further pray that they have such other and further relief at said hearing and before the Department of Reclamation as they are entitled to by law or equity and further pray that any relief prayed for by said Mission Creek Water Association, Inc. be denied.

DATED this 13 day of July, 1945.


Attorneys for Fred Ahlborn and Mary Ahlborn,
his wife, Protestants.

17199

STATE OF WASHINGTON)
County of Spokane) ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says:
That he is one of the protestants above named and makes this protest for and
on his own behalf and for and on behalf of his co-protestant, Mary Ahlborn, and
is authorized so to do; that he has read the above and foregoing protest, knows
the contents thereof and believes the same to be true.

Fred Ahlborn

Subscribed and sworn to before me this 13 day of July, 1945.

Ernest J. Cleaveland
Notary Public in and for the State
of Washington, residing at Spokane

17199

P R O T E S T

TO THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO AND MISSION CREEK WATER ASSOCIATION, INC.:

Now comes Fred Ahlborn and files this protest for and on his behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do.

That the protestants are the owners of the following described property, to-wit:

The North Half ($N\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

The Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho

except approximately eight acres thereof conveyed to Fred Breckebush by a deed, dated August 4, 1941, and recorded in Book 20 at Page 560 of the deed records of Boundary County, Idaho.

That one of the predecessors in interest of the protestants, namely, Ira Parker, filed a notice of water right, dated April 7, 1900, which was recorded on April 9, 1900 in Book 1 of Water Rights at Page 55 of the water records of Kootenai County, Idaho, part of which is now Boundary County, Idaho, which water rights are now of record in the recorder's office of Kootenai County, Idaho in Book 1 of Water Rights at page 55 of said County records. That by the terms of said notice of water rights, the said Ira Parker, the predecessor in interest of these protestants, claimed that he had the legal right of the use, possession and control of 200,000 inches of the waters of Commission Creek, which is now Mission Creek, measured under a four-inch pressure and flowing at the point of diversion which was and is as follows in Township Sixty-Four (64) North, Range One (1) East, when the same is surveyed and about one hundred sixty (160) yards below where the County road crosses said creek and about one hundred (100) feet above the main cataract in said creek. That the said Ira Parker appropriated and took said water on April 4, 1900. That said notice of water right is a matter of

public record in the records of Kootenai County, Idaho, at Book 1 of water rights, page 53 of the records of said county and reference to said record is hereby made for full and complete information as to said notice of water right filed by the said Ira Parker as aforesaid.

That the said Ira Parker and one William Peters also on or about April 23, 1900 filed a notice of water right in Book 1 of Water Rights at Page 53 of the water right record of Kootenai County, Idaho, part of which Kootenai County, Idaho is now Boundary County, Idaho, which notice of water right, dated April 23, 1900 and filed on April 26, 1900 in said book of water rights at page 53, claim three thousand (3000) Miners inches of the waters of Commission Creek, now Mission Creek, measured under a four-inch (4) pressure and flowing at a point of diversion at a point in said creek about $\frac{3}{4}$ mile above where the Benner's Ferry and Porthillbench County road crosses said Commission Creek, now Mission Creek, which notice of water right stated that it was intended to be used for irrigation and farming use and that said water was appropriated on April 16, 1900, reference to said notice of water right by said public record being hereby expressly made as though set out verbatim at this place. That the predecessors in interest of these protestants, namely, Ira Parker, William Peters and W. B. Pace and Mary Pace, his wife, have actually appropriated, used and asserted all rights claimed by said water right notices filed and recorded as aforesaid and your protestants have likewise appropriated, used and claimed all rights that were claimed under said notices of water right ever since they have had any interest in and to said lands above described. That your protestants and predecessors in interest, namely, Ira Parker, William Peters and W. B. Pace and Mary Pace, his wife, have at all times claimed and used said water under said claim and have never abandoned same and the said protestants and their predecessors in interests have not had any other water supply for domestic purposes or for irrigating the garden of protestants on said lands and for power use subsequent to April 7, 1900.

That your protestant, Fred Ahlborn, heretofore and to-wit, prior to August 23, 1933, made an application for permit to appropriate the public waters of the State of Idaho, under Application No. 24685 and Permit No. 17621, which application

for permit was filed on August 23, 1933 in Book 1 at Page 20 of the public records of Boundary County, Idaho, reference to said public records being hereby specifically made for full and complete information as to said application for permit filed as aforesaid; which application for permit and permit granted pursuant thereto as hereinafter alleged provided that the applicant, Fred Ahlborn, was entitled to use for domestic purposes water from said Mission Creek in the amount of eight (8) second feet. That pursuant to said application for permit, there was issued by the State Reclamation Commissioner, under date of April 2, 1936, a certificate of completion of works authorizing the diversion of eight (8) second feet of the waters of Mission Creek, County of Boundary, for power and domestic purposes to Fred Ahlborn, the undersigned, which certificate of completion of works is recorded in Book 64 of Permits at Page 17621, reference thereto being hereby made. That thereafter and under date of June 19, 1944, the State Reclamation Engineer issued a license and certificate of water right for eight (8) second feet of water under Water License No. 17621 to the undersigned, Fred Ahlborn, authorizing the said Fred Ahlborn to use the waters of Mission Creek for the purpose of domestic use and for power under said Permit No. 17621 at a point of diversion in the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Seventeen (17), Township Sixty-Four (64) North, Range One (1) East Boise Meridian, Boundary County, which license and certificate of water right was recorded in Book 7 of Licenses, at Page 4225 and which permit was recorded in Book 1 of Water Rights at Page 34 of the water right records of Boundary County, Idaho, reference to said records being hereby specifically made and by such reference said license and certificate of water rights and certificate of completion of works being hereby incorporated herein as though fully set forth at this place.

That the predecessors in interest and your protestants at all times claimed, used and appropriated all rights claimed and given by said certificate of completion of works, application for permit, license and certificate of water rights. That heretofore and to-wit, by a decree of the District Court of the Eighth Judicial District of the State of Idaho in and for the County of Boundary, which decree and judgment became final, there being no appeal therefrom which decree is recorded in Book 6 at Page 537 of the county records of Boundary County, which reference is hereby

made and by such reference said decree is hereby expressly incorporated herein, the undersigned Fred Ahlborn, in a suit instituted against Chester Wagner, was awarded and adjudged to be entitled to eight (8) cubic feet per second of water from Mission Creek under said Application No. 24685 and Permit No. 17621. That said decree restrained and enjoined the said defendants, his agents, servants, representatives, contractors and employees from diverting any of the waters of Mission Creek at a point or in the manner specifically set forth in said decree.

That there was further issued by the State Reclamation Commissioner to the undersigned, Fred Ahlborn, under Permit No. 17844, a certificate of completion of works, dated February 2, 1939, which certificate of completion of works is recorded in Book 64 of Permits at page 17844. That thereafter and to-wit on or about the 8th day of June, 1944, there was issued under said water license No. 17844, a license and certificate of water right by the State Reclamation Engineer which license and certificate of water rights is recorded in Book 7 of Licenses at Page 4224, reference to said public records being hereby expressly made and by such reference said certificate of completion of work and license are hereby incorporated herein as though fully set forth at this place, which certificate and license granted to your protestants eight (8) second feet additional of the waters of Mission Creek, all of which is shown by said instruments last above referred to.

That your protestants are also the owners of the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8) in Township Sixty-Four (64) North, Range One (1) E.B.M., Boundary County, Idaho

and have the right to use, occupy and claim water rights under the following described real property which is owned by R. Lee Wallen, to-wit:

The South Half (S $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Five (5) in Township Sixty-Four (64) North, Range One (1) E.B.M., Boundary County, Idaho.

That heretofore and to-wit, under application for permit No. 27068 under which Permit No. 19569 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. 19569 which is recorded in Book 70, at page 19569,

which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place. That heretofore and to-wit, under application for permit No. 27119 under which Permit No. 19597 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. 19597 which is recorded in Book 70, at page 19597, which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place. That heretofore and to-wit, under application for permit No. 27120 under which Permit No. R-746 was issued, the undersigned, Fred Ahlborn, and R. Lee Wallen made application for and there was issued a permit No. R-746 which is recorded in Book R-3 at page 764, which application and permit issued pursuant thereto by reference to said public records are hereby incorporated herein as though fully set forth at this place.

That your protestants have at all times since the issuance of said three permits last above described appropriated, used and claimed all rights pursuant thereto on the waters of said Mission Creek. That in the event these protestants are not permitted to continue the use for domestic purposes and irrigating said garden on said lands and for power purposes as authorized by said permits and rights above set forth, they will not have any water at all for domestic purposes, for such irrigation and for power purposes and said loss will cause irreparable damage and injury to your protestants and will cause said land and property to become deteriorated in value and practically worthless.

That George W. Ellis and Ray Ellis; his mother, Angely Ellis, have not taken any steps to complete or perfect any water right that they may claim and for many years last past the flume through which they attempted to divert the waters of said Mission Creek has been permitted to deteriorate and rot so that it is of no use for conveying water. That the said George W. Ellis, who is now deceased, and Ray Ellis and Angely Ellis are predecessors in interest of said Mission Creek Water Association, Inc.

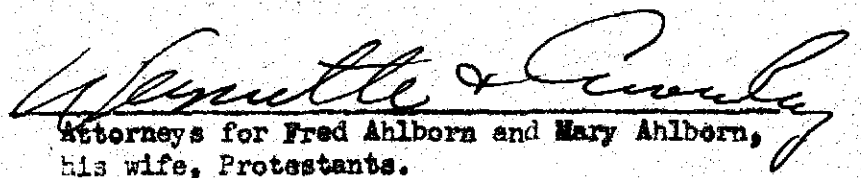
That during the summer months if one cubic foot of water was taken from said Mission Creek, it would so deplete the waters in said Mission Creek that it would not be fit for human consumption and would injure and destroy the proper-

ty of protestans through which said creek flows.

That these protestants are informed and believe and so state the fact to be that the applicant or applicants to whom Permit No. 17199 was issued or their successors in interest, have never put said water in question to beneficial use as required in the application and said permit, nor the assignee or assignees of said permit or anyone else claiming any right under said permit by said water from said Mission Creek to beneficial use under said Permit No. 17199.

That these protestants hereby file and make protest to any finding or order to the effect that any waters from Mission Creek have been put to beneficial use by the Mission Creek Water Association or any of its predecessors in interest and hereby protest and object to any such finding of beneficial use being made at a hearing on July 20, 1945 at 10 A.M. at Bonners Ferry, Boundary County, Idaho before Owen Critchfield or at any other time and place and hereby pray that the application made by the said Mission Creek Water Association, Inc. be denied and that a specific finding be made that no beneficial use of said water has been made under and pursuant to permit No. 17199 and further pray and request that no order or decree or finding be made by the Department of Reclamation or by anyone for and on its behalf that will in any way or manner interfere with the rights of the undersigned protestant to the continued use of the waters of said Mission Creek for domestic, irrigation and power purposes as above set forth. The undersigned protestants further pray that they have such other and further relief at said hearing and before the Department of Reclamation as they are entitled to by law or equity and further pray that any relief prayed for by said Mission Creek Water Association, Inc. be denied.

DATED this 13 day of July, 1945.


Attorneys for Fred Ahlborn and Mary Ahlborn,
his wife, Protestants.

17199

STATE OF WASHINGTON)

County of Spokane)

ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says:
That he is one of the protestants above named and makes this protest for and
on his own behalf and for and on behalf of his co-protestant, Mary Ahlborn, and
is authorized so to do; that he has read the above and foregoing protest, knows
the contents thereof and believes the same to be true.

Fred Ahlborn

Subscribed and sworn to before me this 13 day of July, 1945.

E. J. Crosby
Notary Public in and for the State
of Washington, residing at Spokane

17199

✓
✓
July 17, 1945

Messrs. Wernette & Crowley
Old National Bank Building
Spokane, 8, Washington

Re: Permit No. 17199
Mission Creek Water Ass'n.

Gentlemen:

Receipt of protest of Walter W. Winters and others concerning proof of application to beneficial use of water under Permit No. 17199 is acknowledged, and full consideration will be given before a license can be issued.

All testimony and evidence submitted at the time and place for making proof of application to beneficial use under the permit will be by affidavit; and the department will accept affidavits refuting testimony of witnesses for the applicant, if submitted within a reasonable time.

In any event, no license will be issued until after a field examination by a member of this department.

The matter of the claimed prior rights of the protestants will not be considered by the department, as the relative rights of appropriators on a stream can be determined only by a court of competent jurisdiction.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

M: A

17199

WERNETTE & CROWLEY

ATTORNEYS AT LAW

OLD NATIONAL BANK BUILDING

SPOKANE, WASHINGTON

®

N. D. WERNETTE
EDWARD J. CROWLEY

July 13, 1948

Department of Reclamation
Boise, Idaho

My dear Sir:

We are enclosing herewith a protest of Walter W. Winters and others to any rights of the Mission Creek Water Association, Inc. to use 1 cubic foot per second of water of Mission Creek in Boundary County, Idaho, regarding which there is to be a hearing on the 20th day of July, 1945 at Bonners Ferry, Boundary County, Idaho, at the hour of 10 o'clock A.M. before Owen Critchfield. We are also sending a copy of this protest to Mr. Owen Critchfield at Bonners Ferry, Idaho and we are kindly asking you to acknowledge receipt of the same.

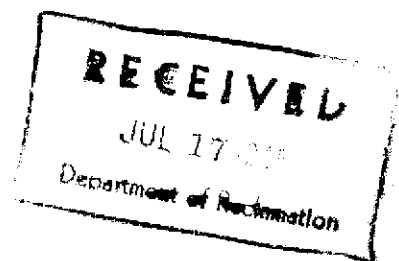
If there are any directions that you desire to make with reference to this hearing on the 20th day of July, or with reference to this protest, we will be glad to hear from you.

Yours very truly,

WERNETTE & CROWLEY

W. D. Wernette
By

NDW mk
Enc.



Bonnere Ferry Ida.

July 16, 1945

To Whome it may concern,

I am entering a protest against
diversion of the waters of Mission
Creek as applied for by the Mission
Creek Water Co. Inc. Under the
terms and conditions of Permit no.
17199

On the grounds that they never
have used 1 cubic foot of water per
second as claimed.

I claim a users right and ~~priority~~
priority of use since May 21, 1932.

Geo. H. Bothwell

Bonnere Ferry
Ida.

17199

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF BENEFICIAL USE OF WATER

BOISE, IDAHO, July 9, 1945

Re: Permit No. 17199
Mission Creek Water Ass'n.

Mr. Owen Critchfield,
Notary Public
Bonners Ferry, Idaho

DEAR SIR:

I enclose herewith the following forms to be used in connection with proof of beneficial use of water under Permit No. 17199

DEPOSITION OF PERMIT HOLDER,
DEPOSITIONS OF TWO WITNESSES.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of rights:

1. On July 20, 1945, the date set for proof, the enclosed forms (one for permit holder and one each for two disinterested witnesses) should be filled out and sworn to, at Bonners Ferry, Idaho before Owen Critchfield, Notary Public

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer, if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly,

Mark R. Zulp
Commissioner of Reclamation.
State Reclamation Engineer

17199

June 21, 1945

Re: Permit No. 17199

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

Your letter of June 8th did not reach this Department until the four o'clock delivery yesterday afternoon, which was, of course, too late for the notice to reach the Bonners Ferry Herald in time for this week's publication.

We have completed the notice by filling in the date of priority which can be established under this permit, which is July 17, 1938, as mentioned in your letter. As you of course know the only way the earlier priority through usage can be established would be through the District Court.

The notice has been sent to the Bonners Ferry Herald, with instructions to publish once a week for four weeks, prior to July 30th, the date set for proof. Publication should start with the issue of June 28th, following on July 5th, 12th and 19th which would allow for the four publications.

We note that the notice only describes use on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, although the permit describes the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ as well; and if proof is made on one second foot it will be more than enough for the one forty. If you wish to amend the notice by including additional land description, you may take it up directly with the newspaper, advising us accordingly.

The assignment of this permit to the Mission Creek Water Association has been duly recorded, and we enclose Receipt # 18905 for the 55 cent fee.

Forms of deposition for the holder and two witnesses will be sent to Owen Critchfield, the Notary Public, about ten days before the date set for proof; and on the date set a representative of the holder should appear before the Notary Public, with two disinterested witnesses, who are familiar with the terms of the permit, and the works constructed thereunder, for the purpose of executing the depositions.

Very truly yours,

A

MARK R. KULP
State Reclamation Engineer
By Chief Clerk

17199

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Re: Permit No. 17199

Date: June 21, 1945

Bonnere Ferry Herald

Bonnere Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to July 20, 1945, the date set for proof, the expense of the publication to be paid by the applicant, Mission Creek Water Ass'n. of Bonner Ferry, Idaho, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

MARK R. KULP

State Reclamation Engineer
By

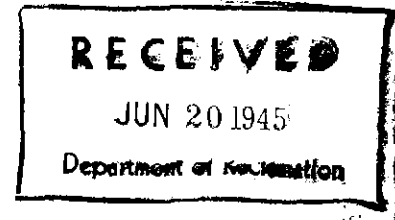
Encl.

Chief Clerk

17199

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 14-F-31



June 18, 1945

Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Dear Sir:

Re: Permit No. 17199

I am enclosing herewith notice of proof of application of water to beneficial use in duplicate together with Form 11, which I have executed for the Mission Creek Water Association. You will note that I have set the hearing on the 20th day of July, which would give time for five publications providing the notice is in the printers hands in time for publication on Thursday of this week. I believe that only four publications is necessary, and the first publication could be made on June 28. If it is necessary for you to change the dates, that will be entirely satisfactory.

From what I have been able to find out, we will be able to establish beneficial use of only approximately one cubic foot of water, and according to your letter of May 28, the priority would be July 17, 1938 providing the hearing is held on July 20. I understand that he has a priority by usage for that amount of water since 1929 or 1930. -OK-

I am enclosing herewith my check in the amount of \$.65 to cover recording conveyance from the Ellis Estate to the Mission Creek Water Association.

Very truly yours,

W. J. Nixon
W. J. Nixon *W. J. Nixon*

WJN:lc

enc.

