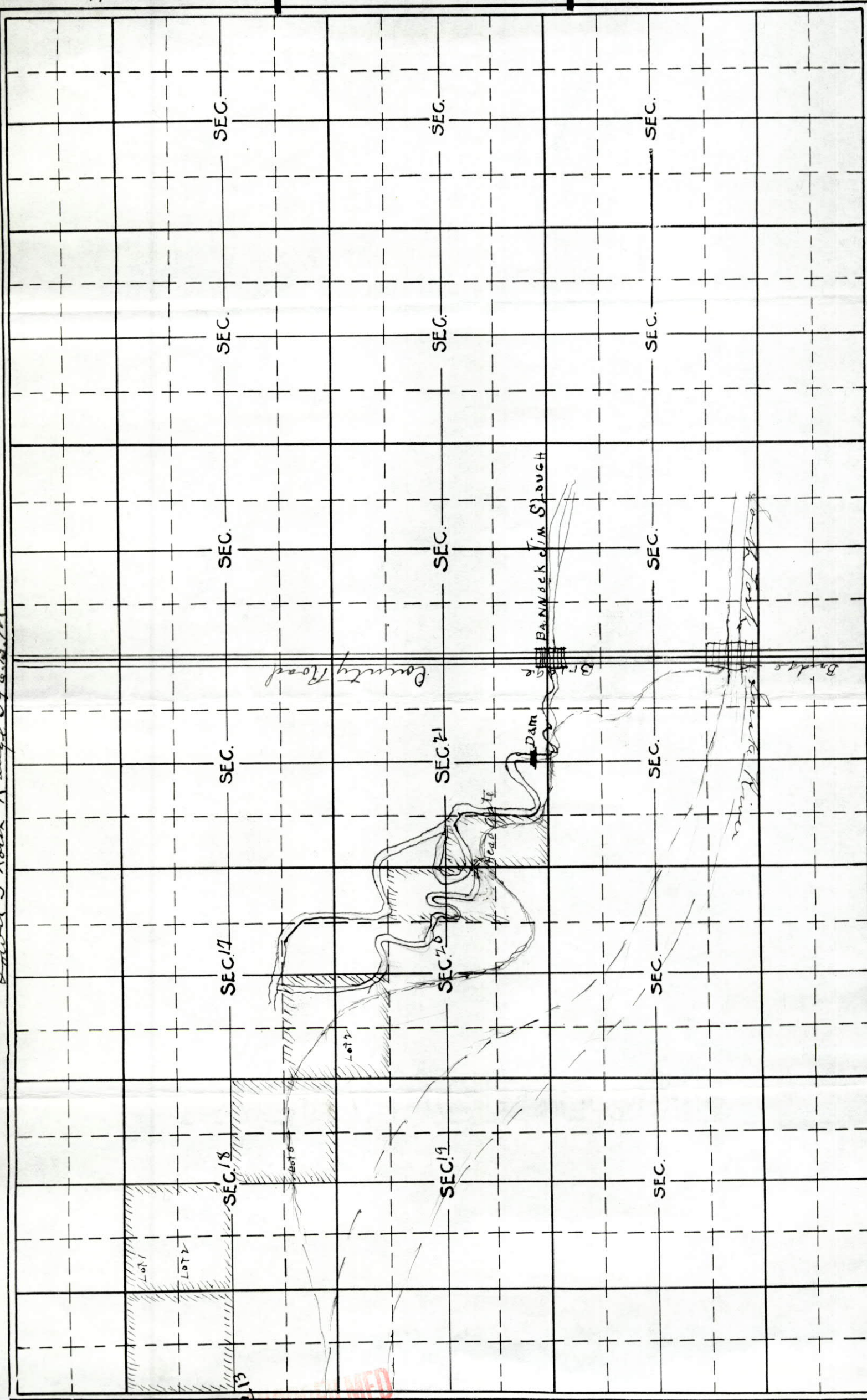


Name of Applicant *O. H. Olive*

*Town 5 North Range 39 E. B. 7M*



1021  
- Your Honor -

My opinion is you cannot determine  
ownership of any of the water. The  
only question is - should change of place  
of use of such water and all the  
loss, as stated in his application,  
injure others - If it does it should  
not be granted; if it does not it  
should be granted. The complaint is  
Horn would not be damaged because of  
depriving him of his water but it must  
be some damage by reason of the different  
place of use and as for that seepage  
throwing waste water on him etc.  
If Horn owns this particular water  
he has his check action to grant title  
to the same in District Court.

My opinion is you should cancel  
the reworking order and accordingly the  
original certificate of change to  
grant the change to such of the claimed  
waters as claim may be the owner  
of - and in the before of your  
order and judgment make a finding  
that the transfer of such of said water  
as owned by applicant claim in the  
manner applied for would not injure  
predecessor Horn or any one else.  
Paperly refer to both records already made  
and to the hearings reciting that notice was properly  
given and read etc. Then say I am advised by the  
counsel for the claimant that the

RECORDED

## OFFICE OF THE STATE ENGINEER OF THE STATE OF IDAHO

IN THE MATTER OF THE )  
 APPLICATION OF O. H. OLIVE )  
 FOR TRANSFER OF WATER RIGHT )  
 CASE # 15 )

## ORDER

This case came on regularly for hearing at Idaho Falls, Idaho, before the State Engineer, at 10 O'clock A.M., January 10th, 1919, on protest of F. L. Koon, against the issuance of transfer in the above entitled case, and the State Engineer having carefully considered the evidence presented by the applicant, O. H. Olive, and the protestant, F. L. Koon, and being fully advised of the facts and the law, finds:

1- That the said 12 second feet of the waters of the Snake River claimed by the applicant, O. H. Olive for a transfer to the Harrison Canal Company is claimed by the protestant, F. L. Koon as his property, and as an appurtenance to the lands heretofore conveyed by the applicant to the protestant, and now the property of the said protestant.

2- That the ownership of the said 12 second feet of water being in dispute and being claimed both by the applicant and the protestant, and the question as to who is, or who is not the owner of the said 12 second feet of water as between the applicant and the protestant, being in dispute, and the power of determination thereof not being vested in the State Engineer, and the State Engineer finds that the question is one not for the determination of his office.

3- That Certificate of Transfer #231 issued on the 9th day of December, 1918, transferring the said 12 second feet of water to the use of certain lands lying in the territory covered by the Harrison Canal Company, all of which is more fully set out in the said Certificate, and which said Certificate has been recorded on page 389, in Book 2 of Miscellaneous, Records of Bonneville County, Idaho, was issued through error and mistake and upon improper information, and that the said protestant, F. L. Koon was not a party thereto.

WHEREFORE, it is ordered and adjudged that the application of O. H. Olive, heretofore filed in the Office of the State Engineer, praying for the transfer of the use of 12 second feet of the waters of Snake River, having a priority date of June 1st, 1889, from the lands situate in Sections 13, 17, 18 and 20, Township 5 North, Range 39 E. B. M. to which lands the said water was decreed, to the Harrison Canal Company for the use and benefit of lands lying under the canal owned by the said Company, as more fully described in the said application, be, and the same is hereby denied.

It is also ordered and adjudged that Certificate of Transfer #231 issued to the Harrison Canal Company of Idaho Falls, Idaho, by the State Engineer under date of December 9th, 1918, be, and the same is hereby recalled, revoked and annulled, and made to all intents purpose as though never having been issued.

Dated this 15th day of March, 1919.

Fred A. Wilkie

State Engineer of Idaho.

## OFFICE OF THE DEPARTMENT OF RECLAMATION

STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION)  
 OF O. H. OLIVE FOR TRANSFER OF )  
 WATER RIGHT- Case No. 15 )

ORDER

This case came up for reconsideration and review on May 8, 1919, upon the petition of O. H. Olive, bearing date of April 12, 1919, said petition being filed by Holden and Holden, Attorneys-at-law, on behalf of the petitioner, and requesting a rehearing and an opportunity to submit further arguments and authorities in support of the original petition for transfer, and the Commissioner of Reclamation of the State of Idaho, having carefully considered and reviewed all of the evidence and documents on file in connection with the case, together with the brief filed by Messrs. Holden and Holden for the petitioner, received in the office of the Department of Reclamation, May 5, 1919, the letters of O. A. Johannesen, Attorney for F. L. Koon, protestant, bearing dates of April 29 and May 5th respectively, and being duly advised of the facts in the case, and having considered the matters of law involved therein with the Attorney General of the State of Idaho, and having in hand his written opinion considering the same, finds:

1. That under date of December 14, 1918, O. H. Olive duly executed an application for transfer of water right in the amount of twelve cubic feet per second of the waters of the South Fork of the Snake River in Fremont County, State of Idaho, and filed the same in the office of the State Engineer,

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 MAR 15 1919

which said waters were covered by a decree handed down by the Hon. J. M. Stevens, Judge of the Sixth Judicial District of the State of Idaho, in the case of the Rexburg Irrigation Company versus the Teton Irrigation Canal Company, said decree bearing date of December 16, 1910, all as set forth in the said petition and as shown by the records of the office of the Department of Reclamation and by the said decree.

That the said petitioner by his application requests permission to transfer his said twelve second feet of water from the lands to which it was decreed and upon which said water has heretofore been used, which lands are located in Twonship 5 North, Range 36 East of Boise Base and Meridian, and more particularly in the said petition, to lands now arid in character and requiring artificial application of water for the profitable production of agricultural crops, described as Section 11, Township 3 North, Range 38 East Boise Base and Meridian, which said lands are lying under what is known as the Harrison Canal through which Canal the said petitioner desires to convey the said twelve cubic feet per second of water.

2. That on December 19, 1918, Fred A. Wilkie the then State Engineer of the State of Idaho, issued certificate of transfer No. 231 to the Harrison Canal Company thereby granting the prayer of the petitioner herein. The said transfer was duly executed and delivered and recorded in Book No. 1 of Transfers on Page 231 of the Office of the State Engineer.

3. That subsequent to the issuing of the said certificate of transfer, and on January 3, 1919 F. L. Koon, through his Attorney, O. A. Johannesen, filed a protest with the State Engineer in the form of a letter protesting against the said transfer and alleging, among other things, that the petitioner, O. H. Olive was not the owner of the water in question, and that as a result of the said protest, the State Engineer reopened the case and temporarily set aside the above stated certificate, and after due notice to the interested parties, held a hearing at Idaho Falls on the 10th day of January, 1919, at which time, the petitioner through his Attorney, presented and offered oral testimony in support of his petition for transfer, and the protestant, F. L. Koon, through his Attorney, offered oral testimony in support of his contentions concerning ownership and to the said waters.

4. That all of the records and evidence on file in this case disclose the fact that there is a controversy as to the real ownership of the said twelve cubic feet per second of water by reason of the fact that certain of the lands recited in the Court decree were transferred and sold by the petitioner Olive to Mr. Koon. The petitioner alleges and contends that when the said lands were sold, the water right therefor was reserved and not transferred, and that since the date of the said transfer, none of the waters herein have been used on the lands which were purchased by Koon. The records further show that Mr. Olive, the petitioner herein is now, and has been for some years past, the owner of certain lands to which it is contended that said waters were for a number of years following the date of the sale of lands to Koon, applied. But that the diverting works and the canals through which the said water was conveyed to the lands have been destroyed by a change in the channel of the South Fork of Snake River, and that a large amount of the land owned by both the petitioner and the contestant has, within recent years, been washed away and rendered useless for agricultural purposes by the shifting channel of the South Fork of Snake River.

That a careful examination of the conditions on the ground recently conducted by me, the Commissioner of Reclamation, disclosed the fact that portions of the irrigation works were destroyed as hereinabove stated; that the same have not been replaced or repaired, and that the protestant herein has no means under the present existing conditions to divert or utilize the said water.

5. That it is apparent from the records and evidence, together with a consideration of conditions on the ground, that the protestant Koon herein, or any other persons will in no way be injured by the transfer by the petitioner, Olive, of such portion of the twelve second feet of water as he may own.

THEREFORE, it is hereby ordered and adjudged that the revoking order of Fred A. Wilkie, State Engineer issued on the 15th day of March 1919, wherein he revoked and set aside certificate of transfer No. 231, is hereby cancelled and held for naught, and that the aforesaid certificate of transfer, No. 231, is hereby reinstated, but subject to the following modifications: That the Harrison Canal Company has a right to the use of only such portion of the twelve second feet of water as may have been owned by O. H. Olive on the date of his transfer by deed to the said Harrison Canal Company.

Dated this 8th day of May, 1919.

W. G. Swendsen.

Commissioner of Reclamation.

See case Koon vs John Empey, W.M. et al  
Voids transfer -

~~Reinstated by order of~~

S T A T E O F I D A H O  
OFFICE OF THE STATE ENGINEER.  
CERTIFICATE OF WATER RIGHT.  
Transferred right No. 231.

This is to certify that the HARRISON CANAL COMPANY, of Idaho Falls, State of Idaho, has a right to the use of the waters of the South Fork of Snake River, for irrigation and domestic purposes, and that said right has been confirmed by decree of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Fremont, to O. H. Oliver, in the case of Rexburg Irrigation Company, et al., plaintiffs, vs. Teton Irrigation Canal Company, et al., defendants; dated December 16, 1910, by J. M. Stevens, Judge, wherein twelve (12) second feet of the waters of Bannock Jim Slough, in Water District No. 36, were dedicated to the NE $\frac{1}{4}$  Sec. 13, T. 1 N., R. 38 E., B.M.; the N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{2}$ SE $\frac{1}{4}$  and Lot 5 Sec. 18, the S $\frac{1}{2}$ SW $\frac{1}{4}$  Sec. 17, Lot 2 and part of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 20, the E $\frac{1}{2}$ NW $\frac{1}{4}$  and Lots 1 and 2 Sec. 18, T. 5 N., R. 39 E., bearing date of priority of June 1, 1889, the said decree being entered at Boise, Idaho, in the records of the State Engineer, in Volume 3 of Decrees, Page 471, and transferred to the Harrison Canal Company by deed from O. H. Olive; that, upon application of the above named Harrison Canal Company for a transfer of water right, made before the State Engineer of the State of Idaho, and after due investigation, said application having been granted by the said State Engineer, the right to use twelve (12) second feet of said waters upon the lands above described is hereby abandoned and the description of the lands to be irrigated under such right and to which the water right hereby confirmed shall by this instrument become appurtenant, for irrigation and domestic purposes, is as follows: 440 acres of land in Section 11, Township 3 North, Range 38 East of the Boise Meridian, to be evidenced and specified by certificates of water rights in the Harrison Canal Company, and limited at any given time to an amount actually needed and beneficially used for said purposes, and shall not exceed the following amount:

12 second feet, dated June 1, 1889.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Engineer of the State of Idaho, affixed at Boise, Idaho, this 19th day of December, 1918.

(SEAL)

FRED A. WILKIE,  
State Engineer.

*Voided in case  
Koon vs John Kimpson, W.M. et al*

*See last paragraph of this Transfer Decree 2318*

RECORDED

*Licensed*

S T A T E O F I D A H O  
 OFFICE OF THE STATE ENGINEER  
 CERTIFICATE OF WATER RIGHT  
 Transferred Right No. 230.

This is to certify that EDGAR A. GUIDINGER of Downey, State of Idaho, has a right to the use of the waters of unnamed springs, for irrigation and domestic purposes, and that said right has been confirmed by a Water License issued January 9, 1914, by the State Engineer of the State of Idaho, Number 7873, wherein 0.4 of one second foot of the waters of unnamed springs, in Water District No. 17H, was dedicated to the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 13, Tp. 12 S., R. 36 E., B. M., bearing date of priority of November 16, 1911; said License being entered at Boise, Idaho, in the records of the State Engineer in Volume 3 of Water Licenses, page 1536; that upon application of the above-named Edgar A. Guidinger for a transfer of water right, made before the State Engineer of the State of Idaho, and, after due investigation, said application having been granted by the said State Engineer, the right to use 0.4 of one second foot of said waters upon the land above described is hereby abandoned and a description of the land to be irrigated under such right and to which the water right hereby confirmed shall by this instrument become appurtenant, for irrigation and domestic purposes, is shown in the following table, limited at any given time to an amount actually needed and beneficially used for said purposes, and shall not exceed the following amount:

| 0.4 second feet, dated November 16, 1911. |                                                                     |                                                                     |                                                                     |                                                                     |        |
|-------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|--------|
|                                           | NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ | NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ | NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ | NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ | Total. |
| Twp Rge Sec                               |                                                                     |                                                                     |                                                                     |                                                                     |        |
| 12S 36E 24                                |                                                                     |                                                                     | 30                                                                  |                                                                     | 30     |

The right to the use of the waters aforesaid, hereby confirmed, is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

No right to the use of waters on the lands herein named exists at the date of this certificate, except as herein stated.

WITNESS the seal and signature of the State Engineer of the State of Idaho, affixed at Boise, Idaho, this 23rd day of November, 1918.

(SEAL)

FRED A. WILKIE,  
 State Engineer.

Recorded in Water Dist. No. 17H 11-25-18.M.E.B.  
 Platted on Map--Water Dist. No. 17H 11-25-18.S.T.B.  
 Points of Diversion: (1) 150' N. & 165' E. of SW  
 Cor of SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 25; (2) 75' S. & 65' E. of center  
 of Sec. 25; (3) 195' S. & 75' E. of center of Sec.  
 25, all in Tp. 12 S. R. 36 E.B.M.

**MAGROFILMED**

RECEIVED

FEB 27 1911

OFFICE OF STATE ENGINEER

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT.

Maxburg Irrigation Company, et al.,

PLAINTIFFS.

DECREED.

Idaho Irrigation Canal Company, et al.,

DEFENDANTS.

This cause coming on to be heard this 17th day of

1910, upon the report of F. J. Cowen, Referee heretofore appointed

for the purpose of taking the testimony and making recommendations

as to Findings of Fact, Conclusions of Law and Decree, to be entered

herein, and the said F. J. Cowen, having filed his report of the

testimony taken, and his recommendations as to Findings of Fact

and Conclusions of Law, which have heretofore been adopted, and the

respective plaintiffs and defendants and cross-complainants appearing

herein by their respective counsel, and the Court being fully informed

and advised in the premises, and having ordered that judgment be

entered in accordance with the report and recommendations of the said

Referee, therefore, by reason of the law and the Report and Findings

of Fact and Conclusions of Law aforesaid,

It is ordered, Adjudged and decreed, that the several parties

plaintiffs and defendants herein named, do have judgment respectively

for a right to use, for irrigation and other purposes, the following

number of inches of water, each fifty inches thereof to be equivalent

to a flow of one cubic foot per second, as prescribed by the law

MICROFILMED

~~0558~~ 23-0066

Nickerson, E. F. 100 inches. June 30, 1903. ✓ Big Elk Creek.

Niederer, Emil

The Sunnydell Irrigation Canal Company.

~~0568~~ 1 136

Nielson, H. B. 1,000 inches. June 1, 1883. ✓ Snake River. Trans #247-583

Nolan, Carrie,  
widow of A. D.  
Nolan, deceased.

North Salem Agricultural &amp; Milling Canal Company.

~~0564~~ 1 137

Nord, James O.

240 inches. June 1, 1890. ✓ Snake River. Trans #19

~~0568~~ 22 0426

Nordval, C.

50 inches. June 1, 1895. ✓ Darby Creek.

~~0568~~ 22 0427

Nordval, C.

110 inches. May 26, 1899. ✓ Darby Creek.

~~0564~~ 1 138North Rigby  
Irrigation  
Company

2,500 inches, June 10, 1883. ✓ South Fork of the Snake River.

~~0565~~ 22 0428North Salem  
Agricultural  
& Milling  
Canal Company.

1,325 inches. June 1, 1888. ✓ Teton River, as a high-water right, until July 1st of each year.

Nowlin, Jabez, Sr.

The Farmers' Friend Canal Company

~~0566~~ 35 0022

Nugent, L. A.

80 inches. May 1, 1903. ✓ McTucker Springs.

0.~~0567~~ 23 0048

Oakden, Robert

160 inches. June 1, 1893. ✓ Rainey Creek.

~~0568~~ 22 0429

O'Brien, James A.

100 inches. June 1, 1891. ✓ North Leigh Creek.

Olesen, James

North Salem Agricultural &amp; Milling Canal Company.

~~0569~~ 1 139

Olive, C. H.

600 inches. June 1, 1889. ✓ Bannock Jim Slough.

~~0570~~ 1 140

Olive, O. H.

160 inches. May 1, 1905. ✓ Bannock Jim Slough.

Olmstead, Henry M.

Wyoming &amp; Darby Bench Canal Company.

Orme, Samuel W.

Pioneer Ditch Company.

Orr, Robert

Watson Slough Irrigation Company.

~~0571~~ 21 0081

Osborn, R. A.

120 inches. June 1, 1895. ✓ Monet Springs, Guy

MICROFILMED

*Protestants Ex A.*  
*Protestants Ex A*

IN THE DISTRICT COURT.

OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO IN AND FOR THE COUNTY OF BONAHE.

REXBURG IRRIGATION COMPANY  
A CORPORATION ET AL.,  
Plaintiffs.

WETCO IRRIGATION CANAL COMPANY  
A CORPORATION ET AL, AND  
O. H. OLIVE

Made defendant by order of Court  
Defendants.

AND THE OLD CROSS-  
COMPLAINT.  
of  
O. H. OLIVE.

CROSS--COMPLAINT

And for a cross complaint herein this answering defendant complains and for a first cause of action alleges:

That the said defendant and cross-complaint, O. H. Olive, and his grantors and predecessors in interest are now and since the 19th day of September, 1892, have continuously been the owners in the possession and entitled to the possession of that certain tract of land situate lying and being in the county of Fremont and State of Idaho, and particularly designated and described as follows, to-wit:

The North Half of the Southeast quarter and the Southeast quarter of the Southeast quarter and Lot 5 Sec. 18, and the South Half of the Southwest quarter of Sec. 17 and Lot 2 and part of the Northeast quarter of the Northwest quarter of Sec. 20, described as follows; Beginning at Northwest corner of said Northeast quarter of Northwest quarter of Sec. 20 thence East 20 rods, thence South 80 rods, thence West 20 rods, thence North 80 rods to place of beginning. Said land being in Tp 5 N R 39 E. B. M. Also East Half of Northwest quarter and Lots Land 2 of Sec. 18 Tp 5 N R 39 E. B. M. Being 452 acres in area.

II

That said above described land is arid agricultural land and required the artificial application of water thereon before crops can be profitably or successfully raised thereon.

III

That said above described land is riparian to Bannock Jim Slough and South Fork of Snake river and the only available water supply for use thereon is from the said Bannock Jim Slough.

IV

That on the nineteenth day of September, 1892 this cross-complaint his grantors and predecessors in interest appropriated six hundred inches of the flow of the waters of Bannock Jim Slough a tributary of the south Fork Snake River and by means of dains and ditches appropriated and diverted said water from said stream and conducted the same to and upon the said hereinbefore described lands for use thereon in irrigating the same and for domestic purposes and use of stock and since said time and continuously during

NOT RECORDED

the irrigation season of each and every year, except when prevented from so doing by the unlawful acts of plaintiffs and co-defendants herein, this defendant and cross-complainant has used said waters upon said land in said amount, for the purpose of irrigating and cultivating said lands and for stock and domestic purposes and that the use of the said water to said amount was and is necessary for said purposes.

V

That this cross-complainant has placed said land hereinbefore described during all the times herein mentioned, in a state of cultivation as fast as his means and ability so to do would permit, and that there is now cultivated of said land three hundred acres. That four hundred fifty-two acres of said land are susceptible of irrigation and cultivation.

WHEREFORE\*-----

State of Idaho  
County of Fremont.

SS

I, Sam A. Trude, Clerk of the District Court of the 9th Judicial District in the State of Idaho for the County of Fremont, do certify that the above and foregoing is a full true and correct copy in part of O.E. Olive. Said cause being more fully described in cross-complaint Number 303 in the above entitled cause.

In witness I wherefore attach my hand and the official seal of this Court, this the 7th day of January 1919.



*Sam A. Trude*  
Clerk of the Court,  
of Fremont County, State of Idaho.

