

Affidavit of Publication

RECEIVED

SEP 14 1910

OFFICE OF STATE ENGINEER

STATE OF IDAHO,)
COUNTY OF FREMONT,)

I, J. W. Jones, do solemnly swear that I am the publisher of the RIGBY STAR, a weekly newspaper of general circulation, published once each week at Rigby, Fremont County, Idaho; that the notice attached hereto and which is a part of this affidavit, and a part of the proof of publication, was published in said newspaper four consecutive weeks; first publication having been made on the 18th day of August 1910; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and that the notice was published in the newspaper and not in a supplement.

Notice of Proposed Transfer of Water Right.

Notice is hereby given that Agnes B. Reno of Reno, Idaho, has applied to the State Engineer of the State of Idaho for a certificate authorizing him to transfer the use of 320 inches of water of Birch Creek, Fremont county, Idaho from the land upon which it was formerly used to-wit. The unsurveyed Desert Entry of one W. A. Tylec, situated in sections 10 and 11. twp. 8 N. R 30 E. B. M. to the following described tract:

N $\frac{1}{2}$ of section 13, twp 8 N, R. 31 E. B. M. This such transfer was made in the year 1900, and this application is made for the purpose of having said transfer recorded.

And that, on the 10th day of September, A. D. 1910, at Dubois Hotel, Dubois Idaho, 1 o'clock p. m. before J. O. Webster 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 George Webster watermaster of said stream.
Aug 18 Sept 8

J. W. Jones
Subscribed and sworn to before me this 14th day of Sept A. D., 1910

W. H. Hammond
Notary Public
My. Comm. Expires - 1914.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5450

WATER RIGHT NO(S). 32-00058/32-00059/32-00060/32-00061C/32-00061D
32-00062/32-00063/32-00064/32-00065/32-00066/32-00068/32-00069
32-00070A/32-00070B/32-00073/32-00074/32-00075/32-00076/32-00077
32-00078/32-00079/32-00080/32-00083/32-00085/32-00086/32-00087
32-00089/32-00090A/32-00091/32-00092/32-00093/32-00101/32-00102
32-02043 & 32-02045

This is to certify that: **RENO DITCH COMPANY**
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

The requested changes have been reviewed in accordance with the provisions of Section 42-222, Idaho Code, and are hereby approved as hereafter set forth. The rights shall be used as herein described in accordance with the conditions of approval and applicable laws and rules.

	<u>PRIORITY</u>	<u>DIVERSION RATE</u>	<u>ACRES</u>	<u>ANNUAL VOLUME</u>
Right No. 32-00058 :	04/01/1910	1.00 CFS	67.0	234.5 AF
Right No. 32-00059 :	05/10/1884	6.40 CFS	320.0	1120.0 AF
Right No. 32-00060 :	05/10/1883	3.20 CFS	320.0	1120.0 AF
Right No. 32-00080 :	05/10/1886	3.20 CFS	320.0	1120.0 AF
Right No. 32-00061C :	05/10/1888	0.40 CFS	20.0	70.0 AF
Right No. 32-00068 :	05/10/1887	3.20 CFS	160.0	560.0 AF
Right No. 32-00069 :	05/10/1888	3.20 CFS	160.0	560.0 AF
Right No. 32-00073 :	05/15/1909	0.20 CFS	160.0	84.9 AF
Right No. 32-00077 :	05/15/1910	0.20 CFS	160.0	84.9 AF
Right No. 32-00078 :	05/15/1911	0.20 CFS	160.0	84.9 AF
Right No. 32-00079 :	05/15/1913	0.80 CFS	160.0	339.6 AF
Right No. 32-00085 :	05/10/1910	0.20 CFS	120.0	84.9 AF
Right No. 32-00086 :	05/01/1911	0.20 CFS	120.0	84.9 AF
Right No. 32-00087 :	05/01/1912	0.20 CFS	120.0	84.9 AF

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Right No. 32-00089	:	05/10/1888	2.50 CFS	160.0	560.0 AF
Right No. 32-00090A	:	05/10/1886	0.80 CFS	80.0	280.0 AF
Right No. 32-00091	:	05/01/1901	0.50 CFS	240.0	212.2 AF
Right No. 32-00092	:	05/10/1888	2.50 CFS	240.0	840.0 AF
Right No. 32-00093	:	05/10/1886	1.60 CFS	240.0	679.2 AF
Right No. 32-00102	:	05/10/1889	4.00 CFS	120.0	420.0 AF
Right No. 32-00061D	:	05/10/1888	2.80 CFS	140.0	490.0 AF
Right No. 32-00070A	:	08/19/1886	2.40 CFS	120.0	420.0 AF
Right No. 32-02043	:	09/19/1912	6.40 CFS	320.0	1120.0 AF
Right No. 32-00062	:	04/01/1904	3.20 CFS	160.0	560.0 AF
Right No. 32-00070B	:	09/19/1886	0.80 CFS	40.0	140.0 AF
Right No. 32-02045	:	11/16/1912	6.40 CFS	320.0	1120.0 AF
Right No. 32-00063	:	04/01/1904	3.20 CFS	159.2	557.2 AF
Right No. 32-00065	:	05/10/1884	3.20 CFS	160.0	560.0 AF
Right No. 32-00064	:	04/01/1907	3.20 CFS	160.0	560.0 AF
Right No. 32-00066	:	01/05/1910	6.40 CFS	320.0	1120.0 AF
Right No. 32-00074	:	10/01/1910	0.14 CFS	160.0	59.4 AF
Right No. 32-00075	:	05/15/1911	0.26 CFS	160.0	110.4 AF
Right No. 32-00076	:	05/15/1912	0.80 CFS	160.0	339.6 AF
Right No. 32-00083	:	05/15/1912	0.46 CFS	160.0	195.3 AF
Right No. 32-00101	:	06/04/1909	2.90 CFS	160.0	560.0 AF