17199

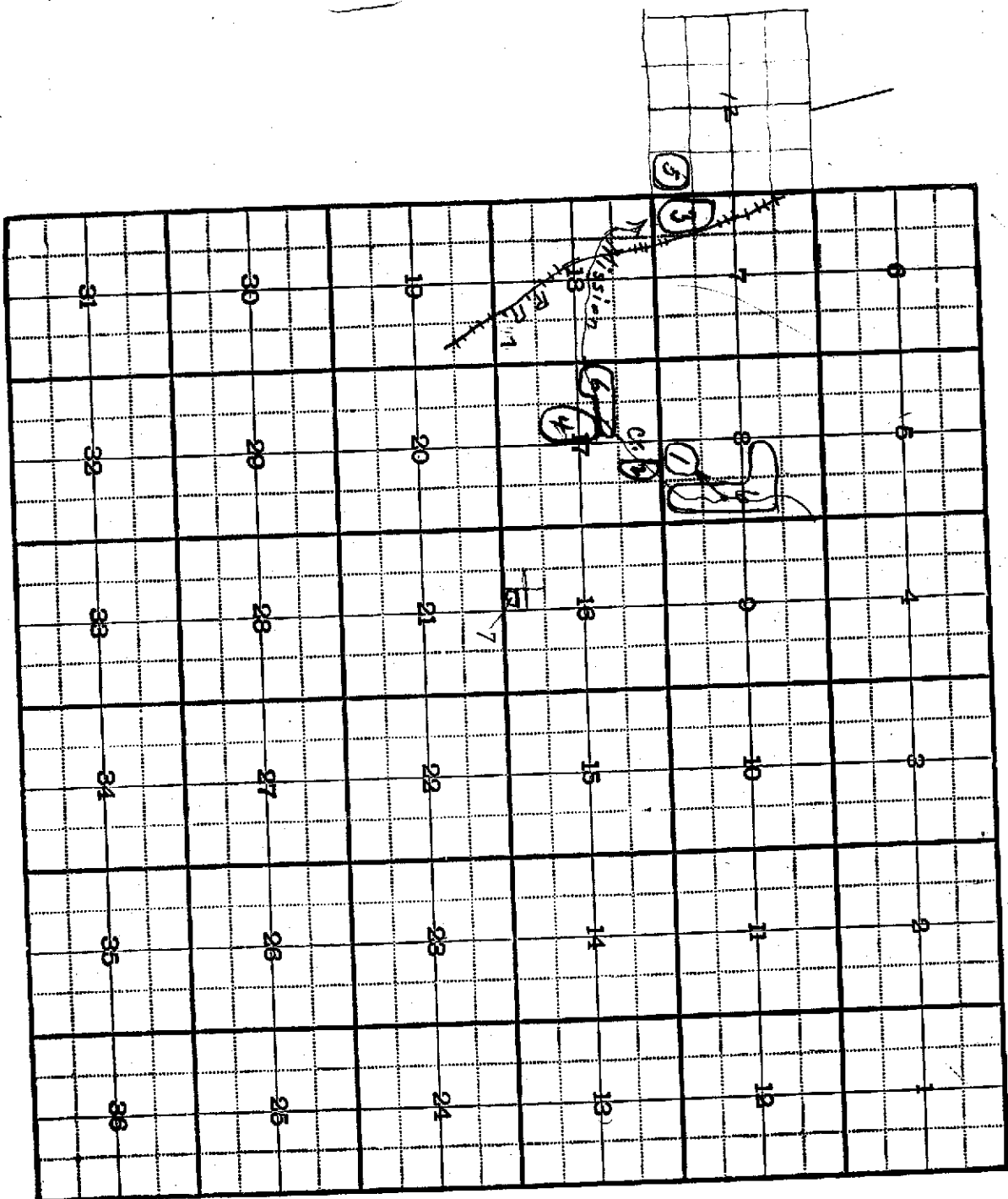
SCALE: ONE INCH TO ONE MILE

Township

6477

Range

1E



Endorsed
Stock
Linnell & Co
de 13 Jan
Lundeen
& Albers
7 Miners

17199

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) June 18, 1945

(P. O.) Bonners Ferry, Idaho

STATE RECLAMATION ENGINEER
TO THE ~~COMMISSIONER OF RECLAMATION~~

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the
Bonners Ferry Herald of Bonners Ferry, Idaho, published in
the county in which the works are situated.

Mission Creek Water Association, Inc.
by W. J. Nixon, Attorney

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water
per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

17199

NOTICE FOR PUBLICATION
NOTICE OF PROOF APPLICATION OF WATER
TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 20th day of July, 19 45
at Bonnars Ferry, County of Boundary, State of Idaho, before
Owen Critchfield, proof will be submitted of the
application to beneficial use of 1 cubic feet per second of the waters of Mission
Creek in accordance with the terms and conditions of Permit No. 17199
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
Mission Creek Water Association, Inc., Bonners Ferry, Idaho

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

The amount applied to beneficial use is one cubic foot

The place where said water is used (if for irrigation, give full and accurate description of the
lands irrigated) Southwest quarter of the Southeast quarter (SW1SE4)
Section eight (8) Township Sixty-four (64) North
Range One (1) East Boise Meridian

The name of the canal or ditch or other works by which said water is conducted to such place of
use is none

The right to take water from such works is based upon Permit No. 17199

The source of supply from which such water is diverted is

Mission Creek

The date of priority which said user is prepared to establish is ~~March 22, 1933~~ July 17, 1933

MARK R. KULP

State Reclamation Engineer.

ESW
W 2 SE

17199

✓
May 28, 1945

Re: Permit No. 17199

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

Reference is made to your letter of May 26th, enclosing certified copies of the Order from the Probate Court and the Conveyance of water right from the George M. Ellis Estate to the Mission Creek Water Association, and requesting information as to the status of Permit No. 17199 evidencing such water right.

For your information will say that this permit was filed October 25, 1929, by George M. Ellis, for two (2) cubic feet per second of water from Mission Creek, with point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B.M., for the irrigation and domestic use on the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of this same section.

Completion of works proof was made and certificate of completion of works issued April 22, 1935. Beneficial use proof was due on or before October 28, 1936, but has not yet been made. This proof may still be made, at any time, but the priority would be later than October 25, 1929, by the length of time after October 28, 1936 that the proof is offered.

Notice of intention to make such proof must be advertised for four consecutive weeks in some newspaper of general circulation in the county where the water is diverted. This notice should be made out in duplicate on Form 10 enclosed, setting time and place, and naming the Notary Public before whom the proof will be made- being sure to set the date sufficiently far ahead to allow for the four weeks publication.

Both copies of the notice are to be returned to this office, together with Form 11, which is your authorization for us to have the notice published at your expense in the designated newspaper. We shall then send a copy of the notice to the paper, with instructions in regard to publishing same.

Before this proof is made, the conveyance of this water permit to the Mission Creek Water Association must be recorded in this department, the fee for which is at the statutory rate of 20 cents per folio, or 60 cents, which you may remit at your convenience.

Very truly yours,
MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

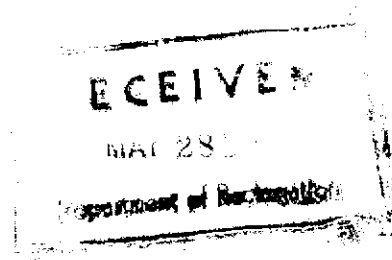
A
Encls.

17199

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 14-F-31

May 26, 1945



Mark Kulp
Reclamation Engineer
Boise, Idaho

Dear Sir:

I am representing the Mission Creek Water Association, which has purchased the water right of the George W. Ellis estate.

I understand that at one time George W. Ellis filed with the State of Idaho an application to appropriate water, Permit No. 17199; that the water was put to beneficial use under this permit, but that no proof of beneficial use has been made. I wish that you would give me the status of this application, and let me know whether or not it will be possible for the Mission Creek Water Association to make proof of beneficial use at this late date on the George Ellis permit. George Ellis died in 1939, and Ray Ellis is the Administrator of his estate.

I am enclosing herewith certified copies of the Order from the Probate Court, and conveyance of water right from the Ellis estate to the Mission Creek Water Association for your information. If the time has expired for proof of beneficial use, would it be possible to have the time extended to make proof?

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to be "W. J. Nixon".

W. J. Nixon

WJN:lc

Enc.

17199

STATE OF IDAHO, }
County of Boundary. } ss.

Certificate

I, **E. B. Schlette,** the duly elected, qualified and acting Probate Judge,

in and for Boundary County, State of Idaho, hereby certify that the within

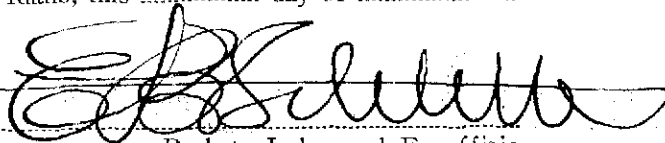
Assignment and Conveyance of Water Right

is a full, true, and correct duplicate copy of the original

Assignment and Conveyance of Water Right

as now appears on file and of record in the Probate Court, of Boundary County, State of
Idaho, in the matter of the Estate of **George W. Ellis,**
Deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of
the Probate Court, of Boundary County, State of Idaho, this 26th day of
May, 1945



Probate Judge and Ex-officio
Clerk of the Probate Court.

17199

IN THE PROBATE COURT OF THE COUNTY OF BOUNDARY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)
George W. Ellis, Deceased) ASSIGNMENT AND CONVEYANCE OF
WATER RIGHT

For and in consideration of the agreement of the Mission Creek Water Association, Incorporated, to furnish water for domestic and household purposes to the land hereinafter described, and for other good and valuable consideration and pursuant to the Order of the Probate Court dated the 10th day of May, 1945, I hereby assign all the right, title, and interest of the said George W. Ellis, deceased, and of his estate in and to permit to appropriate the public water of the State of Idaho, No. 17199 to Mission Creek Water Association, Inc., and hereby grant and convey all the riparian water rights and privileges of every kind, character, and description which belong or in any manner appertain to the following described land situate in Boundary County, State of Idaho, to-wit:

Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) and Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) Section Eight (8), Township Sixty-four (64) North Range One (1) East B. M., and the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$), Section Eight (8) Township Sixty-four (64), North Range One (1) East B.M. Containing 160 acres.

Ray Ellis,

Administrator of the Estate of
George W. Ellis, Deceased

STATE OF IDAHO)
: ss.
County of Boundary)

On this 26th day of May, 1945 before me W. J. Nixon, a Notary Public for the State of Idaho, personally appeared Ray Ellis, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as Administrator of the Estate of George W. Ellis, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed

17199

my official seal the day and year in this Certificate first above written.

W. J. Nixon,

Notary Public for State of Idaho
Residing at Bonners Ferry, Idaho

(NOTARIAL SEAL)

IN THE PROBATE COURT OF BOUNDARY COUNTY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)

George W. Ellis, Deceased)

O R D E R

Ray Ellis, Administrator of the Estate of George W. Ellis, deceased, having on the twenty-fourth day of April, 1945 presented to this Court and filed herein his verified petition in writing praying for an order to assign a certain water right appurtenant to land owned by said estate and the matter coming on regularly for hearing this tenth day of May, 1945, upon proof to the satisfaction of this Court of the posting of notice and service of Order to Show Cause as required by law and as directed by this Court, and it appearing to the satisfaction of this Court from the evidence introduced and from a full examination into the facts that it is for the best interest of said estate and of the persons interested therein that an assignment of said water right be made.

IT IS ORDERED, ADJUDGED, AND DECREED that the said Ray Ellis, Administrator of said estate, be and he hereby is authorized to assign all the right, title, and interest of said estate in and to a certain water right appurtenant to the following described land in Boundary County, Idaho, to-wit:

Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$)
and Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$)
Section Eight (8), Township Sixty-four (64) North
Range 1 East B.M., and the Northwest quarter of the
Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southwest Quarter
of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$), Section Eight (8)
Township Sixty-four (64), North Range 1 East B.M.,

Containing 160 acres; to the Mission Creek Water Association, Inc. for and in consideration of the Mission Creek

Water Association furnishing water for domestic and household purposes to the above described land free and clear of all incumbrances and without charge for services, and free from water assessments.

It is hereby further ordered, adjudged, and decreed that the assignment of said water right be and the same is hereby confirmed and approved; and said Administrator is hereby directed to execute to the said Mission Creek Water Association, Inc. a proper assignment and conveyance of said water right.

Done in open Court this tenth day of May, 1945.

(Probate Court Seal)

E. B. Schlette,

Probate Judge.

STATE OF IDAHO, }
County of Boundary. } ss.

Certificate

I, **E. B. Schlette,**
the duly elected, qualified and acting Probate Judge,
in and for Boundary County, State of Idaho, hereby certify that the within

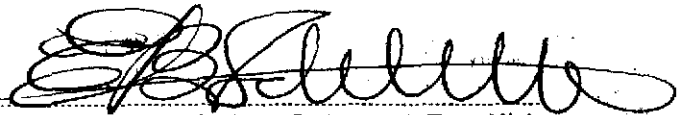
Order

is a full, true, and correct duplicate copy of the original

Order

as now appears on file and of record in the Probate Court, of Boundary County, State of
Idaho, in the matter of the Estate of **George W. Ellis,**
Deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of
the Probate Court, of Boundary County, State of Idaho, this **26th** day of
May, 19**45**



Probate Judge and Ex-officio
Clerk of the Probate Court.

17199

May 22, 1945

Re: Permit No. 17199

Mr. Fred Ahlborn
Bonners Ferry, Idaho

Dear Mr. Ahlborn:

Reference is made to your letter of May 16th, in regard to water right of George Ellis.

Permit No. 17199 was filed October 25, 1929, by George W. Ellis, for two (2) cubic feet per second of water from Mission Creek, with point of diversion in the NE¹ SE¹ Section 8, Township 64 North, Range 1 East, B.M.

Completion of works proof was made April 19, 1935, and certificate of completion of works was issued April 22, 1935. Beneficial use proof was due on October 28, 1936, but has not yet been offered. This proof may still be offered, but the priority would be later than October 25, 1929 by the length of time after October 28, 1936, that the proof is offered. This proof would have to be advertised in some paper of general circulation in the county.

The only other way a right can be completed is through the courts, and in that case the other water users on the stream would be made parties to the action, and their respective rights determined by the courts.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

K:IA

17199

May 18th 1945

Department of Reclamation
Gean Linc.

In regards Water licence
176844 and 17621 issued to
Fred Cepham Bonners Ferry
Idaho Boundary County
an stream known as
Mission Creek.

Also regards a permit
issued to Mr George W. Ellis
17199 for irrigation and
Domestic use.

It seems Mr Ray Ellis
a son of Mr George W. Ellis
has agreed to transfer his
rite to other land owners
for a sum of money.

I wish to state in this
letter that Mr Ellis has
not used his two second

feet of water granted by
the Department for several
years & it does seem to me
he should have made proof
use of said water by this
time. He has of course
used water for his stock
& house hold use from
the stream but not at
the point of diversion
for the past 3 or more
years. Proof of this
can be made by me
if you go there.
Grant however he has
a right for domestic use
but not in the extent
of two second feet.
17199/ He did at one time in
about 1929 or 1930 construct

an untreated wood flume
size about 9x9" square
open top ~~with~~ and divert
waters at said point of
diversion, but very little
if any repairs has been
made to this flume an
about a grade of about
4" to 100 ft. and has
long been rotted down
in several places.

I have also been informed
he has employed an attorney
to help him prove his
rite ~~and~~ so as to meet the
sales transfer of said rite
down at this time
like to say Mr Geo. W. Ellis
nor Mr Ray Ellis did not
help or pay anything towards

17/99

proving his site which
was effected by the site
filled by Chester Wagner and
when the stream was
diverted by Mr Wagner
Mr Ellis did not protest.

Will you please advise me
as to what action the
Department intends to take
in this matter if any.

Yours truly
Forest W. Brown

RECEIVED

MAY 18 1945

Department of Reclamation

17199

April 23, 1935

Re: Permit No. 17199

MR. GEORGE W. ELLIS
Copeland,
Idaho

Dear Sir:

We are enclosing herewith Order Reinstating Permit and Certificate of Completion of Works, issued thereunder, which have been made a matter of record in this department, together with our office receipt in the amount of \$5.00, which was the amount of the fee due in connection with proof of completion of works.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By _____
Assistant Chief Clerk

G
Encl.

17199

PERMIT No. 17199...

Proof of Completion of Works

DEPOSITION OF HOLDER

In compliance with Sec. 5594, Idaho Code Annotated, Compiled Statutes of Idaho.

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. George W Ellis Bonerland Boundary Co Idaho

Farmer

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. none

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. ... 17199 Date ... October ²³ 1929, Two Cubic Feet per second

Point of Diversion NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 8 in T. 64 N. of R. 1. East

Ques. 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you have reclaimed or intend to reclaim.

Ans. ... Irrigation and Domestic, about ten acres in Sec 8 T. 64

North of Range 1. East of B.M. same being the part of

SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said section

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. ... Water... turned in and used... on said land since... 1932.

Ques. 6. State whether or not the works of diversion are fully completed, if so on what date, and whether or not they comply in all respects with terms of the permit.

Ans. Works were completed on the 10th day of May 1932

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. none

Ques. 8. Give description of works and state dimensions and capacity of each part as they existed on May 10th, 1932, and give cost of same.

Ans. Water conduit is a flume 6 inches by 6 inches

About one half mile long

(Sign here.)

George W. Ellis

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, in Bonners Ferry, County of

Boundary, State of Idaho, on this 19th day of April, A. D. 1935.

My Commission expires August 19, 1935.

[Signature]
Notary Public.

17199

The Depositions of Witnesses, in this form, taken separately, required in each case.

PERMIT NO. 17199..

Proof of Completion of Works

DEPOSITION OF WITNESS

Sec. 41-311, Idaho Code Annotated
In compliance with ~~Sec. 5524, Compiled Statutes of~~ Idaho.

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. George Stich Port Hill Idaho

..... Farming

Ques. 2. Are you acquainted with..... George W. Ellis....., the

holder of Permit No. 17199.....authorizing the diversion of.....Two.....second-feet of the waters
of Mission Creek.... Boundary Co. Idaho..... At SE¹/₄ of NE¹/₄ Sec. 8 T.
64 N. of R. 1 E.
for.....Irrigation.....purposes? How long have you known him, and where does he reside?

Ans. I have know him for past 26 years Resides at Copeland Ida

Ques. 3. Have you read or heard read said Permit No. 17199....., and are you familiar with its terms and conditions?

Ans. Yes.... and I am familiar with the land and his permit

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated under said permit? If so, describe same, state its character, and give your estimate of the amount of water required for its profitable cultivation.

Ans. I am acquainted with the land which is in Alfalfa.

..... He has a farm in Section 8 T. 64 N. of R. 1 East and the

..... water is used to Irrigate, he needs more water than he gets.

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use? If so, when were they so completed?

Ans. Yes. the water has been used since 1932 on the place

Ques. 6. Describe the works of diversion as they existed on the date stated in answer to Question 5, and give your estimate of their capacity on that date.

Ans. He conveys the water in a wooden flume.

..... do not know how much water it will carry, it is about 6x6

..... inches

(Sign here.)

George Stich

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Bonners Ferry....., County of
..... Boundary....., State of Idaho, on this 19th day of
..... April..... A. D. 1935..

My Commission expires. August 19-1935

[Signature]
Notary Public.

17199

The Depositions of Witnesses, in this form, taken separately, required in each case.

PERMIT No. I7I99...

APR 22 1935

Proof of Completion of Works

DEPOSITION OF WITNESS

*In compliance with Sec. 41-511, Idaho Code Annotated
Sec. 41-511, Idaho Code Annotated
In compliance with ~~Sec. 41-511, Idaho Code Annotated~~ of Idaho.*

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Thomas Ames of Bonners Ferry Boundary Co. Idaho
..... Occupation United States Mail Carrier

Ques. 2. Are you acquainted with George W. Ellis, the
holder of Permit No. I7I99 authorizing the diversion of ... Two second-feet of the waters
of Mission Creek Boundary Co. Idaho at SE $\frac{1}{4}$ of N.E. $\frac{1}{4}$
for ... Irrigation ... purposes? How long have you known him, and where does he reside?

Ans. Thirty Years at Copeland Idaho

Ques. 3. Have you read or heard read said Permit No. I7I99, and are you familiar with
its terms and conditions?

Ans. Yes

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated
under said permit? If so, describe same, state its character, and give your estimate of the amount of
water required for its profitable cultivation.

Ans. A part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 8 in T. 64
..... N. of R. 1 East of B. M. This land is in Alfalfa and needs ...
..... more water than he has to irrigate with

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the
entire amount of water set out in the permit from point of diversion to place of use? If so, when
were they so completed?

Ans. Works were completed in May 1932 and now in use

Ques. 6. Describe the works of diversion as they existed on the date stated in answer to Question
5, and give your estimate of their capacity on that date.

Ans. The flume is six inches square made of wood

(Sign here.)

Thomas Ames

I hereby certify that the foregoing testimony was read to the above subscriber before its signing,
that I believe him to be the person he represents himself to be, and that said testimony was subscribed
and sworn to before me, at my office in ... Bonners Ferry ... Boundary Co., County of
....., State of Idaho, on this 19th day of
.... April A. D. 1935.

My Commission expires .. August 19th 1935

[Signature]
Notary Public.

17199

April 8, 1935

Re: Permit No. 17199
George W. Ellis

MR. A. J. KENT, Agent
Bonners Ferry,
Idaho

Dear Sir:

Under date of March 25th we wrote to you acknowledging receipt of Mr. Ellis's notice of appearance, wherein he stated that the works required under the above permit were fully completed within the time required and that he was prepared to offer proof to that effect. We, accordingly, mailed you three depositions, being one for the permit holder and one each for two witnesses. We specifically stated in our letter to you, that these depositions should be executed by Mr. Ellis and two witnesses before a Notary Public or some other official empowered to administer oaths. However, you, apparently, did not understand the procedure, since you had Mr. Ellis execute the deposition of the holder and made a carbon copy on one of the depositions for a witness.

