G-25821

APPLICATION FOR PERMIT

To Appropriate the Subterranean Waters of The State of Idaho

Application No. G-33686
Permit No. G- 25821
District No.

1. Name of Applicant: OSCAR LARSEN, J. E. BLAISDELL & SONS, PAUL H. MILLS & MILTON T. JONES

   Postoffice address: RFD No. 1, Malad County: Oneida State: Idaho

2. Quantity of water claimed: 7.40 cubic feet per second

   (a) Rate of withdrawal in cubic feet per second. 7.40 or Idaho Miners' inches 370 or gallons per minute.

   (b) Annual withdrawal in acre feet per annum

3. Source of water supply: Underground water; deep well and pump

4. Location of point of diversion or well is in the NE ¼ of the NW ¼ of Section 24 Twp. 14 S , Rge. ~~33~~ 34 E , B. M., County of Oneida

5. Water is to be used for: Irrigation of Crops

6. If for municipal, industrial or recreational purposes, give:

   (a) Point of use of water is in the ¼ of the ¼ of Section , Twp. Rge. , B. M

   (b) Waste water or sewage effluent is to be returned to at a point in the ¼ of the ¼ of Section , Twp. , Rge. , B. M.

7. Kind of works: Deep well and Pump

8. Estimated cost of works: $7200.00

9. (a) Is reservoir to be used? Yes

   (b) Capacity of reservoir: 12 Hours pumping

10. The time required for the completion of such work and complete application of the water to the proposed use is Two years.

11. If applicant is a corporation, give:

   I. (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:

12. The land to be irrigated is described in the following tabulation:

13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are:

   (a) (cubic feet per second, inches or gallons per minute) of the water herein applied for is to be supplemental to the existing water rights.

   (b) (cubic feet per second, inches or gallons per minute) is for new lands.

Remarks:

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

J. E. BLAISDELL & SONS. *Applicant.*
PAUL H. MILLS
By MILTON T. JONES *Agent.*
OSCAR LARSON

Date of first receipt at Department of Reclamation: 9:00 A.M. June 21, 1955

Returned to applicant for correction: June 30, 1955

Corrected application received: July 8, 1955

Approval of State Reclamation Engineer

The number of this permit is G-25821

Recorded in Book 91 Page 25821 Approved July 25, 1955

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 September 25, 1955 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before July 25, 1956

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made on or before July 25, 1957

Witness my hand this 25th day of July, 1955

MARK R. KULP
State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLIE, Governor of the State of Idaho, and IRA H. MASTERS, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 25th day of July, 19 55

Countersigned:

(SEAL)

By IRA H. MASTERS
Secretary of State.

STATE OF IDAHO

By ROBERT E. SMYLIE
Governor

12.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
14 S.	35 E.	24							40										40
14 S.	35 E.	24												40			40		80
14 S.	35 E.	24													40	40			80
14 S.	35 E.	24					40	10		40	40							40	170
											Total Number of Acres to be Irrigated								370

ASSIGNMENT

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 0-25821 to J. E. BLAISDELL & SONS of Route #1, Malad City, Idaho

/S/ Milton T. Jones
Permit Holder.

/S/ Laura C. Jones
Wife of Permit Holder

STATE OF IDAHO)
: ss.
County of Oneida)

On this 1 st day of December, 1956, before me, a Notary Public for the State of Idaho, residing at _____, personally appeared Milton T. Jones and Laura E. Jones known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

/S/ E. L. Scott
Notary Public, residing at Malad Idaho

My commission expires 5/19/59

Received and filed for record in the Department of Reclamation at Boise, Idaho December 4, 1956

—))—

ASSIGNMENT

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 0-25821 to J. E. BLAISDELL & SONS of Route #1, Malad City, Idaho

/S/ Paul H. Mills
Permit Holder

/S/ Merle S. Mills
Wife of Permit Holder.

STATE OF IDAHO)
: ss.
County of Oneida)

On this 23rd day of November, 1956, before me, a Notary Public for the State of Idaho, residing at Malad Idaho, personally appeared Paul H. Mills and Merle S. Mills known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

/S/ E. L. Scott
Notary Public, residing at

My commission expires 5/19/59

Received and filed for record in the Department of Reclamation at Boise, Idaho November 29, 1956

—((—
))

ASSIGNMENT

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 0-25821 to J. E. BLAISDELL & SONS of Route #1, Malad City, Idaho.

/S/ Oscar Larson
Permit Holder

/S/ Sarah Larson
Wife of Permit Holder.

STATE OF IDAHO)
: ss.
County of Oneida)

On this 20th day of November, 1956, before me, a Notary Public for the State of Idaho, residing at Malad Idaho, personally appeared Oscar Larson and Sarah Larson known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

/S/ E. L. Scott
Notary Public, residing at

My commission expires 5/19/59

Received and filed for record in the Department of Reclamation at Boise, Idaho November 29, 1956.

—((—
))

Application for Amendment

To Permit to Appropriate the Public Waters
of the State of Idaho, No. G-25821

Comes now John E. Blaisdell, and represents to the State Reclamation Engineer of the State of Idaho, That he is a Partner of the firm John E. Blaisdell & Sons a co-partnership the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821, and requests that the list of lands to be irrigated, as described in said permit, be changed to read as follows: The Northwest quarter of Section 24, Township 14 South, Range 35 East, Boise Meridian, only, making a total of 150 acres. That an additional amount of water is not asked for, and that the rights of others will not be adversely affected by such change.

Signed at Malad City, this 9th day of June, 1958

/s/ John E. Blaisdell

Date of receipt at office of Department of Reclamation
June 13, 1958

APPROVAL OF STATE RECLAMATION ENGINEER

I, E. N. HUMPHREY, Acting State Reclamation Engineer of the State of Idaho, hereby approve the above and foregoing application for amendment to Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821. This approval constitutes a new permit and is issued as an amendment to the original permit, to which it refers, and of which it becomes a part, and said application is approved only insofar as the rights of others will not be adversely affected thereby.

/s/ E. N. Humphrey, Deputy
and Acting State Reclamation Engineer

Approved and recorded:
June 13, 1958

Permit No. G-25821

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to certify that J. E. BLAISDELL & SONS of Malad City, County of Oneida, and State of Idaho, the holders of Permit No. G-25821, issued upon Application No. G-33686 bearing date of priority of June 21, 1955, authorizing the diversion of 7.40 second feet of waters of Underground water: deep well and pump, County of Oneida, State of Idaho, for Irrigation purposes, have 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 7.04 second feet of the waters of subterranean flow from a well that the point of diversion of said waters NE¼NW¼ Section 24, Township 14 South, Range 35 East, B.M. and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: 150 acres in the NW¼ of Section 24, Township 14 South, Range 35 East, B.M. Proof of Completion of Works made: February 13, 1957.

Witness my hand this 19th day of June, A.D. 1958

/s/ E. N. Humphrey, Deputy
and Acting State Reclamation Engineer

Proof of Completion of Works made: February 13, 1957
Certificate of Completion of Works issued: June 19, 1958.

CERTIFICATE ISSUED FOR 7.04 C.F.S.
Page 6356

ROBERT E. SMYLIE
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
MARK R. KULP, STATE RECLAMATION ENGINEER
BOISE

June 30, 1955

Mr. J. E. Blaisdell
524 N. 300 W.
Malad City, Idaho

Dear Mr. Blaisdell:

We acknowledge receipt of the Application of yourself and others to Appropriate 2½ second feet of water from a well accompanied by your check for the $5.00 filing fee.

However, the land description in question 12 does not agree with the sketch map. If we understand the sketch map correctly, J. E. Blaisdell owns 130 acres in the $NE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$, and $S\frac{1}{2}NW\frac{1}{4}$ Section 24.

P. H. Mills owns 80 acres in the $E\frac{1}{2}SW\frac{1}{4}$ Section 24.

Oscar Larsen owns 40 acres in the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ Section 24 and Milton T. Jones owns 100 acres in the $S\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ and $S\frac{1}{2}SE\frac{1}{4}$ Section 24.

This would make a total of 370 acres instead of the 240 acres described in question 12. For that reason the Application could be made for 370 inches or 7.4 cubic feet per second as the statutes allow one inch per acre of the land to be irrigated.

The filing fee for that amount would be $6.75 or an additional $1.75.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By Jeanne L. Anderson
Chief Clerk

A:cu

Ld-5821

In close funds check for $1.75 sorry of the mistak Thanks; please return as soon as possible John E Blaisdell

NAME OF APPLICANT LARSEN, BLAISDELL, MILLS & JONES

Form No. 6

R-35E

Amended well location
(as per letter 11/3/55)

T. 14 S.

Point of Diversion-WELL

J.E. Blaisdell

Oscar Larsen

Paul Mills

Milton Jones

Permit Map No. 9-25821
As Approved
JUL 25 1955
MARK R. KULP
State Reclamation Engineer

SCALE: 2 Inches Equal 1 Mile. Draw Plan In Ink.

