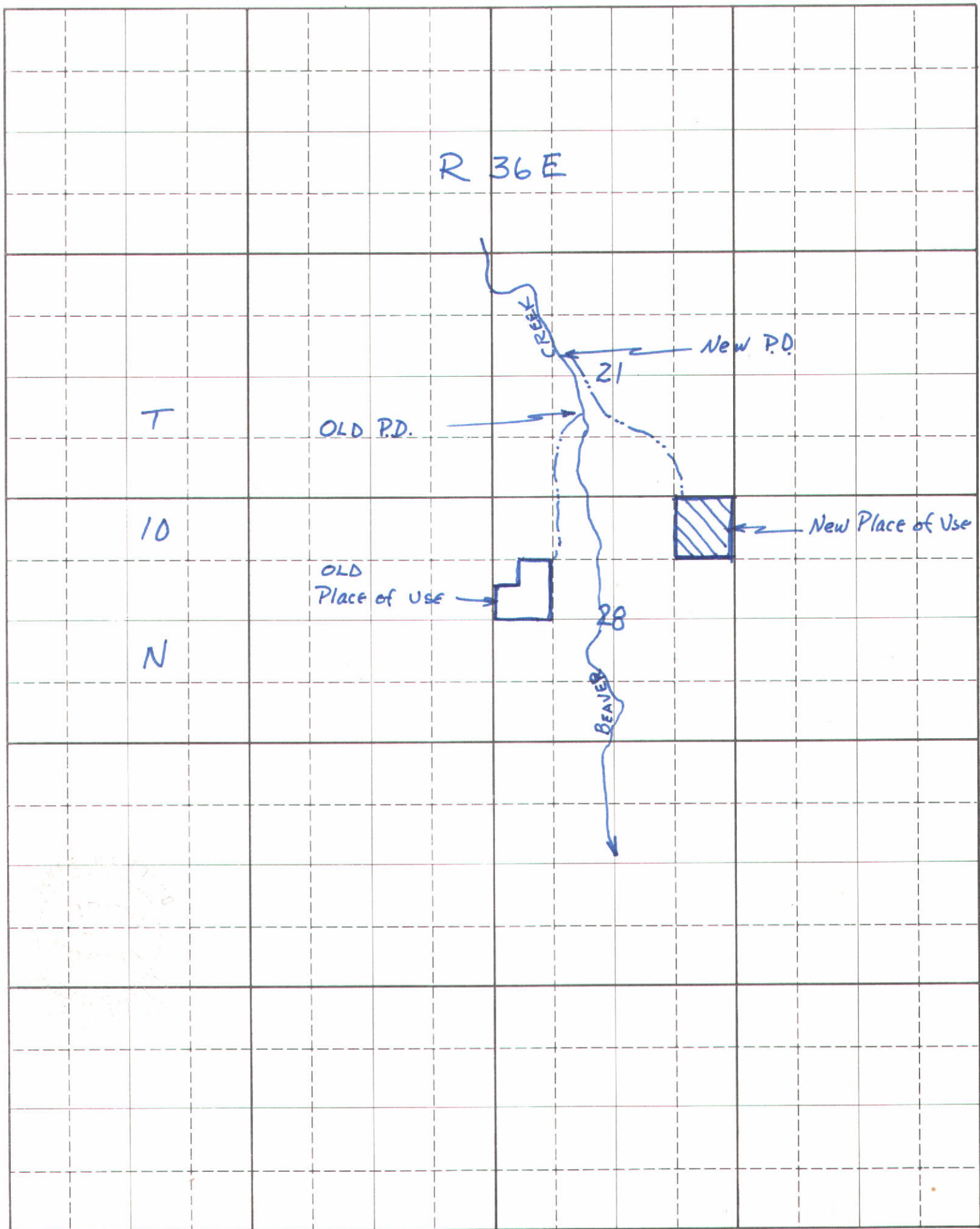
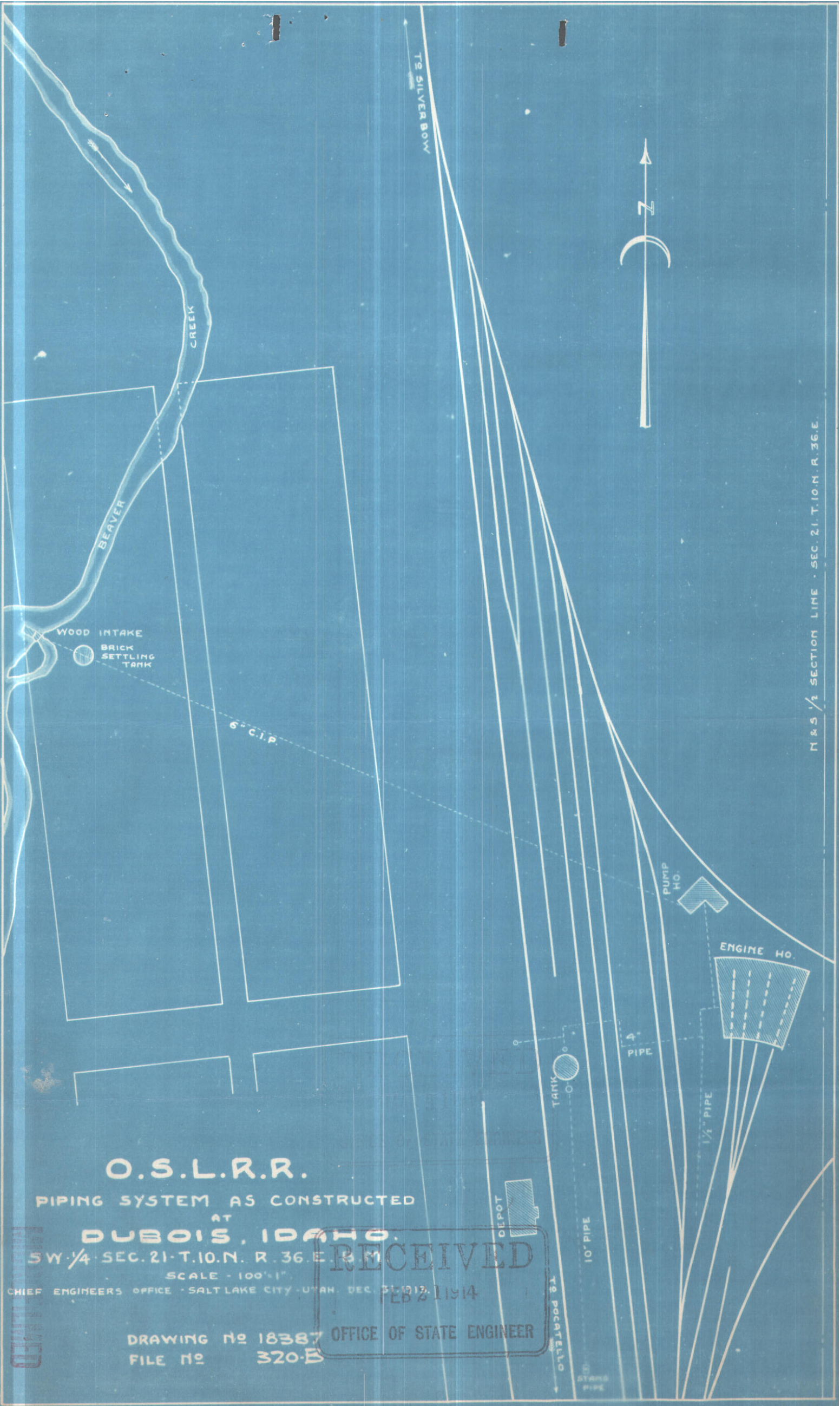


- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.



