

No Color
Documents
In File

See Rgt No
43-0274

165

superseded by Allen
Idaho Land Co. vs
Adams decree dated
10-23-1938

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

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

CERTIFICATE NO. 165, AUTHORIZING TRANSFER OF WATER RIGHT.

Permission is hereby granted William K. Rice, of Conant, County of Cassia, State of Idaho, to transfer the use of one hundred sixty (160) inches of the waters of Warm Springs and Warm Springs Creek, in the County of Cassia and State of Idaho, from the lands upon which it is now used, i.e., NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 20, T. 13 S., R. 26 E.B.M., to the following described lands, to-wit: W $\frac{1}{2}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 20, T. 13 S., R. 26 E.B.M., said water to be diverted in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 17, T. 13 S., R. 26 E.B.M.

The water right appurtenant to the above described lands was adjudged by decree, dated September 30, 1893, of C.O. Stockslager, Judge of the District Court of the Fourth Judicial District of the State of Idaho, in the matter of J.M. Darby, et al, plaintiffs, vs. E.D. Jones, 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.

RECEIVED
SEP 27 1915

Decree

In the District Court of the Fourth Judicial District of Idaho, in
and for the County of Cassia.

.....
J. M. Darby et al,
Defendants
V
E. D. Jones et al,
Plaintiffs.
;.....

This cause having been regularly called for trial before the Court, a jury having been expressly waived by all the parties hereto in open Court, Hawley & Reeves appeared for the plaintiffs and Messrs. J. C. Rogers, H. W. Smith, Albert Heed, F. E. Ensign, J. W. Ellen, and O. R. Hale appeared for the defendants, the defendant John Condit, by permission of the Court appearing in his own behalf. And the Court having heard the proofs of the respective parties and considered the same, and the records and papers in the case, and the arguments and briefs of the respective Attorneys thereon, and it being agreed by each and all of the parties in open Court that the findings, decision and judgement could be filed and entered in vacation and out of term time, if the Court so desired and the cause having been submitted to the Court for decision, the Court now finds the following facts:-

1st.

That each and every of the parties hereto both plaintiffs and defendants are, and were at the times mentioned in the pleadings herein, citizens of the United States.

2nd.

That the several tracts and parcels of land, belonging to and owned by the parties hereto, set forth and described in the several pleadings herein, and each and every thereof, belonging to either the plaintiffs or the defendants are situate in Cassia County Idaho and are arid in character and require the use of water artificially applied before they will produce profitable crops.

MICROFILMED

purposes and during the irrigating season of each year used said water on said land.

23rd.

That on the 30th day of April 1880 the plaintiff S. H. Barker was and since has been and now is the owner and in the possession and entitled to the possession of that certain tract of land described in his cross-complaint herein, the said land being Government land, agricultural in character and not yet thrown upon the market for sale and being 160 acres more or less, in area. That on the said 30th day of April 1880 for the purpose of irrigating and cultivating said land said plaintiff appropriated one half of the waters of Antelope Creek a small stream fed by Antelope Springs and running 15 inches more or less of water, and also 75 inches of the waters of Cassia Creek and by means of dams and ditches diverted the said waters of said Antelope Creek and said Cassia Creek and conducted the said waters upon his said land and since that time has continuously during the irrigating season of each year used said waters upon said land for the purpose of irrigating the same.

24th.

That on April 30th 1872 plaintiff W. K. Rice was, since has been and now is the owner and in the possession and entitled to the possession of that certain tract of land, to-wit: the east half of the south east quarter and the north west quarter of the south east quarter and the north east quarter of the south west quarter and the south west quarter of the south east quarter and the south east quarter of the south west quarter section 20, township 13 south, range 26 east Boise Meridian, being 240 acres, more or less in area. That on said 30th day of April 1872 said plaintiff appropriated all of the waters of Warm Creek a small stream fed by springs and lying contiguous to said land, and of Warm Springs the source thereof, for use upon said land, and also on said day appropriated 50 inches of the waters of Cassia Creek for use upon said land and by means of dams and ditches diverted said water and conducted it upon said land and since has used said water thereon continuously and during the irrigating season of each year upon said land for the purpose of cultivating and irrigating the

MICROFILMED

September 25, 1915.

Re Transfer of Water Right.

William E. Rice,
Conant, Idaho.

Sir:--

Am enclosing herewith certificate of transfer
of water right, No. 165, with receipt for fee.

Very truly yours,

J. E. SMITH,

State Engineer.

CT165-R7645

By _____

RECORDED
INDEXED

THE ALBION NUGGET

PUBLISHED WEEKLY

J. E. TERRY, EDITOR AND PROPRIETOR

ALBION, IDAHO

August 9, 1915

Hon. J. H. Smith
State Engineer
Boise, Idaho

Dear sir:--

The notice of transfer of Water Right for Vevin Macfarlane, of Elba, and also of William K. Rice, of Conant, was received with your communication of August, and both have been inserted in The Nugget of the week of August 6. A marked copy of the paper has been mailed you containing both printed notices.

