

COPY

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Application of

The Oregon Short Line Railroad Company,
Owner,

and

The Union Pacific Railroad Company,
Lessee,

ORDER GRANTING CHANGE

OF POINT OF DIVERSION

No. 186

For a Change of Point of Diversion on Ledge Creek,
in Water District No. 5, Caribou County, Idaho.

WHEREAS, On the 16th day of April, 1946, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, the application of The Oregon Short Line Railroad Company, Owner, and the Union Pacific Railroad Company, Lessee, for a change of point of diversion on Ledge Creek, came on regularly for hearing, pursuant to published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant with the application shows that it seems expedient to change the point of diversion, and that no other decreed water right or water user will be injured thereby; and,

WHEREAS, The said change in point of diversion has been approved by the Watermaster of Water District No. 5, Bear River and Tributaries; and,

WHEREAS, The proposed change in point of diversion will provide a more satisfactory and efficient use of the water:

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be and the same is hereby granted, and that a Certificate of Change in Point of Diversion be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of May, A. D. 1946.

MARK R. KULP

State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE OF CHANGE OF POINT OF DIVERSION OF DECREED WATER RIGHT

No. 186

THIS IS TO CERTIFY That THE OREGON SHORT LINE RAILROAD COMPANY, Owner, and THE UNION PACIFIC RAILROAD COMPANY, Lessee, are using a certain water right, for Two-tenths (0.2) of a cubic foot per second, from Ledge Creek, bearing date of priority of April 1, 1885, decreed to the Oregon Short Line Railroad Company, by Judge Joseph C. Rich, of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock, in the case of

C. H. WETZEL, ET AL.,

Plaintiffs,

vs.

GEORGE NICHOLS, ET AL.,

Defendants,

said decree bearing date of March 6, 1902, and being recorded in the records of the State Department of Reclamation, at Boise, Idaho, in Volume 1 of Decrees, at Page 124;

And said water right having been again confirmed and decreed to the Oregon Short Line Railroad Company, by Judge Jay L. Downing, of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Caribou, in the case of

MARY THUET,

Plaintiff,

vs.

GRACE BEUS, ET AL.,

Defendants,

said amended decree bearing date of April 7, 1941, and being recorded in the records of the State Department of Reclamation of the State of Idaho, in Volume 6 of Decrees, at Page 850;

Both of said decrees adjudicating and confirming said water right to the Oregon Short Line Railroad Company for the purpose of use by said Railroad Company for the operation of its trains and for the supply of its depot and stockyards in Soda Springs, Idaho, continuously throughout the year.

That now, upon the application of the OREGON SHORT LINE RAILROAD COMPANY, as owner, and the UNION PACIFIC RAILROAD COMPANY, as lessee, for a certificate of Change of Point of Diversion, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to change such point of diversion is HEREBY CONFIRMED.

That said change in point of diversion shall not modify in effect said decree, water right, or place of use. Said water to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

Two-tenths (0.2) of a cubic foot per second of the waters of Ledge Creek, with priority of April 1, 1885

That the water right above described has heretofore been diverted from Ledge Creek in the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 8, Township 9 South, Range 42 East, B.M., and conducted to the railroad's water tanks and other points of use through a pipe line owned by said Oregon Short Line Railroad Company.

That the water right above described will hereafter be diverted from Ledge Creek, with point of diversion in the West half of the Southeast quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 5, Township 9 South, Range 42 East, B.M., said point being the point where the City of Soda Springs now diverts its culinary water from said Ledge Creek into the pipe lines and water mains of said City of Soda Springs, and will be conducted through the City's pipe line system for use by the Oregon Short Line Railroad Company, as owner, and the Union Pacific Railroad Company, as lessee, for the operation of trains and for the supplying of the depot, stockyards and other railroad facilities located at Soda Springs, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of May, A. D. 1946.

MARK R. KULP

State Reclamation Engineer

Affidavit of Publication

County of Caribou, }
State of Idaho, } SS.

Fred Massey being first duly sworn
on oath, states:

That she is Principal Clerk of the Soda Springs Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs 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 was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof for two successive weekly issues thereof, the date of the first publication being the 28th day of March, 1946, the date of the last publication being the 4th day of April, 1946.

