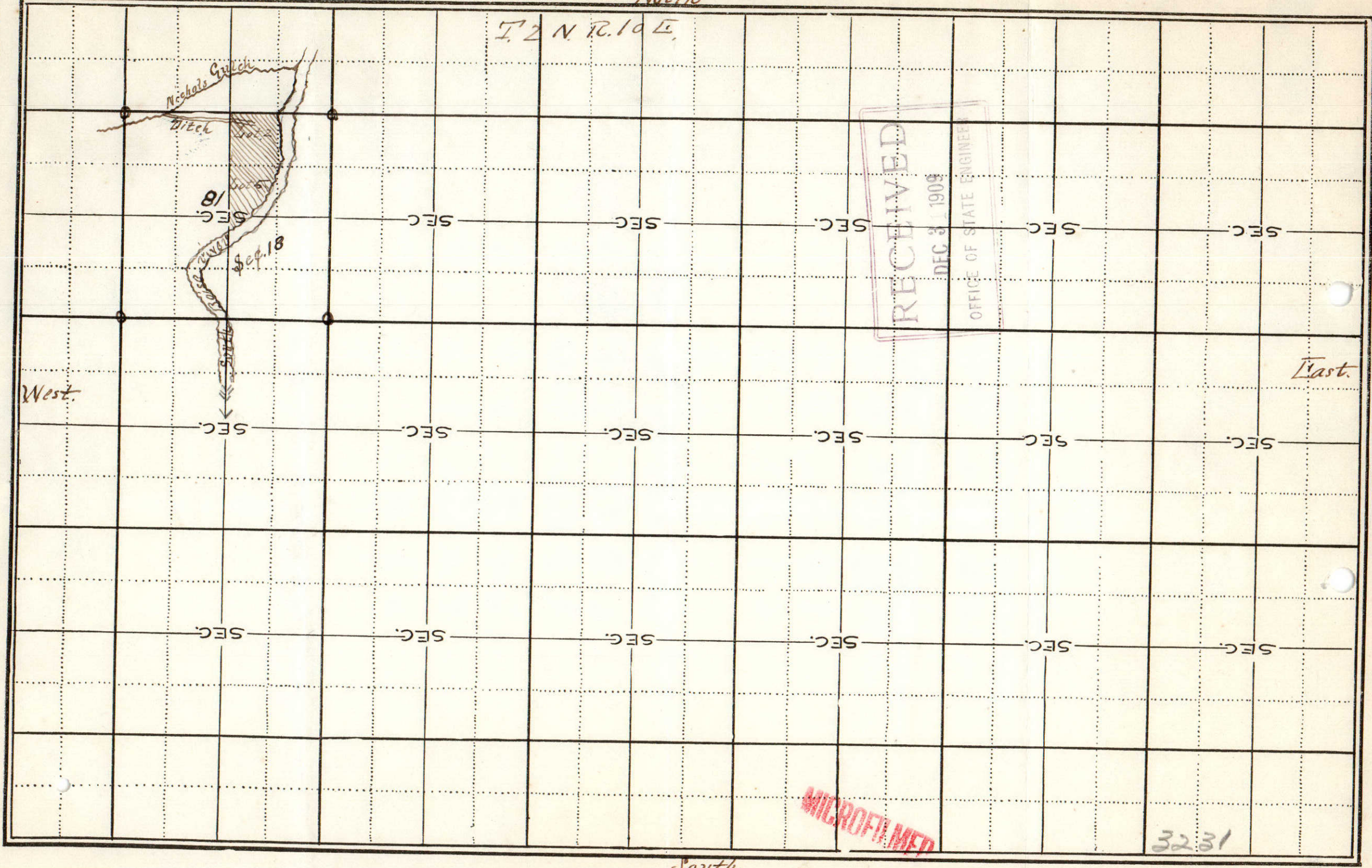




Note:

According to the U.S. G.S. quad.
sheet "Featherville, Idaho" (map X-66),
the source should be called Tollgate
Creek rather than Nichols Gulch.