25821

July 29, 1955

RE: Permit No. G-25821

Mr. J. E. Blaisdell
524 N. 300 West
Malad City, Idaho

Dear Mr. Blaisdell:

We enclose Permit No. G-25821 in the name of yourself and others and direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

You will note that we have changed the location of the well to the NE¼ NW¼ Section 24, Township 14 South, Range 35 East B.M. in accordance with your telephone request.

We also enclose departmental receipt No. G-1368 for the $6.75 filing fee.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

Athll
Enc.

25821

RECEIVED
NOV 29 1956
Department of Reclamation

Ray & Scott
Attorneys
Malad City
Idaho

November 27, 1956

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

Re: Permit No. G-25821

Dear Mr. Kulp:

I am enclosing assignments by Paul Mills, et ux, and Oscar Larson, et ux, to J. E. Blaisdell & Sons, in connection with the above permit.

I am in need of the signature of Milton T. Jones' wife who is apparently out of town at the present, to complete the assignment.

Very truly,

Ray & Scott

By E. L. Scott

G-25821

C O P Y

RECEIVED
NOV 29, 1956
DEPARTMENT of RECLAMATION

A S S I G N M E N T

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821 to J. E. Blaisdell & Sons of Route # 1, Malad City, Idaho

/s/ Oscar Larson
Permit Holder.

/s/ Sarah Larson
Wife of Permit Holder.

State of Idaho)
: ss.
County of Oneida)

On this 20th day of November, 19 56, before me, a Notary Public for the State of Idaho, residing at Malad Idaho, personally appeared Oscar Larson and Sarah Larsnn known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

(SEAL)

/s/ E. L. Scott
Notary Public, residing at

My commission expires 5/19/59.

G25821

RECEIVED
NOV 92, 1956
DEPARTMENT of RECLAMATION

C O P Y

A S S I G N M E N T

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821 to J. E. Blaisdell & Sons of Route # 1, Malad City, Idaho

/s/ Paul H. Mills
Permit Holder.

/s/ Merle S. Mills
Wife of Permit Holder.

State of Idaho)
: ss.
County of Oneida)

On this 23rd day of November, 19 56, before me, a Notary Public for the State of Idaho, residing at Malad Idaho, personally appeared Paul H. Mills and Merle S. Mills known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

/s/ E. L. Scott
Notary Public, residing at

(SEAL)

My commission expires 5/19/59.

G 25821

RECEIVED
DEC 4 1956
Department of Reclamation

Ray & Scott
Attorneys
Malad City
Idaho

December 1, 1956

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

Dear Mr. Kulp:

I am enclosing Assignment to J. E. Blaisdell & Sons by Milton T. Jones and wife, Laura E. Jones.

This should complete the assignment to J. E. Blaisdell & Sons.

Thanking you, I remain,

Very truly,

Ray & Scott

By E. H. Scott

L-25821

C O P Y

RECEIVED

DEC 4, 1956

DEPARTMENT of RECLAMATION

A S S I G N M E N T

For value received, I hereby assign all my right, title, and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821 to J. E. Blaisdell & Sons of Route #1, Malad City, Idaho

/s/ Milton T. Jones
Permit Holder.

/s/ Laura C. Jones
Wife of Permit Holder.

State of Idaho)
: ss.
County of Oneida)

On this 1st day of December, 19 56, before me, a Notary Public for the State of Idaho, residing at _____, personally appeared Milton T. Jones and Laura E. Jones known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notorial seal, the day and year in this certificate first above written.

/s/ E. L. Scott
Notary Public, residing at Malad Idaho

(SEAL)

My commission expires 5/19/59.

G25821

December 5, 1956

Permit No. G-25821

Ray & Scott Attorneys
Malad City,
Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

We acknowledge receipt of the Assignments from Paul H. Mills, Oscar Larsen, and Milton T. Jones wherein each assigning their interest and share in the above captioned Permit to J. E. Blaisdell & Sons of Route 1, Malad City, Idaho.

There is a recording fee of 50¢ for each assignment. Upon receipt of $1.50, these assignments will be duly recorded in this Department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EH:ab

G 25821

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) November 8, 1956

(P. O.) 524 North 300 West, Malad City, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Enterprise of Malad City, Idaho **published in the county in which the works are situated.**

John E Blandell

(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.

25821

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

RE: Permit No. G- 25821

Date: December 4, 1956

Enterprise
Malad City
Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to January 16th, 1956 the date set for proof, the expense of the publication to be paid by the applicant, J.E. Blaisdell & Sons, 524 North 300 West of Malad City 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, in order that we may check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

G 25821

Form 36

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M., on the ~~20th~~ 16th day of ~~December~~ January, 1957~~58~~, at Malad City, County of Oneida, State of Idaho, before Ed. Scott, Notary Public, proof will be submitted of the completion of works for the diversion of 7.40 cubic feet per second of underground waters from a well, and of the application to beneficial use of said water, in accordance with the terms and conditions of Permit No. G-25821 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are J. E. Blaisdell & Sons, 524 North 300 West Malad City, Idaho

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 7.40 cubic feet per second.

3. The use to which said water has been applied is Irrigation purposes, and the amount applied to beneficial use is 7.40 cubic feet per second.

4. The point of diversion of said water is $NE\frac{1}{4}NW\frac{1}{4}$ of Sec. 24., Twp. 14 S., Rge. 33 E., B.M.

5. The place where said water is used is $NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}$ all in Sec. 24., Twp. 14 S., Rge. 35 E., B.M.

6. The date of priority which said user is prepared to establish is June 21, 1955.

G25821

MARK R. KULP
State Reclamation Engineer

December 5, 1956

RE: Permit No. G-25821

Mr. J. E. Blaisdell & Sons
524 North 300 West
Malad City, Idaho

Gentlemen:

We acknowledge receipt of Notice for Completion of Works and Beneficial Use proof on Permit No. G-25821 to be made January 16, 1957, before Ed. Scott, Notary Public.

We shall send a copy of the Notice to the Enterprise with instructions to publish it once a week for four weeks prior to that date and to send you the affidavit of publication together with statement of costs.

At the time set, you should appear before Ed. Scott, Notary Public, together with two disinterested witnesses who are familiar with the terms of the Permit and the work done thereunder for the purpose of executing the enclosed depositions.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

:vm
Enc.
cc. Ed. Scott
Malad City, Idaho

G-25821

December 7, 1956

Re: Permit No. G-25821

Ray & Scott
Attorneys
Malad City, Idaho

ATTENTION: E. L. Scott

Dear Mr. Scott:

We enclose herewith Assignments on Permit No. G-25821 from Milton and Laura C. Jones, Paul H. and Merle S. Mills, and Oscar and Sarah Larson to J. E. Blaisdell & Sons which have been recorded in this Department.

Also enclosed is departmental receipt No. G-2518 for $1.50 for recording fee.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

ER:nls

Encl:

25821

The IDAHO ENTERPRISE
Clyde & Marion Hanson, Publishers
PHONE 40 31 COURT ST.
MALAD CITY, IDAHO

December 7, 1956.

RECEIVED
DEC 10 1956
Department of Reclamation

State of Idaho
Department of Reclamation
Boise, Idaho.

RE: Permit No. G-25821

Gentlemen:

We have received the notice for publication on the aforementioned permit and it will appear in our issues of Dec. 13-20-27 and Jan. 3.

On the advice of Attorney E. L. Scott we have changed the name of the person before whom it will be heard to "Bill Fallis, probate judge" instead of Atty. Scott.

Very truly yours,

Marion R. Hanson
The Idaho Enterprise

G25821

February 8, 1957

RE: Permit No. G-25821
J.E. Bleisdell & Sons

Mr. Bill Fellis
Probate Judge
Court House
Malad, Idaho

Dear Mr. Fellis:

As per your telephone conversation today requesting that we send you another set of deposition forms for Permit No. G-25821 in the name of J.E. Bleisdell and Sons.

We herewith enclose same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

KPR:vem
Encl.

G 25821

RECEIVED
FEB 14 1957
Department of Reclamation

Route 1
Malad City, Idaho
February 13, 1957

Mark R. Kulp
State Reclamation Engineer
State Department of Reclamation
Boise Idaho

Re: Permit G25821

In accordance to the telephone conversation that you had with Probate Judge Bill Fallis on February 7, 1957, I am today making proof of Completion of Works and Application of Water to beneficial Use:

Enclosed please find the following papers:

1. Deposition of Witness
2. Deposition of Witness
3 Deposition of Holder
4. Proof of Publication of Notice
5. Affidavit of Judge Fallis

I thank you for your interest and consideration in this matter.

Yours very truly,

Theron L. Blaisdell

Theron L. Blaisdell

G 25821

RECEIVED
FEB 14 1957
Department of Reclamation

State of Idaho,

ss.

County of Oneida,

Bill Fallis, of lawful age, being first duly sworn upon oath deposes says: That he is the Probate Judge before proof of the completion of works and application of water to beneficial use was to have been taken by J. E. Blaisdell & Sons at 10:00 o'clock a. m., on January 16, 1957, but they did not make proof on that day; that the Office of the Probate Judge was opened all day on January 16, 1957 for any business that might come into the office for transaction; that no one appeared to protest to this matter at any time during the day of January 16, 1957.

