

Name of Applicant.

J. E. GARNER

SEC.

SEC.

SEC.

SEC.

SEC.

SEC.

DES

SECO

SECTIONS

SEC

SEC

245

DES

SFC

DES

255

MS

CS

18

17

20

Disc 1

RECEIVED

Scale: 2 Inches—1 Mile. Draw Map in Ink.

Affidavit for Change of Point of Diversion of Decreed Water Right

STATE OF IDAHO, }
County of Madison } ss.

Void

*not necessary
to use*

J. E. Garner, being first duly sworn, deposes and says: That his postoffice address is Rexburg, Idaho; That he is the owner of and using a certain water right, bearing date of priority of July 1, 1879, 19 , for .26 cubic feet per second of the waters of Camas Creek, County of Jefferson, State of Idaho, decreed to Oregon Short Line Railroad Co. by decree of Judge Charles C. Cavanah, of the District Court, Eastern Division, United States ~~Judicial District~~ of the State of Idaho, in and for the County of Jefferson, in the case of Ernest Sauve vs. W. H. Abbott et al said decree bearing date of November 1, 1930, for the purpose of irrigating the following described lands, situate, lying and being in Water Dist. No. 66, in the County of Jefferson & Clark, and State of Idaho, to-wit: Railroad use at the town of Camas, Idaho

That he is the person (or representative of the corporation) to whom such right was issued, (or has become the owner thereof in the following manner: by purchase

That said waters are now diverted from said stream in the SE 1/4 SE 1/4 of Sec. 21, Twp. 8 N, Range 36 E, and conducted to the above described place of use by pump, pipeline & tanks ~~ditch~~ as per map filed herewith and of this affidavit made a part;

That affiant desires to change the point of diversion of said water from the point above described to a point located in S 1/2 SE 1/4 Section 18, and N 1/2 NE 1/4 Section 19, 10 N Range 38 E., and thereafter conduct same to the above described land through the Jacoby ditch, as per map above referred to:

That his reasons for desiring to make such change are as follows:
Water to be used for irrigation purposes, and is more valuable for use in the proposed new location.

That no one will be injured by such change and that such change will be made at affiant's own risk.

Subscribed and sworn to before me this 1st day of April, 1952.

Mary Smith

Notary Public, residing at
Rexburg, Idaho.

Affiant.

NOTE:—If this water right has heretofore been carried jointly in a ditch with other water, affiant should secure written consent of other owners or users to removal from its original carrier and file such consent with this affidavit.

MICROFILMED

Application Map shows Point of Diversion as marked thus, X

Penninger says point of Diversion as marked thus, *

Decree states Point of diversion located marked thus, #

Range 37.E.

Range 38.E.

Twp. 10.N

13

18

17

16

24

19

20

25

30

CREEK

CAMAS

#

Point of diversion

MICROFILMED

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Oregon Short Line R. R.	0.26		31-0175
791	Garner, J. E.	0.26	0	31-0175A

R

E

F

S

N

A

R

U.S. T

I O P Y I

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)

J. E. Garner of Rexburg,)
Idaho.)

ORDER GRANTING TRANSFER

No. 791

For a Transfer of Water Right, in Water)
District No. 66, Clark County, Idaho.)

WHEREAS, On the 6th day of May, 1952, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of J. E. Garner of Rexburg, Idaho, for a transfer of Water Right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to a higher and more beneficial use, and that no one will be injured thereby.

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be, and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued to the applicants herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 20th day of September, 1952.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 791,

THIS IS TO CERTIFY That J. E. GARNER, of Rexburg, Idaho, is the owner of and using a certain water right for Twenty-six hundredths (0.26) cubic foot per second of the waters of Camas Creek with priority of July 1, 1879, said water being decreed to the Oregon Short Line Railroad Company by Judge Charles C. Cavanah of the District Court of the United States, for the District of Idaho, Eastern Division, in the case of

ERNEST SAUVE,
Plaintiff,

vs.

W. H. ABBOTT, ET AL.,
Defendants.

said decree bearing date of November 1, 1930, and being appurtenant to the following described lands, to-wit:

Railroad use at the old town of Camas, Idaho,
located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, Township
8 North, Range 36 East, B.M.

That said Decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Volume 5 of Decrees, beginning at Page 535.

That said J. E. Garner has become the owner of said water right through purchase.

And that now, upon the application of J. E. Garner, of Rexburg, Idaho, for the transfer of Twenty-six hundredths (0.26) cubic foot per second of the waters of Camas Creek, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of Twenty-six hundredths (0.26) cubic foot per second of the waters of Camas Creek upon the above described lands is hereby abandoned and the land to which the water rights hereby confirmed shall, by this certificate, become appurtenant for irrigation and domestic purposes is described as follows, to-wit:

S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19, Town-
ship 10 North, Range 38 East, B.M.

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

0.26 cubic foot per second of the waters
of Camas Creek with priority of July 1, 1879.

That the water right hereby transferred has heretofore been conducted to the first above described lands from Camas Creek through Railway pipe line with point of diversion in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, Township 8 North, Range 38 East, B.M.

That the water right hereby transferred shall hereafter be conducted to the last above described land from Camas Creek, through the Jacoby Ditch with point of diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, Township 10 North, Range 38 East, B.M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 20th day of September, A.D. 1952.

Mark R. Kulp
MARK R. KULP
State Reclamation Engineer

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF IDAHO, EASTERN DIVISION

ERNEST SAUVE,

Plaintiff,

- vs -

No. 635. -- In Equity

D E C R E E

To W. H. Abbott, Fay Abbott, Mary C. Adels, Allen Almonda, G. B. Allen, Allen & Harn, a co-partnership, consisting of G. B. Allen and H. R. Harn; Wm. A. Andrews, Joseph Andrasen, Anderson Bros. Bank, a corporation; Gerret Auldhouse (sometimes known as Gerret Oldhouse); Clausen Auldhouse (sometimes known as Clausen Oldhouse), William Axline, Ernest Bauerle, Edward C. Barnes, May L. Barnes, Lovisa Barney, Arthur J. Barber, Charles Bartlett, Ambrose J. Beckner, Laura E. Beckner, William Beck, David Bethune, Lloyd Bennett, Gus E. Brauer, Administrator of the Estate of Annie J. Bennett, deceased; A. W. Belnap, C. W. Belnap, The Bennett Investment Company, Limited, a corporation; Gussie Binnard, Burka Binnard, Horace L. Birch, Binnard Ranch Company, a corporation; B. Binnard, Sarah Binnard and E. F. Mobley, Trustees for Binnard Ranch Company, a defunct corporation; Charles O. Rickman, as Trustee in Bankruptcy of Binnard Ranch Company, a corporation; Oscar A. Johanneson, as Receiver of Binnard Ranch Company, a corporation; Heber J. Blackburn, W. B. Boucher, Ray Bohney, R. T. Boatman, Mary Nicholas Boyd, Frank Boe, Charles E. Brosic, E. L. Browning, Adna E. Bramwell, Afton Bradshaw, Theresa Brinkmann, Lottie Burcham, G. F. Burcham, Kath-

MICROFILMED

Oregon Short Line
Railroad Company,
a corporation

1879 - July 1

0.36 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

0.57 c.f.s.

