

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

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

Notice is hereby given that John B. McNabb Ph: 775-3681
(name of claimant)
of Box 92, Inkom, Idaho 83245, claims a right to the diversion and beneficial use of
(mailing address)
the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Knox Canyon Creek
Spring, tributary to, Bannock
- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
- | | | | | | | | | |
|-----|--------|----------------------|-----|-------------------------------|---------------------|---------------|----|------------------------|
| (B) | Amount | <u>0.08</u> | Use | <u>Irrigation</u> | Period of Use: From | <u>Apr. 1</u> | To | <u>Nov. 1</u> |
| (A) | Amount | <u>0.04</u> | Use | <u>Stockwater</u> | Period of Use: From | <u>Apr. 1</u> | To | <u>Oct. 15</u> |
| (A) | Amount | <u>0.02</u> | Use | <u>Domestic</u> | Period of Use: From | <u>Apr. 1</u> | To | <u>Oct. 15</u> |
| | | (cfs, gpm
or a/f) | | (dom., irri.,
stock, etc.) | | | | (both dates inclusive) |
- (3) Total quantity of water claimed: 0.14 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.
- (4) Priority claimed: (the date water was first applied to beneficial use) (A) April, 1922; (B) April, 1956

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35 Twp. 10S Rge. 32E B. M. County of Power
 Additional points of diversion:

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. "A" open ditches; "B" 1900' x 8" reduced to 2" with risers and sprinklers head along the line

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

Total No. of acres 4

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: Stockwater for 5,000 head of sheep and domestic water for one cabin during summer within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E.

If you are claiming water as a member of an organization, list name of organization: _____

MICROFILMED

R32E

T 10 S

35

Split E. 1/4

PD. Spring

Place of use for both
Irrigation, Domestic and
stock water

Tabor Canyon Cr.

Received by CW Date 6-09-77 Exception filed by: _____ Forwarded to: _____ Date: _____
Prelim. check by CW Date 6-09-77 claimant by: _____
\$10.00 fee received by CW Date 6-09-77
Approved for publication by #7354 John Newberry CW
Published in Carroll County Green Carroll County, Md. 6/15/78
Dates June 16 & 23 - 1977

AFFIDAVIT

RECEIVED
JUN 9 1977

JUN 9 1977

Department of Water Resources
Eastern District Office

State of Idaho
County of *Power*

being first duly sworn,

deposes and says: I Landed at Horell Utah in
March 1923, after Lumbering I came north
in to Idaho- and up the Perry Creek
mountains, west of Malad, at The
Turkey Trails, I crossed the Arbon
Valley and came to Knox Canyon
for the summer. and I have
summered there each year since.

2 Filed a Grazing Horse Stead
Entry, the year of 1924, and Received
my Patent From the Government
14th day of July 1932

14 days of July 1932
There was an agreement with
Mr Joseph Abson- and the Rev Bailey
and Melvin Bailey, that I could build
The (2) Two watering ponds, in Knoy canyon,
also, that I could put the Pipe Line in
at the Head of the Spring, to water and the
Grass that I Planted along the Knoy creek.
as the Dust and Loose Dirt was from 3 to 5
inches Deep. I have used that water
out of the Knoy creek every summer
since that time.

(Signature)

Subscribed and sworn to before me this 8th day of June, 1921.

(Notary Public)

Residing at Locatello, Idaho
My Commission Expires 4-8-78

MICROFILMED

Affidavit of Publication

STATE OF IDAHO

COUNTY OF POWER } s.s.

Phyllis Ringe being first duly sworn

on oath, states:

That she... is the principal clerk of the printer of the Power County Press, a newspaper of general circulation in Power County, Idaho, published weekly at American Falls in said County; that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement:

That the annexed notice or advertisement was published as per clipping attached in the regular and entire edition of said

newspaper and not in any supplement thereof for 2 successive weekly issues thereof, the date of the first publication being the 16th day of June, 1977

the date of last publication being the 23rd day of June, 1977

(Signed)

Subscribed and sworn to before me this

24th day of June, 1977

Notary Public, residing at American Falls, Idaho.

My Commission expires the

..... day of, 19

NOTARY PUBLIC

My Commission is for Life

JUL 5 1977

Department of Water Resources
Eastern District Office

Published in the Power County Press, American Falls, Idaho on June 16 and June 23, 1977.

NOTICE OF A CLAIM
TO A WATER RIGHT
NO. 29-4083

Notice is hereby given that John B. McNabb, Inkom, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 0.14 cubic feet per second of water from Knox Canyon Creek Spring tributary to Bannock Creek with point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E, B.M., Power County.

The water is claimed to be used from Apr. 1 to Oct. 15 for domestic purposes for one family and stockwatering purposes for 5,000 head of sheep with a priority date of April, 1922; and from Apr. 1 to Nov. 1 for the irrigation of 4 acres with a priority of April, 1956; the place of use is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

Affidavit of Publication

STATE OF IDAHO

COUNTY OF POWER

} s.s.