RECORDED

Idaho Falls, Idaho,

Dec 20 1918

Hon. Fred. A. Wilkie  
State Engineer  
Boise Idaho

RECEIVED

JAN 2 1919

NAME OF STATE ENGINEER

Dear Sir

Mr Olive has handed me your letter to Mr Koon and one addressed to ~~the~~ him revoking the transfer of his water. Will you kindly furnish me with a copy of the protest, As to the delay in completing the records will say that while your letter was dated Dec 21 it was not mailed until 11:15 P.M. on the 23<sup>rd</sup> and arrived here on Christmas and was delivered on the 26<sup>th</sup>. On the 27<sup>th</sup> Mr Olive mailed to you the required Affidavit - Deed. And a statement relative to the carrying right in the Harrison Canal. Which shows that we have not acquiesced.

Yours Very Truly  
Chas. H. DeCamp

RECEIVED

Idaho Falls Id. Dec 27-18

Hon Fred A. Wilkie State Engineer  
Boise Idaho

Dear Sir:

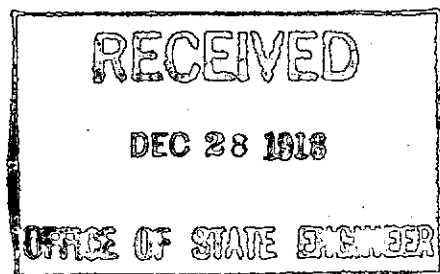
In reply to yours of the 21<sup>st</sup> which I have just received. Am handing you herewith deed from myself to the Harrison Canal Co. An Affidavit dictated by Mr Chas H. DeCamp and a list of the lands to which the water is dedicated.

In regard to the water right in the Harrison Canal will say. that at a meeting of the board directors held on the 24<sup>th</sup> of this month it was agreed that they would take over this water and would issue certificates of stock for 600 inches of water at their next annual meeting which occurs in January. They also agreed to notify you of the action taken at this meeting.

I also want to say that while it is to be regreted that there was any misunderstanding in regard to this case. it is all cleared up now and I want to thank you for clearing it up and making the transfer

Yours Truly

O. H. Olive



MICROFILMED

December 27, 1918.

Re: Transfer O. H. Olive,

Mr. C. H. DeCamp,  
Idaho Falls, Idaho.

Dear Sir:

A protest has been filed in this office against the transfer asked for by O. H. Olive, and upon which the record is not complete as per agreement with you. I will be compelled to clear up the objections raised against the issuance of this transfer. I have entered an order revoking the transfer until further notice to you.

Very truly yours,

FAW/MB

State Engineer..

File Case 15. ✓

RECEIVED  
MAY 10 1919

December 27, 1918.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:

A protest has been filed in this office against the transfer asked for by yourself, and upon which the record is not complete as per agreement with you. I will be compelled to clear up the objections raised against the issuance of this transfer. I have entered an order revoking the transfer until further notice to you.

Very truly yours,

FAW/MB

State Engineer.

Case 15. ✓

RECEIVED  
DEC 28 1918

December 21, 1918.

Re: Application for Transfer of Water Right  
District 36.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:

I gave to Mr. De Camp on the 19th, a certificate of transfer for 600 inches of water from you to the Harrison canal, upon Mr. DeCamp's promise to furnish the records of this office with the following documents:

1. A deed of this water right from yourself to the Harrison Canal Company.
2. A certificate from the Harrison Canal Company that they will issue or have issued, water rights in their canal system representing said 600 inches of water, and a list of the lands to which it will become dedicated.
3. An affidavit from yourself covering the same points as in Mr. De Camp's affidavit.

I will ask you to please furnish these documents without delay.

Very truly yours,

FAV/ID  
CC: C.H. DeCamp.

State Engineer.

Case: 15 ✓

RECEIVED

December 21, 1918.

Re: Transfer O. H. Olive.

Mr. C. H. DeCamp,  
Idaho Falls, Idaho.

Dear Sir:

I enclose you herewith a copy of letter to Mr.  
O. H. Olive which will explain itself to you.  
I want you to see to it that he does not delay  
in furnishing these documents for the record  
of this office.

Very truly yours,

FAW/MB

State Engineer.

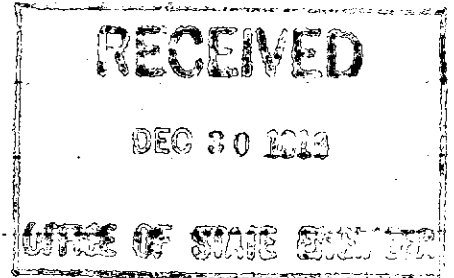
Case:15 ✓

MICROFILMED

Idaho Falls, Idaho,

Dec 27 1918

Hon. Fred. A. Wilkie  
State Engineer.  
 Boise Idaho



Dear Sir

Yours of the 21<sup>st</sup> just reached me today. The delay was no doubt due to the Christmas rush.

Relative to the papers you require for record in the Olive case. Will say that the affidavit and deed will be mailed you today.

On the 24<sup>th</sup> inst I accompanied Mr Olive to Union to a Board Meeting of the Harrison Canal. Where a resolution was passed granting to Mr Olive a carrying right for 660' in their Canal. And agreed to issue stock for the same at their Annual meeting which will be held in January next. Their Secretary was authorized to mail you a copy of the resolution which I suppose you have on file by this time.

If there is any thing further you require

if the affidavit does not fully cover the ground please let me know and I will give it immediate attention.

I have taken the matter up with the Canals on Egner Bench. Relative to being represented at the Twin Falls meeting next month. Hope you will soon have the prospectus of the contemplated law off the press and ready for distribution. A large majority of those with whom I have discussed the matter seem to be favorably impressed.

With compliments of the season

I am Yours Very Truly  
Chas. A. DeCamp

County of Bonneville )  
State of Idaho )ss.  
)

O.H.Olive, being first duly sworn, deposes and says; That on December 16th, 1910, he was decreed 600 inches of the waters of Bannock Jim Slough by J.M. Stevens, Judge of the Sixth Judicial District in and for the County of Fremont, State of Idaho, and that he has made beneficial use of said 600 inches of water from 1908 untill 1913 inclusive and that no one will be injured by a transfer of said water.



O.H.Olive  
Subscribed and sworn to before me this 27th day  
of December, A.D. 1918.

J.M. Adams  
Notary Public.  
Residence, Idaho Falls, Idaho.

List of lands to which the water will be dedicated;  
North-east quarter, north half of the north-west  
quarter, north half of the south-east quarter, south-  
~~west quarter of the southeast quarter and the east~~  
half of the southwest quarter, section 11, township  
3 north, range 38 east of the Boise Meridian.

July 27, 1919.

Re Deed.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:--

Per your request the 18th inst.,  
I am returning herewith Warranty Deed from  
you to The Harrison Canal Company.

Very truly yours,

W. G. SWENLSEN,

Commissioner of Reclamation.

By \_\_\_\_\_

D

RECORDED  
INDEXED

Idaho Falls Idaho July 18-19

Hon W. G. Swendsen

Department of Reclamation  
Boise Idaho

Dear Sir:

At the request of Fred A. Wilkie  
I sent to your office a deed for six  
hundred inches of water from myself  
to the Harrison Canal Co for his inspection.  
Will you please look it up and return  
it to me.

Yours Truly  
O. H. Olive

MICROFILMED

applicant Ex C.

## Application for Transfer of Water Right

STATE OF IDAHO,

County of Bonneville } ss.

Applicant

, being first duly sworn, deposes and says:

That his name is O. H. Olive; that he is of lawful age, a citizen

of the United States and of the State of Idaho, and that his postoffice address is

Idaho Falls Idaho

That he is the owner and using a certain water right, bearing date of priority of June 1<sup>st</sup> 1889 for Twelve cubic feet per second of the waters of The South Fork of Snake River

County of Fremont, State of Idaho, decreed to O. H. Olive

by decree of Judge J. M. Stevens of the Sixth Judicial District of the State of

Idaho, in and for the County of Fremont, in the case of Nesbury Irrigation Co

vs. Teton Irrigation Canal Co, said decree bearing date of Dec 16 - 1910

(or obtained by virtue of License No. .... issued by the State Engineer of the State of Idaho,

dated ....., 19....), bearing date of priority of .....

for the purpose of irrigating the following described lands situate, lying and being in Water District No. 36

in the County of Madison and State of Idaho, to-wit: NE 1/4 Sec (13) Town 1

North Range 38 E.B.M. N 1/2 of SE 1/4 SE 1/4 of SE 1/4 and Lot 5 of Sec 18

S 1/2 of SW 1/4 of Sec 17. Lot 2 and part of NE 1/4 of NW 1/4 of Sec 20.

E 1/2 of NW 1/4 and Lots 1 and 2 of Sec 18 T 5 N R 39 E.B.M. and is the person (or the representative of

the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i. e.

as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters ~~were~~ diverted from said stream about 100 yards south of the NW Cor of  
the SW 1/4 of Sec (21) T 5 N R 39 E.B.M. through the Bannock Jim Slough a  
tributary of the South Fork of Snake River

and conducted to the above described lands through Natural Swails

as per map hereto attached and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of 12 Cubic feet

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 Bonneville and State of Idaho, to-wit:

Four hundred and forty acres of Sagebrush land  
in Sec 11 Town 3 North Range 38 E.B.M.

That his reasons for desiring to make such transfer are as follows: That the land upon which  
said water was used has been largely washed away making it no  
longer profitable for irrigation. And that the Bannock Jim Slough has  
been permanently dammed about one half mile above the present  
point of diversion, making it impossible to divert water for  
the land. Said dam being put in by County Commissioners of  
Madison County at request of land owners below said dam.

That he intends to divert and convey said 12 Cubic feet - of water to the tract of land last above described in the following manner, to-wit: Through the Harrison Canal

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

WHEREFORE, Affiant and Petitioner prays that the State Engineer of the State of Idaho issue to him the proper certificate authorizing such transfer, and give proper notice of the same to the Water Master of Water District No. 36, in accordance with the provisions of Section 3264 of the Revised Codes of Idaho, as amended.



Subscribed and sworn to before me this

J. H. Olive  
14th day of December

J. M. Adams  
Notary Public  
Residence Idaho Falls, Idaho.

**Applicant will answer the following questions:**

From what stream is the water diverted? South Fork of Snake River through Damrock Jim Song  
Where is the diversion point located? About 100 yards South of the NW cor of the SW 1/4 of Sec 21 T 5 N R 37 E B M.  
Through what ditch is it now conducted? Through Natural Swails  
How much land is now irrigated by the water sought to be transferred? None  
Give the description:

What is the total amount of water in inches, or second feet, dedicated to said land? 12 Cubic feet

What kind of crops are being raised?

How much water per acre is now required to irrigate said land? None

What will be the effect on the land now irrigated, if the use of water on it is discontinued? The land is largely washed away and can not be irrigated from present point of diversion

From what stream will the water be diverted if the transfer is made? South Fork of Snake River

Give location of new point of diversion. About the Center of the NW 1/4 of the SW 1/4 of Sec 27 T 4 N R 40 E B M.

Through what ditch will it be conducted after transfer? Harrison Canal

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

inches per acre

Do you claim any other water right for the land from which you seek to abandon the use of this water? No

Is there now any other water right for the land to which you seek to make this transfer? on some of it

Signed

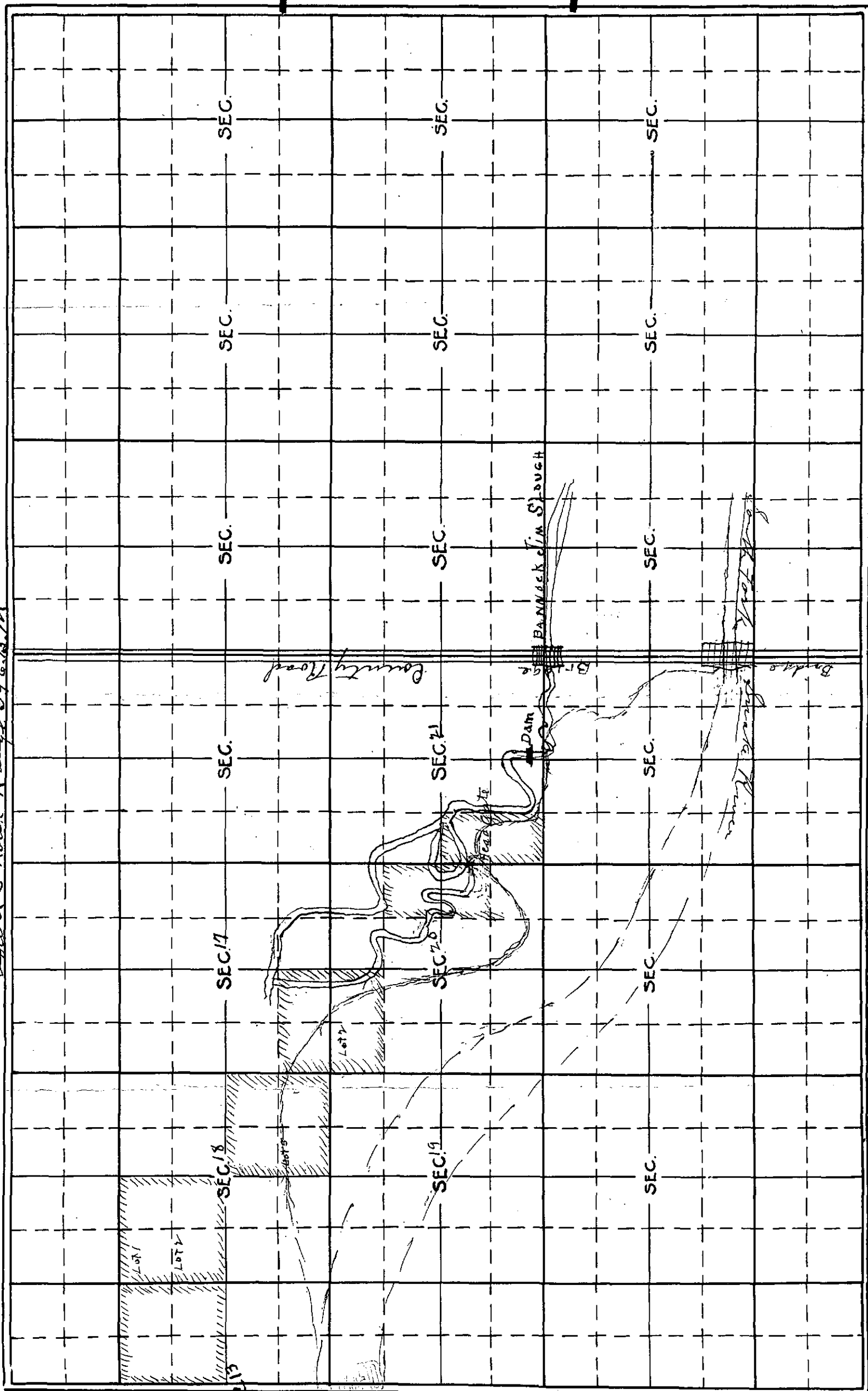
J. H. Olive

Applicant.

RECEIVED  
JAN 1 1919

Name of Applicant V. F. Chow

James S. North Range 39 E. 73 M



STATE OF IDAHO

County of

Bonneville

ss.

A. H. Martin

and

W. O. Cotton

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 Idaho Falls, Idaho that he is a user of water from Snake River, in Water District No. 36, County of Bonneville, State of Idaho; that he has read or heard read the foregoing affidavit and petition of O. H. Olive, 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.

A. H. Martin

W. O. Cotton

Subscribed and sworn to before me this

16<sup>th</sup>

day of

December

A. D. 1918.

J. M. Adams

Notary Public

Residence, Idaho Falls, Idaho

STATE OF IDAHO,

County of

Bonneville

ss.

I, John Empey

Watermaster of

Water District No. 36

County of

Bonneville

State of Idaho, whose postoffice address

is Idaho Falls #3

of O. H. Olive

, have read or heard read the foregoing affidavit and petition of O. H. Olive, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Engineer issue the certificate of transfer as petitioned; ~~or (do not approve of the issuance of the certificate of transfer prayed for)~~ for the following reasons:

John Empey

Watermaster, Dist. No.

36

Dated at

Idaho Falls

Idaho, this

14<sup>th</sup>

day of

Dec

1918.

RECORDED

*Applicant Ex B.*

State of Idaho, )  
                          ) ss:  
County of Ada.)

Charles H. DeCamp, being first duly sworn, deposes and says that he was Water Commissioner of the 1st Division, during the years 1910 and 1911; that, during that time O. H. Olive was using the waters of the South Fork of Snake river upon the West half of the Southwest quarter ( $W\frac{1}{2}SW\frac{1}{4}$ ) Section 21, and the Northeast quarter of Southeast quarter ( $NE\frac{1}{4}SE\frac{1}{4}$ ) and the Southeast quarter of the Northeast quarter ( $SE\frac{1}{4}NE\frac{1}{4}$ ) Section 20, Township 5 North, Range 39 East, B.M.

That subsequent to that time the river has washed the greater portion of this land away; that the original point of diversion was from Bannock Jim Slough, a tributary of the South Fork of Snake river, but that Bannock Jim Slough has been permanently dammed off about one-half mile above this point of diversion hence he is no longer able to divert the water from this point; that by making the change of point of diversion asked for in his application, no one would be interfered with, either prior or subsequent right.

That said water will be conveyed to land which is not now under cultivation but will be brought under cultivation by the use of this water.

*Charles H. DeCamp*

Subscribed and sworn to before me this 18th day of December, 1918.

*Sara M. Brown*

Notary Public for the  
State of Idaho, residing  
at Boiss.

MICROFILMED

Water Location of T. J. Brandon et al.

Notice is hereby given that we, T. J. Brandon and G. A. Brandon, citizens of the United States do hereby claim the waters of Bannock Jim Slough to the extent of 600 inches under a four inch pressure to be diverted from Bannock Jim Slough the point of diversion being in Section 21 Township 5 north of Range 39 East of Boise Meridian, Bingham County Idaho, and we further claim the prior right of way on the said ditch to convey the amount of water specified. Said water is taken for irrigation, agricultural, mining and domestic purposes, and to be used north and west of point of diversion.

The said water is to be diverted by means of a ditch dam and head gates. Said ditch to be ten feet wide at the bottom and four feet deep.

Dated this Sept. 19 1892

T. J. Brandon

G. A. Brandon

State of Idaho )  
County of Bingham ) ss.

T. J. Brandon being first duly sworn says that on the 14th day of September 1892 he posted an exact copy of the foregoing notice in a conspicuous place at the point of diversion.

T. J. Brandon

Subscribed and sworn to before me this 19th day of September 1892.

M. Patrie Clerk  
By Geo. F Gagon Deputy.

Recorded at the request of T. J. Brandon Sept 19 1892 at 9 10 A.M.

M. Patrie Recorder.

Transcribed from D Water Location Record of Bingham County Idaho page 94  
Transcribed from Book A of Water Locations page 456 Fremont County Records.

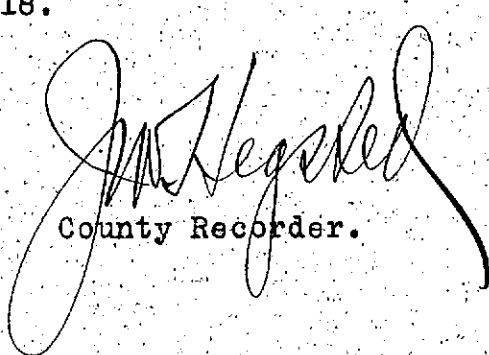
(Transcribed in Book 58 Madison County Records page 251)

RECORDED

STATE OF IDAHO        )  
                          { ss.  
County of Madison    )

I, Jno Hegsted, County Auditor and Recorder of Madison County Idaho, do hereby certify that the foregoing is a true and correct copy of the Water Location filed on by T. J. Brandon et al, now of Record in my office in Book 58, page 251.

Given under my hand and seal at my office in Rexburg Idaho this 9th day of Dedember A D 1918.

  
County Recorder.

RECEIVED  
FILMED



The claim is for six hundred inches of water of the Bannock Jim Slough from the 19th day of December, 1892.

Q. You are the owner of the land described in the first cause of action? A. Yes sir.

Q. Who did you purchase the land of? A. John W. Hurd.

Q. Known as the Brandon ranch is it? A. Yes sir.

Q. How many acres under cultivation at the present time?

A. About 120.

Q How many acre susceptible of irrigation from the Bannock Jim Slough? A. All of it.

Q. Is there a ditch, or dam in the Bannock Slough by which you, running from the slough to the land through which you carry water to irrigate this land? A. Yes sir.

Q. How many inches of water will that ditch carry?

A. 1000 inches. 12000 inches.

Q. 1200 inches, how long have you been the owner of this tract of land? A. About three years.

Q. And have you farmed this land each and every year? A. Yes sir.

Q. Raised crops on it? A. Yes sir:

Q. What kind of crops? A. Barley.

Q. Any other crop? A. Peas.

Q. Any hay land on that land? A. Yes sir.

Q You raise hay there? A. Wild hay.

Q. And this water has been used on the land for that purpose?

A. It has.

Q. What is the nature of the soil? A. Black clay.

Q. Any gravel in it? A. Very little.

Q How many inches of water to the acre does it require.

A. Between three and four.

Q. Is the land arid, and does it require the application of water to make it productive? A. It does.

Holden--I will offer proof by Mr. Olive now upon the second case of action, relative to the water supply for the Southeast quarter of the Northeast quarter, and the Northeast quarter of

the Southeast quarter, section twenty, and the Northwest quarter of the Southwest quarter, lot one of section twenty in township five, north of range thirty-nine east, containing 152.33 acres--you are the owner of that land are you?

A. Yes sir.

Q. Is that part of what is known as the Brandon tract of Land?

A. No sir.

Q. It is not--how long have you known that tract of land?

A. about two years.

Q. From whom did you purchase that land? A. Fred Carrolson.

Q. Gave a warranty deed to you for the land? A. Yes sir.

Q. We claim for this land 150 inches of water of the Bannock Jim Slough, dating from the 12th day of April, 1889--

what is the character of this land, is it arid? A. It is.

Q. Required the application of water to make it productive?

A. Yes sir.

Q. What kind of crops if any do you raise there?

A. Hay and grain.

Q. How many acres of that land are in cultivation ?

A. About ninety.

Q. And how many acres can be cultivated and irrigated from this Bannock Jim Slough? A. All of it

Q. Have you a ditch leading from the Bannock Jim Slough to this tract of land from which you carry water to irrigate the land? A. Yes sir.

Q. What is the carrying capacity ?

A. Could not tell you--never measured it.

Q. Well, just about? A. I should judge about 200 inches.

Q. Is Bannock Jim Slough a tributary of the South Fork of Snake River? A. Yes sir, it is.

Q. And you have used this water upon that tract of land?

A. Yes sir.

Holden--We offer Mr. Olive's testimony now upon the third cause of action, relative to the claim of water to irrigate the Northeast quarter of section thirteen, township five,

north of range thirty-eight, the same being 160 acres of land, the--claiming from the 29th of October, 1902. Calls for two hundred inches of the water of Bannock Jim Slough--you are the owner of that tract? A. It is a claim--it has not been proved up on.

Q. You are in possession of it and have filed on it? A. Yes sir.

Q. What was the nature of your filing? A. Dezert.

Q. This land is dezert in character is it? A. It is.

Q. Have you a ditch leading from the Bannock Jim Slough to and upon this tract of land? A. Not to it yet.

Q. You are constructing it now? A. Yes sir.

Q. When did you begin the construction of the ditch?

A. About two yeats.

Q. and Where does it head? A. At the Bannock Jim Slough.

Q. Are you pushing the completion of the ditch as rapidly as possible? A. As fast as I can.

Q. What is the carrying capacity of the ditch sofar as you have constructed it? A. About four hundred inches.

Q. And you are now engaged in the construction of the ditch?

A. Yes sir.

Q. How long will it take you to complete the construction of this ditch? A. I dont know.

Q. About how long? A. Oh, a month probably.

Q And as soon as you can get to it in warm weather you can complete it in a month? A. Yes sir.

