

RECEIVED

SEP 15 PM

Department of Reclamation

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the "Notice of Claim t

as per clipping
herefo attached, was published in the regular and entire issue
of said newspaper, and not in any supplement thereof, for

two (2) consecutive weeks, the first publication of the

same being made in the issue dated September 4, 1969

and the last in the issue dated September 11, 1969
that said newspaper is of general circulation in Adams County
Idaho, printed and published weekly at Council therein and
that said newspaper has been continuously and uninterrupted-
ly published in said county during a period of more than sev-
enty-eight consecutive weeks prior to the first publication of

said "Notice" as aforesaid.

Bert J. Rogers

Subscribed and sworn to before me this 12th

day of September, 1969.

William E. Daniel

Notary Public for Idaho,
Residing at Council, Idaho

NOTICE OF CLAIM TO A WATER RIGHT No. 78-4008

Notice is hereby given that
Walter Overlander, 122 N. 10th
St., Payette, Idaho, has filed a
claim to a water right established
by diversion and application to
beneficial use of .1 cubic feet per
second of water from Fall Creek
tributary to Little Salmon River
with point of diversion in NW¼-
NW¼, Sec. 27, T. 22 N, R. 1E
B.M., Adams County; the water
is claimed to be used from April
1 to October 31 for irrigation
with a priority of April 1, 1961;
the place of use is SW¼NE¼, Sec.
27, T. 22 N, R. 1 E, B.M.

Any exception to this claim of
water right may be filed with the
Department of Reclamation.

R. KEITH HIGGINSON
State Reclamation Engineer
Published in the Adams County
Leader, Council, Idaho, on Sep-
tember 4 and September 11, 1969.

78-4008

Bill submitted
9-15-69
K.H.

Identification No. _____
Claim No. 78-4008 P.
Map No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
CLAIM TO A WATER RIGHT
Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1. Name of claimant WALTER OVERLANDER
post office address 122 N. 10th St., Payette, Idaho - 83661
2. The point of diversion is in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 27 Township 22 N.
Range 1 E. B.M. located on Fall Creek
(name of source)
tributary to Little Salmon River in Adams County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

a. Date of priority claimed:

April 1 1961 amount: .1 c.f.s. or _____ acre feet
_____ amount: _____ c.f.s. or _____ acre feet
_____ amount: _____ c.f.s. or _____ acre feet
Total claimed _____ c.f.s. or _____ acre feet.

b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use irrigation period of use from April 1 to October 31 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive).

4. Description of diverting works:

a. Surface water diversion dam and/or headgate: material is composed of rock
_____ ; length is 14 feet; height is 5 feet;
width at bottom is 8 feet; with at top is 3 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known _____

b. Underground water diverting works: is well flowing or pumped _____ ; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____
capacity of pump is _____ g.p.m.; name and address of well driller is _____
_____ ;

78-4008

-
-
-
-

- if feeder canal is used give maximum carrying capacity_____c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions_____

[illegible]

78-4008

INSTRUCTIONS

Your claim should set forth all necessary information to describe your claimed right. Failure to give enough information may make your claim of little value. Some of the items in the form may not apply to your situation. Please use additional sheets if space provided is not sufficient to fully answer the questions.

Paragraph No.

1. Give full name and post office address of person or company making the claim.
2. Describe the point of diversion by 40-acre subdivision. Give the name of the source, the drainage to which it is tributary if surface water, and the county in which the point of diversion is located. If there is more than one point of diversion, list others in the remarks section.
3. Give the priority dates and the quantities of water that you claim. You should accurately list the dates that you initiated each new use of the water. List separately the dates and amounts of water involved in each enlargement of the diversion. (Example: if you diverted 0.8 c.f.s. of water for irrigation on May 18, 1871, for the first time for use on 40 acres of land, and then later you enlarged the diversion by diverting an additional 0.4 c.f.s. of water to irrigate an additional 20 acres of land on June 1, 1901, your right should be described as follows:

Date of priority claimed:	<u>May 18, 1871</u>	amount:	<u>0.8 c.f.s.</u> or _____	acre feet
	<u>June 1, 1901</u>	amount:	<u>0.4 c.f.s.</u> or _____	acre feet
	Total claimed:		<u>1.2 c.f.s.</u> or _____	acre feet

Since the water was used for irrigation between April 1 and October 31 on that particular farm, part b. would be completed as follows:

use irrigation period of use from April 1 to October 31 (both dates inclusive). If the water had been used for any other purpose, you would have described the priority date, amount, use, and period of use in a similar manner.