31 176

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, Ida o.

1879 - September 1

0.23 c.f.s.

31 177

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
25, Township 12 North, Range 36
East, B.M.

For use at Spencer, Clark County,
Idaho.

1880 - May 1

0.15 c.f.s.

31 178

Source: Beaver Creek, a tributary
of Camas Creek.

Point of Diversion: A point in
unsurveyed township 14 North,
Range 36 East, B.M.

For use at Humphrey, Clark County,
Idaho.

September 22, 1952

Mr. J. E. Garner
Rexburg
Idaho

Dear Mr. Garner:

We enclose Certificate of Transfer of water right No. 791,
together with departmental receipt No. 24905 for the \$1.00 record-
ing fee.

By this same mail, we are sending Mr. Elvin W. Henninger,
watermaster, a copy of this transfer for his information.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A:fg
Enc.
cc: Mr. Elvin W. Henninger

Form No. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Boise

April 16, 1952

Date _____

**The Clark County Enterprise,
Dubois, Idaho.**

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to **May 6, 1952** the date set for the hearing, the expense of the publication to be paid by the applicant, **J.E. Garner, Rexburg, Idaho.**

to whom you should furnish proof of publication on or prior to the date set for the hearing.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication, in order that we may check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By **Roy W. Thompson,**
Supervisor of Water Distribution.

RECEIVED

Notice Of Proposed Transfer Of Water Right

Notice is hereby given that.....J. E. Garner.....
of Rexburg.....has applied to the State Reclamation Engineer
of the State of Idaho for a certificate authorizing Him.....to change the point of diversion
and/or place of use of the waters of Camas Creek,
.....as follows: Amount: .26 cubic feet per second,
Point of diversion: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 21....., Township 8.N......
Range 36.E...... Place of Use:.....
Railroad use at old town of Camas, Idaho, located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 21, Twp. 8.N. R. 36.E.

Transfer to

Point of diversion: SW $\frac{1}{4}$ $\frac{1}{4}$ SE $\frac{1}{4}$, Section 17....., Township 10.N......
Range 36.E...... Place of Use:.....
S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18 and N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19. Twp. 10.N. Rge. 36.E.

And that on the 6th, day of May..... 1952.....
at 10.....o'clock A.....M., at Room 107 State House, Boise Idaho
before the State Reclamation Engineer, or his authorized agent, the opportunity will be
given to any and all persons to appear and present, for his consideration any reason or rea-
sons why a certificate should not be issued authorizing such transfer.

MARK. R. KULP.
State Reclamation Engineer.

RECORDED

Notice Of Proposed Transfer Of Water Right

Notice is hereby given that.....
of has applied to the State Reclamation Engineer
of the State of Idaho for a certificate authorizing..... to change the point of diversion
and/or place of use of the waters of.....

..... as follows: Amount:
Point of diversion:..... $\frac{1}{4}$ $\frac{1}{4}$, Section....., Township.....,
Range..... Place of Use:.....
.....
.....
.....

Transfer to

Point of diversion:..... $\frac{1}{4}$ $\frac{1}{4}$, Section....., Township.....,
Range..... Place of Use:.....
.....
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.....
.....

And that on the..... day of....., 194.....
at..... o'clock..... M., at
before the State Reclamation Engineer, or his authorized agent, the opportunity will be
given to any and all persons to appear and present, for his consideration any reason or rea-
sons why a certificate should not be issued authorizing such transfer.

.....
State Reclamation Engineer.

Application for Transfer of Water Right

STATE OF IDAHO,

County of Clark,

} ss.

J.E. Garner

, being first duly sworn, deposes and says:

That his name is J. E. Garner,; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Rexburg, Idaho.

That he is the owner and using a certain water right, bearing date of priority of July 1, 1879, for .26 cubic feet per second of the waters of Camas Creek, County of Jefferson, State of Idaho, decreed to Oregon Short Line Railroad Co. by decree of Judge Charles C. Cavanah of the United States District Court, Eastern Div. District of Idaho. Idaho, in and for the County of Clark, in the case of Ernest Sauve vs. W.H. Abbott et al, said decree bearing date of November 1, 1930 (or obtained by virtue of License No. _____, issued by the State Engineer or the Commissioner of Reclamation of the State of Idaho, dated _____, 19____, bearing date of priority of _____, 19____) for the purpose of irrigating the following described lands situate, lying and being in water District No. 66 in the County of Jefferson and and State of Idaho, to-wit: Railroad use at the town of Camas Idaho.

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

By Purchase,

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 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, Township 8.N., Range 36.E., B. M., and conducted to the above described ~~land~~ place of use by pump, pipeline and tanks, as per map herewith and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of .26 cubic feet per second 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 Jefferson and State of Idaho, to-wit:

S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18 and N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19, Twp. 10.N. R. 38.E.

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

Water to be used for irrigation Purposes, and is more valuable
for use in the proposed new location.

That he intends to divert and convey said .26 second feet of water to the tract of land last above described in the following manner, to-wit: Water will be delivered through the Jacoby ditch with point of diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, Twp. 10.N. R. 38.E.

as set forth upon the map herewith; and that no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the Commissioner of Reclamation of the State of Idaho issue to him the proper certificate authorizing such transfer, in accordance with the provisions of Section 5582 of the Idaho Compiled Statutes.

J. E. Banner
Applicant.

Subscribed and sworn to before me this 11th day of February

A. D. 1952...

W. J. Thomas
Clerk of District Court ~~Idaho~~
Clark County, Idaho

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water now diverted? Camas Creek,

Where is the diversion point now located? SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, Twp. 8.N. R.36.E.

Through what ditch is it now conducted? through Ry. pipe line,

How much land is now irrigated by the water sought to be transferred? None,

Give the description:.....

What is the total amount of water in inches, or second feet, dedicated to said land? Use discontinued,

What kind of crops are being raised?.....

How much water per acre is now required to irrigate said land?.....

What will be the effect on the land now irrigated, if the use of water on it is discontinued?.....

Give location of new point of diversion, if change is to be made?.....?

Through what ditch will it be conducted after transfer? Jacoby ditch

How much water will be required per acre to irrigate the land to which this water is transferred?.....

One inch per acre,

Do you claim any other water right for the land from which you seek to abandon the use of this water?.....

No.

If so, give amount, date and source.....

Is there now any other water right for the land to which you seek to make this transfer? If so, give amount,

date and source. 80 inches, May 15, 1890 and 215 inches 1894 water all

from Camas Creek,

Signed J. E. Banner
Applicant.

STATE OF IDAHO,

County of Clark

SS.

Jos. A. Laird

and

H. E. Frederiksen

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 and Kilgore, Idaho that he is a user of water from Canas Creek, in Water District No. 66 County of Clark, State of Idaho; that he has read or heard read the foregoing affidavit and petition of J. E. Garner 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.

x Jos A Laird
H. E. Frederiksen

Subscribed and sworn to before me this 11th day of February

A. D. 19 52

B. H. Thomas

B. H. Thomas
Clerk of District Court
Clark County, Idaho

STATE OF IDAHO,

County of CLARK

SS.