Q. Tt is your intention to complete it for the purpose of irrigating this tract of land? A. Yes sir.

Q. How many acres of land is there under cultivation o n this tract? A. None at all.

Q. And how many acres can be irrigated from the Bannock Jim Slough, and that is under the ditch now under construction?

A All of it.

H<sup>u</sup>lden--We offer in evidence statement "106 of the State Engineer

and the maps referred to in this statement #106 and #107

If the Court please, we would like to reserve the right to office tomorrow morning the evidence of Tom Brandon with reference to the claim of water for what is known as the old Brandon tract of land, and also the testimony of J. W. Curd, which we would like to take at Idaho Falls, as he resides there, with reference to this tract of land.

CROSS EXAMINATION BY SOULE.

Q. Are there any other parties interested in this ditch referred to in the first cause of action known as the Brandon ranch? A. Not in the first cause, in the second cause there is.

Q. That is your own private ditch? A. Yes sir.

Q. In the second cause, who are interested with you?

A. James Nelson, Leon Caory, and Pete Carrolson.

Q. What do you claim in the second cause of action?

A. I don't think the ditch was ever completed--

Holden--You mean in the second--  
Soule--Yes sir.

Witness--We claim--

Holden--152 inches from April 12, 1899.

Soule--You are all still interested in the ditch? A. Yes sir.

Q. In this third cause action, is that an independent ditch?

A. Yes sir.

Q. Nobody interested with you? A. No sir.

CROSS EXAMINATION BY LEE.

Q. How much water did you say this land would require?

A. I think between three and four inches.

Q. Do you mean a continuous flow of between three and four miner's inches during the entire irrigating season?

A. I mean that it takes three or four inches of water the tract of land when you water it.

Q. Oh yes, that is what I was trying to get at-- but of course you only water from two to four times during the season to a crop?

A. Should be twice or three times.

Q. Then your statement is regard to the amount of water required had reference to the quality required at a watering?

A. Yes sir.

Q. But there is an interval between the watering?

A. Yes sir.

Q. And then it is turned out during that interval? A. Yes sir.

RECROSS EXAMINATION BY SOULE.

Q. How long will it take to water 160 acres of land with three or four inches to the acre, onw watering?

A. I could not tell you, never have timed it.

Q. Then you cannot give any definite information as to just how long it will take that many inches of water to water a piece of land? A. No sir, be owing to what shpae you had it in.

CROSS EXAMINATION BY DIETRICH.

Q. Suppose you had it in good shape, would it ake more than four days to water 160 acres of land with six hundred inches fo water? A. I dont suppose it would.

Court--That all gentlemen? Call your next witness.

100-100-100

State of Idaho  
County of Fremont.

SS

I, Sam A. Trude, Clerk of the District Court of the 9th Judicial District in the State of Idaho for the County of Fremont, do certify that the above and foregoing is the full, true and correct copy of the proceedings of the herein entitled case inso far as the affects the testimony of O. H. Olive, as shown on pages 1884 and pages 21890 inclusive .

In witness I wherefore attach my hand and the seal of the Court, this the 7th day of January, 1919.



*Sam A. Trude*  
~~Clerk of the Court,~~  
of Fremont County, State of Idaho.

RECORDED  
JAN 10 1919

# DAY LETTER

## THE WESTERN UNION TELEGRAPH COMPANY

INCORPORATED

25,000 OFFICES IN AMERICA

CABLE SERVICE TO ALL THE WORLD

THEO. N. VAIL, PRESIDENT

BELVIDERE BROOKS, GENERAL MANAGER

RECEIVER'S No.

TIME FILED

CHECK

**SEND** the following **DAY LETTER** subject to  
the terms on back hereof which are hereby agreed to }

Boise, Idaho. Jan. 25, 1919.

C. H. DeCamp,  
Idaho Falls, Idaho.

You have until February 1 to serve brief for Olive.

Fred A. Wilkie,  
State Engineer.

(Collect)

*10.00*

RECEIVED

# DAY LETTER

## ALL DAY LETTERS TAKEN BY THIS COMPANY SHALL BE SUBJECT TO THE FOLLOWING TERMS WHICH ARE HEREBY AGREED TO

The Western Union Telegraph Company will receive **DAY LETTERS**, to be transmitted at rates lower than its standard day message rates, as follows: one and one-half times the standard night letter rate shall be charged for the transmission of fifty (50) words or less, and one-fifth of the initial rate for such fifty words shall be charged for each additional ten (10) words or less.

To guard against mistakes or delays, the sender of a message should order it **REPEATED**, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, **THIS IS AN UNREPEATED MESSAGE AND PAID FOR AS SUCH**, in consideration whereof it is agreed between the sender of the message and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any **UNREPEATED** message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any **REPEATED** message, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in obscure messages.

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the non-delivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of **FIFTY DOLLARS**, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other Company when necessary to reach its destination.

4. Messages will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning messages until the same are accepted at one of its transmitting offices, and if a message is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

In further consideration of the reduced rate for this special **"DAY LETTER"** service, the following special terms are hereby agreed to:

A. **DAY LETTERS** may be forwarded by the Telegraph Company as a deferred service and the transmission and delivery of such **DAY LETTERS** is, in all respects, subordinate to the priority of transmission and delivery of regular day messages.

B. **DAY LETTERS** shall be written in plain English. Code language is not permitted.

C. This **DAY LETTER** may be delivered by the Telegraph Company by telephoning the same to the addressee, and such delivery shall be a complete discharge of the obligation of the Telegraph Company to deliver.

D. This **DAY LETTER** is received subject to the express understanding and agreement that the Company does not undertake that a **DAY LETTER** shall be delivered on the day of its date absolutely and at all events; but that the Company's obligation in this respect is subject to the condition that there shall remain sufficient time for the transmission and delivery of such a message on the day of its date during regular office hours, subject to the priority of the transmission of regular day messages under the conditions named above.

*No employee of the Company is authorized to vary the foregoing.*

THEO. N. VAIL, PRESIDENT

BELVIDERE BROOKS, GENERAL MANAGER

**MONEY TRANSFERRED BY TELEGRAPH AND CABLE TO ALL THE WORLD**

| CLASS OF SERVICE | SYMBOL |
|------------------|--------|
| Telegram         |        |
| Day Letter       | Blue   |
| Night Message    | Nite   |
| Night Letter     | N L    |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

# WESTERN UNION

## TELEGRAM

NEWCOMB CARLTON, PRESIDENT

GEORGE W. E. ATKINS, FIRST VICE-PRESIDENT

| CLASS OF SERVICE | SYMBOL |
|------------------|--------|
| Telegram         |        |
| Day Letter       | Blue   |
| Night Message    | Nite   |
| Night Letter     | N L    |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

RECEIVED AT

97SX JR 50 BLUE

IDAHO FALLS IDA 12NOON JAN 24 1919

HON FRED W WILKIE

62

STATE ENGR BOISE IDA

I UNDERSTAND THAT I HAVE FIFTEEN DAYS FROM RECEIPT TRANSCRIPT OF EVIDENCE WITHIN WHICH SERVE BRIEF FOR OLIVE AM I CORRECT I RECEIVED TRANSCRIPT ON SEVENTEENTH THIS MONTH WIRE MY EXPENSE IF MY UNDERSTANDING IS CORRECT THAT TIME TO SERVE OLIVE BRIEF WILL NOT EXPIRE UNTIL FIRST OF NEXT MONTH

CHAS H D CAMP

1235PM

RECEIVED

JAN 24 1919

OFFICE OF STATE ENGINEER

January 15, 1919.

Mr. C. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:

We enclose herewith copy of the transcript of the testimony in the case of your application for transfer of water right, held at Idaho Falls, on January 10th, 1919. Will you kindly see that this reaches Mr. DeCamp at the earliest possible time.

Very truly yours,

FRED A. WILKIE,

State Engineer.

By

MB  
Encl.

RECEIVED

January 16, 1919.

Re: Transfer Case No. 15.

Mr. O. A. Johannesen,  
Idaho Falls, Idaho.

Dear Sir:

We enclose herewith transcript of the testimony taken at the hearing in the above case at Idaho Falls on January 10th.

You will notice that the time in which the applicant is given to file a brief has been extended to fifteen days, instead of ten days as stated at the hearing.

Very truly yours,

FRED A. WILKIE,

State Engineer.

By

MB  
Encl

RECEIVED

Idaho Falls, Idaho,

Jan 5 1917

Hon F. A. Melker  
State Engineer  
Boise Idaho

RECEIVED

Dear Sir,

Your letter of the 2<sup>nd</sup> inst at hand. But have not received yours of the 3<sup>rd</sup> containing copy of the protest. You could not force mail through this P.O. with a hydraulic Jack. But will get in course of time.

The prospectus of the proposed law arrived here today. I am sending 20 copies to J. T. Fisher of St. Anthony. He has called a meeting of Canal Companies for Tuesday the 7<sup>th</sup>. And Ensey has called a general meeting here for next Friday the 12<sup>th</sup>.

The law is being discussed on the streets and of course the general idea is that the object is to put nothing but Engineers as Water Masters on our canals. I suggested that we with hold our judgement until we should get a copy of the law and then we would be.

in a better position to judge as to its merits.

The main objections as I am having them impressed upon me here by the discussions I hear. Is that our decrees may be spent on too slight a provocation. And that our water masters are to be replaced with technical men. I do not think the law contemplates such action, And will try and make that matter plain at the meetings both at St. Anthony and here.

I am just giving you this information that you make know how things stand in this section.

Yours Very Truly  
Chas. H. D. Camp

January 3, 1919.

Mr. C. H. DeCamp,  
Idaho Falls, Idaho.

Dear Sir:

In the matter of the transfer of O. H. Olive, you are hereby notified that the state engineer will hold a hearing thereon at the Court House in Idaho Falls on January 10, 1919, at 10 o'clock A.M., and as an endorser of said application and having filed testimony in the records, you will be required to be present at such hearing.

Very truly yours,

FAW/MB  
Case 15. ✓

State Engineer.

RECORDED

January 3, 1919.

Re: Transfer of Water Right - O. H. Olive.

Mr. John Empey,  
Watermaster District 36,  
Idaho Falls, Idaho.

Dear Sir:

You are hereby notified that in the matter of the application of O. H. Olive for transfer of water right, the state engineer of the state of Idaho, will hold a hearing thereon at the Court House, in Idaho Falls, on the 10th day of January, 1919, at 10 o'clock A. M. As watermaster of District 36, and an endorser of said application, you are hereby required to be present at such hearing.

Very truly yours,

PAW/MB

Case 15. ✓

State Engineer.

RECEIVED  
JAN 10 1919

January 3, 1919.

Re: Transfer Case No. 15.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:

You are hereby notified that in the matter of your application for transfer of water right, the state engineer of the state of Idaho, will hold a hearing thereon at the Court House at Idaho Falls, on Friday, the 10th day of January, 1919, at 10 o'clock A. M., and you are required to appear at said time and place and give testimony in support of your application, and have all necessary witnesses present to testify in your behalf. You are further notified that on your failure to so appear that the prayer of your application will be denied.

Very truly yours,

EDW/MB

State Engineer.

Case 15. ✓

RECORDED

January 3, 1919.

Re: Transfer of Water Right - O. H. Olive.

Mr. F. L. Koon,  
Thornton, Idaho.

Dear Sir:

You are hereby notified that in the matter of your protest against the transfer of water right by O. H. Olive, that the state engineer of the state of Idaho, will hold a hearing in the said matter at the Court House at Idaho Falls, Idaho, at 10 o'clock A. M., on Friday, the 10th day of January, 1919, and you are hereby required to be present at the said hearing to support your protest now on file in the said case, and to have present all witnesses necessary to testify in your behalf. You are further notified that if you fail to so appear on the above mentioned date, that the prayer of Mr. O. H. Olive for a transfer of water right will be approved.

Very truly yours,

FAK/MB

State Engineer.

Case 15. ✓

RECORDED

RECEIVED AND REGISTERED

Article No.

10105

class postage paid

From

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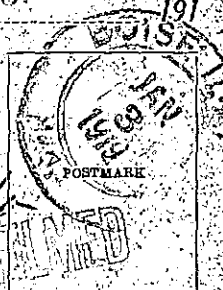
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To addressee or order

Postmaster, per



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*Date of delivery,* , 191

Form 3811

05-6116

**Post Office Department**  
OFFICIAL BUSINESS

**REGISTERED ARTICLE**

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Article No.

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191

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C. H. West

John Falk

Return receipt desired

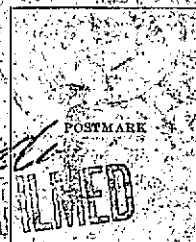
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Date of delivery,

*July 6*, 191*7*

Form 8311

65-6216

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No.

10106

INSURED PARCEL

No.

Return to

State Engineer

(NAME OF SENDER)

Street and Number,  
or Post Office Box,

Post Office at

State

Boise Idaho

PENALTY FOR PRIVATE USE  
TO AVOID PAYMENT OF  
POSTAGE, \$300.

POSTMARK OF DELIVERING  
OFFICE

AND DATE OF DELIVERY

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No.

INSURED PARCEL

No.

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State



UNITED STATES DEPARTMENT OF POSTS AND MARITIME SERVICE

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*C. J. De Camp*

(Signature or name of addressee.)

*Mark De Camp*

(Signature of addressee's agent.)

Date of delivery, *July*, 191*9*

Form 3811

65-6116

RECEIVED AND REGISTERED

Article No. 191

class postage paid.

From

State Eng. Borse

Addressed to

F. L. Horn

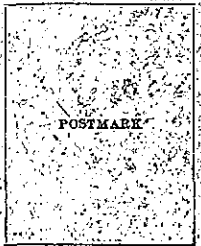
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Delivery restricted

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To addressee or order

Postmaster, per



Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No.

INSURED PARCEL

No.

Return to

(NAME OF SENDER)

*Mark Eugene*

Street and Number,  
or Post Office Box,

Post Office at

*Boise, Idaho*

State

0-6-6116

PENALTY FOR PRIVATE USE  
TO AVOID PAYMENT OF  
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POSTMARK OF DELIVERING  
OFFICE  
AND DATE OF DELIVERY

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*H. L. K.*

(Signature or name of addressee.)

(Signature of addressee's agent.)

*Date of delivery, \_\_\_\_\_, 191*

**Form 8811**

9-1110

RECEIVED AND REGISTERED

Article No. 10827  
class postage paid.

191

From

State Engineer

Boise, Idaho

Addressed to

Mr. A. H. Howe

Idaho Falls, Idaho

Return receipt desired

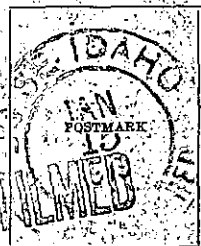
Delivery restricted

To addressee in person

To addressee or order

Postmaster, per

1/8



Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No.

10825

INSURED PARCEL

No.

Return to

State Engineer

(NAME OF SENDER)

Street and Number,  
or Post Office Box,

Post Office at

Boise Idaho

State

PENALTY FOR PRIVATE USE  
TO AVOID PAYMENT OF  
POSTAGE \$3.00.

POSTMARK OF DELIVERING  
OFFICE

AND DATE OF DELIVERY

# RETURN RECEIPT.

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JAN 17 1919

(Signature of addressee or agent)

Date of delivery, 1, 1919

Form 3811

GS-6113

RECEIVED AND REGISTERED

Article No.

10106

From

1  
Mater. Eng.

class postage paid

Addressed to

63-10-10  
O. A. Thompson  
John F. H. H.

Return receipt desired

Delivery restricted

To addressee in person

To addressee or order

Postmaster, per



January 2, 1919.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir ;

This is to acknowledge receipt of your letter of the 27th of December enclosing affidavit and deed to the Harrison Canal Company which I have placed in the record. This matter is still open pending the result of the protest filed by Mr. Koon, whom I have given ten days from the date of my former letter, to answer the inquiries I made of him and state his case.

Very truly yours,

FAW/MB  
15-Transfer. ✓

State Engineer.

RECEIVED

1.

No. 10394.

THIS INDENTURE, Made this 21st day of December A D 1905  
by and between Frank L. Koon and Mabel O. Koon his wife of the County  
of Fremont and State of Idaho hereinafter called the mortgagors, and  
The Alliance Trust Company Limited a corporation duly incorporated and  
organized under the laws of Great Britian and Ireland and having its reg-  
istered office at Dundee Scotland, hereinafter called the mortgagee.

WITNESSETH: That the said mortgagors for and in consideration  
of the sum of FIFTEEN HUNDRED DOLLARS United States gold coin to them in  
hand paid, the receipt whereof is hereby acknowledged, have granted bar-  
gained sold and conveyed and by these presents do grant bargain sell and  
convey unto the said mortgagee its successors legal representatives and  
assigns, those certain premises situate in the County of Fremont and  
State of Idaho and described as follows to-wit:

The east half of the northwest quarter ( $E\frac{1}{2}$  NW $\frac{1}{4}$ ) and the lots  
one (1) and two (2) of Section Eighteen (18) in Township Five (5) north  
of range thirty-nine (39) East of the Boise Meridian, containing according  
to the Government Survey, one hundred and sixty (160) acres. Together  
with 200 inches of water right in Snake River appropriated Sept 9th 1892  
recorded in Book "A" at page #456 water records of Fremont County.

Together with all the rights to the use of water for irrigating  
said premises and for domestic use thereon to which the said mortgagors or  
the premises hereby conveyed, are now or may hereafter become entitled or  
which now is or may hereafter be used on said premises, however the same  
may be evidenced, and together with all shares of stock or shares of water  
in any ditch or irrigation company which in any manner entitled said mort-  
gagors to water for irrigating or domestic purposes upon said premises;  
the mortgagors hereby expressly covenanting and agreeing that they will  
preserve, protect and perfect all water rights hereby conveyed, and pay, wh  
when due, all assessments on the ditch or water rights or shares of stock  
or water hereby or otherwise conveyed to secure the Notes hereinafter men-  
tioned.

TOGETHER with all and singular the tenements hereditaments and app-  
urtenances thereto belonging or appertaining. To have and to hold the same  
unto the said Mortgagee, its successors, legal representatives and assigns  
forever.

2.

THE CONDITION of this conveyance is such that WHEREAS, The said mortgagee has loaned to Frank L. Koon and Mabel O. Koon the said mortgagor the full and just sum of Fifteen Hundred Dollars, in U.S. gold coin which is to be repaid in like gold coin, together with interest thereon, payable annually, at the rate of 8 per cent per annum and according to the tenor and effect of the following described Promissory notes being two Principal notes and five interest notes: Said notes being substantially of the tenor and effect following that is to say:

One Principal Note Three Hundred Dollars payable January 1 1907  
One Principal Note for Twelve Hundred Dollars payable January 1 1911  
One interest note for One Hundred Twenty three & 35/100 Dollars payable January 1, 1907  
One interest note for Ninety six # Dollars payable January 1 1908  
One interest note for Ninety six # Dollars payable January 1 1909  
One interest note for Ninety six # Dollars payable January 1 1910  
One interest note for Ninety six # Dollars payable January 1 1911

Option is granted mortgagors to pay \$200.00 on principal sum at any interest pay-day, commencing with January 1st 1908.

All of which notes dated December 21st 1905 are executed by Frank L. Koon and Mabel O. Koon his wife the said mortgagors to the said mortgagee, on an actual loan of Fifteen Hundred # Dollars and are payable to the order of the said Mortgagee at 13 Panmure Street, Dundee Scotland in U. S. gold coin with interest on said principal notes at the rate of nine percent per annum after maturity.

AND, WHEREAS, The said mortgagors for themselves and for their heirs and assigns, have covenanted and agreed and do hereby covenant and agree to and with the said mortgagee, its successors, legal representatives and assigns, as follows:

1. That they will pay each and all of said notes promptly as they become due.
2. That they will keep the improvements therein in good repair and will not do or permit any waste of the premises hereby mortgaged or cut or permit to be cut any growing timber thereon without the consent of the mortgagee, except so much thereof as may be necessary to build, rebuild and keep the fences and other structures on said premises in good repair and for necessary domestic use on said premises. That he will pay all taxes and charges that may be assessed on said premises before they

3.

become delinquent.

3. That they have a valid and unincumbered title in fee simple to said premises and that he will warrant and defend the same to the mortgagee, its successors and assigns, against the claims and demands of all persons whomsoever.

4. That during the existence of this debt will keep the present buildings or any which may hereafter be erected on the said premises insured against fire to the extent of - - - -Dollars in some fire insurance company to be named by the mortgagee for the benefit of the mortgagee, and deliver the policies and renewals to said mortgagee promptly after the issue thereof, and should the said Mortgagor fail to insure or deposit said policies and renewals thereof as herein provided the said Mortgagee may do so at the expense of the said mortgagor.

NOW THEREFORE if the said mortgagors shall pay all and every of said notes taxes and charges and shall in all other respects fully satisfy and comply with the covenants herein set forth and enumerated, this conveyance shall be void. But if the said mortgagors shall fail to pay any of said notes, or in any other respect shall fail to comply with any of the covenants herein set forth, then as often as any such breach shall occur, the said mortgagee or its successors, legal representatives and assigns may at any time thereafter declare the whole of the principal sum or so much thereof as at the time of such declaration may remain unpaid, to be at once due and payable, as well as all interest thereon up to the date when payment may be made, or judgment rendered therefor against the said mortgagors and foreclosure of this mortgage may be entered, and the said mortgagee its successors, representatives and assigns, may at any time after such breach as aforesaid, proceed to foreclose this mortgage to compel payment to be made of the full amount due and payable.

IT IS FURTHER EXPRESSLY AGREED, that:

1. Should the said mortgagors fail to make payment of any assessment

4.

taxes, rates, insurance premiums or other charges payable by them the said Mortgagors may, at its option make payment thereof and the amounts so paid, including interest, penalty and costs thereon, with interest at twelve per cent per annum shall be added to and become a part of the debt secured by this mortgage without waiver however of any rights arising from breach of any of these covenants.

2. In the event of this mortgage being foreclosed, said mortgagors shall pay such sum as the Court may consider reasonable as attorneys fees for the benefit of the plaintiff and subject to this mortgage, the same shall be a lien on the premises hereby mortgaged, which said fee shall be due and payable when suit is begun.

3. And it is further expressly stipulated that no lease of said premises or any part thereof shall be made during the existence of this mortgage for other than a reasonable rental. And in the event said premises or any part thereof are leased, upon default in the performance of any of the stipulations of this mortgage by the mortgagors or their successors in interest the mortgagee, its successors or assigns, shall immediately become entitled and subrogated to all the rights and remedies of said mortgagors or their successors in interest under such lease.

Witness---- hand and seal the day and year first  
above written.

Frank L. Koon (SEAL)

Mabel O. Koon (SEAL)

Signed, sealed and  
delivered in the presence of:

C. E. Rostan

H. C. Graves

State of Idaho  
County of Fremont

ss

I, C. E. Rostan, Justice of the Peace in and for said County and State do hereby certify that on the 21st day of December A.D. 1905, personally appeared before me Frank L. Koon and Mabel O. Koon known by me to be the persons described in and whose names are subscribed

WITNESSED

5.

to the witin instrument and acknowledged to me that they executed the same as their free and vøluntary act and deed.

And I further certify that upon an examination apart from and without the hearing of her said husband I made the said Mabel O. Koon wife of the said Frank. L. Koon, fully acquainted with the contents of said instrument, and thereupon she acknowledged to me that she wexecuted the same freely and voluntarily and that she did not wish to retract such execution.

Given under my hand and official seal, the day and year in this certificate first above written.

C. E. Rostan Justice of Peace  
County of Fremont, State of  
Idaho.

STATE OF IDAHO )  
County of Fremont ) ss.

I, Victor Hegsted, Clerk of the District Court of the sixth Judicial District of the State of Idaho in and for the County aforesaid the same being a Court of Record, do hereby certify that C. E. Rostan Esq., whose name is subscribed to the annexed proof of acknowledgement of mortgage was, at the time therein stated a Justice of the Peace in and for said County duly qualified and authorized to take the same; that I am well acquainted with the hand writing of said officer and verily believe that the signature therein is genuine. Witness my hand and the seal of said Court at St. Anthony, in said County, this 26th day of December A D 1905.