Fred Massey
Subscribed and sworn to before me this 18th day of April, 1946

(SEAL) Notary Public, residing at Soda Springs, Idaho.
My Commission expires the 1st day of August, 1948

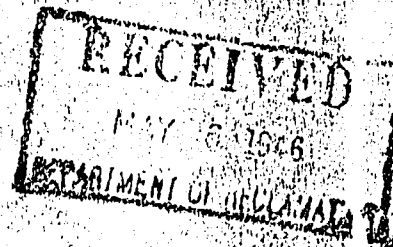
COST: 26 lines at 10 cents a line for the first insertion and 5 cents a line for each of one subsequent insertion, total \$ 5.40

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

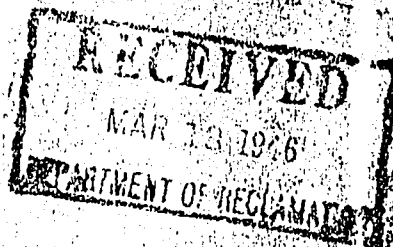
Notice is hereby given that The Oregon Short Line Railroad Company, by E. C. Paulsen, General Manager, has applied to the State Reclamation Engineer of the State of Idaho, for a certificate authorizing him to transfer the use of Two-tenths (0.2) of a cubic foot per second of the water of Ledger Creek from the place where it is now used, and diverted for the operation of trains and supply of its depot and stockyards located in Soda Springs, Idaho, to be transferred and diverted into the city mains and domestic water supply system belonging to the City of Soda Springs, Idaho.

And that, on the 16th day of April, A. D. 1946, at Room 107, State House, Boise, Idaho, at 10:00 o'clock A. M., before the State Reclamation Engineer or his authorized agent, the opportunity will be given to any and all persons to appear and present, for his consideration, any reason or reasons why a certificate should not be issued authorizing such transfer.

MARK R. KULP,
State Reclamation Engineer
M. 28-A-4



AFFIDAVIT FOR CHANGE OF POINT OF DIVERSION
FOR DECREED WATER RIGHT



STATE OF IDAHO, }
COUNTY OF BANNOCK. } ss.

F. C. PAULSEN being first duly sworn, deposes and says:

That the Oregon Short Line Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah and that the Union Pacific Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah; that both of said railroad corporations are duly authorized to own property and to transact business within the State of Idaho by virtue of having complied with all of the provisions of the Constitution and Laws of the State of Idaho relating to foreign corporations doing business within the State of Idaho; that the Oregon Short Line Railroad Company is the owner of a steam railroad system extending through the State of Idaho and adjoining states together with tracks, cars, locomotives and other appliances and appurtenances used in connection therewith; that the Union Pacific Railroad Company, a corporation, is at the present time engaged in the operation as lessee within the State of Idaho and adjoining states of said railroad system so owned by the Oregon Short Line Railroad Company.

That in connection with and as an appurtenant part of said steam railroad system the Oregon Short Line Railroad Company is the owner of and entitled to divert, and the Union Pacific Railroad Company as lessee of said railroad system is diverting and using, a certain water right bearing date of priority of April 1st, 1885, for one-fifth cubic foot per second, or ten miner's inches of the natural flow of the waters of Ledge Creek in Caribou

County, State of Idaho, said water right having been decreed to said Oregon Short Line Railroad Company by decree of Judge Joseph C. Rich of the Fifth Judicial District of the State of Idaho, in and for the County of Bannock, in the case of C. H. Wetzel, et al., vs. George Nichols, et al., said decree bearing date of March 6, 1902; said decree and the water right therein adjudicated having been again confirmed and decreed to the Oregon Short Line Railroad Company by amended decree of Judge Jay E. Downing of the Fifth Judicial District of the State of Idaho, in and for the County of Caribou in the case of Mary Thuet vs. Grace Beus, et al., said amended decree bearing date of April 7, 1941, both of said decrees adjudicating and confirming said water right to the Oregon Short Line Railroad Company for the purpose of use by said Railroad Company for the operation of its trains and for the supply of its depot and stockyards in Soda Springs, Idaho continuously throughout the year.

That affiant is General Manager and the duly authorized representative of the Oregon Short Line Railroad Company, a corporation, to whom such right was decreed, and is also General Manager and the duly authorized representative within the State of Idaho of the Union Pacific Railroad Company, a corporation, which has been and is now diverting and using said water by virtue of its operation of said railroad system under lease with the Oregon Short Line Railroad Company, and as such representative is authorized to make this affidavit and request on behalf of both of said railroad corporations.