N & S 1/2 SECTION LINE - SEC. 21, T. 10 N. R. 36 E.

O.S.L.R.R.

PIPING SYSTEM AS CONSTRUCTED

AT

DUBOIS, IDAHO.

SW 1/4 SEC. 21 - T. 10 N. R. 36 E. S. 1 M.

SCALE - 100' = 1"

CHIEF ENGINEERS OFFICE - SALT LAKE CITY - UTAH. DEC. 31, 1913.

RECEIVED

FEB 2 1914

DRAWING No 18387
FILE No 320-B

OFFICE OF STATE ENGINEER

Transfer No. 1939

Application No. 31-0176

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant Blaine Grover Phone 374-5254

Post office address Dubois, Idaho 83423 Box 236

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree to Oregon Short Line Railroad Company
(Name)
in case of Ernest Sauve vs W. H. Abbott, et. al.
dated 11-01-30 in U.S. District Court county of Bannock
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____
Quit Claim Deed

3. Source of water Beaver Creek tributary to Mud Lake

4. Date of priority Sept. 1, 1879

5. Water is used for the following purposes:
amount 0.37 for Irrigation purposes from Apr. 1 to Nov. 1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)

6. Total amount of water under right: a. 0.37 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 21
Township 10N Range 36E, B.M., in Clark County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
10N	36E	28							30										30

Total number of acres to be irrigated 30

1.	Amount of water:	a.	_____ cubic feet per second	b.	_____ acre feet per annum				
2.	Point of diversion	_____ 1/4	_____ 1/4, Section	_____ Township	_____ County	_____ Range	_____ B.M.,	_____ Additional points	

Point of diversion	$\frac{1}{4}$	$\frac{1}{4}$, Section	Township	County	Range	B.M.,	Additional points
--------------------	---------------	-------------------------	----------	--------	-------	-------	-------------------

[illegible][illegible]

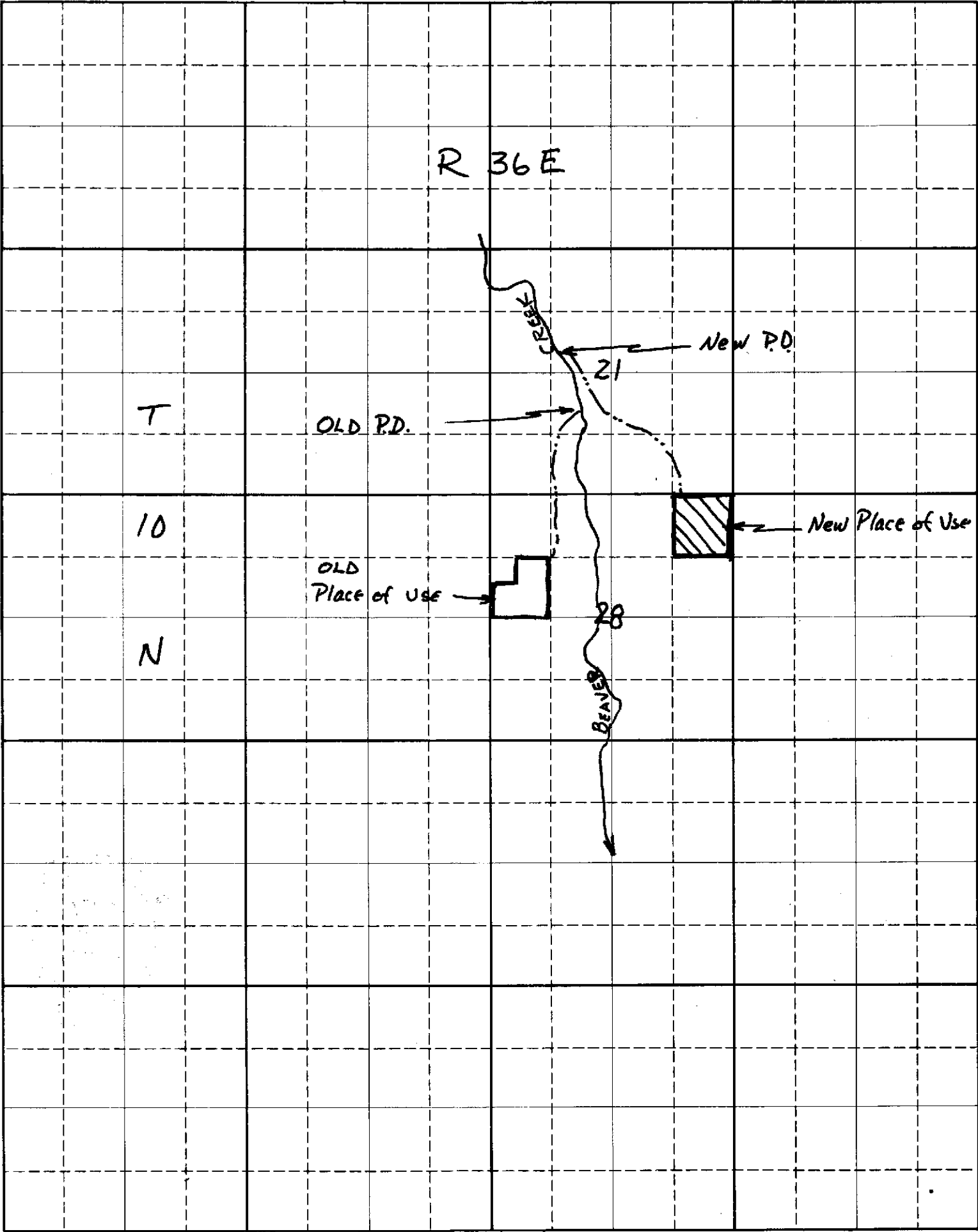
d. Describe the reasons for applying for a change in the point(s) of diversion

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼
TOTALS																		

[illegible]

30 Total number of acres to be irrigated

b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

3. Remarks NOTE: Right transferred from Oregon Shortline to irrigation many

years ago. Old point of diversion and place of use as used by Harn & Thomas.

I hereby assert that no one will be injured by such change and the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

(Signature of applicant)

Subscribed and sworn to before me this 17th day of February, 1976

(Notary public)

My commission expires 12-5-76

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 31-0176 (1939)

and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions:

Pursuant to Memorandum Decision and Order of this date.