(SEAL)

Victor Hegsted Clerk

By Rose D. Miller Deputy

Recorded at the request of B. H. Miller, December 26th 1905 at 8 o'clock A.M.

Victor Hegsted Recorder.

Transcribed from Book "X" of mortgages page #108, Fremont County Records

Transcribed in Book 61 Madison County Records page 7)

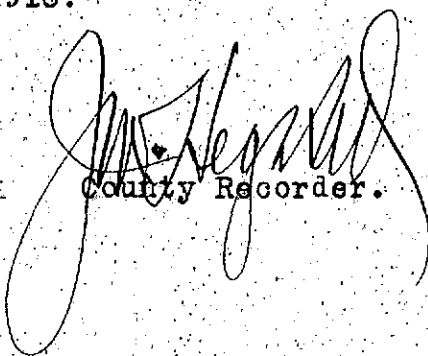
Released in Book One (1) page 719 Madison County Records.

RECORDED

STATE OF IDAHO       )  
                          { ss.  
County of Madison    )

I, Jno Hegsted, County Auditor and Recorder of Madison County Idaho, do hereby certify that the foregoing is a true and correct copy of the Real Estate Mortgage, executed by Frank L. Koon and Mabel O Koon his wife to The Alliance Trust Company Limited, a corporation, now of record in my office in Book 61 page 7.

Given under my hand and seal at my office in Rexburg Idaho, this 9th day of December A D 1918.

  
County Recorder.

RECORDED

No. 10386

WARRANTY DEED

THIS INDENTURE Made the 20th day of December in the year of our Lord one thousand nine hundred and five (1905), between Oliver H. Oliver ( an unmarried man) of the County of Fremont and State of Idaho the party of the first part, and Frank L Koon, of the County of Fremont and State of Idaho the party of the second part:

WITNESSETH That the said party of the first part, for and in consideration of the sum of Thirty-five Hundred and no/100 Dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents Grant, Bargain, Sell and convey and Confirm unto the said party of the second part and to his heirs and assigns, forever, all the certain lot piece or parcel of land situate lying and being in the County of Fremont and State of Idaho and bounded and described as follows, to-wit:

The east half of the northwest quarter (E $\frac{1}{2}$  NW $\frac{1}{4}$ ) and Lots One (1) and Two (2) of Section Eighteen (18) in Township Five (5) north of Range Thirty-nine (39) East of the Boise Meridian, containing one hundred and sixty (160) acres.

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents issues and profits thereof.

TO HAVE AND TO HOLD All and singular, the said premises together with the appurtenances and privileges thereunto incident unto the said party of the second part, to his heirs and assigns for ever. And the said party of the first part and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant any, and by these presents forever defend.

IN WITNESS WHEREOF The said party of the first part has hereunto set his hand and seal the day and year first above written.

Oliver H. Oliver. (Seal)

Signed sealed and delivered in the  
presence of: O. A. Johannesen.

STATE OF IDAHO        )  
                          ) ss.  
County of \_\_\_\_\_ (

I do hereby certify that on this 21st day of December in the  
year 1905 before me, O. A. Johannesen a Notary Public in and for said  
County and State, personally appeared Oliver H. Oliver (single)  
known to me to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my off-  
icial seal at Idaho Falls, the day and year in this certificate first  
above written.

(SEAL)       O. A. Johannesen

My commission expires June 19th 1907

Filed for record at the request of B. H. Miller at no minutes past 8  
o'clock A.M. this 26th day of December A D 1905

Victor Hegsted County Recorder.

By       Rose D Miller   Deputy

Transcribed from Book "R" of Deeds page 222, Fremont County Records.

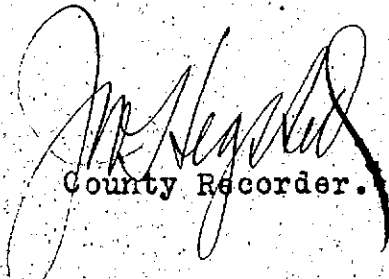
( Transcribed in Book 20 Madison County Records page 637)

RECORDED

STATE OF IDAHO        )  
County of Madison    ) ss.

I, Jno Hegsted, County Auditor and Recorder of Madison County Idaho do hereby certify that the foregoing is a true and correct copy of the Warranty Deed Executed by Oliver H Oliver to Frank L. Koon, now of record in my office in Book 20 of deeds page 637.

Given under my hand and seal at my office in Rexburg, Idaho this 9th day of December A D 1918.

  
County Recorder.

RECORDED

# RETURN RECEIPT.

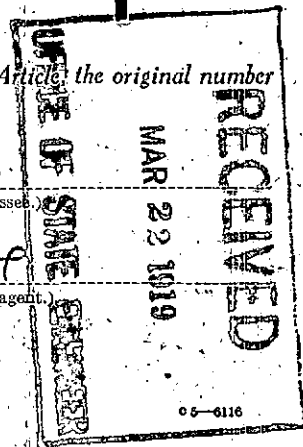
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(Signature of addressee's agent.)

Date of delivery, 9, 1919

Form 3811



Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300

REGISTERED ARTICLE No. 14741

INSURED PARCEL No. \_\_\_\_\_

Return to

*State Engineer*

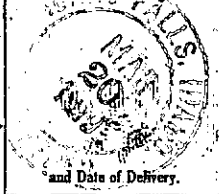
(Name of sender)

Street and Number,  
or Post Office Box, \_\_\_\_\_

Post Office at \_\_\_\_\_

State Boise, Idaho

Postmark of Delivering Office



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*Date of delivery,*

*3 — 20, 1919*

Form 3811

c 5—6116

**Post Office Department**  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300

REGISTERED ARTICLE No.

14742

INSURED PARCEL No.

Return to

State Engineer

(Name of sender.)

Street and Number,  
or Post Office Box,

Post Office at

Boise, Idaho.

State

Postmark of Delivering Office

MAR  
20  
4 PM  
1919

Place of Delivery.

Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300

REGISTERED ARTICLE No.

14744

INSURED PARCEL No.

Return to

Street and Number,  
or Post Office Box,

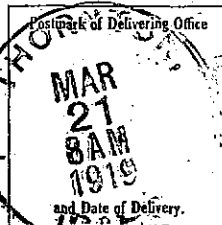
State Engineer

(Name of sender.)

Post Office at

Boise, Idaho.

State



# RETURN RECEIPT.

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OFFICE OF STATE ENGINEER

MAR 22 1919

RECEIVED

*J. L. Koon*

(Signature or name of addressee.)

*Wm. L. Koon*

(Signature of addressee's agent.)

Date of delivery, \_\_\_\_\_, 191

Form 3811

C 5-6116

Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID  
PAYMENT OF POSTAGE, \$300.

REGISTERED ARTICLE No.

14743

INSURED PARCEL No.

Return to

*State Engineer*

(Name of sender)

Street and Number,  
or Post Office Box,

Post Office at

State

Boise, Idaho.

Mark of Delivering Office

Date of Delivery

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

W. R. DeCamp

(Signature or name of addressee.)

Kellie Thompson

(Signature of addressee's agent.)

Date of delivery, \_\_\_\_\_

Form 3811

06-8110

RECEIVED AND REGISTERED

Article No. 14741

191

From

State Eng.

class postage paid.

Addressed to

Chas. C. Brown  
Wash. Field Sta

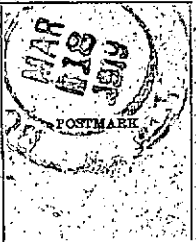
Return receipt desired

Delivery restricted

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Postmaster, per



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Article No.

14742

191

From

State Eng.

class postage paid.

Addressed to

H. J. Holland  
Rt. 1

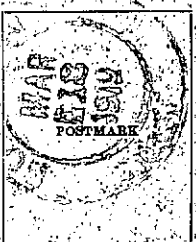
Return receipt desired

Delivery restricted

To addressee in person

To addressee or order

Postmaster, per



RECEIVED AND REGISTERED

Article No.

14743

191

From

State Eng.

class postage paid.

Addressed to

C. H. Brown  
Wash. Field Sta

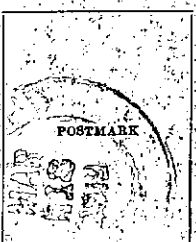
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Delivery restricted

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To addressee or order

Postmaster, per



RECEIVED AND REGISTERED

Article No.

14744

191

From

State Eng.

class postage paid.

Addressed to

F. L. Brown  
Wash. Field Sta

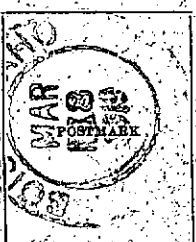
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Postmaster, per



MICROFILMED

OFFICE OF THE DEPARTMENT OF RECLAMATION

STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION )  
OF O. H. OLIVE FOR TRANSFER OF )  
WATER RIGHT - CASE NO. 15. )

ORDER

This case came up for reconsideration and review on May 8, 1919, upon the petition of O. H. Olive, bearing date of April 12, 1919, said petition being filed by Holden and Holden, Attorneys-at-Law, on behalf of the petitioner, and requesting a rehearing and an opportunity to submit further arguments and authorities in support of the original petition for transfer, and the Commissioner of Reclamation of the State of Idaho, having carefully considered and reviewed all of the evidence and documents on file in connection with the case, together with the brief filed by Messrs. Holden and Holden for the petitioner, received in the office of the Department of Reclamation, May 8, 1919, the letters of O. A. Johannesen, Attorney for F. L. Koon, protestant, bearing dates of April 29 and May 8th respectively, and being duly advised of the facts in the case, and having considered the matters of law involved therein with the Attorney General of the State of Idaho, and having in hand his written opinion considering the same, finds:

1. That under date of December 14, 1918, O. H. Olive duly executed an application for transfer of water right in the amount of twelve cubic feet per second of the waters of the South Fork of the Snake River in Fremont County, State of Idaho, and filed the same in the office of the State Engineer, which said waters were covered by a decree handed down by the Hon. J. M. Stevens, Judge of the Sixth Judicial District of the State of Idaho, in the case of the Rexburg Irrigation Company versus the Teton Irrigation Canal Company, said decree bearing date of December 16, 1910, all as set forth in the said petition and as shown by the records of the office of the Department of Reclamation and by the said decree.

That the said petitioner by his application requests permission to transfer his said twelve second feet of water from the lands to which it was decreed and upon which the said water has heretofore been used, which lands are located in Township 5 North, Range 36 East Boise Base and Meridian, and more particularly described in the said petition, to lands now arid in character and requiring artificial application of water for the profitable production of agricultural crops, described as Section 11, Township 3 North, Range 38 East Boise Base and Meridian, which said lands are lying under what is known as the Harrison Canal through which Canal the said petitioner desires to convey the said twelve cubic feet per second of water.

2. That on December 19, 1918, Fred A. Wilkie, the then State Engineer of the State of Idaho, issued certificate of transfer No. 231 to the Harrison Canal Company thereby granting the prayer of the petitioner herein. The said transfer was duly executed and delivered and recorded in Book No. 1 of Transfers on Page 231 of the Office of the State Engineer.

RECORDED

3. That subsequent to the issuing of the said certificate of transfer and on January 3, 1919, F. L. Koon, through his Attorney, O. A. Johannessen, filed a protest with the State Engineer in the form of a letter protesting against the said transfer and alleging, among other things, that the petitioner, O. H. Olive, was not the owner of the water in question, and that as a result of the said protest, the State Engineer reopened the case and temporarily set aside the above stated certificate, and after due notice to the interested parties, held a hearing at Idaho Falls on the 10th day of January, 1919, at which time, the petitioner through his Attorney, presented and offered oral testimony in support of his petition for transfer, and the protestant, F. L. Koon, through his Attorney, offered oral testimony in support of his contentions concerning ownership in and to the said waters.

4. That all of the records and evidence on file in this case disclose the fact that there is a controversy as to the real ownership of the said twelve cubic feet per second of water by reason of the fact that certain of the lands recited in the Court decree were transferred and sold by the petitioner Olive to Mr. Koon. The petitioner alleges and contends that when the said lands were sold, the water right therefor was reserved and not transferred, and that since the date of the said transfer, none of the waters herein have been used on the lands which were purchased by Koon. The records further show that Mr. Olive, the petitioner herein is now, and has been for some years past, the owner of certain lands to which it is contended the said waters were for a number of years following the date of the sale of lands to Koon, applied. But that the diverting works and the canals through which the said water was conveyed to the lands have been destroyed by a change in the channel of the South Fork of Snake River, and that a large amount of the land owned by both the petitioner and the contestant has, within recent years, been washed away and rendered useless for agricultural purposes by the shifting channel of the South Fork of Snake River.

That a careful examination of the conditions on the ground recently conducted by me, the Commissioner of Reclamation, disclosed the fact that portions of the irrigation works were destroyed as hereinabove stated; that the same have not been replaced or repaired, and that the protestant herein has no means under the present existing conditions to divert or utilize the said water.

5. That it is apparent from the records and evidence, together with a consideration of conditions on the ground, that the protestant Koon herein, or any other persons will in no way be injured by the transfer by the petitioner, Olive, of such portion of the twelve second feet of water as he may own.

THEREFORE, it is hereby ordered and adjudged that the revoking order of Fred A. Wilkie, State Engineer issued on the 15th day of March 1919, wherein he revoked and set aside certificate of transfer No. 231, is hereby cancelled and held for naught, and that the aforesaid certificate of transfer, No. 231, is hereby reinstated, but subject to the following modifications: That the Harrison Canal Company has a right to the use of only such portion of the twelve second feet of water as may have been owned by O. H. Olive on the date of his transfer by deed to the said Harrison Canal Company.

Dated this 8th day of May, 1919.

  
Commissioner of Reclamation.

RECORDED  
INDEXED



# TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

OFFICE OF THE COLLECTOR  
DISTRICT OF MONTANA

HELENA, MONT.

*Idaho Falls, Idaho.*

*Dec. 16th, 1918.*

*J.M. Adams being first duly sworn, deposes and says; That subsequent to the hearing had by the State Engineer relative to the change of point of diversion of 600 inches of the flow of Snake River, which was decreed to O.H. Olive: That Frank L. Koon requested me to purchase from said O.H. Olive the water above mentioned for his use: Thus acknowledging that he had no right, title or interest in the same.*

*J.M. Adams*

*Subscribed and sworn to before me this 16th day of December, A.D. 1918.*

*A. Mulhall*  
Notary Public.

*Residence, Idaho Falls, Idaho.*

RECORDED

OFFICE OF THE STATE ENGINEER  
OF THE STATE OF IDAHO

---

.....  
IN THE MATTER OF THE APPLICATION  
OF O. H. OLIVE FOR TRANSFER OF  
WATER RIGHT - CASE NO. 15  
.....

REPORTER'S TRANSCRIPT OF TESTIMONY

---

Before FRED A. WILKIE, State Engineer of the State of  
Idaho, at Idaho Falls, Idaho, January 10th, 1919.

C. H. De Camp,

Attorney for Applicant

O. A. Johannessen

Attorney for Protestant, F. L. Koon.

RECEIVED

OFFICE OF THE STATE ENGINEER

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION )  
OF O. H. OLIVE FOR TRANSFER OF ) . TRANSCRIPT OF HEARING  
WATER RIGHT - CASE NO. 15 )

AFFIDAVIT OF REPORTER

I, MABEL E. BYRNS, being first duly sworn, depose and say:  
That I am the person who took shorthand notes of the hearing in the  
above entitled matter at Idaho Falls, Idaho, on January 10, 1919, and  
that the following thirty-four typewritten pages are a correct trans-  
lation of said notes.

Mabel E. Byrns

Subscribed and sworn to before me, a Notary Public in and  
for the State of Idaho, this Fifteenth day of January, A. D. 1919.

Carra M. Brown  
Notary Public in and for the  
State of Idaho, residing at  
Boise, Idaho.

RECORDED

OFFICE OF THE STATE ENGINEER  
OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION )  
FOR TRANSFER OF O. H. OLIVE, )  
CASE NO. 15. )

TRANSCRIPT OF HEARING

This case came on for hearing at Idaho Falls, Idaho, before the State Engineer, at 10 o'clock A. M., January 10, 1919, on protest of F. L. Koon, against issuance of transfer in the above entitled case.

It is hereby stipulated by and between the parties hereto, that the sworn report of the stenographer shall be accepted as the record of testimony taken at this hearing.

MICROFILMED

TESTIMONY

Mr. O. H. OLIVE was sworn and testified as follows:

Direct Examination by Fred A. Wilkie, State Engineer.

I introduce copy of a map, being a tracing of the records of the State Engineer's Office in the adjudication suit between the Rexburg Irrigation Company and the Teton Irrigation Company, upon upper Snake River.

Q At one time, Mr. Olive, you owned certain lands in Township 5 N. 38 and 39 E?

A Yes, sir

Q Can you recognize the location of any of those lands on this map

A Yes sir

Q I hand you, Mr. Olive, the application for transfer in which you state that you are the owner of the NE $\frac{1}{4}$  Sec. 13, T. 5 N. R. 38 E. You, at one time, owned that

A I had a claim there

Q NE $\frac{1}{2}$  of SE $\frac{1}{4}$ , SE $\frac{1}{4}$  of SE $\frac{1}{4}$  and Lot 5 of Sec. 18, 5 N. 39 E; S $\frac{1}{2}$  SW $\frac{1}{4}$  Sec. 17, Lot 2 and part of NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Sec. 20; E $\frac{1}{2}$  NW $\frac{1}{4}$ , Lot 1 and 2, Sec. 18. Did you have water for any of that land

A Yes sir

Mark what land you had a water right for

Q You had a decree in this water case for 600 inches of water

A Yes sir

You mark on the map the land that that water was decreed for

Q Then that water was decreed to all of the land that you owned

A Yes, and I had some more land up above

Q When was that decree granted, Mr. Olive

A December 16, 1910

Q Did you sell any of that land to Mr. F. L. Koon

A Yes sir

Q State if you recognize that instrument

A Yes sir

Q You recognize that as a certified copy of that deed - a certified copy of the warranty deed in the files of this application.

A Yes sir

Q Did you sell with that, the water that went with the land that it represented

A No sir

Q Then what did you do with the water that was represented above, belonging on the land represented by this deed

A Transferred it to this upper place

Q And used it on your upper place

A Yes sir

Q Now will you mark on the map with this green colored pencil, the land that you used the water on after you sold the land to Mr. Koon

Q Then you owned and used that water on the  $W\frac{1}{2}$   $SW\frac{1}{4}$ , Sec. 21, and the  $NE\frac{1}{4}$   $SE\frac{1}{4}$  of Sec. 20 and  $SE\frac{1}{4}$   $NE\frac{1}{4}$  of Sec. 20, 5 N, R. 39 E

A Yes

Q After you sold this land to Mr. Koon you used the water that was dedicated to that land, on this land you have just described

A Yes sir

Q When did you first use it there

A As near as I can remember, in 1908

Q How long did you use it there

A Up until 1913

Q Was your right to the use of that water ever disputed

A Never was by any one

Q How much of the 600 inches of water that was dedicated to the lands described and that you have marked on the map in red, did you transfer and use on this land farther up the river

A All of it, and stole a little besides

Q Then did you sell all of this land that you have marked with a red cross to Mr. Koon

A No

Mark in green on that map what you did sell to him

Q Then you sold 160 acres of this land to Mr. Koon and took the water off of all of the land that it had been dedicated to, and used all of the water on the upper pieces of land

A Yes sir

Q From about 1908 to 1913

A Yes sir

Q I hand you Exhibit A, and ask you if you can tell what it is

A It is an affidavit from me, stating that I had been decreed 600 inches of water and had used it from 1908 to 1915, inclusive

Q Is that an affidavit that you filed in connection with your other papers in this case

A Yes sir

Cross examination by Mr. O. A. Johannesen

Q Mr. Olive, on what date did you make the sale of the property referred to as being the property sold to Mr. Koon

A On December 20, 1905

Q Were you one of the cross-complainants in the case of the Rexburg Irrigation Company, et al, versus the Teton Irrigation Canal Company, et al

A I do not understand that proposition

Q Do you recall ever having given any evidence in the so-called Snake River Decree suit

A Yes sir

Q Do you ever recall having filed, or having had your attorney file, the cross-complaint in that suit

A I do not know what a cross-complaint is, to be honest with you.

At this time, I would like to offer in evidence, a certified copy of a portion of a cross-complaint and answer, filed by Mr. O. H. Olive in the case of Rexburg Irrigation Company, et al versus Teton Irrigation Canal Company, a Corporation, et al

Q I will ask you, Mr. Olive, to read the first full paragraph therein

A "That the said defendant and cross-complainant, O. H. Olive, and his grantors and predecessors-in interest, are now and since the 19th day of September, 1892, have continuously been the owners in the possession and entitled to the possession of that certain tract of land, situate, lying and being in the county of Fremont and State of Idaho, and particularly designated and described as follows:

Q I will ask you, Mr. Olive, to look at the description in this cross-complaint and mark the lands therein described on the plat now in evidence. I suggest marking with a circle (green)

Q I will ask you, Mr. Olive, if that is not substantially the land that you sold to Messrs. Graves and Koon

A My understanding is, that it is this instead of this.

Q Then as the map now shows, marked with the green circle, the land so marked represents the lands sold to Messrs. Graves and Koon

A Yes sir

RECORDED

Q I will ask you, Mr. Olive, if you recall the date on which the cross-complaint and answer was filed in the water suit in question

A I do not

Q Might it have been the fore-part of 1905

A It might have been

Q Was it before you sold the lands in question to Messrs. Graves and Koon

A I would say that it was

Q From the wording of the complaint, you would say it was, would you not

A I think it was. I would not be positive about it

Q Did you state that you were the owner of these particular lands

A Yes sir

Q And you spoke the truth when you so stated

A Yes sir

Q I will ask you, Mr. Olive, if you recall as to what water right you made proof at that time, for these particular lands

A I do not understand what you mean by what water rights

Q What appropriation and date of priority of use, did you attempt to establish as the water for these particular lands

A June 1, 1889

Q I will refer you to paragraph 4 of your cross-complaint and answer, and ask you to read the first four lines of paragraph 4, being a part of the said paragraph

A "That on the nineteenth day of September, 1892, this cross-complainant, his grantors and predecessors in interest, appropriated 600 inches of the flow of the waters of Bannock Jim Slough, a tributary of the south Fork of Snake River."

Q Then, if this copy is a true copy of a cross-complaint and answer, filed by you through your attorneys Holden and Holden in the suit in question, the 600 inches of water right on which you made proof for the lands sold to Messrs. Graves and Koon was a water right with a priority of the 19th day of September, 1892

A No sir

Q You mean to say the the original cross-complaint, if the certified copy is a true copy thereof, did not state the fact

A I do not think so

Q You recall, do you Mr. Olive, testifying in the said mentioned water suit

A Yes sir

At this time, Mr. Engineer, I would like to offer in evidence, Exhibit No. 2, the same being a certified copy of the testimony offered on behalf of O. H. Olive in the case of the Rexburg Irrigation Company, versus the Teton Irrigation Canal Company.

Q I will ask you, Mr. Olive, to compare the descriptions in your cross-complaint, Protestants Exhibit No. 1, with the description in the opening statement made by Mr. Holden as shown by Protestant's Exhibit No. 2, and state whether or not the two land descriptions refer to the same property

A Yes sir

Q At that time, Mr. Olive, by what name were these particular properties most commonly known.

A. Not by any particular name that I know of

Q Were they not generally spoken of as the Branden ranches

A Sometimes. Sometimes as the Curd

Q Do you recall, Mr. Olive, as to the number of inches of water you claimed for the properties that have just been described - that is to say, the properties identified on the map as those sold to Messrs. Graves and Koon

A 600 inches

Q Do you recall the date of priority of this particular 600 inches of water

A I would not say, positively, but I think June 1, 1889.