We, of course, cannot accept these papers and are, therefore, returning them together with Mr. Ellis's Postal Money Order for \$5.00. We are also enclosing another complete set of depositions and urgently request you to get in touch with Mr. Ellis and have them executed in the manner previously explained. When they are mailed to this office they should be accompanied by the \$5.00 fee.

Very truly yours,

R. F. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLN:RC
Encl.

17199

March 25, 1935

Re: Permit No. 17199
Geo. W. Ellis

Mr. A. J. KENT, Agent
Bonners Ferry,
Idaho

Dear Sir:

Under date of March 20th, we received Notice of Appearance from you, as agent for Mr. Ellis, wherein you stated that the works required under the above permit were fully completed within the time specified in the permit. We are, accordingly, enclosing herewith special depositions which Mr. Ellis and two witnesses should execute before a Notary Public or some other official empowered to administer oaths.

When these depositions are mailed to this department they should be accompanied by a statutory fee of \$5.00.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:RG
Encl.

17199

NOTICE OF APPEARANCE

To Commissioner of Reclamation

Boise, Idaho.

Dear Sir:

Receipt of notice that Permit No. 17199
is held for cancellation, under the provisions of Section
41-311, Idaho Code Annotated, is acknowledged.

I hereby enter an appearance and will offer proof
to show that the works required thereunder were fully com-
pleted on the date proof of completion of works was due.

Dated at Banner Pump this 18th
day of March, 19 35.

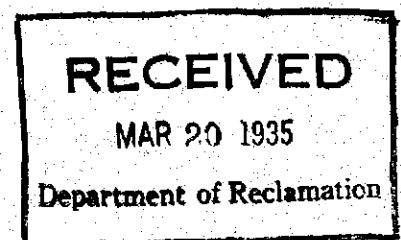
George W. Ellis

Applicant.

By

[Signature]
Agent.

17199



March 16, 1935

Re: Permit No. 17199
Geo. W. Ellis

MR. A. J. KENT
Bonners Ferry,
Idaho

Dear Sir:

In reply to your letter of March 7th, we wish to advise that no further extension of time for offering proof of completion of works and also of beneficial use, can be granted under the above permit.

If you have Mr. Ellis's files in connection with this matter, you, no doubt, are familiar with what has happened during the past two or three months. However, in case you do not have it, we shall briefly review what has transpired. Under date of August 11, 1934, we mailed our form letter, together with the proper forms for offering proof, to Mr. Ellis, advising that both of these proofs would be due on October 28, 1934. We did not receive a reply from him until October 17th at which time we received a request for an extension of time for making proof. We replied to this letter under date of October 23rd, stating that no publication was necessary in connection with completion of works, under this permit, and we urgently advised him to go before a Notary Public, execute the affidavit and return it to this department with a fee of \$5.00 at the earliest possible date. We also enclosed our regular form for an extension of time for applying the water to beneficial use. We heard nothing further from him until November 5th when we received his application for an extension of time for final proof. We, of course, could not accept the application in view of the fact that the permit had lapsed several days before and under date of February 20, 1935, we served notice of cancellation under the provisions of Section 41-311, Idaho Code Annotated.

We feel that we have made every effort to cooperate with Mr. Ellis in this matter and that the present state of affairs is due, entirely, to his neglect in not complying with our suggestions.

If the works required under his permit were fully completed by October 28, 1934, he may file notice of appearance to that effect on the enclosed form and upon its receipt we shall be glad to mail special depositions for offering proof of completion of works. If he is now in a position to do this the permit can be re-instated and a certificate of completion of works issued, otherwise the permit must be cancelled in accordance with the notice of cancellation.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:RG
Encl.

17199

J. B. LEVISON, PRESIDENT

CHARLES R. PAGE, VICE PRESIDENT
EDWARD T. CAIRNS, VICE-PRESIDENT
G. E. TOWNSEND, ASSISTANT VICE-PRESIDENT
EDWARD V. MILLS, SECRETARY AND TREASURER
H. V. R. SCHUYLER, FINANCIAL SECRETARY
GEORGE JORDAN, MARINE SECRETARY
L. J. HAEFNER, ASSISTANT MARINE SECRETARY

B. G. WILLS, ASSISTANT SECRETARY
FRANK J. AGNEW, ASSISTANT SECRETARY
ALBERT P. MENTER, ASSISTANT SECRETARY
L. B. GREGORY, ASSISTANT SECRETARY
THOS. F. RYAN, ASSISTANT SECRETARY
EDWARD RANDALL, GENERAL AUDITOR



A. J. KENT, RESIDENT AGENT
REAL ESTATE AND MINING BROKER
CASUALTY AND FIRE INSURANCE
NOTARY PUBLIC AND SURETY BONDS
BONNERS FERRY, IDAHO

March 7th 1935

Mr R.W.Farris
Commissioner of Reclamation
Boise Idaho.

Re Permit No I7I99
Geo W Ellis.

Dear Sir,-

I have been requested by Mr Ellis to ask you to give him an extension of time to make final proof on his water right.

The works are completed, and the water is used on his farm for Irrigation.

If you can give him an extension it will be appreciated and be of great benefit to him as a farmer.

Yours Respt.

17199

Post Office Department

OFFICE BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300

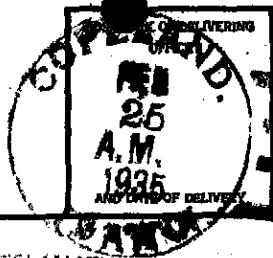
REGISTERED ARTICLE

2283

No. _____

INSURED PARCEL

No. _____



TO BE FILLED IN BY THE SENDER
EXPLANATION

Return to _____

(NAME OF SENDER)

*Street and Number, }
or Post Office Box, }* _____

BOISE,

IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature of name of addressee)

(Signature of addressee's agent)

RECEIVED

FEB 28 1935

Department of Reclamation

Date of delivery

Form 8811

U. S. GOVERNMENT PRINTING OFFICE: 1934

17199

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

3388

February 20, 1935

Re: Permit No. 17199

To: Geo. H. Ellis

Coeur d'Alene, Idaho

It appearing to the Commissioner of Reclamation that the terms and conditions of Permit No. 17199, to appropriate the Public Waters of the State of Idaho, have not been complied with as to

~~Proof of Completion of Work~~

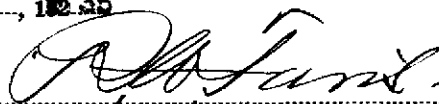
Sec. 41-311, Idaho Code Annotated
you are hereby notified in compliance with ~~Sec. 4504, Compiled Statutes of Idaho~~, that said Permit No. 17199 is hereby held for cancellation.

You are hereby required to show cause before the Commissioner of Reclamation on or before forty days from date of this notice why said Permit should not be cancelled.

Said Permit No. 17199 claims the use of 2 cubic feet per second of the waters of Mission Creek, with point of diversion located NE 1/4 Sec. 2, T. 64 N., R. 1 E., B. M., and was approved October 23, 1929.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this

20th day of February, 1935



Commissioner of Reclamation.

By _____ Assistant.

17199

November 8, 1934

Re: Permit No. 17199

MR. GEO. W. ELLIS
Bonners Ferry,
Idaho

Dear Sir:

Under date of November 5th we received your application for an extension of time for beneficial use proof, under the above numbered permit. If you will kindly check your files you will find that we wrote to you under date of October 23rd requesting you to go before a Notary Public and complete the affidavit for completion of works and return it to this department. We also mailed our form for an extension of time in connection with beneficial use proof, stating that the time for final proof could be extended immediately after the certificate of completion of works had been issued. The statute governing this matter states that proof of completion of works, under any permit claiming 6.4 second feet or less of water, must be made on or before the date when proof is due or within 10 days thereafter, otherwise, the permit will lapse and become subject to cancellation.

Consequently, since you failed to comply with our request, the permit is now subject to cancellation and notice to that effect will be mailed within due time. If the works were fully completed on or before the date when proof was due, which was October 28th, you may offer proof to that effect, at a later date, on special depositions, and the permit can then be reinstated. It would probably be well to let this matter stand until you receive notice of cancellation ordering you to show cause why the permit should not be cancelled. If you will call our attention to the fact that you wish to reinstate your permit, at that time, the proper forms will be mailed to you.

We are returning your fee of \$5.00 and also your application for an extension of time for final proof since this cannot be approved due to the fact that it was not filed by the time specified in the permit.

Very truly yours,

R. S. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:RG
Encls. 2

October 23, 1934

Re: Permit No. 17199

MR. GEORGE W. ELLIS
Bonners Ferry,
Idaho

Dear Sir:

We have your letter of October 15th which was accompanied by a Postal Money Order in the sum of \$5.00.

No publication is necessary in connection with proof of completion of works under this permit and, therefore, if you will go before a Notary Public and complete the affidavit, which is our form No. 6, and return it to this department, at once, your certificate of completion of works can be issued.

We are enclosing the regular form for application for extension of time in connection with beneficial use proof, which we suggest that you fill out and return with your affidavit for completion of works. An extension of time for final proof can be granted immediately after the issuance of the certificate. It would probably be well to ask for at least one year's additional time for final proof.

We shall hold your money order awaiting receipt of these papers.

Since proof will be due on October 23, 1934, it is imperative that these papers be mailed to this office at once.

Very truly yours,

H. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

17199
PLH:RG
Encl.

Board of Directors

District No. 1
John Davidson
District No. 2
L. F. Kuntz
District No. 3
A. J. Kent
District No. 4
Elmer DesVoigne
District No. 5
A. Klockmann
District No. 6
D. H. Chisholm
District No. 7
George Irving
District No. 8
Byron N. Hawks
District No. 9
C. D. Simonds
District No. 10
Geo. E. Crocker
Frank A. Moens
District No. 11
O. H. Campbell
District No. 12
R. W. Allen
District No. 13
R. I. Keator
C. W. King

Kootenai Valley Reclamation Association

COMPOSED OF COMMISSIONERS OF ALL DRAINAGE DISTRICTS IN BOUNDARY COUNTY
COMPRISING 30,000 ACRES

BONNERS FERRY, IDAHO

October 15th 1934.

Officers

A. B. Ashby
President
A. J. Kent
A. Klockmann
Vice Presidents
C. D. Simonds
Treasurer
Geo. E. Crocker
Secretary
Guy C. McGee
Association Engineer
O. C. Wilson
Association Attorney

Mr R.W. Faris
Commissioner of Reclamation
Boise Idaho

Re Permit No 17199.

Dear Sir,-

I received your letter of August 1st 1934 and did not note that I had to make return in 60 days from date, so I am asking you to extend the time and make a new date for final proof.

I enclose to you Five dollars as per your letter of August 11th 1934.

If you will make a new date for Proof I will see that your order will be compiled with.

Yours Respt.

G. W. Ellis

17199

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

INSTRUCTIONS
PROOF OF COMPLETION OF WORKS

GEO. W. ELLIS
Copeland,
Idaho

Boise, Idaho, August 11, 1934

Dear Sir:—

Under the terms of your permit No. 17199.....you are required to complete your diversion works on or before Oct. 23, 1934. I enclose herewith blank affidavit to be filled out, sworn to by you before a Notary Public or a Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the completion of the works substantially in accordance with the terms of the permit, together with a fee of \$5.00, a Certificate of Completion will be issued to you.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Yours truly,

R. W. PARIS

Commissioner of Reclamation.

17199

Form No. 9

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

GEO. W. ELLIS
Copeland, Idaho

August 11, 1934

Dear Sir:—

I enclose herewith blank notice of proof of application of water to beneficial use under your permit No. 17199, which should be filled out and returned to this office at least 60 days before the date upon which you wish to make proof. The date for proof, as set out in your permit, is Oct. 23, 1934, and, if proof is submitted subsequent to said date, your priority will be brought down a length of time equal to the time elapsing between the date proof should have been made and the date proof is actually made.

Yours truly,

R. W. FARIS

~~WESLEY CARTER~~
GEO. N. CARTER,

Commissioner of Reclamation.

17199

October 24, 1932

Re: Permit No. 17199

Mr. George W. Ellis
Bonners Ferry, Idaho

Dear Sir:

We are herewith enclosing the approval of the Commissioner of Reclamation for an extension of time under the above numbered permit to October 28, 1934. Your proof of Completion of Works is now due upon that date.

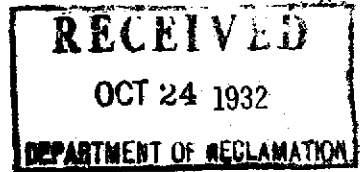
Very truly yours,

R. T. FARIS
Commissioner of Reclamation

By
Chief Clerk & Office Engr.

PLH:MC
Encl.

1 7199



Mr Carter

Dear Friend

I wil drop you a few
in regard to my Flume it
carries six inches of water
it is six inches square inside
I may rais it 10 or 12 ft higher
then I can frigate the hold place
if I dont sell my place I my
change my Flume if I do I wil
haft to getine dig. I am 75 years
old so you see I dont intend to
kill my self at work
in haste Yours

17199

G. W. Ellis

Permit No. 17199

Application for Extension of Time
FOR COMPLETION OF WORKS

RECEIVED

OCT 24 1932

DEPARTMENT OF RECLAMATION

George W. Ellis, of Bonners Ferry

State of Idaho, being first duly sworn, upon his oath deposes and says:

He is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho
No. 17199

Under the terms and conditions of said permit, construction work thereunder was required to be
completed by October 28, 1932

That he has heretofore performed the following work described under said permit

Part of the flume work has been completed.

costing \$150.00

That he is unable to complete the remainder of the work within the required time, for the following reasons, to-wit:

Due to prevailing conditions I have been unable to obtain sufficient
funds to complete the works in accordance with the present terms of
the permit.

WHEREFORE, He asks that the Commissioner of Reclamation extend the time for the completion of works under said permit to October 28, 1934

Subscribed and sworn to before me this 21 day of Oct, 1932

My commission expires May 19 - 1935

Notary Public.

Date of receipt at office of Department of Reclamation

APPROVAL OF COMMISSIONER OF RECLAMATION.

I, R. W. FARIS, Commissioner of Reclamation of the State of Idaho, hereby extend the time for the completion of construction work under Permit to Appropriate the Public Waters of the State of Idaho, No. 17199 to October 28, 1934

Witness my hand this 24th day of October 1932

Commissioner of Reclamation.

October 15, 1932

Re: Permit No. 17199

Mr. George W. Ellis
Bonners Ferry, Idaho

Dear Sir:

We have your letter of October 10th in which you acknowledge receipt of our notice informing you that proof of Completion of Works would be due October 28th under the above mentioned permit.

At the time you made application for permit you were required to give the time necessary for completing your diversion works, and also the time needed for making application to beneficial use. You asked for three years for the Completion of Works. Therefore your proof will be due on October 28, 1932, since your permit was granted under date of October 28, 1929.

Both these proofs are required by law. The maximum time obtainable under any permit for the Completion of Works is five years. Since you asked for only three years in which to complete the diversion works we have prepared an application for extension of two years more.

The form as enclosed is complete except for the amount of money your works have cost you to date, which you should fill in. It is suggested that you then take this affidavit before a Notary Public and have it properly executed. It should be returned to this department prior to October 28th, since it cannot be approved if it is returned after that date. You need not submit any fee with this application.

We can appreciate the financial condition of the country at the present time, and this department is ready to make every possible effort to avoid working a hardship on anyone. Consequently we are suggesting an extension of time whenever it is possible.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

17199
FLH:MC

10 - 10 1932
Board Terry Star Boat J Club
Dear Sirs

P-17199

I mislaid your letter
in regard to Flume it is
made of Plank 6 square
inches of water I didnt get
it by ten feet as high as
I should to I rigate my ~~flume~~
Land al of it only a garden
I am quite hard as I my Old
Boards and J ens didnt pay
their Board last winter I
thought I was though paying
out money on Flume now if
hafte to Pay more money
let me now what I wil haft
to do with your Red Tape
I sorry I lost Your letter
and I hope you wil let me
on paying more
17199 yours G. W. Ellis

my former address
was 6th Street
Qatar

it will

Bornes Ferry
8th Street Qatar

October 6, 1922

Re: Permit No. 17199
Geo. W. Ellis

Mr. Fred Ahlborn
Bonners Ferry, Idaho

Dear Sir:

Reference is made to your letter of the 6th inst. In checking over the stream index we find that the only permit that has been granted for the waters of Mission Creek other than the permit issued to you is in the name of Geo. W. Ellis.

Mr. Ellis's permit claims 2.0 cubic feet per second, and was filed October 25, 1920. The point of diversion is in the NE¹/₄SE¹/₄ of Section 8, T. 64 N., R. 1 E. B. M.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By _____
Chief Clerk & Office Engr.

PLH:MC

17199

Post Office Department

OFFICIAL BUSINESS

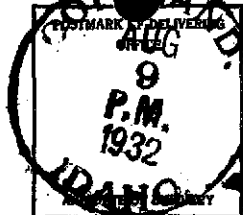
PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300

REGISTERED ARTICLE

No. **323135**

INSURED PARCEL

No. _____



Return to _____

*Street and Number, }
or Post Office Box, }* _____

(NAME OF SENDER)

COMMISSIONER OF RECLAMATION

BOISE,

IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery,

FORM 3811

U. S. GOVERNMENT PRINTING OFFICE: 1931

9199

1932

8/9

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

INSTRUCTIONS
PROOF OF COMPLETION OF WORKS

GEORGE W. ELLIS,
Copeland, Idaho

Boise, Idaho,

August 5, 1932

Dear Sir:—

Under the terms of your permit No. **17199** you are required to complete your diversion works on or before **Oct. 28, 1932**. I enclose herewith blank affidavit to be filled out, sworn to by you before a Notary Public or a Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the completion of the works substantially in accordance with the terms of the permit, together with a fee of \$5.00, a Certificate of Completion will be issued to you.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

3 23135

Yours truly,

REGISTERED
RECEIVED REQUESTED

R. W. FARIS
Commissioner of Reclamation.

17199

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

Permit No. 17199

George W. Ellis
Copeland, Idaho
Dear Sir:

October 28, 1929

Boise, Idaho,

I enclose herewith above numbered permit. BE SURE AND
NOTE LIMITATIONS AND CONDITIONS OF SAME as
given under approval of the Commissioner of Reclamation on
the third page.

17199
Enc. Receipt for fee.

GEO. N. CARTER
Commissioner of Reclamation.

**Notice For Publication
of
Notice of Proof Application
Water to Beneficial Use**

Notice is hereby given that at 10:00 A. M. on the 20th day of July, 1945, at Bonners Ferry, County of Boundary, State of Idaho, before Owen Critchfield, proof will be submitted of the application to beneficial use of 1 cubic foot per second of the waters of Mission Creek in accordance with the terms and conditions of Permit No. 17199 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 Mission Creek Water Association, Inc., Bonners Ferry, Idaho.

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

The amount applied to beneficial use is one cubic foot.

The place where said water is used Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) Section Eight (8) Township Sixty-four (64) North Range One (1) East Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is none.

The right to take water from such works is based upon Permit No. 17199.

The source of supply from which such water is diverted is Mission Creek.

The date of priority which said user is prepared to establish is July 17, 1938.

MARK R. KULP,
State Reclamation Engineer.

June 28-July 19—4t.

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

17199

Notes on Ahlborn protest to transfer
point of diversion.

April 8-47.

Place- Mission Creek North of Bonners Ferry.

Cause- To investigate protest of transfer of point of
diversion of 1 s/f of water from Ellis diversion
in NE₄ SE₄ Sec 8 Twp 64 N. R. 1 E B.M. To a point
upstream in the NE₄ NE₄ Sec 8 T 64 N. R 1 E.

Interviews- interviewed Mr Nixon, Bonners Ferry; Clarence Guthrie
Copeland; Fred Ahlborn, Mission Creek; Mr Ellis, Mission Cr.

