

AFFIDAVIT OF PUBLICATION



STATE OF IDAHO }
County of Gooding } ss.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that John F. Edinborough of Hagerman, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of .80 cubic feet per second, of the water of Big Wood River, from the land upon which it is now used, i.e., SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Twp. 6.S.R. 13. E.B.M. to the following described tract SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Twp. 6.S. R.13.E. B.M.

And that, on the 6th day of June, A.D., 1947, at 10 A.M., 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. 27-28

I, *Leland G. Burress*, do solemnly swear that I am the printer and publisher of THE GOODING LEADER, a weekly newspaper of general circulation, published once each week at Gooding, Idaho; that the notice attached hereto was published in said newspaper Two consecutive weeks, the first publication having been made on the 22nd day of May, 1947, and the last publication having been made on the 29th day of May, 1947, that said notice was published in the regular and entire issue of every number of the paper during that period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in *Gooding, Gooding County, Idaho*, for a period of more than 78 weeks prior to the first publication of the attached notice.

Leland G. Burress

Subscribed and sworn to before me this

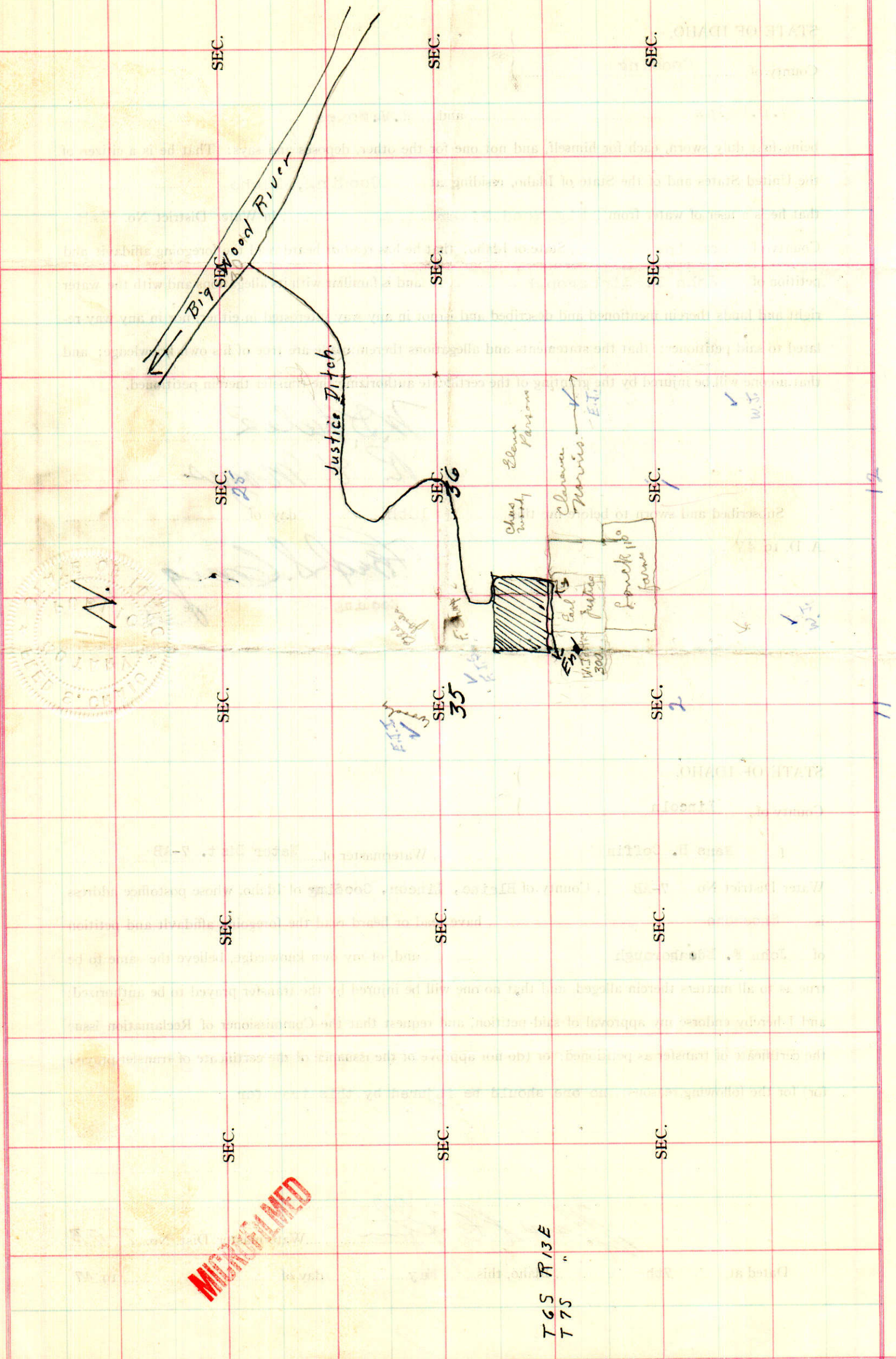
29th day of May, 1947

Helen J. Smit

Notary Public.

MICROFILMED

Name of Applicant John F Edinborough



TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Justice, Wm.	4.0		37-1160
715	Edinburgh, John F.	0.8	3.2	37-1160A

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STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Application of

JOHN F. EDINBOROUGH
OF Hagerman, Idaho

ORDER GRANTING TRANSFER

No. 715

For a Transfer of Water Right, in Water
District No. 7-AB, Gooding County, Idaho

WHEREAS, On the 10th day of May, 1947, JOHN F. EDINBOROUGH, of Hagerman, Idaho, made application to abandon the use of 0.80 cubic foot per second of the waters of Big Wood River, with priority of May 31, 1900, on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Township 6 South, Range 13 East, B.M., and without changing the point of diversion transfer the use of said waters to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 36, Township 6 South, Range 13 East, B.M.; and,

WHEREAS, Notice was published in the Gooding Leader for two consecutive issues, May 22nd and May 29th, 1947, as required by law; and,

WHEREAS, Protest was legally made by Carl Justice on behalf of himself and others, through Messrs. Bissell and Bird, their attorneys; and,

WHEREAS, A field examination was properly and lawfully made; and,

WHEREAS, A decision regarding this transfer has been made by the State Reclamation Engineer:

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 applicant 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 6th day of September, 1947.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

RECORDED
INDEXED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 715

THIS IS TO CERTIFY That JOHN F. EDINBOROUGH, of Hagerman, Idaho is the owner of and using a certain water right from Big Wood River in the amount of 0.80 cubic foot per second, bearing date of priority of May 31, 1900, said water being decreed to William Justice, by Judge H. F. Ensign, of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Lincoln, in the case of

WILLIAM JUSTICE,

Plaintiff,

vs.

S. H. CHAPMAN, as watermaster
of Water District # 7-A,
State of Idaho,
Defendant

said decree bearing date of December 13, 1930, for the purpose of irrigating the following described lands, situate, lying and being in the County of Gooding, and State of Idaho, to-wit:

SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35,
Township 6 South, Range 13 East, B.M.

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho, in Volume 4 of Decrees, at Page 337.

That said John F. Edinborough has become the owner of said water right by purchase.

And that now, upon the application of John F. Edinborough, of Hagerman, Idaho, for the transfer of 0.80 cubic foot per second of said water right, made before the State Reclamation Engineer, and said application having been granted the right to the use of 0.80 cubic foot per second of the waters of Big Wood River upon the lands above described is hereby abandoned, and the lands to be irrigated under such right, and to which the water right H. EBY CONFIRMED shall become appurtenant by this certificate, for irrigation and domestic purposes, are described as follows, to-wit:

SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35;
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36;
Township 6 South, Range 13 East, B.M.

That the water right hereby transferred has heretofore been conducted from Big Wood River to the first above described lands, through the Justice Ditch, with point of diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, Township 6 South, Range 14 East, B.M.

That the water right hereby transferred will hereafter be conducted to the last above described lands, through the same ditch (Justice Ditch), and with the same point of diversion.

CONFIRMED

That the 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:

0.80 cubic foot per second, bearing
date of priority of May 31, 1900.

That the right to the use of the water aforesaid, hereby confirmed, as 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 6th day of September, 1947.

Mark R. Kulp

MARK R. KULP

State Reclamation Engineer

RECEIVED

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
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NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36;
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That the water right hereby transferred will hereafter be conducted to the last above described lands, through the same ditch (Justice Ditch), and with the same point of diversion.

RECORDED

That the 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:

0.80 cubic foot per second, bearing
date of priority of May 31, 1900.

That the right to the use of the water aforesaid, hereby confirmed,
be restituted 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 6th day of September, 1947.