I, Elvin W. Henninger

Watermaster of

Water District No. 66

County of Jefferson

State of Idaho, whose postoffice address

is Dubois, Idaho

, have read or heard read the foregoing affidavit and petition

of Earl J. E. Garner

, 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 Commissioner of Reclamation 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: Application is disapproved by undersigned for the

reason that it is considered that the use was abandoned for more than

five years and the transfer is for a different kind of use in a differ-

ent place, and there are those, as stock waterers, who would consider

themselves damaged. *Elvin W. Henninger* Watermaster Dist. No. 66,

Dated at Dubois, Idaho, Idaho, this 10th day of January, 1952.

Microfilm

J. E. GARNER

CHS

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Ditch

can be seen

SECRET

Scale: 2 Inches—1 Mile. Draw Map in Ink.

August 6, 1952

Mr. H.R. Harn,
Dubois, Idaho.

Dear Mr. Harn:

Re, Transfer of Water Right,
J.E. Garner,

Relative to the proposed , transfer of water right,
filed by Mr. J.E. Garner, transferring the place of use
and changing the point of diversion, The status of
said proposed transfer is as follows,

Applicant, J.E. Garner, of Rexburg, Idaho.
Amount, .26 cubic feet per second,
Decreed to Oregon Short Line R.R. Co.
Place of use, Camas, Idaho.

To be transferred to. J.E. Garner,
Place of intended use, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18, and N $\frac{1}{2}$ NE $\frac{1}{4}$
Section 19, Twp. 10.N. R. 38.E.
Point of diversion, SW $\frac{1}{2}$ SE $\frac{1}{4}$ Section 17, Twp. 10.N. R.
38.E. Waters of Camas Creek,

Transfer certificate has been held up temporarily
for field inspection , which has been made.

Certificate of transfer , transferring said water right
will be issued and approved, is the belief of the writer,
however, it will be necessary for Mr. Kulp to approve
the same. As soon as Mr. Kulp returns to the office
this matter will be taken up with him for immediate
action.

Yours very truly,

MARK. R. KULP.
State Reclamation Engineer,

By, Roy. W. Thompson,
Supervisor of Water Distribution.

RECORDED
INDEXED

H. R. HARN
Phone 28
DUBOIS, IDAHO
P.O.Box 7

August 1, 1952

RECEIVED
AUG 4 1952
Department of Reclamation

Department of Reclamation
Boise
Idaho

RE: Earl Garner
Right transfer

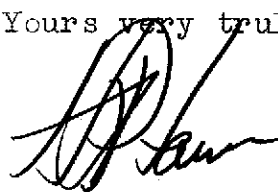
Gentlemen:

Some few weeks ago Earl Garner made application to transfer a water right at Camas, which right formerly belonged to the Oregon Shortline Railroad, to a location higher up on Camas Creek.

Will you please advise me if this right was transferred, and if so, the number of inches and the point to where transferred.

Yours very truly,

H. R. Harn
imc.



cc. B. H. Thomas

ENCLOSURE

PROOF OF PUBLICATION

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that J. E. Garner of Rexburg has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion and place use of the waters of Camas Creek as follows: Amount: .26 cubic feet per second, Point of diversion: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 21, Township 8. N, Range 36 E. Place of Use: Railroad use at old town of Camas, Idaho, located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, Twp. 8 N. R. 36 E.

Transfer to

Point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 17, Township 10 N., Range 38 E. Place of use: S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18 and N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19. Twp. 10 N. Rge. 38 E.

And that on the 6th day of May 1952, at 10 o'clock A. M., at Room 107 State House, Boise Idaho before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present, for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP.

State Reclamation Engineer
5-2-2

RECEIVED
MAY 7 1952

Department of Reclamation

STATE OF IDAHO

COUNTY OF CLARK

SS:

Lowell L. Rusk being

first duly sworn, deposes and says that he is the Publisher of THE CLARK COUNTY ENTERPRISE, a weekly newspaper published in Dubois, Clark County, in the State of Idaho. That the Notice, a true copy of which is hereto attached was published in THE CLARK COUNTY ENTERPRISE for 2 consecutive

weeks, first publication having been made on the 25 day of April, 1952,

and the last publication having been made on the 2 day of May, 1952.

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.

Lowell L. Rusk

SUBSCRIBED and SWORN TO before me this _____ day of _____, A. D., 195_____

Notary Public.

My commission expires _____, 19_____

Joan Rasmussen

Affidavit for Change of Point of Diversion of Decreed Water Right

STATE OF IDAHO, }
County of Madison } ss.

Void

not necessary

J. E. Garner, being first duly sworn, deposes and says: That his postoffice address is Rexburg, Idaho; That he is the owner of and using a certain water right, bearing date of priority of July 1, 1879, 19 , for .26 cubic feet per second of the waters of Camas Creek, County of Jefferson, State of Idaho, decreed to Oregon Short Line Railroad Co. by decree of Judge Charles C. Cavanah, of the District Court, Eastern Division of the State of Idaho, in and for the County of Jefferson, in the case of Ernest Sauve vs. W. H. Abbott et al said decree bearing date of November 1, 1930, for the purpose of irrigating the following described lands, situate, lying and being in Water Dist. No. 66, in the County of Jefferson & Clark, and State of Idaho, to-wit: Railroad use at the town of Camas, Idaho

That he is the person (or representative of the corporation) to whom such right was issued, (or has become the owner thereof in the following manner: by purchase

That said waters are now diverted from said stream in the SE 1/4 SE 1/4 of Sec. 21, Twp. 8 N, Range 36 E, and conducted to the above described place of use by pump, pipeline & tanks ~~ditch~~ as per map filed herewith and of this affidavit made a part;

That affiant desires to change the point of diversion of said water from the point above described to a point located in S 1/2 SE 1/4 Section 18, and N 1/2 NE 1/4 Section 19, 10 N Range 38 E., and thereafter conduct same to the above described land through the Jacoby ditch, as per map above referred to:

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

Water to be used for irrigation purposes, and is more valuable for use in the proposed new location.

That no one will be injured by such change and that such change will be made at affiant's own risk.

J. E. Garner
Affiant.

Subscribed and sworn to before me this 1st day of April, 19 52.

Mary Smith
Notary Public, residing at
Rexburg, Idaho.

NOTE:—If this water right has heretofore been carried jointly in a ditch with other water, affiant should secure written consent of other owners or users to removal from its original carrier and file such consent with this affidavit.

RECORDED

April 17, 1952

Mr. J. E. Garner
Burley
Idaho

Dear Mr. Garner:

Under date of April 16, 1952, we sent notice of publication to the Clark County Enterprise relative to your transfer, on Camas Creek.

The date of hearing is set for May 6, 1952. However, it will not be necessary for you to be present at said hearing because if there are any protests in regard to your transfer, we will issue a notice of extended hearing.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fg

ORIGINAL

April 10, 1952

Mr. J. E. Garner
Rexburg
Idaho

Dear Mr. Garner:

We received your application for transfer of water right as of April 2, 1952, and upon examination we found that you did not show, in the body of the transfer, the point of diversion from Camas Creek to which the water is being transferred.

