No 16884

APPLICATION FOR PERMIT
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

Application No. 23850
Permit No. 16884
District No.

1. Name of Applicant: Albert F. Henderson

Postoffice address: Clifton, County: Franklin, State: Idaho.

I. If applicant is a corporation, give:
(a) Date and place of incorporation:
(b) Amount of capital stock:
(c) Amount paid in:
(d) Names and addresses of directors:

II. The financial resources of the applicant are:
(a) Cash on hand:
(b) Treasury stock:
(c) Bonds to be issued:
(d) Other resources:

2. Quantity of water claimed: one-half cubic feet per second.

3. Source of water supply: Spring known as Hog Back/ Spring, which is a tributary of Clifton Creek.

4. Location of point of diversion: 20 rods feet distant from the N¼ corner of Section 32, T. 14 S., R. 38 E., B. M., and is in the NE¼NW¼ of Section 32, T. 14 S., R. 38 E., B. M., County of Franklin.

5. Water is to be used for: culinary and domestic purposes.

6. If for mining, milling, power or manufacturing purposes, give:
(a) Point of use of water: feet distant from corner of Section T. , R. , B. M., in the of Section , T. , R. , B. M.
(b) Amount of power generated: H. P., under feet head.
(c) Water is to be returned to at a point feet distant from the corner of Section , T. , R. , B. M., in the of Section , T. , R. , B. M.

7. Estimated cost of works: $25.00.

8. Kind of works: Cleaning spring and making ditch.

9. Height of dam feet; length of dam at top feet; length of dam at bottom feet; material used in dam:

10. Size of headgate: Width feet; height feet.

11. Ditch: Width at bottom one feet; width at water line 1½ feet; depth of water 2/3 feet; dimensions of flume
Diameter of pipe inches; length of conduit 1/4 miles.
Average grade per mile 10 feet.
(SEE REMARKS)

12. The time required for the completion of such work is sixty days. ~~years~~.

13. The time required for the complete application of the water to the proposed use is no additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. (a) Is reservoir to be used? No . If so, fill in (b) and (c) below.
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

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

Albert F. Henderson. *Applicant.*

By *Agent.*

Date of first receipt at Department of Reclamation: 3 P. M., May 23, 1928.

Returned to applicant for correction:

Corrected application received:

APPROVAL OF COMMISSIONER OF RECLAMATION

The number of this permit is 16884.
Recorded in Book 61; Page 16884. Approved May 29, 1928.
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 approve the same, subject to the following limitations and conditions:
Bond in the sum of $ to be filed on or before
Work to begin on or before July 28, 1928 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 August 29, 1928.
The whole of said work to be completed on or before November 29, 1928.
Beneficial use of water appropriated in accordance herewith, to be made on or before November 29, 1928.

Witness my hand this 29th day of May, 1928.

GEO. N. CARTER.
Commissioner of Reclamation.

Remarks: Spring is located on Government Land, now held under homestead entry, by applicant.

14.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Applicant intends to use water only for culinary and domestic purposes. There is no ditch, except the natural channel, no flume, dam or headgate. The stream carrying only one-half second foot, is almost impossible of measurement as to width, depth, etc.

Proof of Completion of Works made October 13, 1928
Certificate of Completion of Works issued October 16, 1928

Permit No. 16884
CERTIFICATE OF COMPLETION OF WORKS

To All Whom It May Concern:

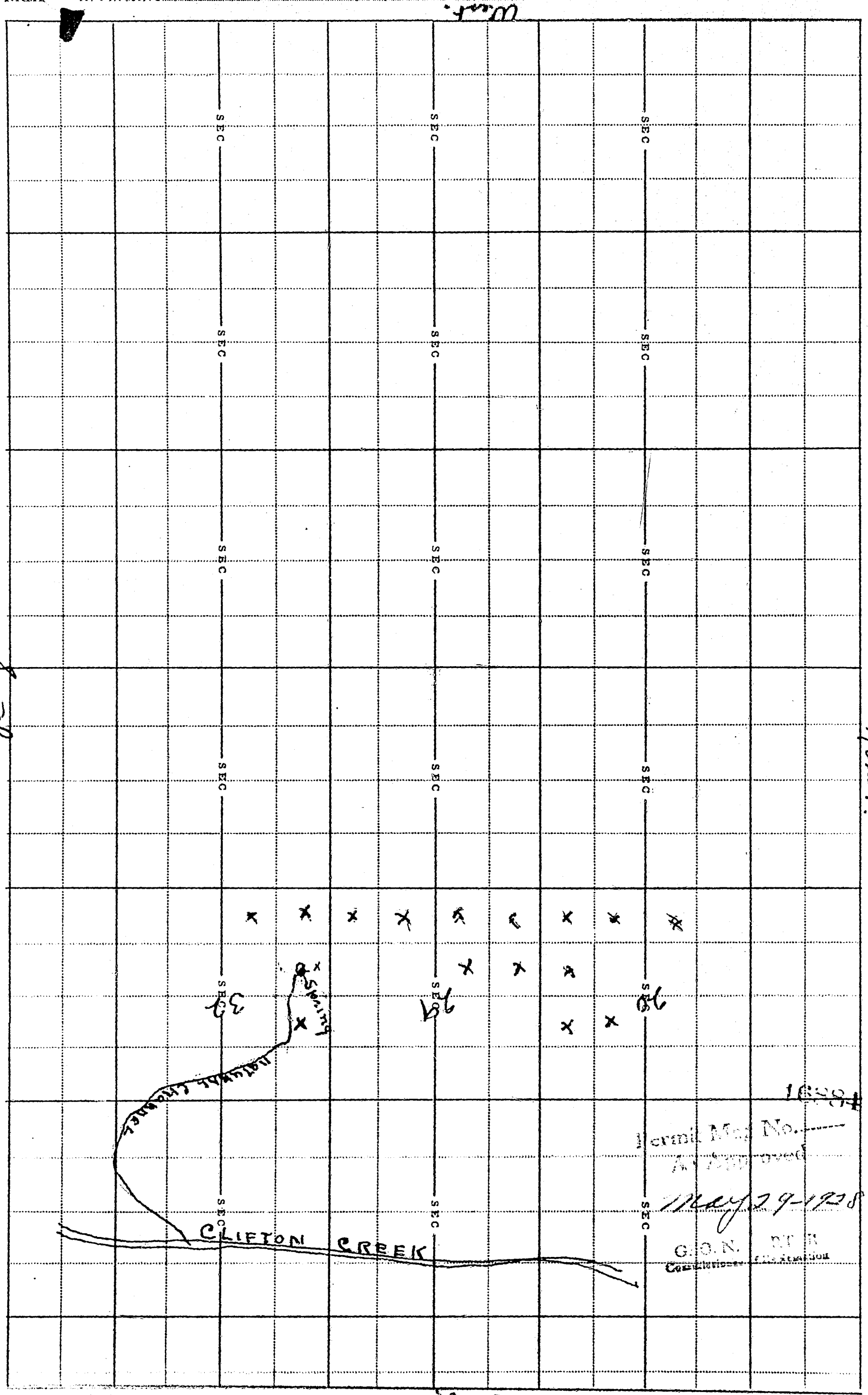
This is to certify that Albert F. Henderson of Clifton, County of Bannock, and State of Idaho, the holder of Permit No. 16884, issued upon Application No. 23542, bearing date of priority of May 23, 1928, authorizing the diversion of 0.5 second feet of the waters of Hog Back Spring, County of Bannock, State of Idaho, for 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 0.5 second feet of the waters of Hog Back Spring; that the point of diversion of said waters is in the NE¼ NW¼ Sec. 32, Twp. 14 S., R. 38 E., B. M., and that the place of use of said water is at home of applicant, in the NE¼NW¼ Sec. 32, Twp. 14 S., R. 38 E., B. M.