Mark R Kulp

MARK R. KULP

State Reclamation Engineer

CENTRAL

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Application of

JOHN F. EWINBOROUGH
OF Hagerman, Idaho

ORDER GRANTING TRANSFER

No. 715

For a Transfer of Water Right, in Water
District No. 7-AB, Gooding County, Idaho

WHEREAS, on the 10th day of May, 1947, JOHN F. EWINBOROUGH, of Hagerman, Idaho, made application to abandon the use of 0.80 cubic foot per second of the waters of Big Wood River, with priority of May 31, 1900, on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Township 6 South, Range 13 East, B.M., and without changing the point of diversion transfer the use of said waters to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, and the ~~W $\frac{1}{2}$ SW $\frac{1}{4}$~~ SW $\frac{1}{4}$ Section 36, Township 6 South, Range 13 East, B.M.; and,

WHEREAS, Notice was published in the Gooding Leader for two consecutive issues, May 22nd and May 29th, 1947, as required by law; and,

WHEREAS, Protest was legally made by Earl Justice on behalf of himself and others, through Messrs. Bissell and Bird, their attorneys; and,

WHEREAS, A field examination was properly and lawfully made; and,

WHEREAS, A decision regarding this transfer has been made by the State Reclamation Engineer:

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 applicant 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 6th day of September, 1947.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer



STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Protest
against the Application of

JOHN F. EDINBOROUGH
of Hagerman, Idaho

For a Transfer of Water Right in
Water District No. 7-AB,
Gooding, County

DECISION

of the

STATE RECLAMATION ENGINEER

On May 10, 1947, John F. Edinborough, of Hagerman, Idaho, made application to abandon the use of 0.80 cubic foot per second of the waters of Big Wood River, with priority of May 31, 1900, on the following described lands, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Township 6 South, Range 13 East, B.M., and to transfer said water to the following described lands: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Township 6 South, Range 13 East, B. M.

The said water is to be conveyed through the same ditch (Justice Ditch), and use the same point of diversion, located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, Township 6 South, Range 14 East, B.M.

Notice of the proposed transfer was duly advertised in the Gooding Leader for two consecutive issues, on May 22nd and May 29th, 1947, stating that a hearing would be held on said application on the 6th day of June, 1947, at 10:00 o'clock A. M., in Room 107 State House, Boise, Idaho.

A protest against the granting of said application was received on June 4, 1947, from Earl R. Justice and others, through Messrs. Bissell & Bird, Attorneys for the protestants.

A field investigation was made by the Deputy State Reclamation Engineer on July 15, 1947.

As no change in point of diversion is involved, no other water right will be injured. The protests are, therefore, rejected, and an order granting the transfer will be issued.

Any one feeling himself aggrieved by this decision may appeal therefrom to the District Court for the County of Gooding, within sixty days from the date hereof.

WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 5th day of September, 1947.

Mark R. Kulp

MARK R. KULP

State Reclamation Engineer

RECEIVED
SEP 10 1947
STATE RECLAMATION ENGINEER

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Protest
against the Application of

JOHN F. EDINBOROUGH
of Hagerman, Idaho

For a Transfer of Water Right in
Water District No. 7-AB,
Gooding, County

DECISION

of the

STATE RECLAMATION ENGINEER

On May 10, 1947, John F. Edinborough, of Hagerman, Idaho, made application to abandon the use of 0.80 cubic foot per second of the waters of Big Wood River, with priority of May 31, 1900, on the following described lands, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Township 6 South, Range 13 East, B.M., and to transfer said water to the following described lands: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Township 6 South, Range 13 East, B. M.

The said water is to be conveyed through the same ditch (Justice Ditch), and use the same point of diversion, located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, Township 6 South, Range 14 East, B.M.

Notice of the proposed transfer was duly advertised in the Gooding Leader for two consecutive issues, on May 22nd and May 29th, 1947, stating that a hearing would be held on said application on the 6th day of June, 1947, at 10:00 o'clock A. M., in Room 107 State House, Boise, Idaho.

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WITNESS MY HAND and the official seal of the Department of Reclamation of the State of Idaho hereunto affixed, at Boise, Idaho, this 5th day of September, 1947.

Mark R. Kulp
MARK R. KULP

State Reclamation Engineer

RECEIVED
SEP 10 1947
STATE RECLAMATION ENGINEER

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF LINCOLN.

William Justice,)
Plaintiff,)
vs.) D E C R E E
S. H. Chapman,)
as Water Master of Water)
District No. 7 A State of)
Idaho. Defendant.)

This cause came regularly on to be heard in open Court this 13th day of December, A. D. 1920, before Hon. H. F. Ensign, Judge of said District Court, sitting at Shoshone, in the county of Lincoln, State of Idaho, the plaintiff present in person and by his attorneys, Messrs. Sutphen & Sutphen, and the defendant coming not, either in person or by counsel, but making default herein although regularly and legally served and by making of said default having waived the making and Findings of Fact and Conclusions of Law by the Court, and the default of the defendant having been duly entered herein, and it also appearing that the plaintiff has heretofore duly caused to be published for four consecutive weeks, a notice of the pendency and purpose of this action, in the Gooding Leader, a weekly newspaper published at Gooding, Idaho, heretofore designated by this court as the newspaper in which publication of such notice should be made. Which notice contained the title of the Court and Cause, the name of the stream in the waters of which said plaintiff claims an interest, the date of priority claimed by him and the date and short title of the decree heretofore entered, fixing the permanent rights in said stream.

The Court having heard all the evidence and proofs published herein, and duly considered the same, and being fully advised in the premises, and it appearing therefrom to the satisfaction of the Court that all the allegations of Plaintiff's complaint are true: Now, on motion of Messrs. Sutphen & Sutphen, counsel for Plaintiff.

INDEXED

It is hereby ordered, adjudged and decreed that the plaintiff, William Justice, do have judgment for the right to the use of four cubic feet of water per second of time of the waters of Lower Malad River and its tributaries with priority dateing from May 31st, 1900 for the irrigation of the following described lands situate in the County of Gooding, State of Idaho, and more particularly described as follows, to-wit:-

Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) Section Thirty-five (35) Township Six (6) South, Range Thirteen (13) East, Boise Meridian, and Lots One (1) and Two (2) in Section One (1) Township Seven (7) South, Range Thirteen (13) East Boise Meridian. #715
Trans

And that said water is appurtenant to said lands.

It is further ordered, adjudged and decreed that the defendant and all other users of water from the lower Malad River and its tributaries be and are hereby required to absolutely desist and refrain from interfering with the Plaintiff's right to use the waters of said stream as herein established.

It is further adjudged that the rights of the plaintiff as determined in this cause are subject to the decree rendered and entered under Date of December 13th, 1909, in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln in the case of S. C. Frost, et al, plaintiffs, vs. Alturas Water Company, et al, defendants, and that the plaintiff has excepted as binding upon him, in so far as applicable, the above mentioned decree and the Findings of Fact and Conclusions of Law upon which said decree is based.

Done in open Court the 13th day of December, 1920.

H. F. Ensign, Judge.

No. 33/7

Filed Dec. 13, 1920.

E. A. Bowler, Clerk.

Recorded book 5 judgments page 153.

MICROFILMED

RE APPLICATION FOR TRANSFER OF WATER by J. F. Edinborough

and

PROTEST OF SAME by Earl Justice, Willa Justice, Florence Justice Sharp and Ethel Justice Jones.

- 1 J. F. Edinborough made application for abandonment of 0.80 c.f.s. of Big Wood River water, priority May 31, 1900, used on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 T. 6 S. R. 13 E.B.M. and transfer of same to SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36, T. 6 S. R. 13 E.B.M.
- 2 Public notice of same was properly given by publishing for two consecutive issues on the 22nd and 29th of May 1947 in the Gooding Leader, a newspaper in general circulation in the county concerned, setting the date of hearing to be June 6th, 1947 at 10 A. M. in room 107 State House, Boise, Idaho.
- 3 Written protest was received by the State Department of Reclamation on June 4th from Branch Bird, attorney for the protestants. Protest was signed by Earl Justice for himself and other protestants, Willa Justice, Florence Justice Sharp, and Ethel Justice Jones.
- 4 The application form submitted by Mr Edinborough was signed by Mans Coffin, watermaster for the district concerned. Thus approval of the watermaster was secured in advance.
- 5 Application was not acted upon until an investigation be made.
- 6 On July 15th Deputy Reclamation Engineer made an inspection trip and conferred with all parties concerned regarding the transfer and objections to a same.
- 7 On July 16 a supplement to the original protest was received from Bissell & Bird pointing out that the new land proposed to be watered had never had any right in the ditch.
- 8 On July 17 all of the protestants called upon the State Engineer in his office in the State House to further explain their protest. They were accompanied by Mr Jones who is a large landowner in the Hagerman Valley and husband of one of the protestants.
- 9 Attached are notes made in connection with the investigation and conferences held on July 15 by the Deputy Engineer.