4. Describe the diversion works and explain any changes since the right was first initiated.
5. If the water is used for irrigation, give the total acreage and list the lands irrigated by 40-acre subdivisions and complete the other questions.
- 6, 7, & 8. Describe any other uses of water.
9. In the remarks section, give any information or details that you feel are not fully covered or that need clarifying. You might explain your operation, where the water is returned to if for an industrial or non-consumptive right, the condition and temperature of the returned water, and any other information to help explain your claim.

You may wish to include as a part of your claim, affidavits of witnesses who are familiar with your right and who have a personal knowledge of the circumstances which you have described in your claim. You may submit maps, drawings, certified copies of posted notices which may have been filed in the county courthouse, water measurement records, or any other document which you feel will support your claim.

Your claim will be advertised in a county newspaper for two weeks. Exceptions to your claim which dispute the water right that you have described may be received by the Department of Reclamation and you will be provided a copy of such exceptions.

The fee for filing this claim with the Department of Reclamation, Room 107, Statehouse, Boise, Idaho 83701, is \$10.00.

AFFIDAVIT

Department of Transportation

Martin W. Carlyle being first duly sworn,

That for more than 7 years last past he has been familiar with the diversion of water from Fall Creek, in Adams County, Idaho to the lands affected by the Claim to a Water Right in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 27, Twp. 22nN., R. 1 E., B.M., and knows of his own knowledge that Walter Overlander has used the water represented in such Claim to a Water Right to the extent claimed therein since sometime during the year 1961, and that it has been used continuously upon such lands since that time, and is now being used thereon; that such water is used for irrigation and there is no other source of gravity water therefor; that there has been no interruption in the use thereof, and no claim of any other person thereto.

Martin W. Carlyle
(Signature)

Subscribed and sworn to before me this 30 day of July, 1969.

Madge F. Overlander
(Notary Public)

Residing at Pallock Idaho
My Commission Expires Aug. 6 1922

78.4008

IN THE MATTER OF:)
CLAIM TO A WATER RIGHT)
of)
WALTER OVERLANDER)
State of Idaho)
County of Adams)

AFFIDAVIT

Department of Registration

Edmund O. Nicholas, being first duly sworn,

deposes and says: _____

That for more than 8 years last past he has been familiar with the
diversion of water from Fall Creek, in Adams County, Idaho, to the
lands affected by the Claim to a Water Right in the NW~~1~~NW~~4~~ Sec. 27,
Twp. 22 N., R. 1 E., B.M., and knows of his own knowledge that
Walter Overlander has used the water represented in such Claim to a
Water Right to the extent claimed therein since sometime during the
year 1961, and that it has been used continuously upon such lands since
that time, and is now being used thereon; that such water is used for
irrigation and there is no other source of gravity water therefor; that
there has been no interruption in the use thereof, and no claim of
any other person thereto.

Edmund O. Nicholas,
(Signature)

Subscribed and sworn to before me this 29 day of July, 1969.

Madge F. Overlander
(Notary Public)

Residing at Vallejo, Idaho.
My Commission Expires Aug 6 1972.

78-4008

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the " Notice of Claim t

..... as per clipping
hereto attached, was published in the regular and entire issue
of said newspaper, and not in any supplement thereof, for

two (2) consecutive weeks, the first publication of the

same being made in the issue dated September 4, 1969

and the last in the issue dated September 11, 1969
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that said newspaper has been continuously and uninterrupted-
ly published in said county during a period of more than sev-
enty-eight consecutive weeks prior to the first publication of

said " Notice " as aforesaid.

Bert J. Rogers

Subscribed and sworn to before me this 12th

day of September, 1969.

William E. Daniel

Notary Public for Idaho,
Residing at Council, Idaho

NOTICE OF CLAIM TO A WATER RIGHT
It is hereby given that Walter O. Rogers, 122 N. 10th St., Payette, Idaho, has filed a claim to a water right consisting by diversion and application to beneficial use of 1 cubic foot per second of water from Fall Creek tributary to Little Salmon River with point of diversion to NW 1/4 NW 1/4, Sec. 27, T. 22 N, R. 1 E B2E, Adams County; the water is claimed to be used from April 1 to October 31 for irrigation with a priority of April 1, 1961; the place of use is NW 1/4, Sec. 27, T. 22 N, R. 1 E B2E. Any objection to this claim of water right may be filed with the Department of Agriculture, R. Keith, State Reclamation Engineer, Payette, Idaho, or published in the Adams County Leader, Council, Idaho, on September 4 and September 11, 1969.