1. Farmers are forming a coop enterprize to obtain domestic water.
2. Many haul water at present because well water is contaminated
by the vegetation in the soil.
3. Well 400' deep did not go below the peaty formation.
4. Need 50 Families - have 44. Being financed by F.H.A.
5. Three parties have water rights in area affected. Pete De Bour,
Pete Ellis, Fred Ahlborn. Wallen & Ahlborn Father up stream.
6. Water Flows rapidly in rocky stream bed - area is brush & timber.
7. Ahlborn had a saw mill originally (insufficient water power)
Sawmill burned, Now has a planing mill immediately below
the highway. Also has 15 K.W. generator, runs continuously
Has a steam auxilliary for Planing Mill.
8. Ahlborn's rights. { Decreed 8 cfs 1931 priority Permit 17621
PA & Division SE₄ NW₄ S. 17 T64N R1E } Judge Hunt 8 cfs 1933 " " 17844
Ahlborn vs Wagner, 8th judicial district, 1935.

Reservoir Permit 746 for 30 acre feet

Wallen & Ahlborn Permit # 19597 for 3 cfs.
" # 19569 " 1 cfs.

- 9 - Ten families use stream for domestic water.
- 10 - Five families haul water.
11. Ahlborn claims \$6000 investment in plant
" " \$500 " domestic water plant

T-711

98-2037

12. Allborn has a storage tank 9' x 15' x 10' holds 17000 gal.
 Three families live out of it cost \$500 per family.
 H. Lee - J. Anderson - S. Stockton, V. Stockton

19569 Property Oct 21 - 1944

Plg. Levee changed 713010' 8.2600' from 58. en. 8.5' in 58' NW 1/4 S. 4T 64N R. 13.
 To Waller + Allborn
 Levee + Spring. And 14'.
 Plg of NW 1/4 T. 64N. R. 13. S. 5' SW 1/4 58' 58' 300.
 100.
 NW 1/4 NE 1/4 400.

19597 Property Feb 28 - 1945

Plg. Levee = same as above. To Waller + Allborn.

And 34' for Forestall.

Plg of NW 1/4 - 8. 675' - W 450' from NE 1/4 en Sec 8 - 64N. R. 13. 58' 58' 300.

Plg of Creek in NE 1/4 NE 1/4 Sec 8. 64N. R. 13. - 5650' W 475' from NW 1/4 en Sec 8.

17199 Elbio Property Sec 8 bought by 17, 1938

Q = 30 acre feet

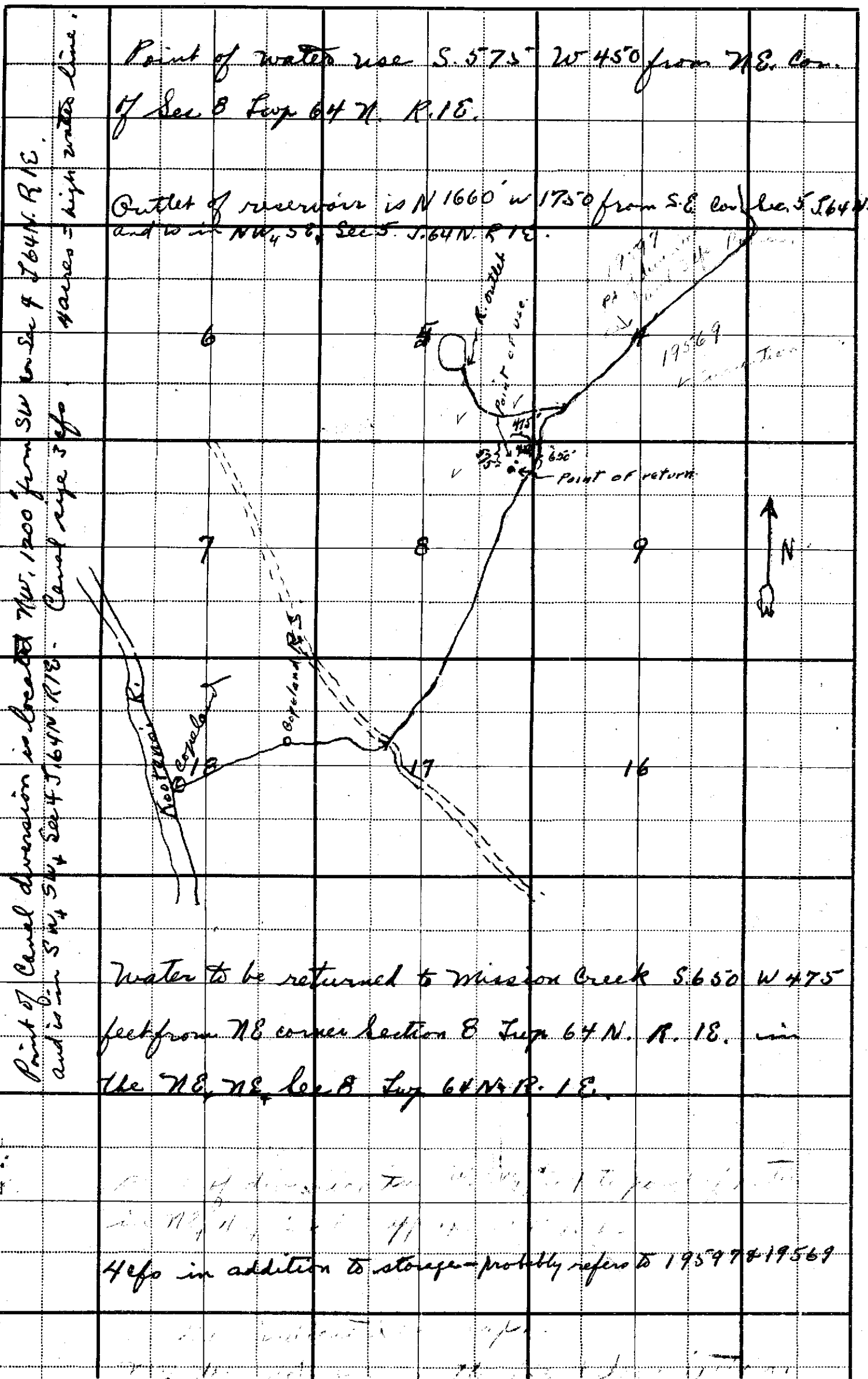
Permit

746

NAME OF APPLICANT

R. Lee Waller & Fred Ahlborn

FORM No. 0

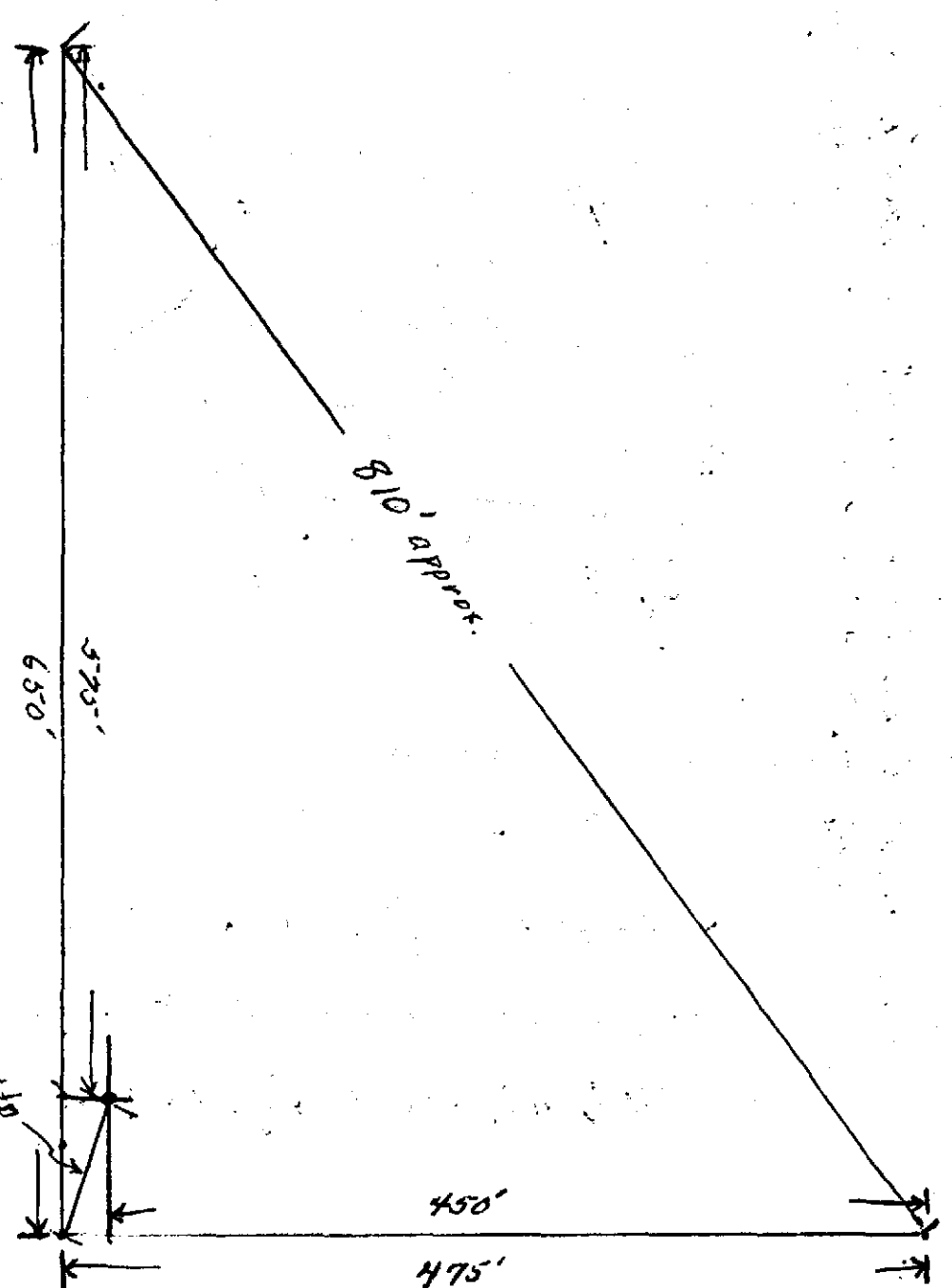


SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK.

T-711

92-9037

approx. 15' from point of use to return to 518'



INTER-DEPARTMENT MEMO-1

DATE October 24, 1950

FROM E. N. Humphrey, Deputy State Reclamation Engineer

TO Mark R. Kulp, State Reclamation Engineer

SUBJECT Mission Creek Water Users Association

On my recent trip to Bonners Ferry, I contacted Mr. C. W. Guthrie, who acted as Secretary of the Mission Creek Water Users Association, and learned the following:

1. They do not now exist as a legal entity and have not since the year 1947.
2. The proposition to furnish water for a group of families fell through because the Federal Agency loaning the money said the cost was too high and refused the loan.
3. The school situated nearby has obtained water from Mission Creek. I was told that they obtained it through use of the Ellis right which the Mission Creek Water Users Association intended to use.

T-711

98-2037

E. N. Humphrey
Deputy State Reclamation Engineer.

On October 13, 1950, I was advised by Mr. C. W. Guthrie, who acted as Secretary of the Mission Creek Water Association, that they no longer exist as an association; also that the proposition to furnish water for a group of some twenty-four families, the purpose of which this association was formed, and requested transfer of certain water rights on Mission Creek, fell through because the Federal Agency loaning the money said the cost was too high and thus refused the money.

E. N. Humphrey

E. N. Humphrey
Deputy State Reclamation Engineer

T-711

98-2037

STATEMENT

BONNERS FERRY HERALD

Complete Newspaper Coverage of Boundary County

BONNERS FERRY, IDAHO

State of Idaho
Department of Reclamation
Boise, Idaho

JULY 1947

July 31--Publication Notice of Proposed
Transfer of Water Right, issues
July 24 and 31, 1947, 59 lines 8.85

"I hereby certify that the above account is correct
and just, that the supplies were actually furnished
and/or the services were actually rendered as
charged, and that I/we have not received payment
therefor."

BONNERS FERRY HERALD

R. L. Myers
Co-Publisher

T-711
98-2037

STATE OF IDAHO

MISCELLANEOUS EXPENDITURE VOUCHER

No.

FOR USE OF DIVISION
OF ACCOUNTS ONLY

5396

No.

FOR USE OF DEPARTMENT

95

From Department Reclamation

Sub-Division Reclamation Administration

Appropriation Reclamation Administration
Account Title

PAY TO:

CODE NO.

Bonnere Perry Herald

Bonnere Perry, Idaho

ACCOUNT CODES					
FUND	FUNCTION	SUB DIV	APPR.	OBJECT	COST CODES
1	6	11	1-411	240	08.85
COMPUTATIONS CHECKED BY:				PRE-AUDITED BY:	
INCLUDED IN DAILY SUMMARY NO.				POSTED TO BUDGET CONTROL LEDGER	

DATE	EXPLANATION	AMOUNT	LEAVE BLANK
	Printing legal notice on proposed transfer of water right - Mission Creek - as listed on attached affidavit of publication and certified statement	08.85	

INSTRUCTIONS TO ISSUING DEPARTMENT

If this claim is to apply against an approved miscellaneous encumbrance requisition, reference to the number thereof must be made in the lower right hand corner of this form.

TO THE STATE AUDITOR:

Request is hereby made that a warrant be authorized and drawn in payment of item or items described hereinabove. I hereby certify that the items described were ordered by proper authority; that they are necessary in the public service; that the items have been received and properly accounted for, and that the account as stated is correct and just.

Date 8/14/47.

Mark R. Kulp
Head of Department or Institution.

AUDITOR'S CERTIFICATE

I hereby certify that the above account is in proper form; that totals carried hereon are correct; that receipts when required by law or regulation of the State Board of Examiners covering items for which reimbursement is asked are submitted herewith; and that there are funds in the state treasury and balances in appropriation accounts out of which the same may be lawfully paid.

T-711

State Auditor.

98-2037

ENCUMBRANCE LIQUIDATION

\$ 8.85

WARRANT NUMBER

3477

DATE PAID

8/18/47

MISCELLANEOUS ENCUMBRANCE REQUISITION

NO. 0006

CLAIM #26

RECLAMATION ADMINISTRATION

Voucher No. 5396

Date Paid - 8/18/47

Amount - \$8.85

BONNERS FERRY HERALD

Mission Creek

August 14, 1947

Bonnars Ferry Herald
Bonnars Ferry, Idaho

Dear Sir:

We acknowledge receipt of duplicate affidavits of publication, also statement of costs in connection with "Notice of Proposed Transfer of Water Right", published July 24 and July 31, 1947.

The statement will be duly presented to the State Auditor for payment and voucher drawn and sent you in regular course.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FS

T-711
98-2037

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that Mission Creek Water Association, Inc., of Copeland, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing it to change the point of diversion and place of use of 0.35 cubic foot per second of the waters of Mission Creek, as follows:

License No. 17199 (George W. Ellis), for 0.1 cubic foot per second, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 North, Range 1 East, B. M. Place of use SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 North, Range 1 East, B. M.

License No. 19582 (Peter DeBoer), for 0.25 cubic foot per second, with point of diversion in S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 17, Twp. 64 North, Range 1 East, B. M. Place of use SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B. M.

To be transferred to the following described tract: E $\frac{1}{2}$ Section 34, Sections 35 and 36, Twp. 65 North, Range 1 West, B. M.; NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 North, Range 1 East, B. M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 North, Range 1 East, B. M.

With point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

And that at 10:00 o'clock A. M., on August 7, 1947, 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 present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP,

State Reclamation Engineer.

First publication July 24, 1947.

Last publication July 31, 1947.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.
R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the

co-publisher

of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the

hereto attached notice; that the advertisement of

State Reclamation Engineer

a Notice of Proposed Transfer of Water Right

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for two consecutive issues, commencing with the issue dated July 24

1947, and ending with the issue dated July 31, 1947.

R. L. Myers
Co-Publisher

Notary Public

Subscribed and sworn to before me this 11th day of

August

1947

W. M. Aldridge
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

T-711
98-2037

APPLICATION FOR TRANSFER OF WATER RIGHT

STATE OF IDAHO)
 : ss.
County of Boundary)

CLARENCE GUTHRIE, being first duly sworn, deposes and says:

That he is President of Mission Creek Water Association, Inc., an Idaho Corporation, lawfully organized and existing; that affiant is of legal age, a citizen of the United States and of the State of Idaho and that his Post office address and that of said Corporation is Copeland, County of Boundary, State of Idaho.

That said Corporation is the owner and entitled to use certain water rights bearing the priority dates and particularly described as follows:

George W. Ellis, Permit No. 17199, for 0.1 cubic feet per second of the waters of Mission Creek with priority date of July 17, 1938, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East Boise Meridian.

Peter DeBoer, License No. 19582, for 0.25 cubic feet per second of the waters of Mission Creek with priority date of December 26, 1944, with point of diversion in the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 17, Township 64 North, Range 1 East Boise Meridian.

That affiant is the representative of the said Corporation which has become the owner of said water rights in the following manner; by assignment, copies of which are on file with the Department of Reclamation.

That the water under the George W. Ellis right is now diverted from Mission Creek with the point of diversion hereinabove specified and conducted through open ditch for use upon the E $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East Boise Meridian; that the water under the Peter DeBoer right is now diverted from Mission Creek with the point of diversion hereinabove specified and conducted through pipe for use upon the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 17, Township 64 North, Range 1 East Boise Meridian, as shown on the map attached hereto and of this affidavit made a part; that affiant and petitioner desires to abandon the use of all of said water upon the above described land and to convey and use the same upon the following tract situate, lying and being in the County of Boundary, State of Idaho, to-wit:

T-711

E $\frac{1}{2}$ Sec. 34, Sec. 35 and Sec. 36, Twp. 65 N, R 1, W.B.M., NW $\frac{1}{4}$ and S $\frac{1}{2}$ Sec. 31, Twp. 65 N, R 1, E.B.M., Se $\frac{1}{4}$ and N $\frac{1}{2}$ Sec. 1, N $\frac{1}{2}$ Sec. 2, NE $\frac{1}{4}$ Sec. 3, and part of E $\frac{1}{2}$ Sec. 12 situate East of Kootenai River, Sec. 6, Sec. 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Sec. 8, Sec. 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Sec. 18, E $\frac{1}{2}$ Sec. 19, Sec. 20, W $\frac{1}{2}$ Sec. 28, Sec. 29, E $\frac{1}{2}$ Sec. 30, Sec. 32 and Sec. 33, Twp 64 N, R 1 E.B.M.

That the reasons for desiring to make such transfer are as follows:

That the Mission Creek Water Association, Inc., is a cooperative water users association formed for the purpose of furnishing domestic and livestock water to about forty users, more or less, including the parties who were the owners of the water rights hereinabove mentioned and transferred to the Association; that when the installation is made it will be to the advantage of the parties who have made the assignment of their water rights and others beneficially interested to have running water at all times and be assured of domestic water that is not contaminated and a constant supply during the winter and summer seasons.

That the Corporation intends to divert and convey all of said water to the tract of land last above described in the following manner, to-wit:

By diversion works and pipe line with separate tap outlets and meters, the said diversion being in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8, T 64 N, R 1 E.B.M., thence the north main pipe line runs through the E $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 7, SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 6, Twp. 64 N, R 1 E, E $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 31, Twp. 65 N, R 1 E, N $\frac{1}{2}$ S $\frac{1}{2}$ Sec. 36, N $\frac{1}{2}$ S $\frac{1}{2}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 35, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 34, Twp. 65 N, R 1 W., NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 2, Twp. 64 N, R 1 W, from the above described north main line branch lines run through SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 6, Twp. 64 N, R 1 E., E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 1 and E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 12, Twp. 64 N, R 1 W and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 7 Twp. 64 N, R 1 E, also through SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 8, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 7, E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 18, Twp. 64, N, R 1 E, also the south main line begins in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 8, Twp. 64 N, R 1 E, thence through W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 8, W $\frac{1}{2}$ E $\frac{1}{2}$ Sec. 17, W $\frac{1}{2}$ E $\frac{1}{2}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 20, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 33, T. 64 N, R 1 E., from the above described south main line branches run through SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ Sec. 20, also NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 29, also NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 29, also N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, also E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 32, and SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 33, Twp. 64 N, R 1 E.B.M., as set forth on the map attached hereto and made a part hereof; that

T-711

98-2037

no one will be injured by such transfer.