The decree states that the point of diversion is located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, Township 10 North, Range 38 East, B.M. According to a little drawing or sketch map on the back of the application, it shows that the point of diversion would be in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, Township 10 North, Range 38 East, B.M.

In the meantime, I have written Mr. Henninger, watermaster in the Camas Creek area, to give me the correct point of diversion and he states that it is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, Township 10 North, Range 38 East, B.M.

It is quite important that this point of diversion be correct. Therefore, we are preparing a map showing the course of Camas Creek as near as possible from what maps we have on hand and will request that you show upon said map the correct point of diversion. We are sorry for this delay, but we wish to get the points of diversion correctly stated prior to publication in the newspaper.

The fee in connection with an application for transfer of water right is \$1.00 which you may submit at your convenience.

Thanking you for an early reply, we are

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fg
Enc.

RECORDED

RECEIVED
APR 10 1952
Department of Reclamation

Dubois, Idaho, April 8, 1952.

Mr. Roy W. Thompson,
Supervisor of Water Distribution,
Boise, Idaho.

Dear Mr. Thompson:

This is in reply to your letter of the 3rd instant asking about the location of the Earl Garner takeout.

The only takeout used at present that I know of is not located in either of the points listed in your letter.

The diversion point you and I are familiar with and which is used yearly is as follows:

SE 1/4 SW 1/4, Sec. 17, T. 10 North, Range 38, Boise Meridian. Further, it would be adjacent from the southwest corner of the above 40 acre tract. But of course, Mr. Garner might intend another diversion point if it is the Camas water he is attempting to transfer.

I had delayed over Saturday and Sunday so as to consult ownership maps in the courthouse.

Very truly,

Elvin W. Henninger

RECEIVED
APR 10 1952

April 3, 1952

Mr. Elvin Henninger, Watermaster
Water District No. 66
Dubois, Idaho

Dear Mr. Henninger:

In checking over an application for a proposed transfer of water right in the name of J. F. Garner, we find that Mr. Garner has failed to show the point of diversion to which the water is being transferred, which is the old Jacoby Ditch out of Camas Creek.

The decree states the point of diversion as being in the SW¹ SE¹ Section 20, Township 10 North, Range 38 East, B.M. According to the county map which we have, Camas Creek does not run very near to the above description.

According to a map on the back of the application, it shows the Jacoby Ditch as being diverted from Camas Creek in the NE¹ SE¹ Section 17, Township 10 North, Range 36 East, B.M.

Providing you have any information whereby you could furnish the exact location of said diversion, within a 40 acre subdivision if possible, kindly give us this information.

Thank you.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fg

RECEIVED
APR 2 1952
Department of Reclamation

Rexburg, Idaho

March 31, 1952

Department of Reclamation
Boise
Idaho

Gentlemen:

I am enclosing herewith affidavit for change of point of diversion of decreed water right and application for transfer of water right. I would appreciate it very much if you would give this matter your earliest consideration.

Please let me know by return mail the amount of any fees that are necessary for this proceeding and I will send you a check immediately.

Yours very truly,



J. E. Garner

f

Enclosures

RECEIVED
APR 11 1952

RECEIVED
MAY 9 1952
Department of Reclamation

Dubois, Idaho, May 7, 1952.

Mr. Roy W. Thompson,
Boise, Idaho.

Dear Mr. Thompson:

Have just rechecked and find that Mr. Earl Garner is correct in the diversion point for the change of Camas water, as the point proved further upstream than I thought possible. Just checked it in the ^{field} ~~file~~ this morning.

Very truly,
Elvin W. Henninger .

RECEIVED

May 5, 1952

Mr. Elvin W. Henninger, Watermaster
Water District No. 66
Dubois, Idaho

Dear Mr. Henninger:

I wish to thank you for your letter of April 29, 1952, drawing our attention to the point of diversion to which it is proposed to transfer the Oregon Short Line water right of Camas Creek by Mr. J. E. Garner.

After receiving your letter on the location of said point of diversion, we wrote Mr. Garner stating that you stated the point of diversion of the Jacoby Ditch from Camas Creek as being in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17. Mr. Garner wrote back stating that he checked the point of diversion from an aerial map in the P.M.A. office and that it showed the point of diversion, very plainly, as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17.

You also state there is some duplication of right in that some of the application is in water right No. 49. I wish you would explain if it anything other than under right No. 49 the point of diversion is given as the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20.

As you say, said application will probably come up for a hearing and, if so, the point of diversion will be correctly located, as one or the other is incorrectly stated.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fg

RECEIVED

RECEIVED
MAY 2 1952
Department of Reclamation

Dubois, Idaho, April 29, 1952.

Mr. Roy W. Thompson,
Director Water Resources,
Boise, Idaho.

Dear Mr. Thompson:

Is there a mistake in the advertisement of the Earl
Garner transfer of the old Camas 1879 right up to the Jacoby
Ranch?

My opinion is that the new diversion point is advertised
incorrectly and should be, "SE SW of Section 17, Township 10 N.,
Range 38 E., B. M."

I just checked with Mr. Leek, the printer, and find he
has the diversion as you sent it, in the advertisement.

There is some duplication of right, I believe, in that
some of the application is in Right No. 49, May 15, 1890,
but this may have been intended so. It is just that likely
all this will finally be reviewed by District Court action, and
it might look better corrected.

Very truly,

Elvin W. Henninger

If granted, this transfer should be held up until a suitable
measuring weir and gate can be properly installed that will meas-
ure 12 inches of water properly; say a six inch Cipoletti in-
stallation with regulator, as the four foot installation there
would not be suitable and the old right will see times when it
will be invalid, as the last two years.

RECEIVED
APR 16 1952
Department of Reclamation

Reber, Ida. 4-14-52

Mr. Ray F. Thompson
Supervisor of Water Distribution
State House, Boise, Ida.

