

AFFIDAVIT OF PUBLICATION

RECEIVED
MAY 24 1968
Department of Reclamation

NOTICE OF CLAIM TO A WATER RIGHT No. 95-4008

Notice is hereby given that Audrey McCray Freeman, Rt. No. 1, Box 194, Post Falls, Idaho, has filed a claim to a water right established by diversion and application to beneficial use of .06 cubic feet per second of water from a spring tributary to Hauser Lake with point of diversion in Lot 2, sec. 7, T. 51 N, R. 5 W, B.M., Kootenai County; the water is claimed to be used from January 1 to December 31 for domestic use with a priority of 1909 for .06 cubic feet per second; the place of use is the NW 1/4 NE 1/4, sec. 7, T. 51 N, R. 5 W, B.M.

Any exception to this claim of water right may be filed with the Department of Reclamation.

R. KEITH HIGGINSON
State Reclamation Engineer
Published in the Post Falls Tribune, Post Falls, Idaho on May 16 and May 23, 1968.

County of Kootenai }
STATE OF IDAHO } ss.

JEANNETTE S. ROSIN, being first duly sworn, deposes, and says that she is the publisher of THE POST FALLS TRIBUNE, a newspaper published weekly at Post Falls, Kootenai County, Idaho, and of general circulation therein.

That the Notice of Claim To A Water Right No. 95-4008

..... a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for two consecutive issues, commenc-

ing with the issue dated May 16 , 19 68
and ending with the issue dated May 23 , 19 68

Subscribed and sworn to before me, this 23rd
day of May , 19 68

..... C. Agnes Luchini
Notary Public for the State of Idaho
Residing at Post Falls, Idaho

Publication Fee \$ 7.13

bill submitted 6-3-68

95-4008

Reason I sign this as =

Audrey Mc Cray Freeman =
County Tax records, is in name
of Audrey M^c Cray =

Mr Nelson, answered ? 3A - to me
on phone, so I filled it in =

05,4008

Identification No. 95-4008Claim No. 42472

Map No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1. Name of claimant Audrey Mc Gray Greenman
post office address Box 194 - Post Falls, Idaho -
LOT 5 - 23 - 24 (60) LOT 2
2. The point of diversion is in 5578 of 1/4 Section 7 Township 51N
Range 5W B.M. located on A SPRING
(name of source)
tributary to HAUSER LAKE in KOOTENAI County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

- a. Date of priority claimed: used on this property since 1909 amount: .06 c.f.s. or _____ acre feet
I bought it April, 61 amount: _____ c.f.s. or _____ acre feet
used water study since amount: _____ c.f.s. or _____ acre feet
Total claimed .06 c.f.s. or _____ acre feet.

- b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use DOMESTIC period of use from JAN 1 to DEC 31 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive).

- X 4. Description of diverting works:

a. Surface water diversion dam and/or headgate: material is composed of WOODEN TANK, FILLED
By PIPES FROM SPRING PIPE TO HOUSE; length is _____ feet; height is 20 X 30 feet;
width at bottom is _____ feet; width at top is 1200 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known 1000 gal tank before 1943 - Larger tank 52 =

b. Underground water diverting works: is well flowing or pumped _____; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____
capacity of pump is _____ g.p.m.; name and address of well driller is _____

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b. Do you get water through a ditch owned by several users? _____ If yes, give the name of the ditch _____ The other users and their respective interests in the ditch are (if known) _____

6. Where water is used for stock watering, give number of each kind of stock watered _____

* 7. Where water is used for domestic or municipal purposes give number of families served APPROXIMATELY
name of town supplied WOODLAND BEACH AREA - AT HOUSE ROCK LAKE 30 - AT AUGER - TRAIL - HOME

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use, and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible, giving dates and quantities _____

* 9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation

Water from spring located this property for domestic purposes is to be available to all lots owned by Axel Albright dated Feb 20, 1939 Filed for Record Feb 24, 1939 Book 110 Pages, Page 449 This information was copied of of Al Albright's abstract.

This date of 1909. also from Abstracts, which states this property, has used this spring water, since that yr.

BE IT KNOWN that the undersigned hereby makes claim to a water right as described above together with all attached information and certifies that all statements are true and accurate to the best of his knowledge.

4-22-68
(Date)

Andrew J. McCray "Freeman"
(Signature of Claimant)

State of Idaho

County of Kootenai } ss.

On this 22nd day of April 1968, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Lutchen M. Rollos
Notary Public residing at Post Falls - Ida

My commission expires 11/24/70

4-29-68 For Department Use Only

Received by <u>ef</u>	Date <u>4-29-68</u>	Exception filed by:	Forwarded to claimant by:	Date
Prelim. check by <u>DM</u>	Date <u>4-29-68</u>			
Fee received by	Date	Fee \$ <u>10.00</u>		
Approved for publication by <u>KS</u>	Date <u>5-16-68</u>			
Published in <u>Post Falls Tribune</u>	Date <u>5-16-68</u>			

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INSTRUCTIONS

Your claim should set forth all necessary information to describe your claimed right. Failure to give enough information may make your claim of little value. Some of the items in the form may not apply to your situation. Please use additional sheets if space provided is not sufficient to fully answer the questions.

