

Affidavit of Publication

I, Elizabeth L. Brammer, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for two (2) consecutive weeks, commencing

with the issue dated March 12, 1970

and ending with the issue dated March 19, 1970

Elizabeth L. Brammer

Subscribed and sworn to before me this

20 day of Mar., 1970

Betty J. Mayo

Notary Public.

Residence: Arco, Idaho.

My commission expires 2-4, 1973

PUBLIC NOTICE

NOTICE OF EXISTING WATER PERMIT

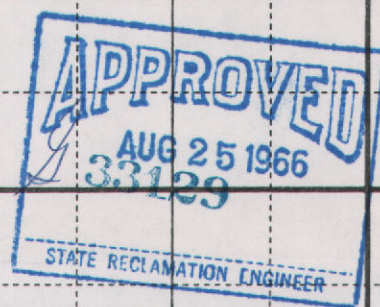
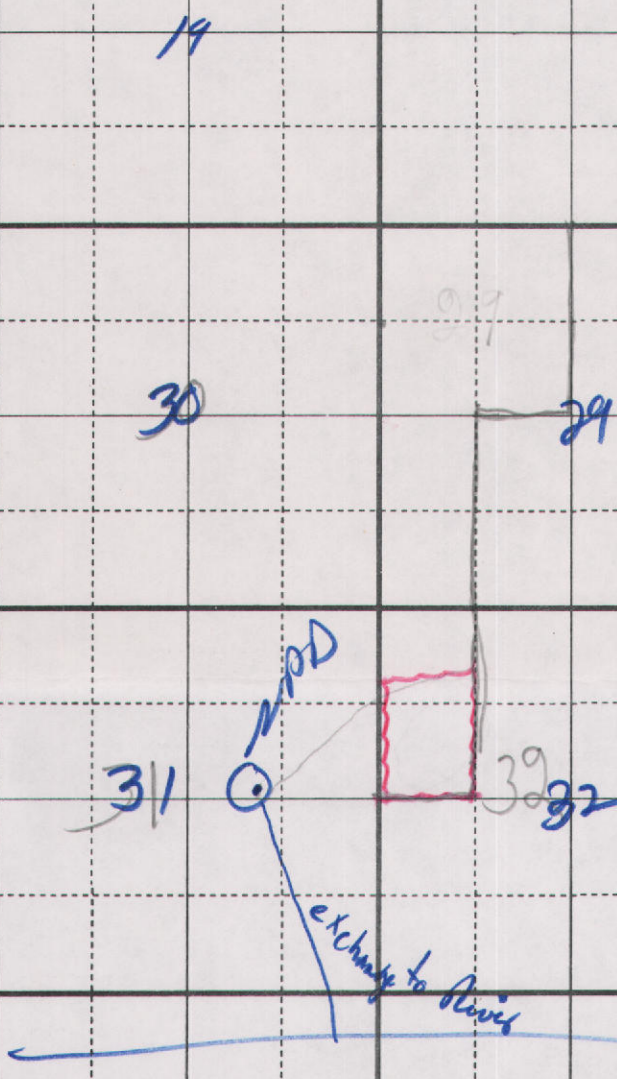
Notice is hereby given that Orville Nicholson, Howe, Idaho, has received an approved permit No. G-33129/33-2128 issued by the Idaho State Reclamation Department authorizing the diversion of 1.8 cubic feet per second of water from a ground-water source subject to all prior rights. The priority to be established under this permit is August 18, 1966, and the permit was approved August 25, 1966. Water is to be diverted by a well and pump from a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 31, T. 8 N., R. 28 E., B.M., Butte County, to be used for irrigation and exchange water in the W $\frac{1}{2}$ -NW $\frac{1}{4}$, Sec. 32, T. 8 N., R. 28 E., B.M. Proof of the application of the water to beneficial use is to be submitted to the department on or before August 25, 1971. Any protests against the issuance of a license for the above referenced permit should be filed with the Department of Reclamation within ten (10) days of the last date of publication of this notice or prior to the licensing of the permit. Licensing may commence prior to the date beneficial use proof is due without further notice.

R. KEITH HIGGINSON,
State Reclamation Engineer.
Published in the Arco Advertiser, Arco, Idaho, on March 12 and March 19, 1970.

33-2128

33129

ORVILLE NICHOLSON



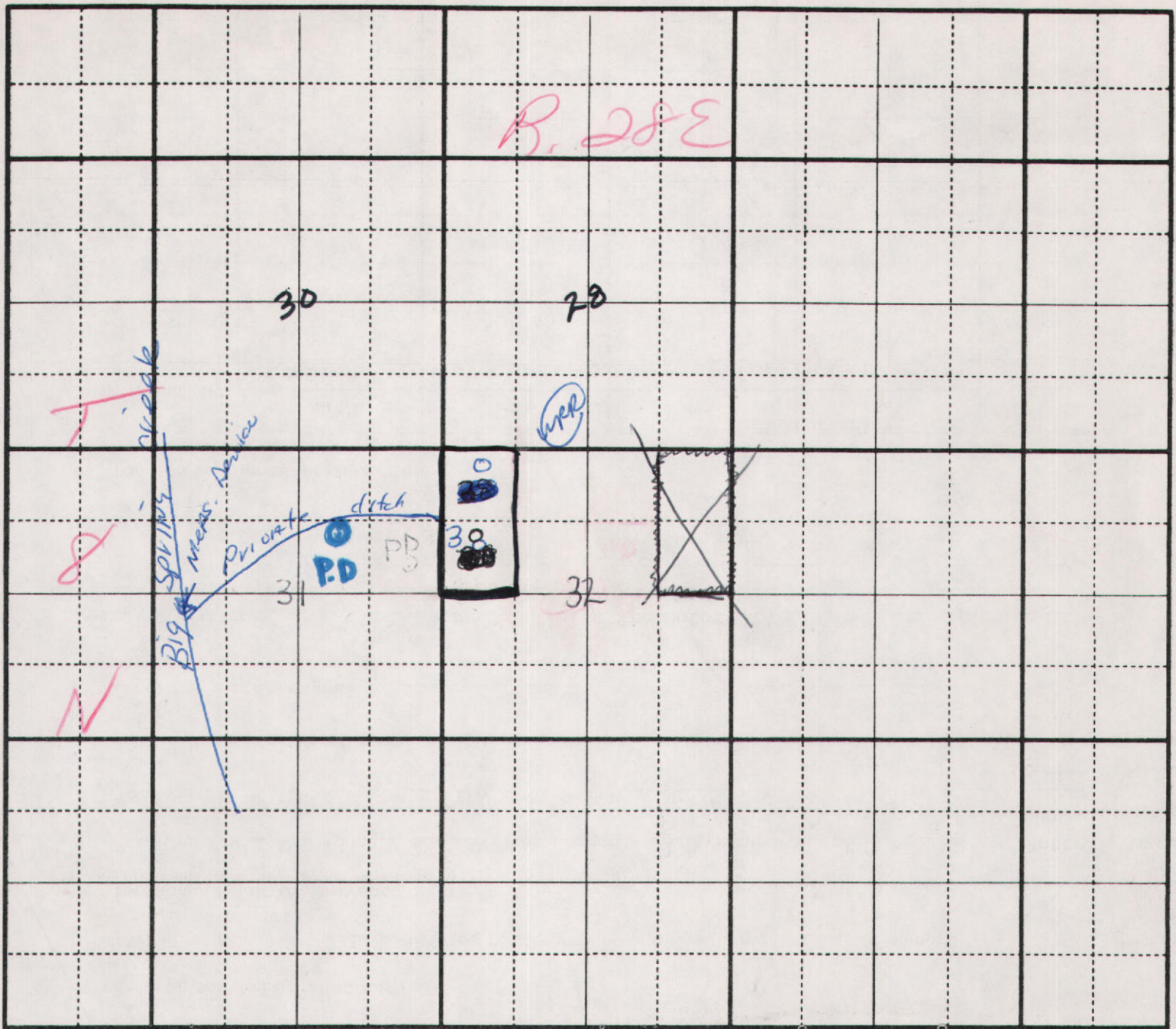
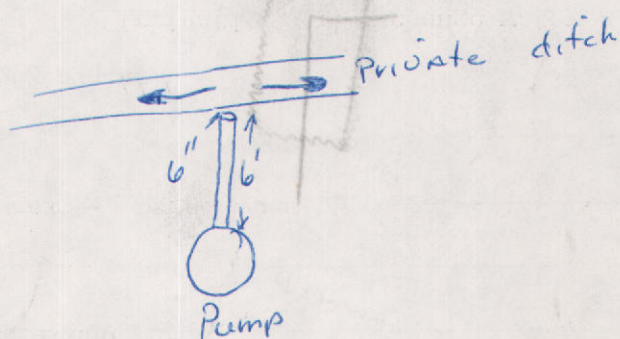
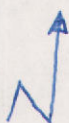