Dick Link

2-9-77

MICROFILMED

Elmore County *
Nichols Gulch *
.2 of 1 second foot *
Irrigation and domestic *
Priority 10/2/1907 *

S T A T E _ O F _ I D A H O

Water License No. 3231

WHEREAS, On the 2nd day of October, A.D. 1907, SIMON NEWTON NICHOLS, of Pine, County of Elmore, State of Idaho, duly made application (No. 4435) to me for a permit to use 2 cubic feet per second of the waters of Nichols Gulch, Tributary to South Boise River, County of Elmore, State of Idaho, for irrigation and domestic purposes; and

WHEREAS, On the 9th day of November A.D. 1907, Permit No. 3231 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 9th day of November, A.D. 1909, and for the application to beneficial use of said water on or before the 9th day of November A.D. 1909; and

WHEREAS, On the 12th day of October A.D. 1909, SIMON NEWTON NICHOLS, the holder of said permit duly made proof of the completion of adequate works for the diversion of 2 cubic feet per second of said waters, as evidenced by my Certificate No. 3231, dated February 16, 1910, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 2 cubic feet per second of the said waters, with date of priority of October 2, 1907, and

WHEREAS, On the 12th day of October, A.D. 1909, SIMON NEWTON NICHOLS, the holder of said permit duly made proof of the application to beneficial use of .2 of 1 cubic foot per second of said water:

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of Idaho I hereby grant and confirm to SIMON NEWTON NICHOLS, of Pine, County of Elmore, State of Idaho, the holder and owner of said Permit No. 3231, a perpetual right, dating from October 2, 1907, to the use of .2 of 1 cubic foot per second of the waters of Nichols Gulch, a tributary of South Boise River, in the County of Elmore, and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point in the Northwest quarter of the Northwest quarter of Section 18, Township 2 North of Range 10 East of the Boise Meridian, being Lot 3, of Section 18, and conducted to and upon (5 acres in Lot 2 and 5 acres in Lot 5 of Section 18, Township 2 North of Range 10 East of the Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 16th day of February,

A.D. Nineteen Hundred and ten.

(SEAL)

Jas. Stephenson, Jr.

Recorded February 16, 1910

State Engineer

No. 4435.

63-2064

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

1. Name of applicant: Simon Newton Nichols.

Postoffice address: Pine.

County: Elmore State: Idaho.

II. The financial resources of the applicant are:

(a) Cash on hand: \$200.00

(d) Other resources: Teams & scrapers.

2. The quantity of water claimed is Two (2) cubic feet per second.

3. Source of water supply: Nichols Gulch Tributary to South Boise river

County of Elmore.

4. Location of point of diversion: NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 18 T 2 N R 10 E Being Lot 5 of Sec. 18.

5. To be used for:

I. Irrigation and domestic use: yes.

(a) Amount of land to be irrigated: One Hundred (100) acres.

(b) In the following legal subdivisions: Fractional Lots in ^{NE $\frac{1}{4}$} W $\frac{1}{2}$ Sec. 18 being
Lots 2 & 5. T 2 N. R. 10 E.

6. Estimated cost of works: \$100.00

7. Description of works for diversion:

I. Kind of works: Ditch.

II. Dimensions of works:

(c) Size of headgate: Width 2 feet, height 2 feet.

(d) Conduit Ditch, width at bottom 1 $\frac{1}{2}$ feet, width at water line 2 $\frac{1}{2}$ feet, depth of water 1 foot. Average grade per mile is 5 feet. Length of conduit is 900 feet, and it crosses the following quarter sections: NW $\frac{1}{4}$ Sec. 18 T 2 N R 10 E to Land described in 5 I (b) above which is the point of intended use.

8. Time required for the completion of the construction of such work is 2 years.

9. Time required for the complete application of the water to the proposed use is 1 additional years.

BE IT KNOWN That the undersigned hereby makes application for a permit to appropriate the public waters of the State of Idaho as herein set forth.