Witness my hand this 16th day of October, A. D. 1928.

GEO. N. CARTER
Commissioner of Reclamation

LICENSE ISSUED FOR 0.1 SEC. FT.
page 35-88.

NAME APPLICANT Albert F. Henderson, Form No. 0



SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

16884

Form No. 18

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

Permit No. 16884

June 2, 1928.

Albert F. Henderson,
Clifton, Idaho.

Boise, Idaho,

Dear Sir:

I enclose herewith above numbered permit. BE SURE AND NOTE LIMITATIONS AND CONDITIONS OF SAME as given under approval of the Commissioner of Reclamation on the third page.

GEO. N. CARTER

Commissioner of Reclamation.

16884

Form No. 5

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

August 1, 1928

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Boise, Idaho,

Albert F. Henderson
Clifton, Idaho

Dear Sir:—

Under the terms of your permit No. 16884 you are required to complete your diversion works on or before Nov. 29, 1928. I enclose herewith blank affidavit to be filled out, sworn to by you before a Notary Public or a Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the completion of the works substantially in accordance with the terms of the permit, together with a fee of $5.00, a Certificate of Completion will be issued to you.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Yours truly,

GEO. N. CARTER
Commissioner of Reclamation.

16884

Form No. 9

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

Albert F. Henderson
Clifton, Idaho

August 1, 1928

Dear Sir:—

I enclose herewith blank notice of proof of application of water to beneficial use under your permit No. .....16884....., which should be filled out and returned to this office at least 60 days before the date upon which you wish to make proof. The date for proof, as set out in your permit, is ~~Nov. 29, 1928~~ ....., and, if proof is submitted subsequent to said date, your priority will be brought down a length of time equal to the time elapsing between the date proof should have been made and the date proof is actually made.

Yours truly,

GEO. N. CARTER,
Commissioner of Reclamation.

16884.

L. R. MORGAN
ATTORNEY AND COUNSELOR-AT-LAW
Greaves Building
PRESTON, IDAHO

October 13, 1928.

Commissioner of Reclamation,
Boise, Idaho.

Dear Sir;-

I enclose herewith affidavit of proof and two copies of notice of proof of works of diversion in connection with the permit of Albert F. Henderson, No. 16884, also authorization to publish notice in the Franklin County Citizen.

May I inquire if this is not an oversight, the requesting of authorization to publish notice, since under the provisions of section 5574 of the Statutes, the department may receive proof of completion, without publication, when the amount of water claimed is six and four-tenths cubic feet or less.

Thanking you to advise me in this connection, I beg to remain,

Yours very truly,

L. R. Morgan

LRM:S

P. S. Check for $5.00 to cover the fee, is also enclosed.

L. R. M.

16584

Form 4

Permit No. 16884

STATE OF IDAHO
Department of Reclamation

Proof of Completion of Works

AFFIDAVIT OF HOLDER

STATE OF IDAHO,
County of Franklin } ss

Albert F. Henderson, being first duly sworn, upon his oath deposes and says:

First: That he is the holder and owner of Permit to Appropriate the Public Waters of the State of Idaho, No. 16884 and that his postoffice address is Clifton, State of Idaho,

Second: That the name of the stream from which said water is to be diverted is Hog Back Springs, a tributary of Clifton Creek,

Third: That the point of diversion of said water is 20 rods distant from the N¼ corner of Section 32, T. 14S R. 38 E. B.M.

Fourth: That under the terms and conditions of said permit, construction thereunder was required to be completed by November 29, 19 28.

Fifth: That the use for which said water is intended is Cullinary & Domestic purposes

Sixth: That on the date above mentioned, the works constructed under said permit were ~~for extension~~ fully completed and consisted of the following:

I. Kind of works: Cleaning spring and making ditch ¼ miles long.
(Reservoir, dam, ditch, flume, pipe or otherwise.)

II. Dimensions of work:

(a) Height of dam ..... feet, length of dam at top ..... feet, length of dam at bottom ..... feet. Material used in construction .....
(State whether wood, earth, stone or concrete.)

(b) Capacity of reservoir ..... acre feet.

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

(d) Conduit ditch width at bottom 1' ft. feet, width at water line 1½
(State whether ditch, flume or pipe.)
feet, depth of water 2/3 feet; diameter of pipe ..... inches, average grade per mile is ..... feet. Length of conduit is ¼ miles.

Seventh: That said works are capable of conducting to the place of intended use one-half second feet of water.

Eighth: That water appropriated under said permit is available for ..... acres of land described as follows: .....

Ninth: Remarks: That .....

Albert F. Henderson
(Sign here)

Subscribed and sworn to before me this 13th day of October, 19 28.

A. L. Morgan
Notary Public.

My commission expires 9/7/29

Residence, Preston, Idaho.

16984

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) October 13, 1928.

(P. O.) Preston, Idaho,

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the FRANKLIN COUNTY CITIZEN, of Preston, Idaho, published in the county in which the works are situated.

Albert F. Henderson

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

16884

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 11 a. m. on the 21st day of January, 1929, at Preston, County of Franklin, State of Idaho, before L. R. Morgan, a Notary Public, proof will be submitted of the application to beneficial use of one-half cubic feet per second of the waters of Hogs Back Springs, in accordance with the terms and conditions of Permit No. 16884 heretofore issued by the Commissioner of Reclamation, of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Albert F. Henderson, Clifton, Franklin County, Idaho.

The use to which said water has been applied is Culinary and domestic purposes,

The amount applied to beneficial use is one-half cubic foot,

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) ~~40 acres~~ of applicant in ~~NE¼NE¼~~, Sec. 32, ~~Twp.~~ 14 S., R. 38 E., B.M.

The name of the canal or ditch or other works by which said water is conducted to such place of use is Private ditch, no name.

The right to take water from such works is based upon Permit No. 16884

The source of supply from which such water is diverted is Hogs Back Springs.

The date of the priority which said user is prepared to establish is May 23, 1928.

~~May 23, 1928.~~

Geo. H. Carter,
Commissioner of Reclamation.

NE NW-32-14-38

16884

October 16, 1928

Re: Permit No. 16884

MR. ALBERT F. HENDERSON
Clifton, Idaho

Dear Sir:

There is transmitted herewith Certificate of Completion of Works, issued under the above numbered Permit, together with receipt for fees.

Very truly yours,

GEO. E. CARTER
Commissioner of Reclamation

By
Chief Clerk

Enclosures

16884

October 16, 1928.

Re: Permit No. 16884- Henderson.

MR. L. R. MORGAN
Attorney at law
Preston, Idaho.

Dear Sir:-

Your letter of the 13th inst. received, together with the affidavit of holder for proof of completion of works and fee of $5.00, also, notice of proof of beneficial use of the water.

As to the proof for publication would say that this notice was for proof of beneficial use of water and not for completion of the works. You are correct in your statement that, under the provisions of section 5574 of the Statutes, all that is required for proof of completion of works , where the amount of water claimed does not exceed 6.4 second feet, is the affidavit of the holder but notice of proof of beneficial use of water is required to be published no matter how small the amount claimed.