Bill Fallis

On this 13th day of February, 1957 before me, _____, a Notary Public, personally appeared Bill Fallis known to me to be the Probate Judge in and for the County of Oneida, State of Idaho and known to be the person whose name is subscribed to the within instrument, and acknowleged to me that he executed the same.

Subscribed and sworn to the day and year in this certificate first above written.

Judd G. Owens
Notary Public

25821

RECEIVED
FEB 14 1957
Department of Reclamation

NOTICE OF PROOF OF COMPLETION OF WORKS and APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A.M. on the 16th day of January, 1957, at Malad City, County of Oneida, State of Idaho, before Bill Fallis, Probate Judge, proof will be submitted of the completion of works for the diversion of 7.40 cubic feet per second of underground waters from a well, and of application to beneficial use of said water, in accordance with the terms and conditions of Permit No. G-25821 heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are J. E. Blaisdell & Sons, 524 North 300 West, Malad City, Idaho.

2. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conveying to the place of use is 7.40 cubic feet per second.

3. The use to which said water has been applied is irrigation purposes, and the amount applied to beneficial use is 7.40 cubic feet per second.

4. The point of diversion of said water is NE¼NW¼ of Sec. 24, Twp. 14 S., Rge. 33 E., B.M.

5. The place where said water is used is NW¼, E½SW¼, SE¼ all in Sec. 24, Twp. 14 S., Rge. 35 E., B.M.

6. The date of priority which said user is prepared to establish is June 21, 1955.

MARK R. KULP
State Reclamation Engineer
12-13 1-3 :4

Affidavit of Publication

State of Idaho
County of Oneida, ss.

Sylvia Stratton ....being first duly sworn on her oath, states: That she is principal Clerk of the Idaho Enterprise, a newspaper of general circulation in Oneida County, Idaho published weekly at Malad, 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 said Idaho Enterprise was at all of the times of publication of said notice a newspaper of general circulation made up of at least four pages of at least five columns each, printed from type matter or stereotyped forms of at least seventeen and three fourths inches depth, and said newspaper during all of the times of publication aforesaid had more than 200 bonafide subscribers thereto living within the county of Oneida in which said newspaper was published at regular intervals not less frequently than once a week.

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 4 successive weekly issues thereof the date of the first publication being the 13th day of Decemba, 1956 the date of the last publication being the 3rd day of January 1957

Sylvia Stratton

Subscribed and sworn to before me this 15th day of January 1957

E. L. Scott

Notary Public, residing at Malad, Idaho

My Commission expires the 19 day of May, 1959

Costs: 49 lines at ~~12~~ 13c per line first insertion $ 6.37
~~6~~ 15c per line each subsequent insertion $ 14.70

TOTAL ..... $ 21.07

L 25821

February 18, 1957

RE: Permit No. G-25821

Mr. Theron L. Blaisdell
Route #1
Malad City, Idaho

Dear Mr. Blaisdell:

We acknowledge receipt of the depositions of yourself and two witnesses, also affidavit of publication in the Idaho Enterprise, all submitted in proof of completion of works and beneficial use on Permit No. G-25821.

Before final action is taken in the matter, the law requires that a field examination be made by an engineer from this department.

We cannot tell just when this examination will be made, but our field engineer will try and contact you at the time he makes the examination so that arrangements may be made to show him over the grounds.

Very truly yours,

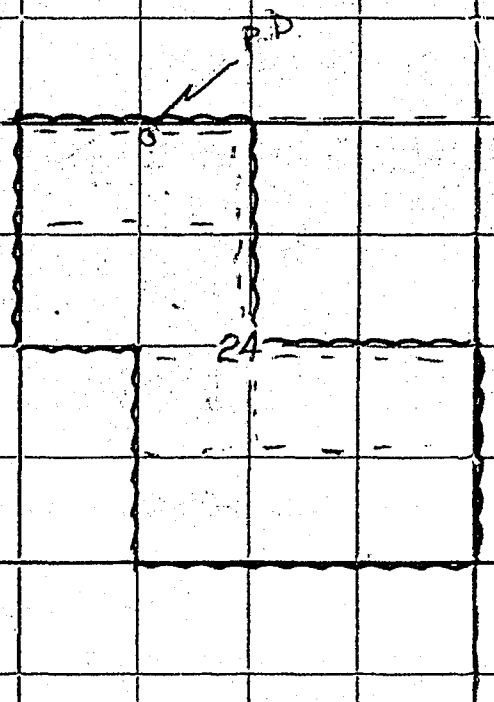
MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EFF

G 25821

R-35E.



T.
14
S.

TO MALAD CITY

Subdivisions 10

NW¼ Sec 24 -T14S R35E - 160
SE¼ " " " " 160
E½ SW¼ " " " 80
Total 400

Quantity of water as measured with sparling meter 102 Miners Inches.

Subdivisions = 10

Area = 400a.

Q = 2.04 cfs.

Measurement 200 CF in 1475 sec.
= 2.04 C-S
= 102 Miners Inches

Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

25821

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. G-25821

This proof is for Completion of Works & Beneficial Use In Water District No.

1. Name of applicant Theron L. Blaisdell

2. Source of water supply: Subterranean flow from a well

3. Location of point of diversion: Is in the NE¼NW¼ of Section 24

T. 14 S. R. 35 E., B.M. County of Oneida

4. Describe works as they exist, giving dimensions and capacities of same: Drilled well 452' x 14"
Pump: Peerless #170962, 8" column, Motor: Westinghouse #4-36V98-
#50, V#45 - Meter GE #32-109522, Demand 0.46 x ?

5. Water is used for: Irrigation

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 other than irrigation):

NW¼, E½SW¼, SE¼ all in Sec. 24., Twp. 14 S., Rge. 35 E., B.M.

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

8. What large stream would the water here appropriated finally reach?

Remarks: Another pump discharge measured at 6.65" (upon request) previously measured by Humphrey at 6.9"

This examination was made on the 2nd day of July, 1957.

(Signed) [signature]
Examiner.

#25821

September 25, 1957

Re: Permit No. G-25821
J. E. Blaisdell & Sons

Mr. Theron L. Blaisdell
Route # 1
Malad City, Idaho

Dear Mr. Blaisdell:

Our field engineer's report on the inspection of the completion of construction work and application of water to beneficial use under the terms of Permit No. G-25821 shows that your well is capable of conveying 102 miner's inches (2.04 c.f.s.) of water for irrigation of 400 acres. This permit is now entitled to the Certificate of Completion of Works and the License and Certificate of Water Right.

Upon receipt of the statutory fees, total of $25.00, we will issue to J. E. Blaisdell & Sons the Certificate of Completion of Works (for which the fee is five dollars) and the License (twenty dollars--based at the rate of two dollars for each 40-acre subdivision) confirming the right with priority of June 21, 1955, to the use of 2.04 second feet of subterranean water with the point of diversion in the NE¼NW¼ of Section 24, for irrigation of 400 acres in the NW¼, E½SW¼, SE¼ of Section 24, Township 14 South, Range 35 East, B.M.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EPR:nls

25821

Re: fee $13.00 rec Nov. 20, 1957 Jaitter

Ray & Scott
Attorneys
Malad City
Idaho

RECEIVED
OCT 9 1957
Department of Reclamation

October 8, 1957

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

Re: Permit No. G 25821
J. E. Blaisdell & Sons

Dear Mr. Kulp:

Your letter of September 25, 1957 is before me, directed to Mr. Thereon L. Blaisdell in connection with the issuance of license in connection with the above permit.

In this regard, all of the land, save 150 acres in the NW¼ of Sec. 24, Tp. 14 S. R. 35 EBM, was withdrawn by the owners from the coverage of the above permit by assignments executed by Paul Mills, et ux, Milton T. Jones, et ux, and Oscar Larsen, et ux, to the Blaisdells. These assignments were filed with your office in the earlier part of this year.

Would you check your records in this regard and advise as to the correctness of the above information. If this is true, the cost of the license would be reduced by approximately $12.50.

Thanking you, I remain,

Very truly,

Ray & Scott

By E. L. Scott

G 25821

October 30, 1957

Re: Permit No. G-25821
J. E. Blaisdell & Sons

Ray & Scott
Attorneys
Malad City, Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

In answer to your letter of October 8th relative to the fees in connection with the above stated permit, the records in this department discloses that assignments were recorded whereby J. E. Blaisdell is listed as sole owner of the permit by assignment on record from co-partners.

Section 42-221, Idaho Code, states that five dollars is the fee for Completion of Works Proof and a fee of two dollars for each 40 acre sub-division examined by this department for Beneficial Use Proof where the right is for irrigation purposes.

As far as the fee is concerned for making Completion and Beneficial Use Proofs, the fee would be the same if the permit is in the name of one individual or a group of individuals.

We hope this answers your inquiry.

Very truly yours,

MARK R. NULF
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

RWT:lw

G25821

Ray & Scott
Attorneys
Malad City
Idaho

RECEIVED
NOV 18 1957
of Reclamation

November 15, 1957

Mr. Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

Mrs. Edna P. Rutledge
Chief Clerk

Re: Permit No. G-25821
J. E. Blaisdell & Sons

Dear Mrs. Rutledge:

On September 25, 1957, you wrote to Thereon L. Blaisdell informing him that Certificate of Completion of Works and License would issue in connection with the above permit upon payment of the statutory fees of $25.00.