Q If Mr. Holden, your attorney, at that time, stated the 19th day of September, 1892, was, or was not, that the date

A I could not say as to the date

Q Do you think that Mr. Holden mis-stated the matter

A He might have done so

Q I will ask you, Mr. Olive, if it is not the truth, that the Messrs. Branden your grantors or predecessors in interest, filed on 600 inches of water for these lands, which filing was recorded on the 19th day of September, 1892

A<sup>2</sup> Yes

Q Is it then not likely Mr. Olive, that the 600 inches on which you made proof for the lands in question was the particular appropriation filed upon by the Brandens

A No sir

Q Can you then explain as to why the date of priority and the volume of water appropriated as offered in the statement on your behalf by Mr. Holden, are exactly the same as the date of filing and the volume of water appropriated in the Branden filing

A When I went up to make proof, the attorneys for the south end of this district wanted to know how much water I was going to ask for, and I told them 900 inches. They said that if I undertook to take more than one inch to the acre that they

would not stand for it and asked me how much land I had to cover. I told them I wanted to cover 640 inches and how much waste land there was on it, and I told them as near as I could come to it, possibly 40 acres and they said that I could ask for 600 inches and they would not make any objections and consequently I asked for 600 inches.

Q In the light of the statement you have just made, can you explain to the Honorable Engineer as to why Mr. Holden, in his opening statement describing the land in question, stated that it contained but 452 acres.

A That must be a mistake

Q At the time you offered the testimony referred to on the 600 inches stated by Mr. Holden as having a priority of the 19th day of September, 1892, and as alleged by you in your cross-complaint and answer, did you make proof on any other water appropriated from Snake River

A I would not say right at that time, but I did make proof on some others

Q In the answer made by you on direct examination, you stated that you had diverted the 600 inches of water to the use of approximately 160 acres in Sections 20 and 21, between the dates of 1908 and 1913. Is that correct

A Yes sir

Q Now, as a matter of fact, Mr. Olive, in the evidence given by you in the so-called water suit, did you not make proof on 100 inches of water having a priority date of April 12, 1889 for the land last referred to

A No, my understanding is that I made proof on 160 inches of 1905, but I would not be positive as to the date

Q Do you recall, Mr. Olive, as to whether or not you were interested, together with Jas. Nelson, Leo Corey and Pete Carlsen in a certain irrigation ditch

A Yes sir

Q Was that for the conveying of water to this last described tract of land

A Yes sir

Q Did you have a fourth interest in that ditch

A Yes sir

Q Is it not true that at that time you claimed 150 inches of an 1889 right for that land

A I will not say positively. It is so long ago and I cannot remember

Q I will ask you, Mr. Olive, if at that time you did not have a possessory claim on an approximate 160 acres in Section 13

A Yes sir

Q Do you recall offering evidence as to the priority of water right for the use on that particular land

A My understanding is that that was included in the 600 inches

RECORDED

Q Do you recall claiming 200 inches having priority of October 29, 1902, for that particular tract of land

A That would be Section 13 - No, I do not.

Q As your testimony so shows, do you now say that at the time it was given it was the truth

A I presume it was

Q And if the recorded testimony shows that at said hearing you claimed 150 inches through the ditch owned by you and three other applicants for the 160 lying in Sections 20 and 21, and said 150 inches had a priority date of April 12, 1889, do you now say that such testimony was the truth when given

A I presume it was

Q Do you recall, Mr. Olive, on or about the 14th day of December, 1905, taking over your land one Hugh Morton, a representative of Wm. McMaster of Portland, Oregon

A I do not know as to the date, but he was there

Q Do you recall informing him the day he was there as to the water rights claimed by you

A No sir, I do not

Q Do you recall for what purpose Mr. Morton was there

A He was there for the purpose of examining the land to make a loan

Q How many loans were arranged for at that time

A One, so far as I am concerned, I think

Q His visit to you was at a time prior to the execution of the loan papers

A I presume so

Q I will ask you, Mr. Olive, if, at the time you made your conveyances to Messrs. Graves and Koon, the suit before referred to in which you offered testimony relative to water rights, had been finally settled and the rights adjudicated

A No sir

Q You became a cross-complainant in that suit and your testimony was offered therein at a time when you were the owner of the lands subsequently conveyed to Messrs. Graves and Koon, did you not

A Yes sir

Q At the time you sold to Messrs. Graves and Koon, did you not contemplate co-operating with them and building a new diversion works for the conveyance of your water

A No sir

RECORDED

Q There was no new ditch at any time partly started by you

A Yes sir, there was

Q Before or after this time

A After the sale

Q If Mr. Morton in his report to Mr. McMaster conveyed the idea that you and Messrs. Graves and Koon were about to build a new ditch, would you say that he gained that impression from you or not

A I could not say

Q In your conveyances to Messrs. Graves & Koon, do you recall whether you conveyed with the lands described any of the appurtenances belonging thereto

A Yes sir

Q Your deed so recite

A Yes sir

Q You said on direct examination that you diverted the 600 inches in question between the years 1908 and 1913 to the use of the quarter-sections in Sections 20 and 21. I will ask you how many acres were in cultivation on that quarter-section at that time

A I could not say exactly

Q About how many

A I think in the neighborhood of 100

Q The land that was in cultivation at that time was growing what character of crops

A Grain and hay

Q Did you irrigate by means of flooding or some other means

A Sub system

Q How so you know that you used the particular 600 inches that you now seek to have transferred in that irrigation

A Because I took it out of the same heading

Q Did you divert it by means of headgates and canals

A I did

Q And it was measured to you

A No sir

Q Was there anyone else using water through the same headgate and canal

A No sir

Q It was not measured

A No sir

Q As a matter of fact, Mr. Olive, might not that have been the water on which you made proof in your second cause of action in the so-called water suit

A No sir

Direct Examination by C. H. DeCamp

Q In your cross-complaint you stated that beneficial use had not been completed on this land in question

A I did

Q And that the ditches were not complete

A That is correct

Q Now, when you sold that water to Mr. Koon, was the water at that time appurtenant to the place - was it on the place

A It was not

Q Why did you reserve that water when you sold to Mr. Koon

A When Mr. Koon bought the land, he stated that he wanted me to make the price without the water as he did not want to buy a law-suit; that he could get trouble enough without buying it. The water suit was on at that time

Q When you sold that land to Mr. Koon, the water that you had formerly applied on that land was no longer possible to apply in the system that you had

A Not unless it was repaired

Q It was not in condition to deliver water

A No sir

Q Did you have a solid dam across your ditch before, which cut the water off of your land

A At what time

Q In 1908

A Yes sir

Q And that dam has been there continuously and ever since

A Yes sir

Q No water has gone by that excepting it might have been in a flood time

A That is all

Q Did Mr. Koon ever object to your adverse use of that water

A Never did

Q You have been recently over the ground

A Yes sir

Q Did you discover in going over that, that Mr. Koon had any headgate and measuring device in the canal

A I Did not discover any

Q Did you see any ditches in going over the ground or evidence that water had been used there recently

A No sir

Q Did you, in 1908, commence to use 600 inches of water or thereabouts on your home place and put it to beneficial use continuously to 1913

A Yes sir

Q And you have answered before that there were no objections made

A None whatever

Re-Cross Examination by Mr. Johannesen

Q Did you use water on the so-called home place prior to 1908

A Yes sir

Q What water did you then use

A Used the water that was decreed to that place

Q What water was that

A Part of the time it was water from the ditch owned by Carlson, Corey, Nelson and myself

Q How many acres approximately were under cultivation prior to 1908 on the so-called home place

A I would say around 100 - the balance was in pasture

Q So that you have used prior to 1908, about the same amount of water for the irrigation of the so-called home place as you did after the year 1908

A No

Q What makes the difference

A The difference in the application

Q Did the land require more water in 1908 than in 1907

A It requires more where you sub than where you flood

Q Did you sub in 1907

A I won't say positive, but it was in 1907 or 1908 that I started to sub, but I think 1908

Q What happened in 1914

A The river washed the place off the map, or most of it.

Q Is any part of the home place farmed by any one now

A A few acres

Q Are they using water for that

A I could not say

Q When you sold that place, did you reserve the water

A I reserved the 600 inches. Put in the water decreed to the place

Q Was that by express reservation in the deed

A No sir

Q You stated a moment ago in answer to a direct question that you reserved the 600 inches. In your conveyance to Messrs. Graves and Koon, did you make an express reservation in your deed

A Not in the deed, just a verbal reservation

Re-Direct Examination by Fred A. Wilkie, State Engineer.

Q Was it a verbal reservation at that time

A Yes sir

Q You had an understanding with him that the water was not to go

A The water was not to go with the place and I priced the land to him with that understanding

Q Then why, Mr. Olive, was there not an express reservation put in the deed

A I did not understand that you had to reserve it in writing. My understanding was that if you sold the land that was all you sold and you had to expressly state in it that you sold the water in order to transfer the water

Re-Direct Examination by C. H. DeCamp

Q Has there been a dam constructed in the Bannock Jim Slough cutting off the flow of Snake River from that headgate of yours

A Yes sir

RECORDED

Q Can you locate it approximately on the map there  
A It was one-half mile east of my land  
Q And that dam was put across Bannock Jim Slough  
A Yes sir  
Q And prevents any water from Snake River from going down the Bannock Jim Slough  
A Yes sir  
Q When was that put in  
A I think two years ago  
Q And has remained intact ever since  
A Yes sir

Re-Direct State Engineer

Q Did you say all of these lands that have been described here today were watered from the Bannock Jim Slough whenever they were irrigated  
A Yes sir, all the time

Mr. Johannesen

Q In the early period of the irrigation from the Bannock Jim, it was water from Snake River  
A Yes sir  
Q So that it was Snake River water taken into the Bannock Jim at times and then diverted into other channels  
A The Bannock Jim and a run-around from the Snake River  
Q Has the river so washed out the original intake as to make it impossible to take water in that manner now  
A I could not say  
Q In 1908 was the river washing away the intake on the Bannock Jim Slough  
A Not that I know of  
Q But you do know that the river has been washing away the old home place seriously  
A Yes sir

NOT FILLED

Q And in that manner affecting the old ditches

A Yes sir

Q The point I want to make clear is whether any water applied to any of the lands in question here had always been diverted from the Bannock Jim Slough

A Yes sir

Q None of it was ever diverted from Snake River itself

A Not to my knowledge

Q Up to and including the year 1905, Mr. Olive, did you use the 600 inches of water that is in controversy on the lands that were sold to Messrs. Graves and Koon

A I did, insofar as possible

Q After the year 1905 and prior to 1908 was this water used

A No

Q Why was it now used

A I did not have any use for it at that time

Q Might Mr. Koon have been using it

A No, there was no water went through the headgate

Q I will ask you, Mr. Olive, did the shifting character of the river during the period of your ownership of the Graves and Koon land, make it necessary for you at times to change the manner and the point from which you diverted water to apply on the land

A No

Re-Direct -- Mr. DeCamp

Q Mr. Olive, did you in 1904 and 1905 try to get any water upon the Koon land

A No

RECORDED

Mr. C. H. DECAMP of Idaho Falls, was sworn and testified as follows:

Direct Examination by Fred A. Wilkie, State Engineer.

- Q How long have you known Mr. Olive, Mr. DeCamp
- A I would judge since long about 1902 or '03 or '04
- Q Have you ever held any official position in connection with the water distribution and management in this community
- A Yes sir
- Q What position was that
- A State Water Commissioner
- Q What years did you serve
- A 1911 and 1912, I believe
- Q During your term as Water Commissioner did you know anything about this land that was owned by Mr. Olive, in Township 5 N, 38 and 39 E
- A Only that in sections 20 and 21, known as the home place
- Q Did you during any of that time have knowledge of water being used on this land for irrigation
- A Yes sir
- Q Did you know what right that water was being used out of
- A The decree of 1910
- Q Did you ever have occasion to examine or inquire into the status of Mr. Olive's right during that time
- A I never did
- Q Then how do you know that water was used on the home place during the time
- A Because I made two separate and distinct trips to Mr. Olive's ranch
- Q Will you describe what you saw there in the way of water being applied to the land
- A I could not describe in detail, but Mr. Olive took me over his place and showed me his headgate and his diverting works
- Q In your opinion, Mr. DeCamp, was that land receiving actual benefit in crop production from the use of that water
- A I would naturally presume so
- Q I hand you applicant's Exhibit B, will you state what that is

A That is an affidavit made by myself relative to the transfer of this water

Q Now, are you familiar with Mr. Olive's water right in any other manner than you have mentioned

A No sir

Q As to what disposition he may have made of them or otherwise, from personal knowledge

A Nothing other than the certified copy of deeds which have been presented here

Q What caused you while you were Commissioner to visit Mr. Olive's home place

A My first visit was at his suggestion to look after water troubles on the South Fork

Q Was this trouble in connection with Mr. Olive's water right

A No

Q Then, incidentally you were at that place and saw this water

A Only as incidentally; not called concerning water

Q In a general way, Mr. DeCamp, during your term as water commissioner, did you know Mr. Olive held a water right

A Yes sir

Q And how did you have that knowledge

A By the decree

Q The decree you were operating under

A Yes sir

That is all I want to ask

Cross Examination by Mr. Johannesen

Q You have never measured any water expressly for Mr. Olive

A No sir

Q Have you ever seen the property owned by Mr. Koon, known as the Graves and Koon property

A I think that I was over it the last of November

Q Do you know whether Mr. Koon has used water on that property

A Recently?

Q During your administration

A Not to my knowledge

- Q Do you know whether his land requires water
- A Could not tell you as to that
- Q From your own knowledge can you say whether Mr. Koon has used any water on these three quarter-sections or not
- A No sir
- Q And as far as you know then, Mr. Koon might have used this 600 inches of decreed water right for these properties
- A Insofar as I know
- Q The character of the river in that vicinity is such, is it not, that it makes it almost impossible to maintain a permanent diversion point for the lands along the river
- A In the river, yes
- Q I notice from the affidavit that you have made in this matter that no particular water right is referred to, merely that water diverted for the use of the so-called home property is no longer susceptible of being used there. Did you have any particular water right in mind at that time
- A Yes sir
- Q What water right was that
- A 600 inches decreed to Mr. Olive by the Sixth Judicial District
- Q But, as a matter of fact, Mr. DeCamp, you cannot positively testify that Mr. Olive was using this particular 600 inches, less or more
- A No

Mr. D. G. MARTIN of Idaho Falls, was sworn and testified as follows:

Direct Examination by Fred A. Wilkie, State Engineer.

- Q I hand you applicant's Exhibit C. Can you state if you know what that is
- A It purports to be an application for transfer of water right
- Q On the third page of that, you have endorsed the application as a water user in this district. Are you familiar with the lands now, or ever, owned by Mr. Olive in the vicinity of Bannock Jim Slough in Township 5 N, 38 and 39E
- A I am not very well acquainted with the lands, although I have been on the lands
- Q Can you identify any of them on this map
- A I doubt if I can.---- No, I could not identify the lands upon the map
- Q Have you a knowledge of any water now or ever having been owned by Mr. Olive
- A Only from decree records

RECORDED

Q Are you familiar with the condition at the present time of Bannock Jim Slough as to whether it will convey water from Snake River down into the vicinity of Sections 18 or 21 in 5 N and 39 E.

A In high water, I believe it would. In low water, I believe not.

Q Have you ever observed that the flow has been dammed off east of Section 21 or in Section 21

A No I have not been at the place since any dam was put in. I have been at the head of the slough at different times but there was no dam at that time

Q Have you ever observed any water being applied to any land owned by Mr. Olive, to your knowledge

A Not to my knowledge

Q Now, in your statement on that affidavit ~~that~~ <sup>that</sup> you endorsed/as a water user and as such having no objection to this transfer and believe that no injury would accrue to any one by it. How did you arrive at this conclusion, Mr. Martin

A In my office as a Special Deputy on the river, I have tried to determine the location of the headgate of every canal that takes water from the river or its immediate tributary, and I have never been able to find a heading to any canal taking water in that section of the country until reaching farther up the river, which lead me to believe that there was none diverted in that particular locality. I tried at one time to follow down the canal there that I supposed was Mr. Olive's canal but I did not have definite knowledge as to that and found it ran into the river where the river had afterwards changed channels somewhat.

Q Then if this water were to be transferred to another canal and definitely diverted from the river, do you still think there would be no injury to any other water user accrued thereby

A I do not see how there would be, if title is still in Mr. Olive

That is all I wish to ask

Cross Examination by Mr. Johannesen

Q Are you familiar, Mr. Martin, more or less with the water users in that particular neighborhood

A Yes

Q Do you know if they are cultivating their farms around there

A They are to a certain extent, yes

Q Do you know the character of the irrigation on which they depend

A Well, not so very well

UNRECORDED

Q As a matter of fact, is it not true that most of that land now is irrigated by sub-irrigation

A I could not say definitely as to that

Q Do you know whether or not it is common among these particular water users to dam up some of the natural channel in order to cause the water to rise

A I think I have noticed such in existence

Q From your knowledge as an irrigation engineer would you say that a person might make beneficial use of decreed water by means of sub-irrigation

A I do

Q So far as you know and have seen, could it have been possible for Mr. Koon, protestant in this case, to have used the 600 inches of water in controversy by means of sub-irrigation

A It is possible

Direct Examination by Mr. DeCamp

Q Mr. Martin, did you observe on your trip down the Bannock Jim Slough any such dams for the purpose of holding up the sub in the Bannock Jim Slough

A Not in the Bannock Jim Slough

Mr. Johannesen

Q Do you know, Mr. Martin, whether the Bannock Jim Slough channel is lower than the river there or not

A No, I do not know

Q So far as you know, it might have been

A Yes, it might have been

Mr. F. L. KOON of Thornton, Idaho, was sworn and testified as follows:

Direct Examination by Mr. Johannesen.

Q What is your name

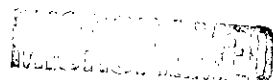
A F. L. Koon

Q Where do you live

A In the vicinity of Thornton

Q You are the protestant in this case

A I am



Q Mr. Koon, you have noticed the map here on the table and the land marked with a circle in green with the red through. Who is the owner of that land at the present time

A I am

Q You own all of them

A My wife and I

Q And who is the owner of the fractional NE $\frac{1}{4}$  Section 13

A I am -- I own 160 acres in the shape of four forties

Q Do you own any other lands there, Mr. Koon

A Yes sir, I own Lots 3 and 4 in Section 18

Q So that you are now the owner of what was originally the Olive properties sold to Mr. Graves and yourself, and a desert claim formerly held by Mr. Olive

A Yes sir

Q And in addition to those parcels of land, you own two lots that you have made proof on yourself

A Yes sir

Q When did you buy your property from Mr. Olive.--Your first property

A About December 15th or 20th, 1905

Q Were you acquainted with this property at that time

A Yes sir

Q Had you been on them before

A I had

Q How long a period had you been on that property

A About three years

Q Were you employed by Mr. Olive

A Yes sir

Q Was any of the land on the ranches purchased by yourself and Mr. Graves, under cultivation at that time

A Yes sir

Q Was water used in the irrigation of those properties

A Yes sir

Q Did you use water in the irrigation of those properties in 1905

A I did

Q Was that prior to your and Mr. Grave's purchase from Mr. Olive in 1905

A Yes sir

Q It was the same year that you purchased the property, was it not

A It was

Q During the years 1903, 1904 and 1905, was it always possible for you to procure water in the same manner and from the same point of diversion, upon these lands

A No sir

Q What was the reason for this

A It was the difference in the condition of the water

Q Caused by the character of the river

A Yes sir

Q You later purchased the ranch property which you now own

A Yes sir

Q And you are now the owner of it

A Yes sir

Q You have continuously farmed these properties since you became the owner of them

A Yes sir

Q And prior to your purchase from Mr. Graves or his estate, was his property farmed

A Yes sir

Q Have all these properties been irrigated, one way or another, since they were sold by Mr. Olive in 1905

A Yes sir

Q What water right have you been using in the irrigation of these properties

A The water right that we bought, known as the Branden

Q How many inches of water did you claim for these properties

A 200 inches for each 160 acres

Q That would be 600 inches

A Yes sir

MICROFILMED

Q Do you claim, Mr. Koon, that the 600 inches that you had aimed to use on these properties are the same 600 inches which Mr. Olive now seeks to divert to other properties

A Yes sir

Q In 1905, you made a loan with the Alliance Trust Company, Ltd., for the sum of \$1500, did you not

A Yes sir

Q Do you know how much water you loaned at that time

A Yes sir

Q How much

A 200 inches with each quarter

Q Was that the water that you purchased from Mr. Olive with your land

A Yes sir

Q And you have continued to use that same water to this date

A Yes sir

Q You are still using the water during the irrigation season

A Yes sir

Q I will ask you, Mr. Koon, whether or not, you have dammed up channels along the edges of your land for the purpose of raising the sub through your land

A I have

Q Were these channels the Bannock Jim Slough, or channels on the other side of your land

A They were channels between the Bannock Jim Slough and the river

Q Were these channels leading from the river

A Yes sir

Q Are those dams in those channels to day

A No sir

Q Why are they not there today

A The water ripples are too big this year

Q Did you have them in the channels prior to this year

A Yes sir

Q Did you have them in the spring of this year, before the flood

A Yes sir

MICROFILMED

Q Was any part of your land flooded by the highwater this year

A Yes sir

Q Did you lose any of your crops because of high water this year

A Yes sir

Q About what portion of the acreage was under water

A I think there was probably 80 acres

Q So that something more than 80 acres of your land was under water this year

A Yes sir

Q Did that destroy the crops on those lands

A It did

Q No occasion for irrigating particularly this year

A No sir

Q Had it been your intention and aim, as well as effort, to divert for the use of these particular lands, water from Snake River every year since your ownership

A Yes sir

Q And have you raised crops every year on them

A I have

Q Has any person deprived you of the use of any of the water claimed by you, during your ownership

A No sir

Q- Then the only interference that you had with your water right, if it be called interference, is that caused by nature and the shifting of the river bed

A That is all

Q Under existing conditions, Mr. Koon, is it possible for you to maintain a permanent diversion works

A It is not

Q Is this because of the shifting nature of the river

A Yes sir

I think that is all.