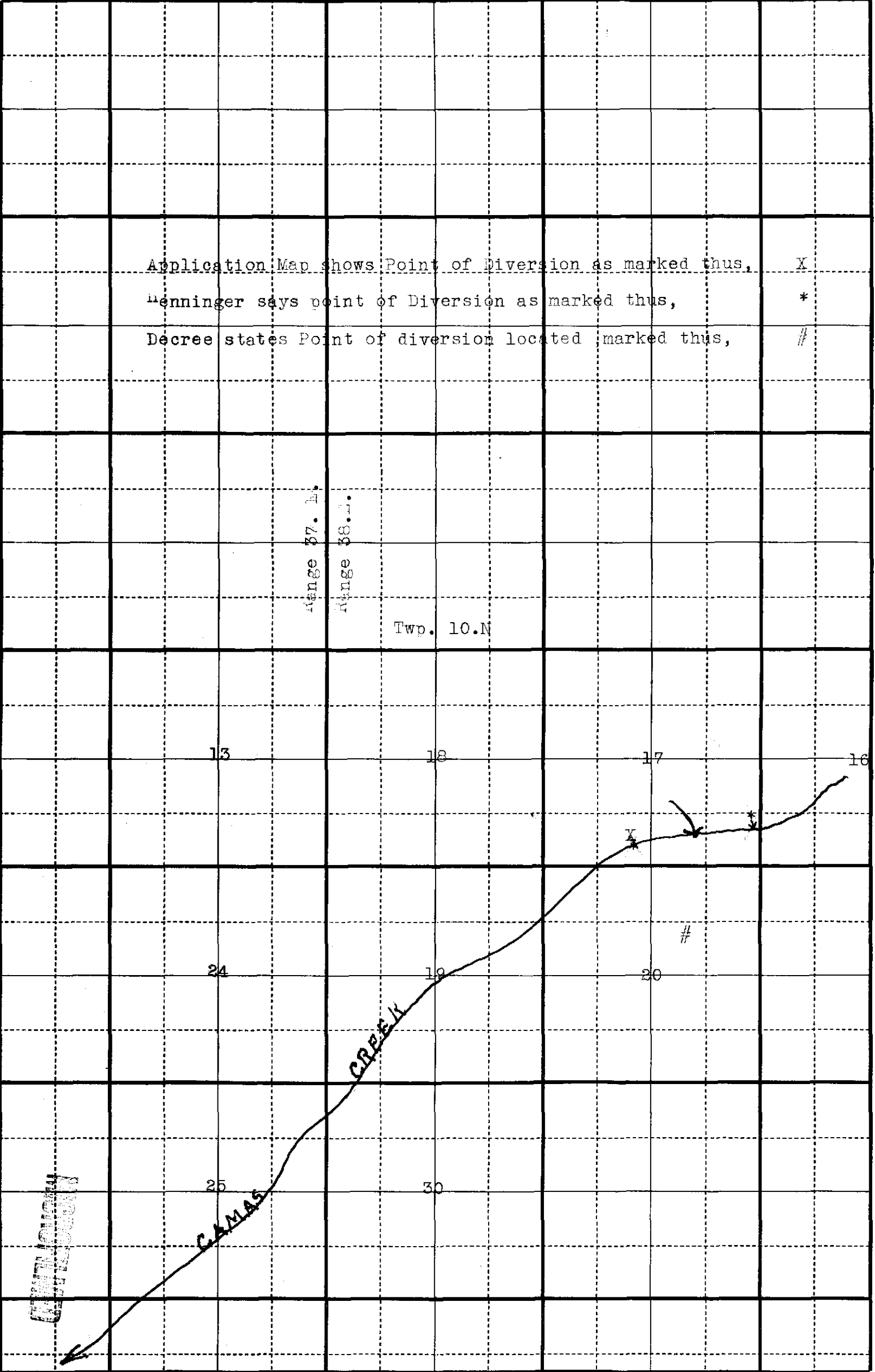
Dear Mr. Thompson:- Replying to
your favor dated Apr. 10th I am enclosing
the map indicating by Δ the point of diversion
as taken from an air map at the P.M.A. office in
Humboldt. This photo shows the ditch and Camis
Creek very plain and thus the point of diversion
would be in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of sec. 17. instead of
the SE of the SE as indicated by Mr. Hemminger.

I trust this will furnish the necessary in-
formation, and that the application can
soon be published and I hope approved.

Thanking you for your favor.

Yours truly
E. L. Hemminger

RECEIVED



May 26, 1950

Mr. J. E. Garner
Rexburg, Idaho

Dear Mr. Garner:

We wish to acknowledge receipt of your letter of May 23, 1950, in which you refer to your recent conversation with Mr. Kulp while in Boise, and requesting a copy of a letter of instruction to be sent to Mr. Henninger, Watermaster, at Dubois, to deliver 13 miners inches of water, decreed to the Oregon Short Line Railroad Company and now owned by you.

If the writer is not in error, you are requesting the use of this 13 inches of water to be used on your ranch property, approximately one mile above present point of diversion where the water was decreed and made appurtenant for railroad use. Under these conditions, we cannot instruct the Watermaster to deliver said water until a legal transfer changing the place of use and point of diversion has been made through this Department.

Mr. Kulp wishes to inform you that he did not realize that it was necessary for you to change the point of diversion in order to use said water upon your land.

In prior correspondence under date of May 26, 1949, we sent you a blank form for making application for change of place of use and point of diversion. We think that you should request the transfer of said water even if protested. We see no legal reason why the water could not be transferred.

We thank you for the copy of the deed which deeds said water from the Railroad Company to yourself. We will retain same in our files at least until such time said transactions are completed.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bh

Idaho 5-23-1950
Department of Reclamation
Boise, Ida.

Dear Mr. Pulp:- As per our
recent conversation in your
office, I am enclosing a certified
copy, of the, deed, from the Oregon
Short Line R. R. Co. to my self.

I would much appreciate a copy
of your letter to Mr. Heringer
at Dubois, Idaho.

Thanking you for the favor,
yours truly
Garner

RECEIVED

RECEIVED
MAY 25 1950
Department of Reclamation

STATE OF IDAHO, }

County of Jefferson, }

ss.

I HEREBY CERTIFY That the within is a full, true and correct copy of the

QUIT CLAIM DEED between Oregon Short Line Railroad Co.
and J.E.Garner.

as appears of record in my office, in Book 141 of Deeds on Page 234

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Rigby, Idaho,

this 23rd day of May, 1950

By: _____

Deputy.

Eileen Madsen

Clerk and Ex-Officio Recorder.

QUIT CLAIM DEED.

THIS INDENTURE, Made this 28th. day of August 1947, between the Oregon Short Line Railroad Company, a corporation of the State of Utah, the party of the first part, and J.E.Garner an individual of Rexburg, Madison County, Idaho the party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One and no/100ths. Dollars (\$1.00) lawful money of the United States of America, to it in hand paid by the said party of the second part, and other valuable considerations, receipt of which is hereby acknowledged has bargained, sold released and forever quit claimed and by these presents does bargain, sell, release, remise and forever Quit Claim and Convey unto the said party of the second part and to his heirs and assigns all of the rights title and interest of the party of the first part to the use of Twenty-six Hundredths (0.26) cubic feet per second of the waters of Camas Creek, with the authorized point of diversion on the north bank of Camas Creek, within the limits of the right of way of the grantor in the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-one (21) Township Eight (8) North Range Thirty Six (36) East of the Boise Meridian, in Jefferson County, State of Idaho pursuant to a decree of the United States District Court for the District of Idaho, Eastern Division in suit in equity No.635, wherein Ernest Sauve was plaintiff and W.H.Abbott, the Oregon Short Line Railroad Company, and others were defendants, which said decree was rendered November 1, 1930.

IN WITNESS WHEREOF, the said party of the first part has caused these present to be executed by its President and Assistant Secretary, thereunto duly authorized, on the day and year first above written.

(CORPORATE SEAL)

OREGON SHORT LINE RAILROAD COMPANY
BY: G.F.Ashby, Its President.

ATTEST: L.J.Bachman, Assistant Sec'y.

(FIFTY FIVE CENTS IN U.S.R.STAMPS ATTACHED AND CANCELLED)

STATE OF NEBRASKA(

: ss
County of Douglas(

On the 28th. day of August, 1947, before me, a Notary Public in and for said County personally appeared G.F.Ashby, to me personally known to be the President of the Oregon Short Line Railroad Company, who being duly sworn did say that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed, sealed and executed in behalf of said corporation by authority duly conferred by its by-laws and acknowledged to me said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate written.