WHEREFORE, affiant and petitioner prays that the State Engineer of the State of Idaho issue to said Corporation the proper certificate authorizing such transfer in accordance with the provisions of Section 41-216 and related sections, I.C.A., as amended.

MISSION CREEK WATER ASSOCIATION, INC.

BY _____
President

Subscribed and sworn to by Clarence Guthrie, President of said Corporation on behalf of said Corporation this _____ day of _____, 1947.

Notary Public for Idaho, Residing at
Bonners Ferry, Idaho.

(Notarial Seal)

T-711
92-2037

August 7, 1947

Messrs. Wernette and Crowley
Old National Bank Building
Spokane, Washington

Attention: Mr. Edward J. Crowley.

Dear Mr. Crowley:

We acknowledge receipt of your letter of August 5th, enclosing protests of Fred and Mary Ahlborn and R. Lee Wallen, against the application of the Mission Creek Water Association for the transfer of certain water rights, and same will be given careful consideration.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FS

T-711
98-2037

WERNETTE & CROWLEY

ATTORNEYS AT LAW
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

③

N. D. WERNETTE
EDWARD J. CROWLEY

August 5, 1947

Mark R. Kulp
State Reclamation Engineer
State House
Boise, Idaho

Dear Mr. Kulp:

Enclosed in duplicate is protest of Fred Ahlborn and Mary Ahlborn and also enclosed in duplicate is protest of R. Lee Wallen to the proposed change of the point of diversion and place of use of 0.35 cubic feet per second of waters by Mission Creek Water Association. Will you kindly acknowledge receipt of the enclosed instruments.

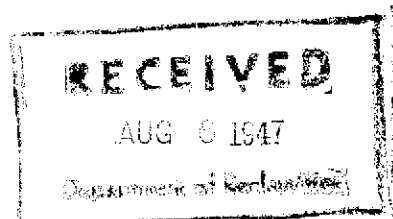
We have today forwarded duplicate originals of these protests to the Mission Creek Water Association at Copeland, Idaho.

Yours very truly,

WERNETTE & CROWLEY

EJC mk
Enc.

By *Edward J. Crowley*



T-711
98-2037

PROTEST OF R. LEE WALLEN

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,
MARK R. KULP, State Reclamation Engineer, and MISSION
CREEK WATER ASSOCIATION:

STATE OF WASHINGTON)
 ss
County of Spokane)

R. LEE WALLEN, being first duly sworn, upon oath deposes
and says: That he is the owner of the following described property,
to-wit:

The Northeast Quarter ($NE\frac{1}{4}$) and the Southeast
Quarter ($SE\frac{1}{4}$), and the East Half ($E\frac{1}{2}$) of the
Northwest Quarter ($NW\frac{1}{4}$), and the East Half ($E\frac{1}{2}$)
of the Southwest Quarter ($SW\frac{1}{4}$), of Section Five
(5), Township Sixty-four (64) North, Range One
(1), E.B.M., Boundary County, State of Idaho.

That the said R. Lee Wallen holds in conjunction with
Fred Ahlborn, permits No. 19597 and No. 19569, and storage permit
No. 746.

That affiant protests the proposed change of point of
diversion and place of use, as proposed in the notice of Mark R.
Kulp, State Reclamation Engineer, published on July 24, 1947 and
July 31, 1947, respectively, with respect to 0.35 cubic feet per
second of the waters of Mission Creek.

That affiant has read and knows the contents of the Protest
of Fred Ahlborn of this date, copy of which is attached hereto,
marked Exhibit "A" and by reference made a part of this Protest; and
affiant hereby expressly objects to said proposed change in point of
diversion and use of said waters of Mission Creek upon the same
grounds and for the same reasons as set forth in said Protest of
Fred Ahlborn dated August 5, 1947.

WHEREFORE, your affiant, as protestant, prays that the
proposed transfer and change in point of diversion be denied, and

T-711
98-2037

that in the event any hearing is had on this protest or any other protest to said transfer and proposed change in point of diversion which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the witnesses.

Your protestant further prays for such other and further relief as may be deemed just and equitable.

R. Lee Wallen

Subscribed and sworn to before me this 5th day of August, 1947.

W. D. Blingel

Notary Public in and for the State
of Washington, residing at Spokane.

*Wm. H. Crocker
and National Bank Bldg.
Spokane, Wash.
Attorneys for Protestant*

PROTEST OF FRED AHLBORN AND MARY AHLBORN

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO, MARK R. KULP, State Reclamation Engineer, and MISSION CREEK WATER ASSOCIATION:

STATE OF WASHINGTON)

County of Spokane)

ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says: That he and his wife, Mary Ahlborn, are the owners of the hereinafter described real property and the undersigned affiant, Fred Ahlborn, files this protest for and on his own behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do. The protest hereby made is a protest to the proposed change of the point of diversion and place of use of 0.35 cubic feet per second of the water of Mission Creek from the land upon which it is now used and effects License No. 17199 (George W. Ellis) and License No. 19582 (Peter De Boer) as shown by notice of proposed transfer of water right which was published in the Bonners Ferry Herald on July 24, 1947 and July 31, 1947, which notice was given by Mark R. Kulp, State Reclamation Engineer, reference to said notice being hereby specifically made.

That affiant, Fred Ahlborn, and his wife, Mary Ahlborn, own the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

The Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho.

That your affiant, Fred Ahlborn, and Mary Ahlborn, own water license No. 17844 and No. 17621, and permit No. 746, together with other licenses and permits issued under the laws of the State of Idaho, all of which licenses and permits effect either in part, or the whole of the hereinabove described lands. That the said rights, licenses and permits of affiant are all prior to the rights

T-711
98-2037

of Mission Creek Water Association, Inc. herein mentioned.

That affiant is informed and believes, and therefore alleges the fact to be that one-tenth (0.1) of a cubic foot per second of the waters proposed to be transferred by Mission Creek Water Association constitutes the identical one-tenth (0.1) of a cubic foot per second of the unappropriated water of said Mission Creek which is referred to in paragraph numbered 3 in the Department of Reclamation of the State of Idaho Decision of the State Reclamation Engineer entered in the Matter of the Proof of Application to Beneficial Use of Permit No. 17199 on the 24th day of January, 1946.

That affiant, acting as aforesaid, objects to and protests the proposed transfer and change in point of diversion by Mission Creek Water Association, for the following reasons and upon the following grounds:

That as shown by said Decision of the State Reclamation Engineer dated January 24, 1946, the use of said one-tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek is licensed to the Mission Creek Water Association, Inc. for domestic and irrigation purposes on and appurtenant to, five (5) acres in the Southwest Quarter (SW₄) of the Southeast Quarter (SE₄) of Section 8, Township 64 North, Range 1 East, B.M. That so long as said one-tenth (0.1) of a cubic foot per second of said waters is so used on said five (5) acres, all or a great part of said waters will by subterranean channels, drain back into said Mission Creek at a point or points above the point of diversion used by your affiant.

That where said one-tenth (0.1) of a cubic foot per second is now being used, the land upon which said water is applied is very porous sand, and gravelly soil, and is on a slope facing the south, which will drain into said Mission Creek at a point or points above the diversion point of your affiant. That if said waters are transferred as proposed in said notice, to the lands described in said notice, said waters will, for the most part, be used in a different watershed and will not percolate back into Mission Creek, thus depleting the waters of Mission Creek, to the detriment of your affiant.

Your affiant further states that in the event of the proposed transfer, the use of said one-tenth (0.1) of a cubic foot per second of said waters of Mission Creek on the lands to which it is proposed to transfer the same would be of such nature so as to violate the priority of affiant as to said waters, for the reason that the use of said waters on the increased acreage would immediately infringe upon the priority of affiant.

That affiant specifically protests and objects to the proposed change in point of diversion as disclosed by said notice and the petition of Mission Creek Water Association for the following reasons and upon the following grounds:

That affiant and said Mary Ahlborn own the following described lands in addition to the lands above described, to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, State of Idaho.

That the said Mission Creek Water Association according to said notice and petition proposes to change the point of diversion of the water described in said notice to a point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8).

That under permit No. 19597 of the State of Idaho, State Reclamation Engineer, a power site was granted to affiant and Mary Ahlborn and to R. Lee Wallen. That under the said permit the work on said power site does not have to be completed until on or before March 5, 1950, and affiant and R. Lee Wallen have completed the work which was to be done under said permit prior to September 5, 1947. That if the point of diversion of said water described in said notice is changed to said point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eight (8), the rights of affiant and R. Lee Wallen will be materially damaged and interfered with in that the pipe in diverting the water if so changed would interfere with the construction of a power plant and the use of said lands of Fred Ahlborn and R. Lee Wallen as a power site and the removal of water from said stream at said point would materially cut down the efficiency of any power plant placed on said power site.

That if said point of diversion is changed as proposed, the

rights of R. Lee Wallen and affiant and Mary Ahlborn will be further affected and damaged for the following further reasons:

That affiant and the said R. Lee Wallen own and have a right to a reservoir which is located on the Northwest Quarter (NW₄) of the Southeast Quarter (SE₄) of Section Five (5), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, Idaho. That if the Mission Creek Water Association is permitted to change its point of diversion to the point where it proposes to have it changed in the said Northeast Quarter (NE₄) of the Northeast Quarter (NE₄) of said Section Eight (8), the taking of said water from said Mission Creek at said proposed changed point of diversion will deplete the waters that are kept in said reservoir causing them to become stagnant, all to the damage and detriment of affiant and said R. Lee Wallen.

That the point where affiant and the said R. Lee Wallen have a right to divert their water and now divert water is above the proposed new point of diversion of Mission Creek Water Association and the point at where the water flows back into Mission Creek out of said reservoir is below the proposed new point of diversion. That the taking of said water at said new proposed point of diversion will undoubtedly deplete the stream.

That the rights which affiant and the said R. Lee Wallen have in the use of said water of Mission Creek and said reservoir are covered by said permit No. 746 and also by permit No. 19569.

That affiant has heretofore filed a protest based on a notice issued by said State Reclamation Engineer on February 7 and March 6, 1947 respectively and pursuant to said protest an order was made by said State Reclamation Engineer dated May 19, 1947 adjudicating that said protest was valid as to said Peter DeBoer under license No. 19582. That your affiant reserves all rights under said decision of May 19, 1947 insofar as the denial for transfer of the Peter DeBoer License No. 19582 is concerned.

That your affiant for the foregoing reasons protests and objects to the change in the point of diversion and use as proposed by the Mission

Creek Water Association, Inc. as to the George W. Ellis License No. 17199 as well as for said Peter DeBoer License No. 19362 for the foregoing reasons.

WHEREFORE your affiant, as protestant, acting as aforesaid, prays that the proposed transfer and change of point of diversion be denied and that in the event any hearing is had on this protest or any other protest, to said transfer and proposed change in point of diversion which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the Witnesses.

Your protestant further prays for such other and further relief as may be deemed just and equitable.

W. DeBoer
Subscribed and sworn to before me this 5th day of August, 1947.

W. D. Hazel
Notary Public in and for the State
of Washington, residing at Spokane

WERNETTE & CROWLEY
Attorneys for Protestants
810 Old Natl Bank Bldg.
Spokane, Spokane County,
Washington

T-711

98-2037

PROTEST OF R. LEE WALLER

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,
MARK R. KULP, State Reclamation Engineer, and MISSION
CREEK WATER ASSOCIATION:

STATE OF WASHINGTON)
 ss
County of Spokane)

R. LEE WALLER, being first duly sworn, upon oath deposes
and says: That he is the owner of the following described property,
to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) and the Southeast
Quarter (SE $\frac{1}{4}$), and the East Half (E $\frac{1}{2}$) of the
Northwest Quarter (NW $\frac{1}{4}$), and the East Half (E $\frac{1}{2}$)
of the Southwest Quarter (SW $\frac{1}{4}$), of Section Five
(5), Township Sixty-four (64) North, Range One
(1), R.B.M., Boundary County, State of Idaho.

That the said R. Lee Waller holds in conjunction with
Fred Ahlborn, permits No. 19597 and No. 19569, and storage permit
No. 746.

That affiant protests the proposed change of point of
diversion and place of use, as proposed in the notice of Mark R.
Kulp, State Reclamation Engineer, published on July 24, 1947 and
July 31, 1947, respectively, with respect to 0.35 cubic feet per
second of the waters of Mission Creek.

That affiant has read and knows the contents of the Protest
of Fred Ahlborn of this date, copy of which is attached hereto,
marked Exhibit "A" and by reference made a part of this Protest; and
affiant hereby expressly objects to said proposed change in point of
diversion and use of said waters of Mission Creek upon the same
grounds and for the same reasons as set forth in said Protest of
Fred Ahlborn dated August 5, 1947.

WHEREFORE, your affiant, as protestant, prays that the
proposed transfer and change in point of diversion be denied, and

T-711

98-2037

that in the event any hearing is had on this protest or any other protest to said transfer and proposed change in point of diversion which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the witnesses.

Your protestant further prays for such other and further relief as may be deemed just and equitable.

R Lee Wallen

Subscribed and sworn to before me this 5th day of August, 1947.

W. D. Blingel

Notary Public in and for the State
of Washington, residing at Spokane.

PROTEST OF FRED AHLBORN AND MARY AHLBORN

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO, MARK R. KULP, State Reclamation Engineer, and MISSION CREEK WATER ASSOCIATION:

STATE OF WASHINGTON)
County of Spokane) ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says: That he and his wife, Mary Ahlborn, are the owners of the hereinafter described real property and the undersigned affiant, Fred Ahlborn, files this protest for and on his own behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do. The protest hereby made is a protest to the proposed change of the point of diversion and place of use of 0.35 cubic feet per second of the water of Mission Creek from the land upon which it is now used and effects License No. 17199 (George W. Ellis) and License No. 19582 (Peter De Boer) as shown by notice of proposed transfer of water right which was published in the Bonners Ferry Herald on July 24, 1947 and July 31, 1947, which notice was given by Mark R. Kulp, State Reclamation Engineer, reference to said notice being hereby specifically made.

That affiant, Fred Ahlborn, and his wife, Mary Ahlborn, own the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

The Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho.

That your affiant, Fred Ahlborn, and Mary Ahlborn, own water license No. 17844 and No. 17621, and permit No. 746, together with other licenses and permits issued under the laws of the State of Idaho, all of which licenses and permits effect either in part, or the whole of the hereinabove described lands. That the said rights, licenses and permits of affiant are all prior to the rights

T-719

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of Mission Creek Water Association, Inc. herein mentioned.

That affiant is informed and believes, and therefore alleges the fact to be that one-tenth (0.1) of a cubic foot per second of the waters proposed to be transferred by Mission Creek Water Association constitutes the identical one-tenth (0.1) of a cubic foot per second of the unappropriated water of said Mission Creek which is referred to in paragraph numbered 3 in the Department of Reclamation of the State of Idaho Decision of the State Reclamation Engineer entered in the Matter of the Proof of Application to Beneficial Use of Permit No. 17199 on the 24th day of January, 1946.

That affiant, acting as aforesaid, objects to and protests the proposed transfer and change in point of diversion by Mission Creek Water Association, for the following reasons and upon the following grounds:

That as shown by said Decision of the State Reclamation Engineer dated January 24, 1946, the use of said one-tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek is licensed to the Mission Creek Water Association, Inc. for domestic and irrigation purposes on and appurtenant to, five (5) acres in the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 8, Township 64 North, Range 1 East, B.M. That so long as said one-tenth (0.1) of a cubic foot per second of said waters is so used on said five (5) acres, all or a great part of said waters will by subterranean channels, drain back into said Mission Creek at a point or points above the point of diversion used by your affiant.

That where said one-tenth (0.1) of a cubic foot per second is now being used, the land upon which said water is applied is very porous sand, and gravelly soil, and is on a slope facing the south, which will drain into said Mission Creek at a point or points above the diversion point of your affiant. That if said waters are transferred as proposed in said notice, to the lands described in said notice, said waters will, for the most part, be used in a different watershed and will not percolate back into Mission Creek, thus depleting the waters of Mission Creek, to the detriment of your affiant.

Your affiant further states that in the event of the proposed transfer, the use of said one-tenth (0.1) of a cubic foot per second of said waters of Mission Creek on the lands to which it is proposed to transfer the same would be of such nature so as to violate the priority of affiant as to said waters, for the reason that the use of said waters on the increased acreage would immediately infringe upon the priority of affiant.

That affiant specifically protests and objects to the proposed change in point of diversion as disclosed by said notice and the petition of Mission Creek Water Association for the following reasons and upon the following grounds:

That affiant and said Mary Ahlborn own the following described lands in addition to the lands above described, to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, State of Idaho.

That the said Mission Creek Water Association according to said notice and petition proposes to change the point of diversion of the water described in said notice to a point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8).

That under permit No. 19597 of the State of Idaho, State Reclamation Engineer, a power site was granted to affiant and Mary Ahlborn and to R. Lee Wallen. That under the said permit the work on said power site does not have to be completed until on or before March 5, 1950, and affiant and R. Lee Wallen have completed the work which was to be done under said permit prior to September 5, 1947. That if the point of diversion of said water described in said notice is changed to said point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eight (8), the rights of affiant and R. Lee Wallen will be materially damaged and interfered with in that the pipe in diverting the water if so changed would interfere with the construction of a power plant and the use of said lands of Fred Ahlborn and R. Lee Wallen as a power site and the removal of water from said stream at said point would materially cut down the efficiency of any power plant placed on said power site.

That if said point of diversion is changed as proposed, the

T-711

rights of R. Lee Wallen and affiant and Mary Ahlborn will be further affected and damaged for the following further reasons:

That affiant and the said R. Lee Wallen own and have a right to a reservoir which is located on the Northwest Quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Five (5), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, Idaho. That if the Mission Creek Water Association is permitted to change its point of diversion to the point where it proposes to have it changed in the said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eight (8), the taking of said water from said Mission Creek at said proposed changed point of diversion will deplete the waters that are kept in said reservoir causing them to become stagnant, all to the damage and detriment of affiant and said R. Lee Wallen.

That the point where affiant and the said R. Lee Wallen have a right to divert their water and now divert water is above the proposed new point of diversion of Mission Creek Water Association and the point at where the water flows back into Mission Creek out of said reservoir is below the proposed new point of diversion. That the taking of said water at said new proposed point of diversion will undoubtedly deplete the stream.

That the rights which affiant and the said R. Lee Wallen have in the use of said water of Mission Creek and said reservoir are covered by said permit No. 746 and also by permit No. 19569.

That affiant has heretofore filed a protest based on a notice issued by said State Reclamation Engineer on February 7 and March 6, 1947 respectively and pursuant to said protest an order was made by said State Reclamation Engineer dated May 19, 1947 adjudicating that said protest was valid as to said Peter DeBoer under license No. 19582. That your affiant reserves all rights under said decision of May 19, 1947 insofar as the denial for transfer of the Peter DeBoer License No. 19582 is concerned.

That your affiant for the foregoing reasons protests and objects to the change in the point of diversion and use as proposed by the Mission

T-111

Creek Water Association, Inc. as to the George W. Ellis License No. 17199 as well as for said Peter DeBoer License No. 19582 for the foregoing reasons.

WHEREFORE your affiant, as protestant, acting as aforesaid, prays that the proposed transfer and change of point of diversion be denied and that in the event any hearing is had on this protest or any other protest, to said transfer and proposed change in point of diversion which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the Witnesses.

Your protestant further prays for such other and further relief as may be deemed just and equitable.

George W. Ellis

Subscribed and sworn to before me this 5th day of August, 1947.

M. J. Shugel
Notary Public in and for the State
of Washington, residing at Spokane

Wernette & Cooney

Attorneys for Protestants
810 Old Natl Bank Bldg.
Spokane, Spokane County,
Washington

T-711

98-2087

PROTEST OF FRED AHLBORN AND MARY AHLBORN

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO, MARK R. KULP, State Reclamation Engineer, and MISSION CREEK WATER ASSOCIATION;

STATE OF WASHINGTON)
County of Spokane) ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says: That he and his wife, Mary Ahlborn, are the owners of the hereinafter described real property and the undersigned affiant, Fred Ahlborn, files this protest for and on his own behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do. The protest hereby made is a protest to the proposed change of the point of diversion and place of use of 0.35 cubic feet per second of the water of Mission Creek from the land upon which it is now used and effects License No. 17199 (George W. Ellis) and License No. 19582 (Peter De Boer) as shown by notice of proposed transfer of water right which was published in the Bonners Ferry Herald on July 24, 1947 and July 31, 1947, which notice was given by Mark R. Kulp, State Reclamation Engineer, reference to said notice being hereby specifically made.

