

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO, IN AND
FOR THE COUNTY OF CASSIA. 43-BX-1

Lea Kirk, et al,)
Plaintiff,)
Vs.) Findings of Fact.
A. Bartholomew et al,)
Defendants.)

This case came on for hearing at the September Term, 1892 said cause being called for hearing it was stipulated by agreement of all to submit said cause on the testimony taken at the first trial of said cause and to argue the same at chambers. Said cause was argued at Chambers at Hailey in January, 1893, and afterwards said cause was called at the September Term, 1893, at Albion, Court then being in session, and the attention of said court was called to said testimony and arguments of counsel was had upon the evidence heretofore taken in pursuance of said stipulation.

Stewart C. Dietrich appeared for plaintiff Raft River Land & Cattle Company and Stephen Hooper. F. S. Richards for plaintiff Lea Kirk. Hawley & Reeves for plaintiffs R. C. McCormick. & H. W. Smith for Sweetser Bros. & Pierce and James Hitt; Arthur Brown for the Durham Land & Cattle Company; F. S. Richards for the defendants, Langford, and J. H. Jones; J. C. Rogers for defendants Bartholomew, Hubbard, Whitaker and Branson; Hawley & Reeves for G. V. Spencer, T. O. King, Jacob Eden, M. L. Durfee, H. R. Cahoon, H. D. Durfee Jr. W. E. Johnston, J. P. Janson, J. T. Taylor, Charles Heath, Charles Eames, G. B. Graham, Joseph Eason, William Holt, J. W. Miller and Henry Eames.

The Court having heard and considered the evidence and the arguments of counsel and being fully advised in the premises finds the following facts:

that to properly irrigate the lands during the ~~XXXXXXX~~.
after mentioned which are entitled to irrigation both
water, one inch per acre as the amount necessary to
ator, and each is awarded an inch per acre during the

MICROFILMED

FILE 43-A(11)

~~43-0300~~

Superceeded by → See Albion Idaho Land Co
Vs Adams decree

43-0474

S T A T E O F I D A H O .

----- OFFICE OF STATE ENGINEER -----

CERTIFICATE NO. 164, AUTHORIZING TRANSFER OF WATER RIGHT.

Permission is hereby granted Nevin Macfarlane, of Elba, County of Cassia, State of Idaho, to transfer the use of fifty (50) inches of the waters of certain springs located on $W\frac{1}{2}$ of $SW\frac{1}{4}$, Sec. 29, and $E\frac{1}{2}$ of $SE\frac{1}{4}$ Sec. 30, in T. 13 S., R. 25 E.B.M., in Cassia County, State of Idaho, from the lands upon which it is now used, $W\frac{1}{2}$ of $SW\frac{1}{4}$ and $E\frac{1}{2}$ of $SE\frac{1}{4}$, Secs. 29 and 30, T. 13 S., R. 25 E.B.M., to the following described lands, to-wit: $NW\frac{1}{4}$ of $NE\frac{1}{4}$ and $NE\frac{1}{4}$ of $NW\frac{1}{4}$, Sec. 30, T. 13 S., R. 25 E.B.M., said water to be diverted near the north boundary line of said Section 30, T. 13 S., R. 25 E.B.M.

The water right appurtenant to the above described lands was adjudged by decree, dated October 5th, 1893, of C.O. Stockslager, Judge of the District Court of the Fourth Judicial District of the State of Idaho and for the County of Cassia, in the matter of Lee Kirk, et al., plaintiffs, vs. A. Bartholomew, et al, defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 22nd day of September, 1915.

J.H. SMITH,

State Engineer.

(SEAL)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO, IN AND
FOR THE COUNTY OF CASSIA.

43-BX-1

Lee Kirk, et al,)
Plaintiffs,)
vs.) Findings of Fact.
A. Bartholomew et al,)
Defendants.)

This case came on for hearing at the September Term, 1892 said cause being called for hearing it was stipulated by agreement of all to submit said case on the testimony taken at the first trial of said cause and to argue the same at chambers. Said cause was argued at Chambers at Halley in January, 1893, and afterwards said cause was called at the September Term, 1897. at Albion, Court then being in session, and the attention of said court was called to said testimony and arguments of counsel was heard and the evidence heretofore taken in pursuance of said stipulation.