On October 8, 1957, I wrote to your office concerning the withdrawal of all of the land in connection with the permit except 150 acres in the NW¼ of Sec. 24, Tp. 14 S. R. 35 EBM, by reason of the assignments that have been filed in your office in connection with the above permit. Because of the withdrawal of this land, I figured that the statutory fees would be reduced to $13.00, as there would be only 150 acres covered under the permit.

On October 30, 1957 Mr. Thompson wrote to me, and I believe that he has mis-understood my letter. Would you kindly check the cost of the issuance of the Certificate of Completion and the license, and advise me again?

Thanking you, I remain,

Very truly,

Ray & Scott

By E. R. Scott

G 25821

State of Idaho
County of Oneida, ss

Nolan Blaisdell being first duly sworn deposes and says:

That he is a member of the co-partnership John E. Blaisdell & Sons, residing in Oneida County, Idaho; that the said John E. Blaisdell & Sons, a co-partnership is the owner and holder of State of Idaho Water Permit No. G-25821.

That an error was made in the Proof of Completion of Works and Application of Water to Beneficial Use now on file in the Department of Reclamation of the State of Idaho, in that said Proof provides that the water to be used on other land than the NW¼ of Sec. 24, Tp. 14 S. R. 35 E.B.M., when in fact, said water is used solely upon the NW¼ of said Sec. 24, and that said Permit Holder, John E. Blaisdell & Sons, has no interest in or claim to ownership of the other lands mentioned in said Proof, namely, the E½SW¼ and SE¼ of said Sec. 24.

That the amount of water claimed and used upon the said NW¼ Sec. 24, Tp. 14 S. R. 35 EBM, is 2.04 cubic feet per second.

And further affiant sayeth not.

Nolan Blaisdell

Subscribed and sworn to before me this 27th day of January, 1958

E. L. Scott
Notary Public
Residing at Malad, Idaho
My Comm. Exp. 5/19/59

G 25821

November 20, 1957

Re: Permit No. G-25821
Blaisdell & Sons

Ray & Scott
Attorneys At Law
Malad, Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

We will try and answer your letter of November 15, 1957 relative to the status of the above captioned permit.

In checking over the permit in the files in this department relative to this permit, we assume that you ment, in the first instance, by filing the assignments of Larsen, Mills & Jones interests in said permit, that the said three joint holders of said permit would be eliminated along with their land ownerships from said permit. However, the records in this department do not bear out this assumption.

The status of the permit is as follows: - Oscar Larson, J. E. Blaisdell & Sons, Paul H. Mills and Milton T. Jones filed a joint permit for 7.40 cubic feet per second from the subterranean flow by well, with point of diversion in the $NE\frac{1}{4}$ $NW\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East, for the irrigation of the $NW\frac{1}{4}$ $SW\frac{1}{4}$ and the $SE\frac{1}{4}$ and the $E\frac{1}{2}$ $SW\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East. Assignments are recorded in this department whereby Larsen, Jones and Mills assigned all their interest in said permit to Blaisdell and Sons.

On the notice of Proof of Completion of Works and Application of Water to Beneficial Use, a notice was sent in to this department stating that the place of use of said water was the $NW\frac{1}{4}$, $E\frac{1}{2}$ $SW\frac{1}{4}$ and the $SE\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East, and was so published. On the depositions sent in to this office by the holder of said Permit, Theron L. Blaisdell, made Proof of Application of Water to Beneficial Use and Completion of Works stating in his proof sworn to and signed by Bill Fallis, Probade Judge, and in answer to Question (6) of the deposition stated as the place of use of said water as the $NW\frac{1}{4}$, $E\frac{1}{2}$ $SW\frac{1}{4}$, $SE\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East, for a total of 400 acres of land irrigated.

G 25821

He also states in his own deposition that water was put to use on June, 1955. The water was pumped from the well and into an overnight reservoir, the water then conveyed to the place of use by irrigation ditch on the following described lands; NE¼, E½ SE¼, SE¼ Section 24, Township 14 North, Range 35 East, - total acres - 400. The amount of water being used is 7.40 cubic feet per second. In the depositions of the two witnesses for Mr. Blaisdell, they state that the amount of water capable of being conveyed to the place of use was 7.40 cubic feet per second and theplace of use where the water is used is the NW¼, E½ SW¼, SE¼ Section 24, Township 14 South, Range 35 East - total of 400 acres.

With the above information and from the deposition of the holder and the two witnesses, this department could only assume that Mr. Blaisdell was the sole owner of said permit and the place of use was the NW¼, E½ SW¼ of Section 24, Township 14 South, Range 35 East and consisted of 400 acres of cultivated land.

Our field engineer who made the inspection made his inspection report as follows: "Well located in the NE¼ NW¼ Section 24, Township 14 South, Range 35 East and gave the place of use as being in the NW¼, E½ SW¼ and the SE¼ of Section 24, Township 14 South, Range 35 East".

We now assume from your letter of November 15, 1957 that your intentions were to eliminate Larson, Mills and Jones and all supposed land ownership from the permit at the time the assignments were filed with this department, thus leaving Mr. Blaisdell and Sons with the 160 acres located in the NW¼ of Section 24. If this is a fact, Mr. Blaisdell should have only proved up on the 160 acres in place of proving up on the 400 acres as the proofs indicated.

Providing our assumption is correct, if you will furnish this department with an affidavit from Blaisdell and Sons to the effect that an error was made in their Proof of Completion of Work, and Application of Water to Beneficial Use and that the intention at the time was for only proving up on lands in the NW¼ of Section 24, in place of all the holder's filed on, we can allow the 2.04cubic feet per second as found by our engineer as being the flow of the well at the time inspection was made, said water can be made appurtenant to the NW¼ only, leaving the SE¼ and the E½ SW¼ out of the picture. The affidavit should state that Blaisdell and Sons had no interest in the E½ SW¼ and the SE¼ of Section 24.

82581

The statutory fee in this case, if the water should be made appurtenant to the NW¼ of Section 24 only, would be as follows - five dollars for the Completion of Works Proof and two dollars for each 40 acre subdivision, which is four, making a total of eight dollars for license fee, which would be a grand total of thirteen dollars in place of the twenty-five as billed you under our letter of September 25, 1957.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

RWT:lw

ll

B25821

January 31, 1958

Re: Permit No. G-25821
Blaisdell & Sons

Ray & Scott
Attorneys At Law
Malad, Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

This will acknowledge affidavit signed by Nolan F. Blaisdell and subscribed and sworn before you as Notary, in reply to our office letter of November 20, 1957.

However it will be necessary, before license can be issued on this permit, to have the permit amended on the form enclosed, changing the place of use from the $NW\frac{1}{4}NW\frac{1}{4}$ and the $E\frac{1}{2}SW\frac{1}{4}$ and the $SE\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East, to the $NW\frac{1}{4}$ of Section 24, Township 14 South, Range 35 East, only.

We are also returning the Deposition of Holder and the two witnesses and will request that the land to be irrigated, as shown under question (6) of the holder's deposition, be changed to read the $NW\frac{1}{4}$ of Section 24, only. To do this legally, we request that you show, without erasing the answers under question (6) but to show in addition, a correction of land or land description, to the $NW\frac{1}{4}$ only and give the date and the initials or name of the person correcting same. We think the same should be shown under question (7) of both of the witnesses on their depositions.

Please make the necessary corrections and amendment and return all papers to this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

RWT:lw
Encls. Application for Amendment
Deposition of Holder
Depositions of Witnesses

G25821

April 7, 1958

Re: Permit No. G-25821
Blaisdell & Sons

Ray & Scott
Attorneys At Law
Malad, Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

Under date of January 31, 1958, this department wrote you a letter returning the Deposition of Mr. Blaisdell & Sons, and the Depositions of two witnesses, in connection with same, of final proof of Completion of Works and Application of Water to Beneficial Use.

To date we have had no reply to the letter or the depositions have not been returned to this department.

We would appreciate immediate action in regard to this matter.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

RWT:lw

G 8582-1

April 28, 1958

Re: Permit No. G-25821
Blaisdell & Sons

Ray & Scott
Attorneys At Law
Malad, Idaho

Attention: Mr. E. L. Scott

Dear Mr. Scott:

We wish to refer you to our office letter of January 31, 1958, in which we returned the Deposition of Holder and two witnesses in connection with Permit No. G-25821 in the name of Blaisdell & Sons, returning same for correction as to land description.

We also mailed you an office letter under date of April 7, 1958, requesting the return of the corrected depositions of Holder and two witnesses.