MICROFILMED

INSPECTION AND HEARING HELD IN CONNECTION WITH APPLICATION FOR TRANSFER OF PLACE OF USE OF WATER BY JOHN F. EDINBOROUGH, AND PROTEST OF SAME.

As per letter of July 2nd to Bissell & Bird and J. F. Edinborough, a trip was made to inspect the ditch and lands on which a change in place of use of water was requested by J. F. Edinborough and protested by members of the Justice family. Also to gather any additional information that might be pertinent to the case.

An inspection of the ditch and lands concerned was made in company with Mr. Edinborough and then a meeting was held with the protestants in the office of Bissell & Bird, in Gooding.

INSPECTION

The water is to be abandoned on 40 acres and transfered to the same 40 acres plus ten adjoining acres.

There are no headgates with locks nor weirs installed on the ditches leading from the lateral for purposes of measuring the water delivered.

The main headgate at the dam had no lock and was setting wide open.

Inspection at the heading where the lateral takes out of the Malad showed the following: gate wide open; no method for locking; sack of dirt piled on top of the concrete dam to turn additional water down the ditch.

The dam is a low dam of concrete construction with a heading on each side of the river.

Water still wasted over the dam, indicating that all user were satisfied or else the ditches were full to capacity.

The dam is the last diversion on the Malad before it drops into the canyon. Within $\frac{1}{4}$ mile below the dam the stream drop very rapidly thru a crevasse in the lava and could not be diverted easily without use of a pump.

Water flowed quite swiftly thru the open headgate. Cross-section of same was approximately 4 feet wide by 20" deep.

It is probable that at least 10 cubic feet per second was flowing and the canal was not full.

The new land which Edinborough proposes to irrigate can be irrigated by direct diversion from the ditch which now carries the water or by constructing a new ditch parallel and immediately below the present one.

Mr. Edinborough had begun to haul dirt and construct a fill on which to put his proposed ditch.

The new land is of a fine sandy texture and is covered with sage brush.

RECEIVED

Statement by Applicant.

"I want permission to use my water where I want it, where it will do the most good"

In asking for a transfer I am beginning at the beginning and transferring the oldest right first" After that is taken care of I intend to transfer the American Falls right"

I am hauling dirt to use as a fill because I can get it loaded by dragline while they are cleaning the canal a short distance away." three

On ~~the~~ separate occasions I have asked men to estimate the amount of water going on past my place for use on the places of Earl Justice (40 acres) and Willa Justice (30 acres).

Results;

Morton Passmore of Tuttle estimated 3 to $3\frac{1}{2}$ cfs on June 6, 1947

Pete Gold of Hagerman estimated 3 cfs on June 10, 1947

Burton who rides river for Mans Coffin estimated $3\frac{1}{2}$ cfs on June 9

R. M. Woody is considered manager of the ditch and keeps everything in order.

Our right is an inch per acre $\frac{3}{8}$ from Big Wood River and $\frac{5}{8}$ from American Falls Reservoir.

Charges on decreed right is approximately \$7.50 per ~~xxx~~ forty acres.

Charges on American Falls Right is \$117.00 plus approximately \$25.00 for O. & M. *On forty acres.*

Each man sets his own water.

I bought the school land in May 1943

I got the farm in 1940 when it was foreclosed on Art Justice.

Earl Justice's own sisters rent their land to Mr Woody.

Owners of the land under the ditch are; Willa Justice 30 acres, Earl Justice 40 acres, Florence Sharp 40 acres, Ethel Jones 40 acres, R. M. Woody 240 acres and Edinborough 40 acres.

~~Second~~

Second, in the afternoon a conference was held in the office of Attorney Bird with Mr Bird and the following members of the Justice family, Earl Justice, Willa Justice, Florence Justice Sharp, Ethel Justice Jones, signers of the protest and Mrs Earl Justice.

~~Statements by Protestants.~~

Statement by Protestants.

Considerable discussion brought out the following statements.

In effect Edinborough is establishing a water right for the new land and will be in position to sell same for a high price.

It is not fair that he be permitted to run water on new land without paying on the ditch construction.

The applicant will use more water than the amount he is asking to have transferred.

There will be no control without a watermaster and why should we be caused the expense of installing weirs and paying a watermaster on account of one person.

The ditch has been operated 47 years without controversy, measuring devices, or anything else and we do not want to be forced into it now.

The ditch will be overloaded and cause trouble. It won't carry sufficient water for the extra land.

The Edinborough land has potholes and is unsuited for irrigation.

If he wants water for the new land let him get it from the large canal which crosses the new land.

The land was taken up in 1900. Mr Justice bought it out in 1904. In 1906 Mr Corco got an interest, which interest is now the Woody interest.

The Justices (including the Edinborough forty) own two thirds interest in the dam. Woody has one third interest in the dam.

We have an owned storage right in the American Falls Reservoir
For ~~66~~ 70% of our right.

Mans Coffin has charge of the water delivery.

Mrs Willa Justice said that at \$2.96 per acre ~~for~~ yearly for twenty years the American Falls storage right would be paid up.

Art Justice said that Edinborough got out of going to the army by claiming to be a farmer.

Art Justice displayed his Legion card.

UNRECORDED

STATEMENTS BY MANAGER OF THE BIG WOOD RIVER CANAL CO, MR. S. BAER

Mr. Baer was in the office of the American Falls District #2 and made the following statements when questioned.

Water in the Big Wood River with a priority of May 31, 1900 has been off between two and three weeks already.

One can raise nothing but early pasture or hay with that water.

That is the last diversion on the Malad and often has excess water. It is a natural consequence in the operation of the canal system. Nearly always there is a small amount of excess water wasting as it is necessary to insure full delivery to all water users. When crops need water they need it right away not next week.

The man has a right to transfer his water and use it where he wants to.

STATEMENTS BY SECRETARY OF THE AMERICAN FALLS DISTRICT # 2, Mrs Henderson.

I dont believe that he has any right to transfer that water without the consent of the directors of this district, because all land owning American Falls water is just the same as mortgaged to the U. S. Government.

I dont see why they would refuse permission to such a request if made.

NOTES RE EDINBOROUGH TRANSFER

The following notes are taken from Idaho Reports #50 out of the Report on an Appeal from the Department of Reclamation, a case in regards to Transfer of Water Rights of Enoch and Thorger Johnson.

Quote from Opinion of the Court, Varian, Judge, Lee C.J. and Budge, Givens, and Mc Naughton J.J. concurring.

2--4, "It is likewise established in this state that where one owns water, made appurtenant (as here) to certain lands by decree of Court he may voluntarily abandon the use of such water in whole or in part on the land which is recetving the benefit of the same and transfer the same to other land" providing no one shall be injured by such transfer. (C.S. sec. 5582, as amended by Session Laws 1921, chap. 146; Hard vs Boise City Irrigation and Land Co.. supra, Twin Falls Canal Co. vs Shippen et al. 46 Idaho 787, 271 Pac. 578; Crockett vs Jones supra.

8 The term "injured" as used in the sections of the statutes referred to C. S. section 5563 and (C.S. 5582 as amended by Session Laws 1921, chap. 146) applies to injury to the water right of another.

RECORDED
INDEXED

JAMES, SHAW & JAMES

ATTORNEYS AT LAW
BOODING, IDAHO

A. F. JAMES
CHAS. G. SHAW
ANDREW F. JAMES

PHONE 15

March 23, 1948

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

Mr. Mans Coffin
District Water Master
Shoshone, Idaho

Re: Edinborough Water
- Matter

Gentlemen:

The hearing in the above case will be held before Judge Sutphen on Friday of this week at 10 o'clock a.m. We wish that both of you would kindly arrange to be present and call at the office about 9:30 a.m. on that date so that we will have an opportunity to discuss the matter briefly in advance of the hearing.

Very truly yours,

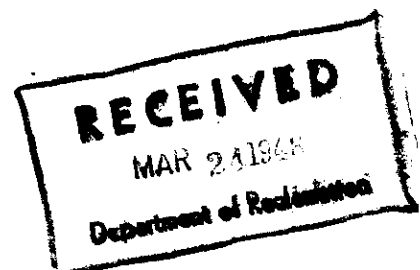
JAMES, SHAW & JAMES

By:

A. F. James

AFJ/s

RECEIVED



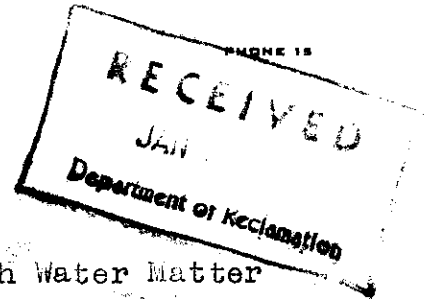
JAMES, SHAW & JAMES

ATTORNEYS AT LAW

BOODING, IDAHO

A. F. JAMES
CHAS. G. SHAW
ANDREW F. JAMES

January 28, 1948



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

Re: Edinborough Water Matter

Dear Sir:

The hearing in the above matter has been again continued.
As soon as a new date has been fixed, we shall promptly inform
you.