TOTALS:	*	77.06 CFS	*	3427.0	*	11579.2 AF
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BENEFICIAL USE
IRRIGATION

PERIOD OF USE
04/01 to 11/01

SOURCE
BIRCH CREEK

TRIBUTARY OF
SINKS

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111 27 1000

TRANSFER NO. 5450

09N 31E 31	NESW 40	Lot 3 (NWSW) 40	Lot 4 (SWSW) 40	
	SESW 40	NESE 40	NWSE 40	
	SWSE 40	SESE 40		320
32	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 40	
	SWNW 40	SENE 40	NESW 40	
	NWSW 40	SWSW 40	SESW 40	480
32E 36	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 40	
	SWNW 40	SENE 40	NESW 40	
	NWSW 40	Lot 4 (SWSW) 35	Lot 3 (SESW) 41	
	NESE 40	NWSE 40	Lot 2 (SWSE) 40	
Lot 1 (SESE) 40				636

Permissible Place of Use Acres: * 5798

CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 32D.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
7. Rights 32-00060 and 32-00080 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
8. Rights 32-00073, 32-00077, 32-00078 and 32-00079 when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
9. Rights 32-00085, 32-00086 and 32-00087 when combined shall not exceed the irrigation of 120.0 acres.
10. Rights 32-00089 and 32-00090A when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
11. Rights 32-00091, 32-00092 and 32-00093 when combined shall not exceed the total annual diversion volume of 840.0 af and the irrigation of 240.0 acres

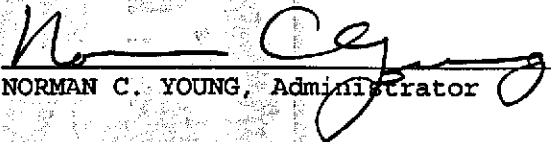
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12. Rights 32-00061C, 32-00068, 32-00069, 32-00073, 32-00077, 32-00078, 32-00079, 32-00085, 32-00086, 32-00087, 32-00089, 32-00090A, 32-00091, 32-00092, 32-00093 and 32-00102 when combined shall not exceed the total annual diversion volume of 3360.0 af and the irrigation of 960.0 acres.
13. Rights 32-00061D, 32-00070A and 32-02043 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
14. Rights 32-00062, 32-00070B and 32-02045 when combined shall not exceed the total annual diversion volume of 1120.0 af and the irrigation of 320.0 acres.
15. Rights 32-00063 and 32-00065 when combined shall not exceed the total annual diversion volume of 560.0 af and the irrigation of 160.0 acres.
16. Rights 32-00074, 32-00075, 32-00076 when combined shall not exceed the irrigation of 160.0 acres.
- * 17. All rights under Transfer 5450 when combined shall not exceed a total diversion rate of 77.06 cfs, a total annual maximum diversion volume of 11,579.2 af at the field headgates, and the irrigation of 3,427.0 acres in the place of use described above in a single irrigation season.
18. Approval of Transfer 5450 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Dated this 23RD day of July, 1999.


NORMAN C. YOUNG, Administrator

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JUL 27 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)
4124 OF WATER RIGHT NOS. 32-00058)
AND 32-00059 IN THE NAME OF D & D)
ENTERPRISES)
_____)

ORDER FOR
PREHEARING STATEMENTS

In order to prepare and schedule the above captioned contested matter for hearing before the department of Water Resources,

IT IS HEREBY ORDERED, pursuant to Rule of Procedure IDAPA 37.01.01510 (Rule 510) that you file with the Hearing Officer a Prehearing Statement responding to the following items:

1. The issues to be resolved, and the statutes, rules, and legal precedent involved;
2. A brief statement of the facts and reasons supporting your position on each matter in dispute;
3. A list of proposed witnesses together with a request for any requested subpoenas to be issued as authorized in IDAPA Rule 37.01.01525 (Rule of Procedure 525).
4. Whether you wish to pursue discovery as authorized in IDAPA Rule 37.01.01521 (Rule of Procedure 521) and, if so, the estimated length of time required;
5. Requested location of hearing;
6. Estimated length of hearing;
7. The date by which you will be ready to have a hearing in this matter; and
8. Other related matters.