Cross Examination by Mr. DeCamp

- Q You say, Mr. Koon, that it is impossible for you to maintain diversion works on account of the shifting of the river
- A Yes sir
- Q Your water that you claim is from the Bannock Jim Slough or the River
- A The Filing is on Bannock Jim Slough
- Q Decreed, I presume, on Bannock Jim Slough
- A Yes sir
- Q The consequence is then, you are not taking your water that you are now getting, from the Bannock Jim Slough
- A No sir
- Q Why
- A It is impossible
- Q What makes it impossible to take it
- A Condition of the river
- Q Condition of the river is not made in the Bannock Jim Slough
- A The condition of the river made it impossible to get it from the Bannock Jim Slough
- Q The river was shut off from the Bannock Jim Slough
- A Yes sir
- Q You say that no person has interfered with your water rights
- A Not to now
- Q That is, from 1905 up until 1918, no one has interfered with your water right
- A No sir
- Q The channels which you divert water from the river -- have you any diversion works in them, any head gates
- A No sir
- Q No dam in the river
- A No sir
- Q According to this map, you state that the river flows through this country to the Bannock Jim Slough
- A Yes sir

Q Do you note on this map here that the swale runs from the Bannock Jim Slough to the river

A Yes sir

Q The consequence is, the waters of Bannock Jim Slough run into the river instead of from the river into the Bannock Jim Slough

A The river is higher than the Bannock Jim Slough

Q Then, Mr. Koon, this map must be in error as to that

A It may be

Q Did you testify, Mr. Koon, that you used water in 1905 on the lands you now own

A Yes sir

Q Mr. Olive testifies that there was no water in 1905. Is it not a fact that there has been a permanent dam in Mr. Olive's diversion works in his ditch that made it impossible to take that water through after that date

A There might be for as late as 1908 - not 1905

Q In 1904, is it not a fact that the river came through and cut off the end of the ditch that was formerly the ditch to water your land

A It cut off one

Q And is it not a fact that that break has never been repaired

A It never has today

Q The consequence is that water could not have been diverted onto that land after the break was made

A On one part. There are two ditches leading from the same point

Q To your land

A Yes sir

Q How many acres have you under cultivation, Mr. Koon, all together

A About 200 acres

Q The point of diversion you claim was Mr. Olive's point of diversion on his home place

A At one time

Q Did you ever ask for a change of point of diversion

A No sir

Q You stated also that the use of this water had not been denied you by reason of the fact that Mr. Olive was still using it up above you

A Yes sir

Q At the time of the sale in December 1905, was the water appurtenant to the place - was it being used on the land

A Not at the time of the sale

Q In the year I have referred to of 1905

A Yes sir

Q You claim no right then today in Bannock Jim Slough

A I claim the original right - the Branden rights

Q The location of the Branden right is in Section 21, near the center of the section on the Bannock Jim Slough, is it not

A Yes sir

Q Then you claim the water out of the Bannock Jim Slough

A I claim the water from those rights

Q Now, if Mr. Olive should get a change of point of diversion, would it lessen the amount of water that you use

A I do not know

Q You are not claiming then, as I understand it that you were watering your land out of the Bannock Jim Slough by a series of dams to hold up the sub-irrigation

A Not for the last two years

Q When was the last time you used water through Mr. Olive's headgate

A The last water that we used through there was in 1906 or 1907, before the dam was put in

Q Then from 1906 or '07 up until 1918, a period of 10 or 11 years, you had abandoned the Olive point of diversion and was not using water out of that

A Correct

Q If you were using water out of the Bannock Jim Slough, and Mr. Olive's headgate, at this time, admitting that he was there, was so high and the flow of water so meager that he could not get his water in his ditch, <sup>was it</sup> and you sustain any damage if Mr. Olive secured a change of point of diversion

A I do not think so

Q In making your application for loan in 1913 you stated in your application that you had decreed water, did you not

A I may have

Q And in perfecting that loan, you designated your water as the water appurtenant to the land

Q Yes sir

Q Why did you change from Decreed water in your application, to the water appurtenant to the land as designated in the mortgage

A I do not know

Q Now, you have owned this water, in your opinion, since 1905, the date of sale

A Yes sir

Q Why at that time did you not intervene as an intervenor in the suit of adjudication

A I was advised that it was not necessary

Q If Mr. Olive had sold you that water and it was appurtenant to the land at that time, and the deed absolutely conveyed it, or deed was given to you, or a quit-claim, do you not think at that time that all he did was to relinquish his interest in the water and you should perfect your title

A No

Q Now, did Mr. Olive agree to take that through court and get a decree

A I do not think there was anything said about it

Q You never paid the expenses of that decree

A I did not

Q Was there Snake River water running in the Bannock Jim Slough in 1916 and 1917

A In 1916 there was

Q Now, if Mr. Olive has held this decree since 1910, why have you never made demands on him to quiet title in your favor

A I have been advised that it was not necessary - that the water belonged to the land

Q In other words then you were not aware that Mr. Olive was using this identical water you claim to have purchased

A I was not

Q When this hearing was held in 1915, you had no knowledge or a hearing or did not get that information in a round-about way

A I had no knowledge of such a hearing until now

Q But in a few weeks thereafter you was notified by Mr. Ed Priest of this contemplated change of point of diversion

A I was not

Q In 1915, Mr. Koon, Mr. Olive made application for this same transfer. It was advertised in the Rigby papers for hearing which was held at Rigby, but no one appeared to protest and about a week afterward I received a letter signed by five parties in which your name was among them, protesting against the transfer

A I met Mr. Priest on the road one day and he stopped in the road and asked me if I would object to Mr. Olive transferring water. I said that I would object to transferring my water, I says, if Mr. Olive has any other water, it is nothing to me

Q Was that the first knowledge you had of any attempt to transfer any of this water whatever

A It was the only knowledge I have

Q Did you then understand that transfer was for this 600 inches of the decree

A I did not

Q Did you enter into an agreement with Mr. Olive at the time you bought this land whereby the water appurtenant to this land was to be with-held from the transaction

A I did not

Q Now, your method of irrigation during the years since you purchased this land has been by damming up the channels and creating sub

A Yes sir

Q But not by direct diversion into any ditch or canal where the water was measured

A No sir

Q Then how long since you have been able to do that by damming up the Bannock Jim Slough

A Well, I guess it might be possible yet if we could hold the dams

Q Then how long since you did irrigate by that method -- by damming Bannock Jim Slough

A Well, it has been some five or si x years

Q Then, in the last two years have you so irrigated

A I have not

Q Three years ago

A Three years ago we took water from the Bannock Jim before the dam was put in the Bannock Jim Slough

Q Now after that dam was put in the Bannock Jim Slough, how did you accomplish the irrigation of your lands

A South Fork of Snake River, by running it through sloughs and channels and damming it up

Q Now that method then you have used up to the present time

A Yes sir

Q And you state that all this time the water that you have used was the water that you purchased from Mr. Olive with the land

A That was what we supposed

Q And you understood it to be the 600 inches decreed to Mr. Olive dated June 1, 1889

A Yes sir

Q Now, you mentioned a while ago referring to a filing. What do you mean by that filing

A I do not remember

Q You did not mean to say then you used Mr. Johannesen any water by virtue of a water filing

A No sir

Q What do you mean when you refer to the Branden right

A It was the original filing that was made for Branden's three pieces of land

Q Not a water right at all

A It was a water right filing on the water right

Q For what land

A For these three quarters in 17-20-18

Q Then have you used that water in addition to this decreed water you claimed to have bought from Mr. Olive

A We claim it is the same water

Q That the said Branden filing is the same right that finally became adjudicated in this 600 inches

A Yes sir

Q Then when you refer to the Branden right you mean this identical 600 inches of water

A Yes sir

Q After Mr. Priest talked to you and you found out your water was in jeopardy you took no steps to protect it

A I did not feel it was in jeopardy

Q The thing that got you interested was my visit to you

A Yes sir

Re-Direct Examination of C. H. DeCamp by State Engineer.

Q When was that visit

A On November 30, 1918

Re-Cross Examination of F. L. Koon by Mr. DeCamp

Q Mr. Koon, you testified that there was two ditches on that land. Do they both come from the same heading

A Yes sir

Q And your land then in the spring is largely irrigated by flood water from the river

A Yes sir

Q Did you, after the date of buying this land, make a filing with the State Engineer covering this same land and others

A Part of it

Q Did you attempt to divert water thereafter from the Bannock Jim Slough on this filing

A Yes sir

Q Were you successful

A No sir

Q Why could you not divert that water

A That was before the dam was put in the Bannock Jim Slough and high water took our works out

Q What was your object in filing for water with the State Engineer on the same land if it was already covered by water bought from Mr. Olive

A I did not think there was sufficient for it and I had other lands adjoining

Q But you did designate this other land as well

A I think so

Q Now, when you were unsuccessful in your efforts to divert this water and apply it to beneficial use and your time had expired on your permit, did you make application for an extension

A Yes sir

Q You made application for extension for the same permit

A Yes sir

Q Was it granted

A Yes sir

Q It was granted

A Yes sir

RECORDED

Q You made then another effort after the extension was granted to divert the water

A I did not

Re-Direct Examination by Mr. Johannesen

Q In those early years, Mr. Koon, the water that came into the Bannock Jim Slough, was it largely Snake River water

A Yes sir

Q So that you were getting water from Snake River through a portion of the Bannock Jim Channel

A Yes sir

Q The only difference today, that is between today and 1905 or thereabouts, is that instead of using the Bannock Jim Channels for a portion of the distance, you are using some other natural channel to convey the water from the river

A Yes sir

Re\* Direct Examination by State Engineer

Q Mr. Koon, if a given quantity of water -- say 600 inches of water-- were taken out of the river at a point farther up -- we will say at the heading of the Harrison Canal-- would there be any possibility of that diminishing the use of the waters as you apply them to your land

A Not at the present time

Q Well, what do you mean by not at the present time

A I mean when there would be less water there

Q Now, you claim that if Mr. Olive has applied 600 inches to this home place that you have never had any knowledge that he was applying that water mentioned in this decree which you have referred to as the Branden right

A No sir

Q If he did do that, you did not know that he was using that identical water

A No sir

Q And you deny then, if I understand you right, that he has at any time since your purchase of the lands had a right to the use of the identical 600 inches of water

A I do

Q Had you been aware that he was doing so, would you have entered any protest heretofore

A If he was infringing on these rights I would have protested

RECORDED

Mr. O. A. JOHANNESSEN of Idaho Falls, Idaho, was sworn and testified as follows:

By way of preliminary statement, I will say that the so-called Branden and Curd tracts which is the property in controversy and which is now owned by Mr. Koon was not filed upon until July, 1902, by the original entryman - that is, the land. On September 19th, 1892, the Messrs. Branden filed a water location notice appropriating 600 inches from Snake River by way of the Bannock Jim Slough for the use of these particular lands. In December, 1905, Mr. Olive arranged through the office of Johannesen and Hartert, of which firm I was then a member, for a loan of \$6500.00, the same to be made as four separate loans. He at that time was arranging to sell three quarters of the land to Messrs. Graves and Koon.

Mr. Olive at that time in my office answered the questions on four loan applications, one of which was made out in the name of Frank L. Koon, and two of which were made in the name of Highland C. Graves and the 4th which was made in the name of Oliver H. Olive. In each of the first three applications, and which cover the lands that were being sold to Messrs. Graves and Koon, Mr. Olive described the water right as consisting of 200 inches of a prior right from Snake River. It was explained to me at that time that this represented the water that had been appropriated by the Messrs. Branden on the 19th day of September, 1892.

I, at that time prepared three loans, one for Mr. Frank L. Koon's signature and two for the signature of Mr. Graves and in each of these mortgages described the water right as consisting of 200 inches of water right in Snake River, appropriated September 9, 1892, recorded in Book A, at page 456 of the water records of Fremont County. A slight error was made in the date and the mortgage made September 9 when it should have been September 19th. In the mortgage that I prepared on the so-called home place, then owned by Mr. Olive, he described the water right as consisting of a one-fourth interest in what was then known as the Bannock Jim Island Ditch. I prepared the deeds that were made by Mr. Olive to Messrs. Graves and Koon, and also prepared the mortgages, all of which was done at the same time. I had no direct business transactions with Messrs. Graves and Koon until the entire matter had been arranged between myself and Mr. Olive, he furnishing me all of the information and data necessary to fill out the applications, the deeds and the respective mortgages.

It was my understanding at that time that Mr. Olive conveyed to Messrs. Graves and Koon, the entire water right that had been appropriated by the Brandens for the use and benefit of the lands sold to these gentlemen. At that time I sent a Loan Company's Inspector over the land and so his report on the data, for it was made out and mailed to the Loan Company which we represented, and that report recited that there was a 200 inch water right for each of the properties purchased by Messrs. Graves and Koon, or 600 inches all together.

Cross examination by Mr. DeCamp

- Q You state that the deed and mortgage were both executed on the same date
- A No, prepared on the same date. The deeds were signed in my office in Idaho Falls by Mr. Olive, while the mortgages were sent to St. Anthony and signed there
- Q And that Mr. Olive gave you this information relative to this water being appurtenant to the land
- A Yes sir, he did

Direct Examination of Mr. Olive by Mr. DeCamp

- Q Have you any knowledge of making the statements contained in those applications
- A I have not
- Q Are you the man that appeared at his office and gave this information on all of those applications for loans
- A I do not think so
- Q Have you any statement to make concerning it
- A Not right now

Cross Examination of Mr. Koon by Mr. DeCamp

- Q Mr. Koon, did you tell me on November 30, 1918, that you had a special deed for this water
- A Special Deed! No, I said we had deeds

Re-Direct Examination by State Engineer

- Q Mr. Koon, I hand you a paper filed among the records of this case sworn to by J. M. Adams. Will you examine that paper and state whether or not you made the statements referred to in that affidavit
- A I did not

Re-Direct Examination of Mr. Olive by State Engineer

- Q Mr. Olive, when you sold this land to Mr. Koon and others, in what general way did you reserve that water right
- A By an oral agreement
- Q With whom was that oral agreement made
- A With Mr. Koon
- Q Where was it
- A Down on the place
- Q You heard Mr. Koon's testimony wherein he denies having made any such agreement with you
- A Yes sir
- Q Do you care to make any statement
- A The fact that I left the water out of the deed as an improvement was all that was necessary to reserve the water

- Q On the other hand, Mr. Koon's testimony is that he understood that it was not necessary to expressly recite the transfer of water with the deed and that he understood that water was going with the deed
- A Well, every deed that I have received all carry the water in the ditch rights in the body of the deed and I presumed that that was the way you transferred the water
- Q Now, do you wish to make any statement in regard to the testimony of Mr. Johannesen in regard to those deeds
- A Nothing more than that I left the water out of the deed intentionally for the purpose of preserving the water. If I had intended the water to go with the place, it would have been included in the deed
- Re-Direct Examination of Mr. Koon by State Engineer
- Q Mr. Johannesen testifies that you expressly included this water right as a part of the transaction in the deed
- A I did not understand why the right was not put in the deed if he was to convey the water and they put it in the mortgage

Re-Direct Examination of Mr. Johannesen by State Engineer

- Q As an attorney at that time, Mr. Johannesen were you familiar with the fact that the Supreme Court in this county held, that in the absence of an express provision to the contrary, that the water is conveyed with the deed
- A Yes sir
- Q You understood that to be a decision of the Supreme Court in this State
- A I could not cite any decision, but I do know that
- Q Mr. Johannesen, can you tell me whether or not this cross-complaint of Mr. Olive, protestant's Exhibit A, was filed in the suit, before or after these deeds.
- A Filed nearly a year before the deeds were prepared

The applicant here introduces as part of the record, any permits on file in the State Engineer's Office in the name of F. L. Moon on Upper Snake River, or Bannock Jim Slough, in Township 5 North, Range 39E.

The applicant is hereby given fifteen (15) days in which to file a brief and certify to the State Engineer that he has served a copy of said brief on the Protestant, and the Protestant is hereby given ten (10) days from the date of service in which to reply thereto.

Hon Fred. A. Wilcox  
Wash Dc  
Boise Id

RECEIVED  
FEB 20 1894

Am enclosing Brief in the Olive case. And hope  
for an early decision.

How is the new code coming? I am I was not appointed  
as one of the legislative committee. It seems  
as though the enemies instead of the friends of  
the bill were chosen to boost it. Practically all  
the irrigators who attended the Twin Falls meeting  
are knocking it. All three of the Idaho Falls papers  
are warning the people that they will lose their  
decreed water. I saw High Frew. circulating a petition  
against it. And I asked him what the law  
provided. He replied "I don't know as I never have seen."

The bill." I say. you certainly act like it.

Please direct Miss Byrns to send me her bill  
for the transcript of evidence. And I will send  
it with Mrs Brown's box of Candy.

Well if this "Engineers Law" don't pass we can all  
get a job on the new Dubois project. Which there  
is so much talk of at present

Very Truly Yours

Chas. H. DeLamp

UNRECORDED

# REPORT

IN THE MATTER OF THE APPLICATION  
OF O. H. OLIVE FOR TRANSFER OF  
WATER RIGHT -- Case No. 15.

This is not an action commenced for the purpose of determining as to whether O. H. Clive owns such water or as to whether F. L. Koon owns such water. Even though the above named applicant and the above named F. L. Koon, protestant, were both desirous of having the State Engineer adjudicate the ownership of and the title to such water, this would not vest the State Engineer with the authority or jurisdiction to do so, because all such authority and jurisdiction is vested in the District Courts of the State of Idaho, and in the particular instance, in the District Court of the County where such water is located. Nevertheless, the protestant and his counsel, upon the hearing of the application herein, tendered some testimony touching the question as to whether such water was, or was not, appurtenant to the lands owned by Koon, apparently for the purpose of showing that Koon owned the water which the applicant seeks to have changed and transferred. Unless the State Engineer is of the opinion, and, therefore, holds, that he is vested with judicial authority sufficient to adjudicate the

14-00000

ownership of and title to water, it must be held that any and all testimony offered for the purpose of establishing the ownership of or title to such water, on the part of Koon, is wholly irrelevant and immaterial.

In regard to the question as to whether or not Mr. Koon really holds this water ~~as~~ an appurtenance, let me say that the evidence is ~~confusive~~ <sup>confusing</sup> to the effect that Mr. Olive sold the land without the water. The deed does not specifically convey the water and Mr. Olive testified that he reserved the water from the sale and that it did not pass with the land. As a matter of law water will not pass with the land as an appurtenance where it is the intent of the grantor to reserve it and the grantee acquiesces in such reservation as is the case here. In support of this statement let me call your attention to the following facts:

Mr. Koon testified that after he had purchased this land referred to herein from O. H. Olive he made application to the State Engineer for a permit to appropriate other waters with which to irrigate this land and later made application for a renewal of said permit. Mr. Koon also testified that under said permit he made an attempt to divert water under his permit with which to irrigate his said land but that the high water washed out his dam and diversion works away, and that he never made any other attempt to put the water under his permit to a beneficial use.

Again Mr. James M. Adams made affidavit to the effect that Mr. Koon requested him, Adams, to try and purchase the six hundred inches of water in question of Mr. Olive, clearly showing that Koon knew and recognized the fact that Mr. Olive reserved this water from such sale of said land, and that throughout all these years he, Koon, respected such reservation.

From the date of the sale in 1905 down to the present time Koon has never claimed or demanded this water or the right to the use thereof, of Mr. Olive.

RECEIVED  
JAN 10 1910

I desire to call your attention to the fact that for three years after the Publication of Notice that Mr. Olive was desirous of changing the point of diversion and use of this water, and fixing the time and place of hearing thereof, Mr. Koon never made any protest whatever either to the change of the point of diversion, or point of use thereof. You will also recall that Mr. Koon did not appear at this hearing and make claim to this water or protest to the change in point of diversion, even after he had been personally notified by Mr. Priest.

Again I desire to call your attention to the evidence of Mr. Koon wherein he testifies that he has neither dam, ditch or headgate whereby or wherewith to divert the water in question for use upon his lands. In regard to the irrigation of the Koon lands let me direct your attention to his testimony found on Page 22 of the Transcript of the Evidence where Mr. Koon admits that the irrigation of these lands was from highwater and that the high water destroyed much of his crops, that the only interference with his irrigation system was that offered by the high water, and that owing to the high water he could not maintain permanent works. His own evidence shows that he has never claimed or used the water in question, and that the only irrigation system he has or ever has had is a migratory one, subject to the caprice of the high water.

According to the evidence adduced herein there is only one headgate through which Mr. Koon could divert the waters in question for use upon his land, and that is what is known as the Olive Headgate, and Mr. Koon testified himself that for the past eleven years he had never diverted any water whatever through this headgate.

The evidence of Mr. Olive, Mr. DeCamp and D. G. Martin, each of whom has gone over all the land in question and are thoroughly familiar therewith is to the effect that there is no evidence of dams, headgates, ditches or other diversion works for the irrigat-

tion of the Koon lands, and no evidence of recent or any irrigation thereof. In regard to the question of Mr. Olives ownership or right to the use of the water in question I wish to say that this has been once adjudicated by a court of Competent Jurisdiction and cannot be changed or modified. And the courts hold that it is not necessary to decree the water to any particular tract of land nor is it necessary that the land upon which it is to be used, be described. In support of this contention let me call your attention to Snake River Decree; more than half the water decreed in the Snake River water suit, was decreed without describing any land for it whatever.

In regard to the evidence offered touching certain loans of Olive, Koon and Graves, you will recall that Mr Johannesen testified that Mr Olive stated there was two hundred inches of water for each 160 acres of the Koon and Graves land; in opposition to this testimony of Mr Johannesen's, ~~Mr~~ we have Mr Olive's testimony positively denying the same; further Mr Johannesen's statement is controverted by the copy of the telegraphic report of Mr Hugh Moreton then acting as agent for Mr McMasters, wherein Moreton stated that he and not Olive made the report on the Koon and Graves loans and that upon this report the ~~the~~ Koon and Graves loans were perfected.

In regard to the contention that water passes as appurtenant to the land let me say-- where the water is not specifically described in the deed, that then and in such case it is a question of ~~fact~~ intent, that is as to whether or not the grantor intended the water to pass with the land as ~~an~~ appurtenant thereto, or whether the grantor intended to reserve the water from the sale of the land, and this intent is a matter of proof with the burden of ~~of~~ proof resting upon the one who claims the water as appurtenant to the land.

In support of this position I call your attention to Wiel  
on Water Rights:

"APPURTENANCE, -It is well settled that a water right may pass with land as an appurtenance thereto, or as a parcel thereof.

Whether a water right passes as an appurtenance involves two questions, viz., a:-whether the water right is an appurtenance, and b:-Whether, being such, it was intended to pass. Both of these are questions of fact in each case."

Wiel, 2nd Ed., Section 225 p. 340.

It being a question of fact, Koon's own testimony precludes him absolutely from claiming this water as an appurtenance to his land.

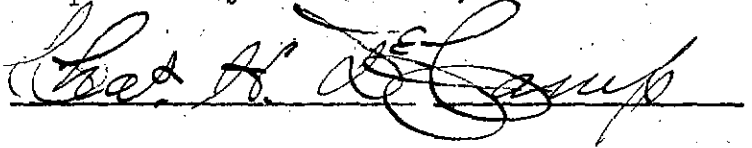
The record shows that Olive changed the place of use of such six hundred inches of water and used the same on other lands owned by him for a period of five years or more; this record also shows that for such period of five years or more, Koon recognized Olive's right to use the waters in question and acquiesced in such use, and having so recognized and having so consented to a change of the place of use of such waters for the statutory period of five years, it is now too late for Koon to object to another and different change in the place of use of the waters in question.

The testimony of Koon himself shows that for a period of at least ten years he has not irrigated his lands at all, ~~what~~ either with the waters of Snake River or of what is known as Bannock Jim Slough; Koon testifies that he has dammed certain channels between the River and the Bannock Jim Slough and that by so damming such channels he subirrigates his lands; excepting such testimony as the truth, it conclusively establishes the abandonment not only of the six hundred inches of water in question but also of the waters covered by the Koon permit; this testimony of Koon also establishes the fact, beyond controversy, that a change of the place of use of the six hundred inches of the water in question would not have the effect of preventing Koon from continuing to maintain dams in such channels and to thus, in the future, continue to subirrigate his lands as he has done in the past; in addition to this, Koon also testified that the change of the place of use of the waters in question made by Olive in the year 1906 or in the year 1907 did not damage him, Koon, (see page 25 transcript); Koon also testifies, at page 30, that if the six hundred inches of water in question were taken out of the river at the Heading of the Harrison Canal that there would not be any possibility of that diminishing the use of the waters as he applies the same to his lands; therefore, under and according to the testimony of Koon himself, the place of the use of the water in question can be changed as applied for by Olive without working any injury or damage whatever to Koon.

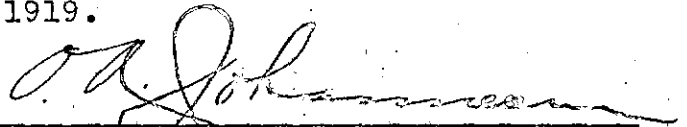
In conclusion I desire to say; that Mr Koon himself having testified that he would not be injured by the desired change ~~by~~ of the place of use of the six hundred inches of water in question, and this testimony being corroborated by all of the other testimony in the record touching this particular matter, I submit, that the reasonable and proper course for the State Engineer to pursue is to stand by his former action in issuing to Mr Olive a Certificate of Transfer of the water in question and refuse to revoke the same.

Dated ~~th~~ at Idaho Falls, Idaho, this 30th day of Jan., A.D. 1919.

Respectfully submitted,



Service of the foregoing brief, by copy, is hereby acknowledged this 30<sup>th</sup> day of January, A. D. 1919.



Attorney for Protestant.  
Residence and Post Office address, Idaho Falls, Idaho.

107-112

January 3, 1919.

Re: Transfer O. H. Olive.

Mr. C. H. DeCamp,  
Idaho Falls, Idaho.

Dear Sir:

Mr. F. L. Koon, through his attorney, has filed a protest in which he alleges the ownership of the land to which the water Mr. Olive has asked to transfer, is owned by himself and the 600 inches of water also, and that he is now and has been using the same ever since the decree.

This raises the very question that I was afraid of in this transfer and that came up in the former application, and the question upon which the decision of this office was rendered denying said application. It is now before the office in concrete form, and will have to be cleared up, so it will be necessary for me to have a hearing upon the subject or else the case will be taken to the Courts and you will have to fight it out there.

