

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,)
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 and Dietrich appeared for plaintiff Raft River Land & Cattle Company and Stephen Hoogh. F. S. Richards for plaintiff Lee 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. R. Jones; J. C. Rogers for defendants Bartholomew, Hubbard, Whittaker and Brunson; Hawley & Reeves for C. V. Spencer, T. O. King, Jacob Eden, M. D. 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 Benson, William Melt, 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;

I find that to properly irrigate the lands during the seasons hereinafter mentioned which are entitled to irrigation both for late and early water, one inch per acre is the amount necessary to each proprietor, and each benefited an inch per acre during the

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of Boise Meridian. That said James Bronson was, on the 30th day of April 1882, the owner and since has been and now is the owner & in possession of the said lands.

I find that David Hubbard appropriated for the irrigation of the lands hereinafter described from the waters of said Raft River for the entire season, from April 1st to October 1st, 50 inches of water. That said David Hubbard used the above amount of said water during the time mentioned each year from April 30th, 1882, down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The East 1/2 of the North East 1/4 and South East 1/4 of the North East 1/4 of Sec. 12, Township 16 South of Range 24 East of Boise Meridian. David Hubbard aforesaid was on the 30th day of April 1882, the owner and since has been and now is the owner in possession of said lands.

I find that J. W. Hubbard has appropriated for the irrigation of the lands hereinafter described, from the waters of said Raft River for the entire season from April 1st to October 1st, 75 inches of water. That said J. W. Hubbard used the above amount of said water during the time mentioned each year from April 30th 1882 down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The North East 1/4 of the North West 1/4, the North West 1/4 of the North East 1/4 and Lots 1 & 2 Sec. 7, Township 16 South of Range 24 East of Boise Meridian. That said J. W. Hubbard was on the 30th day of April 1882, the owner, and since has been and now is the owner in possession of said lands.

I find that William Holt appropriated from Raft River, on the 30th day of June 1887, one hundred and sixty inches of water to be used on the following described land, in irrigating the same. That he has used said amount of water on said land from April 1st to October 15th each and every year since said appropriation down to the date of these findings. That the land upon which said waters has been so used is described as follows, to wit: The North half of the South East Quarter and the West half of the North East Quarter of Section 9, Township 15 South, Range 27 East of the Boise Meridian.