That said waters are now diverted from said stream in the Southwest Quarter of the Northeast Quarter of Section 8, Township 9 South, Range 43 East Boise Meridian, and are conducted to the railroad's water tanks and other points of use by the operating railroad company through a pipe line owned by said Oregon Short Line Railroad Company and operated under lease by the Union Pacific

Railroad Company. That the Oregon Short Line Railroad Company as lessor, and the Union Pacific Railroad Company as lessee and operator of said railroad system, desire to change the point of diversion of said water from the point above described to a point located in the West Half of the Southeast Quarter of Section 5, Township 9 South, Range 42 East Boise Meridian, said point being the point where the City of Soda Springs now diverts its culinary water from said Ledge Creek into the pipe lines and water mains of said City of Soda Springs, and thereafter to conduct the same to the water tanks, depot and stockyard facilities at Soda Springs, Idaho by pipe line extending from said new point of diversion to the City of Soda Springs.

That the reasons for desiring to make such change are as follows:

That the Oregon Short Line Railroad Company as owner and lessor of said railroad system and appurtenant water right, and the Union Pacific Railroad Company as lessee and operator thereof, propose to enter into a contract with the City of Soda Springs, Idaho, if the change in point of diversion herein requested is granted, whereby, for a stipulated consideration, the City of Soda Springs will conduct the water so owned and used by the railroad companies through the water mains and pipe lines of the City of Soda Springs to the water tanks, depot and other places of use by the railroad companies at Soda Springs. That it is believed by the Oregon Short Line Railroad Company as owner and lessor, and the Union Pacific Railroad Company as lessee and operator, that all of the facilities of said railroad system can be better served from the new point of diversion than from the present point of diversion, and that it will be to the mutual advantage and benefit not only of the railroad system but also of the City of Soda Springs that said point of diversion be changed to coincide with the point of diversion now used by said City of Soda Springs. That the City of Soda Springs will, in addition to granting the railroad companies a carrying

right in its pipe line system, purify all water so carried, so that the water hereafter used by the railroad companies at the depot and other points of use at Soda Springs will be of equal purity to water supplied and used elsewhere in the City of Soda Springs.

That no one will be injured by such change and that such change will be made at the sole risk and expense of the Oregon Short Line Railroad Company, lessor, and the Union Pacific Railroad Company, lessee.

E. E. Baulun

Subscribed and sworn to before me this 15th day of March, 1946.

Rosa Enke

Notary Public for Idaho,
Residing at: Pocatello, Idaho.

READ & APPROVED at Soda Springs, Idaho this 3rd day of May, A.D. 1946.

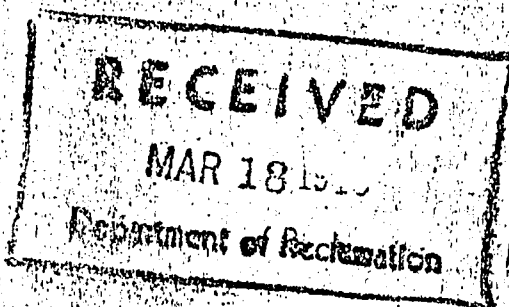
E. J. Baird

Water Master
District 5
State of Idaho.

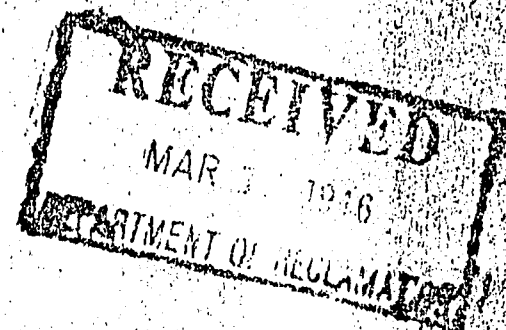
UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT—IDAHO

L. H. ANDERSON,
GENERAL ATTORNEY,
A. U. MINER,
ASSISTANT GENERAL ATTORNEY



POCATELLO, IDAHO
March 15, 1946



State Department of Reclamation,
State House,
Boise, Idaho.

Atten: State Reclamation Engineer

Dear Sir:

I am enclosing herewith an application for change of point of diversion for a decreed water right as shown by the affidavit.

The water right is owned by the Oregon Short Line Railroad Company and is at present being used by the Union Pacific Railroad Company under lease of the railroad properties. The application does not contemplate a change in the point of use but merely requests a change in the point of diversion from the point where the water is now diverted from Ledge Creek by the Railroad Company to a point of diversion to coincide with that used by the City of Soda Springs, the purpose being to enter into a contract with the City of Soda Springs to conduct the water right owned and used by the Railroad Company through the water mains and water system of the City of Soda Springs to be used for the same purposes and at the same places at which it is now used in Soda Springs.

Will you fix a time and place for the hearing of this application and forward to me proper notice for publication, and I will see that proper publication is had in Caribou County.