2. Denial of said application is for the following reasons:

Witness my hand this 30 day of March, 1976

R. KEITH HIGGINSON, Director

FOR DEPARTMENT USE ONLY

Received by WJ Date 2-18-76

Prelim. check by WJ Fee \$30.00

Received by WJ Date 2-18-76

Published in Continued - WJ #15625

Pub. dates Feb. 26 + Mar. 4, 1976

Watermaster recommendation requested on WD 31

WJ 2-12-76 rec'd. 3-05-76

by WJ

Recommended for

approval

denial

Hearing held by

Date

Copies of protest forwarded by

Protest filed by

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Application for Transfer)
of Water Right No. 31-0176 in the name)
of BLAINE GROVER)
_____)

MEMORANDUM DECISION
AND ORDER

On February 18, 1976, Blaine Grover filed an application with the Department of Water Resources to change the point of diversion and place of use of Beaver Creek water originally decreed to the Oregon Short Line Railroad Company in the case of Ernest Sauve vs. W. H. Abbott, et al, dated November 1, 1930. The right, bearing priority of September 1, 1879, is for 0.37 cubic feet of water per second from Beaver Creek with point of diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, Twp. 10 N, Rge. 36 E, B.M., Clark County, for railroad use at Dubois, Clark County, Idaho. Title to the right was acquired from the railroad company by H. R. Harn and Benjamin H. Thomas, who have irrigated 30 acres of land within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, Twp. 10 N, Rge. 36 E, B.M., for over forty years.

Title to the right was obtained on January 31, 1976, by the applicant, Blaine Grover, who proposes to transfer the point of diversion to a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp. 10 N, Rge. 36 E, B.M., and the place of use to 30 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, Twp. 10 N, Rge. 36 E, B.M.

The transfer now under consideration involves no apparent expansion of the water right, and no protests have been received. There are questions, however, concerning the validity of the right to be transferred.

The issues of concern are:

- (1) Has the decreed water right which is proposed to be transferred been forfeited by previously changing the place of use without obtaining an approved transfer; and
- (2) Was the change from railroad uses to irrigation uses an expansion of the right?

FINDINGS OF FACT

(1) The type of use was changed from railroad uses to irrigation uses around 1930. Since that time, the 30 acres listed as belonging to Harn and Thomas have been supplied water by authority of the right in question.

(2) The extent and consumptive use of the originally decreed railroad right cannot be determined.

CONCLUSIONS OF LAW

(1) The Idaho Code, Section 42-108, states in part:

" . . . After the effective date (May 26, 1969) of this act, no person shall be authorized to change the point of diversion or place of use of water unless he has first applied for and received approval of the Department of Water Resources under the provisions of Section 42-222, Idaho Code."

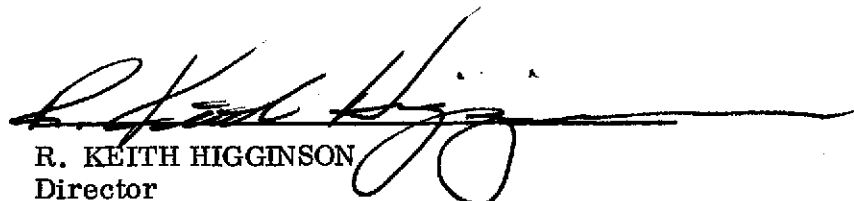
Prior to the effective date of the amendment of Section 42-108, it was possible that the place of use of an existing water right could be changed by effecting such, as long as there was no injury to existing water rights. Since the change of use was made over 40 years ago, and no action has been taken against such use, it can be assumed that other existing rights on Beaver Creek were not injured.

(2) The periods of use of the water for railroad purposes may be different from those for irrigation purposes. However, due to lack of data, it is not possible to compare such periods and determine any change in the consumptive use of water.

ORDER

IT IS, THEREFORE, ORDERED and Application for Transfer of Water Right No. 31-0176 is hereby APPROVED subject to the condition that a measuring device of a type approved by the Director of the Department of Water Resources be permanently installed and maintained as part of the diverting works at the new point of diversion from Beaver Creek. Approval of this transfer is for point of diversion and place of use only and no determination has been made of the legality of a change from railroad to irrigation use.

Dated this 30th day of March, 1976.


R. KEITH HIGGINSON
Director

21-376

See Right No. 310176 →

superseded by
James vs. Abbott
JuneS T A T E O F I D A H O

---OFFICE OF STATE ENGINEER---

CERTIFICATE NO. 133, AUTHORIZING TRANSFER OF WATER RIGHT.

Permission is hereby granted the Oregon Short Line Railroad Company, of Salt Lake City, County of Salt Lake and State of Utah, to transfer the use of ten (10) inches of the waters of Dry Creek (now called Beaver creek) in the County of Fremont, State of Idaho, from the place at which it is now used, i. e., High Bridge station, in the Montana division of the O. S. L. Railroad, to the following described point, to-wit: the town of Dubois, on said O. S. L. railroad about nine miles southerly from said High Bridge station.

The water right above described was adjudged by decree, dated June 14, 1901, of J. C. Rich, Judge of the Fifth Judicial District of the State of Idaho in and for the County of Fremont, in the case of F. A. Pyke, et al, and Oregon Short Line Railroad Company, plaintiffs, vs. James Burnside, et al, defendants.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this first day of April, A. D. 1914.

F. P. KING,

(SEAL)

State Engineer

RECORDED

Supervised by Federal Court
Decree of 1930 Camas Creek and
trib. Swann vs Abbot
SECOND DIVISION.

31-AT-1

FRANK RIBLETT, *Commissioner.*

ALBION, IDAHO.

1903.

DECREED WATER RIGHTS, Beaver Canyon or Dry Creek, Fremont Co.

MODIFIED DECREE.

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

F. A. Pyke, et al., Plaintiffs,
vs.

James Burnsides, et al., Defendants.

Whereas this cause having been tried before the said court, and the decree and judgment heretofore having been entered from which said decree and judgment, the defendants, Thomas B. Wharton and Milt Russell, having appealed to the supreme court, from the order and judgment made and entered therein, and after a full hearing in said supreme court, and the said supreme court of the State of Idaho having been fully advised in the premises, and their decision having been made and entered in said supreme court, and the same with the remittitur being thereto attached having been filed in this court, and ordering that the decree of said court be modified to the effect that the defendant Milt Russel be decreed eighty inches of water of the waters of Beaver canyon or Dry creek, and his rights to date from May, in the year 1901, it is therefore ordered, adjudged and decreed that the waters of said Dry creek and its tributaries, and all the streams hereinafter found to

be such tributaries, be and the same are hereby distributed and decreed to the several parties to this suit for the benefit, purposes and uses in amounts and of the dates with priority of rights in accordance with said dates as follows, to wit:

To F. A. Pyke, Dellaphine Pyke, J. D. Ellis, Elvira Ellis, jointly, 444 inches, dating from September 10th, 1892, 275 inches, dating from May 1, 1894, all diverted from the main channel of Dry creek.

To the Oregon Short Line Railroad company, a corporation, 25 inches, dating from July 1, 1883, diverted from the main channel of Dry creek near Dubois; also 10 inches, dating from July 1, 1880, diverted from the main channel of Dry creek near High bridge; also 10 inches, dating from February 1, 1894, diverted from the tributary Thomas creek; also 5 inches, dating from May 1, 1900, diverted from Beaver Canyon creek near Pleasant Valley.

To Spencer Harwood, 20 inches, dating from July 1st, 1893, diverted from Davidson creek; also 10 inches, dating from June 1, 1894, diverted from Thomas creek; also 60 inches, dating from June 1, 1894, also 60 inches, dating from June 1, 1894, diverted from Beaver Canyon creek.

To Jacob Bauer, 60 inches, dating from October 1, 1898, diverted from Beaver Canyon creek.