One copy of the notice for proof of beneficial use of water will, therefore, be mailed to the Franklin County Citizen in time for the required four weeks publication prior to January 21, 1929, and deposition blanks for holder and two witnesses will be mailed to you.

Enclosed herewith you will find the Certificate of Completion of Works issued, with receipt for fee paid.

Very truly yours,
GEO. H. CARTER,
Commissioner of Reclamation.

By_____
Chief Clerk.

Encl. CCW-R

16884

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Date Dec. 8, 1928

FRANKLIN COUNTY CITIZEN
Preston, Idaho

DEAR SIR:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to January 21, 1929, the date set for proof, the expense of the publication to be paid by the applicant, Albert F. Henderson, of Clifton, Idaho, to whom you should furnish proof of publication on or prior to the date set for proof.

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

Very truly yours,

GEO. N. CARTER,

Commissioner of Reclamation.

16884

ARTHUR W. HART
ATTORNEY-AT-LAW

Preston, Idaho

Dec. 2Ist,I928

Hon. Geo. N.Carter
Commissioner of Reclamation
Boise,Idaho

The Clifton Irrigation ~~Xixixi~~ Company intends to file protest against the granting of License to ALBERT F.HENDERSON UN-der his permit No I6884,proof of which is to be made Jan 2Ist,1919 before L.R.Morgan,Notary Public; alsp they will protest against the permit No I6935 of Albert C.Carlson,proof to be made the same before the same Notary.

Judge Dietrich in I92o decreed all of the waters of Clifton creek to the above named corporation; and the said Hogs Back Springs,that Mr. Henderson has filed on; and the said Peanut Spring that Mr. Carlson has filed on,are direct tributaries of the Clifton Creek and have all been used for upwards of sixty years.

Would your kindly suggest to me the better way to file these protests--whether at the time of the hearing before Notary Public Morgan,and prior or subsequent thereto; or whether you have any blank forms that we should use.

The Clifton Irrigation Company retained me to-day to make the protest and this letter is intended as the first protest of the company.

Very truly,

Arthur W Hart

All waters probably [illegible] jud. det. Priority also adjusted. Wm. should take care of matter. Denial of license on good [illegible] no water available [illegible] under permit [illegible]

16884

December 26, 1928.

Re: PERMITS Nos. 16884-16935

ARTHUR E. MANT, Esquire,
Attorney-at-Law,
Preston, Idaho.

Dear Sir:

This will acknowledge receipt of your notice of December 21 to the effect that the CLIFTON IRRIGATION COMPANY will protest the granting of a license to A. F. Henderson on Permit 16884 and likewise protest the proof of A. C. Carlson on Permit 16935 which proofs will likely be offered some time in January-1929.

You state that the waters claimed under these permits were all decreed by Judge Dietrich in 1920 and that these waters, being direct tributaries of Clifton Creek, have all been used for more than sixty years.

It occurs to me that your assertion to the effect that all of these waters are decreed and used would require a judicial determination before this office could take judicial notice of such a fact; furthermore, the foregoing being the case the date of priority attached to the rights claimed by Henderson and Carlson would automatically adjust the use of the prior water rights thereto being in effect. It is only necessary for the Bear River Watermaster to regulate these subsequent diversions for the benefit of prior decreed rights. If there be a surplus of water after such rights are filled then such water should go to the next right in point of time.

I do not understand at this time that denial of license on these two permit rights upon the theory that no unappropriated water is available to supply them would be justified, taking cognizance of the present Idaho law governing this subject.

However, the protests you expect to file will be received and considered. I suggest that you file them with the Notary Public before whom the depositions of proof will be taken; the entire matter will then be transmitted to this office for consideration and if after a study of the depositions of proof and the protests it appears desirable to convene a hearing at which further evidence may be presented, such action will take place. You will be advised of any further proceedings in the matter.

16884

ARTHUR V. HART, Esquire December 26, 1928.

This Department does not have blank forms for use of a protestant, neither is there any prescribed form in which the complaints should be presented.

Very truly yours,

Commissioner of Reclamation.

CHC/tp

16884

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF BENEFICIAL USE OF WATER

BOISE, IDAHO, Jan. 9, 1929

Albert F. Henderson,

c/o L. R. MORGAN,
Preston, Idaho.

DEAR SIR:

I enclose herewith the following forms to be used in connection with proof of beneficial use of water under Permit No. 16884

DEPOSITION OF PERMIT HOLDER,
DEPOSITIONS OF TWO WITNESSES.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of rights:

1. On January 21, 1929, the date set for proof, the enclosed forms (one for permit holder and one each for two disinterested witnesses) should be filled out and sworn to. at Preston, before L. R. Morgan, notary public.

2. When the depositions have been taken, they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer. if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly,

GEO. E. CARTER
Commissioner of Reclamation.

16884

Phone No. 4

P. O. Box 117

ARTHUR W. HART

PROSECUTING ATTORNEY
FRANKLIN COUNTY

Preston, Idaho

Jan. 21st, 1929

Hon. Geo. H. Carter
Commissioner of Reclamation
Boise, Idaho
Dear Sir:-

Re: Permits I6884--I6935

In keeping with my letter to you of the 21st ult and your reply of the 26th ult. the Clifton Irrigation Company through its President Thomas Sant and Director John V. Sperry, filed a protest in each of the cases advertized, namely, Alfred F. Henderson, permit I6884; and Albert C. Carlson, permit No I6935.

The protests are in the nature of affidavits filed and subscribed to before L. R. Morgan, Notary Public. Mr. Morgan said that he would forward same to you with the proofs submitted by Messrs. Henderson and Carlson.

Yours truly,

ARTHUR W. HART

16884

L. R. MORGAN
ATTORNEY AND COUNSELOR-AT-LAW
Greaves Building
PRESTON, IDAHO

January 22, 1929.

Commissioner of Reclamation,
Boise, Idaho.

Dear Sir;- RE: Albert P. Henderson, Permit #16884
Albert C. Carlson, Permit #16935.

I beg to hand you herewith depositions of the above permit holders, the depositions of two witnesses in each case, the publishers affidavit of publication of notice of taking final proof in each case, and the affidavit of protest filed in each case.

The holders of the above numbered permits wish me to request that be given an oppertunity to submit proof in opposition to the protest, before any final action is taken on the protest.

Kindly acknowledge receipt of the ~~xx~~ enclosed and advise me as to the request of the holders with respect to the protest filed.

Yours very truly,

L. R. Morgan

LRM:S

16884

PROTEST OF CLIFTON IRRIGATION COMPANY
AGAINST GRANTING PERMITS NOS 16884-16935

STATE OF IDAHO)
COUNTY OF FRANKLIN) SS

THOMAS SANT and JOHN V. SPERRY

on this 21st day of January, 1929, personally appeared before me L. E. Morgan, Notary Public, in and for the County of Franklin, State of Idaho and state taht they are officers of the Clifton Irrigation Company, Clifton, Franklin County, Idaho, and are Directors in said Corporation, and officers, that is to say:-

(THOMAS SANT IS PRESIDENT OF THE CORPORATION)

That on behalf of said corporation they protest against any permit to use any of the waters of Clifton Creek and or any of its tributaries on behalf of ~~i~~ either of the permit holders, who have this day advertized ~~to~~ to make proof of the usuage of waters under said permits; that neither Alfred F. Henderson under his permit No. 16884, nor Albert C. Carlson under his permit no. 16935, have any right, title, claim or interest in or to Hogs Back Springs or Pea Nut Springs: that both of said Springs are tributary to Clifton Creek.