That affiant, Fred Ahlborn, and his wife, Mary Ahlborn, own the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

The Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho.

That your affiant, Fred Ahlborn, and Mary Ahlborn, own water license No. 17844 and No. 17621, and permit No. 746, together with other licenses and permits issued under the laws of the State of Idaho, all of which licenses and permits effect either in part, or the whole of the hereinabove described lands. That the said rights, licenses and permits of affiant are all prior to the rights

T-711
98-2037

of Mission Creek Water Association, Inc. herein mentioned.

That affiant is informed and believes, and therefore alleges the fact to be that one-tenth (0.1) of a cubic foot per second of the waters proposed to be transferred by Mission Creek Water Association constitutes the identical one-tenth (0.1) of a cubic foot per second of the unappropriated water of said Mission Creek which is referred to in paragraph numbered 3 in the Department of Reclamation of the State of Idaho Decision of the State Reclamation Engineer entered in the Matter of the Proof of Application to Beneficial Use of Permit No. 17199 on the 24th day of January, 1946.

That affiant, acting as aforesaid, objects to and protests the proposed transfer and change in point of diversion by Mission Creek Water Association, for the following reasons and upon the following grounds:

That as shown by said Decision of the State Reclamation Engineer dated January 24, 1946, the use of said one-tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek is licensed to the Mission Creek Water Association, Inc. for domestic and irrigation purposes on and appurtenant to, five (5) acres in the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 8, Township 64 North, Range 1 East, B.M. That so long as said one-tenth (0.1) of a cubic foot per second of said waters is so used on said five (5) acres, all or a great part of said waters will by subterranean channels, drain back into said Mission Creek at a point or points above the point of diversion used by your affiant.

That where said one-tenth (0.1) of a cubic foot per second is now being used, the land upon which said water is applied is very porous sand, and gravelly soil, and is on a slope facing the south, which will drain into said Mission Creek at a point or points above the diversion point of your affiant. That if said waters are transferred as proposed in said notice, to the lands described in said notice, said waters will, for the most part, be used in a different watershed and will not percolate back into Mission Creek, thus depleting the waters of Mission Creek, to the detriment of your affiant.

Your affiant further states that in the event of the proposed transfer, the use of said one-tenth (0.1) of a cubic foot per second of said waters of Mission Creek on the lands to which it is proposed to transfer the same would be of such nature so as to violate the priority of affiant as to said waters, for the reason that the use of said waters on the increased acreage would immediately infringe upon the priority of affiant.

That affiant specifically protests and objects to the proposed change in point of diversion as disclosed by said notice and the petition of Mission Creek Water Association for the following reasons and upon the following grounds:

That affiant and said Mary Ahlborn own the following described lands in addition to the lands above described, to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, State of Idaho.

That the said Mission Creek Water Association according to said notice and petition proposes to change the point of diversion of the water described in said notice to a point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Eight (8).

That under permit No. 19597 of the State of Idaho, State Reclamation Engineer, a power site was granted to affiant and Mary Ahlborn and to R. Lee Wallen. That under the said permit the work on said power site does not have to be completed until on or before March 5, 1950, and affiant and R. Lee Wallen have completed the work which was to be done under said permit prior to September 5, 1947. That if the point of diversion of said water described in said notice is changed to said point in said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eight (8), the rights of affiant and R. Lee Wallen will be materially damaged and interfered with in that the pipe in diverting the water if so changed would interfere with the construction of a power plant and the use of said lands of Fred Ahlborn and R. Lee Wallen as a power site and the removal of water from said stream at said point would materially cut down the efficiency of any power plant placed on said power site.

That if said point of diversion is changed as proposed, the

rights of R. Lee Wallen and affiant and Mary Ahlborn will be further affected and damaged for the following further reasons:

That affiant and the said R. Lee Wallen own and have a right to a reservoir which is located on the Northwest Quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Five (5), Township Sixty-Four (64) North, Range One (1), E.B.M., Boundary County, Idaho. That if the Mission Creek Water Association is permitted to change its point of diversion to the point where it proposes to have it changed in the said Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eight (8), the taking of said water from said Mission Creek at said proposed changed point of diversion will deplete the waters that are kept in said reservoir causing them to become stagnant, all to the damage and detriment of affiant and said R. Lee Wallen.

That the point where affiant and the said R. Lee Wallen have a right to divert their water and now divert water is above the proposed new point of diversion of Mission Creek Water Association and the point at where the water flows back into Mission Creek out of said reservoir is below the proposed new point of diversion. That the taking of said water at said new proposed point of diversion will undoubtedly deplete the stream.

That the rights which affiant and the said R. Lee Wallen have in the use of said water of Mission Creek and said reservoir are covered by said permit No. 746 and also by permit No. 19569.

That affiant has heretofore filed a protest based on a notice issued by said State Reclamation Engineer on February 7 and March 6, 1947 respectively and pursuant to said protest an order was made by said State Reclamation Engineer dated May 19, 1947 adjudicating that said protest was valid as to said Peter DeBoer under license No. 19582. That your affiant reserves all rights under said decision of May 19, 1947 insofar as the denial for transfer of the Peter DeBoer License No. 19582 is concerned.

That your affiant for the foregoing reasons protests and objects to the change in the point of diversion and use as proposed by the Mission

Creek Water Association, Inc. as to the George W. Ellis License No. 17199 as well as for said Peter DeBoer License No. 19582 for the foregoing reasons.

WHEREFORE your affiant, as protestant, acting as aforesaid, prays that the proposed transfer and change of point of diversion be denied and that in the event any hearing is had on this protest or any other protest, to said transfer and proposed change in point of diversion which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the Witnesses.

Your protestant further prays for such other and further relief as may be deemed just and equitable.

Ed DeBoer

Subscribed and sworn to before me this 5th day of August, 1947.

M. Klingel

Notary Public in and for the State
of Washington, residing at Spokane

Wm. H. Crowley

Attorneys for Protestants
810 Old Natl Bank Bldg.
Spokane, Spokane County,
Washington

T-711
98-2037

Bonners Ferry Herald

T-711

July 24-1947 98-2037

PAGE FIVE

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th day of

HUGHES
Board of

E $\frac{1}{2}$ Section 30, Sections 32 and
33, Twp. 64 North, Range 1 East,
B. M.
With point of diversion in the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township
64 North, Range 1 East, B. M.
And that at 10:00 o'clock A. M.,
on August 7, 1947, at Room 107 State
House, Boise, Idaho, before the State
Reclamation Engineer, or his auth-

orized agent, the opportunity will
be given to any and all persons to
appear and present, for his consider-
ation, any reason or reasons why a
certificate should not be issued au-
thorizing such transfer.

MARK R. KULP,
State Reclamation Engineer.
First publication July 24, 1947.
Last publication July 31, 1947.

W. H. CHAMBERLIN,
Village Clerk.
Publish July 24, 1947.

NOTICE OF PROPOSED TRANS- FER OF WATER RIGHT

Notice is hereby given that Mis-
sion Creek Water Association, Inc.,
of Copeland, Idaho, has applied to
the State Reclamation Engineer of
the State of Idaho for a certificate
authorizing it to change the point
of diversion and place of use of
0.35 cubic foot per second of the
waters of Mission Creek, as follows:

License No. 17199 (George W.
Ellis), for 0.1 cubic foot per second,
with point of diversion in the NE $\frac{1}{4}$
SE $\frac{1}{4}$ Section 8, Twp. 64 North,
Range 1 East, B. M. Place of use
SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 North,
Range 1 East, B. M.

License No. 19582 (Peter DeBoer),
for 0.25 cubic foot per second, with
point of diversion in S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Section 17, Twp. 64 North, Range 1
East, B. M. Place of use SE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 17, Twp. 64 North, Range 1
East, B. M.

To be transferred to the fol-
lowing described tract: E $\frac{1}{2}$ Sec-
tion 34, Sections 35 and 36, Twp.
65 North, Range 1 West, B. M.;
NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp.
65 North, Range 1 East, B. M.;
SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$
Section 2, NE $\frac{1}{4}$ Section 3, Part
of E $\frac{1}{2}$ Section 12 situate East
of Kootenai River, Sections 6
and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8,
Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Sec-
tion 18, E $\frac{1}{2}$ Section 19, Section
20, W $\frac{1}{2}$ Section 28, Section 29,

BONNERS FERRY HERALD

BONNERS FERRY, IDAHO

July 23, 1947

State Reclamation Engineer
Department of Reclamation
Boise, Idaho

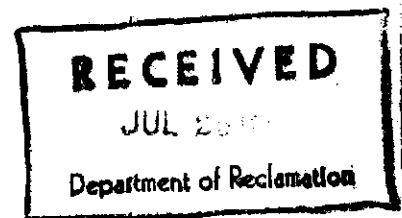
Dear Sir:

This will acknowledge your letter of July 18 enclosing a notice for publication to appear in our issues of July 24 and 31, 1947. A copy of the first publication will be mailed to you.

Yours very truly,

BONNERS FERRY HERALD

R. L. Myers
Co-Publisher



T-711

98-2037

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

BOISE

Date . July 18, 1947 . . .

Bonnars Ferry Herald

Bonnars Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to August 7, 1947 starting with your next issue the date set for hearing/ the expense of the publication to be paid by the applicant ~~applicant~~ State Department of Reclamation,

Boise, Idaho

to whom you should furnish proof of publication on or prior to the date set for hearing.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By
Chief Clerk

J-711
98-2037

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that Mission Creek Water Association, Inc., of Copeland, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing it to change the point of diversion and place of use of 0.55 cubic foot per second of the waters of Mission Creek, as follows:

License No. 17199 (George W. Ellis), for 0.1 cubic foot per second, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 North, Range 1 East, B.M. Place of use SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 North, Range 1 East, B.M.

License No. 19588 (Peter DeBoer), for 0.25 cubic foot per second, with point of diversion in S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B.M. Place of use SE $\frac{1}{4}$ NW $\frac{1}{4}$ ~~and SW $\frac{1}{4}$ NW $\frac{1}{4}$~~ Section 17, Twp. 64 North, Range 1 East, B.M.

To be transferred to the following described tract: E $\frac{1}{2}$ Section 34, Sections 35 and 36, Twp. 65 North, Range 1 West, B.M.; NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 North, Range 1 East, B.M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3. Part of E $\frac{1}{2}$ Section 12 situate east of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 North, Range 1 East, B.M.

With point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 64 North, Range 1 East, B. M.

And that at 10:00 o'clock A. M., on August 7, 1947, 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 present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP

State Reclamation Engineer

T-711
98-2037

APPLICATION FOR TRANSFER OF WATER RIGHT

STATE OF IDAHO)
 : ss.
County of Boundary)

CLARENCE GUTHRIE, being first duly sworn, deposes and says:

That he is President of Mission Creek Water Association, Inc., an Idaho Corporation, lawfully organized and existing; that affiant is of legal age, a citizen of the United States and of the State of Idaho and that his Post office address and ~~that~~ of said Corporation is Copeland, County of Boundary, State of Idaho.

That said Corporation is the owner and entitled to use certain water rights bearing the priority dates and particularly described as follows:

George W. Ellis, Permit No. 17199, for 0.1 cubic feet per second of the waters of Mission Creek with priority date of July 17, 1938, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East Boise Meridian.

Peter DeBoer, License No. 19582, for 0.25 cubic feet per second of the waters of Mission Creek with priority date of December 26, 1944, with point of diversion in the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 17, Township 64 North, Range 1 East Boise Meridian.

That affiant is the representative of the said Corporation which has become the owner of said water rights in the following manner; by assignment, copies of which are on file with the Department of Reclamation.

That the water under the George W. Ellis right is now diverted from Mission Creek with the point of diversion hereinabove specified and conducted through open ditch for use upon the E $\frac{1}{2}$ SW $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East Boise Meridian; that the water under the Peter DeBoer right is now diverted from Mission Creek with the point of diversion hereinabove specified and conducted through pipe for use upon the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 17, Township 64 North, Range 1 East Boise Meridian, as shown on the map attached hereto and of this affidavit made a part; that affiant and petitioner desires to abandon the use of all of said water upon the above described land and to convey and use the same upon the following tract situate, lying and being in the County of Boundary, State of Idaho, to-wit:

E $\frac{1}{2}$ Sec. 34, Sec. 35 and Sec. 36, Twp. 65 N, R 1, W.B.M., NW $\frac{1}{4}$ and S $\frac{1}{2}$ Sec. 31, Twp. 65 N, R 1, E.B.M., SE $\frac{1}{4}$ and N $\frac{1}{2}$ Sec. 1, N $\frac{1}{2}$ Sec. 2, NE $\frac{1}{4}$ Sec. 3, and part of E $\frac{1}{2}$ Sec. 12 situate East of Kootenai River, Sec. 6, Sec. 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Sec. 8, Sec. 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Sec. 18, E $\frac{1}{2}$ Sec. 19, Sec. 20, W $\frac{1}{2}$ Sec. 28, Sec. 29, E $\frac{1}{2}$ Sec. 30, Sec. 32 and Sec. 33, Twp 64 N, R 1 E.B.M.

That the reasons for desiring to make such transfer are as follows:

That the Mission Creek Water Association, Inc., is a cooperative water users association formed for the purpose of furnishing domestic and livestock water to about forty users, more or less, including the parties who were the owners of the water rights hereinabove mentioned and transferred to the Association; that when the installation is made it will be to the advantage of the parties who have made the assignment of their water rights and others beneficially interested to have running water at all times and be assured of domestic water that is not contaminated and a constant supply during the winter and summer seasons.

That the Corporation intends to divert and convey all of said water to the tract of land last above described in the following manner, to-wit:

By diversion works and pipe line with separate tap outlets and meters, the said diversion being in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8, T 64 N, R 1 E.B.M., thence the north main pipe line runs through the E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 8, NE $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 7, SE $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 6, Twp. 64 N, R 1 E, E $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 31, Twp. 65 N, R 1 E, N $\frac{1}{2}$ S $\frac{1}{2}$ Sec. 36, N $\frac{1}{2}$ S $\frac{1}{2}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 35, SE $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 34, Twp. 65 N, R 1 W., NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 2, Twp. 64 N, R 1 W, from the above described north main line branch lines run through SW $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 6, Twp. 64 N, R 1 E., E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 1 and E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 12, Twp. 64 N, R 1 W and NW $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 7 Twp. 64 N, R 1 E, also through SW $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 8, SW $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 7, E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 18, Twp. 64, N, R 1 E, also the south main line begins in the NW $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 8, Twp. 64 N, R 1 E, thence through W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 8, W $\frac{1}{2}$ E $\frac{1}{2}$ Sec. 17, W $\frac{1}{2}$ E $\frac{1}{2}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 20, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 29, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 33, T. 64 N, R 1 E., from the above described south main line branches run through SW $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ Sec. 20, also NW $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 29, also NW $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 29, also N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 29, also E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 32, and SW $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 33, Twp. 64 N, R 1 E.B.M., as set forth on the map attached hereto and made a part hereof; that

T-711

98-2037

no one will be injured by such transfer.

WHEREFORE, affiant and petitioner prays that the State Engineer of the State of Idaho issue to said Corporation the proper certificate authorizing such transfer in accordance with the provisions of Section 41-216 and related sections, I.C.A., as amended.

MISSION CREEK WATER ASSOCIATION, INC.

BY Clarence Guthrie
President

Subscribed and sworn to by Clarence Guthrie, President of said Corporation
on behalf of said Corporation this 27th day of Jan, 1947.

[Signature]
Notary Public for Idaho, Residing at
Bonners Ferry, Idaho.

(Notarial Seal)

T-711

98-2037

July 16, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

On June 23th, 1947, we received a letter from attorneys for the protestants in regard to the recent application of the Mission Creek Water Association, Inc., for transfer of water and change of point of diversion, stating that the published notice failed to mention the intention to change the point of diversion, and for said reason they had not had an opportunity to protest the change in point of diversion.

This, of course, affects the validity of the order and certificate of transfer; so an opinion was requested from the Attorney General as to the procedure for correcting same.

On July 7th we received a letter from his office stating that it was probably best for all concerned to enter an order setting aside the proceedings, and permit you to institute proceedings over again.

Accordingly, we have issued an Order voiding same, copy of which is enclosed herewith.

We will re-advertise at our own expense, and make a decision and order that conform to the statutes.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

CC to Wernette & Crowley
W. N. Young

T-711

98-2037

S T A T E O F I D A H O

DEPARTMENT OF RECLAMATION

In the Matter of the Application of)
)
MISSION CREEK WATER ASSOCIATION,)
of Copeland, Idaho)
)
For a Transfer in Point of Diversion and)
Place of Use of 0.35 cubic foot per second)
of the waters of Mission Creek, a tributary)
of the Kootenai located in Boundary County)

ORDER VOIDING PARTIAL
TRANSFER ORDER OF MAY 19, 1947
AND CERTIFICATE OF WATER RIGHT
TRANSFERRED RIGHT NO. 711

WHEREAS, The Mission Creek Water Association, Inc., in February, 1947, made application for a change in place of use and point of diversion of the waters covered in Licenses Nos. 17199 and 19582; and,

WHEREAS, Such application was advertised in published notice, and later a decision rendered in connection therewith, and my order of partial transfer issued; and,

WHEREAS, It was later discovered that the published notice did not comply with the statute in regard to Section 41-216 as amended in 1943, but rather to this section as written before the amendment; and,

WHEREAS, Said error makes this order of partial transfer issued on May 19, 1947, in the above mentioned case, illegal and subject to attack:

NOW, THEREFORE, The decision and order in the case of Application for Transfer of Water Right by the Mission Creek Water Association, Inc., is, on account of said error, rescinded, and the Certificate of Water Right, Transferred Right no. 711, is declared null and void.

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 16th day of July, A. D. 1947.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

T-711

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OFFICE OF THE

ATTORNEY GENERAL

STATE OF IDAHO

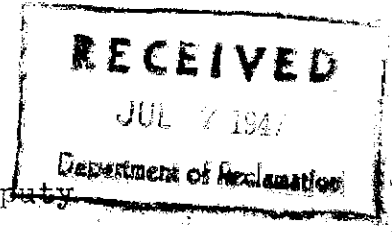
ROBERT AILSHIE, Attorney General

BOISE

July 2, 1947

J. R. SMEAD
ASSISTANT

Mr. Mark R. Kulp
State Reclamation Engineer
B U I L D I N G



Attention: Mr. E. N. Humphrey, Deputy
Reclamation Engineer

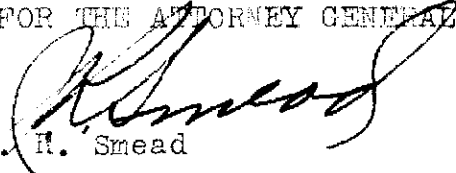
Dear Sir:

Your inquiry concerning the application of Mission Creek Water Association of Copeland, Idaho for authorization to change certain points of diversion of water from Mission Creek, in Boundary County, and the proceedings had pursuant thereto, has been given considerable attention. After our discussion of the matter and a consideration of the letter received on behalf of certain other water users it is the thought that probably the notice which was published as provided by law was somewhat misleading and would probably be held so by the courts with the result that the Order permitting such change of points of diversion would likewise be held invalid.

The 1943 amendment, Chapter 53, of Section 41-216, I.C.A. specifically provided that such a notice shall state that the application is for a change of point of diversion if such be the fact. Inadvertently, the old form of notice was used, which states merely that the application is for authorization to transfer the use of the water from land upon which it is presently in use to some other land. It is our belief that it is permissible and probably the best for all concerned to enter an Order setting aside the proceedings already had and if the applicants desire, institute a new proceeding in which an appropriate notice will be prepared and published.