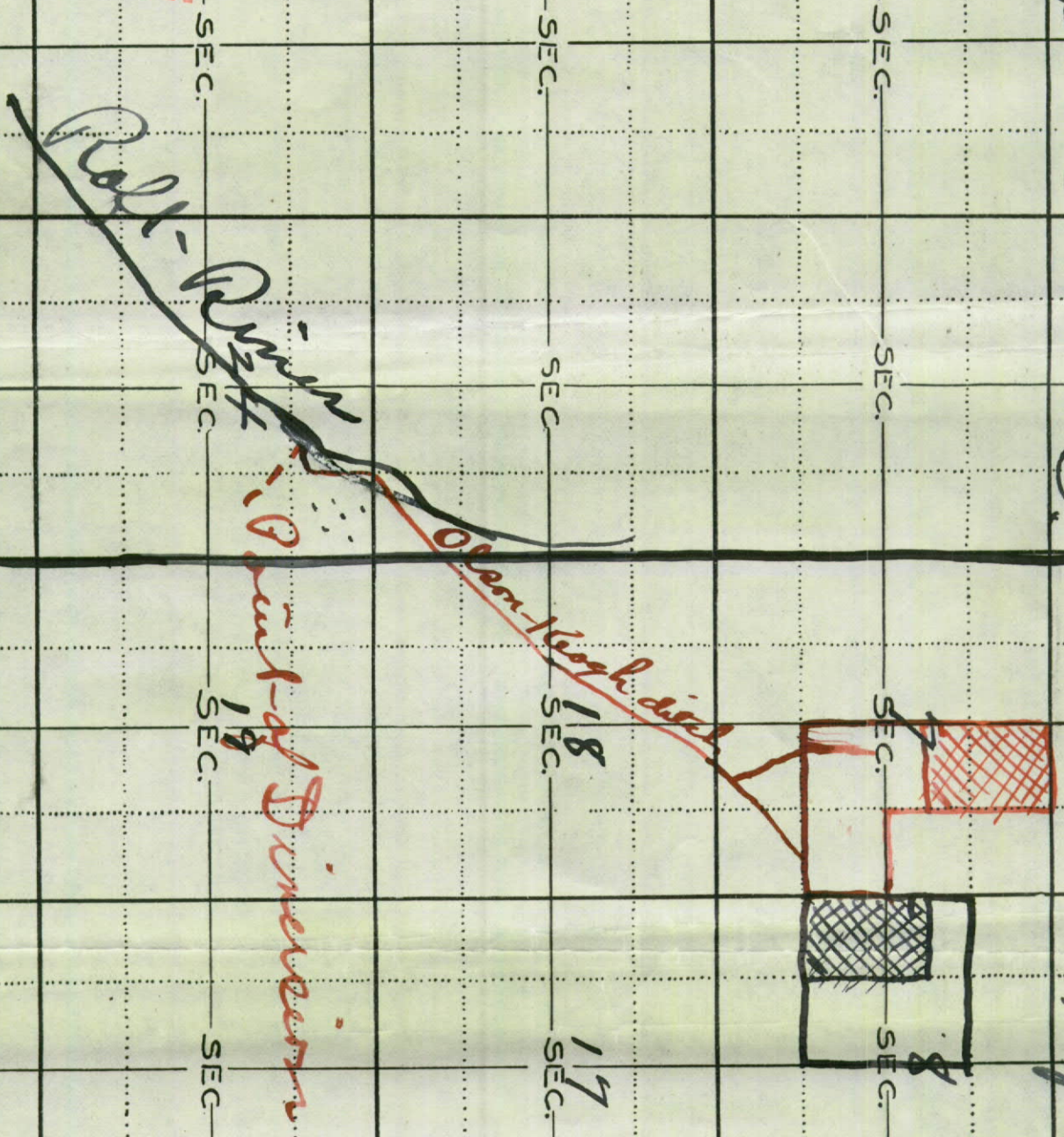
I find that John R. Jones appropriated from Raft River, on the 30th

Name of Applicant

MICROFILMED

Tp 15-8. R 26 E.

Tp 15-8. Range 27 E.



AFFIDAVIT of PUBLICATION

STATE OF IDAHO,

COUNTY OF CASSIA.

SS.

I, J.R. Brinton

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

four consecutive weeks, commencing with the issue dated August 2, 1912

August 22, 1912, 191

, and ending with the issue dated August 22, 1912, 191, 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.

J.R. Brinton

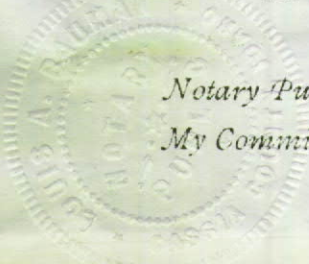
Subscribed and sworn to before me

this 29th day of August, 1912.

Louis A. Bannan

Notary Public, Cassia County, Idaho.

My Commission expires _____



NOTICE OF PROPOSED TRANSFER OF WATER RIGHT.

Notice is hereby given that Dave J. Clark of Bridge, Idaho, has applied to the State Engineer of the state of Idaho for a certificate authorizing him to transfer the use of sixty inches of the water of Raft River from the land upon which it is now used, i. e. NW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$, sec. 7, twp. 15 S., R. 27 E. B. M., to the following described tract: NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 8, twp. 15 S., R. 27 E. B. M.

And that on the 29th day of Aug., A. D. 1912 at Malta, Idaho, before the water commissioner of this division, or his authorized agent, W. R. Stevens, U. S. Commissioner, 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 E. D. Brockenbury water master of said stream.

39-44

RAVENEL MACBETH,
Water Commissioner 2nd Div.

In the Office of Water Commissioner
of Second Division, Ravenel Macbeth at
Boise Idaho.