Simon Newton Nichols.

Applicant.

Remarks: Time asked for in Sec. 8 is hereby reduced to one year.

Jas. Stephenson, Jr.,

State Engineer.

APPROVAL OF STATE ENGINEER.

The number of this permit is 3231.

Date of first receipt of application 9.00 a.m. October 2, 1907.

Returned to applicant for correction October 2, 1907.

Corrected application received November 6, 1907.

Recorded in Book 9 Page 3231 Approved November 9, 1907.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before January 8, 1907, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before May 9, 1908.

The whole of said work to be completed on or before November 9, 1909.

The time for proof of beneficial use of water appropriated in accordance herewith, to extend to November 9, 1909.

Witness my hand this ninth day of November 1907.

Jas. Stephenson, Jr.,

State Engineer.

Blank notice for proof of completion and beneficial use mailed applicant August 1, 1909
 Notices received, August 7, 1909, fixing October 12, 1909, as date and Rocky Bar, Idaho,
 as place of proof.

Publication notice mailed Mountain Home Maverick, at Mountain Home, September 11, 1909.

Deposition blanks mailed N.A. Nixon, at Rocky Bar, Idaho, September 11, 1909

Depositions received October 16, 1909

Fees received October 27, 1909

E.C. Towne authorized to make examination of works: November 12, 1909

His report received December 20, 1909

Affidavit of publication received February 8, 1910,

Certificate and License issued February 16, 1910

C-----O

Permit No. 3231

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom it May Concern:

This is to certify that SIMON NEWTON NICHOLS, of Pine, County of Elmore, and State of Idaho, the holder of Permit No. 3231, issued upon Application No. 4435, bearing date of priority of October 2, 1907, authorizing the diversion of 2 second feet of the waters of Nichols Gulch, a tributary of South Boise River, County of Elmore, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use, 2 second feet of the waters of Nichols Creek, a tributary of South Boise River, that the point of Diversion of said waters is at a point in the northwest quarter of the Northwest quarter of Section 18, Township 2 North of Range 10 East of the Boise Meridian, being Lot 3, of Section 18, and that the lands proposed to be irrigation by the use of said water are described as follows, to-wit: Lots 2 and 5, Section 18, Township 2 North of Range 10 East of the Boise Meridian.

Witness my hand this sixteenth day of February, A.D. 1910.

Jas. Stephenson, Jr.

State Engineer

License Issued for 2/10 second feet

Page 583



State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

July 31, 1986

McGuire Subdivision Water & Sewer Users Assn.
c/o Arden Drake, President
427 South Second East
Mountain Home, ID 83647

Re: Permit No. 63-9815 and License No. 63-2064 ✓

Dear Mr. Drake:

I am in receipt of your letter dated July 14, 1986 regarding your concerns about the Miller water permit referenced above. I will respond to the concerns in the order they were addressed in your letter.

First, as a matter of clarification, the Boise River Watermaster normally does not make water deliveries upstream from Lucky Peak. Any such deliveries at your location would have to be made by a deputy, appointed by both the watermaster and this office, and funded by the entities that receive the delivered water. Although appointment of a deputy is possible, there are other, less costly approaches that may be more appropriate in this instance as described below.

Regarding the service line diameter, please be advised that there is no limitation of this diameter in the permit. The permit does, however, limit the water use to in-house needs and prohibits lawn irrigation under the permit.

Computation of cubic feet per second for a domestic water right is usually made by timing the discharge from an open spigot into a 5 gallon bucket. The permit allows for a discharge of 0.02 cubic feet per second, or 9 gallons per minute.

Regarding the condemnation process necessary to obtain a domestic water preference over irrigation water, the basis of this procedure is Article XV, Sec. 3, Idaho Constitution, which states:

The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any

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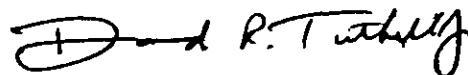
natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 or article 1 of this Constitution.