MICROFILMED

Very truly yours,

JAMES, SHAW & JAMES

BY: A. F. James

AFJ:jw

January 12, 1948

Messrs. James, Shaw & James
Attorneys at Law
Gooding, Idaho

Attention- Mr. A. F. James

Dear Mr. James:

I am in receipt of your letter of January, 10th, advising that the Edinborough appeal has been continued to February 3rd.

I regret that previous commitments will render it impossible for me to be present at that time.

Mr. Humphrey is no longer connected with this Department, but is now with the Branch Experiment Station, at Aberdeen, Idaho. He might possibly be able to attend, if you wish to contact him at that place.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

K:A

MICROFILMED

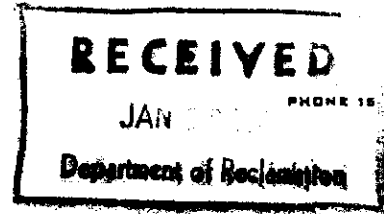
JAMES, SHAW & JAMES

ATTORNEYS AT LAW

BOODING, IDAHO

A. F. JAMES
CHAS. D. SHAW
ANDREW F. JAMES

January 10, 1948



Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Re: Edinborough Water Matter

Dear Sir:

We refer again to the above matter. Judge Sutphen call^{ed} us today and stated that he would be unable to hear the matter on January 27th, as originally set, and that he was continuing the case to February 3rd at 10 a.m. Please keep the above date in mind and arrange to be available as a witness at that time. Mr. Edinborough informs us that a Mr. Humphrey from your office is the man who made the field investigation and if this is correct, it might be well to bring him with you when you come for the hearing.

MICROFILMED

Very truly yours,

JAMES, SHAW & JAMES

By:

A. F. James

AFJ/urb

JAMES, SHAW & JAMES
ATTORNEYS AT LAW
GOODING, IDAHO

A. F. JAMES
CHAS. D. SHAW
ANDREW F. JAMES

PHONE 15

January 5, 1948

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

Re: Order & certificate of
Transfer No. 715 Issued
to John F. Edinborough

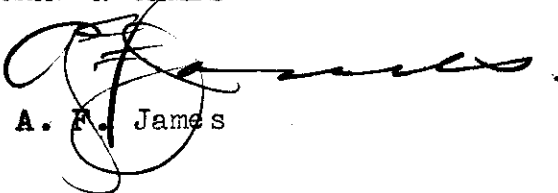
Dear Sir:

Judge Sutphen today set the appeal in the above matter for trial here at Gooding on January 27th at 10 o'clock. Will you kindly make a note of this date in your diary and arrange to be present at the time of the hearing. We suggest also that you come to our office at Gooding about 9:30 a.m. on the 27th so that we shall have a little time to discuss the facts with you.

Very truly yours,

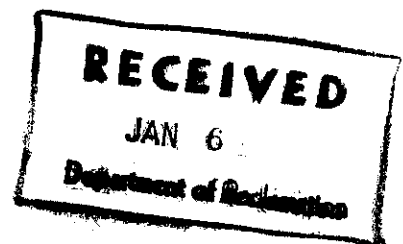
JAMES, SHAW & JAMES

By:


A. F. James

AFJ/srb

MICROFILMED



January 7, 1948

Messrs. James, Shaw & James
Attorneys at Law
Gooding, Idaho

Attention- Mr. A. F. James

Dear Sir:

This is to acknowledge receipt of
your letter of January 5th, informing me that
the appeal in the matter of the Edinborough
Certificate of Transfer No. 715, has been set
for hearing at 10:00 o'clock A. M. January 27th.

I will arrange to be present at that
time, and will call upon you at your office ahead of
time, as you suggest.

Very truly yours,

MARK R. KUIP

State Reclamation Engineer

K:A

MICROFILMED

December 26, 1947

Messrs. James, Shaw & James
Attorneys at Law
Gooding, Idaho

Attention- Mr. A. J. James

Dear Sirs:

I have no objection to your
appearing in my behalf in the appeal from my
decision in the case of the John F. Edinborough
Transfer.

I am enclosing copy of a letter from
the Attorney General to the District Court
concerning the appearance of the State in the
matter.

Very truly yours,

MARK R. KULP

State Reclamation Engineer

Kia
Encl.

RECEIVED

December 22, 1947

Honorable D. H. Sutphen
District Judge
Gooding, Idaho

Dear Sir:

There is pending in your court an appeal from an order of the State's Reclamation Engineer, Mr. Mark Kulp, in connection with the use of certain irrigation water. The proceedings and the record thereof deal with the application of Mr. John F. Edinborough, who is represented by Mr. A. F. James on the appeal. The protestants are also represented. So far as is now known, there is no particular need for the attendance at the hearing of someone from this department, although this will be done if to you it shall seem advisable. Otherwise, subject to your approval, it is thought that Mr. Kulp's attendance to appear as a witness if called, will be sufficient, the hearing to be conducted by the respective attorneys of the applicant and the protestants.

If the entry of record of a formal appearance by this office is satisfactory, this will be done, or if a personal appearance at the hearing is desired it will be attended to accordingly.

I shall be gratified to learn of your desires in this respect.

Very truly yours,

ROBERT E. SMYLIE

RES:JRS:bs

cc; Mr. Mark Kulp, Engineer
Department of Reclamation
Building

MICROFILMED

C O P Y

JAMES, SHAW & JAMES
ATTORNEYS AT LAW
BOODING, IDAHO

A. F. JAMES
CHAS. G. SHAW
ANDREW F. JAMES

PHONE 15

December 12, 1947

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

Re: Order and Certificate of
Transfer No. 715 issued to
John F. Edinborough.

Dear Sir:

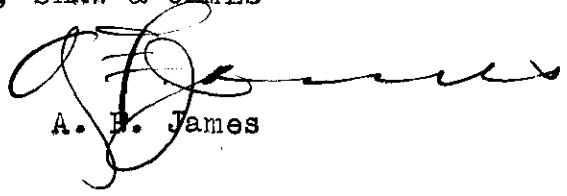
Mr. John F. Edinborough has asked us to represent him in the hearing to be had in the District Court here on the appeal taken by Wilks Justice and others from your order in the above matter, and in as much as you are also one of the defendants, we wish to know whether or not we have your permission to appear on behalf of you also. We assume that at the time of the hearing you can arrange to be present to testify in support of the order.

Thanking you for an early reply, we remain.

Very truly yours,

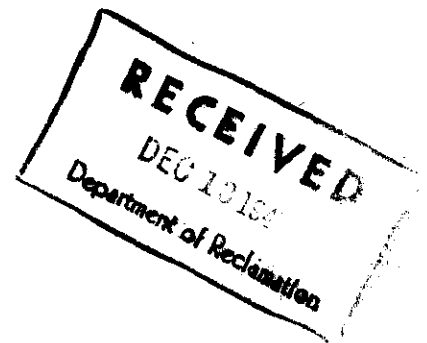
JAMES, SHAW & JAMES

By:


A. F. James

AFJ/srb

MICROFILMED



October 11, 1947

John F. Edinborough
Hagerman, Idaho

Dear Sir:

I have a copy of the Notice of Appeal by Wills Justice et al..

All of the public records and files pertaining to the matter of the transfer are open to your inspection or to inspection by your attorney.

The decision being appealed from was made after due investigation and deliberation and was considered the proper decision or it would not have been made. The appeal being from my decision requires my being named as a defendant.

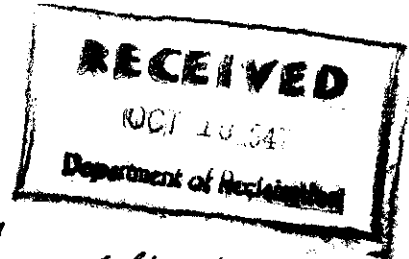
Yours truly,

Mark R. Kulp
State Reclamation Engineer

E. N. Humphrey, Deputy

RECEIVED

Oct. 9, 1947



Dear Mr. Kulp:

It seems as though we've been sued over your decision of our water transfer. We are sorry your name was mentioned in the suit and are wondering if you'd have any information that would be of value to us. Thanks!