IT IS FURTHER ORDERED that you must file the Prehearing Statement with the hearing officer within fourteen (14) days of receipt of this order. Failure to comply with this order is cause for the director to dismiss the request for hearing with prejudice.

Dated this 4th day of August, 1995.


L. GLEN SAXTON
Hearing Officer

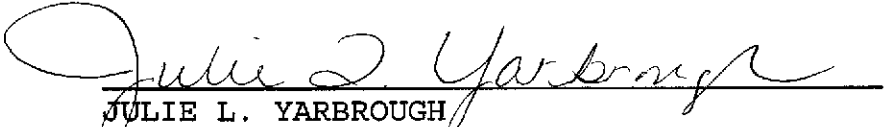
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JUL 27 1999

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of August, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER FOR PREHEARING STATEMENTS** to the following:

George C. Peterson
PETERSON MOSS ET AL
485 E St.
Idaho Falls, ID 83402


JULIE L. YARBROUGH
Senior Secretary

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
F R E M O N T.

Agnes B. Reno, Jerome F. Reno,
Franklin A. Reno, Jennie C. Reno and
Agnes M. Reno,
 plaintiffs,

vs.

J.R. Richards, S. Kuharski, W. A. Tyler,
Samual Goddard, M. Kaufman, W. A. Scott,
W. W. Johnson, Thomas Miller, David Miller,
Edward Kaufman, Henry Kaufman, Frank G.
Worthing, Jessie Worthing, Chester Worthing,
Thomas Weimer, Charles B. Watts, William
Goddard, Alfred L. Goddard, John Goddard,
George Stevenson, Thomas Clark, Frank
Clark, James Wells, Thomas Fayle, John
Robison, James Dyer, Frank Shafer, Francis
Waters, John B. Weimer, T. W. Thomas, H.D.
Mason, Birch Creek Irrigation Company, a
corporation, A. R. Nichols, Clara Granger,
F. F. Granger, C. B. Watts and Wood Live
Stock Company, a corporation,

Defendants.

JUDGMENT.

BE IT REMEMBERED, That:

This cause came regularly on for trial before the above entitled court sitting without a jury, a jury having been expressly waived by the respective parties thereto; Messrs. Standrod & Terrell and Messrs. Soule & Soule, appeared as attorneys on behalf of the plaintiffs, and A. M. Bowen, Esq., and J. W. Porter, Esq., appeared as attorneys for the defendants, Frank G. Worthing, Jessie Worthing and James Dyer; Messrs. Millsaps & Moon, appeared as attorneys for the defendants, Wood Live Stock Company, Thomas J. Weimer, C. B. Watts and Lillian M. Watts; B. J. Briggs, Esq. and W. L. McConnell, Esq., appeared as attorneys for the defendants, Samuel Goddard, William Goddard, Alfred L. Goddard, John Goddard and George Goddard; S.E. Blaine, Esq. appeared as attorney for the defendants, Birch Creek Irrigation Company, a corporation, and T. W. Thomas, A. H. McConnell, Esq. appeared as attorney for the defendant Edward M. Kaufman; W. A. Lee, Esq., appeared as attorney for the defendant, Oliver Ransom; and Holden and Holden, appeared as attorneys for the defendants, A. R. Nichols, Emma Nichols, J. C. Roberson, mentioned in the title of this action as John Robinson, (being one and the same person) Gertrude Roberson and Charles Curtis.

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1894, in an action therein pending, wherein J. R. Richards is named as plaintiff and Frank Reno, S. Kuharski, William Goddard, W. A. Tyler, Samuel Goddard, M. Kaufman, W. A. Scott, W. W. Johnson, Thomas Miller, David Miller, Edward Kaufman and Henry Kaufman, are named as defendants, be and the same is hereby approved and confirmed, and the rights to the use of said waters of Birch Creek therein adjudicated, ^{shall be} are herein distributed to the parties of said action, and to their grantees and successors in interest, as of the dates mentioned in said judgment. 2 → 1894

32 0058 It is further ordered, adjudged and decreed, that Agnes B. Reno have at all times the use of one cubic foot per second of time (fifty miners' inches) of the waters of said Birch Creek, her right to the use of the same to date, from the first day of April, 1910, all of which waters shall be used upon and become appurtenant to the following described lands:

The South Half of the North-east Quarter of Section Fourteen, In Township Eight North of Range Thirty-one, and East of the Boise Meridian in Clark County, State of Idaho, containing eighty acres;

82 0058 That the said Agnes B. Reno, have at all times the use of six and four-tenths (6.4) cubic feet per second of time, (three hundred and twenty miners' inches) of the waters of said Birch Creek, her right to the use of the same to date, from the 10th day of May, 1884, as the successor in interest of W. A. Tyler, to be used upon and become appurtenant to the following described lands:

The North Half of Section Thirteen (13), in Township Eight (8) North of Range Thirty-one (31) East of the Boise Meridian, in Clark County, State of Idaho, containing three hundred and twenty acres:

32 0060 That Jerome F. Reno, have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred and sixty miners' inches) of the waters of said Birch Creek, his right to the use of the same to date, from May 10th, 1883, and also have at all times the use of three and two-tenths (3.2) cubic feet per second of time (one hundred and sixty miners' inches) of the waters of said Birch Creek, his right to the use of same to date from May 10th, 1886, to be used upon and become appurtenant to the following described lands;

The South Half of the South-east Quarter, the South-east Quarter of the South-west Quarter, and Lot Numbered Four of Section Ten (10), and the North-east Quarter of the North-west Quarter, the North Half of the North-east Quarter, and Lot

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It is further ordered, adjudged and decreed, that each of the parties to this action to whom water is herein allotted, shall pay all costs incurred by him in this action, including his proportionate share of the stenographer's fees.

That execution may issue out of this Court for the enforcement of the collection thereof.

It is further ordered, adjudged and decreed that each and every of the parties hereto, their agents, servants, counselors and employees, be, and they are hereby forever and perpetually restrained and enjoined from using or interfering in any manner in the use of the waters of the said Birch Creek, and its springs and tributaries and all other springs and streams herein mentioned, except in the manner and in accordance with their rights to the use of such water as herein above set forth and as herein allotted to them respectively.

Dated this 6th day of September, 1922.

James G. Gwinn,

District Judge.

Filed for record at the request of F. L. Soule at 11:30 A.M., September 14th,
1922.

S. D. FAIRNSWORTH,

Recorder.

See Right No. 32-0059

*Superseded by
Reno vs Richards
Case dated 9-6-1922*

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

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

CERTIFICATE NO 56 AUTHORIZING TRANSFER OF USE OF WATER RIGHT.

Permission is hereby granted AGNES B. RENO, of Reno, Fremont County, State of Idaho, to transfer the use of Three Hundred and twenty (320) inches of the waters of BIRCH CREEK, Fremont County, Idaho, from the lands upon which it is now used, i.e., the unsurveyed Desert Entry of W. A. Tyler, situated in Sections Ten (10) and Eleven (11), Township Eight (8) North, Range Thirty-one (31) East of Boise Meridian, to the following described tract, to-wit: North half (N2) of Section Thirteen (13), Township Eight (8) North, Range Thirty-one (31) East of Boise Meridian.

The water right appurtenant to the above described lands was adjudged by decree, dated October 12, 1894, of D. W. Standrod, Judge of the Fifth Judicial District of the State of Idaho in and for Fremont County, in the case of J. R. Richards, plaintiff, vs. Frank Reno, et al, defendants.

in the following words:

"Wherefore it is ordered, adjudged and decreed :
That the defendant, W. A. Tyler, do have at all
times the flow of 320 inches of water measured
under a four inch pressure of the waters of
Birch creek.....to date from May 19, 1884."

The above water right was conveyed by deed to Agnes B. Reno.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office
at Boise, Idaho, this twenty-first day of October, A. D. 1910.

D. G. Martin

State Engineer.

RECEIVED

SECOND DIVISION.

FRANK RIBLETT, *Commissioner.*

ALBION, IDAHO.

1903.

DECREED WATER RIGHTS,

Birch Creek, Fremont County.

JUDGMENT AND DECREE.

In the District Court of the Fifth Judicial District of the
State of Idaho, in and for Fremont County.

J. R. Richards, Plaintiff,

vs

*Frank Reno, S. Kuharski, William Goddard, W. A. Tyler,
Samuel Goddard, M. Kaufman, W. A. Scott, W. W.
Johnson, Thomas Miller, David Miller, Edward Kauf-
man, and Henry Kaufman*, Defendants.

This cause came on regularly for trial under a stipulation of the respective parties and their attorneys heretofore signed and filed, Messrs. J. Ed. Smith and W. T. Smith appeared as attorneys for plaintiff, Messrs. Reeves and Terrell appeared as attorneys for M. Kaufman, Edward Kaufman and Henry Kaufman, Messrs. Quarles and Averitt appeared as attorneys for W. W. Johnson, S. Kuharski and W. A. Scott, Messrs. Stewart & Dietrich appeared as attorneys for W. A. Tyler, Thomas Miller and David Miller. Messrs. S. C. Winters and R. V. Cozier appeared as attorneys for Frank Reno, and Mr. Thomas R. Hamer appeared as attorney for Samuel Goddard and William Goddard, and the parties were all present in person.

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The court proceeded to the hearing of the testimony and all the parties with their witnesses having duly testified, which said testimony was taken by the court stenographer and the documentary and record testimony having been duly admitted, and the court having listened to the argument of the respective counsel, the cause was closed and finally submitted to the court for its consideration and adjudication.