Section 14 of Article 1 of the Idaho Constitution refers to a formal legal proceeding which can be extremely costly to resolve through the formal legal process. As we have discussed, it is often much preferable for the parties to amicably determine a reasonable compensation rather than to litigate the matter, especially for a use as small as the one currently being reviewed. In answer to your question, yes, this compensation should be adopted by both your organization and the permit holders prior to diversion of domestic water in dry periods.

With this situation as with most water disputes the best solution is one that is determined through direct communication between the new appropriator and the senior appropriator. In a discussion with Mr. Miller I encouraged him to make contact with your organization in this regard. Likewise I would encourage your organization to be open to innovative thinking with respect to some type of mitigation to be performed by the Millers in compensation for the small amount of water that they will use for domestic purposes in their cabin. For discussion purposes, a few possibilities would be for the Millers to (1) enlarge your storage system, or (2) line your storage system to reduce leakage, or (3) line your diversion ditch to reduce leakage.

I am hopeful that you will be able to resolve this matter without the need for intervention by an outside party. However, please feel free to contact me further on this matter.

Sincerely,



DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT:jp

c.c. J. L. &/or D. E. Miller

MINUTED

D715

MCGUIRE SUBDIVISION WATER & SEWER
USERS ASSOCIATION

427 South Second East
Mountain Home, ID 83647

July 14, 1986

David R. Tuthill, Jr., P. E.
Manager, Western Regional Office
Department of Water Resources
Statehouse
Boise, ID 83720

RE: Permit No. 63-9815 and License No. 63-2064

Thank you very much for sending our Association a copy of the letter to J. L. &/or D. E. Miller concerning water rights.

When we discussed this situation with you in your office, you mentioned the District/State Water Master. Can you tell us if he has checked the lockable valve installation? Do you know if he has checked the line diameter? We would like to have the District/State Water Master explain the various methods of calculating the cubic feet per second water flow. We would certainly appreciate your looking into these concerns of ours and also giving us the name and telephone number to contact if and when we feel some action should be taken by the District/State Water Master.

Please explain the "condemnation process" necessary to obtain a domestic water preference over irrigation water as we discussed in our meeting with you. Is this process necessary before domestic water can be taken during a dry period?

Our Annual Meeting of our Corporation will be held on August 17, 1986, and we would very much appreciate being able to read a reply to this letter to our membership.

Arden D. Drake

ARDEN DRAKE - PRESIDENT

RECEIVED
JUL 16 1986

Department of Water Resources
Western Regional Office

MICROFILMED

WATER RIGHT NUMBER 63-2064

OWNER LAST NAME - NICHOLS

FIRST NAME - SIMON NEWTON

ORIG OWNER -

ADDRESS LINE 1 -

ADDRESS LINE 2 -

ADDRESS LINE 3 -

CITY - PINE

STATE - ID ZIP CODE -

SOURCE - TOLLGATE CREEK

TRIBUTARY OF - S. FK. BOISE RIVER ✓

STAGE - LICENSE

STATUS -

PRIORITY - 10-02-1907

COUNTY - ELMORE

TOTAL DIV. RATE -

.2000 -CFS

TOTAL DIV. VOLUME -

.00 AFA TRFR/AMEND -

WATER DIST. - 63

DLE/CAREY ACT -

RIGHT BASIS -

DIVERSION POINT - NWNW 18 02N 10E LOT 03 REDIV -

272.0 312.0 96.0

55.0 0.0

0.0 0.0 0.0 0.0

0.0 0.0 0.7

FROM - TO -

USE - IRRIGATION

USE DIV. RATE -

.2000 CFS

USE DIV. VOLUME -

.00 AFA

FROM - TO -

USE - DOMESTIC

USE DIV. RATE -

.0000 CFS

USE DIV. VOLUME -

.00 AFA

USE - IRRIGATION

PLACE OF USE - TWN 02N RNG 10E SEC 18

TRACT NWNE LOT 02 AC 05 TRACT SWNE LOT 05 AC 05

DECREE NAME -

DATE -

TOTAL ACRES

10

REMARKS - LIC. INCORRECTLY LISTS NICHOLS GULCH AS SOURCE.