If I hold a hearing, and at such hearing you can clear up the matter so that the transfer can stand, it will be much cheaper for you than to go through the Courts with it and if the allegations of Mr. Koon cannot be overcome, the Court would not sustain the transfer, and it would be of no avail for me to issue it.

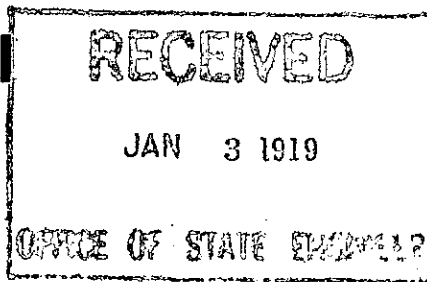
Very truly yours,

FAW/MB  
Case 15.

State Engineer.

RECORDED

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO



*Olive Transfer*

January 2nd, 1919.

Hon. Fred A. Wilkie,  
State Engineer,  
Boise, Idaho.

Dear Sir:-

Mr. F. L. Koon of Thornton has just referred to me your kind favor to him of the 27th ult., relative to the matter of the application of Mr. O. H. Oliver for transfer of water right.

The writer is more or less acquainted with this matter, so far as the water right goes, having made a loan to Mr. Koon at the time he purchased his property from Mr. Olive, and from the facts readily called to mind, cannot help but express surprise that Mr. Olive should attempt at this time to transfer a water right in which he has no equity or right whatsoever.

Mr. Koon is now the owner of all the property described in the first paragraph of your letter, and which is the property to which the 600 inches was decreed. At the time Mr. Olive disposed of his property to Mr. Koon and Mr. Graves, Mr. Olive claimed 200 inches of water <sup>for each quarter</sup> from Snake River through the 'Bannock Jim' Slough, and that this appropriation was covered by location notices, duly recorded. The water location referred to in your letter (second paragraph) was not made by Mr. Koon, as Mr. Koon did not purchase the property until December 1905, and of course could not have made a location in 1892. The reason for the mortgage making the recital in the manner stated in your letter is due entirely to the fact that, in drawing the mortgage, I inserted therein the water location which I found set out in the abstract. So far as Mr. Koon (and Mr. Graves, also) was concerned, he knew of the matter only as he found it stated in the mortgage.

As I recall it now, when Mr. Olive submitted his proof in the Adjudication Suit, he gave evidence to the effect that the water claimed by him had been in use on the land at a date earlier than the date of the location notice, and this accounts for the fact that the decree shows the date of priority as 1889, while the location dates only from 1892. It was all the same water right.

As you will recall, the Adjudication suit extended over a long period of years, and was pending at the time Mr. Olive sold to Mr. Koon, and this accounts for the fact that the final decree was entered in Mr. Olive's name, he having been one of the plaintiff's. There was no occasion for Mr. Koon's (and Mr. Graves' also) name being substituted in the case, as the warranty deeds given by Mr. Olive fully covered and passed any rights that he might have acquired thereafter which related to the land he then

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

conveyed. The water rights in question became appurtenant to the land on which they were used, and passed in the deed as one of the appurtenances.

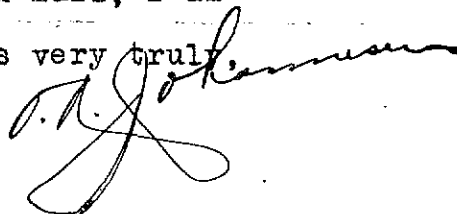
Mr. Olive conveyed his interest in the lands in question in December 1905 and has had no interest in them since that time. Assuredly he had no land to which the right could attach when the final decree in the water suit was entered. As before stated, while it is true that the decree was entered in Mr. Olive's name, but for the land expressly described, he had, when conveying those same lands, passed along with the land the water right, which was appurtenant to the land, which the decree defined and fixed. The decree did not make the right, but merely fixed it with reference to other rights. Mr. Koon has been and is now using the 600 inches of water in question and on the land to which they were decreed, so that Mr. Olive has nothing to be transferred.

If the foregoing statement lacks information desired by you, I shall be very glad to have you inform me thereof, so that I may furnish you such additional information as you may require. I also desire to inform you that if any affidavits or other form of evidence is required by you in the above matter in order to substantiate what I have herein stated, it will be a pleasure to supply same, as the facts are easily proven.

In behalf of Mr. Koon, I certainly most emphatically protest and object to the transfer proposed, and I certainly hope that your office will not permit it. If the transfer is permitted, we will be compelled to take the matter into the courts, as no person can be deprived of his property in such an illegal manner.

Hoping to hear from you by return mail, I am

Yours very truly,



RECEIVED

December 27, 1918.

Re: Water Right - District 36.

Mr. F. L. Koon,  
Thornton, Idaho.

Dear Sir:

This is to acknowledge receipt of yours of the 24th. Mr. Olive has made application for transfer of water right, the same being granted to O. H. Olive in the case of the Benburg Irrigation Company, et al, plaintiffs, versus Teton Irrigation Company, et al, defendants, dated December 16, 1916, by J. M. Stevens, Judge, for 12 second feet (600) inches, dedicated to the NW 1/4 Sec. 18, T. 1 N. R. 39 E., the NE 1/4, SW 1/4, and Lot 5, Sec. 18; S 1/4 SW 1/4, Sec. 17; Lot 2 and part of NW 1/4 NW 1/4, Sec. 20; the E 1/4 NW 1/4, and Lots 1 and 2, Sec. 18, T. 5 N., R. 39 E., S. 1., bearing date of priority of June 1, 1889.

I have a certified copy of a deed from O. H. Olive to Frank L. Koon, dated December 20, 1905, conveying the E 1/4 NW 1/4, Lots 1 and 2, Sec. 18 - 160 acres, to yourself. And another one dated December 21, 1905, from yourself and wife to the Alliance Trust Company, in which the dedication is as follows: E 1/4 NW 1/4, Lots 1 and 2, Sec. 18, together with 200 inches of water right in Snake River, appropriated September 9, 1892, recorded in Book A at page 456, water records of Fremont County. Both of these transactions were five years prior to the rendition of the decree in which Mr. Olive was granted 600 inches of water which he seeks to transfer.

Will you kindly explain to me why when the decree was rendered, you did not have your rights adjudicated, and who owned the E 1/4 NW 1/4 and Lots 1 and 2 of Sec. 18, T. 5 N., R. 39 E., at the time the decree was rendered. Also, why, if you had water purchased from Mr. Olive for the E 1/4 NW 1/4 and Lots 1 and 2, Sec. 18, T. 5 N. R. 39 E., that you afterwards recited in your deed to the Alliance Trust Company, other water appropriated by you, to-wit: on September 9, 1892, 200 inches of water from Snake River by Location Notice, and had it recorded in Book A, page 456, water records of Fremont County. Also, state to me exactly what claim you have upon the water right granted to O. H. Olive by decree as above stated in this letter. Also, please inform me how Mr. Olive obtained the decree of Court for 600 inches of water, five years after the deed he gave to you.

If you are interested in this transfer in any such a way that you will be injured by it, I will expect you to reply to this letter within ten days, and set forth fully the information for which I have asked you. If I do not receive such reply and you do not set up sufficient grounds to indicate that you are injured by this transfer, or that any one else is, I shall confirm the same and grant a certificate of transfer to Mr. Olive.

Very truly yours,

State Engineer.

RECEIVED  
FILED  
File: Case 15.  
cc - Deegan  
cc - OH Olive

Dec. 24. 1918.

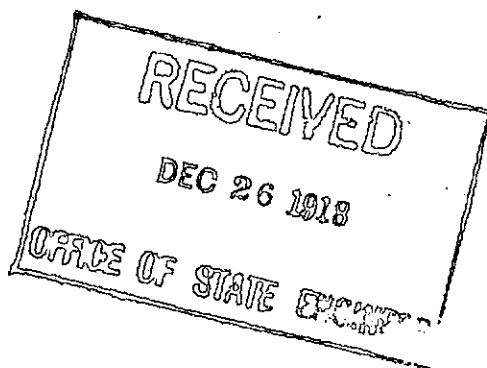
Thornton, Idaho.

State Engineer; Boise Ida.

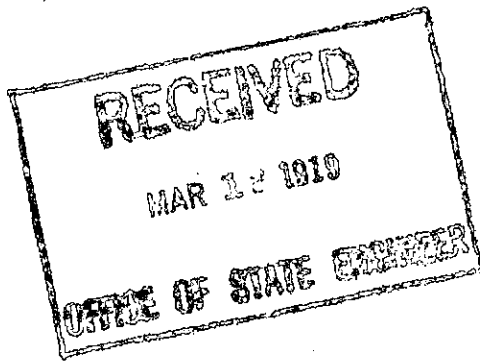
Dear Sir. Kindly inform me in regard to some water rights. Some few years ago we purchased land from O. H. Olive, and received deeds for the water rights. Should these deeds be recorded with - State Engineer or County recorder? I understand that Mr Olive is trying to Transfer this water.

Yours Truly -  
J. L. Koon.

Thornton  
Idaho.



O. A. JOHANNESEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO



March 16th, 1919.

Hon. Fred A. Wilkie, State Engineer,  
Boise, Idaho.  
Dear Mr. Wilkie:

Complying with my promise to you over the telephone,  
I enclose you herewith Order and Notice in the matter of  
the application of O. H. Olive for transfer of water right.  
I hope that these are prepared in manner that will meet  
with your approval. There are a number of things that I  
should have liked to have incorporated in the Order, but  
these provisions might not be proper. I therefor limited  
the Order to a denial of the application, and an annulment  
of the Transfer heretofore granted.

Thanking you again for your kindness in this matter, and  
appreciating the consideration given the case of my client,  
and wishing you the utmost success in your future undertak-  
ings, I am

Yours very truly,

OAJEML  
Enc. 2.

RECEIVED

Report to Mr. J. L. ...  
2255

March 18, 1919.

Re: Transfer Case No. 15.

Mr. C. H. DeCamp,  
Idaho Falls, Idaho.

Dear Sir:

We enclose herewith Notice and Decision in  
the matter of the application of O. H. Olive  
for transfer of water right.

Very truly yours,

W. G. SWENDSEN,

State Engineer.

MB  
Encl.

By

Trans. 15

RECORDED

March 18<sup>th</sup> 1919.

Re: Transfer Case No. 15.

Mr. O. H. Olive,  
Idaho Falls, Idaho.

Dear Sir:

We enclose herewith Notice, Order and Decision  
in the matter of the application of O. H. Olive  
for transfer of water right.

Very truly yours,

W. G. SWENDSEN,

State Engineer.

MB  
Encl.

By

Trans. 15

March 18, 1919.

Re: Transfer Case No. 15.

Mr. H. J. Holland, Secretary,  
Harrison Canal Company,  
Rigby, Idaho.

Dear Sir:

We enclose herewith Notice, Order, and Decision  
in the matter of the application of O. H. Olive  
for transfer of water right.

Very truly yours,

W. G. SWENDSEN,

State Engineer.

MB  
Encl.

By

Trans.15

MICROFILMED

March 18, 1919.

Re: Transfer Case No. 15.

Mr. F. L. Koon,  
Thornton, Idaho.

Dear Sir:

We enclose herewith Notice and Decision in  
the matter of the application of O. H. Olive  
for transfer of water right.

Very truly yours,

W. G. STENDSEN,

State Engineer.

MB  
Encl.

By

Trans. 15.

FILED

- <sup>Ms</sup> Exhibit -

They say you cannot determine  
ownership, except by the water. The  
only question is - should change of place  
of such water and claim  
be made, as stated in his application,  
injure others. If it does not, it should  
not be granted. If it does not, it  
should be granted. The contemplated it  
would not be damaged because of  
defining, from others water but not must  
be some damage by reason of the different  
place of use such as for bath, sewage  
throwing waste water on him etc.  
If there were this particular water  
be there this should be granted till  
to the same in that court.

They say you should cancel  
the reworking order and modify the  
original certificate of abeyance to  
grant the change to such of the claimed  
waters as claim may be the owner  
of - and in the beginning of your  
order and judgment to make a finding  
that the transfer of such of said water  
as owned by applicant to him in the  
processes of said former and my minor  
of others that or any one else.

Report refer to both records already made  
and to the subsequent record that order was made  
and the order of the court was made.

May 22, 1919.

Mr. O. A. Johannesen,  
Attorney-at-Law,  
Idaho Falls, Idaho.

Dear Sir:

For your information there is enclosed herewith a copy of an order which has been entered in the case of O. H. Olive wherein he filed an application to transfer certain waters of the South Fork of Snake River, which case is designated as Case No. 15.

Very truly yours,

WGS/MB  
Encl.  
T-15 ✓

Commissioner of Reclamation.

WAGGEN MEG

May 22, 1919.

Re: Transfer Case No. 15.

Messrs. Holden & Holden,  
Attorneys-at-Law,  
Idaho Falls, Idaho.

Gentlemen:

Herewith I am enclosing an order which has been entered in the case of Mr. O. H. Olive wherein he filed an application to transfer certain waters in the South Fork of Snake River.

Copy of this order is being forwarded to Mr. O. A. Johannesen, Attorney for Mr. F. L. Koon,

Respectfully,

WGS/MB  
Encl.

Commissioner of Reclamation.

T-15 ✓

MICROFILMED

May 22, 1919.

Mr. J. H. Peterson,  
Attorney-at-Law,  
Pocatello, Idaho.

Dear Sir:

Herewith I am enclosing a copy of an order which has been entered in the case of O. H. Olive wherein he made an application to transfer certain waters of the South Fork of Snake River and which case is designated as Case No. 15.

Very truly yours,

WGS/MB  
encl.  
T-15 ✓

Commissioner of Reclamation.

RECORDED

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

February 15th, 1919.

Hon. Fred A. Wilkie,  
State Engineer,  
Boise, Idaho.

Dear Sir:-

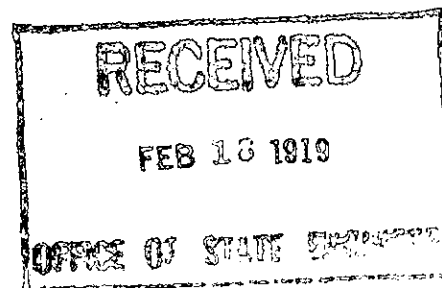
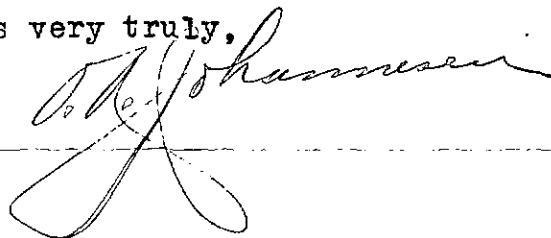
Re. Transfer Case No. 15.

In behalf of the protestant, F. L. Koon, I am glad to hand you herewith brief in the above matter. I thank you very kindly for the extension of time given me, as I have been so extremely busy of late, as well as short of office help, that it has been quite impossible to take the matter up ere this.

Hoping that the matter will have your early attention, and that we may look for a decision from you in the no distant future, I am

Yours very truly,

enc.



RECEIVED

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF IDAHO.  
-----

|                                  |   |                      |
|----------------------------------|---|----------------------|
| IN THE MATTER OF THE APPLICATION | ) |                      |
| OF O. H. OLIVE FOR TRANSFER OF   | ) | BRIEF OF CONTESTANT. |
| WATER RIGHT.      CASE NO. 15.   | ) |                      |

The above-named applicant, claiming to be the owner of six hundred inches of water in Snake River, decreed in the so-called Snake River water suit, being the case of the Rexburg Irrigation Co. et al. vs. the Teton Irrigation Canal Co. et al., and having a priority date of June 1st, 1889, seeks to have the said waters diverted from the lands to which they were decreed for the purpose of irrigating other lands, all of which is more fully set out in the application now on file herein. The protestant, F. L. Koon, objects to this attempted transfer on the ground that the said six hundred inches of water is not the property of the applicant, but, on the contrary, is the property of the the protestant, who is now the owner of the lands to which said waters were decreed.

Protestant agrees with the applicant that the issue involved in this case is the question "will F. L. Koon, the protestant, be injured by a change of place of use of such water". But the protestant denies that the question is to be answered in the manner so glibly attempted by counsel for applicant.

Protestant fully agrees with the applicant that the Honorable State Engineer of Idaho is not vested with authority to adjudicate the ownership of water and water-rights, that being a power delegated by the laws of the state to courts of competent and proper jurisdiction. In addition to that proposition, however, the protestant contends that the Honorable State Engineer has "no right, power or authority to interfere with vested rights", and that he cannot grant a permit giving an applicant the right to appropriate and divert the waters of any stream, if such waters have already been diverted and applied to beneficial use by other persons and claimed by the latter as their property. (19 Ida.727; 20 Ida.275; 21 Ida.485).

However, before the Honorable State Engineer can entertain

or consider an application for the transfer of a water right, he must in the nature of things first determine to his own satisfaction that the applicant is the owner of the water sought to be transferred. To this extent, therefore, in the instant case the Honorable State Engineer must determine as to whether or not the six hundred inches in question is the property of the applicant, O. H. Olive. If it is, he has jurisdiction, but if it is not, then he has no jurisdiction.

It may very well be admitted that the diversion of six hundred inches of water from the great Snake River can not have any appreciable effect upon the flow required by the protestant, but this admission neither proves nor disproves the question involved in this case. If the six hundred inches sought to be diverted is the property of the protestant, assuredly he will be injured. If it is not his property, then the question of injury is purely one of physical facts.

In support of his contention that the six hundred inches in question is a water right owned by the protestant, the latter respectfully directs the attention of the Honorable State Engineer to the testimony given at the hearing held before him on the 10th day of last January at Idaho Falls, Idaho, as well as to the exhibits offered by both the applicant and the protestant, and particularly to the following facts and propositions based thereon.

First. The lands owned by the protestant, purchased by him from the Applicant on the 20th day of December, 1905, were entered for the first time in the United States Land Office at Blackfoot, Idaho, some time during the fore-part of the year 1892 by the Messrs. Branden/ (Tr. pg. 31)

Second. On or about the 19th day of September, 1892, the Messrs. Branden filed upon six hundred inches of water from Snake River (undoubtedly the water claimed by the applicant) for the use and benefit of the land entered by them and referred to in the preceding paragraph. This water was duly diverted from the flow of Snake River by the appropriators and applied to use upon the said land. (Tr. pg. 31)

Third. Some time in the very early part of the year 1905,

the applicant, who had in the course of events succeeded to the right, title and interest of the Messrs. Branden in and to the said lands and the said water appropriation, and having at that time been made a party defendant in said Snake River Water Suit, filed therein his Answer and Cross-complaint, wherein he alleged himself to be the owner of the said land in question and also of the said water right, the latter of which he had, as had his predecessors, applied to beneficial use upon said lands, and therein asked the court to decree to him for use upon the said land the said six hundred inches of water. (Protestant's Exhibit #1, and Tr. pgs. 3 and 4).

During the summer of the said year 1905, the said applicant, while testifying under oath in the said suit and in support of the allegations contained in his said Answer and Cross-complaint, stated that the said six hundred inches of water, which is the six hundred inches now claimed by him, had been used upon and were appropriated by his predecessors for use upon the said land, being the land now owned by the protestant. (Protestant's Exhibit #2, and Tr. pgs. 5 and 6).

That in the said Answer and Cross-complaint filed by the applicant, the latter also alleged himself to be the owner of other lands and for these he made <sup>the</sup>claim <sup>the</sup>other water diverted and used thereon.

That the applicant, when the final decree was rendered in the said Water Suit, some time in the year 1910, was decreed other water in addition to the six hundred inches in question, in accordance with the prayer of his cross-complaint.

Fourth. That while the applicant was the owner of the land now owned by the protestant, the said applicant made beneficial use and application of the said six hundred inches of water on said land, and that the said six hundred inches were used thereon during the season of 1905; that during said season, and prior to his purchase of said lands, the protestant, then in the employe of the applicant, irrigated the said land with the said water, and the said protestant did then and there know that the applicant claimed the said six hundred inches for the use and benefit of the said land.

RECORDED

The said protestant did then and there understand that the said six hundred inches of water was appurtenant to the said land. (Tr. pgs. 13, 19 and 20).

Under the Constitution and Statutes of the state of Idaho, a water right is real property and is an "appurtenance" to the land irrigated by the use of such water. (22Ida.498). There can be no question but that by virtue of the said appropriation of the said six hundred inches of water for use on the said land, being the land now owned by protestant, and the subsequent use thereon of it, the said water did become appurtenant to said land.

Fifth. That on or about the 20th day of December the protestant, and one Highland C. Graves whose interest the protestant afterwards acquired and now owns, purchased from the applicant the said land in question, and the said applicant conveyed the said premises by a good and sufficient warranty deed, which deed conveyed with said land "all and singular the .....appurtenances thereunto belonging or in any wise appertaining". That the said six hundred inches of water, having become appurtenant to the land on which the same had been used and for which the said water was appropriated, passed to the grantees in said conveyances with the lands therein described. The latter principle has been fully established and determined by our courts. (See 20 Ida.194). If, as the applicant now contends, he intended to reserve from said conveyances the said six hundred inches of water, such reservation could have been made only by express written terms stated in the said conveyances. The protestant claims, on the contrary, that it was not the intention of the applicant to reserve the said six hundred inches of water, but to convey the same to the protestant and that for that reason no reservation thereof was made in the said conveyances.

Sixth. Since the protestant became the owner of the said property, the said six hundred inches of water have been used by him in the irrigation of the said land, and that, except as his ditches or diversion works have been destroyed during the high water season, he has suffered no interference therewith. (Tr. pgs. 21 and 22). That while the protestant has found it desirable to irrigate his land by the method known as sub-irrigation instead of

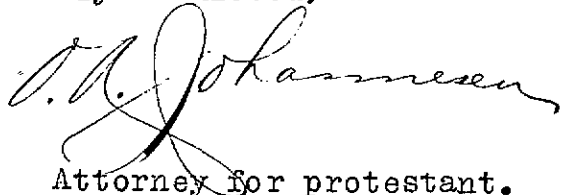
by the method known as flooding, and while, because of the ever changing nature of the channel of Snake River near the point of his diversion, he has been compelled to change the point of diversion as well as the methods of diversion, the said protestant alleges that he has at all time during his ownership of said property endeavored to apply to beneficial use thereon the said six hundred inches of water, and that he has raised crops on said premises during his said ownership by means of such irrigation. The attention of the Honorable State Engineer is respectfully directed to the case of Bower vs. Moorman, 27 Ida. 162, and also the case of Bessinger vs. Taylor, 30 Ida. 287, wherein our highest state court confirms the view that protestant by the said changes has in no wise lost the right sought to be maintained him. Again it is also suggested that the applicant, being a riparian owner, might employ a number of methods not common to all other water users, so long as he did not interfere with the rights of other persons. (17 Ida. 506). The applicant, in his evidence as well as in the brief filed by his counsel, seeks to show that he has, at all events, secured title to the said six hundred inches of water thru adverse possession, but it is to be noted that the protestant has never had any knowledge of such adverse claim, nor has ever been deprived of the use of his water, and that the said claim of applicant is entirely void of the elements so requisite to adverse possession. Particular attention is directed to the law on this point as laid down in the case of Brossard vs. Morgan, 7 Ida. 215.

Finally. The protestant contends that the facts herein-above enumerated fully support his claim of ownership to the said six hundred inches of water in question, and that the said six hundred inches being appurtenant to his land and therefore his property, cannot be diverted therefrom upon the application of Mr. Olive or any person, other than the protestant; that even tho the question of ownership was a debatable one, it would be a matter entirely without the jurisdiction of the Honorable State Engineer and would by reason of that fact make it improper and unlawful for him to grant a permit authorizing a change in the point of diversion and application to beneficial use under such circumstances.

Wherefore, the protestant respectfully suggests and prays the Honorable State Engineer that the application for transfer filed by the applicant be denied, and that an order heretofore issued be recalled and cancelled, if such order has granted any permission to the applicant to change the place of use of the said water, to the full end and purpose that no order shall issue or stand which may in any manner place a cloud upon the title of the protestant to the said six hundred inches of water.

Dated this 15th day of February, 1919.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "A. A. Johansen".