And the court after due consideration in the premises renders its decision and files its findings of facts and conclusions of law and orders judgment to be entered in accordance therewith.

Now, therefore, it is ordered, adjudged and decreed.

First.

That the defendant W. W. Johnson do have at all times a flow of 160 inches of water, measured under a four-inch pressure of the water of Birch creek a stream situated in Fremont county, state of Idaho, and the one in question in this suit, for the purpose of irrigating the lands described in cross-complaint of said defendant, his right to the use of same to date from May 10th, 1886.

Second.

That the plaintiff J. R. Richards do have at all times a flow of 160 inches of water, measured under a four-inch pressure of the waters of said Birch creek for the purpose of irrigating his land described in the complaint herein, his right to the use of same to date from May 10th, 1884.

Third.

That the defendant, Frank Reno, do have at all times the flow of 160 inches of water, measured under a four-inch pressure of the waters of said Birch creek for the purpose of irrigating the lands described in his cross-complaint herein; his right to the use of the same to date from May 10th, 1883; and that he also do have an additional 160 inches of water, measured under a four-inch pressure, of the waters of Birch creek for the purpose of irrigating his said lands; his rights to the use of same to date from May 10th, 1886.

Fourth.

That the defendant S. Kuharski do have a flow at all times of 160 inches of water, measured under a four-inch pressure of the waters of the said Birch creek for the purpose of irrigating his lands, described in his cross-com-

plaint herein, his right to the use of the same to date from August 19th, 1886.

Fifth.

That the defendant, W. A. Scott, do have a flow at all times of 160 inches of water measured under four-inch pressure of the waters of the said Birch creek for the purpose of irrigating the lands described in his cross-complaint herein; his right to the use of the same to date from May 10th, 1888.

Sixth.

That the defendant William Goddard, do have at all times a flow of 160 inches of water measured under a four-inch pressure of the waters of the said Birch creek for the purpose of irrigating the lands described in his cross-complaint herein; his right to the use of the same to date from May 10th, 1888.

Seventh.

That the defendant Samuel Goddard, do have at all times a flow of 200 inches of water measured under a four-inch pressure of the waters of the said Birch creek for the purpose of irrigating the lands described in his cross-complaint herein; his right to the use of same to date from May 10th, 1889.

Eighth.

That the defendants, M. Kaufman, Edward Kaufman, Henry Kaufman, do have at all time a flow of 250 inches of water, measured under a four-inch pressure of the waters of said Birch creek for the purpose of irrigating the lands described in their cross-complaint herein; their right to the use of same to date from May 10th, 1888.

Ninth.

That the defendants Thomas Miller and David Miller do have at all times a flow of 160 inches of water measured under a four-inch pressure of the water of the said Birch creek for the purpose of irrigating the lands described in their cross-complaint; their right to the use of the same to date from September 10th, 1882 and that they also do have the flow of 160 inches of water additional, measured under a four-inch pressure of the waters of said Birch creek, for the purpose of irrigating their said lands above described; their right to the use of the same to date from May 10th, 1887.

That they also do have the use at all times of all the

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waters of that certain spring, a tributary of said Birch creek, more fully described in the findings herein, for domestic purposes, and for watering stock, and irrigating the lands of said defendants, described in their cross-complaint.

Tenth.

That the defendant, W. A. Tyler, do have at all times the flow of 320 inches of water measured under a four-inch pressure, of the waters of said Birch creek for the purpose of irrigating lands described in his cross-complaint herein; his right to the use of the same to date from May 10th, 1884.

Eleventh.

That the waters herein adjudged to the parties be measured at the head of the ditch of each claimant, i. e. from the point where the water is diverted from the creek, that it shall be measured in inches by multiplying the width by the depth of the water flowing into the box at the head, said box to be hereafter described.

That the water shall flow into said box without any damming, or excessive current or pressure above the depth to which the claimant is entitled; that the water flowing into said box shall at no time exceed six inches in depth.

Twelfth.

That before any claimant herein shall be entitled to divert or use any water herein adjudged to him, he shall place at the point of diversion in the stream a box not less than 8 1-4 feet in length or greater than 16 1-2 feet in length, made of strong lumber, and set upon an absolutely firm foundation; said box shall not exceed six inches in depth and shall be covered over at the head with straight boards for a length not less than two feet, said box shall have a fall from the head, of one inch, if a rod, or one-half inch if one-half rod in length.

Thirteenth.

For the purpose of securing the placing of the boxes referred to, and for the distribution of the waters as herein adjudged the court reserves the right at any time to appoint a suitable person as a commissioner for that purpose.

Fourteenth.

That each of the parties hereto, his agents, attorneys, servants or employes are enjoined and forever prohibited

RECORDED

from using any of the waters of said Birch creek herein adjudged to him in any manner or in any greater quantity than as above set out.