Paragraph No.

1. Give full name and post office address of person or company making the claim.
2. Describe the point of diversion by 40-acre subdivision. Give the name of the source, the drainage to which it is tributary if surface water, and the county in which the point of diversion is located. If there is more than one point of diversion, list others in the remarks section.
3. Give the priority dates and the quantities of water that you claim. You should accurately list the dates that you initiated each new use of the water. List separately the dates and amounts of water involved in each enlargement of the diversion. (Example: if you diverted 0.8 c.f.s. of water for irrigation on May 18, 1871, for the first time for use on 40 acres of land, and then later you enlarged the diversion by diverting an additional 0.4 c.f.s. of water to irrigate an additional 20 acres of land on June 1, 1901, your right should be described as follows:

Date of priority claimed:	May 18, 1871	amount:	0.8 c.f.s. or	acre feet
	June 1, 1901	amount:	0.4 c.f.s. or	acre feet
	Total claimed:		1.2 c.f.s. or	acre feet

Since the water was used for irrigation between April 1 and October 31 on that particular farm, part b. would be completed as follows:

use irrigation period of use from April 1 to October 31 (both dates inclusive). If the water had been used for any other purpose, you would have described the priority date, amount, use, and period of use in a similar manner.

4. Describe the diversion works and explain any changes since the right was first initiated.
5. If the water is used for irrigation, give the total acreage and list the lands irrigated by 40-acre subdivisions and complete the other questions.
- 6, 7, & 8. Describe any other uses of water.
9. In the remarks section, give any information or details that you feel are not fully covered or that need clarifying. You might explain your operation, where the water is returned to it for an industrial or non-consumptive right, the condition and temperature of the returned water, and any other information to help explain your claim.

You may wish to include as a part of your claim, affidavits of witnesses who are familiar with your right and who have a personal knowledge of the circumstances which you have described in your claim. You may submit maps, drawings, certified copies of posted notices which may have been filed in the county courthouse, water measurement records, or any other document which you feel will support your claim.

Your claim will be advertised in a county newspaper for two weeks. Exceptions to your claim which dispute the water right that you have described may be received by the Department of Reclamation and you will be provided a copy of such exceptions.

The fee for filing this claim with the Department of Reclamation, Room 107, Statehouse, Boise, Idaho 83701, is \$10.00.

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R. KEITH HIGGINSON
State Reclamation Engineer
Published in the Post Falls Tribune, Post Falls, Idaho on May 16 and May 23, 1968.

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STATE OF IDAHO } ss.

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with the issue dated May 16 , 19 68

and ending with the issue dated May 23 , 19 68

Subscribed and sworn to before me, this 23rd day of

..... May , 19 68

Notary Public for the State of Idaho
Residing at Post Falls, Idaho

Publication Fee \$.. 7.13

File submitted 6-3-68

95-4008

LAW OFFICE OF
HERBERT NAGEL
305 JOHNSTON BUILDING
111 NORTH SECOND STREET
COEUR D'ALENE, IDAHO 83814

October 21, 1970

RECEIVED

OCT 22 1970

Department of Water Administration

Mr. W. Baxter Brown
Attorney at Law
P. O. Box 1313
Coeur d'Alene, Idaho 83814

In re: AUDREY I. MCCRAY - Permit #95-4008

Dear Baxter:

I have gone over your letter of October 12, Baxter, and this is about the third time that this issue has come up. The facts of the matter are that many many years ago Mrs. Sala's predecessor in interest deeded certain parcels off and some giving the right to use the water in the system so long as it existed. There was never any conveyance made to Mrs. McCray, or her predecessors, agreeing to continue the maintenance and repair of the system. This system is now completely shot, the water doesn't reach Mrs. McCray's property in any condition and in fact Mrs. Sala has no water. I don't believe Mrs. Sala has any obligation to furnish this water to the McCray residence.

Insofar as to the establishment of the water line as to Mrs. McCray is concerned, I don't believe the law is as you stated in your letter. Section 42-212 definitely states that you must have the landowners consent. A more recent Idaho case in 338 Pac. 2nd, 766, also requires this.

Enclosed is the instructions that came from the Department of Reclamation and on page two, where I have underlined the same, these requirements are set forth. I don't think that there is any way that Mrs. McCray can acquire any rights whatsoever in this spring.

95-4008

COPY

Page Two
Mr. Baxter Brown
October 21, 1970

I am sending a copy of this letter to the Department of Reclamation and asking them to check in their file to see whether or not the permit application wrongfully sets forth ownership in the applicant.