Your immediate attention to this matter will be greatly appreciated by this department.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

D 25821

RWT:lw
cc: Blaisdell & Sons
Rt. # 1,
Malad City, Idaho

June 6, 1958

Re: Permit No. G-25821
Blaisdell & Sons

Mr. E. L. Scott
Ray & Scott
Attorneys At Law
Malad, Idaho

Dear Mr. Scott:

We refer you to our past correspondence to you relative to Permit No. G-25821, Blaisdell & Sons. Unless the corrected depositions of proof of completion of works and beneficial use in connection with said permit, together with the application for amendment which will correct the record of the Permit to include only the NW¼ of Section 24, Township 14 South, Range 35 East, B.M. are received within the next few days, we will assume that it is not the intention of the applicant to bring the permit to license and will return his check for $13.00 which was sent in for the Certificate of Completion of Works and the License.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

EPR:nls
cc: John E. Blaisdell & Sons
Malad City, Idaho

25821

Ray & Scott
Attorneys
Malad City
Idaho

RECEIVED
JUN 13 1958
Department of Reclamation

June 12, 1958

Department of Reclamation
State House
Boise, Idaho

Re: J. E. Blaisdell & Sons
Permit No. G 25821

Gentlemen:

Enclosed please find the depositions of the Holder and two Witnesses together with Application for Amendment to Appropriate the Public Waters of the State of Idaho, in connection with the above Permit.

Please accept my apologies for the extreme delay, but have had a couple of casualties in the immediate family.

Hoping these papers will complete the proof and that License will issue, I remain,

Very truly,

Ray & Scott

By E. H. Scott

G25821

Form 16.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
FEB 14 1957
Department of Reclamation

Permit No. G25821

Proof of Application of Water to Beneficial Use

Deposition of Holder and Completion of Works

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

Ans. Theron L. Blaisdell, Route 1, Malad City, Idaho, Farmer, Route 1, Malad City, 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. Individual permit.

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

Ans. G25821 1, date of permit July 25, 1955; The date of priority which the user is prepared n to establish is June 21, 1955.

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

Ans. Underground water, deep well and pump. The point of diversion of the water is NE¼NW¼ of sec. 24, Twp. 14 S., Rge. 35 E. B. M.

Ques. 5. Describe your works of diversion, and state amount 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. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined. If sprinkler irrigation, give number and size of nozzles and operating pressure.

Ans. The works for conveyong the water from the point of diversion to the place of use are deep well and pump, an overnight reservoir with tiled pipe line running from the well to the overnight reservoir, and irrigation ditches to convey the water to the place of use.

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. Irrigation of crops. The place where the water is to be used is NW¼, E½SW¼, SE¼ all in sec. 24, Twp. 14 S., Rge. 35 E.B.M. Total acres 400. All the land is under cultivation.

CORRECTED DESCRIPTION IS: NW¼ Sec. 24, Twp. 14 S. R. 35 E.B.M. ONLY

Theron L Blaisdell
June 9, 1958

H 25821

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

Ans. No power generated. The water from the well is used for the irrigation of crops.

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

Ans. None for power.

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. Individual permit issued to J. E. Blaisdell and Sons

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

Ans. The water was put to use on June, 1956, The water was pumped from the well into an open night reservoir, the water is then conveyed to the place of use by irrigation ditches on the following described land: the NE¼, E½SW¼, SE¼ all in Section 24, Twp. 14 S., Rge. 35 E. B. M. Total acres 400. The amount of water being used is 7.40 cubic feet per second.

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. 11 shares of the water of the St. John Irrigating Company can be used on land described in quetion 10.

(Sign) Elmon J. Blaisdell

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 Malad City, Idaho, **County of** Oneida,

State of Idaho, on this 13th **day of** February, **A. D. 19**57,

Bill Fallis
Probate Judge

My commission expires .....

25821

Form 17-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
[illegible] 1957
[illegible] of Reclamation

Permit No. G25821

Proof of Application of Water to Beneficial Use

Deposition of Witness and Completion of Works

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. A. Rex Jensen, age 46, 440 North 200 West, Malad City, Idaho, Farmer, 440 North 200 West, Malad City, Idaho.

Ques. 2. Are you acquainted with J. E. Blaisdell & Sons, the holder of Permit No. G25821? How long have you known him and where does he reside? 25 Years, Route 1, Malad City, Idaho

Ans. 25 years, Route 1, Malad City, Idaho

Ques. 3. Have you read or heard read said Permit No. G25821, 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. Underground water, deep well and pump; The place of diversion of said water is NE¼NW¼ of Sec 24, TWP. 14 S., Rge. 35 E.B.M. The works for conveying water from point of diversion to the place of use are Deep Well and pump/and over night reservoir with a tiled pipe line running rom the well to the overnight reservoir and irrigation ditches to carry the water from the over night reservoir to the place of use.

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. 7.40 cubic feet per second. the works are capable of conveying to the place of use 7.40 cubic feet per second.

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons per minute have you seen the pump deliver, and how did you measure or estimate the amount?

Ans. I esimated that the water pumped from the well is 1250 gallons per minute.

G25821

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision 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. Irrigation of crops. The place where the water is used is NW¼, E½SW¼, SE¼ all in sec. 24, Twp. 14 S., Rge. 35 E.B.M. Total 400 acres. All this land is under cultivation.

CORRECTED DESCRIPTION IS: NW¼ Sec. 14, Twp. 14 S. R. 35 EBM ONLY

A. Rex Jensen - 6/10/58

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what etxent.

Ans. No power.

Ques. 9. (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. The water is used for the irrigation of crops. The character of land is a sandy loam. The amount of water required for its cultivation is 7.40 cubic feet per second.

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 11. 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. I have seen all the water that is being pumped from the well put to beneficial use.

(Signed) A. Rex Jensen

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 Malad City, County of Oneida, State of Idaho, on this 13th day of February, A. D. 19 57

Bill Fallas
Probate Judge ~~Notary Public.~~

My commission expires

S 25821

Form 17-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
FEB 14 1957
Department of Reclamation

Permit No. G25821

Proof of Application of Water to Beneficial Use

Deposition of Witness and Completion of Works

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. John A. Evans, age 63, 152 North 70 East, Farmer, 152 North 70 East, Malad City, Idaho.

Ques. 2. Are you acquainted with J. E. Blaisdell & Sons, the holder of Permit No G25821? How long have you known him and where does he reside?

Ans. Route 1, Malad City, Idaho. I have known the Blaisdell family for thiry years.

Ques. 3. Have you read or heard read said Permit No G25821, 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. Under ground water; The place of diversion is NE¼NW¼ of Se. 24. Twp. 14 S., Rge. 35 E. B. M. The works for conveying the water from the point of diversion to the place of use are deep well (Deep well and pump) an over night reservoir with tiled pipe line running from the well to the overnight reservoir, and irrigation ditches to carry the water to the place of use.

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. 7.40 cubic feet per second. The works are aapable of conveying to the place of use 7.40 cubic feet per second.

Ques. 6. (Pumps) How much water in cubic feet per second, miner's inches, or gallons per minute have you seen the pump deliver, and how did you measure or estimate the amount?

Ans. The pump will draw from the well, I would estimate 1250 gallons per minute.

G25821

Ques. 7. State for what purpose water is used and at what place. (If for irrigation, give each subdivision 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. Irrigation of crops. The place where the water is used is NW¼, E½SW¼, SE¼ all in se. 24, Twp. 14 S., Rge. 35 EBM. Total acres 400. All this land is under cultivation.

CORRECTED DESCRIPTION IS: NW¼ Sec. 14, Twp. 14 S. R. 35 E.B.M. only
John A Evans June 11 - 1958

Ques. 8. If for power or other purposes than irrigation, state how water has been applied and to what etxent.

Ans. No Power.

Ques. 9. (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. The water is used for the irrigation of crops. The character of the land is a sandy loam. The amount of water required for its cultivation is 7.40 cubic feet per second.

Ques. 10. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 11. 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. I have seen all the water that is being pumped from the well put to beneficiaal use.

(Signed) John A Evans

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 Malad City, County of Oneida, State of Idaho, on this 13th day of February, A. D. 1957.

Bill Fallis
Probate Judge ~~Notary Public~~

My commission expires.....

J 23821

Application for Amendment

To Permit to Appropriate the Public Waters of the State of Idaho, No. G 25821

RECEIVED
JUN 13 1958
Department of Reclamation

Comes now John E. Blaisdell, and represents to the State Reclamation Engineer of the State of Idaho.

That he is a Partner of the firm John E. Blaisdell & Sons a co-partnership the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. G 25821, and requests that the list of lands to be irrigated, as described in said permit, be changed to read as follows:

The Northwest quarter of Section 24, Township 14 South, Range 35 East, Boise Meridian, only

, making a total of 150 acres.

That an additional amount of water is not asked for, and that the rights of others will not be adversely affected by such change.

Signed at Malad City, this 9th day of June, 1958

Jno E. Blaisdell

Date of receipt at office of Department of Reclamation June 13, 1958

APPROVAL OF STATE RECLAMATION ENGINEER

I, E. N. HUMPHREY, Acting State Reclamation Engineer of the State of Idaho, hereby approve the above and foregoing application for amendment to Permit to Appropriate the Public Waters of the State of Idaho, No. G-25821. This approval constitutes a new permit and is issued as an amendment to the original permit, to which it refers, and of which it becomes a part, and said application is approved only insofar as the rights of others will not be adversely affected thereby.