Very truly yours,

FOR THE ATTORNEY GENERAL


J. R. Smead

Assistant Attorney General

JRS:bc

T-711
98-2037

July 2, 1947

Mr. Mark R. Kulp
State Reclamation Engineer
B U I L D I N G

Attention: Mr. E. M. Humphrey, Deputy
Reclamation Engineer

Dear Sir:

Your inquiry concerning the application of Mission Creek Water Association of Copeland, Idaho for authorization to change certain points of diversion of water from Mission Creek, in Boundary County, and the proceedings had pursuant thereto, has been given considerable attention. After our discussion of the matter and a consideration of the letter received on behalf of certain other water users it is the thought that probably the notice which was published as provided by law was somewhat misleading and would probably be held so by the courts with the result that the Order permitting such change of points of diversion would likewise be held invalid.

The 1943 amendment, Chapter 53, of Section 41-216, I.C.A. specifically provided that such a notice shall state that the application is for a change of point of diversion if such be the fact. Inadvertently, the old form of notice was used, which states merely that the application is for authorization to transfer the use of the water from land upon which it is presently in use to some other land. It is our belief that it is permissible and probably the best for all concerned to enter an Order setting aside the proceedings already had and if the applicants desire, institute a new proceeding in which an appropriate notice will be prepared and published.

Very truly yours,

FOR THE ATTORNEY GENERAL

J. R. Smead

Assistant Attorney General

JRS:bo

COPY

T-711

98-2037

July 2, 1947

Messrs. Wernette & Crowley
Old National Bank Building
Spokane, 8, Washington

Attention- Mr. N. D. Wernette

Dear Mr. Wernette:

Herewith enclosed is a copy of the application of the Mission Creek Water Association, Inc., for transfer of water right, which you requested in your letter dated June 23rd.

We have filled in your check in the amount of \$2.00 for cost of same, and enclose Departmental Receipt No. 20034 therefor.

We have taken your protest to the Attorney General, and if in his opinion a mistake was made by this department, steps will be taken to rectify same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:A
Encls.

T-711

98-2037

July 1, 1947

Honorable Robert Ailshie
Attorney General
B U I L D I N G

Attention: Mr. J. R. Smead.

Dear Mr. Smead:

We are submitting to you for an opinion as to whether or not the published notice in the case of transfer of waters covered in the Ellis License No. 17199 was substantially in accord with the 1945 amendment of Section 41-216.

If the notice was not in accord with the requirements and decision has been rendered permitting both transfer of use and change in point of diversion, what is necessary to rectify the mistake?

In order that you may fully understand we are attaching a copy of a letter recently received from Wernette and Crowley of Spokane.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:FS
Encl.

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Elmer.

ask attorney
if advertisement
was substantially
as in 1965 Amendment

How to remedy omission
if necessary to remedy.

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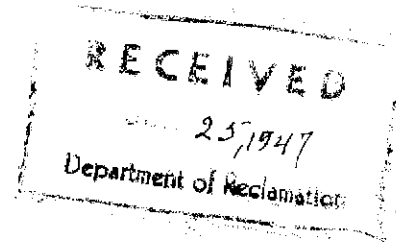
WERNETTE & CROWLEY

ATTORNEYS AT LAW
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

N. D. WERNETTE
EDWARD J. CROWLEY

(8)

June 23, 1947



Honorable Mark R. Kulp
State Reclamation Engineer
Statehouse
Boise, Idaho

My Dear Mr. Kulp:

On the 19th day of May, 1947, you rendered your written decision "In the Matter of the Protest against the proposed transfer of water right by the Mission Creek Water Association." In your written decision you granted the petition of the Mission Creek Water Association in part and denied the petition in part, and we note from the decision that you state as follows:

"Permission was requested to move the point of diversion up stream and use the water in a domestic supply system for a group of approximately forty farm families."

Then you further state in the decision that notice was published in the Bonners Ferry Herald February 27th, and March 6, 1947, etc.

We would like to call your particular attention, Mr. Kulp, to the notice of the proposed transfer of water right that was published in the Bonners Ferry Herald on February 27th, and March 6, 1947, in that the notice so published merely stated as follows:

"Notice is hereby given that Mission Creek Water Association of Copeland, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of 0.35 cubic foot per second of the water of Mission Creek from the land upon which it is now used, i.e. (here is described the land in detail);

and then further in the notice it describes the land to which the use of the water is to be transferred. Then further in the notice it fixes the time and place of the hearing of the application, to give any person interested an opportunity to be heard.

The matter was taken up by us, Mr. Kulp, as to this hearing, before the time set, and we filed our protest on behalf of Fred Ahlborn which was signed and sworn to on the 12th day of March, 1947. We assumed from the notice that no question was involved

T-711

98-2037

Honorable Mark R. Kulp
June 23, 1947
Page 2

whatsoever as far as the hearing was concerned except as to the right to transfer the use of the water from certain described premises to other certain described premises, and we did not know that the question of changing the point of diversion upstream from the place it was originally located was in question at all or that any attempt was being made to change the point of diversion; and we did not ascertain the fact that the matter of changing the point of diversion was taken into consideration by you or your department until we got your decision under date of May 19, 1947.

We then got in touch with Mr. Ahlborn and just recently have found out that by changing the point of diversion as to George W. Ellis, License No. 17199, from where it was originally located, will be very injurious and detrimental to Mr. Fred Ahlborn in that it substantially and materially interferes with another water right that he has upstream from the original point of diversion, with regard to George W. Ellis, License No. above given; that it does him serious injury in view of the fact that most of the water from Mission Creek, long previous to the time that this application was made, was taken out of the original creek by canal constructed by Mr. Ahlborn and other parties who have water rights upstream, and sufficient water is run into a lake used as a reservoir, and then from the lake back to the creek by canal constructed by Ahlborn and other parties; and considerable improvements have been made on the lake in order to make it satisfactory as a reservoir.

Now as we understand it, where the Mission Creek Water Association expects to place the new point of diversion of the 0.1 cubic foot per second which is owned by them under the George W. Ellis Licence No. 17199, is between the place where the water is taken out of the creek and ran by canal to the lake reservoir and the place where the water re-enters the creek by canal as above stated. In other words, changing this point of diversion is a very serious proposition to Mr. Ahlborn and will cause him serious damage if the point of diversion is changed.

We call your attention to what the notice provided that was published with reference to the hearing in regard to the above application, and we would like to call your attention to the Idaho Session Laws of 1945, Chapter 63, on page 80, as to what the law requires the notice to contain, to be given with reference to a hearing of this kind where the applicant intends to change the point of diversion. You will note that the law specifically provides that in the event there is to be a hearing on the question of changing the place of diversion that the notice shall state that the applicant has applied to the State Reclamation Engineer of the State of Idaho "for a certificate authorizing him to change the point of diversion," etc.

T-711

98-2037

Honorable Mark R. Kulp
June 23, 1947
Page 3

Now the notice that was published in the instant case did not set forth in any manner or form the fact that the applicants were applying for a certificate authorizing it to change the point of diversion, but it was merely set forth in the notice that application was made to transfer the use of the water from certain described land to other described land; and the result was that we did not know that the question of changing the point of diversion was in question at all until we received your decision, and consequently, we were not in a position to meet the question and show that by changing the point of diversion serious injury would result to Mr. Ahlborn, as well as to other parties.

It would seem that this notice with reference to proceedings such as are in question here by comparison would take the same place as the service of a summons and complaint in an ordinary civil action so as to give the parties interested an opportunity to meet the issues and defend; and in an ordinary civil case if the summons and complaint is not properly served on the defendant or does not set forth the facts that the law requires it to do, the Court has no jurisdiction; and the question arises as to whether or not your department had jurisdiction to permit the changing of the point of diversion without the proper notice having been given, especially in view of the fact that Mr. Ahlborn, as well as Wallen, have good ground to object for that being done, as it damages and injures them very substantially.

As to the other matter -- that is, with reference to changing the place of the use of the water from one described property to another described property, I think there is no question but what you had jurisdiction and had a right to decide the issue, and we are not making any complaint with reference to that; but we don't believe under the circumstances you had jurisdiction to pass on the question of changing the point of diversion.

We thought it best to call your attention to this matter at this time, as we only found it out just a few days ago. Probably the matter can be fixed up in some form or other in your office, either by way of further notice and an opportunity for us to be heard, or by entering an amended or supplementary order and decision eliminating the question entirely with regard to changing the point of diversion because there was no notice given that that matter was pending before you.

We would like to hear from you promptly because if this matter cannot be fixed up in your office, it will necessitate an

T-711

98-2037

Honorable Mark R. Kulp
June 23, 1947
Page 4

appeal, which we are trying to avoid if possible, because we haven't any complaint to make with reference to the questions that you decided with regard to the change of the use of the water, except as to the question of changing the point of diversion.

Will you also kindly furnish us with a certified copy of the petition that was filed by the Mission Creek Water Association in connection with this matter. We are enclosing herewith our blank check not to exceed \$10.00, and we hereby authorize you to write in the check whatever the amount is, as we assume that it will not exceed \$10.00.

We hope to hear from you promptly in connection with this matter, because the time expires for an appeal by the middle of July.

Respectfully yours,

WERNETTE & CROWLEY

By 

NDW ac

enc. ck.

T-111
98-2037

June 10, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We enclose certificate of transfer No. 711, for 0.1 of a cubic foot per second of water from Mission Creek issued in accordance with the decision of the State Reclamation Engineer, a copy of which was sent you under date of May 31, 1947.

We also enclose Departmental receipt No. 19977 in the amount of \$3.50 which includes \$2.00 fee for license No. 17199, \$0.50 fee for recording the assignment of Permit No. 19582 and \$1.00 recording fee for transfer No. 711.

Since your check enclosed in your letter of February 8, 1947, was in the amount of \$4.50 there is a refund of \$1.00 which we enclose in currency.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

Encl.
CC. to W. N. Young.

T-711
98-2037

30 P 1

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

MISSION CREEK WATER ASSOCIATION)
of Copeland, Idaho)

ORDER GRANTING PARTIAL TRANSFER
by the State Reclamation Engi-
neer.

For a Transfer in Point of Diversion and)
Place of Use of 0.35 cubic foot per second)
of the waters of Mission Creek, a tributary)
of the Kootenai located in Boundary County.)

WHEREAS, On the 5th day of February, 1947, the Mission Creek Water Association, of Copeland, Idaho, made application for change in point of diversion and place of use of 0.35 of a cubic foot per second of water from Mission Creek, from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B. M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 North, Range 1 W., B. M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M. SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6, and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

WHEREAS, Notice was published in the Bonners Ferry Herald, as required by law, on the days of February 27 and March 6, 1947; and,

WHEREAS, Protest was legally made by Fred and Mary Ahlborn; and,

WHEREAS, A field examination was proper and lawfully made and,

WHEREAS, A decision regarding this transfer was made by the State Reclamation Engineer in this matter

NOW THEREFORE, IT IS HEREBY ORDERED as follows: First the application, as it pertains to License No. 17199, is allowed and the change in point of diversion and place of use as requested is so ordered, to-wit:

Amount 0.1 cubic foot of water per second.

Change in point of diversion from-NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 N, Rge. 1 E., B. M. to-NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 64 North Range 1 E.
Change in place of use from SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, Twp. 64 N. Rge. 1 East to--E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B. M., NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M., SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

Second, the Application as it pertains to License No. 19582 is denied, and the change is not ordered.

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 19th day of May, A. D., 1947.

Mark R Kulp

MARK R. KULP
State Reclamation Engineer

T-711

98-2037

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 711

THIS IS TO CERTIFY THAT MISSION CREEK WATER ASSOCIATION, INC., through its president, Clarence Guthrie, of Copeland, Idaho, is the owner of and using a certain water right in Mission Creek, in the amount of 0.1 cubic feet per second bearing date of priority of July 17, 1938, by virtue of License No. 17199 issued to Mission Creek Water Association, Inc., by the State Reclamation Engineer, dated February 15, 1947, and being appurtenant to the following described land to-wit:

SW $\frac{1}{2}$ SE $\frac{1}{4}$ Section 8
Township 64 North, Range 1 East, B.M.

That said license has been entered in the records of the Department of Reclamation of the State of Idaho in Volume 7 of License 1, Page 4328.

And that now, upon the application of Mission Creek Water Association, Inc., of Copeland, Idaho, for the transfer of 0.1 of a cubic foot per second of said water, made before the State Reclamation Engineer, of the State of Idaho and said application having been granted, the right to the use of 0.1 of a cubic foot per second of the waters of Mission Creek, upon the above described land is hereby abandoned, and the lands upon which said water right is to be used;

And to which the water right HEREBY CONFIRMED, shall become appurtenant by this Certificate, for irrigation and domestic purposes are described as follows to-wit:

E $\frac{1}{2}$ Section 34; Sections 35 and 36
Township 65 North, Range 1 West, B.M.

NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31
65 North, Range 1 East, B. M.

SE $\frac{1}{4}$ and N $\frac{1}{2}$, Section 1;
N $\frac{1}{2}$ Section 2;
NE $\frac{1}{4}$ Section 3;
Part of East-half, Section 12, situate East of Kootenai River;
Sections 6 and 7;
NW $\frac{1}{4}$ and S $\frac{1}{2}$, Section 8
Section 17
N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18
E $\frac{1}{2}$ Section 19
Section 20
W $\frac{1}{2}$ Section 28
Section 29
E $\frac{1}{2}$ Section 30
Sections 32 and 33
Township 64 North, Range 1 East, B. M.

T-711

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(2)

That the amount is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

0.1 cubic feet per second, bearing date of priority of July 17, 1938.

That the water right hereby transferred has heretofore been conducted from Mission Creek to the first above described land, with point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 64 North, Range 1 East, B. M.

That the water right hereby transferred will hereafter be conducted to the last above described lands with point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, Township 64 North, Range 1 East, B. M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described, 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 7th day of June, A. D., 1947.

Mark R Kulp

MARK R. KULP
State Reclamation Engineer

T-711

98-2037

May 21, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We enclose copy of the decision of the State Reclamation Engineer in connection with the application of the Mission Creek Water Association for change in point of diversion and place of use under License Nos. 17199 and 19582, assigned to said association by George W. Ellis and Peter LeBoerd respectively.

A certificate authorizing such change in connection with license No. 17199 will be issued within a few days.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

Encl.

C C to W. N. Young

T-711
98-2037

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE No. 73
RESIDENCE TELEPHONE 88-J

April 4, 1947

Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

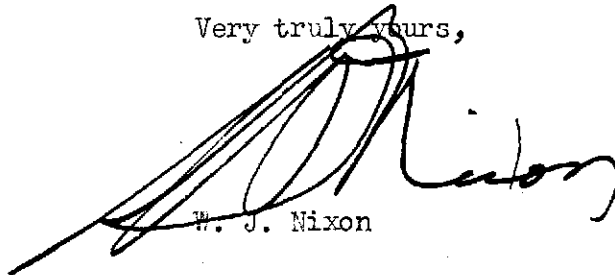
Re: Mission Creek Water Association
Permit No. 17199
License No. 19482
Change of Point of Diversion

Dear Mr. Kulp:

It has just come to my attention that Fred Ahlborn filed a protest against changing the point of diversion. That the changing of the point of diversion of the one tenth (1/10) of a cubic foot would interfere with his power right.

It does not appear reasonable or just that such a feeble objection should even be recognized when you consider that it will merely delay some forty families from getting household water. I am wondering if I should have my clients file a reply to Mr. Ahlborn's protest or whether your practice is to set the matter for public hearing. I will be glad to have your advice in this matter.

Very truly yours,



W. J. Nixon

WJN:aw



T-711

98-2037

May 14, 1947

Mr. W. N. Young
State WF Specialist
Farmers Home Administration
424 Baird Building
Boise, Idaho

Dear Mr. Young:

The application for change in point of diversion and place of use of certain waters of Mission Creek, by the Mission Creek Water Association, has been decided, and order will be issued within a week granting a partial transfer.

As you know, Fred and Mary Ahlborn protested the transfer. The decision in this case is briefly as follows:

Transfer as requested under the Ellis license No. 17199 will be granted, and so ordered.

Under the Peter DeBoer license No. 19582 the protest will be sustained and order for transfer will not be issued.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

R: A

T-711
98-2037

UNITED STATES DEPARTMENT OF AGRICULTURE

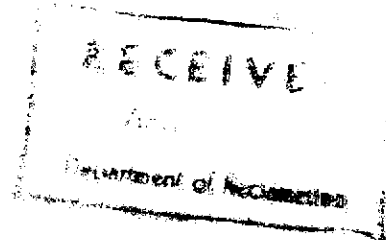
~~RURAL SECURITY ADMINISTRATION~~

FARMERS HOME ADMINISTRATION

424 Baird Building

IN REPLY REFER TO

Boise, Idaho
April 28, 1947
Box 2797



Mr. Mark R. Kulp
State Reclamation Engineer
State House
Boise, Idaho

Subject: MISSION CREEK WATER ASSOCIATION

Dear Mr. Culp:

Will you please advise this office the status of the above Association's water transfer.

It is my understanding that the rights of Ellis and DeBoer were assigned to this Association and the problem now seems to be the establishment of the proper point of diversion.

It was also my understanding that a representative of your office was to make a survey of this proposal and report to you. Will you please advise us of your findings.

Yours very truly,


W. N. Young
State WF Specialist

WNY/vg
cc/Geo.R.Ames

7-11
98-2037

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

MISSION CREEK WATER ASSOCIATION)
of Copeland, Idaho)

ORDER GRANTING PARTIAL TRANSFER
by the State Reclamation Engi-
neer.

For a Transfer in Point of Diversion and)
Place of Use of 0.35 cubic foot per second)
of the waters of Mission Creek, a tributary)
of the Kootenai located in Boundary County.)

WHEREAS, On the 5th day of February, 1947, the Mission Creek Water Association, of Copeland, Idaho, made application for change in point of diversion and place of use of 0.35 of a cubic foot per second of water from Mission Creek, from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B. M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 North, Range 1 W., B. M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M. SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

WHEREAS, Notice was published in the Bonners Ferry Herald, as required by law, on the days of February 27 and March 6, 1947; and,

WHEREAS, Protest was legally made by Fred and Mary Ahlborn; and,

WHEREAS, A field examination was proper and lawfully made and,

WHEREAS, A decision regarding this transfer was made by the State Reclamation Engineer in this matter

NOW THEREFORE, IT IS HEREBY ORDERED as follows: First the application, as it pertains to License No. 17199, is allowed and the change in point of diversion and place of use as requested is so ordered, to-wit:

Amount 0.1 cubic foot of water per second.

Change in point of diversion from NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, Twp. 64 N., Rge. 1 E., B. M. to NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8, Township 64 North Range 1 E.
Change in place of use from SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, Twp. 64 N. Rge. 1 East to--E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B. M., NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M., SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B. M.

Second, the Application as it pertains to License No. 19582 is denied, and the change is not ordered.

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 19th day of May, A. D., 1947.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

T-711

98-2037

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Protest
against the proposed transfer
of water right by the Mission
Creek Water Association.

)
)
)
)
DECISION OF THE
STATE RECLAMATION ENGINEER.

On February 5th, 1947, the Mission Creek Water Association made application for change in point of diversion and place of use of water secured under the George W. Ellis License No. 17199 and Peter DeBoer, License No. 19582 in the amounts of 0.1 cubic foot per second and 0.25 cubic foot per second respectively.

Permission was requested to move the point of diversion up stream and use the water in a domestic supply system for a group of approximately forty farm families.

Notice of the proposed transfer was duly advertised for two consecutive issues in the Bonners Ferry Herald, on February 27th, and March 6, 1947, stating that a hearing would be held on the 14th day of March, 1947, on said application in the office of the State Department of Reclamation in the State House, in Boise, Idaho.

Protest against the granting of said application was received from Fred and Mary Ahlborn by the Department of Reclamation on March 13, 1947, to be entered in the records, against said application during the hearing.

Field investigation of the protest was made by the Deputy State Reclamation Engineer on April 8th, 1947.