I hereby certify that no one appeared either
in person or by attorney either before, or
on after the 29th day of August 1912 and
entered protest to the proposed transfer
of Dave J. Clark of 60 inches of the water
of Raft River - from the tract upon which
it is now used to tract described in above
notice.

W. R. Stevens
U. S. Commissioner

9/7/12

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See Right No. 43-0111

*superseded by Albin -
Idaho Land Co. vs Adams
decree dated 10-18-1928*

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

CERTIFICATE NO. 112, AUTHORIZING TRANSFER OF WATER RIGHT.

Permission is hereby granted DAVE J. CLARK, of Bridge, County of Cassia, State of Idaho, to transfer the use of sixty (60) inches of the waters of RAFT RIVER, in the county of Cassia and State of Idaho, from the lands upon which it is now used, i. e., the West half of Northeast quarter (W2 NE4) and North half of Southeast quarter (N2 SE4), Section 7, Township 15 South, Range 27, East of Boise Meridian, to the following described tract, to-wit: Northwest quarter of Southwest quarter (NW4 SW4) and South half of Southwest quarter of Northwest quarter (S2 SW4 ~~NW4~~), Section 8, Township 15 South, Range 27 East of Boise Meridian.

Permission is granted the above named party to divert, hereafter, the above described waters from Raft river at a point at the southeast corner of the Northwest quarter of Northeast quarter (NW4 NE4), Section 24, Township 15 South, Range 26, East of Boise Meridian, and carry same through the Olson-Koogh Ditch.

The water appurtenant to the above described lands was adjudged by decree, dated October 5, 1893, of C. O. Stockslager, Judge of the Fourth Judicial District of the State of Idaho, in and for the County of Cassia, in the matter of Lee Kirk, et al., plaintiffs, vs. A. Bartholomew, et al., defendants, title to the use of which water has heretofore been duly vested in the above named party by proper deeds and conveyances.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 6th day of December, 1912.

A. E. Robinson,
State Engineer.

(SEAL)

RECORDED

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 cause 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 Moscow 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 as had been taken and evidence heretofore taken in pursuance of said stipulation.

Stewart and Dietrich appeared for plaintiff Raft River Land & Cattle Company and Stephen Keogh. F. S. Richards for plaintiff Lee Kirk. Hawley & Spencer for defendant R. C. McCormick. W. H. Smith for defendant Bros. & Pierce and James Pitt; Arthur Brown for the Burnham Land & Cattle Company; F. S. Richards for the defendants, Langford, and J. H. Jones; J. C. Rogers for defendants Bartholomew, Hubbard, Whitaker and Brannon; Hawley & Reeves for C. V. Spencer, T. C. King, Jacob Gen, H. M. Durfee, H. R. Cahoon, H. D. Durfee Jr. W. E. Johnston, J. P. Johnson, J. F. Taylor, Charles Heath, Charles James, G. E. Graham, Joseph C. Coker, William Holt, J. V. Miller and Harry James.

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

1. That the lands were properly irrigated during the seasons mentioned which are entitled to irrigation both for land and water, one inch per acre is the amount necessary to grow a crop, and each defendant an inch per acre during the

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of Boise. That said John Johnson was, at the 30th day of April 1882, the owner and since has been and now is the owner in possession of the said lands.

I find that David Hubbard appropriated for the irrigation of the lands hereinafter described from the waters of said Raft River for the entire season from April 1st to October 1st, 52 inches of water. That said David Hubbard used the above amount of said water during the time mentioned each year from April 30th, 1882, down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The East 1/2 of the North East 1/4 and North West 1/4 of the North East 1/4 of Sec. 12, Township 16 South of Range 24 East of Boise Meridian. David Hubbard aforesaid was on the 30th day of April 1882, the owner and since has been and now is the owner in possession of said lands.