Stewart T. Hestrich appeared for defendant Rapt River Land & Cattle Company and Stephen Booth. F. S. Richards for plaintiff Lee Kirk. Hawley & Heever for plaintiff R. C. McCormick. & H. W. Smith for Executors of Estate of James Hilt; Arthur Brown for the Durham Land & Cattle Company; F. S. Richards for the defendants, Langford, and J. J. Jones & J. C. Rogers for defendants Bartholomew, Hubbard, Whitaker and others; Hawley & Heever for G. V. Spencer, T. O. King, Jacob Nelson, E. J. Kestee, H. R. Gibson, H. D. Duffee Jr. W.E. Johnston, J. P. Tinson, J. F. Taylor, Charles Heath, Charles James, G.E. Graham, Joseph Jackson, Willie Holt, J. W. Miller and Henry Hanes.

The Court having heard and considered the evidence and the arguments of counsel and being fully advised in the premises finds the following facts:

That the lands are to be irrigated during the summer months. That the water, one inch per acre is the amount necessary to grow crops, and each is entitled to one inch per acre during the

RECEIVED

September 25, 1915.

Re Certificate of Transfer.
Nevin Macfarlane.

Mr. T. Bailey Lee,
Attorney at law,
Burley, Idaho.

Sir:--

An enclosing herewith certificate of transfer
No. 164.

Very truly yours,

J. H. S. SMITH,

State Engineer.

CE164

By _____

Affidavit of Publication

STATE of IDAHO, } ss.
County of Cassia, }

Notice of Proposed Transfer of Water Right

Notice is hereby given that Nevin Macfarlane, of Elba, Idaho, has applied to the state engineer of the state of Idaho, for a certificate authorizing him to transfer the use of fifty inches of water of certain springs from the land upon which it is now used, i. e. $\frac{1}{2}$ of $\text{sw}\frac{1}{4}$ and $\frac{1}{2}$ of $\text{se}\frac{1}{4}$, sections 29 and 30 respectively, township 13 south, range 25 east, Boise Meridian, to the following described tract: $\text{Nw}\frac{1}{4}$ of $\text{ne}\frac{1}{4}$ and $\text{ne}\frac{1}{4}$ of $\text{nw}\frac{1}{4}$, section 30, township 13 south, range 25 east, Boise Meridian.

And, on the 7th day of September, A. D. 1915, at Malta, Idaho, before the State Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer,

41-44 J. H. SMITH, State Engineer.

I, J. E. Perry, Publisher ~~Foreman~~ of The Albion Nugget, a weekly newspaper of general circulation, published once each week at Albion, Cassia County, Idaho, do solemnly swear that a copy of the notice attached hereto and which is made a part of this affidavit, and a part of the proof of publication, was published in said newspaper for 4 consecutive weeks commencing with the issue dated Aug. 6 1915 and ending with the issue dated Aug. 27 1915, that said notice was published in the regular and entire issue of every number and not in any supplement thereof, and that said newspaper has been published for more than fifty-two consecutive weeks prior to date of first publication of said notice.

Subscribed and sworn to before me this 3rd day of Sept 1915

George Cook

Notary Public, Cassia County, Idaho

My commission expires Apr 23, 1918

THE ALBION NUGGET

PUBLISHED WEEKLY

J. E. TERRY, EDITOR AND PROPRIETOR

ALBION, IDAHO

Sept 3, 1915

Mr. T. Bailey Lee
Burley, Idaho

Dear sir:--

According to instructions from the State Engineer, I am enclosing affidavit of publication of "Notice to transfer Water Right" for Vivian Macfarlane, which should be in your hands on or before September 7, 1915. I was also instructed that you were attorney in the case for the applicant, and to send you notice of the amount of charges for publishing.

The notice, which is attached to the affidavit, was published four times, beginning with the issue of August 6, 1915, and ending August 27, 1915. The charges in full are \$6.00.

Yours very truly,


The Albion Nugget

RECEIVED
SEP 10 1915
ALBION, IDAHO

August 2nd, 1915.

Re application for transfer- Nevin Macfarlane.

Mr. T. Bailey Lee,
Attorney at law,
Burley, Idaho.