(Seal)

J.G.ASHBY, Notary Public
Residing at Omaha, Nebraska.

My commission expires: Sept. 2, 1950.

Recorded at the request of J.E.Garner, October 1, 1947, at 3:30 o'clock P.M.

BY: Hettie A.Kelley, Deputy

Eileen Madsen-Recorder.

December 19, 1949

Mr. H. R. Harn
Dubois, Idaho

Dear Mr. Harn:

We wish to acknowledge receipt of your letter of December 16, relative to Earl Gerner water rights on Camas Creek, and requesting if any attempt has been made by Mr. Gerner to transfer any part of said water rights from present place of use, through this Department.

We wish to state that this Department has not received any request from Mr. Gerner for proposed transfer of any water right from Camas Creek, to date.

Very truly yours,

MARK R. KULT
State Reclamation Engineer
By

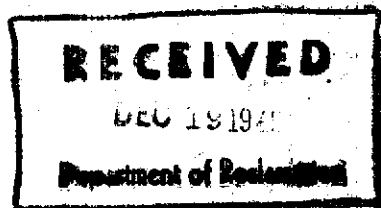
Roy W. Thompson
Supervisor of Water Distribution

RWT:bh

H. R. HARN
TELEPHONE 28
DUBOIS, IDAHO

December 16, 1949

Department of Reclamation
State Capital Building
Boise, Idaho



Attn: Roy W. Thompson
Supervisor of water distribution

Dear Mr. Thompson:

Perhaps my letter of December 2 regarding Camas Creek water rights of Earl Garner was not clear, as your reply of December 5 only referred to the Oregon Short Line Railroad rights.

also
I wanted to know whether any attempt has been made by Mr. Garner to transfer his other Jefferson County water right. This right covers land just a mile or so up Camas Creek from the Camas town-site. I do not have a copy of the federal decree and therefore cannot refer you to the proper number.

Yours very truly,

H. R. Harn

A handwritten signature in dark ink, appearing to be "H. R. Harn", written over the typed name.

HRH/mrm

RECEIVED

December 5, 1949

RE: Camas Creek Water Right,
Oregon Short Line Railroad,
.26 c.f.s.

Mr. H. R. Harn
Dubois, Idaho

Dear Mr. Harn:

In reply to your letter of December 2,
relative to the above water right which we now
understand is in the name of Earl Gerner:

Mr. Gerner has corresponded with this
office relative to the transfer of this water
right. However, up to this date, no transfer,
transferring said described water right has been
received by this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

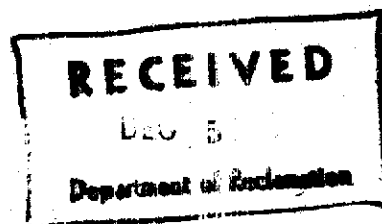
Roy W. Thompson
Supervisor of Water Distribution

RWT:bb

RECORDED

H. R. HARN
TELEPHONE 28
DUBOIS, IDAHO

December 2, 1949



Department of Reclamation
State Capital Building
Boise, Idaho

Re: Camas Creek Water Rights

Gentlemen:

I am writing at the request of J. C. Sorenson, a water user on Camas Creek, who desires the following information:

Earl Garner

Has any application been made by the above named water user for moving certain water now being used on land located in or near Section 10, Twp. 8N, Range 36 E.B.M. in Jefferson County?

U.P. Railroad water right

I believe this water right, amounting to thirteen inches, was purchased by Earl Garner and the point of use was in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, Twp. 8N, Range 36 E.B.M. in Jefferson County.

Has any application been made or permission granted to use this water at any other point?

Your early attention will be greatly appreciated, but in the event I have not made the above inquiries clear, please advise and I will stop in sometime during the period of December 8 - 10, as I will be in Boise these three days.

Yours very truly,

H. R. Harn

HRH/mrm

McDonnell

May 26, 1949

Mr. J. K. Garner
Rexburg, Idaho

Dear Mr. Garner:

In answer to your letter of May 15, relative to the transfer of 13 inches (or .26 c.f.s.) decreed to the Oregon Short Line Railroad with the source of supply from Camas Creek, a tributary of Mad Lake, the point of diversion as stated in the decree reads thus "diverted from the North bank of Camas Creek at a point on the right of way on the Oregon Short Line Railroad, near the station of Camas, Idaho, for use at Camas, Jefferson County, Idaho.

We are enclosing herewith, a form on which to make application for change of place of use or point of diversion, which, after being properly filled out, should be sent to this Department with a recording fee of \$1.00.

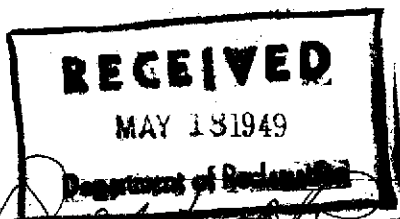
Said notice of application of transfer will have to be published in the Jefferson County Newspaper for two consecutive weeks, at your expense. However, the Department will prepare the publication and mail same to the publisher.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bb



1
Rexburg Ida. 5-15-49

Dept. of Reclamation

Boise Ida.

Dear Mr. Thompson:- Thanks for
your favor dated May 9th

The water referred to is was purchased from
The R. Road Co. and for several years
previous was leased from the R.R. Co.
the point of diversion being up Lewis
creek about three miles above where
the R. Road. use to take the water as
I understood it.

In as much as I purchased the water
and got a deed from the R. Road I wish
to use the water and am willing ^{and ready}
to pay my assessment.

I see no reason for Mr. Heninger
denying my use of that which belongs to me.
I therefore wish to complete a transfer
of water right through your department
changing place of present use to a point
of diversion to be designated in
an application to be filed soon.
If you could further instruct just the

procedure and mail the necessary
blanks. I would much app I
recreate, same, and any charge
connected with the procedure will
be mailed promptly

Yours truly
J. E. Farmer

RECEIVED

May 9, 1949

Mr. J. E. Garner
Rexburg, Idaho

Dear Mr. Garner:

We have delayed answering your letter of April 18, waiting for a reply from the Watermaster, Mr. Elvin W. Henninger of Dubois, Idaho.

The Watermaster reports that this water has not been used since 1939; therefore, there would be no current assessments levied by Water District No. 66. If we are correct in assuming that this Water Right of .26 cubic feet per second is the Water Right decreed to the Oregon Short Line Railroad.

No action has been taken by the Court, ordering the abandonment of said water for non use, therefore, the delivery of this water can be requested and delivered, providing it is used for the same purpose and at the same point of diversion as stated in the decree. Otherwise, it would be necessary to complete a Transfer of Water Right thru this Department, changing place of use and point of diversion, if necessary.

Providing you use said water during 1949, you will be assessed for same by the Water District.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

HWT:bh

CC: Mr. Elvin Henninger

Dubois, Idaho, May 4, 1949.

Department of Reclamation,
Boise, Idaho.