G25821

E. N. Humphrey, Deputy

State Reclamation Engineer

June 19, 1958

Re: Permit No. G-25821
J. E. BLAISDELL & SONS

Mr. E. L. Scott
Ray & Scott
Attorneys
Malad City, Idaho

Dear Mr. Scott:

We enclose the following:

Application for Amendment to Permit No. G-25821 as approved by the Acting State Reclamation Engineer and recorded in the Department of Reclamation in Book 91 of Permits at Page 25821 amending the list of land as described on record of permit to read as follows: "NW¼ of Section 24, Township 14 South, Range 35 East, Boise Meridian, only, making a total of 150 acres." This amendment should now be attached to the original permit to which it refers and of which it becomes a part.

Certificate of Completion of Works and the License and Certificate of Water Right issued under Permit No. G-25821, confirming the right with priority of June 21, 1955, to the use of 2.04 second feet of subterranean water, with the point of diversion in the NE¼NW¼ of Section 24, for irrigation of 150 acres in the NW¼ of Section 24, Township 14 South, Range 35 East, B.M.

Departmental receipt #G-3371 for $13.00, issued as receipt of the five dollar fee for the Certificate of Completion of Works and eight dollars for the license fee.

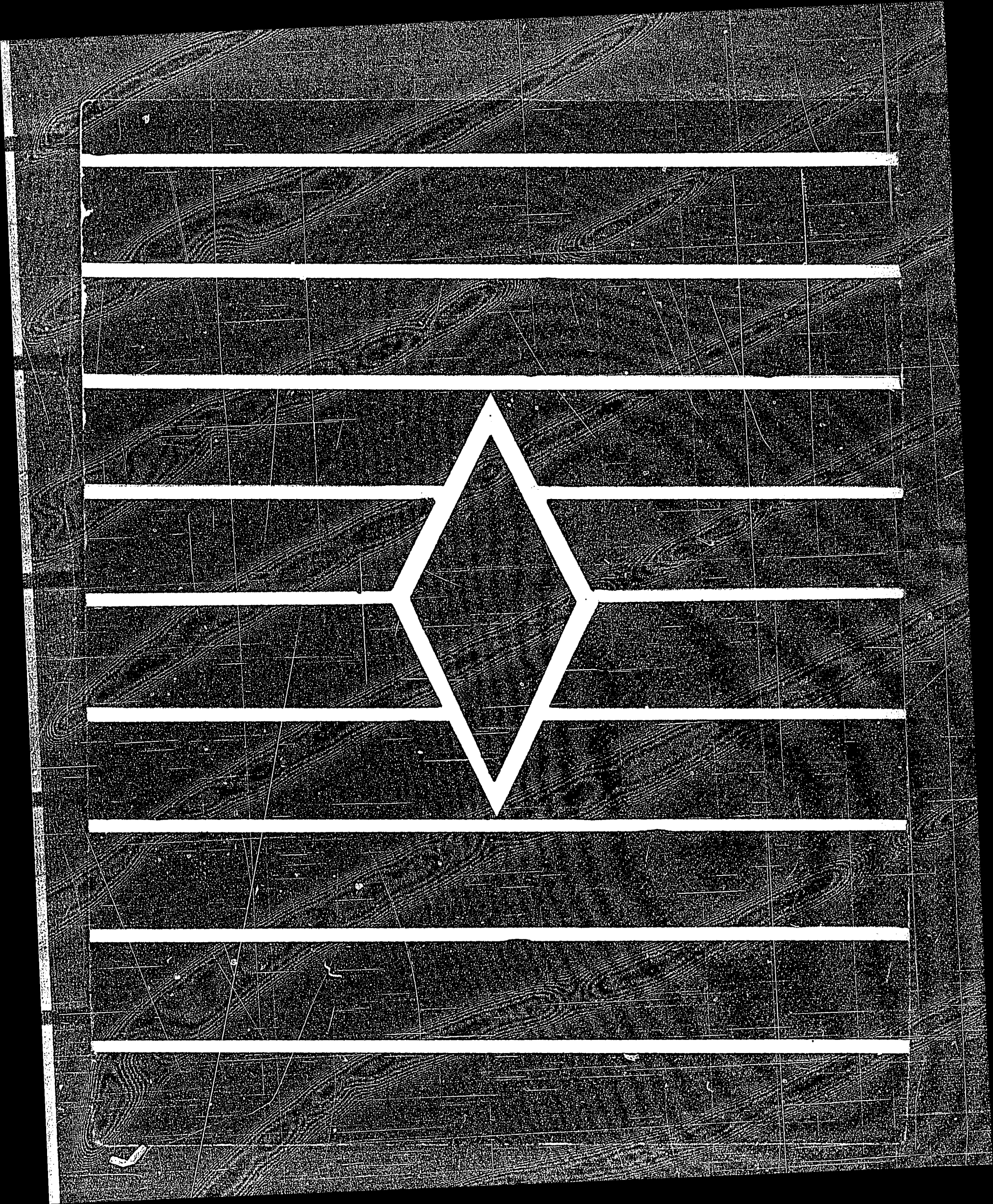
Very truly yours,

E. N. HUMPHREY
Acting State Reclamation Engineer
By

Chief Clerk

EPR:nls
Enc.

25821



6356 ✓

State of Idaho
License and Certificate of Water Right

Water License No. G-25821 Amount 2.04 c.f.s.

Water District No. Priority June 21, 1955

THIS IS TO CERTIFY that OSCAR LARSEN, J.E.BLAISDELL & SONS PAUL H. MILLS & MILTON T.JONES - J. E. BLAISDELL & SONS Assignee of Malad, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated June 21, 19 55; that Permit No. G-25821 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 2.04 second feet, was issued thereunder on June 19, 19 58, showing that said works were completed on the 13th day of February, 19 57; and that on the 13th day of February, 19 57, , J. E. BLAISDELL & SONS By: Theron Blaisdell

of Malad City, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of a well, a tributary of subterranean, for the purpose of Irrigation, under Use Permit No. G-25821 of the Department 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 State Reclamation Engineer of Idaho and entered of record in Volume 10 of Licenses at page 6356, on the 19th day of June, 19 58;

The right hereby confirmed dates from June 21, 19 55;

The Point of Diversion is located in the NE ¼ NW ¼, Sec. 24, Tp. 14 S, R. 35 E., B. M. County Oneida

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 2.04 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
14 S.	35 E.	24	NE¼ NW¼	--	40
			NW¼ NW¼	--	30
			SW¼ NW¼	--	40
			SE¼ NW¼	--	40
			Total number of acres irrigated		150

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 19th day of June, 19 58.

/s/ E. N. Humphrey, Deputy and Acting State Reclamation Engineer.

(SEAL)

15 2048

COMMISSIONER KULP: It will be admitted.

(Protestant's Exhibit No. 3, for identification, R. D. B., was by Commissioner received in evidence.)

MR. CLARK: It is merely to show the land of Mr. Jones. You already have the plat, I take it, in the record, but this will show the dam as constructed, where it lies, and that the land belongs to Mr. Jones, where the site will be.

COMMISSIONER KULP: Very well.

MR. CLARK: Will you stipulate, Mr. Ray, the two deeds Mr. Jones has received may be received in the record?

MR. RAY: May we see them just a minute?

MR. CLARK: Yes. (Hands papers to Mr. Ray.)

MR. RAY: Yes; we will so stipulate.

MR. CLARK: Then with the consent of the Commissioner it may be so stipulated that the warranty deeds received by Mr. Jones from his predecessor in interest be recognized as duly of record in Oneida County, and that he is the owner in fee of this particular land.

COMMISSIONER KULP: You have no objection to that?

MR. RAY: No objection.

COMMISSIONER KULP: It will be so stipulated.

Q (Mr. Clark, continuing:) Now, Mr. Jones, to your knowledge in the past few years has there been any particular water stored in this reservoir site that has been put to beneficial

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use?

A None that I know of.

Q And in the last number of years,you may state the approximate number, - what has been done with this real estate that you claim, - with reference to the reservoir?

A Well, I have leased it and had it farmed. It has been getting farmed.

Q You have been farming this land for the last how many years?

A Around ten years.

Q Ten years?

A We didn't this year.

Q And who is your lessee?

A Melbourne Mills, and Mrs. Rex Mills.

Q Will you speak loud enough so that the Reporter can hear you?

A Well, it was leased to Mr. Mills and Mrs. Mills.

Q And they have been farming that land for you for the past ten years, at least?

A Well, I gave them a lease in 1941, and they farmed it, - well, this year, they didn't put anything on it.

Q Speak up, Mr. Jones.

A That would make nine years it was farmed.

Q Was this land farmed at any time prior to the time

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you leased it out to them?

A Well, - oh, no, not since it was leased out to them.

Q I say, prior?

A Oh, before; yes, sir. There had been some on it before.

Q Who did that?

A Fred Thomas.

Q He was your predecessor?

A Yes, sir.

Q And have you been able to farm that the last two years?

A Well, yes; we farmed it some last year, but we didn't farm it this year. They gave them orders not to farm it, the Reservoir Company's lawyers.

Q Have you any idea how high the water will back from the present construction?

A No.

Q You wouldn't know?

A No; I wouldn't know.

Q But you stated your estimate would be from eighty to ninety acres that wold be affected?

A Yes, sir.