I find that J. M. Hubbard has appropriated for the irrigation of the lands hereinafter described, from the waters of said Raft River for the entire season from April 1st to October 1st, 75 inches of water. That said J. M. Hubbard used the above amount of said water during the time mentioned each year from April 30th 1882 down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The North East 1/4 of the North West 1/4, the North West 1/4 of the North East 1/4 and lots 1 & 2 Sec. 9, Township 16 South of Range 24 East of Boise Meridian. That said J. M. Hubbard was on the 30th day of April 1882, the owner, and since has been and now is the owner in possession of said lands.

I find that William Holt appropriated from Raft River, on the 30th day of April 1887, one hundred and sixty inches of water to be used on the lands hereinafter described land in irrigating the same. That he has used said water for the entire season from April 1st to October 1st ^{15th} each year. That said appropriation down to the date of these findings. The lands on which said water has been so used is described as follows, to wit: The North half of the South East quarter and the South half of the North East quarter of Section 5, Township 16 South, Range 24 East of the Boise Meridian.

I find that John H. Jones has appropriated from Raft River, during the

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December 7, 1912.

Re transfer

Dave J. Clark,
Bridge, Idaho.

Sir:-

Am inclosing you herewith certificate
of transfer No. 112, together with receipt
for fee.

Very truly yours,

CE112-R5143

By... State Engineer.

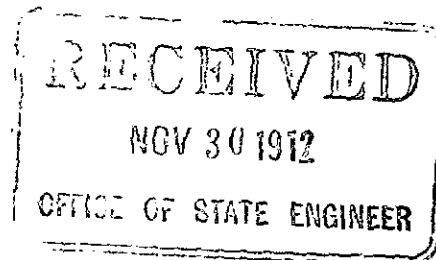
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1

Bridge []
Idaho
Nov 28 1912

Mr A E Robinson State
Engineer of Id. with hand
you a check of \$100 for
my applications certificates
for transfer of water yours
Truly L. J. Clark

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October 14, 1912.

Re transfer of water right

Dave J. Clark,
Bridge, Idaho.

Sir:-

I am in receipt of completed papers in the matter of application for transfer of water right. Upon receipt of fee of \$1.00 the certificate will be granted.

Very truly yours,

State Engineer.

By...

RECEIVED
OCT 16 1912
STATE ENGINEER

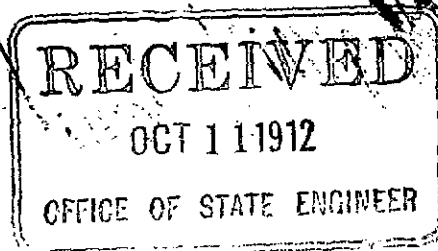
RAVENEL MACBETH.
WATER COMMISSIONER
2ND DIVISION.
MACKAY, IDAHO

Oct 8/12

*Hon. H. C. Johnson
State Engineer, Boise, Ida.*

*Dear Sir:
Enclosed find papers relating to transfer water
from J. Clark, Almo, Ida.*

*Very truly,
Ravenel Macbeth
W. C. 2nd Div.*



July 2, 1912.

Re transfer - Dave J. Clark

W. R. Stevens,
U. S. Commissioner,
Malta, Idaho

Sir:-

Am in receipt of your letter of the 27th ult enclosing application of Dave J. Clark for transfer of water right. The application will be sent to water commissioner, Hon. Ravenel Macbeth, of Mackay, who will advise as to the date and place of hearing.

Very truly yours,

State Engineer.

By...

MICROFILMED

July 2, 1912.

Re transfer of water

Hon. Ravenel Macbeth,
Water Commissioner,
Blackfoot, Idaho

Sir:-

Am enclosing you herewith application
of Dave J. Clark for transfer of water right.
Please communicate with W. R. Stevens, U.S.
Commissioner, at Blackfoot, Cassia county, in regard
to the date and place of hearing.

Very truly yours,

State Engineer.

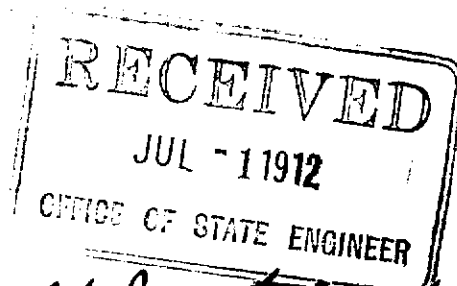
App.Tr.