I will be happy to discuss this with you at any time.

Very truly yours,

HERBERT NAGEL

HN/lm

Enc.

cc: Department of Reclamation
State House - Annex 2
Boise, Idaho

95-4008

June 3, 1968

Re: Claim No. 95-4008

Audrey McCray Freeman
Route #1, Box 194
Post Falls, Idaho

Dear Mrs. McCray:

Your claim to a water right has been received and processed by the Department of Reclamation. The information in your claim is filed under Claim No. 95-4008.

Enclosed is receipt No. 815 for the amount of \$10.00 which covers the filing fee. Please contact us if we may be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

Enclosure: Receipt No. 815

95-4008

June 3, 1968

Re: Claim to a Water Right No. 95-4008
Audrey McCray Freeman

Herbert Nagel, Attorney At Law
305 Johnston Bldg; 111 N. 2nd St.
Coeur d'Alene, Idaho 83814

Dear Mr. Nagel:

Thank you for your letter of May 20, 1968, concerning the above referenced claim. The notice published in the Post Falls Tribune you are referring to is published in connection with Section 42-225A of the Idaho Code. This section allows a party to file a claim concerning a specific water right and make it a public record. Procedure involves submitting a claim to the Department of Reclamation with a fee. The Department in turn publishes the claim and files it of record.

A person may submit under a claim any information he so desires. There is no authority under this provision for the Department of Reclamation to check or challenge claims submitted. You may, however, under Section 42-225A submit an exception to the claim. Copies of the exception will be forwarded to the claimant and the original will be filed without further action in the claim folder. The Department does not supply a form for the filing of an exception. We can only say that the exception should be as complete in detail as possible.

With reference to the Idaho Statutes, the Department's policy is that a spring rising and remaining solely on private property without forming a stream flowing from the property is private water and not subject to appropriation. On the other hand, any spring that rises and forms a spring flowing from a property in the form of a stream can be subject to appropriation under the state statutes.

The claim above referenced indicates to the Department that the claimant is filing directly on a spring located as described in the advertisement under 'point of diversion'. If as indicated in your May 20, 1968, letter, someone else taps the springs and diverts the water into a private reservoir, and Mrs. Freeman actually diverts from

95-4008

Herbert Nagel

2

June 3, 1968

the reservoir, there may be a question as to the establishment of a water right; however, the department cannot judge in this matter. We are sending you claim forms and instructions for your use in this and other matters.

Please contact us if we can be of further assistance.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:dj

Enc: Claim forms (6)

95-4008

RECEIVED
MAY 21 1968

Department of Reclamation

LAW OFFICE OF
HERBERT NAGEL
305 JOHNSTON BUILDING
111 NORTH SECOND STREET
COEUR D'ALENE, IDAHO 83814

May 20, 1968

RECEIVED
MAY 21 1968
Department of Reclamation

State of Idaho
Department of Reclamation
107 State House
Boise, Idaho 83701

Re: Notice of Claim to Water Right No. 95-4008
Claimant: Audrey McCray Freeman

Gentlemen:

I represent Irene Sala who owns,

Lot 2, Section 7, Township 51 N. R. 5 W.B.M.,
Kootenai County, Idaho.

I notice in the Post Falls Tribune where a water right is being claimed upon said property by the above named person. Actually, what has happened here is that there is a spring located at this point on the property. The water goes into a large reservoir some distance away and this water is then piped down to Mrs. Freeman's property, as well as others. This system in its entirety belongs to the owner of the land. I am wondering how Mrs. Freeman can gain any water right under these circumstances?

I would appreciate it if you would let us know at your early convenience the basis of the claim and if there is any particular form which need be filed to file an objection to this claim, would you please forward such form to me.

Yours very truly,


HERBERT NAGEL

HN:s1m

95-4008

POST FALLS, IDAHO

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WATER RIGHT
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State Reclamation Engineer

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MAY 15 1968

Department of Reclamation

95-4008

May 6, 1968

Re: Claim to a Water Right No. 95-4008
Audrey McCray Freeman

Post Falls Tribune
Post Falls,
Idaho

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you can not publish the notice on the proposed dates please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, along with the publication bill. In order to receive payment, the following certification must appear on the bill:

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

(Do not certify this letter)

Signature of claimant

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

Enclosure: legal notice

NOTICE OF CLAIM TO A WATER RIGHT

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cubic feet per second ~~per foot~~ of water from a spring, tributary to Hauser
Lake with point of diversion in the Lot 2,
sec. 7, T. 51 N, R. 5 W, B.M., Kootenai County; the water is
claimed to be used from January 1 to December 31 for domestic use
with a priority of 1909 for .06
cubic feet per second; the place of use is the NW 1/4, sec. 7,
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