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE -

PROOF DUE -

PERMIT/DENIED -

PROTESTED -

HEARING -

OLD NO. - 3231

PROOF MADE -

FLD EXAM -

COND. OF APPROVAL -

DIVERSION MEANS -

VERIFIED / G

4/18/85

3/79

IDENT. NO. 63-2064

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

WATER RIGHT
DATA ENTRY LOG

[illegible]

Report of Engineer

1. State name of applicant and number of permit: Simon Newton Nichols-Permit 3231.
2. State source of water supply: Nichols creek
3. Location of point of diversion: NW4 NW4 Sec. 18, Tp. 2 N., R. 10 E. B.M.

4. State whether or not the works of diversion are *fully* completed and in accordance with terms of permit: Yes

5. Describe works as they exist, giving dimensions of same as follows:

(a) Width of conduit at bottom: 2 feet

(b) Width at water line: 3 feet :

(c) Depth of water: 4 inches

(d) Grade per mile: 40 feet

6. State whether or not water has been turned into works of diversion and if so, to what extent:

All of the water has been diverted and used, except at flood time, during April & May of each year.

7. Give exact location of lands to be irrigated. Give exact number of acres under cultivation in each

forty acre tract: Lots 2 & 5 Sec. 18 T. 2 N. R. 10 E. 5 Acres in Lot 2 & 5 Acres in Lot 5. All remaining Acreage in Lot 2 & 5 are under the ditch, but have not been cultivated

8. Submit map on enclosed plat, source of supply, point of diversion, route of ditch or ditches and cross hatch lands to be irrigated.

Remarks: The ditch is ample in size to carry all water available during the irrigating season

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DEC 20 1909

OFFICE OF STATE ENGINEER

Elmer C. Towne C.E.

STATE OF IDAHO,

County of Blaine } ss.

Elmer C. Towne, being first duly sworn, deposes and says that the statements contained in the within report are correct to the best of his knowledge and belief.

Subscribed and sworn to before me this 16th day of December 1909.

My Commission Expires.....

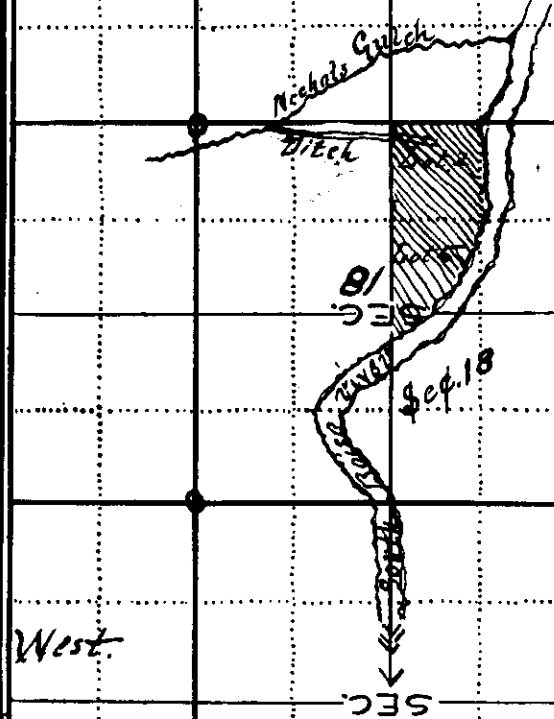
Wm. A. Nijose 3231

Justice of the Peace in and for Blaine County, Idaho. Rocky Bar Precinct

UNRECORDED

North

T2 N. R. 10 E.



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DEC 3 1909

OFFICE OF THE

East.

RECEIVED

3231