Diagram of System





52.6

X
53.7

W
72.3

72.3

H
23.7

G
17.4

F
23.6

18.7

E
13.5

M
16.6

K

L

N
45.7

O

P
46.8

Not
Irrigated

R

T
16.7
16.7

38

S
S

OUT

33 2128

Ditch
P.D.

Road

UPP

State of Idaho

Department of Water Administration

WATER RIGHT LICENSE

License of Water Right No. 33129/33-2128 Priority August 18, 1966 Amount 0.98 cfs

THIS IS TO CERTIFY, that ORVILLE NICHOLSON
of Howe, Idaho, has complied with the terms and conditions of Permit
No. 33129/33-2128 issued pursuant to Application for Permit dated August 18, 1966,
and has submitted proof to the Department of Water Administration on July 23, 1971,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.98 cfs of water from a ground water source,
tributary to n/a, and that the permit holder has applied to a beneficial use &
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u> from <u>April 1</u> to <u>Nov. 1</u> at <u>0.76</u> cfs and			<u>114 acre feet</u>
* <u>Exchange</u> from <u>April 1</u> to <u>July 15</u> at <u>0.80</u> cfs and			<u>167 acre feet</u>
from _____ to _____ at _____ cfs and			
(both dates inclusive)			

Subject, however, to the condition that no more than 0.98 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
281 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 31,
Twp. 8 N, Rge. 28 E, B. M. in the County of Butte

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8 N	28 E	32							38										38

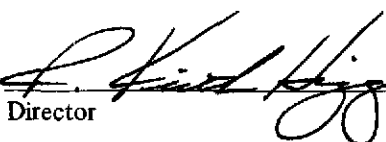
Total number of acres irrigated 38

* Exchange water required under Decree to Orville Nicholson in case of Orville Nicholson, et al, -vs- N.W. Hansen, et al, dated July, 1954, in Sixth Judicial District Court. The right holder must supply 0.80 cfs of water to the Little Lost River, via Spring Creek, during the period of April 1 through July 15 of each year for use on other lands not described under this license. This can be supplied from Pass Creek or by exchange from the well under this license.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 9th day of
July, 19 73.


Director 33 2128

✓
33129
K.D.

33-2128

APPLICATION FOR PERMIT To Appropriate the Subterranean Waters of The State of Idaho

Application No. G- 41332
Permit No. G- 33129
District No.

1. Name of Applicant: Orville Nicholson
Postoffice address: Howe County: Butte State: Idaho
2. Quantity of water claimed:
 - (a) Rate of withdrawal in cubic feet per second 1.8 or Idaho
Miners' inches 40" for exchange water, or gallons per minute
50" for irrigation and 90" total.
 - (b) Annual withdrawal in acre feet per annum
3. Source of water supply: Subterranean
4. Location of point of diversion or well is in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31
Twp. 8 N , Rge. 28 E , B.M., County of Butte
5. Water is to be used for: irrigation and exchange water.
6. If for municipal, industrial or recreational purposes, give:
 - (a) Point of use of water is in the $\frac{1}{4}$ of the $\frac{1}{4}$ of Section , Twp.
Rge. , B.M.
 - (b) Waste water or sewage effluent is to be returned to
at a point in the $\frac{1}{4}$ of the $\frac{1}{4}$ of Section , Twp. , Rge. , B.M.
7. Kind of works: drilled well, pump - surface.
8. Estimated cost of works: \$2,700.00
9. (a) Is reservoir to be used?
(b) Capacity of reservoir:
10. The time required for the completion of such work and complete application of the water to the proposed use is
years. 5
11. If applicant is a corporation, give:
 - I. (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:
12. The land to be irrigated is described in the following tabulation:
13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: Well permit
 - (a) 50 (~~cubic feet per second~~, inches or gallons per minute) of the water herein applied for is to be supplemental to the existing water rights.
 - (b) (cubic feet per second, inches or gallons per minute) is for new lands.

Remarks:

Idaho as herein set forth.

/s/ ORVILLE NICHOLSON

Applicant.

By

Agent.

Date of first receipt at Department of Reclamation: August 18, 1966 3:00 P.M.

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is G— 33129

Recorded in Book 116 Page 33129 Approved August 25, 1966

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 _____ and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before February 25, 1969

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made and proofs offered on or before August 25, 1971

Witness my hand this 25th day of August, 1966.

/s/ R. KEITH HIGGINSON
STATE RECLAMATION ENGINEER.

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLLIE, Governor of the State of Idaho,
and LOUIS E. CLAPP, Secretary of State of the State of Idaho, have caused this instrument to
be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 25th
day of August, 1966

Countersigned:

STATE OF IDAHO

(SEAL)

By /s/ LOUIS E. CLAPP
Secretary of State.

By /s/ ROBERT E. SMYLIE
Governor

12.

Twp.	Range	Sec.	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	Totals
			NE ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ SE ¹ / ₄	NE ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ SE ¹ / ₄	NE ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ SE ¹ / ₄	NE ¹ / ₄ NW ¹ / ₄ SW ¹ / ₄ SE ¹ / ₄	
8N	28E	32		10 40			50

LICENSE ISSUED FOR 0-28 SEC. FT.
 LICENSE PAGE NO. _____

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. G-33129/33-2128)

in the name of Orville Nicholson, Howe,)
Idaho)

ORDER MODIFYING REQUIREMENTS
FOR COMPLETION OF PERMIT TO
APPROPRIATE WATER

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law;
and,

WHEREAS, these changes raised questions as to the procedures to be followed by
holders of permits issued prior to the effective date of the amendments, May 31, 1967;
and,

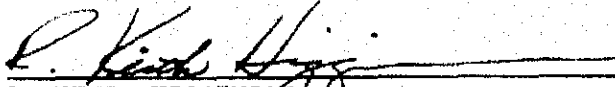
WHEREAS, on August 1, 1968, the Department of Reclamation adopted Rules of Practice
and Procedures for the processing of such permits issued prior to May 31, 1967; and,

WHEREAS, Permit No. 33-2128 was issued previous to that date;

NOW THEREFORE, the requirements for completion of the above-numbered permit are
hereby modified to conform to the adopted Rules of Practice and Procedures as follows:

1. The above-numbered permit will be completed under the terms of Title 42,
Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.
2. The conditions of the above-numbered permit are modified as follows:
 - a. Notice of the issuance of the permit will be published at the permit
holders expense for two weekly issues in the official newspaper of
the county in which the point of diversion lies.

Dated this 23RD day of JANUARY, 19 70.