Fifteenth

That the right of any party hereto to use the water herein awarded to him as against any other claimant herein, depends upon the date of his right to use being prior to that of such claimant, and each and every claimant whose rights are found to be prior in time shall be supplied with the amount of water herein found to belong to him, before any subsequent claimant shall have the right to use any of the waters of said Birch creek.

Sixteenth.

That each of the parties hereto shall pay all costs incurred by him, and the costs and expenses incurred in common by reason of the suit shall be equally divided among all of the parties hereto.

Judgment rendered on this 12th day of October, 1894.

D. W. STANDROD,

Judge.

Recorded in Book A of Judgments, page 412, records of Fremont County, Idaho.

State of Idaho, County of Fremont, ss.

I, Victor Hegsted, Clerk of the District Court and Ex-Officio Auditor and Recorder in and for the above named County and State do hereby certify the foregoing decrees to be true and literal exemplifications of the originals as the same appear of record in the Judgment records of my office.

Given under my hand and seal, this 17th day of April 1903.

(Seal.)

VICTOR HEGSTED,

Clerk, Etc.

By ERNEST BRAMWELL,

Deputy.

RECEIVED

MEMORANDUM

TO: Files 32-00058/00059/00060/00061C/00061D/00062/00063/00064/00065/00066/
00068/00069/00070A/00070B/00073/00074/00075/00076/00077/00078/
00079/00080/00083/00085/00086/00087/00089/00090A/00091/00092/
00093/00101/00102/02043 & 02045.

FROM: Pam Skaggs^{CS}/State Office

SUBJECT: Transfer 5450

DATE: June 29, 1999

Transfer 5450 combines the above referenced rights from Birch Creek and creates a 5798-acre permissible place of use for the newly formed Reno Ditch Company. The rights will have a common diversion point and water will be distributed to shareholders within the service area. This transfer resolves previous disputes among the water users.

Region water right and adjudication staff reviewed these rights and provided initial recommendations. Review of the rights as originally decreed and licensed provided further detail to each right. The total combined use under these rights is limited to a diversion rate of 77.06 cfs, a total annual diversion volume of 11,579.2 af, and the irrigation of 3,427 total acres each season within in the permissible place of use.

Season of use was identified as 04-01 to 11-01 under these rights to be consistent with previous transfers. Recommended conditions include watermaster control, measuring device and lockable controlling works, irrigation overlap, permissible place of use limits, combined right limits, and standard transfer conditions.

MICROFILMED

JUL 27 1999

MEMORANDUM

32-00059

TO: FILE ~~32-00059~~

FROM: PAM SKAGGS

RE: TRANSFER # 5450

DATE: 5-17-99

=====

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 32-00058.

MICROFILMED

JUL 27 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

21 August 1995

GEORGE PETERSON
PETERSON MOSS OLSON CARR ESKELSON & HALL
485 E STREET
IDAHO FALLS, IDAHO 83402

RECEIVED

AUG 24 1995

Department of Water Resources

RE: In the matter of Transfer No. 4124 of Water Right Nos.
32-00058 and 32-00059 in the name of D & D Enterprises

Dear George:

Summarizing our conversation of 8 August 1995, it is my understanding we agreed to the items below:

1. Your clients will drop their appeal of the Director's decision concerning Transfer No. 4124.
2. A representative of IDWR will conduct a field investigation to determine the land historically irrigated by D & D Enterprises with water for Birch Creek.
3. A new transfer application will be submitted for right 32-00059 relocating it to lands identified as historically irrigated by the above investigation.

Regarding a time table for Item 1, Steve Ball from this office has indicated he will be able to conduct the field work prior to 1 September 1995. A land list should be available within a couple of weeks following the field work.

If your understanding of future actions concerning the above matter is different, please contact me.

Respectfully submitted

EC

Ernest Carlsen
WR Supervisor

cc: Glen Saxton

MICROFILMED

JUL 27 1999

GEORGE C. PETERSEN, JR.
REED L. MOSS
WM. CHARLES CARR
SCOTT P. ESKELSON
STEPHEN D. HALL

PETERSEN, MOSS, OLSEN, CARR,
ESKELSON & HALL

Attorneys at Law
485 "E" Street
Idaho Falls, Idaho 83402
(208) 523-4650

DENNIS M. OLSEN
(1930-1985)
FAX NO.
(208) 524-3391

August 8, 1995

RECEIVED

AUG 10 1995

Department of Water Resources


L. Glen Saxton
Hearing Officer
Dept. of Water Resources
1301 N. Orchard Street
Statehouse Mail
Boise, ID 83720-9000

RE: In the Matter of Transfer No. 4124 of Water Right Nos. 32-00058 and 32-00059
in the Name of D & D Enterprises

Dear Glen:

For the purpose of supporting your file and in response to my commitment to you this date, please be advised as follows:

In my discussion with Ernie Carlsen, this date, he suggested that where his personnel will be inspecting the D & D property within the next few days and the requested transfer, the subject of the above captioned, can be appropriately handled at that time, that the appeal, the subject of the above captioned, be set off in that he feels certain that the transfer can be approved following the department's review of D & D's properties.