..... being first duly sworn

on oath, states:

That is the of the Power County Press, a newspaper of general circulation in Power County, Idaho, published weekly at American Falls in said County; that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement:

That the annexed notice or advertisement was published as per clipping attached in the regular and entire edition of said

newspaper and not in any supplement thereof for successive weekly issues thereof, the date of the first publication being the day of 1977

the date of last publication being the

..... day of 1977

(Signed)

Subscribed and sworn to before me this

..... day of 1977

Notary Public, residing at American Falls, Idaho.

My Commission expires the

..... day of 19.....

(SEAL)

JUL 5 1977

Department of Water Resources
Eastern District Office

Legal Notice

Published in the Power County Press, American Falls, Idaho on June 16 and June 23, 1977.

NOTICE OF A CLAIM TO A WATER RIGHT NO. 29-4083

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The water is claimed to be used from Apr. 1 to Oct. 15 for domestic purposes for one family and stockwatering purposes for 5,000 head of sheep with a priority date of April, 1922; and from Apr. 1 to Nov. 1 for the irrigation of 4 acres with a priority of April, 1956; the place of use is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

C. STEPHEN ALLRED
Director



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

June 15, 1978

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

RE: Claim to a Water Right No. 29-4083

Mr. John B. McNabb
Box 92
Inkom, Idaho 83245

Dear Mr. McNabb:

Enclosed please find a copy of the exception filed by Attorney Lyle D. Eliassen in behalf of John Newport and Bannock Valley Irrigation Company in connection with your Claim No. 29-4083. The following is a quote from the provisions of the Idaho Code under which this claim has been filed:

42-225b. Recording of claims by department-----Corrections.-----
.....
.At any time after filing a claim under the provision of this section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Water Administration (renamed Department of Water Resources, July 1, 1974) and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Water Resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the department the same as the original and for which no additional filing fee shall be required.

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

If you have any questions regarding this matter, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor, Eastern Region

RDC:CW

Enclosure

cc: IDWR - State Office



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

June 15, 1978

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

RE: Claim to a Water Right No. 29-4083 JOHN B. McNABB

Mr. Lyle D. Eliassen
Attorney at Law
P.O. Box 168
American Falls, Idaho 83211

Dear Mr. Eliassen:

We have received the exception dated July 26, 1977, filed in behalf of John Newport and Bannock Valley Irrigation Company against the above referenced claim to a water right. The following is a quote from the provisions of the Idaho Code under which this claim has been filed:

42-225b. Recording of claims by department-----Corrections.-----

.....
.At any time after filing a claim under the provisions of this section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Water Administration (renamed Department of Water Resources, July 1, 1974) and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Water Resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the department the same as the original and for which no additional filing fee shall be required.

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If you have any questions regarding this matter, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor, Eastern Region

RDC:CW

cc: IDWR - State Office

Memo From:

Lyle D. Eliassen

ATTORNEY AT LAW

P.O. BOX 168 OR 202 IDAHO STREET
AMERICAN FALLS, IDAHO 83211
PHONE (208) 226-5138

DATE: June 5, 1978

RECEIVED

JUN 7 1978.

Idaho Dept. of Water ~~Resources~~ ^{Water Resources}
1515 Lincoln Road Eastern District Office
Idaho Falls, Idaho 83401

Enclosed please find a Claim to a Water Right
by John Newport and Bannock Valley Irrigation
Co. and an Affidavit opposing the water right
of John McNabb.

Lyle D. Eliassen

Handwritten signature: Lyle D. Eliassen

IN THE MATTER OF:)
CLAIM TO A WATER RIGHT)
by John B. McNabb,)
no. 29-4083)

State of Idaho)
County of Power)

AFFIDAVIT

RECEIVED

JUN 7 1978

Department of Water Resources
Eastern District Office

John Newport being first duly sworn,

deposes and says: that he is president of Bannock Valley Irrigation Company, and a share holder thereof. Bannock Valley Irrigation Company was formed on July 24, 1897, upon the adoption of bylaws and incorporation under the laws of the territory of Idaho. Continuously from and since the year 1897, Bannock Valley Irrigation Company has appropriated the full stream flow of Knox Canyon Creek and applied it to beneficial use in that it has been used for irrigation 360 acres of pasture and farm ground and for livestock watering purposes for 800 head of cows and 50 head of horses. The entire stream flow has been appropriated by Bannock Valley Irrigation Co. and its share holders from April 1 to October 15 for irrigation and stock watering purposes and for stock watering purposes the year round.

On August 10, 1966, a lawsuit was filed by shareholders of Bannock Valley Irrigation Co. against Vern Eames, Sr. and Vern Eames, Jr. and others, who were the owners of the property now owned by John B. McNabb. A restraining order was issued in that case on September 8, 1966, restraining the Eames from diverting or appropriating any water from Knox Canyon Creek. Although that was a temporary order pending trial, the matter has never come up for trial and the suit is apparently still pending here in Power County.