R. KEITH HIGGINSON
State Reclamation Engineer

33-2128

33129

OK
1-24-70

Affidavit of Publication

I, Elizabeth L. Brammer, of the
Arco Advertiser, a weekly newspaper of general
circulation, published weekly at Arco, Idaho, since
March, 1909, do solemnly swear that a copy of
this notice, per clipping attached, was published
weekly in the regular and entire issue of said
newspaper, and not in any supplement thereof,

for two (2) consecutive weeks, commencing

with the issue dated March 12, 1970

and ending with the issue dated March 19, 1970

Elizabeth L. Brammer

Subscribed and sworn to before me this

20 day of Mar, 1970

Betty J. May
Notary Public.

Residence: Arco, Idaho.

My commission expires 2-4, 1972

PUBLIC NOTICE

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that Orville Nicholson, Howe, Idaho, has received an approved permit No. G-33129/33-2128 issued by the Idaho State Reclamation Department authorizing the diversion of 1.8 cubic feet per second of water from a ground-water source subject to all prior rights. The priority to be established under this permit is August 18, 1966, and the permit was approved August 25, 1966. Water is to be diverted by a well and pump from a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 31, T. 8 N., R. 28 E., B.M., Butte County, to be used for irrigation and exchange water in the W $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 32, T. 8 N., R. 28 E., B.M. Proof of the application of the water to beneficial use is to be submitted to the department on or before August 25, 1971. Any protests against the issuance of a license for the above referenced permit should be filed with the Department of Reclamation within ten (10) days of the last date of publication of this notice or prior to the licensing of the permit. Licensing may commence prior to the date beneficial use proof is due without further notice.

R. KEITH HIGGINSON,

State Reclamation Engineer.

Published in the Arco Advertiser, Arco, Idaho, on March 12 and March 19, 1970.

33-2128

33129

ORVILLE NICHOLSON

Address all communications to:

Orville Nicholson

P. O. _____

APPLICATION FOR PERMIT

TO APPROPRIATE THE SUBTERRANEAN WATERS OF THE STATE OF IDAHO

Application No. G 41332

33129

Permit No. G _____

Water District No. _____

RECEIVED
AUG 18 1966

Department of Reclamation

1. Name of applicant: Orville Nicholson

Post office address Howe County Butte State Idaho

2. Quantity of water claimed: 40" for exchange water + 50" for irrigation 90" 1.8 cfs

3. Source of water supply: Subterranean

4. Location of point of diversion or well is in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31

Twp. 8N, Rge. 28E, B.M., County of Butte

5. Water is to be used for: irrigation & exchange water

6. If for domestic, municipal, industrial or recreational purposes give:

(a) Point of use of water is in the _____ $\frac{1}{4}$ of the _____ $\frac{1}{4}$ of Section _____

Twp. _____, Rge. _____, B.M.

(b) Waste water or sewage effluent is to be returned to _____

at a point in the _____ $\frac{1}{4}$ of the _____ $\frac{1}{4}$ of Section _____, Twp. _____, Rge. _____, B.M.

7. Kind of Works: Drilled well pump - surface

8. Estimated cost of works: \$ 2,700.⁰⁰

9. (a) Is reservoir to be used? _____

(b) Capacity of reservoir: _____

10. The time required for the completion of such work and complete application of the water to the proposed use is

5 years.

11. If applicant is a corporation, give:

I. (a) Date and place of incorporation: _____

(b) Amount of capital stock \$ _____ (c) Amount paid in: \$ _____

(d) Names and addresses of directors: _____

33129

△

(Continued)

II. The financial resources of the applicant are: (a) Cash on hand: \$_____

(b) Treasury stock:_____ (c) Bonds to be issued:_____

(d) Other resources: _____

12. The land to be irrigated is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision)

[illegible]

13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: well permit

(a) 50 (~~Cubic feet per second, inches or gallons per minute~~) of the water herein applied for is to be supplemental to the existing water rights.

(b) _____ (cubic feet per second, inches or gallons per minute) is for new lands.

33/29

Remarks:

Exchange water required under decree on
Uncle Ike Creek or Pass Creek - where in Mr. Nicholson
must supply 40 cusecs of Pass Creek water to the Little Lost
River via Spring Creek. Applicant intends to use
pumped water from a well to meet this requirement.

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.

Orville Nicholson
Applicant

By _____, Agent

Approval of State Reclamation Engineer

The number of this permit is G 33129
Recorded in Book 116 Page 33129 Approved AUG 25 1966

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 before _____

One-fifth of the work above specified to be completed on or before February 25, 1969

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made on or before August 25, 1971

Witness my hand this 25th day of August, 1966

R. Keith Higgins
State Reclamation Engineer

IN TESTIMONY WHEREOF, We ROBERT E. SMYLLIE, Governor of the State of Idaho, and LOUIS E. CLAPP, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 25th day of August, 1966

Countersigned:

STATE OF IDAHO

By

Louis E. Clapp
Secretary of State

By

Robert E. Smyllie
Governor.

33129

No. G

PERMIT

Date of first receipt at office of State Reclamation Engineer

August 12, 1966 3:00 P.M.

Returned to applicant for correction

Corrected application received

Fees, \$ 5.25

FILING FEES FOR USE PERMIT:

For the first Sec. Ft. \$5.00

For each additional Sec. Ft. or Fraction

Thereof .25

33129

ACKNOWLEDGEMENT

33129

Date: _____

Re: Application No. _____

I hereby acknowledge that, even though I was assisted by employees of the Idaho State Department of Reclamation in the preparation of Application No. _____, all responsibility with regard to the accuracy and completeness of the information contained therein rests with me.

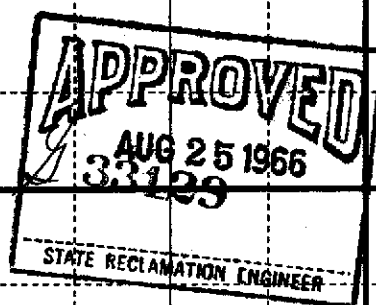
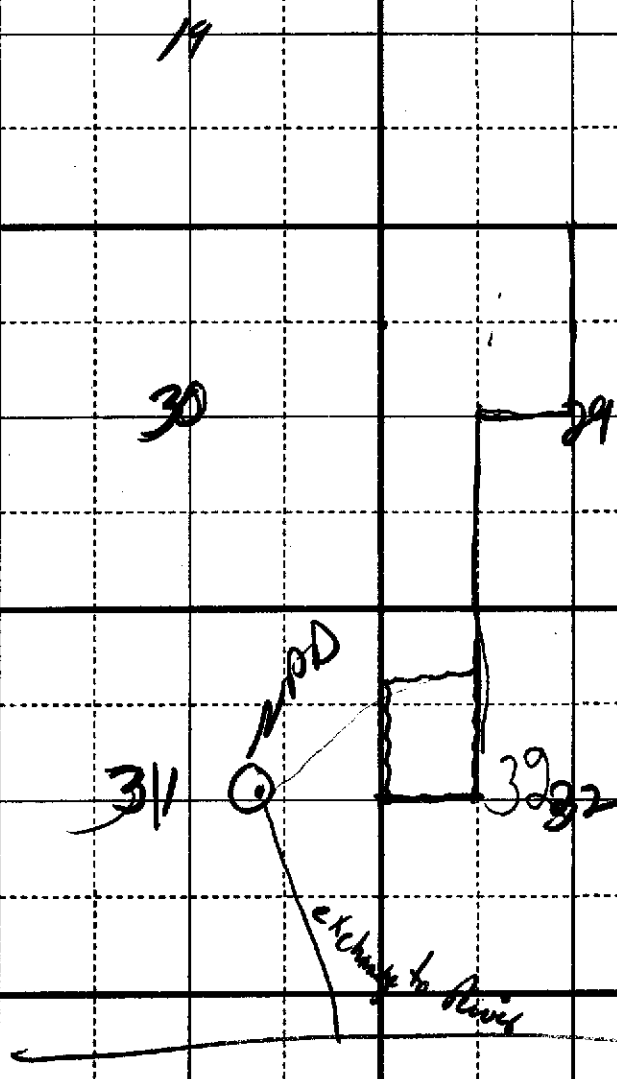
Signed: _____

Orville Nicholson

Applicant

33129

Done



July 10, 1973

Re: Permit No. 33129/33-2128

Mr. Orville Nicholson
Howe,
Idaho 83244

Dear Mr. Nicholson:

Enclosed please find a copy of the Water License issued on the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

bjg

Enclosure

33 2128

June 26, 1973

Mr. Orville Nicholson
Howe,
Idaho 83244

Dear Mr. Nicholson:

A representative of this Department has made an examination of the works covered by your Permit No. 33129/33-2128 and has found the following:

Quantity of water diverted: 0.98 cfs

Amount of water that can be recognized as beneficially used under Idaho law: 0.98 cfs

The maximum quantity diverted shall not exceed 281 acre feet per year.