To Joseph Davidson, 10 inches, dating from May 15, 1891, diverted from Venoy creek; also 30 inches, dating from May 1, 1898, diverted from Dairy creek.

To William Patt, 80 inches, dating from May 15, 1898, diverted from Modock creek.

To Frank Robbins, 40 inches, dating from May 15, 1896, diverted from Modock creek; also 75 inches, dating from June 1, 1898, diverted from Tuppie creek.

To Peter Lawson, 40 inches, dating from October 15, 1896, diverted from Thomas creek.

To Samuel Burnside, 60 inches, dating from May 15, 1895, diverted from Modock creek, also 40 inches, dating from May 1, 1898, diverted from springs near premises.

To Annie Burnside, 100 inches, dating from June 1, 1898, diverted from Modock creek.

To Smith McKnight, 160 inches, dating from June 1, 1900, diverted from Modock creek.

To Henry Gleed, 160 inches, dating from May 1, 1899, diverted from Modock creek.

INDEXED

To David Stoddard, 40 inches, dating from May 15, 1901, diverted from Venoy creek.

To Stanley Stoddard, 90 inches, dating from May 1, 1899, diverted from Idaho Hollow creek.

To Alick Stoddard, 100 inches, dating from May 1, 1898, diverted from Pleasant Valley creek.

To Thomas Stoddard, 40 inches, dating from May 1, 1898, diverted from Davidson creek; also 60 inches, dating from May 1, 1898, diverted from Beaver Canyon creek.

To James Burnsides, 75 inches, dating from April 1 1894, to be diverted only from Little Dry creek.

To Milt Russell, 80 inches, dated from May 1, 1901, diverted from west fork of Beaver Canyon creek.

That the several amounts of water above described be measured and distributed to the said parties at their several points of diversions from the natural channel of said Dry creek and said tributaries thereof, respectively.

That said waters except that herein decreed to the said railroad company be measured under a weir system in cubic feet per second of time; 50 inches of water as herein decreed being equal to one cubic foot of water per second of time or one second foot. It is further ordered that each of said parties to this suit construct and maintain at their several points of diversion, respectively, substantial and uniform boxes, head gates and weirs for the measurement of their said water, excepting said railroad company, and it being impracticable for said railroad company to use weirs for measuring into its pipes, it is ordered that said company adopt some practical mode for the measurement of water used by it. That each and every of the parties to this suit, their agents, attorneys, assignees and grantees are hereby restrained and perpetually enjoined from in any manner interfering with the waters of said Dry creek and the tributaries thereof, herein decreed or exercising any other or greater rights with reference to said waters than is herein decreed to the said parties respectively.

That the costs of this action be paid as follows, to wit:

Each party pay his own costs.

Dated September 25th. 1902.

JOSEPH C. RICH,

Judge of the District Court.

Recorded in Book A of Judgments, page 579.

RECORDED

April 7, 1976

Re: Transfer No. 31-0176 (1939)

**Mr. Blaine Grover
Box 236
Dubois, Idaho 83423**

Dear Mr. Grover:

Enclosed herewith is a copy of your approved Application for Transfer of Water Right No. 31-0176 along with a copy of the Memorandum Decision and Order.

Be sure to note that a special condition requiring you to install and maintain a measuring device at the new point of diversion has been placed upon this transfer. Enclosed is a letter describing different types of measuring devices approved by the Director.

Sincerely,

**BOBBY D. FLEENOR
Chief, Water Rights**

**BDF:DR
Enclosures**

bc: Eastern Regional Office

100 00

Oregon Short Line
Railroad Company,
a corporation

1879 - July 1

0.26 c.f.s. Source: Camas Creek, a tributary
of Mud Lake.

Point of Diversion: Diverted from the
North bank of Camas Creek at a point
on the right of way of the Oregon
Short Line Railroad Co., near the
station of Camas, Idaho.

For use at Camas, Jefferson County,
Idaho

1879 - September 1

0.37 c.f.s. Source: Beaver Creek, a tributary of
Camas Creek.

Point of Diversion: In the Northeast
Quarter of the Southwest Quar-
ter of Section 21, Township 10
North, Range 36 East, B.M.

For use at Dubois, Clark County, Idaho.

1879 - September 1

0.23 c.f.s. Source: Thomas Creek, a tributary
of Beaver Creek.

Point of Diversion: Through two
circular pipe lines into a 50,000
gallon water tank, said tank being
located in the Northeast Quarter of
the Northwest Quarter of Section
23, Township 12 North, Range 36
East, B.M.

For use at Spencer, Clark County
Idaho.

1880 - May 1

0.15 c.f.s. Source: Beaver Creek, a tributary
of Camas Creek.
1.01

Point of Diversion: A point in
unsurveyed township 11 North,
Range 36 East, B.M.

For use at Humphrey, Clark County,
Idaho.

HILL OF SALE OF WATER RIGHT

For the sum of ONE DOLLAR (\$1.00), and other valuable considerations, we, the undersigned, do hereby release, quitclaim and set over to Elaine U. Grover of Dubois, Idaho, our right, title and interest in and to the below described water right.

1879 - September 1 0.37 c.f.s. Source: Beaver Creek, a tributary of Camas Creek.

Point of Diversion: In the Northeast Quarter of the Southwest Quarter of Section 21, Township 10 North, Range 36 East, B.M.

DATED: January 31, 1976

(Signed)


H. R. Harn

(Signed)


Marva McGarry

Proof of Publication

RECEIVED

MAR 5 1976

Department of Water Resources
Eastern District Office

STATE OF IDAHO
County of Clark

ss.

Terry T. Weatherston being
first duly sworn, deposes and says that he is the

printer of THE CLARK COUNTY
ENTERPRISE, a weekly newspaper published in
Dubois, Clark County, in the State of Idaho. That

the notice of proposed change,
a true copy of which is hereto attached was pub-
lished in THE CLARK COUNTY ENTERPRISE for

two consecutive weeks, first publication

having been made on the 26 day of

February, 1976 and the last

publication having been made on the 4

day of March, 1976.

That said paper has been continuously and
uninterruptedly published in said county during
a period of seventy-eight consecutive weeks
prior to the first publication of said notice or
advertisement, and is a newspaper within the
meaning of the laws of Idaho.

Terry T. Weatherston

SUBSCRIBED AND SWORN TO before me

this 5 day of March, A.D. 1976

For - O. Potter
Notary Public.

My commission expires August 5, 1977

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 31-0176

Notice is hereby given that Blaine
Grover, Dubois, Idaho has applied to
the Department of Water Resources
for a change in the point of diversion
and place of use of the waters of
Beaver Creek. The right sought to be
changed is evidenced by decree to
Oregon Short Line Railroad Company
in case of Ernest Sauve -vs- W. H.
Abbott, et. al., dated November 1,
1930 in U.S. District Court Eastern
Division, Bannock County and is
recorded as follows:

AMOUNT: 0.37 cfs
PRIORITY: Sept. 1, 1879
DECREED POINT OF DIVER-
SION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, T. 10N,
R. 36E, B.M., Clark County.

The water is used to irrigate 30
acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28,
T. 10N, R. 36E, B.M.

TO BE CHANGED AS FOLLOWS
The water will be diverted within the
SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 10N, R. 36E,

B.M., and used to irrigate 30 acres
within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, T. 10N,
R. 36E, B.M.