Thanking you very kindly, I remain

Very truly,

THE ALBION NUGGET

J. E. Terry Prop.

MICROFILMED

RECEIVED
AUG 10 1915
J. E. TERRY, PROP.

August 2nd, 1915.

Re transfer of water right.

William K. Rice,
Conant, Idaho.

Sir:--

September 7th has been set as the date for your hearing before the State Engineer, or his deputy, in the matter of your transfer of water right, and Malta will be the place of hearing. Examination on the ground will be made before the hearing.

Very truly yours,

J. H. SMITH,

State Engineer.

By _____

RECORDED

August 2, 1915.

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 the publication will be paid by William K. Rice, of Conant, Idaho, to whom you will please proof of publication on or before September 7th.

Please acknowledge receipt of this notice and mail me your first issue containing its publication that I may compare it with my records.

Very truly yours,

J. H. SMITH,

State Engineer.

Enc.N

By _____

MICROFILMED

Notice of Proposed Transfer of Water Right

Notice is hereby given that William K. Rice of Conant,
Idaho, has applied to the State Engineer of the State of Idaho for a certificate
authorizing him to transfer the use of all of of the water of
Warm Springs and Warm Springs creek,
from the land upon which it is now used, i. e. NE4 of S. 4 and NW4 of SE4 Sec. 20, T. 13 S.,
R. 26 E. B. M.,

to the following described tract: W2 of NW4, SE4 of NW4 and SW4 of NE4, Sec. 20,
T. 13 S., R. 26 E. B. M.

And that, on the 7th day of September, A. D.
1915, at Malta, Cassia County, Idaho,
before the State Engineer,
~~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
~~Watermaster of said stream.~~

J. H. Smith,

July 15, 1915.

Re transfer of water right.

William K. Rice.
Conant, Idaho.

Sir:--

It will be impossible for our engineer to make the required investigation and hold the hearing in the matter of your transfer of water before some time in September. As soon as we can arrange the date for same, you will be further advised.

Very truly yours,

J. H. SMITH,

State Engineer.

By _____

RECEIVED
JUL 20 1915

June 11, 1915.

Re: Transfer Water Right.

Mr. E. Rice,
Conant, Idaho.

Dear Sir:

Replying to yours of the 27th inst.
in which you enclose application for transfer
of water right with maps, would say that the
notice for transfer is required to be advertised
four weeks prior to the date of hearing.

Please to advise you if you desire to
proceed further in the matter of the transfer.

Yours very truly,

J. H. Smith,

By,-

RECORDED
JUN 15 1915
FBI - BUTTE

was left 7'
at Malad

State of Idaho }
County of Cassia } ss.

William A. Ward of Elba, Cassia County, Idaho, being duly sworn, deposes and says, that he is the Watermaster of and for Cassia Creek, Cassia County, Idaho, acting in and for the Irrigation season and as much ~~xx~~ more as the law provides for in the year 1915 and until his successor is elected or appointed and qualified.

That he is now in active charge of the waters of the said stream.

That he is well acquainted with the lands now being irrigated with the waters of Warm Springs and Warm Springs Creek in Sections 17 and 20, ----- Township 13 South of Range 26 East of the Boise Meridian., also with the lands to which it is desired to transfer the use of the said waters of the said Warm Springs and Warm Springs Creek which were decreed to William K. Rice of Conant, Cassia County, Idaho by Judge C.O. Stockslager of the Fourth Judicial District of the State of Idaho,

That the said waters last mentioned are not connected with the waters of the said Cassia Creek and that the said Warm Springs and Warm Springs Creek are not tributaries of the said Cassia Creek and have no ^{Physical} relation to the same and are not under ~~his~~ charge or management being an entirely Independent right and there are no other water users on the said Warm Springs and Warm Springs Creek, Mr. William K. Rice being alone in their ownership and use and that the transfer and change of place of use for the said waters asked for by him will work no harm to any other person whatsoever, and no injury to any other persons rights or privileges.

William A. Ward

Subscribed and sworn to before me this 28th. day of May, 1915.

Frank Riblett

Notary Public.

RECEIVED

JUN 1 - 1915

OFFICE OF STATE ENGINEER

Affidavit of Publication

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

Notice of Proposed Transfer of Water Right

Notice is hereby given that William K. Rice, of Conant, Idaho, has applied to the state engineer of the state of Idaho, for a certificate authorizing him to transfer the use of all of the water of Warm Springs and Warm Springs Creek, from the land upon which it is now used, i. e. ne $\frac{1}{4}$ of sw $\frac{1}{4}$ and nw $\frac{1}{4}$ of se $\frac{1}{4}$, section 20, township 13 south, range 26 east, Boise Meridian, to the following described tract: W $\frac{1}{2}$ of nw $\frac{1}{4}$, se $\frac{1}{4}$ of nw $\frac{1}{4}$ and sw $\frac{1}{4}$ of ne $\frac{1}{4}$, section 20, township 13 south, range 26 east, Boise Meridian.