Dear Mr. Kulp:

This is in reply to your letter of the 2nd instant and inclosure of copy written by Mr. Garner of Rexburg, complaining of a water right of .26 second foot claimed by him, as not being budgeted.

Supposedly this is Right No. 92 decreed to the Oregon Short Line Railroad and formerly used in a tank for engines on that line.

Naturally this was not budgeted as it has been abandoned since the tank was pulled down and such use discontinued in 1939. This right has long since reverted to the State of Idaho.

The Watermaster would be unable to transfer such point of use and also kind of use without making himself liable to an action for damages by injured parties.

Very truly,
Elvin W. Henninger



May 2, 1949

Mr. Elvin W. Heninger, Watermaster
Water District No. 66
Dubois, Idaho

Dear Mr. Heninger:

We are enclosing herewith, a copy of a letter received from Mr. J. E. Gerner, Rexburg, Idaho, relative to water assessment covering an old water right of the Union Pacific Railroad Company for 0.26 cubic foot per second of the waters of Camia Creek.

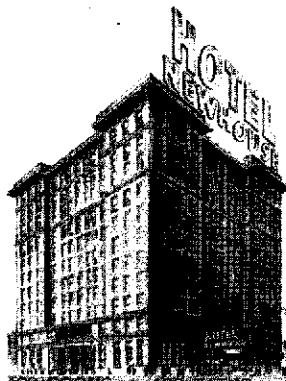
We suppose this is the water that is in controversy in your District. However, kindly answer the enclosed letter, letting Mr. Gerner know what he can expect from his water right, or right us accordingly, so that we may write him the facts.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

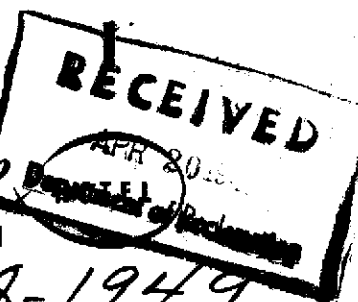
Roy W. Thompson
Supervisor of Water Distribution

RWT:bh
Enc.



THE Newhouse
SALT LAKE CITY, UTAH

RESTAURANT
GARAGE
SERVICE



4-18-1949

Department of Reclamation
Boise Idaho.

Dear Mr. Seep:- In 1947 I purchased from the Union Pacific R. Road Co. an old water right, consisting of 0.26 cubic feet per second on Camas creek.

Jefferson Co.
I notice my water assessment for 1949. does not include this right.

If the budget for water district No. 66 is made up in your office? would you please notify the Water Master, Mr. Heringer at Wendover so I can pay the fee and use the water this year

Yours truly
J. Garner

Pxburg, Ida.

RECORDED

GEORGE L. BARNARD
ATTORNEY AT LAW
DUBOIS, IDAHO

PROSECUTING ATTORNEY
CLARK COUNTY

October 31, 1947

Mr. Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Atten: Roy W. Thompson, Supervisor of Water Distribution.

Dear Sir:

I have your letter of October 30, 1947 in reference to the complaint of J. C. Sorensen concerning diversion of water from Camas Creek over a 13 inch decreed right, decreed to Oregon Short Line Railroad Company. It will be very satisfactory to Mr. Sorensen if you postpone investigation of this complaint until next spring when a field man will be in this territory.

I have learned since writing you that the Oregon Short Line Railroad Company conveyed the water right in question to Mr. J. E. Garner, but this will have no bearing on Mr. Sorensen's complaint, which is a protest against any change in the point of diversion.

We will take this entire situation up with your field man when he makes his investigation, but it is requested that you advise us a few days ahead of his visit, so that arrangements can be made to see him at that time.

Yours very truly,



GEO. L. BARNARD

GLB/eh

RECEIVED
OCT 31 1947

October 30, 1947

Mr. George L. Barnard
Attorney at Law
Dubois, Idaho

Dear Mr. Barnard:

We wish to acknowledge receipt of your letter of October 16th, in further reference to Mr. J. C. Sorensen's complaint against Mr. Henninger, Watermaster of Water District No. 66, in the delivery of a certain water right on Camas Creek, namely a 13 inch decreed right, decreed to the Oregon Short Line Railroad Company.

We assure you that a thorough investigation will be made by the Department in connection with the delivery of the water right in question, according to your request.

Due to the lateness of the season, and the cost of making a special trip to Dubois for this one purpose, we would prefer to postpone this investigation until the spring or early summer of 1948, when it will be necessary to have a field man in your vicinity.

However, if there seems to be any urgent reason why an investigation should be made sooner, we shall be glad to hear from you further.

Hoping that this meets with your approval,
we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

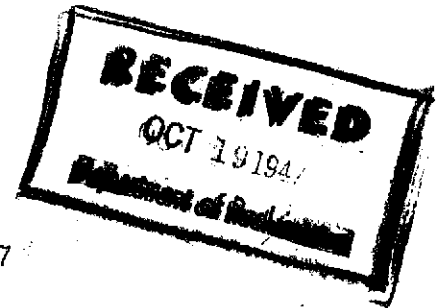
Roy W. Thompson
Supervisor of Water Distribution

T:4

RECEIVED
OCT 31 1947
FBI - IDAHO

GEORGE L. BARNARD
ATTORNEY AT LAW
DUBOIS, IDAHO

PROSECUTING ATTORNEY
CLARK COUNTY



October 16, 1947

Mr. Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Dear Mr. Kulp:

I have just now been able to take up your letter of September 19, 1947 with Mr. J.C. Sorensen of Camas, Idaho. My previous request in my letter of September 11th should not be considered closed, as I do with the department to make a further and complete investigation, because my client is of the opinion that Mr. Henninger's report is not based on the facts and does not correctly explain the situation.

Under the decree in the U. S. District Court in the case of Earnest Suave vs W.H. Abbott, et al., which is generally known as the "Mud Lake Decree," the water right decreed to the Oregon Short Line Railroad Company of 0.26 C.F.S., with a priority July 1, 1879, simply states that the point of diversion is "Diverted from the North bank of Camas Creek at a point on the right-of-way of the Oregon Short Line Railroad Company, near the station of Camas, Idaho," and that it is "for use at Camas, Jefferson County, Idaho". There is nothing in the decree to limit the use for boilers on the railroad. The facts are that the water was long used by stock shippers for stock watering purposes whenever shipping to or from Camas.

Mr. Henninger states in his letter, "As Mr. Garner leased this right, I can presume that he wishes to extinguish the right at Camas town, but I never delivered such water at his place, which lies three miles above the railroad point of diversion." I am unable to determine any authority for a Lessee to extinguish the water right which he has leased, nor can I find any reason why the water-master should presume that the Lessee had any such desire. So far as Mr. Henninger's statement that he never delivered such water at Mr. Garner's place is concerned, Mr. Sorensen advises me that this statement is not true. Mr. Garner has certain water rights with the point of diversion three miles above Camas, and he and Mr. Henninger have seen fit to have placed at this point of diversion

RECORDED

GEORGE L. BARNARD
ATTORNEY AT LAW
DUBOIS, IDAHO

PROSECUTING ATTORNEY
CLARK COUNTY

a dam which diverts all of the water in Camas Creek at that point. Mr. Henninger does not use any weir to measure the amount properly diverted by this dam, but Mr. Sorensen advises me that it has been far in excess of what Mr. Garner is entitled to.

