

OV 24 1983
2445

815

AFFIDAVIT OF PUBLICATION

DEC 9 1983

Department of Water Resources
Eastern District Office

E OF IDAHO,

ty of Bear Lake

ss.

Maria B. Nye
being duly sworn,

es and says:

it he is the Publisher of THE
3-EXAMINER, a weekly newspaper published at Mont-
pelier, in the County of Bear Lake and State of Idaho; and
said paper has been and is in general circulation in the
vicinity aforesaid, and in the vicinity of Montpelier; that the
advertisement, a copy of which is attached hereto, was pub-
lished in said newspaper once a week for 2 con-
secutive weeks in the regular and entire issue of said paper
during the period and time of publication, and was published
as a newspaper proper and not a supplement; that said
advertisement has been established and regularly published for more
than seventy-eight consecutive weeks prior to the date of
publication of said advertisement.

h notice was published in the issue beginning with

November 10, 1983, and ending
the issue of November 17, 1983
Maria B. Nye
b. 43.13

scribed and sworn to before me this 21st day
November, 1983

Notary Public, Residing at Montpelier, Idaho

Commission Expires Lifetime, 19

MICROFILMED

LEGAL NOTICE

OFFICE OF CLAIMS TO WATER RIGHTS

The following claim(s) have been filed on
water right(s) created by diversion and
beneficial use:

11-4290

HULME, MELVIN J.
15941 VIEWFIELD AVE., MONTE
SERENO, CA 95030
Source: BLOOMINGTON CREEK trib. to
BEAR RIVER
Priority Date: 05/01/1877
Diversion Pt: SWNE Sec 26 T 14S R 43E
Use: IRRIGATION (4.20 CFS)
In: NWNW SWNW Sec. 25 T 14S R 43E
SENE Sec. 26 T 14S R 43E FOR 47 ACRES

11-4295

LIBERTY PIPELINE INC.
OVID, ID 83260
Source: SPRING trib. to MILL CREEK
Priority Date: 03/25/1926
Diversion Pt: NWNW Sec. 08 T 13S R 43E
Use: DOMESTIC (0.50 CFS)
In: NWNW Sec. 08 T 13S R 43E

11-4294

LDS CHURCH
BERN WARD, BERN, ID 83220
Source: GROUNDWATER
Priority Date: 08/01/1953
Diversion Pt: NENE Sec 35 T 12S R 43E
Use: DOMESTIC (0.04 CFS)
In: NENE Sec 35 T 12S R 43E

11-4293

BIENZ, RAY &/or LOIS
BERN, ID 83220
Source: SPRING trib. to REDPINE CREEK
Priority Date: 09/09/1902
Diversion Pt: NENW Sec 24 T 12S R 43E
Use: STOCKWATER (0.02 CFS)
In: NENW Sec 24 T 12S R 43E

11-4292

BIENZ, RAY &/or LOIS
BERN, ID 83220
Source: RED PINE HOLLOW CREEK trib.
to SINKS
Priority Date: 09/09/1902
Diversion Pt: NENW Sec 24 T 12S R 43E
Use: STOCKWATER (0.02 CFS)
In: NENW Sec 24 T 12S R 43E

11-4291

HULME, MELVIN J.
15941 VIEWFIELD AVE., MONTE
SERENO, CA 95030
Source: SPRING trib. to DRY CREEK
Priority Date: 03/25/1884
Diversion Pt: SESW SWSW Sec 28 T 14S R
43E
Use: IRRIGATION (0.02 CFS)
DOMESTIC (0.02 CFS)
In: SWSW SESW Sec 28 T 14 S R 43E SENW
NESW Sec 27 T 14S R 43E FOR 2 ACRES.

Exceptions to a claim may be filed with the
Director, Dept. of Water Resources, 150
Shoup Ave., Shite 15, Idaho Falls, Idaho
83402.

KEN DUNN, Dir.