That said Clifton Creek was decreed to Clifton Irrigation Co in 1920 in an action in the U. S. District Court, wherein Utah Power and Light Company was plaintiff and Last Chance Canal Company, Clifton Irrigation Company and many others were defendants; that all of the waters of said Clifton Creek were decreed to Clifton Irrigation Company, to-wit, fourteen Second feet per second of time and of the date of May 1st, 1869 for the irrigation of 707 acres of lands to be irrigated in Sections 22 and 27, Township 14 S. Range 38 E. B. M.

Affiants further say that the said Clifton Irrigation Company has used all of the waters of Clifton Creek including the said two Springs filed on by the parties above named, and said affiants further state that the said Company uses all of said waters including said springs during the entire year, both with winter and summer, in the winter for domestic purposes and for irrigation of the said 707 acres of lands; and notwithstanding they use all of said waters as aforesaid during each and every year, during all the seasons of the year, the said Company does not even then have sufficient water for its use and the use of its many stock-holders;

Affiants further state, that if the said holders of permits (16884 and 16935) were permitted to get any use of said Springs filed on, it would be a continual annoyance and detriment to the said corporation, as the River Water Master would not be able to adequately protect the said corporation against persons taking the said waters, especially on account of the distance from Clifton where said springs are located.

Affiants therefore ask the Hon. Commissioner of Reclamation to refuse the application of said Henderson and said Carlson.

The Judgment and decree in favor of Clifton Irrigation Company is recorded in Bannock County and in Franklin County, and is recorded in the latter in Book One of Judgments, at page 384, Sept. 30th 1920.

Thomas Sant

John V Sperry

Subscribed to before me this
21st day of January, 1929

L. E. Morgan NOTARY PUBLIC

16884

Form 16.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO.

PERMIT NO. 16884

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Albert F. Henderson, 38 years, Clifton, Idaho, Clifton, Idaho.

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. #16884 May 29, 1928, May 23, 1928,

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Hog Back Spring, 20 rods distant from the N¼ corner of Sec. 32, T 14 South, R. 38 E. B. M. in NW¼ of Sec. 32, T. 14 S. R. 38 E. B. M.

Ques. 5. Describe your works of diversion, and state amout of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Enlarging of spring and ditch comveying water from spring to place of use, ditch approximately one foot wide at bottom, 1½ feet at water line, and depth of waterr approximately 2/3 feet. No name given to ditch.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. domestic purposes, for watering stock and household use.

Ques. 7. If for other than for irrigation purposes; state how applied, amount of horse power generated, etc.

Ans.

16884

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. ½ cubic foot per second,

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued. please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. Since May 19, 1928, for watering stock, approximately ½ cubic foot per second, used continuously.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. None

(Sign) Albert P. Henderson

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Preston, County of Franklin, State of Idaho, on this 21st day of January, A. D. 1929

W. H. Morgan
Notary Public

My commission expires 9/7/29

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO.

PERMIT NO. 16884

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. F. D. Olsen, 51, Clifton, Idaho, Clifton, Idaho,

Ques. 2. Are you acquainted with Albert F. Henderson, the holder of Permit No. 16884? How long have you known him and where does he reside?

Ans. Fifteen years, Clifton, Idaho,

Ques. 3. Have you read or heard read said Permit No. 16884, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Hog Back spring, 20 rods distant from N¼ corner of sec. 32, Tp. 14 South, Range 38 E. B. M. located in ~~xx~~ NW¼ sec. 32.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Approximately ½ cubic foot per second.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Domestic use at corrals watering stock and household use.

16884

Ques. 7. If for power or other purposes than irrigation. state how water has been applied and to what extent.

Ans. .....

.....

.....

.....

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. .....

.....

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None.

.....

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. During summer and fall of 1928, approximately ½ C. F. S. used for watering stock and sheep pastured on lands.

.....

(Signed) F. D. Olsen

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Preston County of Franklin, State of Idaho, on this 31st day of January, A. D. 1929.

V. K. Morgan

Notary Public.

My commission expires 9/7/29

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO.

PERMIT NO. 16884

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Albert C. Carlson, 36, Clifton, Idaho, Clifton, Idaho.

Ques. 2. Are you acquainted with Albert F. Henderson, the holder of Permit No. 16884? How long have you known him and where does he reside?

Ans. Yes, twenty-four years, Clifton, Idaho.

Ques. 3. Have you read or heard read said Permit No. 16884, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Hog Back Spring, 20 rods from N¼ corner sec. 32, Tp. 14 South Range 38 E. B. M. in NW¼ said sec. 32.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. approximately ½ ~~xxxandxfeet~~ cubic foot per second.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Domestic purposes, household use and watering stock.

16884

Ques. 7. If for power or other purposes than irigation, state how water has been applied and to what extent.

Ans. .....

.....

.....

.....

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. .....

.....

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None.

.....

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. During summer and fall of 1928, about ½ c. f. s. watering stock.

.....

.....

.....

(Signed) Albert E Carlson

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Preston, County of Franklin, State of Idaho, on this 21st day of January, A. D. 1929

V. E. Morgan

Notary Public.

My commission expires 9/7/29

NOTICE FOR PUBLICATION

Notice of Proof of Application of Water to Beneficial Use.

Notice is hereby given that at 11 a.m. on the 21st day of January, 1919, at Preston, County of Franklin, State of Idaho, before L. R. Morgan, a Notary Public, proof will be submitted of the application to beneficial use of one-half (½) cubic feet per second of the waters of Hogs Back Springs, in accordance with the terms and conditions of Permit No. 16884 heretofore issued by the Commissioner of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are, Albert F. Henderson, Clifton, Franklin County, Idaho.

The use to which said water has been applied is cullinary and domestic purposes.

The amount applied to beneficial use is one-half cubic foot.

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) at home of applicant in NE¼ NW¼, Sec. 32, Twp. 14 S., R 38 E. B. M.

The right to take water from such works is based upon Permit No. 16884.

The source of supply from which such water is diverted is Hogs Back Springs.

The date of the priority which said user is prepared to establish is May 23, 1928.

Geo. N. Carter,
Commissioner of Reclamation.

d12 j2 4t

Affidavit of Publication

I. .....

(publisher) ~~(foremen)~~ of the

FRANKLIN COUNTY CITZEN

published weekly at Preston, Franklin County, Idaho, do solemnly swear that a copy of the notice as per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement therof, for ...4.....consecutive weeks, commencing with issue dated

....December.12... 192 8. and

ending with the issue dated

.....January.2..... 192.9.

By .....

Subscribed and sworn to before me

this 21st day of Jan. 192.9

L. R. Morgan
Notary Public

16884

January 26, 1929.

Re: PERMIT No. 16884
PERMIT No. 16935

L. R. HOKEN, Esquire,
Attorney-at-Law,
Greaves Building,
Preston, Idaho.

Dear Sir:

This will acknowledge receipt of your communication of January 22, enclosing depositions of holders and two witnesses in the cases of proof of application of water to beneficial use, ALBERT F. HENDERSON 16884 and ALBERT C. CARLSON 16935, and the affidavit of protest lodged against said proofs and permits.