(con't. page two)

John L. Newport
(Signature)

Subscribed and sworn to before me this 26th day of July, 1977.

[Signature]
(Notary Public)

Residing at Ann. Falls IDAHO
My Commission Expires APRIL 19, 1978

In addition, John B. McNabb has never watered 5,000 head of sheep from Knox Canyon Creek and further, there have not been that number of sheep watered at any time from Knox Canyon Creek by John B. McNabb or any predecessor in interest. The date of April 1922 is about 10 years earlier than the time that Vern Eames was given permission to use a small amount of water from Knox Canyon Creek for stock watering purposes. That permission has now been revoked by Bannock Valley Irrigation Co. There are not 4 acres of land irrigated by John B. McNabb or his predecessors in interest from the waters of Knox Canyon Creek and never has been. A more accurate description of the property would be approximately one acre , which was done with^{out} the consent of Bannock Valley Irrigation Co.

Your affiant opposes any claim of the right to use of water from Knox Canyon Creek or Knox Canyon Creek Spring in Power County, Idaho.

July 21, 1977

RE: Claim to a Water Right No. 29-4083

John B. McNabb
Box 92
Inkom, Idaho 83245

Dear Mr. McNabb:

The Department of Water Resources has completed the processing of your claim to a water right and no further action is authorized under Sections 42-225a and 42-225b, Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

As you are aware, the filing of your claim does not, in itself, guarantee you a water right; it only records and preserves the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included in your claim file, you may have that information or evidence added at any time. Please refer to your claim number when corresponding with this office.

We are enclosing, for your records, a copy of your claim. If you have any questions or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

R. N. D. CARLSON
Superintendent
East Region

RDC: CD

Enc: Copy of claim

July 19, 1977

RE: Claim to a Water Right No. 29-4083 JOHN B. McNABB

Mr. Lyle D. Eliassen
Attorney at Law
P.O. Box 168
American Falls, Idaho 83211

Dear Mr. Eliassen:

We are returning your letter of protest concerning the above referenced claim to a water right.

If your clients do not agree with the information that is contained in the above referenced claim to a water right, then they should file an exception, which must be in affidavit form, indicating why the right claimed is incorrectly represented. There is no time limitation for filing an exception to a claim, however, we request that if you choose to file an exception you submit it as soon as possible. For your convenience, we have enclosed an affidavit form.

If you have any questions concerning this matter, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC

Enclosures

MICROFILMED

June 10, 1977

RE: Claim to a Water Right No. 29-4083 McNABB

Power County Press
174 Idaho Street
American Falls, Idaho 83211

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted 7-06-77 by CW

RDG:CH

Legal Notice (1)

RECEIVED
JUN 14 1977

Sally Perry

Published in the Power County
Press, American Falls, Idaho on
June 16 and June 23, 1977.

NOTICE OF A CLAIM
TO A WATER RIGHT
NO. 29-4083

Notice is hereby given that
John B. McNabb, Inkom, Idaho
has filed a claim to a water right
established by diversion and ap-
plication to beneficial use of 0.14
cubic feet per second of water
from Knox Canyon Creek Spring
tributary to Bannock Creek with
point of diversion in the
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35, T. 10S, R.
32E, B.M., Power County.

The water is claimed to be used
from Apr. 1 to Oct. 15 for
domestic purposes for one family
stockwatering purposes for
head of sheep with a priority
date of April, 1922; and from Apr.
Nov. 1 for the irrigation of
acres with a priority of April,
1976; the place of use is within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 10S, R.
32E, B.M.

Any exception to this claim of
water right may be filed with the
Idaho Department of Water
Resources, 1515 Lincoln Road,
Idaho Falls, Idaho, 83401.

C. STEPHEN ALLRED
Director

NOTICE OF CLAIM TO A WATER RIGHT

NO. 29-4083

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Inkom, Idaho

has filed a claim to a water right established by diversion and application
to beneficial use of 0.14 cubic feet per second ~~XXXXXXXXXXXXXXXXXXXX~~

of water from Knox Canyon Creek Spring tributary to Bannock Creek

with point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E, B.M., Power
County

The water is claimed to be used from Apr. 1 to Oct. 15 for domestic purposes
for one family and stockwatering purposes for 5,000 head of sheep with a priority
date of April, 1922; and from Apr. 1 to Nov. 1 for the irrigation of 4 acres

with a priority of April, 1956;

the place of use is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 10S, R. 32E, B.M.

Any exception to this claim of water right may be filed with the Idaho
Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

C. STEPHEN ALLRED
~~XXXXXXXXXXXXXXXXXXXX~~

Director

Published in the Power County Press, American Falls, Idaho

on June 16 and June 23, 1977

MICROFILMED

McNabb
the H.