78-4008

Bill submitted
9-15-69
K.H.

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

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as per clipping
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said " Notice " as aforesaid.

Subscribed and sworn to before me this 12th

day of September . 1969.

William E. Daniel

Notary Public for Idaho,
Residing at Council, Idaho

78-4008

Bill submitted
9-15-69
K.H.

ACT
ION

N OWNER LAST NAME - OVERLANDER FIRST NAME - WALTER
N ADDRESS LINE 1 - 122 N. 10TH ST.
N CITY - PAYETTE STATE - ID ZIP CODE - 83661
N SOURCE - FALL CREEK TRIBUTARY OF - LITTLE SALMON RIVER
N STAGE - STATRY CLM PRIORITY - 04-01-1961 COUNTY - ADAMS TOTAL DIV. RATE - .1000CFS
N DIVERSION POINT - NWNW 27 22N 01E
N FROM - 04-01 TO - 10-31 USE - IRRIGATION USE DIV. RATE - .1000CFS
N USE - IRRIGATION PLACE OF USE - TWN 22N RNG 01E SEC 27 TRACT SWNE AC 01
N REMARKS - AC. IRR.=1.1.

3/79

IDENT. NO. 78-4008

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT
DATA ENTRY LOG

[illegible]

- DATA ENTRY -

Record

- | | <u>Tract</u> | <u>Sec.</u> | <u>Twp.</u> | <u>Rge.</u> | <u>Gov't
Lot</u> | <u>Rediv.</u> |
|--------------------------|--------------|-------------|-------------|-------------|----------------------|---------------|
| 6. A. Point of Diversion | NWNW | 27 | 22N | 1E | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

- [illegible]

ch 9-25-79

8. Use Code: *A*

[illegible]

9. A. Decree Name:

B. Decree Date:

10. Remarks: A. $ac - irr. = 1.1$.
B.
C.
D.
E.

11. Other Uses (Non-irrigation explanatory information):

12. Other Rights for Same Use:

13. A. Proof Due Date:

B. Date Permit Approved or Denied:

C. Protested Date:

D. Hearing Date:

E. Old Number:

F. Proof Made (P or blank):

G. Field Exam Made (P,R,F or blank):

H. Conditions of Approval: _____

14. Diversion Means (brief narrative):

prk
October 15, 1969

Mr. Keith Higginson
State Reclamation Engineer
Dept. of Reclamation
State House-Annex 2
Boise Idaho

Dear Sir:

Department of Reclamation

I have read two notices of claims to water rights published in the Adams County Leader. The claim Nos. are No. 78-4008 and No. 78-4009.

Number 78-4008 is a Walter Overlander and No. 78-4009 is a Grace Hemenway Nicholas.

The diversion point given is on land that I own and I have no knowledge that they were doing this. Neither has ever asked nor received permission to come onto my land, and further, during this time my land has been posted with no trespassing signs that they could not have failed to see.

Since I have read these notices I have made a limited investigation and find that what has probably been done is briefly this; There is a party that owns about sixty acres that adjoins my land and is between the Claimants and my property. I have known that he was taking some water and dumping into the next drainage which flows through his property, to supplement the flow for his use on a garden and lawn. The Claimants are evidently tapping this source and are basing their claim on it.

At this time I do not know whether my neighbor has knowledge of this or not.

The people filing these claims have no right of way across my land and I do not plan to give them one.

I have taken steps to close this water source across my land and if they enter onto my land again, they will be subject to prosecution for trespass.

I intend this to be official notice of exception to their claim to a right of way across my land. If this is not the proper method, will you please advise me.

Sincerely

Lloyd H. Jourdain
Route #1
New Meadows, Idaho
83654

78-4008

RKA
DMM

This is a protest By

Overlander 78-4008

Nicholas

CD-17/E 78-4010

Mr. James L. Schoenhut
Attorney at Law
Cascade, Idaho

June 12, 1970

Re: Nicholas - Pourtner Matter

Dear Mr. Schoenhut:

I have just received a letter from my clients in connection with the above matter. They request me to notify you that notice is being sent to the department of reclamation of the State of Idaho to remove that protest against their filing on water out of Big Fall Creek, and that Mr. and Mrs. Nicholas want the same terms as before applied not only to themselves but to anyone they hire or have go with them back and forth in the maintenance of such ditch. I have further more been requested to advise you that my clients stand with Mr. Overlander and Mr. Carlyle, who also filed upon the same water and ditch. They advise me that the same agreement issued against Mr. Pourtner is to apply for them also. They desire to have the protest filed by Mr. Pourtner removed and the department to issue them a permanent permit to such water.