Attorney for protestant.  
Residence and address,  
Idaho Falls, Idaho.

OFFICE OF THE STATE ENGINEER OF THE STATE OF IDAHO

IN THE MATTER OF THE )  
APPLICATION OF O. H. OLIVE )  
FOR TRANSFER OF WATER RIGHT )  
CASE #15 )

ORDER

This case came on regularly for hearing at Idaho Falls, Idaho, before the State Engineer, at 10 o'clock a.m., January 10th, 1919, on protest of F. L. Koon, against the issuance of transfer in the above entitled case, and the State Engineer having carefully considered the evidence presented by the applicant, O. H. Olive, and the protestant, F. L. Koon, and being fully advised of the facts and the law, finds:

1 - That the said 12 second feet of the waters of the Snake River claimed by the applicant, O. H. Olive for a transfer to the Harrison Canal Company is claimed by the protestant, F. L. Koon as his property, and as an appurtenance to lands heretofore conveyed by the applicant to the protestant, and now the property of the said protestant.

2 - That the ownership of the said 12 second feet of water being in dispute and being claimed both by the applicant and the protestant, and the question as to who is, or who is not the owner of the said 12 second feet of water as between the applicant and the protestant, being in dispute, and the power of determination thereof not being vested in the State Engineer, and the State Engineer finds that the question is one not for the determination of his office.

3 - That Certificate of Transfer #231 issued on the 9th day of December, 1918, transferring the said 12 second feet of water to the use of certain lands lying in the territory covered by the Harrison Canal, all of which is more fully set out in the said Certificate, and which said Certificate has been recorded on page 389, in Book 2 of Miscellaneous, Records of Bonneville County, Idaho, was issued through error and mistake and upon improper information, and that the said protestant, F. L. Koon was not a party thereto.

WHEREFORE, it is ordered and adjudged that the application of O. H. Olive, heretofore filed in the Office of the State Engineer, praying for the transfer of the use of 12 second feet of the waters of Snake River, having a priority date of June 1st, 1889, from the lands situate in Sections 13, 17, 18 and 20, Township 5 North, Range 39, E.B.M., to which lands the said water was decreed, to the Harrison Canal Company for the use and benefit of lands lying under the canal owned by the said Company, as more fully described in the said application, be, and the same is hereby denied.

It is also ordered and adjudged that Certificate of Transfer #231 issued to the Harrison Canal Company of Idaho Falls, Idaho, by the State Engineer under date of December 9th, 1918, be, and the same is hereby recalled, revoked and annulled, and made to all intents and purposes as though never having been issued.

Dated this 15th day of March, 1919.



State Engineer of Idaho.

RECORDED

OFFICE OF THE STATE ENGINEER OF THE STATE OF IDAHO

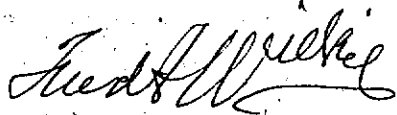
IN THE MATTER OF THE APPLI- )  
CATION OF O. H. OLIVER FOR )  
TRANSFER OF WATER RIGHT. )  
CASE NO. 15. )

TO

Harrison Canal Company, c/o H. J. Holland, Rigby, R. F. D. #1.  
O. H. Olive, Idaho Falls, Idaho .  
C. H. DeCamp. Idaho Falls, Idaho, and to whom concerned:

You will hereby take notice that Certificate of Transfer #231, issued by the State Engineer on the 9th day of December, 1918, permitting of the transfer of 12 second feet of the waters of Snake River, having a priority date of June 1st, 1889, from lands formerly owned by the applicant, O. H. Olive to lands lying under the canal system of the Harrison Canal Company, is this day recalled, revoked and annulled, and the same is more fully set out in the Order entered this day by the State Engineer.

WITNESS the seal and signature of the State Engineer at Boise, Idaho,  
this 15th day of March, 1919.



State Engineer.

RECORDED

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLI- )  
CATION OF O. H. OLIVE FOR )  
TRANSFER OF WATER RIGHT. )

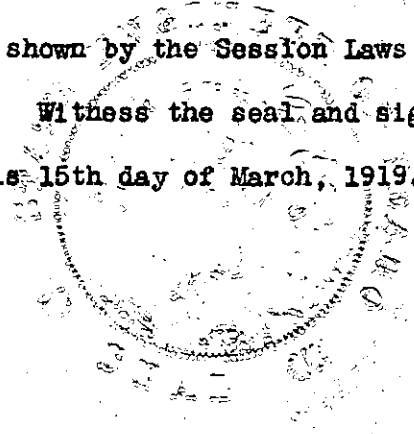
N O T I C E.

TO

O. H. Olive and F. L. Koon:

You are, and each is, hereby notified that the undersigned, the State Engineer of the state of Idaho, has this day entered a decree in the above entitled cause denying the petition of the applicant for a transfer of water right, and you are further hereby notified that any party aggrieved by said decision or decree shall have sixty days from the date of this decision or decree in which to commence action or appeal from such decision or decree in the District Court of the Ninth Judicial District of the State of Idaho, in and for the county of Bonneville, in the manner provided by House Bill No. 119, as shown by the Session Laws of 1909, pages 495 to 497, inclusive.

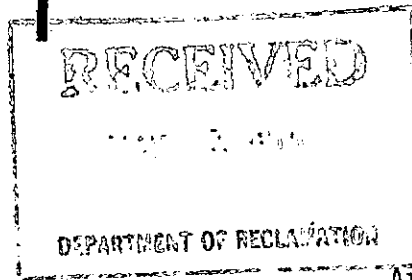
Witness the seal and signature of the State Engineer at Boise, Idaho,  
this 15th day of March, 1919.



*Fred A. Wilkie*

State Engineer.

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO



April 29th, 1919.

Hon. W. G. Swendson,  
Comm'r of Reclamation,  
Boise City, Idaho.

My Dear Sir:-

Re. Case No. 15. Application for Transfer.  
-----

Your favor of the 26th, in the above matter, addressed to Mr. F. L. Koon, the protestant, has been handed to me for reply.

You will kindly pardon me, when I say that I am very much surprised over the action taken by your office relative to the application of Mr. Olive for rehearing. It occurs to me that the facts in the case have evidently not been properly called to your attention, as otherwise I am sure that you would have dismissed the last application.

Mr. Olive sought to have a certain water right transferred to other lands than those to which the water was decreed. Mr. Koon, who is the owner of the latter lands, claims the water right as his property. A hearing was held here in Idaho Falls by the Hon. Fred A. Wilkie, former state engineer, and both sides produced evidence as to ownership. The fact that both Mr. Olive and Mr. Koon claimed ownership of the water in question, made the entire matter one not for the adjudication of the State Engineer, and Mr. Wilkie rightly dismissed the application.

Now it occurs to the writer that it would matter little if Mr. Olive filed one brief or a dozen, the fact still remains that Mr. Koon claims the water in question as his property, and the Honorable State Engineer, and now the Honorable Commissioner of Reclamation can therefore have no jurisdiction in the matter.

Disputed water rights, like other questions affecting the ownership of realty, can be adjudicated only in the District Court, and our statutes fully provide the methods of procedure. The question of water ownership cannot be settled by the office of the State Engineer, nor by the Department of Reclamation.

In this connection I respectfully call your attention to the brief filed by the protestant in this matter. The law, I think, is quite fully set out therein.

In view of the foregoing, I cannot see the necessity of making

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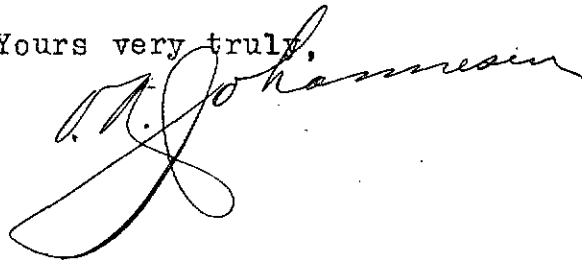
additional showings in the matter. At all events, it would certainly be very unfair to ask Mr. Koon to anticipate the argument that Mr. Olive's attorneys may make in the brief which they have been permitted to submit to you in the matter, and such a course is, to say the least, unusual.

If your office should take the view that it has the right to determine and adjudicate ownership of water, and in line with such a policy issue a permit to Mr. Olive, such a permit can have no other effect than to becloud Mr. Koon's title. I have no hesitation in saying that such an act would result in damages to Mr. Koon, and that he would necessarily have to pursue his legal remedy by seeking re-imbursement from the bonds of the officials responsible for his injury. I sincerely trust that the matter will never reach such a stage, but I do feel that to ask Mr. Koon to further defend himself, except in the District Court, is very unfair to him.

If Mr. Olive thinks that he is the owner of the water in question, he has his remedy in the Court, and I would respectfully suggest that your office so advise him.

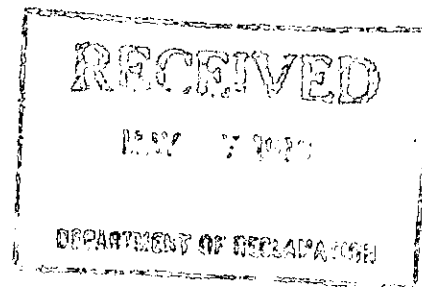
Thanking you for your due and full consideration in the matter, I am

Yours very truly,

A handwritten signature in cursive script, appearing to read "W. J. Johnson". The signature is written in dark ink and is positioned below the typed name "W. J. Johnson".

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MAY 10 1906

O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO



Idaho Falls, Idaho.

May 5, 1919.

Hon. W.G. Swendsen,

Commissioner of Reclamation,

Boise, Idaho.

My dear sir:

In Re: Case # 15 O.H. Olive.

Messrs Holden & Holden have handed me a copy of the supplementary brief filed by them, by your permission, in the above matter, and I have looked over the same very carefully,

No new matter is set out in the brief, and the sum total of the effort made is merely an attempt to have you adjudicate the ownership of the six hundred inches of water in question.

The last paragraph on page one (1) cites one of our Statutes with reference to taking appeals from the order of the State Engineer. The testimony at the <sup>last</sup> hearing showed, however, that Mr. Koon had no intimation whatsoever of the <sup>first</sup> hearing, or rather alleged hearing, held at Rigby sometime last year, and shows no information <sup>concerning</sup> of Mr. Olive's attempt until the transfer permit had been issued. This being true, it was of course impossible for Mr. Koon to take any appeal, and besides, had he been informed of the hearing so that he personally could have been in attendance, I am sure there would have been no occasion of any appeal on his part, as the Honorable Engineer would certainly have concluded that he had no jurisdiction in the matter and would therefore have refused the permit.

The brief makes an attempt to show that Mr. Olive acquired title to the water through adverse possession, and the remainder of the brief is in fact an attempt to prove Mr. Olive's ownership. The very fact that it becomes necessary for the applicant to attempt to prove his ownership to this water and to endeavor to show that he has a better claim thereon than Mr. Koon, is certainly ample evidence that the question of ownership is in dispute, and therefore the case is not for the determination of the Honorable State Engineer.

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O. A. JOHANNESSEN  
ATTORNEY AND COUNSELOR AT LAW  
IDAHO FALLS, IDAHO

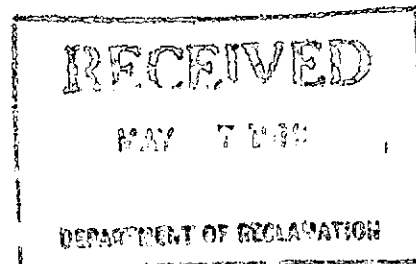
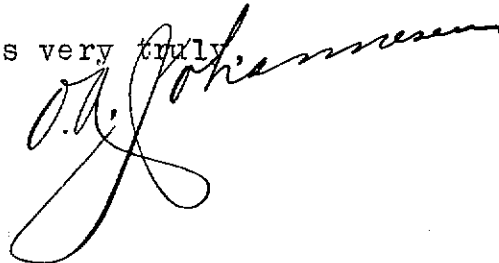
I do not think that it is necessary for me to file any further brief by way of replying to the applicant's supplementary brief. The original brief filed by the protestant, I am sure, fully sets out the law, and I feel morally certain that you will quite agree with us in this question.

Sometime ago I had a conversation with Mr. Wilkie, and he then informed me, and I am sure that he will confirm this to you, that he was grossly imposed upon by Mr. Olive and his associates, and that he would never have issued the permit of transfer had he known the real facts in the case.

I certainly hope that the entire proposition has been made fully plain to you and that you will deny Mr. Olive any permit, and that your office will do nothing which will tend to becloud Mr. Koon's title to this water right.

Thanking you in advance for your kind attention in the matter, I am,

Yours very truly



RECEIVED

May 5, 1919.

Re Olive Transfer.

Messrs. Holden & Holden,  
Attorneys at law,  
Idaho Falls, Idaho.

Gentlemen:--

We are in receipt of your letter of the 2nd inst.  
enclosing brief of applicant on petition for rehearing under  
the above transfer. This matter will be brought to Mr. Swendsen's  
attention immediately upon his return home the latter part of the  
week.

Very truly yours,

Clerk.

RECORDED

## HOLDEN &amp; HOLDEN

LAWYERS

ROOMS 4-5-6-7 B. W. &amp; M. BUILDING

IDAHO FALLS, IDAHO

May 2nd, 1919.

Mr. W. G. Swendsen,  
Boise City, Idaho.

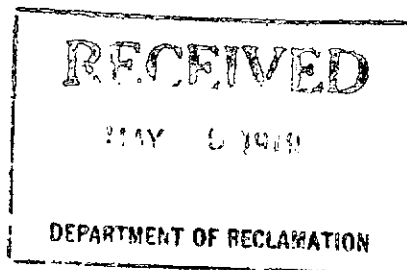
My Dear Swendsen:

Herewith we are handing you supplemental argument in support of the application of O. H. Olive for the transfer of certain water rights involved in that certain action designated, Case No. 15, a copy of which argument we are serving on O. A. Johannesen, of Council for Koon, which we respectfully submit for your careful consideration.

With kind personal regards, we are,

Very sincerely yours,

WHH/GLB



MICROFILMED

IN THE DEPARTMENT OF RECLAMATION  
OF THE STATE OF IDAHO.

-----  
IN THE MATTER OF THE APPLICATION  
OF O. H. OLIVE FOR TRANSFER OF  
WATER RIGHT--Case No. 15.  
-----

)  
)  
) Brief of Applicant on  
) Petition for Rehearing.  
)  
-----

The above named applicant, O. H. Olive, seeks to have the point of diversion and place of use of six hundred inches of the waters of Snake River changed and transferred and, therefore, filed his application applying for a Certificate of Transfer. The State Engineer of the State of Idaho on or about the 19th day of December, 1918, issued a Certificate of Transfer of such water to the said O. H. Olive, and thereafter and on or about the 15th day of March, 1919, revoked and cancelled such Certificate of Transfer.

The State Engineer of the State of Idaho having determined the right of O. H. Olive to have said water transferred by issuing a Certificate of Transfer, as above stated, if the protestant or any other person, or persons, felt aggrieved by such determination of the State Engineer, then and in such case, said Koon should have prosecuted an appeal from such decision to the District Court of the County having jurisdiction of the subject matter, as provided by Section 3264, Revised Codes of the State of Idaho, as amended by the 14th Session of the Legislature of the State of Idaho, at pages 495, 496 and 497, which said Section, among other things, provides as follows:

"Any person or persons feeling themselves aggrieved by the determination of the State Engineer in issuing or refusing, upon application for permission to change the place of use of water, to issue a Certificate authorizing such transfer may, within sixty days from the date of such refusal, appeal to the District Court for the County in which the land is situated to

RECORDED

which such water is appurtenant."

Therefore, the ~~was~~ order of the State Engineer revoking and cancelling the Certificate of Transfer made by him on or about the 19th day of December, 1918, was and is a mere nullity and no appeal having been taken within the time required by law, the said decision of the State Engineer became and now is final. Therefore, we submit, it is the duty of this department to vacate and set aside the later action and ruling of the State Engineer attempting to annul his former decision.

That this applicant was and is entitled to a Certificate of Transfer is clear both as a matter of law and as a matter of fact. The protestant bases his claim to the waters in question upon the fact that there was no express reservation of such water made in the deed of the lands to the protestant, upon which said water had formerly been used. The record shows that after the applicant had conveyed the said lands, he changed the place of use of such waters and used the same in the irrigation of other lands owned by him, for a period of more than five years. Consequently, it is wholly immaterial as to whether said water, was, or was not reserved from the operation of the deed from Olive to Koon, because Olive acquired title to said water by his adverse possession and use of the same on other lands for the statutory period of five years. However, the evidence in the record is clear and overwhelming to the effect that Olive did not sell and that Koon did not purchase said waters and that it was not the intention of either Olive or Koon that said deed should convey said waters to Koon. The record shows that Koon filed upon other waters for the irrigation of the lands purchased by him from Olive, which he,

Koon, would not have done had he understood, at the time, that he had purchased, or that said deed conveyed to him the said six hundred inches of water. In addition to this, the record shows that Koon never did use any of the waters for irrigation or any other purpose and that Koon never used any ditch, or ditches, constructed by the Brandons and used by Olive in diverting the waters in question and conducting the same down to the lands sold by Olive to Koon, for the irrigation of such lands. If Koon had purchased this water as he now claims he did, he would have taken over and operated the diversion works constructed by the Brandens. These diversion works consisted of dams, ditches and headgates and this Koon never did.

There is no ditch and no diversion works, and there has been none for years, by which Koon could divert or conduct to the lands owned by him, the waters in question, and, therefore, even though a Certificate of Transfer was denied to this applicant, Koon could not use the water for any beneficial purposes. In other words, Koon cannot use and has no way of diverting the waters in question, and, still ~~more~~, he protests against the applicant using the same.

That Koon could not be injured by a transfer of water which he could not, under any circumstances, use himself, is clear and that, Olive is entitled to change the point of diversion and place of use of such water, under such circumstances is equally clear:

Bennett vs. Nourse, 22 Idaho, 249.

Basinger vs. Taylor, 30 Idaho, 289.

*{ P of Div. may change if  
others are injured. }*

11

Further: One who is entitled to the use of water may  
and  
sell such right ~~in~~ the waters may be transferred to other lands,

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so long as such transfer does not interfere with the rights of others:

Hard vs. Boise City Irrigation & Land Company,  
9 Idaho, 600, beginning with last paragraph on said  
page.

We take this opportunity of calling the attention of the Department to the Brief of this applicant filed in the office of the State Engineer on or about the 1st day of February, 1919. We submit that the order of the State Engineer made on or about the 15th day of March, 1919, attempting to revoke and cancel the Certificate of Transfer issued by him on or about the 19th day of December, 1918, was without authority of law and contrary to the great weight of the evidence contained in the record and that this applicant is entitled to a Certificate of Transfer of the waters in question as applied for by him.

Respectfully Submitted,

*Halden Holan*

HARRY HOLDEN

E. M. HOLDEN

HOLDEN & HOLDEN

LAWYERS

ROOMS 4-5-6-7, B. W. & N. BUILDING

IDAHO FALLS, IDAHO

April 16th, 1919.

Hon. W. G. Swendsen,

Boise City, Idaho.

My Dear Swendsen:

Your favor under recent date acknowledging receipt of the O. W. Olive application for rehearing, in case No. 15 received and contents noted, for which please accept our thanks.

With kind personal regards, we are,

Very truly yours,

*Holden & Holden*

WHH/GB



April 26, 1919.

Messrs. Holden & Holden,  
Idaho Falls, Idaho.

Gentlemen:

Receipt is hereby acknowledged of your application for a reconsideration and an opportunity to submit further arguments and cite further authority in the case of the application of O. H. Olive to transfer certain water rights, the said case being designated as Case No. 15.

You are hereby notified that after having duly considered your petition for re-hearing and review, the same is hereby granted and that you will be allowed ten days from the date of this communication within which to file additional priefs or arguments, after the expiration of which time, the evidence and documents now on file in this case, together with such additional arguments and briefs as may in the meantime be filed, will be considered and the case finally disposed of.

Very truly yours,

WGS/MB

T.C.-15 ✓

Commissioner of Reclamation.

MICROFILMED

April 26, 1919.

Re: Application for Transfer --Case No. 15.

Mr. F. L. Koon,  
Thornton, Idaho.

Dear Sir:

Reference is had to the matter of the application of O. H. Olive for transfer of water right, the same being designated as Case No. 15.

The records of this department show that you were a protestant in the case and represented at the hearing held some time since at Idaho Falls. The records further show that under date of March 15, 1919, Hon. Fred A. Wilkie, the then State Engineer entered an order denying said transfer.

This department is now in receipt of an application for a review and a rehearing of this case as is evidenced by the enclosed copy.

This petition for review and reconsideration having been duly considered has been and is hereby granted and petitioner has been given ten days from the date of this communication within which to file additional argument or briefs in connection with the case.

You are hereby notified that immediately upon the expiration of the above stated ten days period, the papers and evidence on file in this office together with such further argument as may have been filed by the petitioner will be reviewed and considered and you are hereby granted ten days from the date of this letter within which to file any additional argument or briefs bearing on the case as you may desire.

Respectfully,

WGS/MB  
T-15. ✓

Commissioner of Reclamation.

RECEIVED

April 14, 1919.

Messrs. Holden & Holden,  
Attorneys-at-Law,  
Idaho Falls, Idaho.

Gentlemen:

This is to acknowledge receipt of your favor of the 12th inst. enclosing an application for re-hearing in the matter of O. H. Olive for transfer of water right, the same being designated as Case No. 15. This matter will receive prompt attention, and you will be notified of any action in the matter.

Very truly yours,

WGS/MB  
15-2

Commissioner of Reclamation.

*Case 15-2*

UNRECORDED

March 30, 1919.

Mr. J. H. Peterson, Atty.,  
Pocatello, Idaho.

Dear Sir:

This is to acknowledge receipt of your telegram of the 29th inst. in regard to the matter of the transfer of water in which Mr. O. H. Olive of Idaho Falls is interested.

I will bring the papers in this case with me and run over the matter with you at Pocatello on the 3d of April.

I am this mail forwarding a copy of the photographs I took at the head of the Aberdeen Canal to Mr. Baum and there is enclosed herewith a copy for yourself. I will bring the films with me when I come to Pocatello so that you may secure additional prints if you so desire.

Yours very truly,

TGS/MB  
Encl.

State Engineer.

*Trans. 15-*

MICROFILMED

HOLDEN & HOLDEN

LAWYERS

ROOMS 4-5-6-7, B. W. & M. BUILDING

IDAHO FALLS, IDAHO

April 12th, 1919.

Hon. Warren D. Swendsen,  
Commissioner, Department of Reclamation,  
Boise City, Idaho.

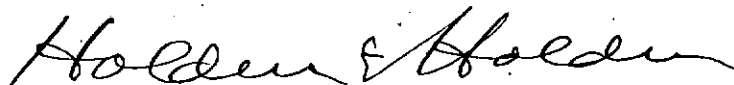
My Dear Swendsen:

Herewith please find enclosed the application for rehearing in the matter of the application of O. H. Olive for transfer of certain water right, Case No. 15.

With kind personal regards, we are, as ever,

Very truly yours,

WHH/GB  
Encl.



MICROFILMED

IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE  
OF IDAHO.

----- )  
IN THE MATTER OF THE APPLICATION )  
OF O. H. OLIVE FOR THE TRANSFER ) APPLICATION FOR  
OF WATER RIGHT. CASE NUMBER 15. ) REHEARING.  
----- )

To the Hon. Warren Swendsen, Commissioner of the Department of Reclamation.

Your petitioner herein, O. H. Olive, hereby respectfully requests that he be given a rehearing in the above entitled matter, and that the same be opened for further argument and the submission of further authorities herein, for the reason that the order of the State Engineer of the State of Idaho, dated March 15, 1919, denying the application of your Petitioner for the transfer of that certain water right mentioned and described in the application filed herein, is clearly against law and against the evidence, both oral and documentary, offered and received at the hearing of such application.

Dated this 12th day of April, 1919.

O. H. Olive  
Petitioner.

Holden & Holden  
Attorneys for Petitioner,  
Residence and Post Office  
Address, Idaho Falls, Bonne-  
ville County,  
Idaho.

RECORDED