Sir:--

We are in receipt of your letter enclosing application for transfer of water right filed by the above named party and same is satisfactory. The notice for publication has today been mailed to the Albion Nugget, the nearest paper to the land. The hearing will be held before Mr. F.W. Wilkie, Deputy State Engineer, at Malta, on September 7th. As there are two other transfers to be made on that date it will be most convenient to hold all three at Malta. Mr. Wilkie will make an examination on the ground before the hearing is taken. We have advised the publisher of the Nugget to furnish you with affidavit of publication and send statement for fees to you, as attorney for the applicant.

Very truly yours,

J. H. SMITH,

State Engineer.

By _____

En

August 2, 1915.

Re publication notice.

The Nugget,
Albion, Idaho.

Gentlemen:--

Am enclosing herewith notice for publication for transfer of water right, which please publish once a week for four consecutive weeks. The expense of this publication will be paid by Vevin Macfarlane, by his attorney T. Bailey Lee, of Burley, to whom you will please furnish proof of publication on or before September 7th.

Please mail me a copy of your first issue containing this notice that I may compare it with my records.

Very truly yours,

J. E. SMITH,

State Engineer.

Enc.N.

By _____

RECEIVED
AUG 10 1915

Notice of Proposed Transfer of Water Right

Notice is hereby given that Nevin Macfarlane of Elba
Idaho, has applied to the State Engineer of the State of Idaho for a certificate
 authorizing him to transfer the use of fifty inches of the water of
certain springs,
 from the land upon which it is now used, i. e. W $\frac{1}{2}$ of SW $\frac{1}{4}$ and E $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 29, and 30
respectively, T. 13 S., R. 25 E.B.M.
 to the following described tract: NW $\frac{1}{4}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 30, T. 13 S., R. 25 E.B.M.

And that, on the 7th day of September, A. D.
 1915, at Malta, Idaho,
State Engineer
 before the ~~Water Commissioner of this Division~~, or his authorized agent, the opportunity will be given
 to any and all persons to appear and present for his consideration any reason or reasons why a certifi-
 cate should not be issued authorizing such transfer.

~~Full details of the proposed transfer may be obtained from~~
~~Water Commissioner of said district.~~

J.H. Smith,
 State Engineer.

T. BAILEY LEE
LAWYER
BURLEY, IDAHO

Stamp
100
pd

July 30th 1915
RECORDED
JUL 31 1915
THE C. ...

State Engineer.,
Boise, Idaho

My Dear Sir:-

I am enclosing you petition of Hevin MacFarlane for permit to transfer water from present location:also map, Court Decree awarding him the use of such water,and a partly filled Notice of such application. I did not fill out the latter completely,as I did not know what your pleasure might be. I think the Albion Nuggett,at Albion,would be the best paper to publish the notice in;and since the Water Commissioner is no more,I did not know who should sign such notice.

There is a misprint in the water decree on page 21,W.MacFarlane appearing instead of N.MacFarlane. The pleadings are correct,and there is no such man as W.MacFarlane.

I also enclose \$1.00 which may be a little ahead of time,but can be held until later.

I thank you very much for your letter explaining the tortuous route the former application travelled before vanishing. We hope better luck this time.

Very truly yours,

T. Bailey Lee

RECORDED
JUL 31 1915
THE C. ...

Sept 1

Notice of Proposed Transfer of Water Right

Notice is hereby given that

Kevin Macfarlane of *Elba*
Cassia Co. Idaho has applied to the State Engineer of the State of Idaho for a certificate

authorizing him to transfer the use of *fifty inches* of the water of

certain springs

from the land upon which it is now used, i. e.

W 1/2 SW 1/4 and E 1/2 SE 1/4
Sec 29 Tp 13 and 30, respectively, R 25
E. B. M.

to the following described tract:

NW 1/4 NE 1/4 and NE 1/4 NW 1/4 of
Sec 30, Tp 13, R 25 E. B. M.

And that, on the _____ day of _____, A. D.

191*5*, at _____

before the Water Commissioner of this Division, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Full details of the proposed transfer may be obtained from

H. A. Ward

Watermaster of said stream.

Application for Transfer of Water Right

STATE OF IDAHO,

County of Cassia

ss.