Beneficial use: Irrigation of 38 acres from April 1 to Nov. 1 within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, Twp. 8N, Rge. 28E, B.M. and * Exchange from April 1 to July 15.

Point of diversion: SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 31, Twp. 8N, Rge. 28E, B.M.

Priority date established: August 18, 1966

* Exchange water required under Decree to Orville Nicholson in case of Orville Nicholson, et al, -vs- N.W. Hansen, et al, dated July, 1954, in Sixth Judicial District Court. The right holder must supply 0.80 cfs of water to the Little Lost River, via Spring Creek, during the period of April 1 through July 15 of each year for use on other lands not described under this license. This can be supplied from Pass Creek or by exchange from the well under this license.

If you do not concur with these findings, please contact us within 10 days from the date of this letter; otherwise, a water license will be issued as set forth above.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

through Howe 15 mi Nick Sam Byrne Ranch Righ 2 mi

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

thurs-Morn

1. Name of permit holder Orville Nicholson
Post office address Howe, Idaho Phone 767-2751
Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____
(name spring, stream, etc.)
Tributary to _____

3. Water will be used for the following purposes:

Amount 1.8 c.f.s. for Irrigation and exchange water
_____ AF/Annum (nature of use)

Period of Use: from April 15 to October 15
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

Permit No. 33129/33-2128
Examination for B/U

4. Total amount to be appropriated:

Max Rate of Diversion 1.8 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

Township 8 N/S, Range 28 E/W, B.M., Section 31, Subdivision SW $\frac{1}{4}$ NE $\frac{1}{4}$, Butte
County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, _____
County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, _____
County

Other Points of Diversions: _____

Description of diverting works: Well, pump, and electric motor

Measuring device required: yes ☐ no ☒

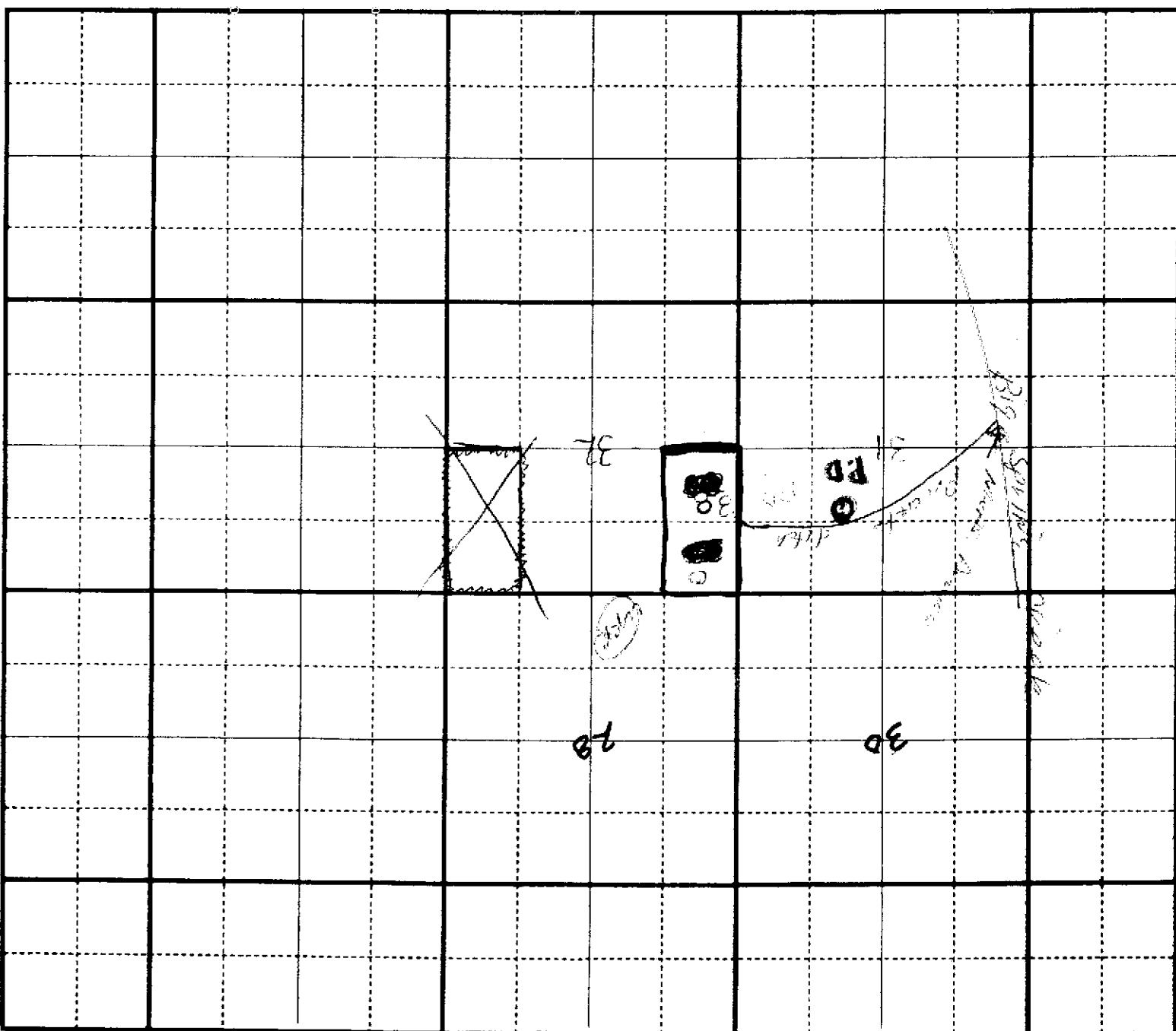
6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8N	28E	32						40											50

33 2128

TOTAL ACREAGE 50

N



① Need to show land
irrig. out of creek the ch.
& acreage

② Volume should also be
for exchange not just
direct irrig.

③ Redo lic. form

④ Measuring device @ point
of exchange & injection
location & description

No

33 2128

52.6

X
53.7

72.3

76.2

G

17.4

F

23.6

M

16.6

K

L

N

45.7

O

P

46.

Q

R

WPE

S

33 2128

Ditch

P.D.

DATE OF EXAM Aug 11, 1972

ACREAGE

Found

38

Recommended

38

Irrigation Requirement

3.0

Ac Ft/Ac

USE

Irrigation Q= .98 c.f.s.

V= 114

AF/Ann. from

April 15

to

Oct 15

Domestic Q= c.f.s.

V=

AF/Ann. from

to

Livestock Q= c.f.s.

V=

AF/Ann. from

to

Is water co-mingled? yes

no ☒

Name source:

NA

twp.

N/S, Rge

E/W, B.M., Sec.

Sub.

1/4

1/4

County

Exchange? yes

☒

no

Name source exchanged with:

twp.

8

N/S, Rge

28

E/W, B.M., Sec.