Inasmuch as the statutes require a field examination of the physical features in connection with these permits to appropriate water, I do not believe it will be necessary to take any further action until such field examinations are made. On account of weather conditions they are impractical at this time. As soon as the reports of the examining engineer are made, you will be notified of further action, whether same may be in the form of a notice for hearing or a decision upon the information now in hand.

Very truly yours,

Commissioner of Reclamation.

CNC/tp

16884

Phone No. 4

P. O. Box 117

ARTHUR W. HART

PROSECUTING ATTORNEY
FRANKLIN COUNTY

Preston, Idaho

February 19, 1929

Honorable Commissioner of
Reclamation
Boise, Idaho

Dear Sir:

Officers of the Clifton Irrigation Co. called in to see me yesterday and wanted to know if their protest had been received by you, the protest they filed with L. R. Morgan, Notary Public, at the time Mr. Henderson and his partner filed their proof with Mr. Morgan.

I told the Officers that Mr. Morgan promised to send a protest to you but that I would write to you to find out if you had received it.

Hoiping to hear from you I am,

Yours truly,

Arthur W Hart

16884 —
16923 —

16894

February 21, 1929

Re: Permit No. 16884
Permit No. 16935

MR. ARTHUR W. HART
Attorney at Law
Preston, Idaho

Dear Sir:

For your information we are enclosing herewith copy of a letter written to Mr. L. R. Morgan relative to proofs of beneficial use of water and protests filed under Permits No. 16884 and No. 16935.

Very truly yours,

GEO. N. CARTER
Commissioner of Reclamation

By
Chief Clerk

Enc.
Encls.

16884

Phone No. 4

P. O. Box [illegible]

ARTHUR W. HART
PROSECUTING ATTORNEY
FRANKLIN COUNTY
Preston, Idaho.

File
Permit 16884

July 20th, 1929

Hon. Geo, N. Carter
Commissioner of Reclamation
Boise, Idaho
Dear Sir:-

Thomas Sant, President of the Clifton Irrigation Company, and John V. Sperry Chairman of the Village of Clifton, are in my office at the present time, and they were wondering when you could send a man down to look into the two filings that were made on the waters of Hog Back Springs (in reality the feeders of the Clifton Creek) that were made by Albert Henderson and Albert Carlson (Pea-nut Springs) You will doubtless recall the protest that was mailed to you at the time that you received the final proof made by these parties; and the letter that you wrote to the effect that you would send a man down to look into the matter.

In connection with this proof, there was the proof that we submitted for and on behalf of the Cub River & Wormcreek canal Company on its filings on Cub River and its filings on Wormcreek.

It may be if you send some one down here that all of these matters could be attended to at the same time.

Would be pleased to know when you are coming as these gentlemen in the office would like to show you the situation and take you over the entire creek-bed.

This is quite urgent as this Mr. Henderson is threatening to take waters that belong to the companies who protested as aforesaid.

Hoping that this will receive your prompt attention,

I am, Very truly,

ARTHUR W. HART

Arthur W. Hart

16884

July 23, 1929

Re: Permit 16884

Mr. Arthur W. Hart
Attorney at Law
Preston, Idaho

Dear Sir:

This is to acknowledge receipt of your letter of July 20 relative to the rights of Albert Henderson and Albert Carlson to the waters of certain springs tributary to Clifton Creek. Proof of completion of works on the above mentioned right has been submitted, and the matter is being held in abeyance pending field examination, which will probably be made sometime this summer.

As you no doubt know, our constitution provides that a right to appropriate public waters shall never be denied, and that appropriate legislation has been had which provides for a definite procedure in acquiring permit rights, and when the applicant has complied with the provisions of this legislation it is mandatory on this office to issue license for so much water as has been actually put to beneficial use.

In this connection the doctrine of priority protects all prior users, and I can see no possibility of serious damage, provided of course proper administration by the local watermaster is had.

In your letter you state that these parties have threatened to take the water to the detriment of decreed prior rights. If such is the case, the owner of such decreed prior rights should immediately notify the watermaster on the stream, and then it is his duty to see that all decreed rights are filled before these permit holders are allowed to divert any water which is tributary to the stream in question. This case is almost identical with your client, the Cub River and Worm Creek Canal Company, which has appropriated the surplus

16 884

waters of Cub River and Worm Creeks, and it is of course understood that they will only be allowed to divert such water as may be available after all prior rights have been filled.

The statutes do provide for protests to the granting of license, but it is my interpretation that such protest should only be relative to improper proof as to amount of water, place of application, or time of application, and that a protest against granting any license on the grounds that prior rights will be injured would be of no effect, inasmuch as our system of administration recognizes the doctrine of priority of rights grants a priority of use.

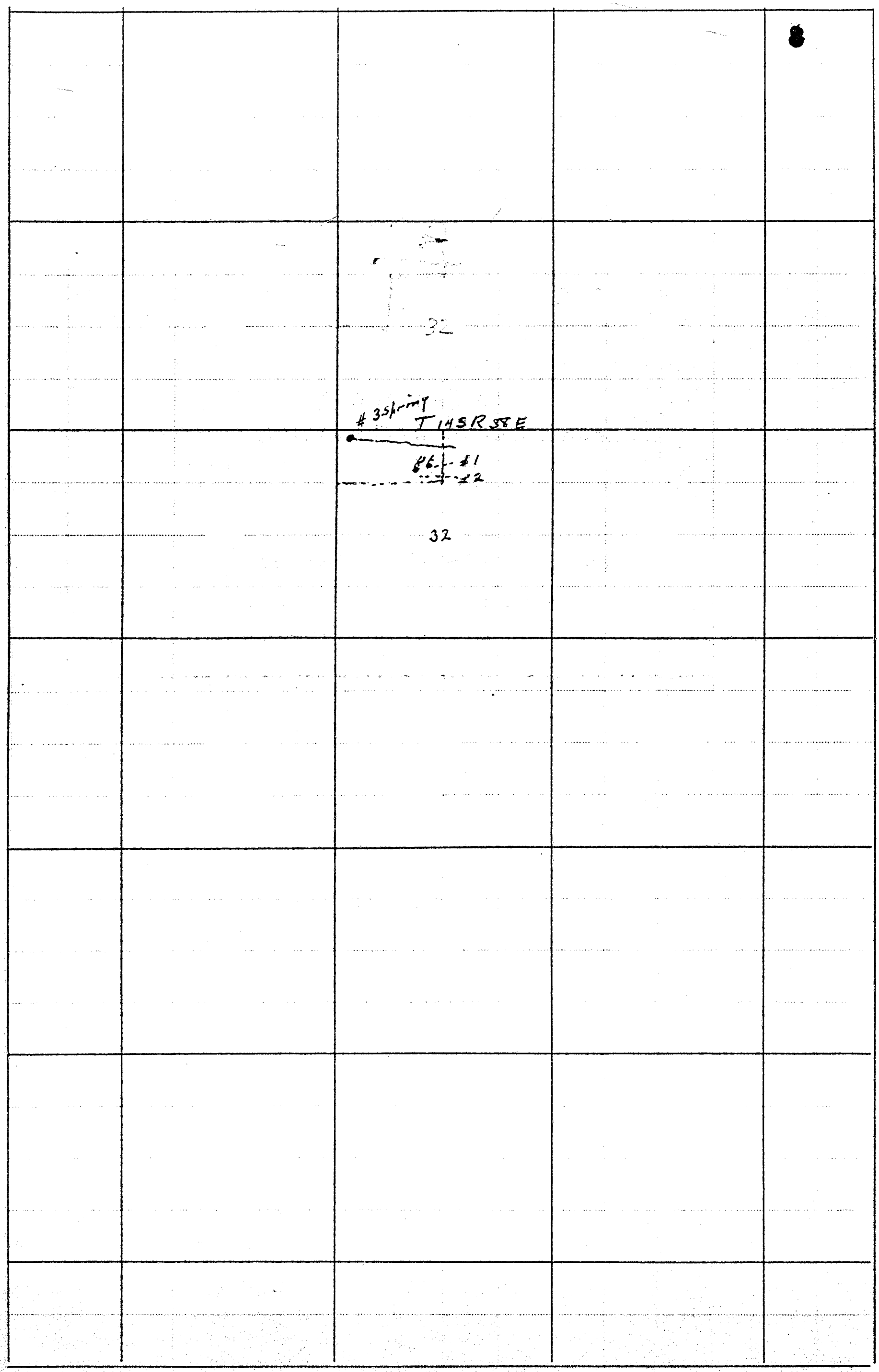
When our field engineer arrives in your territory, he will make it a point to contact you and the other parties interested.