Nevin MacFarlane

being first duly sworn, deposes and says:

That his name is Nevin McFarlane; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is

Elba, Cassia County, State of Idaho

That he is the owner and using a certain water right of ~~all the waters of certain~~ the springs located and flowing on W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 29 and E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 30 all in Tp. 13.S.R.25.E.B.M., in said Cassia County

County of _____, State of Idaho, decreed to N. McFarlaneby decree of Judge C.O. Stackslager, of theFourth Judicial District of the State of Idaho, in and for the County of Cassiain the case of Lee Kirk et al vs A. Bartholomew et al~~xxx~~ said decree bearing date of October 5th 1893

(or obtained by virtue of License No. _____, issued by the State Engineer of the State of Idaho, dated _____), for the purpose of irrigating the

following described lands situate, lying and being in the County of Cassia andState of Idaho, to-wit: W $\frac{1}{2}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Secs. 29 and 30 in Tp. 13.S.R.25.E.B.M.

to which lands said decree also awarded 20 inches of the waters of Cotton Wood Creek.

and is the person (or the representative of the ~~corporation~~ person) to whom such right so issued, or has become the owner thereof in the following manner, to-wit:

~~as per abstract of title of said water right hereto attached and made a part of this statement~~
springs

That said waters are now diverted from said ~~stream~~ points near the north boundary line of said Section 30

and conducted to the above described lands through ditches as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of fifty inches of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Cassia and State of Idaho, to-wit: NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30. Tp. 13.S.R.25.E.B.M.

That his reasons for desiring to make such transfer are as follows: ~~that the land now watered by said waters slants to such an extent that the full decreed amount is not necessary therefor, and that the excess is sufficient to irrigate the parcel of land to which such fifty inches of excess is sought to be transferred.~~

That he intends to divert and convey said fifty inches of water to the tract of land last above described in the following manner, to-wit:

By simply swinging the present ditches across the north boundary line of said Section 30, as per enclosed map.

as set forth upon the map hereto attached; and

That no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the State Engineer of the State of Idaho issue to him the proper certificate authorizing such transfer, and give proper notice of the same to the Water Commissioner of the Division, in accordance with the provisions of Section 11, House Bill No. 146, of the Laws of the Seventh Session of the Legislature of the State of Idaho.

Subscribed and sworn to before me this 24 day of July

A. D. 1915

Notary Public in and for Cassia County, Idaho

STATE OF IDAHO,

County of Cassia

SS.

J. H. Parish and A. M. Homer

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Elba, Cassia County, Idaho that he is a user of water from Cottonwood Creek, County of Cassia, State of Idaho; that he has read or heard read the foregoing affidavit and petition of Nevin McFarlane, and is familiar with its allegations, and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