11-10, 11-17
69 LINES

Department of Water Resources
Eastern District Office

CLAIM TO A WATER RIGHT



The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

on that Liberty Pipe Line Inc. - George L. Yon
(Name of Claimant)
Ovid Idaho 83260 Telephone No. 945-2313
(Mailing Address) (Zip Code)

(1) Date of priority: (When was the water first applied to a beneficial use) **3-25-1926**

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>1/2</u>	Use <u>Domestic</u>	Period of Use From <u>Jan 1</u>	To <u>Dec 31</u>
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

(5) A) Point of diversion: (Location of point where water is diverted from its source)

change. 4" P.C.P. 80 ft Fall for 1/2 Mile

[illegible]

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

Culinary use for 5 Homes and a Church

(7) If you are claiming water as a member of an organization, list name of organization:

claiming water as a member of an organization, list name of organization:
Liberty Pipe Line Inc

58T138 R43c

A blank sheet of graph paper featuring a grid of solid lines forming large squares, with each large square further divided by dashed lines into four smaller quadrants. A small handwritten 'X' is located in the top-left corner of the first large square.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

George Lyon
(Claimant)

_____ , 1943

Child, Robert

Lifetime

2583 FOR DEPARTMENT USE ONLY

Received by CW Date 6-24-83 Exception filed by: _____ Forwarded to _____ Date _____
Prelim. check by Hurst Date 11/2/83 claimant by: _____
\$30.00 fee received by CW Date 7-6-83
Published in News Examiner # 29282 _____
Dates 11/10 - 11/17/83 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Liberty Pipeline Inc. - George Lyon
(Name of Claimant)
Ovid, Idaho 83260 Telephone No. 945-2373
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) 3-25-1926

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Spring tributary to Mill Creek

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)		(Both dates inclusive)	
				(Mo., Day)	(Mo., Day)
Quantity	<u>0.50 cfs</u>	Use	<u>Domestic</u>	Period of Use From <u>1-1</u>	To <u>12-31</u>
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To
Quantity		Use		Period of Use From	To

(4) 0.50 cfs TOTAL QUANTITY USED.
(cfs, af)

(5) A) Point of diversion: (Location of point where water is diverted from its source)
NW ¼ NW ¼, Sec. 8 Twp. 13S Rge. 43E B.M., County of Bear Lake
Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities; be as specific as possible. Describe any changes in the system and give the date of the change. 4" pipe 80 ft. fall for ½ mile

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13S	43E	8						X											

No. of acres

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:
Culinary use for 5 homes and a church

NOTE: Include here the type and number of stock watered:

(7) If you are claiming water as a member of an organization, list name of organization:
Liberty Pipeline Inc.

(8) Remarks _____

S8T13S R43E

X

Point of Diversion.

Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Bear Lake)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 5th day of January

George Lyon
(Claimant)

Notary Public for Idaho
Residing at Ovid, ID 83260

My commission expires Lifetime

Received by CW Date 6-24-83 Exception filed by: _____ Forwarded to _____ Date _____
 Prelim. check by HWJ Date 11-2-83 claimant by: _____
 \$30.00 fee received by CW Date 7-6-83 #29282
 Published in News Examiner
 Dates 11/10 & 11/17/83

OV 24 1983
2445

815

AFFIDAVIT OF PUBLICATION

DEC 9 1983

Department of Water Resources
Eastern District Office

E OF IDAHO,

ty of Bear Lake

SS.

Marie B. Nye
being duly sworn,

ses and says:

at he is the Publisher of THE
S-EXAMINER, a weekly newspaper published at Mont-
in the County of Bear Lake and State of Idaho; and
paper has been and is in general circulation in the
y aforesaid, and in the vicinity of Montpelier; that the
tisement, a copy of which is attached hereto, was pub-
in said newspaper once a week for 2 con-
ve weeks in the regular and entire issue of said paper
the period and time of publication, and was published
newspaper proper and not a supplement; that said
has been established and regularly published for more
seventy-eight consecutive weeks prior to the date of
ublication of said advertisement.