Sincerely,

John F. Edinburgh
Hagerman, Ida

RECEIVED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

Willa Justice, Ethel J. Jones,
Earl R. Justice, Florence
Justice Sharp,

Plaintiffs,

-vs-

John F. Edinborough and Mark R.
Kulp, State Reclamation Engineer
of the State of Idaho,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs Willa Justice,
Ethel J. Jones, Earl R. Justice, Florence Justice/ ^{Sharp,} feeling them-
selves aggrieved thereby, do hereby appeal to the District Court
of the Fourth Judicial District of the State of Idaho, in and
for the County of Gooding, the county in which the land is situated
to which the water in question is made appurtenant, from that
certain "Order Granting Transfer, No. 715" made and entered by the
State Reclamation Engineer of the State of Idaho, September 6, 1947,
whereby said State Reclamation Engineer granted the application of
John F. Edinborough and issued to him a certificate of transfer to
abandon the use of .8 cubic feet per second of the waters of Big
Wood River with priority of May 31, 1900, on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35
and transfer the same to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 and the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$
Sec. 36, all in Twp. 6 S. R. 13 E. B. M., Gooding County, Idaho;
and in denying and overruling the objections and protests filed
against the granting of said application by the above named plain-
tiffs.

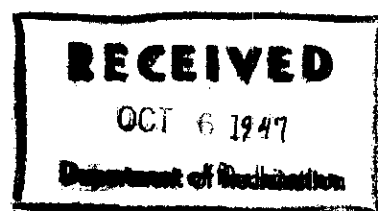
This appeal is upon the ground and for the reason that said
plaintiffs and their respective ditch and water rights will be
materially injured by such transfer within the purview of Sec. 41-216

I. C. A., as amended by Chapt. 63 of the Idaho Laws of 1945.

Dated October 4, 1947.

BISSILL & BIRD
GOODING, IDAHO

Attorneys for Plaintiff



FILED

October 6, 1947

Messrs. Bissell & Bird
Attorneys at Law
Gooding, Idaho

Dear Sirs:

We acknowledge receipt of your letter
of October 4th, enclosing copy of notice of appeal
in the matter of the Edinborough water transfer,
No. 715.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

MICROFILMED

W. G. BISSELL

BRANCH BLDG

BISSELL & BIRD
LAWYERS
GOODING, IDAHO

October 4, 1947

Hon. Mark R. Kulp,
State Reclamation Engineer,
State House,
Boise, Idaho.

Dear Sir:

Enclosed please find copy of notice of appeal in the
Edinborough-Justice water transfer matter. Please acknowledge
receipt.

Sincerely yours,

BISSELL & BIRD

By *Anna L. Warner*

RECORDED

BB:dlw
Enc.

October 2, 1947

Messrs. Bissell & Bird
1st Security Bank Bldg.
Gooding, Idaho

Attention- Mr. Branch Bird

Dear Sirs:

In reply to your letter of September 30th, we enclose a certified copy of the Application for Transfer, also decision and order of the State Reclamation in connection therewith, in the John F. Edinborough matter.

The cost of this certified copy is \$3.00, for which we have filled out the check which you enclosed, and for which we enclose Departmental Receipt No. 20171.

We overlooked the fact that you wish an extra copy of these instruments for your own files- when we made out the check. This additional cost will be \$2.00-

We enclose the extra copies herewith, and you may send us your check for this additional amount, at your convenience.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encl.

RECEIVED

R 20197

BISSELL & BIRD

1ST. SECURITY BANK BLDG.

GOODING, IDAHO

W. G. BISSELL
BRANCH BIRD

September 30, 1947

Department of Reclamation,
State House,
Boise, Idaho.

Gentlemen:

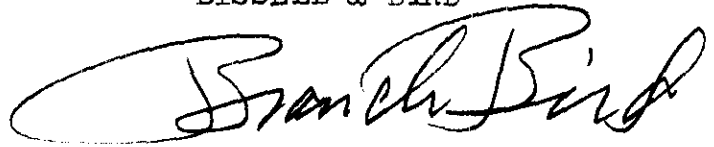
Concerning the application of John F. Edinborough to transfer some water near Hagerman, the decision of the State Reclamation Engineer is dated September 5, 1947. On behalf of those who protested the granting of this application we desire to perfect an appeal. As a part of the appeal the statute requires that a copy of the application for change of point of diversion or place of use, certified by the department as a true copy and having endorsed thereon the order of the department granting or refusing to grant the change, be filed in the district court. Will you kindly furnish us this certified copy with the required endorsement thereon.

We will appreciate it if you will send us a copy also, which we can retain in our file.

Check for less than \$10.00 enclosed to cover your charge, if any.

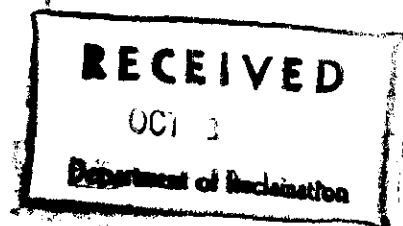
Sincerely yours,

BISSELL & BIRD



BB:dlw
Enc.

MICROFILMED



September 8, 1947

Mr. John F. Edinborough
Hagerman, Idaho

Dear Mr. Edinborough:

We enclose herewith the Decision of the
State Reclamation Engineer, also Order and Certificate
of Transfer No. 715, issued in accordance with your
application for transfer.

A copy of same has been sent to Mr. Mans
Coffin, Watermaster, for his information.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

A
Encl.
CC to Mans Coffin.

MICROFILMED

September 8, 1947

Messrs. Bissell & Bird
Attorneys at Law
Gooding, Idaho

Attention- Mr. Branch Bird

Dear Sirs:

We enclose herewith a copy of the
decision of the State Reclamation Engineer, in the
matter of the protest of Earl R. Justice and others
on the application of John F. Edinborough for
transfer of water right.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

A
Encl.

RECEIVED

September 3, 1947

Mr. John F. Edinborough
Route 1
Hagerman, Idaho

Dear Mr. Edinborough:

A decision in regard to your application
for transfer of water right, dated May 10, 1947,
will be made very soon. You will be notified at
that time.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

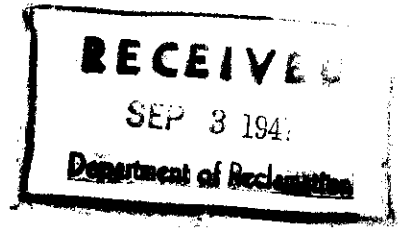
L. N. Humphrey
Deputy State Reclamation Engineer

H:A

MICROFILMED

Hagerman, Idaho
Sept 1, 1947

State Reclamation Engineer
Boise, Idaho



Dear Sir

As it is getting fall and
we would like to start work
on our Waste land- we would
like to know if any information
on transfer of our water. Please
let us know as soon as possible.
Thank you!

Yours truly,
John F. Edinborough
Hagerman, Idaho
Route 1

MICROFILMED



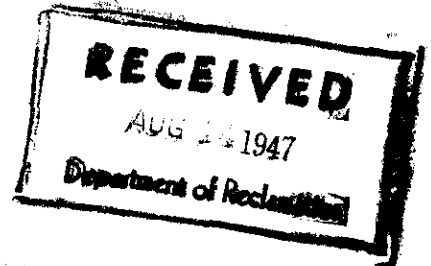
C. A. ROBINS
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

August 1, 1947



Mr. Guy Barton
Bliss, Idaho

Dear Mr. Barton:

We are writing to get a statement from you as to the amount of water you thought was going on past J. F. Edinborough's farm, on June 9th of this year, to lands of Earl Justice and Willa Justice.

Thanking you for this information, we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey

E. N. Humphrey
Deputy State Reclamation Engineer

A.

H:FS

Dear Sir,

*There was 3 feet 1/2 of water going pass
to my estimation on June the ninth*

G B Barton

MICROFILMED

August 1, 1947

Mr. Guy Berton
Bliss, Idaho

Dear Mr. Berton:

We are writing to get a statement from you as to the amount of water you thought was going on past J. F. Edinborough's farm, on June 19th of this year, to lands of Earl Justice and Wills Justice.

Thanking you for this information, we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:FS

RECEIVED
AUG 1 1947

Hagerman, Idaho
July 31, 1947

State Reclamation Engineer
State House
Boise, Idaho

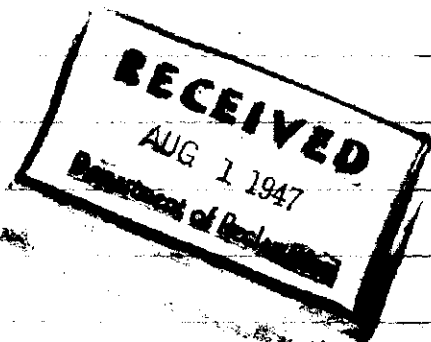
Dear Sir:

If you would like additional
information regarding the transfer
of our water, our ditch rider's
name is - Guy Barton, Bliss, Ida
Thanks!