Yours truly,

Assistant Commissioner
of Reclamation

MS/co

16894



SCALE: 2 INCHES EQUALS 1 MILE. DRAW MAP IN INK.

16884

Form 23

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 16884

This proof is for BEN. USE In Water District No.

1. Name of applicant: Albert F. Henderson
2. Source of water supply: Hog Back Spring
3. Location of point of diversion: Is in the NE¼NW¼ of Section 32
   T. 14 S R. 38 E.B.M. County of Franklin
4. Describe works as they exist, giving dimensions and capacities of same:
   Spring #1, small, sinks about 50 ft. below origin, has been cleaned out, small excavation, pole corrall, 3' high, 10' square around same.
   Spring #2, West & south of #1, small excavation, 10 minutes work, pole corral 4' high 8' square around spring, flows some 30 to 50 feet.
   #3 large spring runs down gulch and off land of applicant about ¼ mile
   No diversion ditches
5. Water is used for: Domestic purposes
6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): At home of applicant

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? None, sinks

Remarks: Side hill, brush & timber land, not fenced, H.E. used for stock, Springs used as watering holes.

No beneficial use for irrigation. Stock watering purposes only. City of Clifton extending pipe line towards spring #3. Has not entered premises of Henderson. Matter pending on contract.

This examination was made on the 14 day of August 1929

(Signed) R. L. Lutcliffe
Examiner.

16884

STATE OF IDAHO

Department of Reclamation

- - - - -

IN THE MATTER OF PROOF)
OF APPLICATION OF WA-)
TER TO BENEFICIAL USE)
PERMIT No. 16884 and)
PERMIT No. 16935)

ORDER GRANTING LICENSE

WHEREAS, ALBERT F. HENDERSON and ALBERT C. CARLSON, the holders of Permits Nos. 16884 and 16935, respectively, have regularly offered proof of application of water to beneficial use as required by the terms and provisions of said Permits, and

WHEREAS, the CLIFTON IRRIGATION COMPANY has protested the acceptance of said proofs and the issuance of water licenses in accordance with the laws of Idaho, advancing as an argument and reason for said protest that the said CLIFTON IRRIGATION COMPANY is the prior owner and user of all the waters of Clifton Creek and tributaries, among which are HOOK BACK SPRINGS and PEANUT SPRINGS, the sources of water appropriated by the said permits respectively, and, THAT The allowance of said permits as applied for would seriously interfere with the use of water by Clifton Irrigation Company, and FURTHERMORE, That the watermaster qualified and acting in Water District No. 5-J would not be able to adequately protect the Clifton Irrigation Company against these applicants taking the waters from said springs on account of the distance said watermaster would be required to travel to regulate the use of water by said permit-holders, and

WHEREAS, The position taken by said protestant, CLIFTON IRRIGATION COMPANY, is untenable in that it would prevent further appropriation of water in Idaho upon the alleged ground of prior exhaustive ownership and use and it being clearly the purpose of the Laws of Idaho, which provide for the office of watermaster and prescribe the power and duties of such an officer, to promote the orderly use of all waters of the State available for any beneficial use and it further appearing from the facts gathered by the Department of Reclamation that the said permit-holders, Henderson and Carlson, are not claiming a right for irrigation but only for domestic and stock-watering purposes as borne out by the actual physical works constructed for the appropriation of the waters of these springs, same not employing any diversion ditches which could transmit water to lands which might be irrigated,

16884

NOW, THEREFORE, IT IS HEREBY ORDERED, That the deposition of permit-holder, ALBERT F. HENDERSON accompanied by the depositions of his two witnesses, ALBERT C. CARLSON and F. D. OLSEN, evidencing the application of water to beneficial use in conformity to the terms and provisions of Permit No. 16884 and the deposition of permit-holder, ALBERT C. CARLSON accompanied by the depositions of witnesses of F. D. OLSEN and ALBERT F. HENDERSON, evidencing the application of water to beneficial use in conformity to the terms and provisions of Permit No. 16935, be approved and water licenses issue as provided by statute, and

IT IS FURTHER ORDERED, That any person feeling aggrieved by the decision of the Department of Reclamation in this case may appeal therefrom to the District Court of the County in which the place of use of the water claimed is situated, taking such appeal within 60 days from the date of the license about to be issued.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Department of Reclamation at Boise, Idaho this 23d day of August, 1929.

Geo. N. Carter
Commissioner of Reclamation.

16884

August 24, 1929.

RE: PERMITS NOS. 16884 & 16935
Henderson & Carlson

MR. ARTHUR W. HART
Prosecuting Attorney,
Preston, Idaho.

Dear Sir:-

Enclosed you will find order granting licenses under the above numbered permits.

Very Truly Yours,
GEO. H. CARTER
Commissioner of Reclamation.

By _____
Chief Clerk.

1 enc.

16884

August 24, 1929.

RE: PERMIT NO. 16884.

Mr. Albert F. Henderson,
Clifton, Idaho.

Dear Sir:-

Enclosed you will find copy of order granting license under your above numbered permit. The license will, therefore, issue upon receipt of fees in the sum of $5.00.

Very truly yours,
GEO. N. CARTER
Commissioner of Reclamation.

By _____
Chief Clerk.

1 enc.

16484

August 30, 1929

Re: Permit 16884.

Mr. Albert F. Henderson
Clifton, Idaho

Dear Sir:

We are mailing you herewith License and Certificate of Water Right issued under your above numbered permit, together with receipt for fee paid.

Very truly yours,

GEO. N. CARTER
Commissioner of Reclamation

By_____
Chief Clerk

Encl.

16884

BUREAU OF WATER RESOURCES
MYRON SWENDSEN, ASST. COMM.

WATER APPROPRIATIONS
CAREY ACT DEVELOPMENT

State of Idaho

H. C. BALDRIDGE, GOVERNOR

DEPARTMENT OF RECLAMATION

GEO. N. CARTER, COMMISSIONER

BOISE

September 4, 1929

Re: Permits 16884 and 16935.