h notice was published in the issue beginning with

November 10, 1983, and ending

the issue of November 17, 1983

Marie B. Nye

11-13-83

scribed and sworn to before me this 31st day

November, 1983

Marie B. Nye

Notary Public, Residing at Montpelier, Idaho

ommission Expires Lifetime, 19

LEGAL N 445

CE OF CLAIMS TO WATER RIGHTS

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water right(s) created by diversion and
beneficial use:

11-4290

HULME, MELVIN J.
15941 VIEWFIELD AVE., MONTE
SERENO, CA 95030

Source: BLOOMINGTON CREEK trib. to
BEAR RIVER

Priority Date: 05/01/1977

Diversion Pt: SWNE Sec 26 T 14S R 43E

Use: IRRIGATION (4.20 CFS)

In: NWNW SWNW Sec. 25 T 14S R 43E

SENE Sec. 26 T 14S R 43E FOR 47 ACRES

11-4291

LIBERTY PIPELINE INC.

OVID, ID 83260

Source: SPRING trib. to MILL CREEK

Priority Date: 03/25/1926

Diversion Pt: NWNW Sec. 08 T 13S R 43E

use: DOMESTIC (0.50 CFS)

In: NWNW Sec. 08 T 13S R 43E

11-4294

LDS CHURCH

BERN WARD, BERN, ID 83220

Source: GROUNDWATER

Priority Date: 08/01/1933

Diversion Pt: NENE Sec 35 T 12S R 43E

Use: DOMESTIC (0.04 CFS)

In: NENE Sec 35 T 12S R 43E

11-4293

BIENZ, RAY &/or LOIS

BERN, ID 83220

Source: SPRING trib. to REDPINE CREEK

Priority Date: 09/09/1902

Diversion Pt: NENW Sec 24 T 12S R 43E

Use: STOCKWATER (0.02 CFS)

In: NENW Sec 24 T 12S R 43E

11-4292

BIENZ, RAY &/or LOIS

BERN, ID 83220

Source: RED PINE HOLLOW CREEK trib.
to SINKS

Priority Date: 09/09/1902

Diversion Pt: NENW Sec 24 T 12S R 43E

Use: STOCKWATER (0.02 CFS)

In: NENW Sec 24 T 12S R 43E

11-4291

HULME, MELVIN J.

15941 VIEWFIELD AVE., MONTE
SERENO, CA 95030

Source: SPRING trib. to DRY CREEK

Priority Date: 03/25/1884

Diversion Pt: SESW SWSW Sec 28 T 14S R
43E

Use: IRRIGATION (0.02 CFS)

DOMESTIC (0.02 CFS)

In: SWSW SESW Sec 28 T 14S R 43E SENW

NESW Sec 27 T 14S R 43E FOR 2 ACRES.

Exceptions to a claim may be filed with the
Director, Dept. of Water Resources, 150
Shoup Ave., Shite 15, Idaho Falls, Idaho
83402.

KEN DUNN, Dir.

11-10, 11-17
69 LINES

RECEIVED



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 22, 1994

VIA FACSIMILE TRANSMISSION

Hon. O. Lynn Brower
Judge of the Magistrate Division
Bear Lake County Courthouse
Paris, Idaho
FAX NO. (208) 945-2780

Re: Inquiry Regarding Mill Canyon North Canal Co., et al.

Dear Judge Brower:

Per your telephone inquiry of April 18th I have had staff in the Water Allocations Bureau of this department search the bureau's records for information regarding water rights held by the Mill Canyon North Canal Company, the Liberty Hillside Canal Company, and the Liberty Town or Townsite canal or ditch company. It appears that we have no significant information over and above what you yourself already have.

Our records do contain the original of the statutory claim for water right no. 11-04024, of which you already have a copy. The only additional information of substance in that file is a two sentence letter, dated April 19, 1969, from Albert Miller, the individual who signed the statutory claim, requesting the department to correct an error in the claim by substituting 36 cfs for 36 acre feet as the amount of water claimed. I note that that correction was made in section 3 a. of the statutory claim by handwritten notation.