Sincerely,
John F. Edinborough
Hagerman, Ida

6-9

MICROFILMED



July 29, 1947

Mr. Morton Passmore
Tuttle, Idaho

Dear Mr. Passmore:

We are writing to get a statement from you as to the amount of water you thought was going on past J. F. Edinborough's farm, on June 6th of this year, to lands of Earl Justice and Willa Justice.

Thanking you for this information,
we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:A

RECEIVED

July 29, 1947

Mr. Pete Gold
Hagerman, Idaho

Dear Mr. Gold:

We are writing to get a statement from you as to the amount of water you thought was going on past J. F. Edinborough's farm, on June 10th of this year, to lands of Earl Justice and Willa Justice.

Thanking you for this information,
we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H: A

MICROFILMED

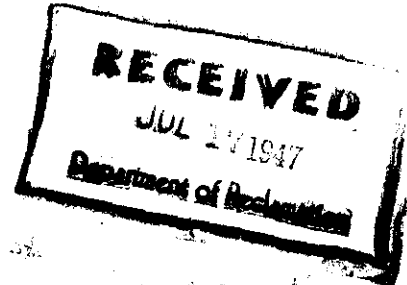
BISSELL & BIRD

1ST. SECURITY BANK BLDG.

GOODING, IDAHO

W. G. BISSELL
BRANCH BIRD

July 16, 1947



State Reclamation Engineer
Boise, Idaho

Dear Sir:

Your Mr. Humphries was in the office yesterday in connection with the protest filed by members of the Justice family against the application of John F. Ednborough to transfer certain water from lands in Section 35 to lands in Section 36, all in 6 S.R. 13, E. B. M., Gooding County, Idaho.

During the interview Mr. Humphries indicated that in his opinion water right may be appurtenant to land, but that an irrigation ditch is not an appurtenance of the land. No doubt you are familiar with the law in this connection, but to be sure that the matter is understood we call attention to the Court's opinion in the case of Randall Canal Co. vs Randall, 56 Idaho 99. In that case the Supreme Court stated that irrigation ditches are appurtenant to the land served by such ditch, and that such ditches are property in the sense and to the extent that the owner cannot be deprived of the use, and enjoyment thereof without compensation.

This is important in the situation, because the land to which Mr. Ednborough seeks to have some of his water transferred has not heretofore used the ditch now serving the lands in the vicinity. This ditch and the diversion works cost from \$7,000.00 to \$8,000.00 and it is an appurtenance of the lands which have been taking water therefrom. To include additional land without making such new land bear its part of the construction of the ditch and diversion works would be equivalent to taking value from the old lands and adding it to the new land without compensation, which in our opinion cannot properly be done.

We do not feel that the transfer should be granted under any conditions, but if it is, certainly the new land must be required to pay its pro-rate of part of the construction of the diversion works and ditch in question.

Sincerely yours,

BISSELL & BIRD

MICROFILMED

BB/feb

State Rec. Engineer July 16, 1947 PS:

We believe the latest case in the Supreme Court considering the right to transfer water, change the place of use, etc, is that of

Beecher v. Cassia Creek Irrigation Co.,
154 Pac.(2) 507.

There the court reiterated the old formula that the decisive question is whether or not any one will be "substantially injured", "not merely a fanciful injury".

However, in applying this rule the court states:

"Rotation above respondents' points of diversion could well lessen the volume of the stream and deprive them of their appropriation in point of time during which they were entitled to the use of the water."

So in the immediate situation, to grant the requested change "could well" do substantial damage to protestants, and in ~~the~~ natural course of events is just as certain to do them damage as the requested change in the Beecher case.

Respectfully,

B&B

MICROFILMED

Notice of Proposed Transfer of Water Right

Notice is hereby given that John F. Edinborough

of Hagerman, Idaho., has applied to the
State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of

.80 cubic feet per second,

of the water of Big Wood River,

from the land upon which it is now used, i. e., SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Twp. 6.S.R. 15. E. B.M.

to the following described tract SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Twp. 6.S. R.15.E.

B.M.

And that, on the 5th, day of June, A. D., 19 47

at 10 A.M. 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.

MICROFILMED

MARK. R. KULP.

State Reclamation Engineer.

Form No. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

BOISE

Date . . . **May 15, 1947** . . .

**The Gooding Leader,
Gooding, Idaho.**

Gentlemen:

Enclosed you will find notice for publication once a
week for two consecutive weeks prior to **June, 6, 1947**
the date set for hearing, the expense of the publication to be
paid by the applicant, **John F. Edinborough, of Hagerman, Idaho.**

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

Please acknowledge receipt of this notice, and furnish this
office with a copy of the first publication.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

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

RECEIVED

July 2, 1947

Mr. John F. Edinborough
Hagerman, Idaho

Dear Mr. Edinborough:

This is to inform you that a protest has been filed in this department against the approval of your application for transfer of water right, by the following protestants:

Willa Justice, Earl R. Justice, Ethel J. Jones and Florence Justice Sharp.

The writer will make an inspection of the matter on the morning of July 15th, as per copy of letter to Bissell & Bird, enclosed herewith.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

A
MICROFILMED

July 2, 1947

Messrs. Bissell & Bird
First Security Bank Bldg.
Gooding, Idaho

Attention- Mr. Branch Bird

Dear Sirs:

I will call on you on July 15th in connection with an inspection of the proposed transfer of water right made by Mr. John F. Edinborough, and will be glad to talk with the parties making the protest and hear their complaints in detail at that time.

I intend to call on you after I have inspected the property with Mr. Edinborough, and hope to see you shortly after noon.

Will you please notify the several protestants regarding this matter.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:A
CC to John F. Edinborough

NOT RECORDED

BISSELL & BIRD

1ST. SECURITY BANK BLDG.

GOODING, IDAHO

W. G. BISSELL
BRANCH BIRD

June 3, 1947

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

Dear Sir:

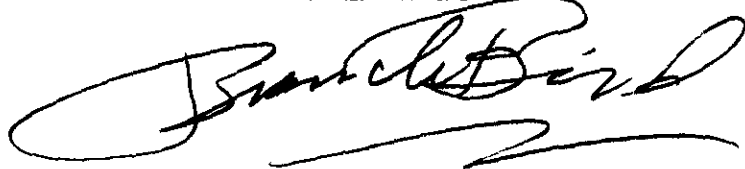
In line with our phone conversation yesterday afternoon relative to the application to transfer water being made by John F. Edinborough of Hagerman, we enclose protest filed on behalf of four nearby land owners, who take water through the same ditch.

Will you kindly acknowledge receipt and advise us as to developments, particularly with reference to time and place of any hearing which you may determine to hold.

We are sending copies of this letter and protest to Mr. Edinborough at Hagerman by mail today.

Sincerely yours,

BISSELL & BIRD



BB:dlw
Enc.
cc/Edinborough

RECEIVED
JUL 1 1947
Department of Reclamation

RECEIVED
JUL 1 1947
Department of Reclamation

June 6, 1947

The Gooding Leader
Gooding, Idaho

Gentlemen:

We acknowledge receipt of the affidavit of publication "Notice of Proposed Transfer of Water Right" in the name of John F. Edinborough, together with statement of publication costs, amounting to \$4.50.

If you will refer to office letter sending you this notice for publication, we advised that the cost was to be paid by Mr. Edinborough.

We are accordingly transmitting this statement to him for payment.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:FA

C.C. to Mr John F. Edinborough.

RECEIVED

STATEMENT RENDERED EVERY THIRTY DAYS

THE GOODING LEADER

And GOODING INDEPENDENT Combined

One Newspaper • One Coverage • One Cost

Gooding, Idaho, ~~May 31~~ 1947

Account of

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

ADVERTISING—

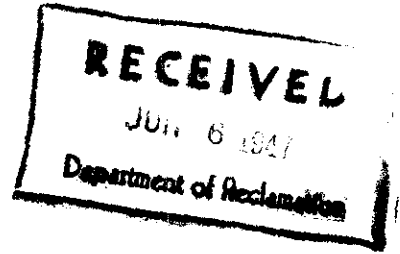
Weeks of Month	1st	2nd	3rd	4th	5th	Total	Rate	Cost
DISPLAY, Col. Inches								
JOB PRINTING AND SUPPLIES								

May 22--Notice of proposed transfer of
water right--John F. Edinborough--
2 weeks--May 22-May 29--30 lines
@10¢ and 5¢

4.50

PAID

AFFIDAVIT OF PUBLICATION



STATE OF IDAHO } ss.
County of Gooding }

[illegible]

I, Leland G. Burress, do solemnly swear that I am the printer and publisher of THE GOODING LEADER, a weekly newspaper of general circulation, published once each week at Gooding, Idaho; that the notice attached hereto was published in said newspaper Two consecutive weeks, the first publication having been made on the 22nd day of May, 1947, and the last publication having been made on the 29th day of May, 1947, that said notice was published in the regular and entire issue of every number of the paper during that period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in *Gooding, Gooding County, Idaho*, for a period of more than 78 weeks prior to the first publication of the attached notice.

attached notice.