I do not know whether there is a filing fee required for this application or not. The statute does state that there is a fee of \$1.00 for the issuance of the certificate of transfer when granted. If there is a fee prior to the issuance of such certificate will you please let me know and I will immediately forward the same.

Yours respectfully,

L. H. Anderson

AUM:E

March 22, 1948

Mr. L. H. Anderson
General Attorney,
O. S. L. R.R. Co.
Pocatello, Idaho

Dear Mr. Anderson:

We acknowledge receipt of your letter of March 15th, enclosing the application of the Oregon Short Line Railroad Company for transfer and change of point of diversion of 0.2 cubic foot per second of water from Lodge Creek.

A notice has been prepared, setting April 14th, at 10:00 o'clock A.M., as the time for hearing to be held at Room 107 State House, Boise, Idaho; which notice has been sent to the Soda Springs Sun, with instructions to publish it once a week for two consecutive weeks prior to that date, and to send you the affidavit of publication, together with statement of publication cost.

The \$1.00 fee for recording is required prior to the issuance of the certificate of transfer, and may be sent to this Department along with the affidavit of publication, after the date set for hearing.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A

Form No. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

Date : March 22, 1946

Soda Springs Sun

Soda Springs, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to **April 14, 1946** the date set for hearing, the expense of the publication to be paid by the applicant, **O. S. L. Railroad Co., C/o L. H.**

Anderson, General Attorney, Pocatello, Idaho

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

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

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Roy W. Thompson
Supervisor of Water Distribution

March 25, 1946

The Soda Springs Sun
Soda Springs, Idaho

Gentlemen:

Since writing you on March 22nd, enclosing a notice for publication in connection with Proposed Transfer of Water Right by the O. S. L. Railroad, our attention has been called to the fact that the date set for hearing (April 14th) falls on Sunday.

Will you please, therefore, change this date to April 16th, 1946.

Thanking you, we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A
CC to L. H. Anderson

Notice of Proposed Transfer of Water Right

Notice is hereby given that The Oregon Short Line Railroad Company, by F. C. Paulsen,
its General Manager, has applied to the
State Reclamation Engineer of the State of Idaho for a certificate authorizing him to transfer the use of

Two-tenths (0.2) of a cubic foot per second

of the water of Ledge Creek

place where
from the ~~land upon which~~ it is now used, ~~and~~ and diverted for the operation of trains and
supply of its depot and stockyards located in Soda Springs, Idaho,

to the following described tract to be transferred and diverted into the city mains and
domestic water supply system belonging to the City of Soda Springs, Idaho;

And that, on the 14th day of April, A. D., 19 46
at Room 107 State House, Boise, Idaho, at 10:00 o'clock A. M.

before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all
persons to appear and present, for his consideration, any reason or reasons why a certificate should not be
issued authorizing such transfer.

MARK R. KULP

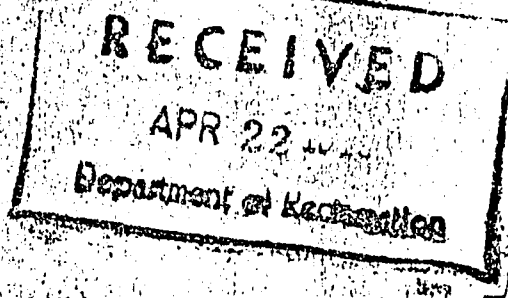
State Reclamation Engineer.

UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT—IDAHO

L. H. ANDERSON,
GENERAL ATTORNEY

A. U. MINER,
ASSISTANT GENERAL ATTORNEY



POCATELLO, IDAHO

April 19, 1946

Water Rights - Soda Springs.....

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

Attention: Roy W. Thompson.

Dear Sir:

I am enclosing herewith proof of publication of notice of hearing upon the application which I filed on behalf of the Oregon Short Line Railroad Company and the Union Pacific Railroad Company as its lessee, asking for change of the point of diversion of the water right owned by the Oregon Short Line Railroad Company on Ledge Creek in Caribou County, Idaho.

I understand that no protest or objection to this application was filed and that therefore it is in order to issue immediately a certificate authorizing the change in the point of diversion. For the statutory fee for such certificate I am enclosing herewith my check in the amount of \$1.00, for which I would be obliged if you would return me a receipt.