Any protest against approval of the
above proposed change of water right
must be filed with the Idaho Depart-
ment of Water Resources, 1515 Lin-

coln Road, Idaho Falls, Idaho, 83401,
on or before March 15, 1976.

R. KEITH HIGGINSON
Director

Published in the Enterprise-Citizen,
Rexburg, Idaho on February 26 and
March 4, 1976.

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

MAR 5 1976

NO. 31-0176

Department of Water Resources
Eastern District Office

RECOMMENDATION OF WATERMASTER

I, Donald W. Shenton, watermaster of Mud Lake & tributaries,
of Water District No. 31, County of Clark, State of Idaho,
whose address is Dubois, Idaho
have read the attached copy of the application for transfer of water right for _____
Blaine Grover, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: NONE

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Dubois, Idaho, this 4 day of March 19 76

Donald W. Shenton
(signature)

RECEIVED

MAR 5 1976

Department of Water Resources
Eastern District Office

Debois, Idaho

Feb. 4 1976

Department of Water Resources.
1515 Lincoln Road.
Idaho Falls Idaho

Concerning this transfer from
Mr. Dorn & Thomas to Mr. Shover
I make the following statement.
I have deeded this right to
these people since Aug 1-1960
as far as I know & ~~can~~
can determine it has been
deeded to them since 1930.
I fully endorse the transfer
of this right.

Sincerely
Donald W. Shover

February 20, 1976

RE: Application of Transfer of Water Right No. 31-0176 GROVER

Enterprise-Citizen
Box 7
Rexburg, Idaho 83440

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted 3-05-76 by CW

RDC:CW

Enc: Legal Notice (1)

END: FROM OFFICE (J)

800:CM

ES27440 REGION

2000A120L

1937. 1. 10N, R. 36E

**NOTICE OF PROPOSED CHANGE
OF WATER RIGHT
NO. 31-0176**

Notice is hereby given that Blaine Grover, Dubois, Idaho has applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Beaver Creek. The right sought to be changed is evidenced by decree to Oregon Short Line Railroad Company in case of Ernest Sauve -vs- W. H. Abbott, et. al., dated November 1, 1930 in U.S. District Court Eastern Division, Bannock County and is recorded as follows:

AMOUNT: 0.37 cfs
PRIORITY: Sept. 1, 1879
DECREEED POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, T. 10N, R. 36E, B.M., Clark County;

The water is used to irrigate 30 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, T. 10N, R. 36E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 10N, R. 36E, B.M., and used to irrigate 30 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, T. 10N, R. 36E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before March 15, 1976.

R. KEITH HIGGINSON
Director
Published in the Enterprise-Citizen,
Rexburg, Idaho, on February 28 and
March 4, 1976.

RECEIVED

BOX

ENCL: 120-01150

RE: ADDITION OF WATER RIGHT NO. 31-0176

RECEIVED

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 31-0176

Notice is hereby given that Blaine Grover, Dubois, Idaho has applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Beaver Creek. The right sought to be changed is evidenced by decree to Oregon Short Line Railroad Company in case of Ernest Sauve -vs- W. H. Abbott, et. al., dated November 1, 1930 in U. S. District Court Eastern Division, Bannock County and is recorded as follows:

AMOUNT: 0.37 cfs

PRIORITY: Sept. 1, 1879

DECREED POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, T. 10N, R. 36E, B.M.,
Clark County;

The water is used to irrigate 30 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, T. 10N, R. 36E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 10N, R. 36E, B.M., and used to irrigate 30 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, T. 10N, R. 36E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before March 15, 1976.

R. KEITH HIGGINSON

Director

Published in the Enterprise-Citizen, Rexburg, Idaho, on February 26 and March 4, 1976.

ma-D.
ma-D.

February 20, 1976

RE: Application for Transfer No. 31-0176

Mr. Blaine Grover
Box 236
Dubois, Idaho 83423

Dear Mr. Grover:

Attached herewith is departmental receipt No. 15625 in the amount of \$30.00 for the above referenced application for transfer.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Attachment

February 12, 1976

RE: Application for Transfer No. 31-0176

Mr. Blaine Grover
Dubois,
Idaho 83423

Dear Blaine:

Please find enclosed a typed transfer of the water right you wish to transfer.

If it meets with your approval, sign at the place indicated by a red check on Page 4, in the presence of a Notary Public, then return with your check in the amount of \$30.00 which is the statutory filing fee for transfers.

If you have any questions, please feel free to contact me.

Very truly yours,

LOY H. JOHNSON
Senior Water Resource Agent

LHJ: CW

Enclosure

February 12, 1976

Mr. Donald Shenton, Watermaster
Water District 31
Dubois, Idaho 83423

Dear Don:

Please find enclosed a recommendation of watermaster form partially completed. Be sure to answer items "A" and "B", stating your recommendations and date above your signature.

Just for the record - see if you can find out the date Harn and Thomas bought this right; and state in letter form that to the best of your knowledge the water has been delivered to the said parties since purchase, and that you verify the water has been delivered to Harn and Thomas since August, 1960, when you assumed the duties of Watermaster of Water District No. 66 now Water District No. 31.

Very truly yours,

LOY H. JOHNSON
Senior Water Resource Agent

LHJ:cw

Enclosures

April 2, 1914.

Re certificate of transfer.

Mr. Clark Stradley,
Chief Engineer O. S. L.,
Salt Lake City, Utah.

Sir:

Am herewith enclosing you certificate of
transfer of water right, No. 133.

Very truly yours,

F. P. KING,

State Engineer.

CT133

By _____

UNRECORDED

February 28, 1914.

Retransfer of water right.

Mr. Carl Stradley,
Chief Engineer O.S.L.
Salt Lake City, Utah.

Sir:

Am enclosing you herewith receipts for fee for
application for transfer of water right.

Very truly yours,

F. P. KING,

State Engineer.

R6278-E

By _____

RECEIVED
FEB 28 1914

OREGON SHORT LINE RAILROAD COMPANY

Office of General Manager

IN REPLY PLEASE REFER TO

No.

SAINT LAKE CITY, UTAH. February 25, 1914.

-Transfer of Water Right, High Bridge to Dubois-

Mr. F. P. King,

State Engineer,

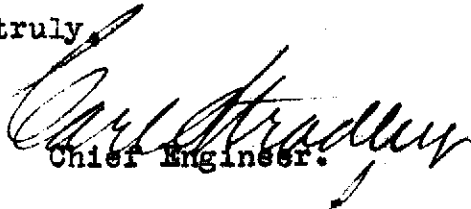
Boise, Idaho.

Dear Sir:

I am in receipt of your letter of February 23rd acknowledging the receipt of the application of the Oregon Short Line Railroad Company for transfer of its water right from High Bridge to Dubois, Idaho, together with the \$1.00 filing fee.

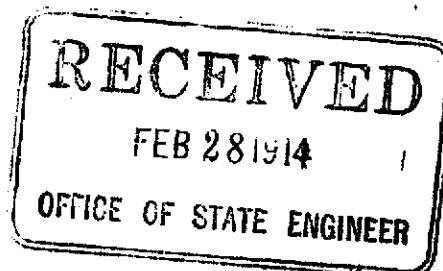
I am handing you herewith our form of receipt covering this filing fee and would request that you kindly sign the same and return to me.