Leland B. Burgess

Subscribed and sworn to before me this

29th day of May, 1947

Helene J. Smith

Notary Public.

MICROFILMED

June 4, 1947

Messrs. Bissell & Bird
1st Security Bank Bldg.
Gooding, Idaho

Attention- Mr. Branch Bird

Dear Sirs:

We acknowledge receipt of your
letter of June 3rd, enclosing protest in the
matter of the application of John F. Edinborough
to transfer water right from Big Wood River.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A

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IN THE OFFICE OF STATE RECLAMATION ENGINEER FOR THE
STATE OF IDAHO

In the matter of application of	}	P R O T E S T
John F. Edinborough,		
Applicant.		

Willa Justice, a widow, Ethel J. Jones, Earl R. Justice and Florence Justice Sharp respectfully submit to the State Reclamation Engineer of Idaho their joint and several protest against the granting of the application of John F. Edinborough, of Hagerman, Idaho, to transfer .8 cubic feet per second of the waters of Big Wood River from the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 T. 6 S. R. 13 E.B.M., Gooding County, Idaho, to the latter tract and the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36 same township and range, upon the following grounds and for the following reasons.

-1-

That Willa Justice is the owner of Tax 2 of Sec. 1, SE $\frac{1}{4}$ SE $\frac{1}{4}$ (less taxes 14 and 15) of Sec. 2 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 11, all in Twp. 7 S. R. 13 E.B.M., Gooding County, Idaho.

That Earl R. Justice is the owner of Tax 1 and Lot 1 Sec. 1 Twp. 7 S. R. 13 E.B.M., Gooding County, Idaho.

That Ethel J. Jones is the owner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35 Twp. 6 S. R. 13 E.B.M., Gooding County, Idaho.

That Florence Justice Sharp is the owner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 Twp. 6 S. R. 13 E.B.M., Gooding County, Idaho.

-2-

That irrigation water was decreed for the use of the lands of protestants, described in the preceding paragraph, as well as for the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35 T. 6 S. R. 13 E.B.M., Gooding County, Idaho, owned by John F. Edinborough and described in his application, by decree of the District Court of the Fourth Judicial District of the

RECORDED

State of Idaho, Lincoln County, in the case of William Justice vs. S. H. Chapman (Water Master), the same being docket No. 1993, and such decree bearing date December 13, 1920, and being of record in Book 3, page 432, of the records of Judgments of Gooding County; that under the terms of said decree there was awarded to the lands of said Edinborough and protestants 4 cubic feet of the waters of Lower Malad River (same as Big Wood River) with priority of May 31, 1900.

-3-

That said waters have been applied for irrigation of and domestic use on the above described lands continuously since the year 1900 by said protestants and their predecessors in interest; that when American Falls Reservoir District No. 2 was created the lands of protestants and said SE $\frac{1}{4}$ SE $\frac{1}{4}$, owned by John F. Edinborough were included within the district, and the water right for said lands under the above mentioned decree were appraised as a 30% right, and supplemental water under said American Falls District was granted to the lands of protestants and said SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 35 of John F. Edinborough; that the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36, owned by John F. Edinborough and to which he seeks to transfer a portion of said decree of 1900, is not within American Falls Reservoir District No. 2, and considerable confusion would result in the distribution of water if the Edinborough application is granted, which would entail the delivery of water through the same ditch to some lands within said Reservoir District and to other lands not within said Reservoir District; that the said decree of 1900 is a comparatively late decree on said stream, and the more dependable water right for the lands of applicant and protestants is the American Falls District right, which obtains water from the dam on Snake River situate at American Falls.

That the ditch supplying water to the lands of applicant and protestants takes water from the Big Wood or Malad River at a point in the SE portion of Sec. 25 T. 6 S. R. 13, and extends thence in a southwesterly course to the lands to be irrigated; that said ditch has been owned and operated as a community ditch since its construction, and said ditch is not under the supervision or control of the water master; that there is no headgate or measuring device for the several users on said ditch; that all waters appurtenant to the lands of applicant and protestant are necessary for the proper irrigation of the lands now being served by said ditch, and the inclusion of additional land would overburden the capacity of said ditch and make its maintenance more expensive to protestants; that the 10 acre tract in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36 to which applicant seeks to transfer a portion of his irrigation water is very sandy soil, the terrain is very uneven and rough and several pot-holes are located thereon, all of which would tend to a very high duty of water on said land; that the inclusion of said additional 10 acre tract under said ditch would result in rotation of water by applicant, thereby inflicting damage and injury on the protestants and increasing the load for said ditch and system, and indirectly the inclusion of said additional land would deprive protestants of some of their water rights and increase the expense of maintaining the ditch and diversion works; that protestants verily believe and allege the granting of such application of applicant to include said 10 acre tract, which 10 acre tract now has no irrigation water appurtenant thereto, either under decree or said American Falls District, would necessarily and inevitably make it necessary to have a water master in **charge** of distribution of water on said community ditch from year to year, and would also require the installation and

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maintenance of individual headgates and measuring devices for the respective users on said ditch.

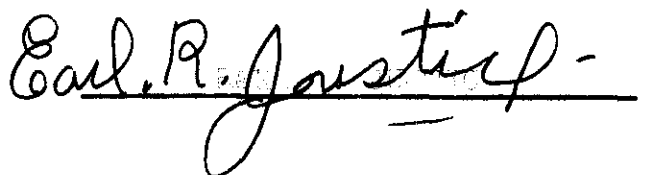
That the applicant has a more feasible method of obtaining water for the irrigation of the lands in said SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36 T. 6 S. R. 13, namely, from the North Side Canal Company, a lateral of which company traverses the last described tract of land from its north to its south boundary, and water is available in said canal company.

WHEREFORE The protestants respectfully urge the State Reclamation Engineer, after examination of such application, and upon hearing if that be necessary, to deny said application; that if a hearing be had the same be had in the vicinity of the land after reasonable notice to protestants.

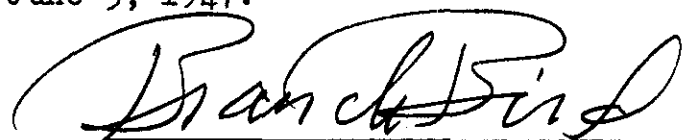

Attorneys for Plaintiff,
Gooding, Idaho.

STATE OF IDAHO)
) ss
COUNTY OF GOODING)

Earl R. Justice being first duly sworn upon his oath deposes and says: That he is one of the protestants named above; that he has read the foregoing protest and knows the contents thereof and believes the statements contained therein to be true.



Subscribed and sworn to before me June 3, 1947.


Notary Public, Gooding, Idaho.

(SEAL)

Wm Justice vs. Chapman
in District Court 4th Judicial Dist.
decreed 4 cfs. priority May 31-1900
to SE₄, NE₄, E₂ SE₄ Sec 35, T. 6 S. R. 13 E.
and
lots 1 & 2 in Sec 1 T. 7 S. R. 13 E.

This is all subject to
the decree of

S. C. Frost et al.

vs

Dec 13, 1909.

Alturas Water Co.

a decree allotting all waters
of upper reaches of streams
some on the Malad.

MICROFILMED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

WILLA JUSTICE, ETHEL J. JONES,
EARL R. JUSTICE, FLORENCE
JUSTICE SHARP,

Plaintiffs,

-vs-

HAROLD HOLMES, and MARK R.
KULP, State Reclamation Engineer
of the State of Idaho,

Defendants.

J U D G M E N T

The above matter came on for trial before the above court sitting in regular session at Gooding, Idaho, on March 26, 1948, the plaintiffs appearing in person and by their attorneys, Bissell & Bird, and the then defendant John F. Edinborough appearing in person and both of the then defendants appearing by their attorneys, James, Shaw & James.