Q Then to your knowledge you know of no water being stored that has been put to a beneficial use?

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A No, I don't. No water.

MR. CLARK: That is all.

COMMISSIONER KULP: Do you wish to cross examine, Mr. Ray?

CROSS EXAMINATION

BY MR. RAY:

Q Mr. Jones, you were born and raised within sight of this dam, weren't you?

A Yes.

Q You were there when it was constructed back in 1917, weren't you?

A Yes, sir.

Q And at that time the land you claim at the present time was public land?

MR. MERRILL: I object to that on the ground it is immaterial. We are dealing with this application, which would have its date as of April, 1950, - nothing else. It isn't any defense for the construction of work, or anything of that sort. It is a complete new, - absolutely new procedure.

COMMISSIONER KULP: The witness may answer.

THE WITNESS: What was the question?

(Whereupon, the pending question was read aloud by the Reporter as above recorded.)

Q (Mr. Ray, continuing:) At that time the land you claim

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to own now was public land, wasn't it?

A Well, not that I know of. I think,-- at the time when they werebuilding the reservoir?

Q Building the dam.

A Building the dam?

Q Yes.

A Well, the way I understand it, Mr. Thomas had filed on it at that time.

Q That is, his boy had filed on it?

A Yes, sir.

Q Frederick Thomas?

A Yes.

Q And this patent that was issued here to the heirs of Frederick Thomas, - Fred Thomas and his wife, Mary E. Thomas, the father and mother of Frederick Thomas, were the heirs; isn't that true?

A Yes.

Q And when you bought it the heirs of Fred Thomas and Mary E. Thomas gave you a deed for it?

A Yes, sir.

Q At that time did they give you an abstract for the property?

A Yes.

Q Have you got that abstract with you?

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A Mr. Merrill has it.

MR. RAY: May I see theabstract, Mr. Merrill?

MR. MERRILL: Yes, but it can't be introduced in evidence, unless you pay for it.

MR. RAY: Make me pay for the abstract?

MR. MERRILL: Yes, if you want to use it.

MR. RAY: I can make another one. I am in the abstract business.

MR. MERRILL: You may look at it, but that is all. (Hands document to Mr. Ray.)

Q (Mr. Ray, continuing:) The abstract shows that a patent was issued to Frederick W. Thomas. That was the son of Fred Thomas and Mary E. Thomas?

A Yes, sir.

Q And he evidently died, and the patent then was issued to the heirs of Frederick Thomas?

A Yes, sir.

MR. RAY: This Patent, being sheet No. 15 of the abstract, shows Lots One and Two, and the East Half of the Northwest Quarter of Section Seven, Township Thirteen South, Range Thirty-five East of the Boise Meridian, containing 105.79 acres issued to the heirs of Frederick Thomas on May 29th, 1915.

Q (Mr. Ray, continuing:) Now, you knew, as a matter of fact that when you bought this land that the dam had been construc-

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ted there, and that this land you were buying, if it would hold the water back, would flood the land you were buying from the heirs of Red Thomas and Mary E. Thomas?

MR. MERRILL: That is objected to as immaterial; and antedating the permit.

COMMISSIONER KULP: The witness may answer.

A Well, the understanding I had, I had the same right the Thomas' had when I bought it.

Q (Mr. Ray, continuing:) Well, yes, you had the same rights, but you understood the dam had been constructed, and that if that impounded water behind it it would flood this land?

A Yes.

Q Yes, you knew that, as a matter of fact?

A Yes.

Q Now, we have Sheet No. 16-A of the abstract, - 18-A, a case filed, - record of a case filed in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, by Fred W. Thomas and Mary E. Thomas, his wife, versus Malad Reservoir Company, Limited, a corporation, and in which they brought an action against the Malad Reservoir Company, Limited claiming they made a homestead filing on the same on September 27th, 1913; is that right?

MR. MERRILL: We object to counsel trying to read

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into the record from an exhibit not in evidence, and for the further reason that it is attempting to interrogate the witness on matters not brought out on direct examination, and it is improper cross examination, and it is attempting to deal with a law suit that occurred a number of years ago, and it is also a matter of record. If they wanted it, they could have had it certified, and it shouldn't be permitted to be read from a record which counsel purports to have prepared himself.

MR. RAY: He would be bound by it, your Honor, if he knew that an action had been brought, and it was in the abstract which he got at the time he bought the property, an abstract certified by the Malad Abstract Company.

COMMISSIONER KULP: Well, that abstract isn't in evidence yet. You may ask questions, but not quote from the abstract.

Q (Mr. Ray, continuing:) Did you examine this abstract that I hold in my hand here that you got at the time you bought this property from the heirs of Fred Thomas and Mary E. Thomas?

MR. MERRILL: We object to that on the ground it is immaterial.

MR. RAY: I take it, your Honor, that he would be bound by the contents of the abstract whether he examined it or not.

MR. MERRILL: Not at all. Abandonment may occur

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whether it was a matter of right away back in 1917, or not.

MR. RAY: Yes; abandonment might occur, but they have taken no action in Court to declare an abandonment in this case, your Honor.

MR. MERRILL: He has taken the action on the land. He used it.

MR. RAY: He has taken no action in Court; you would have to take action in Court, if he is going to contest this application on the ground there had been an abandonment of the right-of-way. We have a Supreme Court ruling on that.

MR. CLARK: Not on this one. We are just trying this one now.

MR. RAY: That might be your theory of the case, but it is not my theoryof the case. We take the position, your Honor, that if he knew that a filing had been made on this land, when it was public land, for a reservoir right-ofway, or should have known by examining an abstract, then he is bound by that. He is bound by what his predecessor in interest has done.

MR. MERRILL: Counsel evidently hasn't read the Idaho cases. The case in 34 Idaho completely eliminates his theory. The man is not bound by it. He has got the rights of the abandonment, whether he brings suit, or doesn't, that the United States Government had. Going along here, here is what they have done:

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They have gone along here for thirty years nearly, trying to hold on and prevent the development of the lands around there. Now, they come in and think they have a new theory, and they file a new application for permit, starting all over again, and trying to inundate this man's land, and claiming he has knowledge of something that has nothing to do with this present permit. They are not asking for any extension of what they had before, but for a new permit.

MR. RAY: Well, if counsel wants to put in evidence all matters that go prior to this application, he knows the reason we haven't been able to hold this water in this territory is because of serious leaks and of course we expect to show all those things, and show the reason to the Court why we haven't been able to comply with the terms of the former permits, and that is the reason we are making application for a new permit, but we also have the right to show, your Honor, that they have come in here and want us to pay for this land that belongs to this protestant. We want to show that we had a right-of-way; we shouldn't have to pay for that land; we had this right-of-way from the Government of the United States. Now, he has an abstract here which shows there was a contest by his predecessor in interest against the Malad Reservoir Company involving this particular thing, and they set up in

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the complaint when this reservoir right-of-way was granted the Malad Reservoir Company, and they set up in the complaint the date that the filing was made by Frederick Thomas upon this land as a homestead filing. That is what I want to show, your Honor; so we can show that we haven't come in here and tried to take advantage of this man. We are merely standing on our legal rights, and if this witness here had an abstract showing the record of those cases, - of that case in the District Court at Malad, why, then he should so state, and he is bound by what his predecessor in interest did. Now, the Supreme Court of Idaho would not hold that an owner of land is not bound by what happened to the title of it before by the party who was in possession and who claimed title to it.

COMMISSIONER KULP: What was the question to which counsel for the protestant objected?

(Whereupon, the pending question was read by the Reporter as above recorded.)

THE COMMISSIONER: The witness may answer.

A No; I didn't read it.

Q (Mr. Ray, continuing:) You didn't examine it?

A No, I didn't examine it. I didn't read it before receiving it.

Q Have you examined it since, to know what is in that abstract?

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A I have read some of it since.

Q You know that there was a case brought by Fred Thomas and Mary E. Thomas against Malad Reservoir Company?

MR. MERRILL: To which we object on the ground it is immaterial, and not the best evidence.

A Yes, sir.

Q (Mr. Ray, continuing:) And that in that complaint the filing of the Malad Reservoir Company was,-- on this land was granted one day before the filing of the homestead by Frederick Thomas on the land?

MR. MERRILL: Object to that on the ground that it calls for a conclusion of the witness; it is not the best evidence. In order that your Honor might understand: All that happened was that there was a complaint filed, and a demurrer, and nothing else happened. That is all there is to it. It is not res adjudicata; it could not have any legal effect at all.

MR. RAY: No, your Honor. Fred Thomas, who owned this land, signed this complaint, and he stated in that complaint the grounds of his action against the Malad Reservoir Company.

MR. MERRILL: At the time it was filed was before they attempted any work at all. There is a lot of reasons why it doesn't have any application to this matter here.

COMMISSIONER KULP: What was that question?

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(Whereupon, the pending question was read by the Reporter as above recorded.)

COMMISSIONER KULP: I think the witness need not answer.

Q (Mr. Ray, continuing:) When you bought this land from the heirs of Red W. Thomas and Mary E. Thomas, was anything said about this right of the Malad Reservoir Company to flood this land?

A No; there wasn't.

Q Nothing said about it?