Yours truly,


Chief Engineer.

Encl.

RECEIVED



February 23, 1914.

Re transfer of water right.

Mr. W. A. Norton,
Water Commissioner,
McCammon, Idaho.

Dear Sir:

Am herewith enclosing you the application of Oregon Short Line for transfer of water right. You will please advise Mr. Carl Stradley, Chief Engineer of the O.S.L., at Salt Lake City, as to the time and place of hearing and the paper in which the notice will appear. The money order for fee is now in this office.

Very truly yours,

F. P. KING,

State Engineer.

App.Tr.-2M-D-Not.

By _____

RECEIVED
FEB 25 1914
STATE ENGINEER

February 23, 1914.

Re transfer of water right.

Mr. Carl Stradley,
Chief Engineer O.S.L.
Salt Lake City, Utah.

Sir:

Am in receipt of your letter enclosing application for transfer of water right, together with maps and money order for \$1.00 fee. The application has been forwarded to Mr. W. A. Norton, water commissioner of the 1st division, of McCammon, Idaho, and he will advise you as to the date and place of the hearing.

Very truly yours,

F. P. KING,

State Engineer.

By _____

RECEIVED

OREGON SHORT LINE RAILROAD COMPANY

Office of General Manager

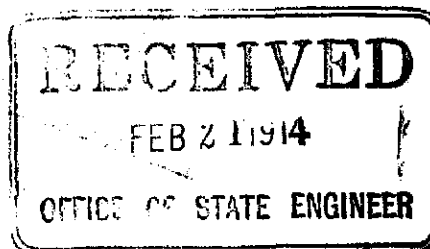
IN REPLY PLEASE REFER TO

No.

SALT LAKE CITY, UTAH, February 19, 1914.

-Subject Transfer of Water Right, High Bridge to Dubois-

Mr. F. P. King,
State Engineer of Idaho,
Boise, Idaho.



Dear Sir:

I hand you herewith the following papers, in connection with application of the Oregon Short Line Railroad Company for transfer of its water right from High Bridge to Dubois, Idaho.

Application for transfer of Water Right, (Form 20).

Notice of Proposed Transfer of Water Right, (Form 202).

Print of Map showing Piping System at Dubois Station Grounds.

Copy of Decree of Court, adjudicating water rights on Dry Creek.

In reply to my inquiry of December 24, 1913 you stated that it would not be necessary to file map showing channel of Beaver Creek (formerly named Dry Creek), but only to show the works to be constructed. It is not proposed to construct any new or additional works at Dubois, but to utilize those which were constructed about ten years ago and to divert the ten miners' inches from Dry Creek (which were adjudicated to the Oregon Short Line at High Bridge) at Dubois.

I am sending you herewith Postal Money Order for \$1.00 for filing fee of the enclosed application. If any further

RECEIVED

Mr. F. P. King -2-

steps are necessary to be taken, kindly inform me.

Yours truly,

Carl Strassberg
Chief Engineer.

Encl.

Application for Transfer of Water Right

STATE OF ~~Idaho~~ ^{UTAH}

SS.

County of Salt Lake

The Chief Engineer Oregon Short Line Railroad being first duly sworn, deposes and says:

That his name is Carl Stradley; that he is of lawful age, a citizen of the United States and of the State of ~~Idaho~~ ^{Utah}, and that his postoffice address is 606 Deseret News Building, Salt Lake City, Utah
the Railroad Company

That ~~he~~ is the owner and using a certain water right of 10 Miners Inches of the waters of Dry Creek, now named Beaver Creek

County of Fremont, State of Idaho, decreed to Oregon Short Line Railroad by decree of Judge J. C. Rich, of the 5th Judicial District of the State of Idaho, in and for the County of Fremont

, in the case of F.A. Pyke et al and Oregon Short Line Railroad vs. James Burnside et al, said decree bearing date of June 14, 1901

~~which was decreed by the State Engineer of the State of Idaho, dated~~ ^{the Railroad Company operating its railroad} for the purpose of ~~the Railroad Company operating its railroad~~

~~the said water right~~ in the County of Fremont and State of Idaho, to-wit: Supplying locomotives of the said Railroad Company with water

RECEIVED

FEB 2 1914

and is

~~under the power of~~ the representative of the corporation) to whom such right so issued, ~~and is hereby transferred to the following company~~

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 High Bridge Station on the main line of the Montana Division of the Oregon Short Line Railroad, by means of a pipe and steam pump and conducted to a water crane pipe

That affiant and petitioner desires to abandon the use of said 10 Miners Inches of said water at said High Bridge station 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: Town of Dubois on said main line of the Montana Division of the Oregon Short Line Railroad as shown on attached map

That his reasons for desiring to make such transfer are as follows: On the grounds of economy, by dispensing with the pump house outfit at High Bridge, Dubois being the beginning of a freight division and also of a passenger helper locomotive division and distant about 9 miles south of High Bridge Station.

That he intends to divert and convey said.....10 inches.....of water to the tract of land last above described in the following manner, to-wit: Through the natural channel of Dry Creek, now named Beaver Creek, from High Bridge Station to Dubois Station on the Montana Division of the Oregon Short Line.

~~and that he has no objection to the same~~ 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.....

Carl Stralley,
2nd day of January

A. D. 1914

E. B. Heisler
Notary Public

STATE OF IDAHO,

County of Fremont

} ss.

E. W. Laird and Joseph Pollock

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 Dubois, Idaho

that he is a user of water from Dry Creek, County of Fremont,

State of Idaho; that he has read or heard read the foregoing affidavit and petition of Oregon Short Line Railroad Company, and is familiar with its allegations, and with the water right ~~and~~

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.....

J. D. Laird and Sons by E. W. Laird
Joseph Pollock
17th day of February
David Miller
Notary Public

A. D. 1914

AFFIDAVIT OF PUBLICATION.

STATE OF IDAHO,
County of Bonneville, } ss.

I, **M. B. YEAMAN**, do solemnly swear that I am the publisher and printer of **THE IDAHO REGISTER**, a semi-Weekly newspaper of general circulation, published twice each week at Idaho Falls, Bonneville 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 4 consecutive weeks; first publication having been made on the 27th day of February 1914; last publication having been made on the 27th day of March 1914; that said notice was published in the regular and entire issue of each 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.