Mr. John V. Sperry
Chairman, Town Board
Clifton, Franklin County, Idaho

Dear Sir:

This is to acknowledge receipt of your letter of August 30 relative to the license recently issued to Albert F. Henderson for the waters of certain springs above Clifton.

You are advised that Mr. Sutcliffe made an examination and an engineer's report in connection with this application, which examination disclosed the fact that all of the works contemplated in the permit had been constructed and were capable of delivering the amount of water appropriated, and that beneficial use had been made of such water. When these conditions have been filled it is mandatory on this department to issue license.

This department has no authority to act in a judicial capacity and under constitutional provisions must follow the statutory requirements. Our constitution states that the right to appropriate the public waters of the State shall never be denied, and that the rights to the use of water shall be in the order of their priorities.

If, as you claim, you have a prior right to the use of these waters this applicant may, when other sources are not sufficient to fill your decreed right, be deprived of his right in your favor.

The protest of the Clifton Irrigation Company was taken into consideration before the order granting the license was rendered. For your information I am enclosing a copy of the order granting license, which gives some detail as to this department's ruling on the protest of the Clifton Irrigation Company.

16884

The granting of this license does not in any way vitiate any rights that prior owners may have to the water, inasmuch as the administration of the water would give the prior rights water at all times, and when there is not sufficient water in the stream to fill subsequent rights, such rights would be cut off and the water turned to prior owners.

If you have any difficulty in the future in the administration of these waters, I would suggest that you ask for the appointment of a watermaster, and I am sure that the matter will be adjusted agreeably to all.

Yours truly,

Myron Bowman
Assistant Commissioner
of Reclamation

MS/co
Encl.
cc: Mr. T. H. Sant.

1G 88-

RECEIVED
DEPARTMENT OF RECLAMATION

Clifton, Franklin County, Idaho
Aug. 30th, 1929

Hon. George N. Carter
Commissioner of Reclamation
Boise, Idaho
Dear Mr. Carter:-

Re: License HENDERSON and CARLSON

Our Attorney Arthur W. Hart mailed to us a few days ago the License, or copy of the License, you had issued in the above noted matter. We have read it carefully, and were greatly surprised especially as we had been informed by Mr. Hart that you would send a man down to look over the situation and give us the opportunity to going over the locality with you; we have been waiting for such an opportunity ever since we protested against the License being issued; one of your letters stated that you were waiting for the snow to leave so that you could come down and that you would let us know so that we could go over this matter with you or your agent.

A short time ago, we heard that some one had gone up the Clifton Canyon and had looked over the situation, and that he had gone over it with Mr. Henderson, the Licensee, in fact we saw the man at a distance going over the said water location, and who ever it was was very careful not even to call on us or permit us to talk with him about the matter; of course, as you say, we can appeal to the District Court.

Well, to say the least, the Clifton Irrigation Company and the Village of Clifton felt disappointed. We are told that we have the next to the oldest water right in the State of Idaho; the Irrigation Company has used all of the water for over sixty years until 15 years ago it transferred a portion of the water to the Village of Clifton, and the Village has been using it ever since; Mr. Henderson, we are told, is already offering water for sale to the inhabitants of the Village that used the water before he was born. A careful investigation of the premises shows plainly that some of our water sinks and then farther down arises again. This we could easily have demonstrated to your agent had we been given the opportunity. We are further informed that the said licensees intend keeping sheep up there; of course this would pollute the water. This Clifton water has been used by us as aforesaid the entire year--winter and summer--during all the times aforesaid, unmolested; and we went to the precaution of getting a decree to said water in 1920 from the U.S. District Court, in the case of Utah Power & Light vs. Last Chance Canal Co., et al, and now to be threatened with such a lay-out as we anticipate from the issuing of these licensees, we are not feeling fine. We do not know whether the license is final as far as your Department is concerned, or whether under the circumstances, a new investigation may be obtained, therefore, we are writing this letter.

Very truly,

CLIFTON VILLAGE
By John V. Sperry Chairman
T. H. Sant Clerk

16884

Phone No. 4

P. O. Box 117

ARTHUR W. HART

PROSECUTING ATTORNEY

FRANKLIN COUNTY

Preston, Idaho.

Oct. 9th, 1929

Hon. Geo. N. Carter
Chairman Board of Reclamation
Boise, Idaho
Dear Sir:-

The village of Clifton, Idaho and the Clifton irrigation company met in my office today and decided to appeal from the decision or order of your board granting a license to Albert F. Henderson and - Carlson .I interpret the law in reference to appeals from such orders granting license to be that we are to have a certified copy of the licenses you issued; and of the protests that we filed with your board; also of the reports made under the direction of your board prior to the issuance of of the license and also of other documentary proof in your department.

I am inclosing a few copies that I had which probably you can use in making the certificates. Would be very pleased if you could attend to this at once so that I can get everything ready before the expiration of the sixty-day period.

Send your bill for your trouble.

Yours truly,

Arthur W. Hart

16884

BUREAU OF WATER RESOURCES
MYRON SWENDSEN, ASST. COMM.

WATER APPROPRIATIONS
CAREY ACT DEVELOPMENT

State of Idaho

H. C. BALDRIDGE, GOVERNOR

DEPARTMENT OF RECLAMATION

GEO. N. CARTER, COMMISSIONER

BOISE

August 24, 1929.

RE: PERMITS NOS. 16884 & 16935
Henderson & Carlson

MR. ARTHUR W. HART
Prosecuting Attorney,
Preston, Idaho.

Dear Sir:-

Enclosed you will find order granting licenses under the above numbered permits.

Very Truly Yours,
GEO. N. CARTER
Commissioner of Reclamation.

By C. O. Brown
Chief Clerk.

1 enc.

16884

State of Idaho
H. C. BALDRIDGE, GOVERNOR
DEPARTMENT OF RECLAMATION
GEO. N. CARTER, COMMISSIONER
BOISE

July 23, 1929

Re: Permit 16884

Mr. Arthur W. Hart
Attorney at Law
Preston, Idaho

Dear Sir:

This is to acknowledge receipt of your letter of July 20 relative to the rights of Albert Henderson and Albert Carlson to the waters of certain springs tributary to Clifton Creek. Proof of completion of works on the above mentioned right has been submitted, and the matter is being held in abeyance pending field examination, which will probably be made sometime this summer.

As you no doubt know, our constitution provides that a right to appropriate public waters shall never be denied, and that appropriate legislation has been had which provides for a definite procedure in acquiring permit rights, and when the applicant has complied with the provisions of this legislation it is mandatory on this office to issue license for so much water as has been actually put to beneficial use.

In this connection the doctrine of priority protects all prior users, and I can see no possibility of serious damage, provided of course proper administration by the local watermaster is had.

In your letter you state that these parties have threatened to take the water to the detriment of decreed prior rights. If such is the case, the owner of such decreed prior rights should immediately notify the watermaster on the stream, and then it is his duty to see that all decreed rights are filled before these permit holders are allowed to divert any water which is tributary to the stream in question. This case is almost identical with your client, the Cub River and Worm Creek Canal Company, which has appropriated the surplus

16884

waters of Cub River and Worm Creeks, and it is of course understood that they will only be allowed to divert such water as may be available after all prior rights have been filled.

The statutes do provide for protests to the granting of license, but it is my interpretation that such protest should only be relative to improper proof as to amount of water, place of application, or time of application, and that a protest against granting any license on the grounds that prior rights will be injured would be of no effect, inasmuch as our system of administration recognizes the doctrine of priority of rights grants a priority of use.