In the matter of the Peter DeBoer License No. 19582, it was found that moving the point of diversion from below, to above the Ahlborn point of diversion, would decrease the amount of water available for Ahlborn's use. The protest, therefore, is valid and petition for transfer of same will be denied.

In the matter of the George W. Ellis License No. 17199, point of diversion and place of use are and always have been situated above, Ahlborn's point of diversion and place of use. Contention that the waters will percolate through and return to Mission Creek is rejected and that part of the protest dismissed. An order making transfer in place of use and change in point of diversion will be issued.

Any one feeling himself aggrieved by reason of this decision may appeal therefrom to the District Court of Boundary County within sixty days.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 19th day of May, A. D., 1947.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

T-711

98-2037

May 23, 1947

Messrs. Wernette and Crowley
Old National Bank Building
Spokane, 8, Washington

Dear Sirs:

We enclose herewith, a copy of the decision
of the State Reclamation Engineer in the mat-
ter of the protests of Fred and Mary Ahlborn
against the granting of transfer of a water right
as applied for by the Mission Creek Water
Association.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

Encl.

T-711
98-2037

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water diverted? Mission Creek.

Where is the diversion point located? Ellis Ditch, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, Twp. 64 North, Range 1 E. B.M; DeBoer pipe line, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 17, Twp. 64 North, Range 1 E.B.M.

Through what ditch is it now conducted? George W. Ellis Ditch and Peter DeBoer pipe line.

How much land is now irrigated by the water sought to be transferred? None

Give the description. None.

What is the total amount of water in inches, or second feet, dedicated to said land?
0.35 cubic feet per second.

What kind of crops are being raised? Hay and garden.

How much water per acre is now required to irrigate said land? Only gardens irrigated at present time.

What will be the effect on the land now irrigated, if the use of water on it is discontinued? The effect will be negligible since there is sufficient rainfall for hay crops and there will be water furnished this land for gardens.

Give location of new point of diversion, if change is to be made. NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 8, Twp. 64 North, Range 1 E.B.M.

Through what ditch will it be conducted after transfer? Mission Creek Water Association Pipe Line.

How much water will be required per acre to irrigate the land to which this water is transferred? The water is to be used as domestic and stock water.

Do you claim any other water right for the land from which you seek to abandon the use of this water? No.

If so, give amount, date and source. None.

Is there now any other water right for the land to which you seek to make this transfer?
If so, give amount, date and source. Not to knowledge of this affiant.

MISSION CREEK WATER ASSOCIATION, INC.

BY Clarence Guthrie
President.

T-711

92-2037

CLASS OF SERVICE DESIRED	
DOMESTIC	CABLE
TELEGRAM ☒	ORDINARY
DAY LETTER	URGENT RATE
SERIAL	DEFERRED
OVERNIGHT TELEGRAM	NIGHT LETTER
SPECIAL SERVICE	SHIP RADIOGRAM

Patrons should check class of service desired; otherwise the message will be transmitted as a telegram or ordinary cablegram.

COPY OF WESTERN UNION TELEGRAM

April 7, 1947

Mr. E. N. Humphrey
C/o Ethel Humphrey
Millwood, Washington

Inspect Mission Creek Water Association re Ahlborn protest STOP Contact
W. J. Nixon, Bonners Ferry.

MARK R. KULP

Prepay
Charge Dept. of Reclamation

State Reclamation Engineer

T-711
98-2037

March 13, 1947

Messrs. Wernette and Crowley
Old National Bank Building
Spokane, Washington

Attention Mr. Edward J. Crowley

Dear Mr. Crowley:

We acknowledge receipt of your letter of March 11 enclosing protests of Fred and Mary Ahlborn against the proposed transfer of water rights by the Mission Creek Water Association.

This protest has been placed on file and will be given due consideration.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy. W. Thompson
Supervisor of Water Distribution

A:FA

T-711
98-2037

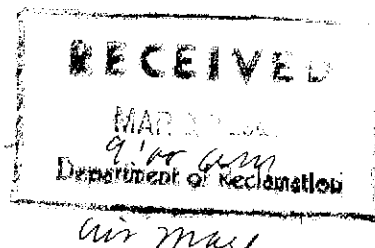
WERNETTE & CROWLEY

ATTORNEYS AT LAW
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

N. D. WERNETTE
EDWARD J. CROWLEY

⑧

March 11, 1947



Mr. Mark R. Kulp
State Reclamation Engineer
Statehouse
Boise, Idaho

Dear Mr. Kulp:

In accordance with the telephone conversation had yesterday with Mr. Wernette of this firm, we enclose in duplicate, Protest of Fred Ahlborn and Mary Ahlborn to the proposed transfer of water rights by Mission Creek Water Association. Will you kindly acknowledge receipt of the enclosed instruments.

We have today forwarded duplicate original of this Protest to the Mission Creek Water Association at Copeland, Idaho.

Yours very truly,

WERNETTE & CROWLEY

[Handwritten signature]
BY

EJC ac

Encs.

T-711
92-2037

P R O T E S T

To THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,
MARK R. KULP, State Reclamation Engineer, and MISSION CREEK WATER
ASSOCIATION:

STATE OF WASHINGTON)
County of Spokane) ss

FRED AHLBORN, being first duly sworn, upon oath deposes and says: That he and his wife, MARY AHLBORN, are the owners of the hereinafter described real property, and the undersigned affiant, Fred Ahlborn, files this protest for and on his own behalf and for and on behalf of his wife, Mary Ahlborn, and is authorized so to do. The protest hereby made is a protest to the proposed transfer of the use of 0.35 cubic feet per second of the water of Mission Creek from the land upon which it is now used, i. e.:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B.M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B.M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B.M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{2}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B.M.

~~to the following described tract;~~ the notice of which proposed transfer of water right was published in the Bonners Ferry Herald on February 27 and March 6, 1947 respectively, and which notice was given by Mark R. Kulp, State Reclamation Engineer.

That affiant, Fred Ahlborn, and his wife, Mary Ahlborn,
own the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17) Township Sixty-Four (64) North, Range One (1), E.B.M. and

T-711

98-2037

The Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter $NW\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho.

together with other lands.

That your affiant, Fred Ahlborn, and Mary Ahlborn, own water licenses No. 17844 and No. 17621, and permit No. 746, together with other licenses and permits issued under the laws of the State of Idaho, all of which licenses and permits effect either in part, or the whole of the hereinabove described lands. That the said rights, licenses and permits of affiant are all prior to the rights of Mission Creek Water Association, Inc. herein mentioned.

That affiant is informed and believes, and therefore alleges the fact to be that One tenth (0.1) of a cubic foot per second of the waters proposed to be transferred by Mission Creek Water Association constitutes the identical One tenth (0.1) of a cubic foot per second of the unappropriated water of said Mission Creek which is referred to in paragraph numbered 3. in the Department of Reclamation of the State of Idaho Decision of the State Reclamation Engineer entered in the Matter of the Proof of Application to Beneficial Use of Permit No. 17199 on the 24th day of January, 1946.

That affiant, acting as aforesaid, objects to and protests the proposed transfer, as aforesaid, by Mission Creek Water Association, for the following reasons and upon the following grounds:

That as shown by said Decision of the State Reclamation Engineer dated January 24, 1946, the use of said One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek is licensed to the Mission Creek Water Association, Inc. for domestic and irrigation purposes on and appurtenant to, five (5) acres in the Southwest Quarter ($SW\frac{1}{4}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section 8, Township 64 North, Range 1 East, B.M. That so long as said One tenth (0.1) of a cubic foot per second of said waters is so used on said

five (5) acres, all or a great part of said waters will by subterranean channels, drain back into said Mission Creek at a point or points above the point of diversion used by your affiant.

That where said One tenth (0.1) of a cubic foot per second is now being used, the land upon which said water is applied is very porous sand, and gravelly soil, and is on a slope facing the south, which will drain into said Mission Creek at a point or points above the diversion point of your affiant. That if said waters are transferred as proposed in said notice, to the lands described in said notice, said waters will, for the most part, be used in a different watershed and will not percolate back into Mission Creek, thus depleting the waters of Mission Creek, to the detriment of your affiant.

Your affiant further states that in the event of the proposed transfer, the use of said One tenth (0.1) of a cubic foot per second of said waters of Mission Creek on the lands to which it is proposed to transfer the same would be of such nature so as to violate the priority of affiant as to said waters, for the reason that the use of said waters on the increased acreage would immediately infringe upon the priority of affiant.

WHEREFORE, your affiant, as protestant, prays that the proposed transfer be denied, and that in the event any hearing is had on this protest, or any other protest, to said transfer, which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the witnesses. Your protestant further prays for such other and further relief as may be deemed just and equitable.

Subscribed and sworn to before me this 12th day of March, 1947.

Wernette & Casady

Thomas M. Mott
Attorneys for Protestant
810 Old National Bank Bldg.
Spokane 8, Washington.

Edward J. Keady
Notary Public in and for the State
of Washington, residing at Spokane.

7-111
7-2007

P R O T E S T

TO THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,
MARK R. KULP, State Reclamation Engineer, and MISSION CREEK WATER
ASSOCIATION:

STATE OF WASHINGTON)

County of Spokane)

ss

FRED AHLBORN, being first duly sworn, upon oath deposes
and says: That he and his wife, MARY AHLBORN, are the owners of
the hereinafter described real property, and the undersigned affiant,
Fred Ahlborn, files this protest for and on his own behalf and for
and on behalf of his wife, Mary Ahlborn, and is authorized so to do.
The protest hereby made is a protest to the proposed transfer of the
use of 0.35 cubic feet per second of the water of Mission Creek from
the land upon which it is now used, i. e.:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17,
Twp. 64 North, Range 1 East, B.M. to the follow-
ing described tract E $\frac{1}{2}$ Section 34; Sections 35
and 36, Twp. 65 N., Range 1 W., B.M. NW $\frac{1}{4}$ and
S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B.M.;
SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3,
Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai
River, Sections 6 and 7, NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8,
Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19,
Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Sec-
tion 30, Sections 32 and 33, Twp. 64 N., Range 1
E., B.M.

~~to the following described tract~~ the notice of which proposed
transfer of water right was published in the Bonners Ferry Herald
on February 27 and March 6, 1947 respectively, and which notice was
given by Mark R. Kulp, State Reclamation Engineer.

That affiant, Fred Ahlborn, and his wife, Mary Ahlborn,
own the following described real property, to-wit:

The North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$)
of the Northwest Quarter (NW $\frac{1}{4}$) of Section Seven-
teen (17) Township Sixty-Four (64) North, Range
One (1), E.B.M. and

T-711
98-2037

The Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter NW $\frac{1}{4}$), Section Seventeen (17), Township Sixty-Four (64) North, Range One (1), E.B.M., less the right of way for highways and county roads, containing about forty acres more or less, all in Boundary County, State of Idaho.

together with other lands.

That your affiant, Fred Ahlborn, and Mary Ahlborn, own water licenses No. 17844 and No. 17621, and permit No. 746, together with other licenses and permits issued under the laws of the State of Idaho, all of which licenses and permits effect either in part, or the whole of the hereinabove described lands. That the said rights, licenses and permits of affiant are all prior to the rights of Mission Creek Water Association, Inc. herein mentioned.

That affiant is informed and believes, and therefore alleges the fact to be that One tenth (0.1) of a cubic foot per second of the waters proposed to be transferred by Mission Creek Water Association constitutes the identical One tenth (0.1) of a cubic foot per second of the unappropriated water of said Mission Creek which is referred to in paragraph numbered 3. in the Department of Reclamation of the State of Idaho Decision of the State Reclamation Engineer entered in the Matter of the Proof of Application to Beneficial Use of Permit No. 17199 on the 24th day of January, 1946.

That affiant, acting as aforesaid, objects to and protests the proposed transfer, as aforesaid, by Mission Creek Water Association, for the following reasons and upon the following grounds:

That as shown by said Decision of the State Reclamation Engineer dated January 24, 1946, the use of said One tenth (0.1) of a cubic foot per second of the unappropriated water of Mission Creek is licensed to the Mission Creek Water Association, Inc. for domestic and irrigation purposes on and appurtenant to, five (5) acres in the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 8, Township 64 North, Range 1 East, B.M. That so long as said One tenth (0.1) of a cubic foot per second of said waters is so used on said

five (5) acres, all or a great part of said waters will by subterranean channels, drain back into said Mission Creek at a point or points above the point of diversion used by your affiant.

That where said One tenth (0.1) of a cubic foot per second is now being used, the land upon which said water is applied is very porous sand, and gravelly soil, and is on a slope facing the south, which will drain into said Mission Creek at a point or points above the diversion point of your affiant. That if said waters are transferred as proposed in said notice, to the lands described in said notice, said waters will, for the most part, be used in a different watershed and will not percolate back into Mission Creek, thus depleting the waters of Mission Creek, to the detriment of your affiant.

Your affiant further states that in the event of the proposed transfer, the use of said One tenth (0.1) of a cubic foot per second of said waters of Mission Creek on the lands to which it is proposed to transfer the same would be of such nature so as to violate the priority of affiant as to said waters, for the reason that the use of said waters on the increased acreage would immediately infringe upon the priority of affiant.

WHEREFORE, your affiant, as protestant, prays that the proposed transfer be denied, and that in the event any hearing is had on this protest, or any other protest, to said transfer, which will require oral evidence, that such hearing be had at or near Bonners Ferry, Idaho, for the convenience of the witnesses. Your protestant further prays for such other and further relief as may be deemed just and equitable.

Subscribed and sworn to before me this 12th day of March, 1947.

Wernette Crowley

Shamus Malott

Attorneys for Protestant
810 Old National Bank Bldg.
Spokane 8, Washington.

Fred Albom

Edward J. Crowley
Notary Public in and for the State
of Washington, residing at Spokane.

T-711
92-2037

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that MISSION CREEK WATER ASSOCIATION of Copeland, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of 0.35 cubic foot per second of the water of Mission Creek from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B.M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B. M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3. Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{2}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64N., Range 1 E., B. M.

And that, on the 14th day of March, A. D., 1947 at 10:00 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 present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP
State Reclamation Engineer.
Publish Feb. 27 and March 6, 1947.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the

co-publisher

of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the

hereto attached notice; that the advertisement of

Mark R. Kulp, State Reclamation Engineer,

a Notice of Proposed Transfer of Water Right

Notice for Publication, a printed copy of which is attached hereto was pub-

lished in said newspaper and not in a supplement thereof two

consecutive issues, commencing with the issue dated Feb. 27

1947, and ending with the issue dated March, 1947.

R. L. Myers
Co-Publisher

Produced
Exhibit

Subscribed and sworn to before me this 16th day of

April

1947

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

T-711

98-2037

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE No. 73
RESIDENCE TELEPHONE 88-J

April 16, 1947

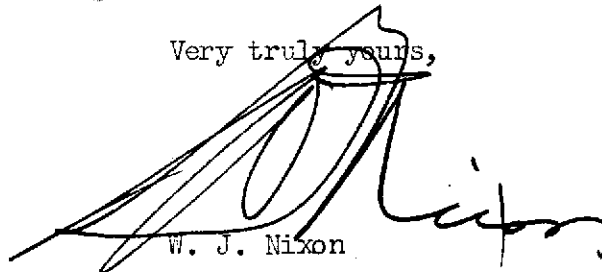
Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

Re: Mission Creek Water Association

Dear Sir:

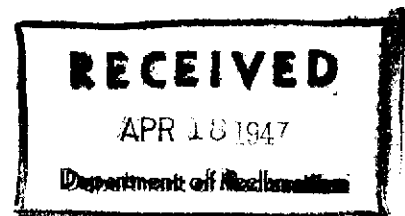
In accordance with your request I have secured the affidavit of publication of notice of change of point of diversion in the above entitled matter and I am enclosing the same herewith.

Very truly yours,



W. J. Nixon

WJN:aw



T-711
98-2037

C. A. Robins

April 11, 1947

Mr. W. J. Nixon
Attorney at Law
Bonners Ferry, Idaho

Dear Mr. Nixon:

We do not seem to have received the affidavit of publication of notice of the Mission Creek Water Association's application for change of point of diversion.

This is necessary to complete the records and if you have not received same, we suggest that you take the matter up with the Bonners Ferry Herald, who were instructed to send this affidavit to you upon completion of publication.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

T-711
98-2037

BONNERS FERRY HERALD

BONNERS FERRY, IDAHO

February 24, 1947



Mr. Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Dear Mr. Kulp:

This will acknowledge receipt of notice for publication for the Mission Creek Water association, which will be published in our issues of February 27 and March 6. A copy of the February 27 issue will be mailed to your office.

Yours very truly,

BONNERS FERRY HERALD

R. L. Myers

T-711

98-2037

Last publication March 13, 1947.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that MISSION CREEK WATER ASSOCIATION of Copeland, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of 0.35 cubic foot per second of the water of Mission Creek from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Twp. 64 North, Range 1 East, B.M. to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B. M. NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B. M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2, NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate East of Kootenai River, Sections 6 and 7, NW $\frac{1}{2}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20, W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64N., Range 1 E., B. M.

And that, on the 14th day of March, A. D., 1947 at 10:00 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 present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP

State Reclamation Engineer.

Publish Feb. 27 and March 6, 1947.

T-711 98-2037

National Forest Timber for Sale

Notice of Proposed Transfer of Water Right

Notice is hereby given that MISSION CREEK WATER ASSOCIATION
of Copeland, Idaho, has applied to the
State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of
0.35 cubic foot per second
of the water of Mission Creek
from the land upon which it is now used, i. e., SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17,
Twp. 64 North, Range 1 East, B.M.

to the following described tract E $\frac{1}{2}$ Section 34; Sections 35 and 36, Twp. 65 N., Range 1 W., B.M.
NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31, Twp. 65 N., Range 1 E., B.M.; SE $\frac{1}{4}$ and N $\frac{1}{2}$ Section 1, N $\frac{1}{2}$ Section 2,
NE $\frac{1}{4}$ Section 3, Part of E $\frac{1}{2}$ Section 12 situate east of Kootenai River, Sections 6 and 7,
NW $\frac{1}{4}$ and S $\frac{1}{2}$ Section 8, Section 17, N $\frac{1}{2}$ and SE $\frac{1}{4}$ Section 18, E $\frac{1}{2}$ Section 19, Section 20,
W $\frac{1}{2}$ Section 28, Section 29, E $\frac{1}{2}$ Section 30, Sections 32 and 33, Twp. 64 N., Range 1 E., B.M.

And that, on the 14th day of March, A. D., 19 47
at 10:00 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 present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP

State Reclamation Engineer.

T-711

98-2037

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

BOISE

Date . February 21, 1947.

Bonnors Ferry Herald

Bonnors Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to March 14, 1947 the date set for hearing, the expense of the publication to be paid by the applicant, Mission Creek Water Association, C/o W. J. Nixon, Attorney at Law, Bonnors Ferry, Idaho to whom you should furnish proof of publication on or prior to the date set for hearing.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

MARK R. BULP
State Reclamation Engineer

By

Roy W. Thompson
Supervisor of Water Distribution

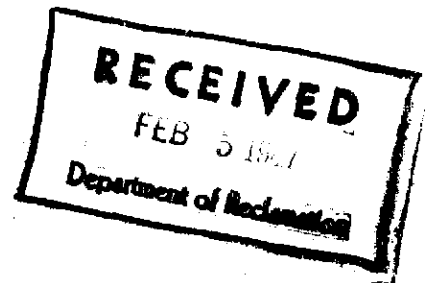
T-711

98-2037

W. J. NIXON
ATTORNEY AT LAW
BONNERS FERRY, IDAHO

OFFICE TELEPHONE NO. 73
RESIDENCE TELEPHONE 88-J

February 3, 1947



Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

Re: Change Points of Diversion
Mission Creek Water Association

Dear Mr. Kulp:

Find enclosed herewith application for change of diversion points of the water rights of George W. Ellis, Permit No. 17199, and Peter DeBoer, License No. 19582, together with maps.

I am also enclosing assignment by Peter DeBoer of his water right to the Mission Creek Water Association. I believe the assignment from George W. Ellis has been previously filed.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "W. J. Nixon".

W. J. Nixon

WJN:aw
encls.

T-711

98-2037