Subscribed and sworn to before ^{me} this 28th day of March A. D., 1914

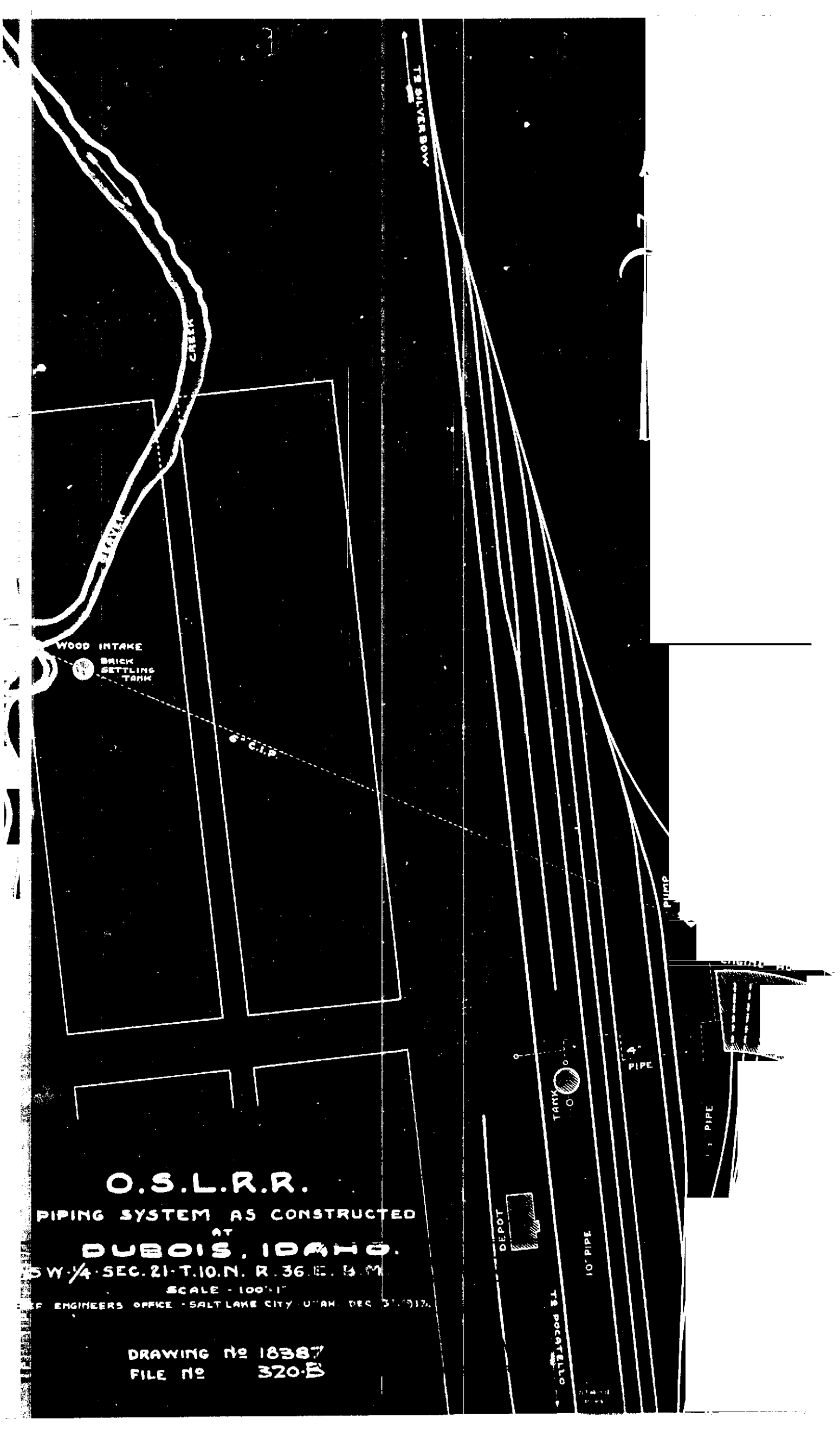
Notary Public.

Notice of Proposed Transfer of Water Right

Notice is hereby given that Oregon Short Line Railroad Company, of Salt Lake City, has applied to the State Engineer of the State of Idaho for a certificate authorizing it to transfer the use of 10 miner inches of the water of Dry Creek, now named Beaver Creek, from the point where it is now used, i.e. High Bridge station, on the Montana division of the O. S. L. railroad, to the following described point: The town of Dubois, on said Oregon Short Line railroad, about 9 miles southerly from said station of High Bridge.

And that, on the 28th day of March, at 10:00 a.m., A. D. 1914, at office of F. C. Bowman, Idaho Falls, Idaho, 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 W. A. Norton, Water Commissioner Div. 1 2-27 3-27



O.S.L.R.R.

PIPING SYSTEM AS CONSTRUCTED

AT

DUBOIS, IDAHO.

SW 1/4 SEC. 21-T. 10. N. R. 36. E. S. 14.

SCALE - 100' = 1"

ENGINEERS OFFICE - SALT LAKE CITY UTAH DEC 31, 1910.

DRAWING No 18387

FILE No 320-B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO

IN AND FOR FREMONT COUNTY

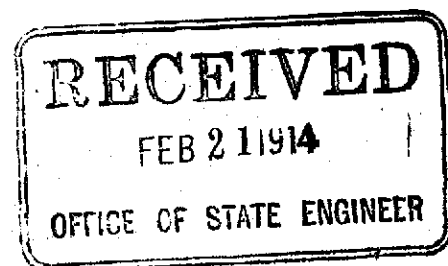
F A Pyke, Dellephine Pyke, J D Ellis,
Alvira Ellis, and Oregon Short Line Railroad
Company, a corporation,
Plaintiffs,

vs.

DECREE

James Burnsides, Spencer Harwood,
Henry Lee, Peter Lawson, Jacob Bauer
(Bower) Thomas Stoddard, Samuel
Stoddard, Albert Stoddard, James
Stoddard, Alick Stoddard, David Stoddard,
Ann Underwood, Joe Davidson, William Patt,
Frank Robbins, Edward Holmer, Thomas B
Wharton, Milt Russel, Samuel Burnsides,
Mrs Annie Burnsides, Mrs Henry Gleed,
Henry Gleed, Mrs Smith Mc Knight, and
Horace Lewis.

Defendants.



This cause was commenced July 5th, 1900, and thereupon a summons was duly issued upon the same day and service was thereafter duly made upon all the defendants above named excepting Horace Lewis. Thereafter all the said defendants appeared in said action by their attorney, B J Briggs, Esq. and thereafter John A Bagley, Esq. appeared for the defendant James Burnsides and S C Winters, Esq. appeared for the defendants Thomas B Wharton and Milt Russell.

And the defendants, James Burnsides, Milt Russell, Thomas B Wharton, Spencer Harwood, Peter Lawson, Jacob Bower, Thomas Stoddard, Samuel Stoddard, Albert Stoddard, James Stoddard, Alick Stoddard, David Stoddard, Joseph Davidson, William Patt, Frank Robbins, Samuel Burnsides, Mrs. Anna Burnsides, Henry Gleed, Mrs Henry Gleed and Mrs Smith Mc Knight, by their respective counsel, filed cross-complaints claiming interests and rights in the waters of Dry Creek and its tributaries, the other defendants named making no claim thereto.

Thereafter it was stipulated by respective counsel for all parties hereto in open Court that all the defendants might make answer to the amended complaint by a general denial with the same force and effect as if specific denials to all of the allegations thereof were made, and that the complaint should be deemed to be unverified. And it was farther so agreed that all cross-complaints should be deemed denied without filing a written answer thereto, with the same force and effect

as if verified answers thereto were duly filed.

And thereafter, to-wit, on or about December 4th, 1900, by agreement of respective counsel for all parties and for the convenience and upon the request of all parties it was ordered that the evidence in this cause should be taken before the Judge of said Court at the town of Dubois, in Fremont County, Idaho, and that upon the evidence so taken judgment should be entered at the next ensuing term of said Court.