26

Sub.

SW

1/4

SE

1/4

Butte

County

Point of injection:

twp.

N/S, Rge

E/W, B.M., Sec.

Sub.

1/4

1/4

County

Point of exchange:

Big Spring Creek

twp.

8

N/S, Rge

28

E/W, B.M., Sec.

31

Sub.

NE

1/4

SW

1/4

Butte

County

Total Q measured

.98 cfs

Method of measurement

Sparking

Ser# 54890

Total Q recommended

.98 cfs

Meter No.

Type

Condition

Total V recommended

114 AF/Ann

Recommended Amendments:

P.D.

Place of Use

Other

None

MEASUREMENT CALCULATION:

435.6 cfs in 441 seconds = .98 cfs

(.98 cfs) (1.9835) (183 days) = 355 AF/Ann

SYSTEM DESCRIPTION:

6" 15' Pipe, Open Discharge into private ditch

U.S. Motors Hollow Shaft 7 1/2 hp Ser# 3908 307

Johnston Pump Ser# 1465

REMARKS:

System shown by owner. Field examiner did not verify exchange use or determine land upon which exchange water is used. Volume recommended does not reflect exchange use. If our records at Dore are not adequate to resolve this problem the exam should be redone next year. Ncy

Examiner's Signature

William R. Rhoads

Date

Aug 14, 1972

Checked by

Norman C. Young, P.E. (500)

Date

12-29-72

Approved by

Date

July 26, 1971

Re: Permit No. G-33129/33-2128

Mr. Orville Nicholson
Howe,
Idaho 83244

Dear Mr. Nicholson:

We acknowledge receipt of your affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative from this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

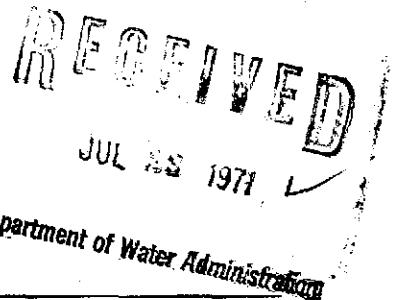
DWM:DR

Identification No. _____

Permit No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE



1. a) Name of Permit Holder Orville Nicholson
b) Post Office Address Howe, Idaho 83244
2. Permit Number 33-2128
3. Date of Priority that you are prepared to establish August 18, 1966
4. a) Source from which water was appropriated Ground water
b) Location of the point of diversion: SW 1/4 NE 1/4, Section 31
Township 8N, Range 28E, Boise Meridian, Other points of diversion:
5. a) The amount of water and use to which the water has been applied:
amount 1.8 for Irrigation purposes from April 15 to Oct. 15 incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
b) Total amount appropriated 1.8 cfs and/or acre feet per annum
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____
b) Describe the agreement or understanding by which you take water from the works: _____
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) Well, pump and electric motor
b) Describe the type and size of measuring device which you have installed at your point of diversion: None
c) Give well drillers name and address and date the well was completed Dwane Denning,
Idaho Falls

Ham typed 9-30-71
mjl

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use _____

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8 N	28 E	32						10	40										50

Total number of acres irrigated 50

10. Remarks: _____

The above information is a true statement of the extent to which the above numbered permit has been developed.

7-23-1971
(Date)

Orville Nicholson
(Signature)

State of Idaho
County of Ada ss.

On this 23 day of July, 1971, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Donald H. Ellis
Notary Public residing at Boise Idaho

My commission expires 2-14-74

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S).
REQUIRED FEE(S) PAID.



Show to whom, date and address
where delivered



Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

CERTIFIED NO.

22801

1

Orville Nicholson

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

Nancy Nicholson

DATE DELIVERED

SHOW WHERE DELIVERED (*only if requested*)

3

33 2128

33-2128

**POST OFFICE DEPARTMENT
OFFICIAL BUSINESS**



**PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300**

POSTMARK OF DELIVERING OFFICE

Print your name and address below. If you want to restrict delivery, or to have the address of delivery shown on this receipt, check block(s) on other side. Moisten gummed ends and attach this card to back of article.

**RETURN
TO**



DEPARTMENT OF POSTS AND TELECOMMUNICATIONS

33 2128

655-16-71243-11

POD Form 3811 Apr. 1969

June 1, 1971

CERTIFIED MAIL #22801

Re: Permit No. G-33129/33-2128

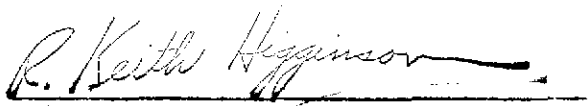
Orville Nicholson
Howe,
Idaho 83244

Dear Mr. Nicholson:

One of the conditions of approval of your water Permit No. G-33129/33-2128 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before August 25, 1971. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise the permit will lapse and be of no further force or effect.


R. KEITH HIGGINSON
Director

Enc: Proof affidavit
dr

33 2128

April 24, 1970

Re: Permit No. G-33129/33-2128

Mr. Orville Nicholson
Howe, Idaho

Dear Mr. Nicholson:

We acknowledge receipt of the affidavit of publication submitted in connection with the above referenced permit. Since proof of beneficial use of the water is not required until August 25, 1971, the Department will notify you sixty days in advance of this date as to further requirements. We wish to advise you, however, that if you have fulfilled the requirements under the permit you may submit proof anytime prior to the above date.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DG

33-2128

33129

April 20, 1970

Re: Permit No. G-33129/33-2128

Mr. Orville Nicholson
Howe,
Idaho

Dear Mr. Nicholson:

As of this date we have not yet received the affidavit of publication to be submitted in connection with the above referenced permit. Proof of beneficial use is not required until August 25, 1971; however, many newspapers do not keep copies of these advertisements in their files. We, therefore, recommend that you obtain this affidavit from the Arco Advertiser, Arco, Idaho and submit it to the Department as soon as possible. This insures that when you are ready to submit proof of beneficial use there will be no unnecessary delay or added expense.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DC

33-2128
33129

RECEIVED

MAR 2 1970

Department of Reclamation

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that Orville Nicholson, Howe, Idaho,
_____ has received an approved permit No.

G-33129/33-2128 issued by the Idaho State Reclamation Department authorizing the
diversion ~~Atkake~~ of 1.8 cubic feet per second ~~Atkake/Field/Field/Field~~
of water from a ground-water source

subject to all prior rights. The priority to be established under this permit is
August 18, 1966. and the permit was approved August 25, 1966.

Water is to be diverted by well./pump
from a point within the SW1/4, Sec. 31, T. 8 N, R. 28 E, B. M., Butte County,

to be used for irrigation and exchange water
in the SW1/4, Sec. 32, T. 8 N, R. 28 E, B. M.

Proof of the application of the water to beneficial use is to be submitted to the
department on or before August 25, 1971. Any protests against
the issuance of a license for the above referenced permit should be filed with the
Department of Reclamation within ten (10) days of the last date of publication of
this notice or prior to the licensing of the permit. Licensing may commence prior
to the date beneficial use proof is due without further notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Arco Advertiser, Arco, Idaho, on
March 12, and March 19, 1970.

State Reclamation Engineer:

Permit No. G-33129/33-2128

You are hereby authorized to have the attached notice published at my expense in
the Arco Advertiser of Arco, Idaho;
published in the county in which the works are situated.