The department has no other information that the Water Allocations Bureau could find regarding Mill Canyon North Canal Company. The department has no record of any other water rights claimed by it. The fact that Mill Canyon submitted a statutory claim to the department indicates that this water right has never been decreed in a water rights adjudication. There is no record that the department has ever issued a permit or licence for it. Essentially it is a water right that was established pursuant to what is generally referred to as the old doctrine of "constitutional" appropriation, by which one could establish a water right simply by diverting the water and putting it to beneficial use. However, if the water right was so created, and

Hon. O. Lynn Brower
April 22, 1994
Page 2

if it has not subsequently been abandoned, or forfeited by five years of continuous nonuse, it is likely still a valid existing right.

The Water Allocations Bureau could find no information about the "Liberty Town" listed as a claimant on the statutory claim. The only information it has regarding the Liberty Hillside Canal Company is the following reference in the bureau's list of water user organizations:

Liberty Hillside Canal Co.
c/o Glade Hymas
123 Church Rd.
Ovid, Idaho 83260

As a contact person, Mr. Hymas presumably ought to have additional information about the organization. The department has no record regarding any other water rights either Liberty Town or Liberty Hillside may possess.

The Water Allocation Bureau did check for other water rights from the same source as is claimed for no. 11-04024 (Mill Creek) and other water rights overlapping the claimed place of use of no. 11-04024. Attached is a copy of that overlap report. This is a computer generated report enumerating all other water rights listing a place of use within the same 40 acre quarter quarter section as contains acres listed as the place of use for No. 11-04024. For each of the rights found, allocations staff particularly checked the name of the claimant. No claimant listing for either Liberty Hillside or Liberty Town or Townsite was found. Likewise a general computer name search through the department records turned up no reference to either one, other than the listing mentioned in the previous paragraph. On the overlap report you will see some handwritten notations: The allocation agent who did the record search listed the claimant name and place of address for each overlap right that listed Mill Creek or Mill Canyon as the source of water.

The department's records list only three water rights having Mill Creek as the source: no. 11-04021, a statutory claim listing South Liberty Irrigation and Mfg. Co. as the claimant; no. 11-04024, the Mill Canyon North Canal Co. statutory claim; and no. 11-04067, a statutory claim in the name of Lee Hotchkiss. The department also has record of a statutory claim filed by Liberty Pipeline Inc., listing as its source a spring tributary to Mill Creek. Since the South Liberty Irrigation and Mfg. Co. claim lists a priority date (1885) that is senior to that of Mill Canyon North (1890), and since the Liberty Pipeline claim contains the word "Liberty" in it, I am enclosing a water right profile describing each of these two rights, as well as a profile

Hon. O. Lynn Brower
April 22, 1994
Page 3

for the Mill Canyon North water right. The information on the profile is identical to that contained in the notice of statutory claim itself.

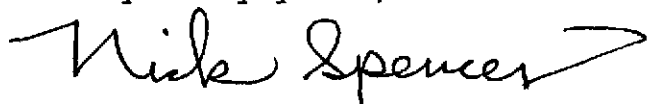
Regarding the fact that Liberty Hillside and Liberty Town were listed, apparently, as additional claimants on the Mill Canyon North statutory claim, the claim itself does not necessarily establish them as co-owners of that water right. The language of Idaho Code §§ 42-244 and 42-246 assigns very limited legal effect to statutory claims.

On the other hand, there is no law of which I am aware that precludes Liberty Hillside or Liberty Town from owning an undivided interest in the water right. Therefore, the fact that they are listed as additional claimants on the statutory claim indicates that they could be co-owners.