Mr. Henninger states, "Below Mr. Garner's point of diversion, three miles above Camas town the Creek has been dry all summer". Mr. Sorensen states that the truth is that the creek was dry below Mr. Garner's point of diversion for only 11 days this summer, and that the only reason it was dry was because of the diversion by Mr. Garner of more water than he was entitled to, on account of the dam above mentioned. Mr. Henninger states, "At the time of complaint, all water used above the town wouldn't have sufficed to supply the 13 inches mentioned, as the creek bed is sandy and sinkage great." Mr. Sorensen states that this also is not in accord with the facts, and in any event, under the Mud Lake Decree, the watermaster is required to supply the amounts provided for in the order of priority, without regard to the matter of sinkage, however great it might be in his opinion.

Mr. Henninger said that Mr. Sorensen has never protested about the water delivery. Mr. Sorensen states that this is not the fact and that he has on several occasions talked with and protested to Mr. Henninger but without getting any satisfaction whatsoever. Mr. Henninger says, "To permit the transfer of this right or to reinstate its priority would be a district-wide calamity as there are times it would require the whole watershed." In my opinion, this is a mere conclusion about something Mr. Henninger is not the proper authority of, and the conclusion does not appear founded on the facts, and in any event, the watermaster is supposed to deliver the water in accordance with the decree in the order or priority.

Mr. Henninger further states, "Clearly, the water comprising this right has long reverted to the state, and likely has been appropriated many times over." So far as I am aware, the Oregon Short Line Railroad has always paid its proper assessment for this water. It has always been used by stock shippers at the point of diversion whenever the watermaster permitted the water to get that far, and I know of nothing which would give Mr. Henninger reason to feel that this water right has been lost or abandoned. So far as I know, the Oregon Short Line does not so regard it, because they are at the present time leasing this right to Mr. J. E. Garner, by written lease, and in the lease, the Oregon Short Line describes the water right as being for irrigation and domestic purposes. In any event, clearly Mr. Henninger is again setting himself up as some sort of a

GEORGE L. BARNARD
ATTORNEY AT LAW
DUBOIS, - IDAHO

PROSECUTING ATTORNEY
CLARK COUNTY

judge over matters which are governed by the statutes of the State of Idaho, and so far as I am aware, Mr. Henninger is a watermaster and has never been authorized or qualified to act as such a judge. Mr. Sorensen is not and does not pretend to be a watermaster on Camas Creek, but so long as Mr. Kenninger holds that office, it is expected that he will perform his duties in the manner the law requires.

The other matters Mr. Henninger reports are not deemed of sufficient importance to require any discussion.

I renew my request that you make a proper investigation in this matter, and see that there is no further unlawful diversion of this water right.

Yours very truly,



GEO. L. BARNARD

GLB/eh

RECORDED

September 19, 1947

Mr. George L. Barnard
Attorney at Law
Dubois, Idaho

Dear Mr. Barnard:

Relative to your letter of September 11th, in which one of your clients, Mr. J. C. Sorensen, of Camas, stated that the watermaster of Water District # 66 had permitted a wrongful diversion of water from Camas Creek; that 13 inches of water decreed to the Railroad Company's use was being diverted to Mr. J. C. Garner from Camas Creek, approximately three miles upstream from the legal point of diversion; and also requesting this Department to take appropriate action to see that this unlawful moving of the point of diversion be corrected:

In order to find out the facts in the case, the Department sent a copy of your letter to Mr. Henninger, Watermaster of Water District # 66, with the request that he give the Department a full report relative to said water controversy.

We received said report from Mr. Henninger this morning, and are enclosing a copy of same for your information, which we think explains the situation.

This department will consider your request relative to the Sorensen complaint closed, unless you wish the Department to make further investigation.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:A
Encl.

WATER DISTRICT NO. 66

ELVIN W. HENNINGER
WATERMASTER

DUBOIS, IDAHO

Sept. 18, 1947.

Mr. Mark R. Kulp,
State Reclamation Engineer,
Boise, Idaho.

Dear Mr. Kulp:

Your letter of the 16th instant in which Lawyer Bernard complains of my water distribution was received yesterday.

The complaint isn't based on fact, as I have not delivered any railroad water to Mr. Garner, as this right has been abandoned for many years.

The railroad water wasn't used as Mr. Bernard indicates, but was used in boilers for generating steam on the railroad. The tank and pumps for this use has long been torn up and the right unused. If Mr. Garner leased this right, I can presume he wished to extinguish the right at Camas town, but I never delivered such water at his place which lies three miles above the railroad point of diversion.

Below Mr. Garner's point of diversion three miles above Camas town the creek has been dry all summer. At the time of complaint, all water used above the town wouldn't have sufficed to supply the 13 inches mentioned, as the creek bed is sandy and sinkage great.

Mr. Sorensen has never protested anything about the water delivery. To permit the transfer of this right or to reinstate its priority would be a district-wide calamity as there are times it would require the whole watershed. Clearly, the water comprising this right has long reverted to the State and likely has been appropriated many times over.

Mr. Sorensen has on one occasion and on another his family have destroyed Mr. Garner's diversion and completely drained his supply ditch. Would you be kind enough to inform his lawyer that such proceedings will not be tolerated further and prosecution in the proper court of law can be expected in future? In short, Mr. Sorensen isn't a watermaster on Camas creek.

Very truly,

Elvin W. Henninger

RECEIVED

SEP 19 1947

Department of Reclamation

September 16, 1947

Mr. Elvin W. Henninger, Watermaster
Water District No.66
Dubois, Idaho

Dear Mr. Henninger:

We are enclosing a copy of a letter received from Mr. George L. Barnard, of your town, which is self-explanatory.

As we do not know anything about the way you are delivering the water in question, we would appreciate hearing from you as soon as possible, giving us the facts, whereby we can answer Mr. Barnard's letter.

Very truly yours,

MARK W. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T:A
Encl.

GEORGE L. BARNARD
ATTORNEY AT LAW
DUBOIS, - IDAHO

PROSECUTING ATTORNEY
CLARK COUNTY

September 11, 1947

Mr. Mark R. Kulp,
Reclamation Engineer,
Boise, Idaho

Dear Mr. Kulp:

Mr. J. C. Sorenson of Camas has consulted me about a water diversion which the water-master, Mr. Elvin W. Henninger, has permitted, but which does not seem to be proper.

According to Dr. Sorenson, the water right involved is 13 inches of the water of Camas Creek belonging to the Oregon Short Line Railroad, the point of diversion having always been near the Railroad station at Camas, and which is for domestic and livestock uses. It seems that the railroad company leased this water right to Mr. J. E. Garner of Rexburg, Idaho, and the water-master has permitted Mr. Garner to change the point of diversion to a place considerably further up stream, which results in there being no water at the station at Camas.

Mr. Sorenson has protested to the water-master without result and it is requested that you take appropriate action to see that this unlawful moving of the point of diversion is corrected.

Please advise me in the matter.

Yours very truly,

Geo. L. Barnard
GEO. L. BARNARD

GLB:eh