Thereafter the evidence was taken pursuant to said agreement and order, and now at a regular term of said Court said cause having ~~come~~ regularly on to be heard and the court having heard the arguments of respective counsel and the same having been submitted to the Court, upon the evidence so taken and the agreements, stipulations, and admissions made during the trial and at the hearing of said cause and the Court being fully advised in the premises, and findings of fact and conclusions of law having been by all parties expressly waived in open court.

And the Court having found that the several parties hereinafter named and their predecessors in interest having been from the several dates hereinafter mentioned as the dates of the respective water rights, and now are in the possession and the owners, against all the world except the United States, of the respective tracts of land described in the several amended complaints and cross complaints as amended, and that said plaintiff Railroad Company was and is the owner, in the possession of and operating a certain Railroad as alleged in the amended complaint and that said several plaintiffs and cross-complainants at the several dates respectively, hereinafter mentioned, diverted and appropriated of the waters of Dry Creek and its tributaries, hereinafter and in the pleadings mentioned, all in Fremont County, State of Idaho, the several amounts of water respectively, hereinafter mentioned and decreed to said several parties, and have used the same for beneficial purposes, to-wit, agricultural, domestic, and stock raising purposes, and said Railroad Company for the operation of its Railroad; and having found all other facts necessary to support this decree and no facts inconsis-

tent herewith.

IT IS THEREFORE ORDERED, adjudged and decreed, that the waters of said Dry Creek and its tributaries (and all the streams hereinafter named are found to be such tributaries) be and the same are hereby distributed and decreed to the several parties to the suit, for beneficial purposes and uses, in amounts and of the dates, with priority of rights in accordance with said dates, as follows, to-wit:

Adjudicated Waters of Dry Creek and Tributaries

(Arranged in groups as to Applicants)

<u>Dating from</u>	<u>Name</u>	<u>Inches</u>	<u>From</u>
Sept 10 1892	F A Pyke Dellephine Pyke J D Ellis Alvira Ellis	) 444)))	Main Channel of Dry Creek
May 1 1894	Do	275	Do Do
July 1 1883	O S L R R	25	Main Channel Dry Creek near Dubois
July 1 1880	Do	10	Main channel Dry Creek near High Bridge
Feb 1 1894	Do	10	Tributary Thomas Creek
May 1 1900	Do	5	Beaver Canyon Creek near Pleasant Valley
July 1 1893	Spencer Harwood	20	Davidson Creek
June 1 1894	Do	10	Thomas Creek
June 1 1894	Do	60	Beaver Canyon Creek
Oct 1 1898	Jacob Bauer (Bower)	60	Beaver Canyon Creek
May 15 1891	Joseph Davidson	10	Venoy Creek
May 1 1898	Do	30	Dairy Creek
May 15 1898	William Patt	80	Modock Creek
May 15 1896	Frank Robbins	40	Modock Creek
June 1 1898	Do	75	Tuppie Creek
Oct 15 1896	Peter Lawson	40	Thomas Creek
May 15 1895	Samuel Burnsides	60	Modock Creek
June 1 1898	Do	40	Modock Creek
May 1 1898	Do	40	Springs near premises
June 1 1898	Anna Burnsides	100	Modock Creek
June 1 1900	Mrs Smith McKnight	160	Modock Creek
May 1 1899	Henry Gleed	160	Modock Creek

<u>Dating from</u>	<u>Name</u>	<u>Inches</u>	<u>From</u>
May 15 1891	David Stoddard	40	Venoy Creek
May 1 1899	Samuel Stoddard	90	Idaho Hollow Creek
May 1 1898	Albert Stoddard	100	Beaver Canyon Creek
May 1 1898	Aliek Stoddard	100	Pleasant Valley Creek
May 1 1898	Thomas Stoddard	40	Davidson Creek
May 1 1898	Do	60	Beaver Canyon Creek
Apr 1 1894	James Burnsides	75	Little Dry Creek
May 1 1891	Thomas B Wharton	80	Modock Creek
-----	Milt Russell	No	

(Arranged as to dates)

Adjudicated Waters of Dry Creek and Tributaries

<u>Dating from</u>	<u>Name</u>	<u>Inches</u>	<u>From</u>
July 1 1880	O S L R R	10	Main Channel Dry Creek near High Bridge
July 1 1883	Do	25	Main Channel Dry Creek near Dubois
May 1 1891	Thomas B Wharton	80	Modock Creek
May 15 1891	Joseph Davidson	10	Venoy Creek
May 15 1891	David Stoddard	40	Venoy Creek
Sept 10 1892	F A Pyke) Dellephine Pyke) J. D Ellis) Alvira Ellis)	444	Main Channel of Dry Creek
July 1 1893	Spencer Harwood	20	Davidson Creek
Feb 1 1894	O S L R R	10	Tributary Thomas Creek
Apr 1 1894	James Burnsides	75	Little Dry Creek
May 1 1894	F A Pyke) Dellephine Pyke) J D Ellis) Alvira Ellis)	275	Main channel of Dry Creek
June 1 1894	Spencer Harwood	10	Thomas Creek
June 1 1894	do	60	Beaver Canyon Creek
May 15 1895	Samuel Burnsides	60	Modock Creek
May 15 1895	Frank Robbins	40	Modock Creek
Oct 15 1896	Peter Lawson	40	Thomas Creek
May 1 1898	Joseph Davidson	30	Dairy Creek
May 1 1898	Samuel Burnsides	40	Springs near premises

<u>Dating from</u>	<u>Name</u>	<u>Inches</u>	<u>From</u>
May 1 1898	Albert Stoddard	100	Beaver Canyon Creek
May 1 1898	Alick Stoddard	100	Pleasant Valley Creek
May 1 1898	Thomas Stoddard	40	Davidson Creek
May 1 1898	Do	60	Beaver Canyon Creek
May 15 1898	William Patt	80	Modock Creek
June 1 1898	Frank Robbins	75	Tuppie Creek
June 1 1898	Samuel Burnside	40	Modock Creek
June 1 1898	Anna Burnside	100	Modock Creek
Oct 1 1898	Jacob Bauer (Bower)	60	Beaver Canyon Creek
May 1 1899	Henry Glead	160	Modock Creek
May 1 1899	Samuel Stoddard	90	Idaho Hallow Creek
May 1 1900	O S L R R	5	Beaver Canyon Creek near Pleasant Valley
June 1 1900	Mrs. Smith McKnight	160	Modock Creek
-----	Milt Russell	None	

That each and every of the parties to this suit, their agents, attorneys, assignees, and grantees are hereby restrained and perpetually enjoined from in any manner interfering with the waters of said Dry Creek and the tributaries thereof herein decreed, or exercising any other or greater rights with reference to said waters than as herein decreed to the said parties respectively.

That the costs of this action be paid as follows, to-wit:

Each party pay his own costs.

Dated this 14th day of June 1901.

(Signed) J C Rich,

Judge of the District Court.

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 The Oregon
Short Line Railroad Co., 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 Idaho Falls, Idaho., on March 28th 1914, 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; or ~~(and it appearing at said hearing that the fol-
lowing injuries would be sustained by others if such transfer is permitted~~

No injuries

I hereby recommend that the State Engineer do ☒ issue the certificate authorizing the transfer sought
hereinabove.

W. A. Noctor
Commissioner of Water Division No. 1

By.....