Orville Nicholson
(Signature)

Howe Idaho
(Address)

Feb - 27, 1970
(Date)

33-2128

33129

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

RECEIVED
JAN 21 1970
Department of Reclamation

IN THE MATTER OF PERMIT NO. G-33129/33-2128)

in the name of Orville Nicholson, Howe,)

Idaho)

ORDER MODIFYING REQUIREMENTS
FOR COMPLETION OF PERMIT TO
APPROPRIATE WATER

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law;
and,

WHEREAS, these changes raised questions as to the procedures to be followed by
holders of permits issued prior to the effective date of the amendments, May 31, 1967;
and,

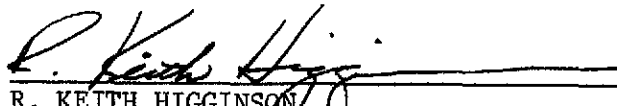
WHEREAS, on August 1, 1968, the Department of Reclamation adopted Rules of Practice
and Procedures for the processing of such permits issued prior to May 31, 1967; and,

WHEREAS, Permit No. 33-2128 was issued previous to that date;

NOW THEREFORE, the requirements for completion of the above-numbered permit are
hereby modified to conform to the adopted Rules of Practice and Procedures as follows:

1. The above-numbered permit will be completed under the terms of Title 42,
Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.
2. The conditions of the above-numbered permit are modified as follows:
 - a. Notice of the issuance of the permit will be published at the permit
holders expense for two weekly issues in the official newspaper of
the county in which the point of diversion lies.

Dated this 23RD day of JANUARY, 19 70.



R. KEITH HIGGINSON
State Reclamation Engineer

33-2128

33129

March 3, 1970

Re: Permit No. G-33129/33-2128

Orville Nicholson
Howe,
Idaho 83244

Dear Sir:

The legal notice for the above referenced permit is being published in the Arco Advertiser, P.O. Drawer C, Arco on March 12, and March 19, 1970.

You will be required to submit an affidavit of publication to this department. The affidavit may be obtained from the above mentioned newspaper upon payment of the bill of publication.

Thanking you for your cooperation in this matter.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM/DG

33-2128

33129

March 3, 1970

Re: G-33129/33-2128

Arco Advertiser
P.O. Drawer C
Arco, Idaho 83213

Gentlemen:

Enclosed is a legal notice which we wish to have published 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 our 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 cannot publish the notice on the proposed dates, please contact the Department of Reclamation immediately.

The expense of the publication is to be paid by ~~Orville~~

~~Nicholson, Howe, Idaho 83244~~
to whom you should furnish an affidavit of publication.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM/DG
Enc: Legal Notice

33-2128

33129

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

January 23, 1970

Re: Permits No. G-33129/33-2128
G-32610/33-2123

Orville Nicholson
Howe, Idaho 83244

Dear Mr. Nicholson:

Pursuant to your request, we have modified the above referenced permits. Please find enclosed modification orders and advertising authorizations which must be signed and returned to the department. Also enclosed please find forms with which to submit proof of beneficial use.

In checking through the file of Permit No. G-33129/33-2128, we fail to find a transmittal letter indicating that the department returned to you the decree pursuant to your request of August 1966. Therefore, we are returning this decree to you. We hope that we did not cause you any inconvenience.

If we may be of any further assistance, please advise.

Very truly yours,

A handwritten signature in cursive script, reading "Donald W. McEldowney".

Donald W. McEldowney
Appropriation Examiner

DWM:JMB

Enc. Decree
Orders (2)
Advertising packages (2)
Transmittal letters (2)

33-2128
33129

January 23, 1970

Re: Permit No. G-33129 (New No. 33-2128)

Orville Nicholson
Howe, Idaho 83244

Dear Mr. Nicholson:

During the 1967 session of the Idaho Legislature, certain amendments were made in the law pertaining to the procedures for making proof of beneficial use of water. In order for the Department to comply with these changes, Rules of Practice and Procedure were adopted on August 1, 1968. Generally, these procedures and the amended law make it simpler for a person to make proof and relieve the permit holder from making separate proofs of completion of works and beneficial use of water.

The enclosed order modifies your permit to comply with these rules and regulations. As a part of the new procedure, you will be required to publish a notice at your expense for two consecutive weeks in a paper as prescribed by the Department; previously, a permit holder had to publish a notice for four weeks when he submitted proof under his permit.

If you will complete the enclosed forms, we will cause the notice to be published. Should you require additional forms or information, we will be glad to supply it upon request at any time.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:JMB

Enc. Order
Advertising package

33-2128
33129

33129

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

ORVILLE W. NICHOLSON, REA E.
NICHOLSON, his wife, and
DUANE HAWLEY,

PLAINTIFFS

-vs-

M. W. HANSEN, as Water Master of
Water District No. 9 of the State
of Idaho,

DEFENDANTS

and

ROBERT R. MAYS, CHARLES O'MALEY,
CHARLES WEBB, CHARLES KYLE, WENDELL
HANSEN, EMLEN MAYS, ANDREW LITTLE
and FRANK REED,

DEFENDANTS in
Intervention

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause came on regularly to be heard and tried in open Court on the 20th day of January, 1954, before the Court without a jury at Arco, Butte County, Idaho; Ralph L. Albaugh appearing as attorney for the above named plaintiffs and J. Blaine Anderson as attorney for the above named defendant and defendants in intervention, (hereinafter called defendants).

The said cause was heard and tried upon the plaintiffs' verified Complaint on file herein and the defendants' answer on file herein.

Witnesses were duly sworn, examined and testified for and in behalf of the above named plaintiff and also witnesses were duly sworn, examined and testified for and in behalf of the above named defendants. The Court having heard the testimony and having examined the proofs offered by the respective parties, and having duly considered the briefs, filed by respective counsel and being fully advised in the premises, finds the facts as follows:

FINDINGS OF FACT

1. That plaintiffs, Orville W. Nicholson and Rea E. Nicholson, are, and for many years last past have been, husband and wife.

33129
33-2128

2. That plaintiffs are the owners, in possession, and entitled to the possession of the following described land, situate in Butte County, Idaho, to-wit:

The Northwest Quarter (NW $\frac{1}{4}$) and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty-nine (29), The West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Thirty-two (32), Township Eight (8) North, Range Twenty-eight (28), East Boise Meridian,

which land and premises, the points of diversion and the creek and the river hereinafter mentioned are situate within the boundaries of Water District No. 9 of the State of Idaho.

3. That the defendant is the duly elected, qualified and acting Water Master of said Water District No. 9.

4. That all of the above described lands are arid in character and require the artificial application of water for the purpose of producing profitable agricultural crops thereon, and that the waters and water rights hereinafter described are necessary for the development, reclamation and use of said lands.

5. That the waters of Little Lost River and its tributaries were heretofore decreed in that certain action entitled Elaine County Investment Company, a corporation, Plaintiff, vs Robert G. Mays, et al, Defendants, judgment therein being made and entered under date of March 4, 1927, and recorded in Book 1 of Orders and Decrees at Page 425 of the Records of Butte County, Idaho; that plaintiffs herein were not parties to said action and did not appear therein, and the water rights hereinafter described were not adjudicated or decreed in said action.

6. That plaintiffs, and each of them, accept as binding upon them the said decree and the findings of fact, and conclusions of law upon which it is based.

7. That Pass Creek is a small stream of water flowing in a general Southerly direction through Section Twenty-six (26) (and other sections), in Township Eight (8) North, Range Twenty-eight (28), East Boise Meridian; that during the months of April, May, June and the first fifteen (15) days of July of each year, said Pass Creek is a tributary of Little Lost River and during the remainder of the irrigation season, it is not a tributary to any stream.

8. That said Pass Creek from plaintiffs' point of diversion

hereinafter described, to its juncture with Little Lost River, flows through a porous bed and channel and during said months of April, May, June and the first fifteen (15) days of July of each year, all of the water in said creek except .8 cubic feet per second is lost by percolation into its bed before its juncture with Little Lost River, and during the remainder of the irrigation season all of said water is so lost between plaintiffs said point of diversion and Little Lost River. That the average flow of said Pass Creek at plaintiffs' said point of diversion is approximately 4 cubic feet per second.