Whereupon, testimony and other evidence was introduced and admitted on behalf of all parties and the matter briefed by respective counsel and the court thereafter, in the presence of said attorneys, inspected the premises involved in the action. The court being now fully advised in the premises and having heretofore made his findings of facts and conclusions of law:

NOW, THEREFORE, It is hereby Ordered and Decreed as follows:
That the application of the then defendant John F. Edinborough for transfer of .80 cubic feet per second (40 inches) of the waters of Big Wood River with a priority of May 31, 1900 decreed to William Justice in the case of William Justice vs. S. H. Chapman from the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 35, Township 6 South, Range 13 E.B.M. to the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 35 and the West Half of the West Half (W $\frac{1}{2}$ W $\frac{1}{2}$) of the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 35, Township 6, South, Range 13 E.B.M., filed in the Department

of Reclamation of the State of Idaho on or about the 10th day of May, 1947, is hereby granted and Order No. 715 of the State Reclamation Engineer of the State of Idaho made on September 6, 1947 granting said transfer is hereby approved, and the above mentioned water right is hereby transferred and made appurtenant to the said Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section 35, Township 6 South, Range 13, E.B.M., and the West Half of the West Half of the Southwest Quarter of the Southwest Quarter ($W\frac{1}{2}W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$) of Section 36, Township 6 South, Range 13, E.B.M., provided, however, that the said Harold Holmes and his successors in interest, before making use of any of said 40 inches of decreed water on the above mentioned 10-acre tract, shall install suitable and adequate headgates and measuring devices in said Justice ditch for diverting water from said ditch for the irrigation of said 10-acre tract, and no water shall be diverted from the Justice ditch for the irrigation of said 10-acre tract except through such headgates and measuring devices, such devices to be boxes constructed of wood, or no less durable material, at least two inches in thickness, with wings extending at least three feet into the banks of the ditch, with cut-off under the box extending at least two feet underneath the bottom of the ditch, and with slide gate in the opening of the box;

At any and all times the defendant Holmes, or his successors in interest, is diverting water from the Justice ditch onto said $W\frac{1}{2}W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$, whether or not water is then being diverted onto said $SE\frac{1}{4}SE\frac{1}{4}$, the maximum diversion from such ditch shall be 40 inches for either or both tracts.

No costs awarded.

Dated February 9, 1949.

/s/ D. H. Sutphen
District Judge

MICROFILMED

Application for Transfer of Water Right

STATE OF IDAHO,

County of Gooding

} ss.

John F. Edénborough

, being first duly sworn, deposes and says:

That his name is John F. Edénborough; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is

Hagerman, Idaho

That he is the owner and using a certain water right, bearing date of priority of May 31, 1900 19... for 0.80 cubic feet per second of the waters of Big Wood River

County of Gooding, State of Idaho, decreed to William Justice

by decree of Judge, H. F. Ensign of the Fourth Judicial District of the State of Idaho, in and for the County of..., in the case of William Justice

vs. S. H. Chapman, said decree bearing date of...

(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. 7-AB in the County of Gooding and State of Idaho, to-wit:

SE $\frac{1}{4}$ Sec. 35, T. 6 S.R. 13 E., B.M.

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 NW $\frac{1}{4}$ Sec. 30 of Section 30, Township 6S, Range 14E, B. M., and conducted to the above described lands through the Justice Ditch

as per map herewith and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of 0.80 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 Gooding and State of Idaho, to-wit:

SE $\frac{1}{4}$ Sec 35 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36 T. 6 SR 13 E.

That his reasons for desiring to make such transfer are as follows: Will use about 10 acres of the land in Sec. 35 for pasture, as it is very rocky, and will irrigate 10 acres of land in Sec. 36 in lieu thereof.

That he intends to divert and convey said.....0.80.....second feet of water to the tract of land last above described in the following manner, to-wit: through the same ditch as before,
i.e the Justice ditch

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.

Subscribed and sworn to before me this

A. D. 1947

John J. Edinborough
Applicant.
10 day of May
And S. Craig
Notary Public.

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water now diverted? Big Wood River

Where is the diversion point now located? NW 1/4 Sec. 30, T. 6 SR 14 E.

Through what ditch is it now conducted? Justice Ditch

How much land is now irrigated by the water sought to be transferred? approx forty acres

Give the description: SE 1/4 Sec. 35, T. 6 SR 13 E.

What is the total amount of water in inches, or second feet, dedicated to said land? 0.80 cfs.

What kind of crops are being raised? Hay grain and pasture

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

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

Give location of new point of diversion, if change is to be made. No change

Through what ditch will it be conducted after transfer? Same. Justice 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?

A supplemental right from American Falls Res. Dist No. 2.

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 No

Signed John J. Edinborough
Applicant.

STATE OF IDAHO,

County of Gooding

ss.

W.D. Fales

and R.V. Moyes

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 Gooding, Idaho that he is a user of water from Big Wood River, in Water District No. 7AB County of Gooding, State of Idaho; that he has read or heard read the foregoing affidavit and petition of John F. Edinborough 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.

W.D. Fales

R. V. Moyes

Subscribed and sworn to before me this 10th day of May

A. D. 19 47

Paul S. Craig

STATE OF IDAHO,

County of Lincoln

ss.

I, Mans H. Coffin

Watermaster of Water Dist. 7-AB

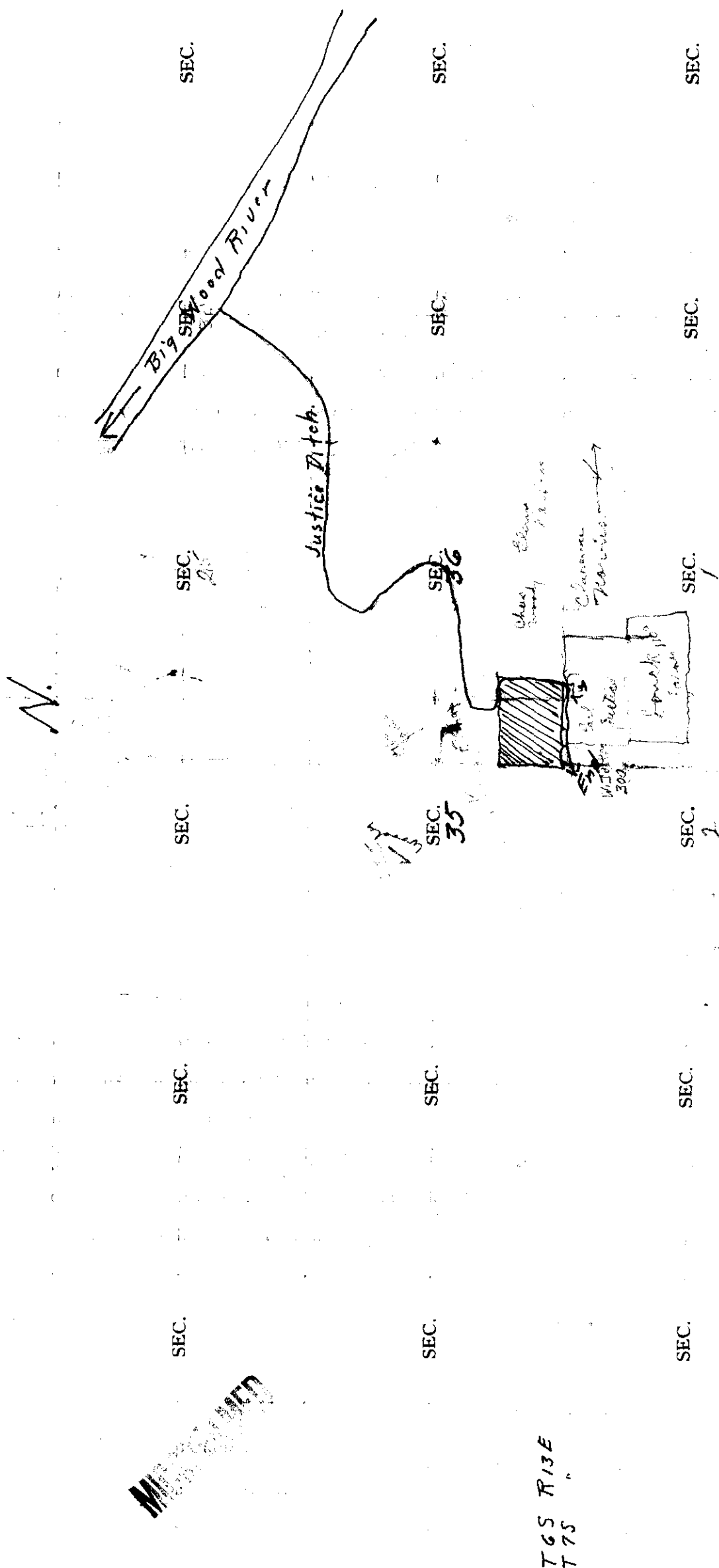
Water District No. 7-AB, County of Blaine, Lincoln, Gooding of Idaho, whose postoffice address is Shoshone, have read or heard read the foregoing affidavit and petition of John F. Edinborough, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will 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: no one should be injured by this transfer

Mans H. Coffin

Watermaster Dist. No. 7-AB

Dated at 7th, Idaho, this May day of May, 19 47

Name of Applicant John F Edinborough



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