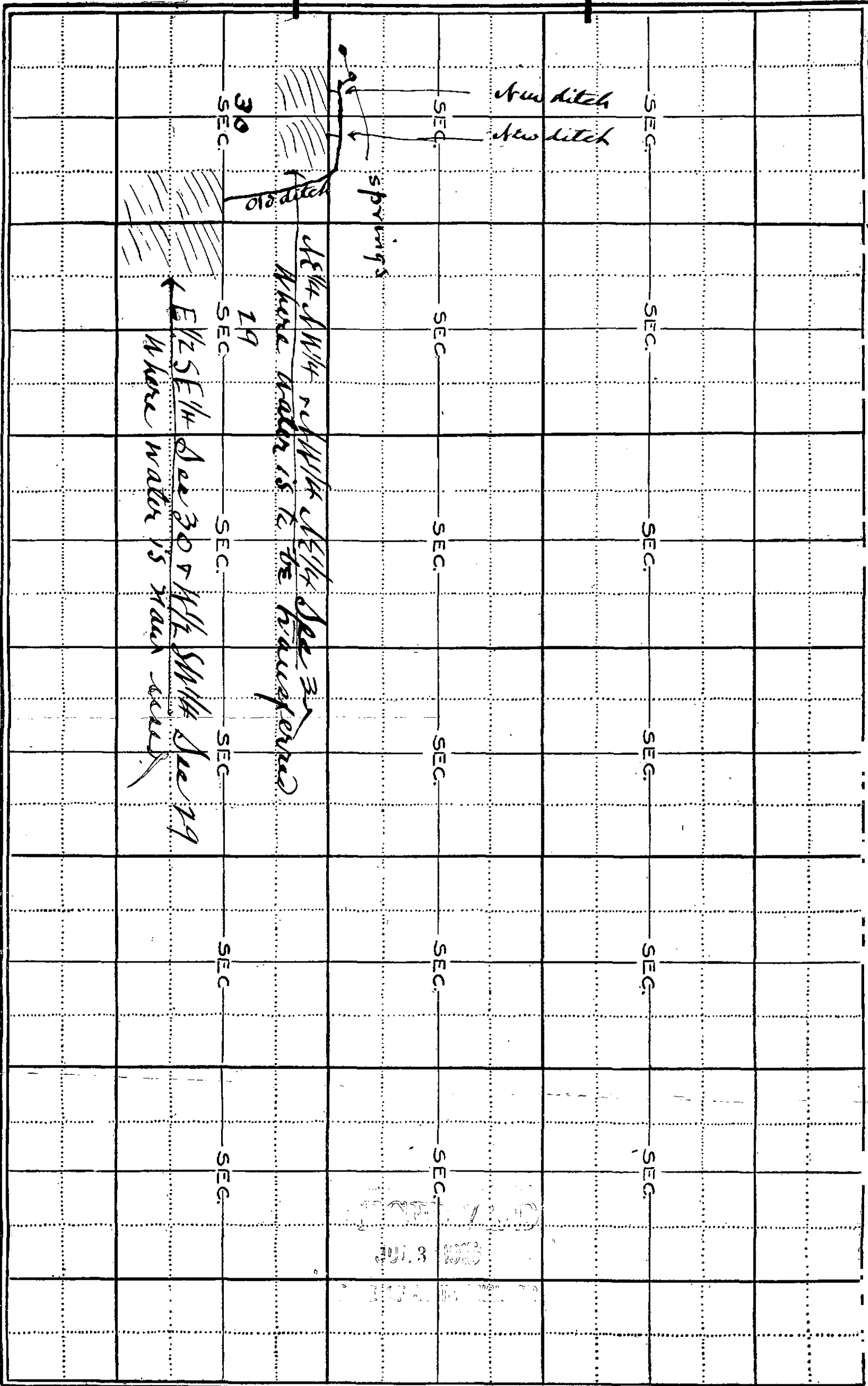
Subscribed and sworn to before me this 24 day of July

A. D. 1915

Notary Public in and for Cassia County, Idaho

Name of Applicant

KEVIN McFarlane



In the matter of Appli-
cation for Water Right
of Nevin MacFarlane at
Elba, Idaho.

)
(Report of Examining
) Engineer.
(

This is to certify that on the 7th day of
September, 1915, I made an examination on the ground
in the above entitled cause and after examining the
Creeks, situation of the land, and taking into consid-
eration the effect that this proposed transfer will
have upon other water rights on the said creeks, I am
unable to discover wherein any other person will be
injured by the said transfer.

The lands included in and effected by this
transfer are situated in Township 13 South, Range 25
East Boise Meridian.

Dated at Boise, Idaho, this 14th day of Sept-
ember, 1915.


Deputy State Engineer.

RB.

STATE OF IDAHO.

County of Cassia

} ss.

I, W. A. Ward, Watermaster of Elba District

County of Cassia, State of Idaho, whose postoffice address is Elba

Cassia County, State of Idaho have read or heard read the foregoing affidavit and petition of Nevin McFarlane

and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized;

and I hereby endorse my approval of said petition, and request that the State Engineer issue the certificate of transfer as petitioned; ~~or (do not approve of the issuance of the certificate of transfer prayed for) for the~~

~~following reasons:~~

W. A. Ward

Watermaster.

Notice having been duly published for thirty days of the intention of the above named Nevin MacFarlane to apply to the State Engineer of the State of Idaho for a certificate authorizing the transfer of water as set forth in this affidavit and petition herein, and an opportunity having been given to any and all persons opposing said transfer to present their objections in a public hearing before me at Malta, Idaho, on September 7th, 1915, according to the terms of said notice;

And it not appearing at said hearing that anyone would be materially injured by such transfer:

I hereby recommend that the said State Engineer of the State of Idaho issue his certificate to said applicant, authorizing the transfer as prayed for in his petition; ~~or (and it appearing at said hearing that the following injuries would be sustained by others if such transfer is permitted)~~

I hereby recommend that the State Engineer do ~~not~~ issue the certificate authorizing the transfer sought hereinabove.

Judith W. W. W.

~~Commissioner of Water Division No.~~

~~Box~~