And that, on the 7th day of September, A. D. 1915, at Malta, Cassia county, 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. Curry, 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 2nd day of Sept 1915

George Crook
Notary Public, Cassia County, Idaho

My commission expires Apr 22, 1918

Application for Transfer of Water Right

STATE OF IDAHO,

County of Cassia

} ss.

William K. Rice

, being first duly sworn, deposes and says:

That his name is William K. Rice; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is

Conant, Cassia County, Idaho

That he is the owner and using a certain water right of all of the waters of the waters of Warm Springs and Warm Springs Creek

County of Cassia, State of Idaho, decreed to said William K. Rice by decree of Judge C. O. Stockelager, of the Fourth Judicial District of the State of Idaho, in and for the County of

Cassia, in the case of J. M. Darby et al., Plaintiffs vs. E. D. Jones et al. defendants, said decree bearing date of September 30, 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 and State of Idaho, to-wit: NE¹ SW⁴ and NW⁴ SE⁴ of Section 20 Township 13 South of Range 26 East of the Boise Meridian,

_____ and is the person (~~or the representative of the corporation~~) to whom such right so issued, ~~or has become the owner thereof in the following manner, i. e.~~

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

That said waters are now diverted from said stream at the same point that will be used for the irrigation of the lands to which it is desired to transfer the use of these waters, on the SE⁴ SW⁴ Section 19 - Township 13 S. R. 26 E. 15 M., near the North East corner thereof - which will not be changed, and conducted to the above described lands through small ditches - one of which is the one that was now used for the irrigation of the lands upon which the said waters are now being used as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of all of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Cassia and State of Idaho, to-wit: W² NW⁴, - SE⁴ NW⁴ and SW⁴ NE⁴ of Section 20 Township 13 South of Range 26 East of the Boise Meridian

That his reasons for desiring to make such transfer are as follows:

That the waters would be used nearer this source and to much more advantage and profit

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

through small ditches as aforesaid - one of these ditches being
one now in use - only that it will be a shorter ditch
and other ditches shown on the 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 27 day of May

A. D. 1915

William K. Rise

Frank Riblett
Notary Public

STATE OF IDAHO.

County of.....

} ss.

and
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
that he is a user of water from....., County of.....
State of Idaho; that he has read or heard read the foregoing affidavit and petition of.....
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.....day of.....

A. D.

Township 13 South of Range 26 East of the Boise Meridian,

~~SECRET~~

Plot:

To accompany an application for transfer of my, of record, interest in Water Springs and Warm Springs Creek - Cassia County, Idaho.

[illegible]

By William K. Rice of Concord
Ordinary Society, Idaho

Dates may 2-11-90.
Each said lab'd as such and defective
of floor and later regraded by
planting red lined thrs -

One ditch that will be
restored for
The other ditches are red-lined.
SEC 36
and for new lands
leave any old so that
with a 100 ft. back line

By William K. Rice of Concord
Ordinary Society, Idaho

Calcutta May 25/11/1910.
 I said that I had some and deposited
 a few and later to be sold by
 planting red lines thus -

Conant, - Cassia County, Idaho

May 27, 1915

Hon. J. H. Smith

State Engineer

Boise, Idaho

Dear Sir,

Enclosed find an application for Transfer of Water Right. If all right please send the Certificate of Transfer to The Register of the U. S. Land Office, Hailey Idaho - direct to save time as I am trying to make an entry of some desert land on which I desire to use this water - Hope an advertisement will not be required as no one else is interested and would cause a delay.

Respy yours

William K. Rice

In the matter of Appli- (Report of Examining
cation for Water Right)
of William K. Rice, of (Engineer.
Malta, Idaho)

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 consideration the effect that this proposed transfer will have upon other water rights on the said creeks, I am unable to discover wherein any other persons will be injured by the said transfer.

The lands included in and effected by this transfer are situated in Township 13 South, Range 26, East Boise Meridian.

Dated at Boise, Idaho this 14th day of September, 1915.


Deputy State Engineer.

RB.

STATE OF IDAHO.

County of.....

ss.

I, ...

Watermaster of

County of

State of Idaho, whose postoffice address is.....

....., have read or heard read the foregoing affidavit and petition of
....., 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:.....
.....
.....
.....

Watermaster.

Notice having been duly published for thirty days of the intention of the above named.....

William K. Rice.....

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 7, 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 appli-
cant, authorizing the transfer as prayed for in his petition; ~~and it appearing at said hearing that the fol-~~
~~lowing 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.

Paul F. Wilkin
Deputy State Engineer.
~~Commissioner of Water Division No.~~

By.....