Inasmuch as I have not heard from you since my correspondence approximately two weeks ago, I have been requested by them to give you this information.

Sincerely,

William B. Taylor, Jr.

WBT:mb

Copies:

State Reclamation Engineer
Department of Reclamation
State House
Boise, Idaho

Mr. and Mrs. Red Nicholas
Route 1
New Meadows, Idaho, 83654

72-46008

December 2, 1969

Re: Claim to a Water Right No. 78-4008

Mr. Walter Overlander
122 North 10th Street
Payette, Idaho 83661

Dear Mr. Overlander:

In reference to the above claim, the enclosed is a copy of an exception filed by Lloyd H. Fourtner in connection with this claim under the provisions of Chapter 2, Section 42-225b of the Idaho Code, which states the following:

"At anytime after filing a claim under the provisions of this section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Reclamation and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Reclamation. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the Department the same as the original and for which no additional filing fee shall be required."

Only the above action has been contemplated by the Idaho Legislature and we are not authorized to hold hearings or evaluate for final censorship or conformation of the described rights.

If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enc: Copy of exception

78-4008

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATE HOUSE - ANNEX 2
BOISE, IDAHO 83726

December 2, 1969

Re: Claim to a Water Right No. 78-4008 - Walter Overlander
78-4009 - Grace Hemenway-Nicholas

Mr. Lloyd H. Fournier
Route 1
New Meadows, Idaho 83654

Dear Mr. Fournier:

We are in receipt of your correspondence concerning the above referenced claims to a water right. The following is a quote from the provisions under which these claims have been filed (Idaho Code, Sec. 42-225b):

"At anytime after filing a claim under the provisions of this section any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Reclamation and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Reclamation. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the Department the same as the original and for which no additional filing fee shall be required."

Only the above action has been contemplated by the Idaho Legislature and we are not authorized to hold hearings or evaluate for conformation or final censorship of the described rights.

If we can be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

78-4008

September 23, 1969

Re: Claim to a Water Right No. 78-4008

Mr. Walter Overlander
122 N. 10th St.
Payette, Idaho 83661

Dear Mr. Overlander:

Please be advised that the Department of Reclamation has received and processed your claim to a water right. We have enclosed a copy of the claim for your files; please refer to the claim number if you desire to add or change information in your claim.

You should be aware that the filing of the claim completes the Department's work in processing the claim. Under Idaho Statutes, no further action is pending at this time. Your claim will merely be filed on record with the Department until such time as you or a court may be in need of the information.

Enclosed is a departmental receipt in the amount of \$10.00 covering the filing fee.

If we may be of assistance at any time, please feel free to contact the Department.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:kh
Enclosures: Copy of claim
Receipt No. 3528

78-4008

August 26, 1969

Re: Claim to a Water Right No. 78-4008 - Walter Overlander

Adams County Leader
Council,
Idaho 83612

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 ample 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 date. If you cannot publish the notice on the proposed dates please contact us immediately.

An affidavit of publication must be submitted to the Department of Reclamation, along with the publication bill. In order to receive payment, the following certification must appear on the bill:

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of same has been paid.

Signature of claimant

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enc: Legal notice

78-4008

NOTICE OF CLAIM TO A WATER RIGHT

No. 78-4008

Notice is hereby given that Walter Overlander, 122 N. 10th St.,
Payette, Idaho, has filed a claim to a water right
established by diversion and application to beneficial use of .1
cubic feet per second ~~amount~~ of water from Fall Creek tributary to
Little Salmon River with point of diversion in NW $\frac{1}{4}$ NW $\frac{1}{4}$,
Sec. 27, T. 22 N, R. 1E, B.M., Adams County; the water is
claimed to be used from April 1 to October 31 for irrigation
with a priority of April 1, 1961
; the place of use is SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 27,
T. 22 N, R. 1 E, B.M.

Any exception to this claim of water right may be filed with the Department
of Reclamation.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Adams County Leader, Council, Idaho,
on September 4 and September 11, 1969.

78-4008