By...

RECORDED

Malta Idaho
6/27/12

A. E. Roberson
State Engineer
Boise Idaho



Dear Sir:

Enclosed you will find application of
Dane J. Clark who desires to transfer the
amount of 60 acres from a tract- 60 acres to
which land the water was deeded to another tract-
owned by him. Should there be anything looking
in connection therewith let me know.

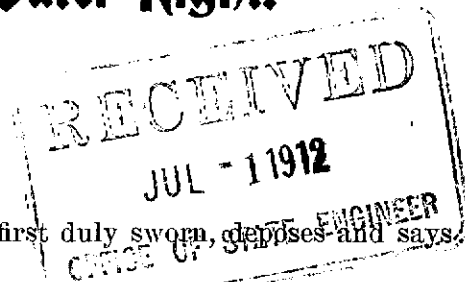
Now I would like to know if you need
application some time back from Annie S
Jensen of Almo Idaho to make proof for
beneficial use of 40 acres of water of Capt.
River? It should be has reached your office
about a month ago and I have heard nothing
from it.

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Very Respectfully
W. R. Stevens

Application for Transfer of Water Right.

State of Idaho, }
 County of Cassia } ss.
Darr J. Clark, being first duly sworn, deposes and says
 That his name is Darr J. Clark; that he is of lawful age, a citizen
 of the United States and of the State of Idaho, and that his postoffice address is
Bridge Cassia Co Idaho

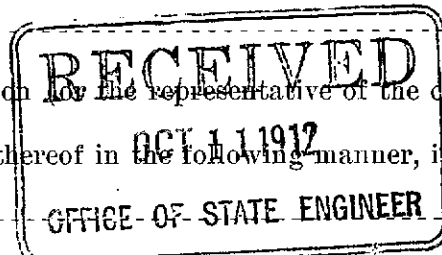


That he is the owner and using a certain water right of _____ of the
 waters of Raft River

County of Cassia, State of Idaho, decreed to William Holt
 by decree of Judge Stockslager, of the
Fourth Judicial District of the State of Idaho, in and for the County of
Cassia, in the case of Kirk vs Bartholomew,
 said decree bearing date of Oct-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 and
 State of Idaho, to wit: It's 1/2 NE 1/4 and 1/2 SE 1/4
Sec. 7, T. 15 South R. 27 E. B. M.

_____ and is the person (or the representative of the cor-
 poration) to whom such right so issued, or has become the owner thereof in the following manner, i. e.
By Warranty deed
 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 south east
corner 1/2 1/4 NE 1/4 Sec 24 T. 15 S. R. 26 E.
 and conducted to the above described lands through Olson-Koogh Ditch
 as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of Sixty Duques
 of said water upon the above described land, and to convey and use same upon the following tract, sit-
 uate, lying and being in the County of Cassia and State of Idaho, to
 wit: 1/2 1/4 SE 1/4 and the south half of
1/2 1/4 NE 1/4 Sec 8 T. 15 S. R. 27 E. B. M.

That his reasons for desiring to make such transfer are as follows: That the land
the water was decreed to is poor land and I desire to transfer to better land and land
upon which I can make the greatest beneficial

That he intends to divert and convey said 60 inches of water to the tract of land last above described in the following manner, to wit: Through the Olson-Keogh ditch

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 this 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

A. D. 1902

D. G. Clark.

22 day of June

W. P. Steen
Notary Public

State of Idaho,

County of

Cassia

} ss.

Andrew Olson

and

Philip Burrows

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 Bridge Idaho

that he is a user of water from Roft River, County of Cassia,

State of Idaho; that he has read or heard read the foregoing affidavit and petition of

Idaho

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.