When our field engineer arrives in your territory, he will make it a point to contact you and the other parties interested.

Yours truly,

Myron Sturdevant
Assistant Commissioner
of Reclamation

MS/co

16984

October 11, 1929

Re: PERMIT No. 16884
PERMIT No. 16935

HONORABLE ARTHUR W. HART
Prosecuting Attorney
Franklin County
Preston-Idaho

Dear Mr. Hart:

This is to acknowledge receipt of your Notice of Appeal from the decision of this Department in granting licenses to the applicants of the above numbered permits.

In this connection the Department is preparing certified copies of the following documents as provided in Section 5583 of the 1919 Compiled Statutes:

licenses
orders of the Department granting licenses
protests against the issuing of such licenses
reports of examining engineer
notice of publication
affidavits of publication
deposition of applicants on proof of beneficial use
deposition of two witnesses on proof of beneficial use

If there are any other documents of which you desire copy please so advise and we shall have them prepared.

The certified copies probably will be ready for mailing on October 15.

Cordially yours,

16884

Assistant Commissioner
of Reclamation

MS/tip

October 14, 1929

Re: PERMIT No. 16884
PERMIT No. 16955

HONORABLE ARTHUR W. HART
Prosecuting Attorney
Franklin County
Preston-Idaho

Dear Mr. Hart:

In connection with your Notice of Appeal from the decision of this Department in granting licenses to the applicants of the above numbered permits: Certified copies of the instruments listed in my letter of October 11th are enclosed herewith - the charge is $12.00.

Very truly yours,

Assistant Commissioner
of Reclamation

16884

TIP
Enclosures

October 21, 1929

Re: PERMIT No. 16884
PERMIT No. 10935

HONORABLE ARTHUR E. HART
Prosecuting Attorney
Franklin County
Preston-Idaho

Dear Sir:

This is to acknowledge receipt and acceptance of service of PETITION in the case of:

CLIFTON IRRIGATION COMPANY
and VILLAGE of CLIFTON

-vs-

DEPARTMENT OF RECLAMATION
State of Idaho, and
ALBERT F. HENDERSON and
ALBERT C. CARLSON

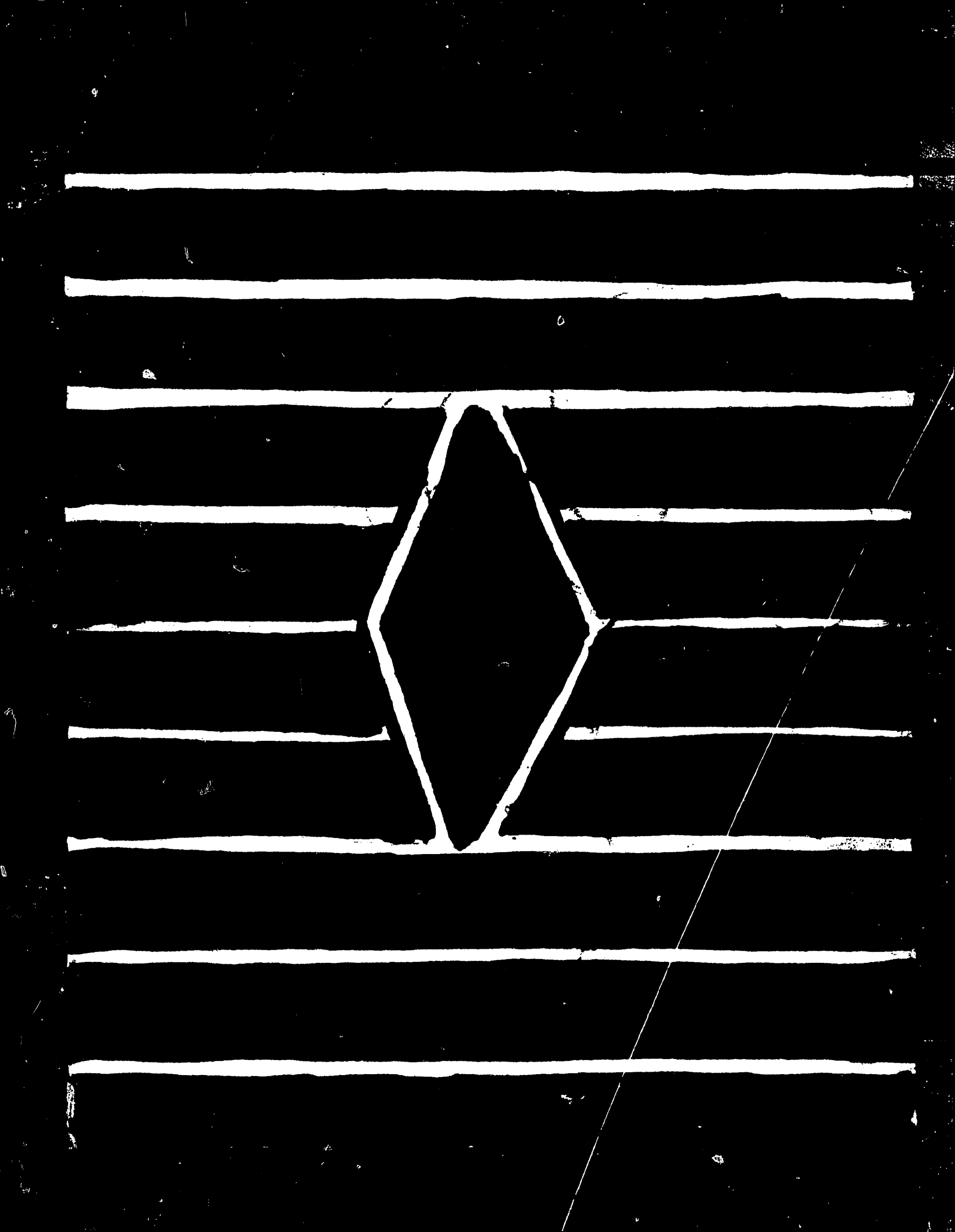
as of October 21, 1929.

16884

Very truly yours,

Assistant Commissioner
of Reclamation

MS/tlp



State of Idaho

License and Certificate of Water Right

Water License No. 16884

Water District No. .....

Amount 0.1 sec.ft.

Priority 5-23-1928

THIS IS TO CERTIFY that Albert F. Henderson, of Clifton, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated May 23, 19 28; that Permit No. 16884 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 0.5 second feet, was issued thereunder on October 16, 19 28, showing that said works were completed on the 13th day of October, 19 28; and that on the 21st day of January, 19 29,

Albert F. Henderson, of Clifton, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Hog Back Springs, a tributary of no stream, for the purpose of domestic use and watering stock, under Use Permit No. 16884 of the Commissioner of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 6 of Licenses, at page 3588 on the 29th day of August, 19 29;

The right hereby confirmed dates from May 23, 19 28;

The Point of Diversion is located in the NE ¼ NW ¼, Sec. 32, Tp. 14 S., R. 38 E., B. M. Franklin County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 0.1. cubic feet per second.

Description and location of use: At home of applicant located on N½NW¼, Sec. 32, Twp. 14 S., R. 38 E., B.M.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

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 Commissioner of Reclamation, affixed at Boise, Idaho, this 29th day of August, 19 29.

GEO. N. CARTER
Commissioner of Reclamation

(SEAL)

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