As you indicated, this would be much cheaper for all parties concerned and thus, I appreciate your suggestion and willingness to set aside and/or delay the hearing on the above appeal for the purpose of seeing if the transfer cannot be made based upon the findings of the local department which, in effect, would make the matters the subject of the pending appeal moot.

In view of our telephone discussion this date, I will not be responding to the queries posed in your Order for Prehearing Statements at this time, unless you advise otherwise.

I will continue to make contact with the local office for the purpose of making sure that you are informed and kept abreast of the findings of the Idaho Falls Office relative to D & D's request for transfer.

MICROFILMED

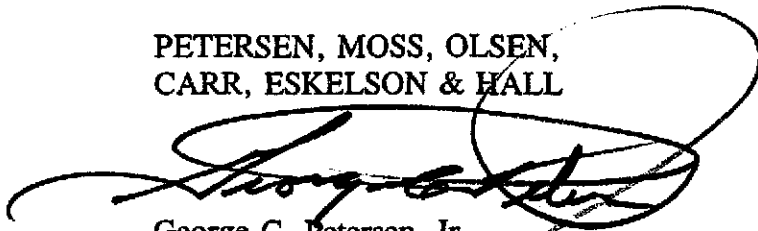
JUL 27 1999

L. Glen Saxton
Dept. of Water Resources
August 8, 1995
Page - 2

If you have any questions and/or I can be of any further assist, please advise. Best regards.

Very truly yours,

PETERSEN, MOSS, OLSEN,
CARR, ESKELSON & HALL

A large, stylized handwritten signature in black ink, likely belonging to George C. Petersen, Jr. The signature is written in a cursive style with a large loop at the end.

George C. Petersen, Jr.

GCP/jih

cc: Ernie Carlsen
Jim DeMordaunt

\\D&D\Saxton.ltr\

MICROFILMED
1111 27 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 4, 1995

RE: In the Matter of Transfer No. 4124 of Water Right
Nos. 32-00058 and 32-00059 in the name of D & D
Enterprises

Dear Interested Parties:

I have enclosed a copy of the ORDER FOR PREHEARING
STATEMENTS.

If you have any questions regarding the enclosed
order, please feel free to contact me at (208)327-7900.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

cc: IDWR - Region

MICROFILMED

JUL 27 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1995

George C. Peterson
Peterson, Moss et al.
485 "E" Street
Idaho Falls, ID 83402

RE: TRANSFER NO. 4124 OF WATER RIGHT NOS. 32-00058 AND 32-00059
IN THE NAME OF D & D ENTERPRISES

Dear Mr. Peterson:

On March 22, 1995, I acknowledged your request for hearing in connection with the department's partial approval on February 1, 1995 of Transfer No. 4124.

Please advise me of tentative dates for which you are available to attend a hearing in Idaho Falls during August 1995.

If you have questions or would like to discuss hearing dates with me over the phone, my direct phone number is (208) 327-7955.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region
Harold Jones

MICROFILMED

JUL 27 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 22, 1995

George C. Peterson
Peterson, Moss et al.
485 "E" Street
Idaho Falls, ID 83402

RE: TRANSFER NO. 4124 IN THE NAME OF D & D ENTERPRISES

Dear Mr. Peterson:

This office acknowledges receipt of your letter dated March 13, 1995 in connection with the above referenced matter.

The department's partial approval of Transfer No. 4124 was mailed to you on February 10, 1995.

Section 42-1701A, Idaho Code, provides in pertinent part as follows:

... any applicant ... aggrieved by a denial or conditional approval ordered by the director ... shall be entitled to a hearing before the director ... upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing.

Although your request for hearing was not timely filed, the department will treat your letter as a request for hearing as provided in Section 42-1701A(3), Idaho Code.

The department did not approve the change in place of use of 0.88 cfs of right no. 32-00059, since the right would be "unstacked" from the existing place of use potentially enlarging the right. You must be prepared to clearly demonstrate there will be no enlargement in use together with making a suitable showing in connection with the other pertinent factors described in Section 42-222, Idaho Code.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED

c: IDWR - E. Region

JUL 27 1999

MEMORANDUM

TO: FILE 3200059

FROM: PAM SKAGGS ^{CS}

RE: TRANSFER # 4124

DATE: 11-08-94

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 32-00058.

MICROFILMED

JUL 27 1999

October 26, 1910.

Re transfer of water right

Agnes B. Reno,
Reno, Idaho

Madam:-

Am inclosing herewith certificate No. 86, authorizing
transfer of water right.

Very truly yours,

State Engineer.

Tr56

By...

RECEIVED
OCT 27 1910
STATE ENGINEER

Application for Transfer of Water Right.

RECEIVED

SEP 14 1910

OFFICE OF STATE ENGINEER

State of Idaho,
County of Fremont } ss.