Andrew Olson

Philip Burrows

22 day of June

W. P. Steen
Notary Public

Subscribed and sworn to before me this

A. D. 1902

Abstract of Title

Copy

1. William Hall - the first owner of said land got possession by making a desert entry of said tract and used patent from the U.S. Government. to
2. John T. Rich by Warranty deed - to
3. Ethan A. Pettit by Warranty deed - to
4. George Hanson by Warranty deed - to
5. Andrew and Joseph Olson as partners by Warranty deed - to
6. Andrew Olson by Warranty deed - to
7. Darr J. Clark - co owner by Warranty deed.

D. J. Clark

Andrew Olson

I hereby certify that the above is a true copy of the abstract owned by Darr J. Clark

W. P. Stevens

Notary Public

11p 15-8. R 26 E.

11p 15-8. Range 27 E.

SEC.

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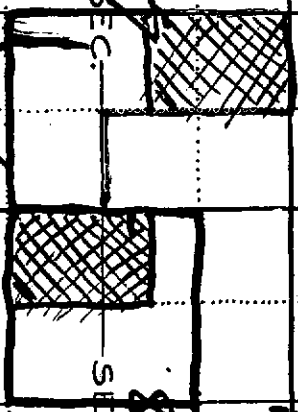
SEC.

SEC.

SEC.

DEVELOPMENT

11p 15-8. R 26 E. 11p 15-8. Range 27 E.



17

11p 15-8. R 26 E.

AFFIDAVIT of PUBLICATION

STATE OF IDAHO,

COUNTY OF CASSIA.

SS.

I, J.R. Brinton ~~XXX~~ 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 four consecutive weeks, commencing with the issue dated August 2, 1912, 1912, and ending with the issue dated August 23, 1912, 1912, 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.

J. Brinton

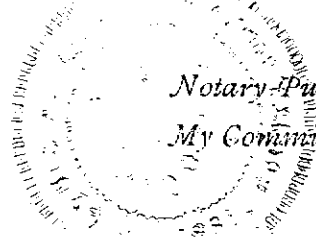
Subscribed and sworn to before me

this 29th day of August, 1912.

Louis A. Bauman

Notary Public, Cassia County, Idaho.

My Commission expires _____



NOTICE OF PROPOSED TRANSFER OF WATER RIGHTS

Notice is hereby given that Dave J. Clark of Bridge, Idaho, has applied to the State Engineer of the State of Idaho for a certificate authorizing him to transfer the use of sixty inches of the water of Raft River from the land upon which it is now used, i. e. NW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ sec. 7, Twp. 15 S., R. 27 E., B. M., to the following described tract: NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ sec. 8, Twp. 15 S., R. 27 E., B. M.

And that on the 29th day of Aug., A. D. 1912, at Boise, Idaho, before the water commissioner of this division, or his authorized agent, W. R. Stevens, U. S. Commissioner, 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 E. D. Brockenbury water master of said stream.

39-44 RAVENEL MACBETH,
Water Commissioner 2nd Div.

In the Office of Water Commissioner of Second Division, Ravenel Macbeth at Boise Idaho.

I hereby certify that no one appeared with or person or by attorney either before, or on after the 29th day of August 1912 and entered protest to the proposed transfer of Dave J. Clark of 60 inches of the water of Raft River - from the tract - upon which it is now used to tract - described in above notice.

W. R. Stevens
U. S. Commissioner

9/7/12

State of Idaho,

County of Cassia } ss.

I, E. D. Brackenbury, Watermaster of Raft River,

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

Almo Idaho have read or heard read the foregoing affidavit and petition of

Dave J. Clark, 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 au-

thorized; 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: _____

E. D. Brackenbury
Watermaster.

Wickham, Idaho Oct 8/12

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

Dave J. Clark to apply to the State Engineer of the State of Idaho for a certificate

authorizing the transfer of water as set forth in his 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 Matta, Idaho, on Aug 29/12, according to

the terms of said notice;

And it not appearing at said hearing that any one 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.

Charles B. Mackay
Commissioner of Water Division No. 4

By _____

No.

**APPLICATION FOR TRANSFER
OF WATER RIGHT.**

From
.....

To
.....

Stream
.....

County
.....

Applicant
.....

Received
.....

Approved
.....

Certificate No. issued.

and recorded in
Book of Transfers, at page
.....