9. That the water table in the vicinity of Pass Creek is such that no water lost by percolation ever finds its way into the bed of Pass Creek or into Little Lost River, nor is there any subterranean flow supporting the surface flow, and during the months of April, May, June and the first fifteen (15) days of July Pass Creek contributes only .8 cubic feet per second of water to Little Lost River, and during the remainder of the irrigation season, contributes no water whatever to Little Lost River or its tributaries.

10. That on or about April 8, 1941, one Roy Hawley made application to the Commissioner of Reclamation of the State of Idaho for a permit to appropriate and divert 4 cubic feet per second of the waters of said Pass Creek for irrigation of the lands described in paragraph 2 herein; that said application was on June 9, 1941, duly approved by said Commissioner of Reclamation and Water Permit No. 19119 for said amount of water was granted to said applicant by said Commissioner of Reclamation. That, thereafter and heretofore, plaintiffs acquired the rights of said applicant, under said permit and are now, and for a long time have been, the owners thereof with all diversion works constructed thereunder, and all water appropriated thereby; that plaintiffs and their said predecessor in interest, in apt time and manner, duly complied with all of the terms, conditions and limitations specified in said Water Permit No. 19119, and the land described in paragraph 2 herein has been, during each irrigation season since the year 1941 and until the year 1953, irrigated through the diversion and application of the waters of Pass Creek, appropriated and diverted under said Permit; that on or about the 14th day of March, 1953, plaintiffs duly submitted to the Idaho

State Reclamation Engineer proof of the application to beneficial use in the irrigation of the said land of said 4 cubic feet per second of the waters of Pass Creek appropriated under said Permit No. 19119 and on or about the 21st day of July, 1953, said State Reclamation Engineer, issued his license confirming plaintiffs' right to the use of said 4 cubic feet per second of the waters of Pass Creek with priority dating from April 8, 1941, for the irrigation of said land.

11. That the point of diversion of plaintiffs' said waters from Pass Creek is situated in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Twenty-six (26), Township Eight (8) North, Range Twenty-eight (28), East Boise Meridian, from whence it is carried through a ditch running in a general Northwesterly direction ~~through said ditch running in a general Northwesterly direction~~ through Sections Twenty-six (26), Twenty-two (22) and Sixteen (16) to the East line of Section Seventeen (17), and said water is from there carried in a tile pipe line in a general Southwesterly direction to the North line of plaintiffs' said land. That plaintiffs have heretofore constructed a ditch from the south boundary line of plaintiffs' said land to Spring Creek for the purpose of carrying to Little Lost River via Spring Creek any Pass Creek water to which the water users taking water from Little Lost River may be entitled; that said ditch is not sufficient or adequate for carrying .8 cubic feet per second of water as herein provided; that it is the duty of plaintiffs to promptly construct a permanent ditch from their said land to Spring Creek sufficient in construction and size to carry .8 cubic feet per second of water from plaintiffs' said land to Spring Creek and to install therein a headgate or other measuring device whereby the flow of water in said ditch may be readily measured with reasonable accuracy. That the measuring and distribution of said water should be under the control of the Water Master of Water District No. 9.

12. That it is the duty of plaintiffs to construct and install, prior to the beginning of the irrigation season for the year 1955, a headgate, or other regulating and measuring device, in their said ditch at its point of diversion on Pass Creek whereby the flow of water in said ditch may be readily regulated and measured with reasonable accuracy.

13. Plaintiffs, by the construction of their diversion works as aforesaid, have prevented a substantial loss of water through seepage and percolation into the bed of Pass Creek, and have substantially augmented the amount of water available from said stream for beneficial use; and excepting only said .8 cubic feet per second which would reach Spring Creek and Little Lost River each year during the months of April, May, June and the first fifteen (15) days of July, the plaintiffs have the right to use all of the waters of Pass Creek, but not to exceed 4 cubic feet per second.

14. That during each and every irrigation season since 1941, and until the year 1953, plaintiffs and their predecessors in interest have conveyed said 4 cubic feet per second of water through the diversion works described in paragraph 11, herein, and have irrigated the land described in paragraph 2. That all of said 4 cubic feet per second of said water is required for the proper and effective irrigation of said land.

15. That in April, 1953, while plaintiffs were diverting said water from Pass Creek and irrigating said land therewith, defendants, their agents, servants and employees obstructed and closed plaintiffs' said diversion works and thereby prevented and for a substantial period of time thereafter did prevent plaintiffs from using said waters of Pass Creek; that at or about said time, the defendants preferred a criminal charge against the plaintiffs under Section 18-4304, Idaho Code, alleging the unlawful diversion of said water, and said criminal action is still pending in the Justice Court of Arco Precinct, Butte County, Idaho; that defendants threatened to, and will henceforth, continue to deprive plaintiffs of said irrigating water and the whole thereof, thereby causing plaintiffs great and irreparable injury unless defendants are restrained therefrom by the order and decree of this Court.

16. That said Pass Creek is sometimes known as Uncle Ike's Creek and sometimes known as Fallert Creek, and that Uncle Ike's Creek, Pass Creek and Fallert Creek is one and the same natural stream of water.

17. That said water so appropriated and used, as aforesaid, by plaintiffs is independent of Little Lost River or any of its tributaries and the right of plaintiffs thereto is prior and paramount to any claim

thereon by any user or claimant of rights in the natural flow of Little Lost River or its tributaries, subject only to the prior rights of the water users of Little Lost River to .8 cubic feet per second of the waters of Pass Creek during the months of April, May, June and the first fifteen (15) days of July of each year.

18. That the right of defendants and other water users of the decreed water from Little Lost River to said .8 cubic feet per second of the waters of Pass Creek during the months of April, May, June and the first fifteen (15) days of July of each year is prior in time, and superior in right, to the rights of plaintiffs, and it is the duty of plaintiffs to deliver from their said ranch to Spring Creek through the ditch described in paragraph 11 herein a continuous flow of said .8 cubic feet per second of water for said period of time.

19. That at the close of the irrigation season in each year, plaintiffs' headgate at plaintiffs' point of diversion on Pass Creek should be closed and all the water of Pass Creek permitted to flow past said headgate and down the natural channel of Pass Creek until the beginning of the following irrigation season when said waters of Pass Creek may again be diverted by plaintiffs into and through plaintiffs' diversion works, as herein provided.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. That the plaintiffs are the owners of the land described in paragraph 2 of the foregoing Findings of Fact; that said land is arid and requires said 4 cubic feet per second of the waters of Pass Creek for the purpose of producing profitable crops thereon.

2. That plaintiffs are entitled to judgment herein adjudging and decreeing that plaintiffs are the owners of, and have the right to use for the irrigation of said land, 4 cubic feet per second of the waters of Pass Creek under their said Water License No. 19119, with a priority of April 8, 1941, subject only to the prior rights of the defendants and other water users of Little Lost River to .8 cubic feet per second of the waters of Pass Creek during the months of April, May, June and the first

fifteen (15) days of July of each year; that subject to said prior right of .8 cubic feet per second for the period of time aforesaid, the said waters of Pass Creek are wholly independent of Little Lost River and its tributaries and plaintiffs' right thereto is prior and paramount to any claim thereto by any user or claimant of rights in the flow of Little Lost River or its tributaries.

3. That in order to use said waters of Pass Creek, so saved and salvaged by plaintiffs, and to provide the water users of Little Lost River with said .8 cubic feet per second as aforesaid, the plaintiffs shall provide and maintain an adequate ditch from their said land to Spring Creek for carrying said .8 cubic feet per second of water, and install therein a headgate or other measuring device for measuring said water, which shall be under the control of the Water Master of Water District No. 9.