Agnes B. Reno

, being first duly sworn, deposes and says:

That her name is Agnes B. Reno; that she is of lawful age, a citizen of the United States and of the State of Idaho, and that her postoffice address is

Reno, Fremont County, Idaho

That she is the owner and using a certain water right of 320 miners inches of the waters of Berch Creek,

County of Fremont, State of Idaho, decreed to W. A. Tyler by decree of Judge D. W. Staudrod, of the

Fifth Judicial District of the State of Idaho, in and for the County of Fremont, in the case of J. R. Richards

vs. Frank Reno et al, said decree bearing date of October 17th 1894 and conveyed by deed to this applicant on the 3rd day of February 1900 (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 Fremont and State of Idaho, to wit: The unsurveyed Desert Entry, of said

W. A. Tyler, situated in sections 10 & 11, T. 8 N. 30 E. B. M.

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.

By deed from said W. A. Tyler
as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters ^{were} ~~are now~~ diverted from said stream at at Section 3 Twp 8 N. R. 30 E. B. M.

and ^{was} ~~is~~ conducted to the above described lands through a ditch
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 Fremont and State of Idaho, to wit: N. of Sec 13, T. 8 N. R. 31 E.

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

That the use of said water upon the first named tract was abandoned about the year 1900, and has since that time been continuously used upon the last named tract of land, and applicant desires such transfer recorded.

MICROFILMED

That she intends to divert and convey said 370 inches of water to the tract

of land last above described in the following manner, to wit:

By means of a ditch already constructed, from ~~the~~ these point of diversion, as shown by map, about eight miles long, and of sufficient capacity to carry said water.

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

1st

day of

August

A. D. 1910.

Agnes B. Reno

Trans Reno

Justice Peace

State of Idaho,

County of

Truman

} ss.

H. J. Hagenbarth

and H. O. Wood

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 Reno, Idaho that he is a user of water from Birch Creek, County of Truman, State of Idaho; that he has read or heard read the foregoing affidavit and petition of Agnes Reno, 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.

H. J. Hagenbarth

H. O. Wood

Subscribed and sworn to before me this

30th

day of

July

A. D. 1910.

Trans Reno

Justice Peace

RECORDED

Affidavit of Publication

RECEIVED

SEP 14 1910

OFFICE OF STATE ENGINEER

STATE OF IDAHO,

COUNTY OF FREMONT,

I, J. W. Jones, do solemnly swear that I am the publisher of the RIGBY STAR, a weekly newspaper of general circulation, published once each week at Rigby, Fremont County, Idaho; that the notice attached hereto and which is a part of this affidavit, and a part of the proof of publication, was published in said newspaper four consecutive weeks; first publication having been made on the 18th day of August 1910; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and that the notice was published in the newspaper and not in a supplement.

J. W. Jones

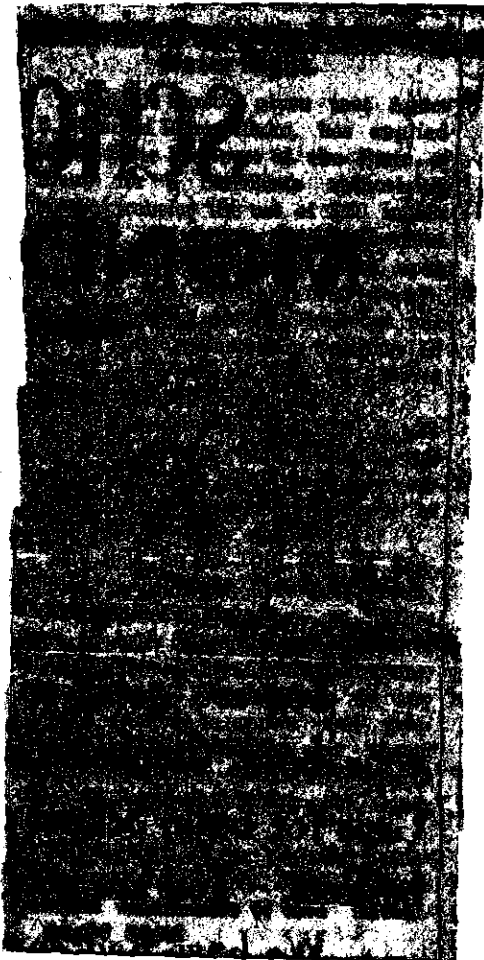
Subscribed and sworn to before me this 14th day

of Sept A. D., 1910

W. H. Hammond
Notary Public

My Comm. Expires July - 1914 -

RECORDED



State of Idaho,

County of Idaho

ss.

I, George H. Webster, Watermaster of Birch Creek,

County of Idaho, State of Idaho, whose postoffice address is Reno

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

Agnes B. Reno, 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: _____

Geo. H. Webster

Watermaster.

Idaho Falls Idaho

P. F. S.

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

B. Reno 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 Idaho Falls Idaho, on Sep. 10th 1910, 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~~

J. O. Webster

Commissioner of Water Division No. 1

By _____

Appl No 78

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