Since the department has no record of any of the three entities in question (Mill Canyon North, Liberty Hillside, and Liberty Town) owning any other water rights, the department would take the legal position that there are no other water rights in existence that they, or any of them, could own other than small domestic rights. Idaho Code §42-245 provides in essence that any unlicensed or undecreed water rights for which a statutory claim was not filed by June 30, 1990, is conclusively deemed to have been waived and relinquished. This provision has been superceded for water rights located within the geographic area encompassed in the Snake River Basin Adjudication; but Basin 11, the area in question here, is outside of the Snake River Basin. Therefore, the department would take the position that any other unlicensed or undecreed rights that might be claimed by any of the three have been relinquished by operation of that statute. You should be aware, however, that the constitutionality of Idaho Code §42-245 has never been tested in court, and there are both due process issues and concerns about whether it may violate provisions of Art. 15 of the Idaho Constitution that could be raised in a court challenge. Therefore it is uncertain at this time whether the department's position would prevail.

I recognize that all of this adds up to very little information that I am in fact providing you. However, it does appear to be all the information that the department has. Should you have any further questions please feel free to contact me.

Very truly yours,



NICHOLAS B. SPENCER
Deputy Attorney General

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

NOVEMBER 28, 1983

LIBERTY PIPELINE INC.

GVID ID 83260

RE: Claim No. 11-4295

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

RONALD D. CARLSON
Eastern Region Supervisor

Enclosure

MICROFILMED

RECEIVED
JAN 17 1984
Department of Water Resources

December 13, 1983

George Lyon
Dvid,
Idaho 83260

RE: Claim to a WaterRRight No. 11-4295

Dear Mr. Lyon:

Enclosed is a new claim form for Liberty Pipeline Inc. that we have prepared using information provided on the original form received 6/24/1983. We have prepared this duplicate claim because portions of the original were answered using pencil and as a notatized document, the claim should be completed in either ink or typed.

After signing the claim in the presence of a notary, please return it to this office. Your prompt attention to this matter will be appreciated.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:bp

Enclosure

RECEIVED
DEC 14 1983



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup — Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

November 29, 1983

RE: Claim to a Water Right No. 11-4290 HULME
11-4291 "
11-4292 BIENZ
11-4293 "
11-4295 LIBERTY PIPELINE
11-4294 LDS CHURCH

News Examiner
P.O. Box 278
Montpelier, ID 83254

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on November 10 and 17, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

RECEIVED

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: HWS

Right Number 11 4295 Applicant Liberty pipeline

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

Nov. 28, 1983

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received.
- ☒ Claim published correctly.
- ☒ Exceptions processed.

By Ernest Carlson Date Jan 11, 1984

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By AC Date 1/18/84

aw



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup - Suite 15
Idaho Falls, Idaho 83401
(208) 525-7161

June 28, 1983

Liberty Pipeline Inc.
c/o George Lyon
Ovid, Idaho 83260

Dear Claimant:

This office is in receipt of a Claim to a Water Right filed in your name. Please be advised that the claim cannot be formally receipted until the following information is provided:

- _____ Complete name.
- _____ Complete mailing address.
- ✓ _____ Date of priority (month, day, and year).
- _____ Source of water.
- _____ Quantity claimed to have been used.
- _____ Nature of use and period of use.
- _____ Location of point(s) of diversion.
- _____ Location of place of use (acres irrigated if water is claimed for irrigation).
- _____ Filing Fee (Amount \$ _____).
- _____ Signature.
- _____ Notarization of signature.
- _____ Other: _____

Please note that your claim has been stamped and initialed as received. If you amend this claim by adding the needed information and return the claim to this office no later than 60 days from the date of this letter, the original date submitted will be utilized for purposes of determining the appropriate filing fee.

Instructions for completing a Claim to a Water Right are included for your information. However, if you desire assistance, please feel free to contact this office.

Encl: Check #92-112 for \$30.00.

Sincerely,

John E. Mitchell

11-4295

LIBERTY PIPELINE INC.

DIVID. ID 83260

Source. SPRING trib. to MILL CREEK

Priority Date. 03/25/1925

Diversion Pt. NMNW Sec 08 T 135 R 43E

Use. DOMESTIC (0.50 CFS)

In. NMNW Sec 08 T 135 R 43E