I would appreciate it very much if you would issue and forward to me at your earliest convenience the usual certificate authorizing this change in point of diversion. I assume you have regular forms for these certificates, but in that connection I would like to make the following observations and suggestions:

In the application as filed we included both the Oregon Short Line Railroad Company and the Union Pacific Railroad Company. The water right is owned by the Oregon Short Line Railroad Company and therefore I think the notice as published was sufficient in that it named only the Oregon Short Line Railroad Company and not the Union Pacific, which is lessee. However, in the notice it was

-2-

stated that the application was for the right to transfer the use of this water from the place where now used and diverted for supplying facilities at Soda Springs, to be transferred and diverted into the City mains and domestic water supply system belonging to the City of Soda Springs, Idaho. We would not want anyone to get the impression that we are turning this water into the City's mains to become a part of their domestic supply; they are only going to carry it for us but they will have no right in it themselves whatsoever. We would prefer that the certificate provide that the Oregon Short Line Railroad Company as owner and the Union Pacific Railroad Company as lessee are granted authority to change the point of diversion from its present point to the point at which the City now diverts its water. The place of use of the water will not be changed but it will be used as at present by the Oregon Short Line Railroad Company and the Union Pacific Railroad Company, its lessee, for operation of trains and supplying of the depot and stockyards located at Soda Springs, Idaho. If the certificate recites that it is to be diverted into the City mains we would like a provision added something in the nature of the following: "To be diverted and carried through the City's pipe line system for use by the Oregon Short Line Railroad Company as owner and the Union Pacific Railroad Company as lessee, for the operation of trains and for the supplying of the depot, stockyards and other railroad facilities located at Soda Springs, Idaho".

I would appreciate an early consideration of this matter and receipt of such certificate as soon as will reasonably be convenient.

Very truly yours,

L. H. Anderson

AUM:E

April 19, 1946

Mr. L. H. Anderson
General Attorney
O. S. L. R.R. Co.
Pocatello, Idaho

Dear Mr. Anderson:

There have been no protests filed against the transfer application of the O. S. L. Railroad Company of 0.2 second foot of water from Ledge Creek.

Therefore upon receipt from you of the affidavit of publication, and the statutory fee of \$1.00 for recording, a Certificate of Transfer will be issued.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A

April 22, 1946

Mr. E. J. Baird, Watermaster,
Water District No. 5,
Soda Springs, Idaho

Dear Mr. Baird:

We enclose herein an affidavit or application
of the O. S. L. R.R. Co. for change of point of
diversion of a water right, at the City of Soda
Springs, which is self-explanatory.

As the law requires that such applications must
be approved by the Watermaster of the district
before Certificate of Change of Point of Diversion
is issued, will you please indicate your approval
or disapproval of this application, and return to
us as soon as possible.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A
Encl.

May 1, 1948

Mr. E. J. Baird, Watermaster,
Water District # 5,
Soda Springs, Idaho

Dear Mr. Baird:

We do not seem to have received a reply to our letter of April 22nd, enclosing application of the O. S. L. R.R. Co. for change in point of diversion of water right, at the City of Soda Springs, which was sent for your approval.

The O. S. L. Attorney is very anxious to have this matter completed as soon as possible, and shall appreciate having your advice as promptly as possible.

Thanking you, we are,

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

Soda Springs Idaho

May 2 1946

State Department of Reclamation
Boise, Idaho

Attention Mr. Thompson;
Dear sir;

Your letter of May 1 regarding disposition of O.S.L. application for transfer of point of diversion at Soda Springs, received this P.M.

Your letter of Apr. 22 containing application was forwarded to Phoenix, disregarding request to hold my mail after April 10.

As I did not return to Soda Springs until Apr. 29 have not received same, and it may be a few days before its return.

I will attend to it immediately upon its return, or if you think best you may send another application.

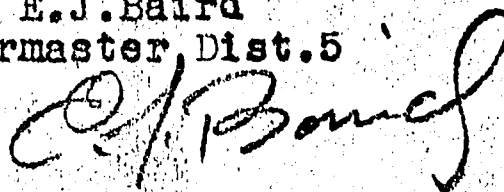
Sorry to have had this happened, but it was a slip up of the P.O. here.

Considerable other mail must have gone the same way as your letter containing Certificate of election, sent Apr. 20 was returned to me yesterday.

Very truly yours

E. J. Baird

Watermaster Dist. 5



RECEIVED

MAY 4 1946

Department of Reclamation

May 10, 1946

Mr. E. J. Baird, Watermaster,
Water District No. 5,
Soda Springs, Idaho

Dear Mr. Baird:

We enclose herewith copy of Certificate of Change
of Point of Diversion No. 186, issued to the
Oregon Short Line Railroad Company, owner, and the
Union Pacific Railroad Company, lessee.

The original certificate has been handed to Mr.
Anderson of the O. S. L., when in the office today.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

A
Encl.