4. That this action is brought under the provisions of Section 42-1405, Idaho Code, and should be made a part of the decree in Blaine County Investment Co. vs. Mays, et al, entered March 4, 1927, in Book 1 of Orders and Decrees at Page 425, Records of Butte County, Idaho, and plaintiffs shall be entitled to vote their said water rights as herein decreed at all annual meetings of the water users of said Water District No. 9.

5. That plaintiffs are entitled to have a permanent injunction issue herein, restraining and enjoining the defendants, their agents, servants and employees from interference with the plaintiffs in the use of their said water rights and diversion works, and from obstructing and closing plaintiffs said diversion works.

6. That plaintiffs should pay their own costs incurred herein and that defendants are entitled to a judgment for their costs and disbursements herein expended.

Let judgment and decree be entered in accordance with the foregoing Findings and Conclusions.

Dated this _____ day of July, 1954.

PRESTON A. THATCHER
DISTRICT JUDGE

33129
33-2128

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
BUTTE

OSVILLE W. NICHOLSON, REA E.
NICHOLSON, his wife, and
LORNE HAWLEY,

Plaintiffs

-vs--

N. M. HANSEN, as Water Master of
Water District No. 9 of the State
of Idaho,

Defendant

and

ROBERT R. MAYS, CHARLES O'MALEY,
CHARLES WEBB, CHARLES KYLE, WENDELL
HANSEN, EMLEN MAYS, ANDREW LITTLE
and FRANK REED,

Defendants in
Intervention

J U D G M E N T

This cause came on regularly to be heard and tried in open Court on the 20th day of January, 1934, before the Court without a jury at Arco, Butte County, Idaho; Ralph L. Albough, of the firm of Albough, Bloem, Barnard & Smith, appearing as attorney for the above named plaintiffs, and J. Blaine Anderson as attorney for the defendant and the defendants in intervention (hereinafter called defendants). The said cause was heard and tried upon the plaintiffs' verified complaint on file herein and the defendants' answer on file herein; and it appearing to the Court that notice of pendency of action was published once a week for a period of three weeks in the Arco Advertiser as ordered by the Court, and the matter having been submitted and by the Court duly considered, and the Court having heretofore made and filed herein its findings of facts and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

That the plaintiffs are the owners of, and have the right to use 4 cubic feet per second of the waters of Pass Creek with a priority date of April 8, 1941, as evidenced and confirmed by Idaho State Water License No. 19119, and to divert and conduct said water from their present point of diversion on Pass Creek, in the Northeast Quarter

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of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Section Twenty-six (26), Township Eight (8) North, Range Twenty-eight (28), East Boise Meridian, and to use said water for irrigation and domestic purposes on the following described lands situate in the County of Butte, State of Idaho, to-wit:

The Northwest Quarter (NW $\frac{1}{4}$) and the West Half of the Southwest Quarter (WSW $\frac{1}{4}$) of Section Twenty-nine (29), The West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Thirty-two (32), Township Eight (8) North, Range Twenty-eight (28), East of the Boise Meridian.

II.

It is further ordered, adjudged and decreed that the defendants and other water users of Little Lost River have the first, prior and paramount right to .8 cubic feet per second of the waters of Pass Creek during only the months of April, May, June and the first fifteen (15) days of July of each year.

III.

It is further ordered, adjudged and decreed that, except as provided and adjudged in Paragraph II herein, the said waters of Pass Creek are wholly independent of Little Lost River or any of its tributaries, and the right of plaintiffs thereto is prior and paramount to any claim thereon by any user or any claimant of rights in the flow of Little Lost River or its tributaries, and that the defendants and all interested parties be, and they are hereby enjoined and barred from asserting any right or claim to the use of said water except as allowed and decreed in Paragraph II herein.

IV.

It is further ordered, adjudged and decreed that plaintiffs shall provide and maintain an adequate ditch from their land, described in Paragraph I herein, to Spring Creek for carrying the .8 cubic feet per second of water decreed in Paragraph II herein to defendants and other water users of Little Lost River, and shall deliver to Spring Creek through said ditch said .8 cubic feet per second of the water of Pass Creek, but only during the months of April, May, June and the first fifteen (15) days of July of each year; that plaintiffs shall install and maintain in said ditch a headgate or other measuring device for measuring said .8 cubic feet per second of water, and the measuring, control and distribution of said water is hereby committed to the Water Master of Water District No. 9.

V.

It is further ordered, adjudged and decreed that plaintiffs shall construct and install, prior to the beginning of the irrigation season for the year 1955, a headgate or other regulating and measuring device in their said ditch at its point of diversion on Pass Creek whereby the flow of water in said ditch may be readily regulated and measured with reasonable accuracy.

VI.

It is further ordered, adjudged and decreed that plaintiffs, at the end of the irrigation season in each year, shall close plaintiffs' headgate at plaintiffs said point of diversion on Pass Creek, and all the waters of Pass Creek shall be permitted to flow past said headgate and down the natural channel of Pass Creek until the beginning of the following irrigation season when said waters of Pass Creek may again be diverted into and through plaintiffs' diversion works to and upon the land described in Paragraph I herein, and said .8 cubic feet per second to Spring Creek as provided in Paragraph IV herein.

VII.

It is further ordered, adjudged and decreed that defendants, their agents, servants and employees, and all persons acting by, through, for or under either of them, be and they hereby are enjoined and restrained from doing any act or thing which in any way obstructs, prevents or interferes with the flow of plaintiffs' said water from Pass Creek to plaintiffs' said lands.

VIII.

It is further ordered, adjudged and decreed that this judgment shall be made a part of the decree in the case, Blaine County Investment Co. vs. Mays, et al, entered March 4, 1927, in Book 1 of Orders and Decrees at Page 425, Records of Butte County, Idaho, and that plaintiffs shall be entitled to vote their said water rights as herein decreed at all annual meetings of the water users of Water District No. 9.

IX.

It is further ordered, adjudged and decreed that this summary adjudication of water rights is made under the authority, and in accordance with, Section 42-1405, Idaho Code, and that plaintiffs pay

their own costs incurred herein and that defendants have judgment against the plaintiffs for their costs, incurred in this suit, amounting to the total sum of, and which are taxed at the sum of \$ _____.

Dated this _____ day of July, 1934.

PRESTON A. THATCHER

September 20, 1966

RE: Permit G-33129

Orville Nicholson
Howe, Idaho

Dear Mr. Nicholson:

Enclosed is departmental receipt No. G-10867 in the amount of \$1.00 which covers the fee for copies of the above numbered permit which has mailed to you September 12.

Very truly yours,

M. RUSSELL BOSCH
Office Manager

MRB:efw

Encl: Receipt

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September 12, 1966

RE: Permit G-23129

Orville Nicholson
Howe, Idaho

Dear Mr. Nicholson:

Enclosed is a copy of the above numbered permit which you requested per telephone conversation of the above date.

There is a \$1.00 fee for this copy. Please remit this amount so we can clear our records.

Very truly yours,

M. RUSSELL BOSCH
Office Manager

MRB:ejw

Encl: Copy of permit

33129

September 12, 1966

Re: Permit No. G -33129

Orville Nicholson
Howe, Idaho

Dear Mr. Nicholson:

We enclose Permit No. G-33129 in which we direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

We also enclose Departmental Receipt No. G-10773 which was issued covering payment in the amount of \$ 12.75 for the filing fee of the above mentioned permit. This amount includes 6.50 and 5.25 for application numbers G-41331 and G-41332 and \$1.00 for a copy to the B.L.M.

Very truly yours,

Enc. permit, receipt

M. RUSSELL BOSCH
Office Manager

MRB:ejw

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Dear Sir;

It the other day I was in there and applied for a water permit for 40 inches of water from a well. We filled out the paper and I was informed that I would have to send you this Decree. Please return it to me please.



RECEIVED
AUG 23 1966

Department of Reclamation

Orville Nicholson

Orville Nicholson
Howe, Idaho

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