A No, sir.

Q You knew it was behind the dam, didn't you?

A I knew it had been dry; no water in it.

Q You knew the Malad Reservoir Company had tried to flood that land on numerous occasionsand that they couldn't hold the water there because of serious leaks in the dam and in the reservoir site?

A Yes; in the dam.

Q Were you living in the region of this neighborhood of this dam in the spring practically every year from the time the dam was constructed until 1950?

A Off and on; yes.

Q And didn't the Malad Reservoir Company try to impound water behind that dam each year during all those years?

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A No, not during all the years, I don't think the water was backed up there.

Q But they did on numerous occasions try to hold the water behind that dam, - closed the gates?

A Yes.

Q Now, the officers of this company were trying to close some leaks there on this land that you owned caused by what was disclosed this spring when thewater was backed up last fall and winter went out of the dam, and didn't they talk to you about getting some clay for the purpose of putting in those leaks?

A Well, they had gone over it first.

Q Last fall they had repaired some leaks?

A Yes.

Q You were good enough to give them clay for that, weren't you?

A No.

Q Didn't you?

A No; I didn't give it to them.

Q Didn't you consent for them to take that clay?

A No, sir; I didn't.

Q They talked to you this spring about getting clay to put in those leaks, didn't they?

A Yes, sir.

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Q And didn't they offer to pay you for that clay?

A Not until I went up to get them to quit working on it. They were on there then, then Jesse offered, - just one of them.

Q And didn't they tell you when they were talking about closing those leaks, that if their reservoir right-of-way happened not to be valid, as they thought it was, they would pay you for the land they would take and flood? Didn't they promise to do that?

A Well, no,-- what do you mean? They,--

Q They said they would pay you for the land. If their reservoir right-of-way should happen to be not valid that they would pay you for the land that they would flood there?

MR. MERRILL: Now, just a minute: We object to that on the ground it is entirely controversial, - if this and if that. They don't come out and say we will pay for it, but they are predicating it on some "ifs." Of course, if we get a judgment against them they will pay it. There are a number of other things that may happen, but our point is that they are atatempting to come in, trying to take this man's land under this permit, because their other permit, of course, is gone. They didn't complete their works within five years, or ten years. That other permit was granted thirty years ago, and has gone now, of course, - no force or effect of any kind or character.

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Now, they are coming in, after they make application here for a new permit, - they have already been trying to construct the works before they get a permit to do it, - they can't operate under the old permit; it is gone; they didn't complete the works; accordingly those patents and all this he has been talking about become utterly immaterial.

MR. RAY: Your Honor, we wouldn't want to pay a man for something we already had. Of course there would be an "if," but we are on the ground there trying to do something, and this man is protesting. Then we made the offer. That is what I am trying to get him to say, is whether we made the offer or not.

MR. MERRILL: The offer is conditioned on "ifs."

MR. RAY: Sure it is.

COMMISSIONER KULP: The "ifs" will appear in the record, and the witness may answer.

MR. RAY: I didn't understand the ruling?

COMMISSIONER KULP: I said the "ifs" will appear in the record, so the witness may answer. What was the question, Mr. Reporter?

(Whereupon, the pending question was read by the Reporter as above recorded.)

A They said if the reservoir wouldn't hold they would pay me. That is the way they stated it.

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MR. MERRILL: I don't hear you.

A They said if the water, - if the reservoir didn't hold then they would pay me.

MR. MERRILL: "Didn't hold?"

A Yes; if it didn't hold, they would pay me.

COMMISSIONER KULP: Pay you for what? For the land they expected to flood?

A Yes; the land that they damaged.

MR. RAY: I think that is all.

REDIRECT EXAMINATION

BY MR. CLARK:

Q You said, Mr. Jones, that the officers of the company offered to pay you, provided that the reservoir did not hold?

A Yes; that is, in meeting with three of them.

Q What did they offer to pay you? Did they make you any offer?

A They made no offer.

Q Have they ever made any kind of an offer?

A Well, one of them, - when they started to put the clay on, Jesse was the only one that offered.

Q That was thislast two months?

A Yes, sir. That is when they started this last time.

Q And what did they offer you at that time?

A Well, Jesse said he would pay me a thousand dollars.

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Q Was that price significant as to the price of your property, the ordinary price of your property?

A Well, I didn't think so.

Q Well, you think it was insignificant?

A Oh, yes; it was.

MR. CLARK: That is all.

MR. RAY: That is all.

COMMISSIONER KULP: That will be all, Mr. Jones.

(Witness excused.)

COMMISSIONER KULP: Do you have any furrther witnesses, Mr. Clark?

MR. CLARK: No; that is all, yourHonor. We rest.

COMMISSIONER KULP: Do you have any witnesses to present, Mr. Ray?

MR. RAY: I would like to call Doctor Ray.

DR. D. C. RAY,

called as a witness on behalf of the Applicant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

MR. RAY: Do you have a copy of the application, gentlemen?

MR. CLARK: Yes. Will you hand it back, because we want to use it.

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MR. RAY: Yes; I will.

Q Your name is Doctor D. C. Ray?

A It is.

Q And you reside in Pocatello, Idaho?

A Yes, sir.

Q You are president of the Malad Reservoir Company?

A Yes, sir.

Q A Utah corporation?

A Yes, sir; we are.

Q That isthe applicant who has applied, - made application No. R-29183, to construct a reservoir and store and appropriate the public waters of the State of Idaho of Little Malad River and its tributaries?

A That is it.

Q And I will ask you to examine this application for permit marked "Copy" and state whether that is a substantial copy of the application that the Malad Reservoir Company made to the State of Idaho?

MR. MERRILL: We object to that. The original is on file. This purports to be a copy, but it doesn't purport to be a complete copy.

COMMISSIONER KULP: What do you expect toshow by it?

MR. RAY: You have it on file, don't you?

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COMMISSIONER KULP: Yes; I have it on file.

MR. RAY: So it is immaterial.

MR. MERRILL: And it has already been stipulated.

MR. RAY: I just asked him to state whether that was substantially the application he had made, showing the assets of the company, and everything necessary to make a valid application.

THE WITNESS: This looks like it.

Q You state in this application that the amount of the capital stock of this corporation is five hundred thousand dollars, and the amount paid in is five hundred thousand?

MR. MERRILL: We object to that. The application itself is the best evidence of what is found in it. There is no need to take the time to go into that.

A Yes; I think that is right.

Q Were you a resident of Malad at the time that the dam was built by the Malad Reservoir Company, Limited?

A I was.

Q About the center of Section Seven, Township Thirteen South, Range Thirty-five East of the Boise Meridian?

A I was.

Q And were you a stockholder in the company at that time?

A I was.

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Q The Malad Reservoir Company, Limited, was an Idaho corporation, wasn't it?

A I am not sure about that.

MR. MERRILL: That is objected to on the ground that is not the best evidence.

A I think it was.

MR. RAY: Will you markethis as Applicant's Exhibit, Mr. Reporter?

(Applicant's Exhibit No. 4, for identification, R. D. B., the same being an Abstract of Title, was marked by the Reporter.)

Q I show you Applicant's proposed Exhibit No. 4, so marked for identification, purporting to be an abstract of title to the property involved in this case, with other land, and ask you to examine the plat of this abstract, and state whether that is approximately the contour line of the Malad Reservoir Company.

MR. MERRILL: We object to that upon the ground, of course, that it is not the best evidence. An abstract is not evidence, and cannot be introduced unless under the statute a true copy thereof has been served upon opposing counsel prior to the time of the trial to give counsel an opportunity to check into it; and, furthermore, with this abstract they are attempting to show that the plat shows the land, -- the rights

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which they claim, and is a matter, I presume, which was prepared by counsel. He says he is an abstractor, and I presume he prepared it.

MR. RAY: Well, I didn't prepare it as an attorney; I prepared it as an abstractor. It is under the seal of the abstract company.

MR. MERRILL: That doesn't obviate that other objection. You can't testify from an exhibit not in evidence.

MR. RAY: The thing speaks for itself. It is under the seal of the company, your Honor. The fact that I happen to be an attorney and an abstractor at the same time, is beside the point.

MR. MERRILL: What have you to say with reference to the statute I suggested, Mr. Ray? Don't you recognize the statute as having anything to do with,--

MR. RAY: You had a copy of the abstract?

MR. MERRILL: No; not that one.

MR. RAY: You had a copy of the abstract with reference to his property.

MR. MERRILL: But that isn't what you have got there. We haven't a copy of that one.

MR. RAY: Well, I will limit it to the abstract covering the property that is in dispute.

COMMISSIONER KULP: It will be admitted as Applican'ts

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Exhibit No. 4.

(Applicant's Exhibit No. 4, heretofore marked for identification, was admitted in evidence.)

Q (Mr. Ray, continuing:) That is approximately the land, and the contour of the reservoir covering the land?

A Yes.

MR. MERRILL: Mr. Ray, would you mind avoiding leading him so badly. I don't want to hold you down to strict rules, but I think there should be some limit to leading questions.

MR. RAY: I understood that in practice before the Commissioner you didn't have to comply strictly with the strict rules of evidence.

MR. MERRILL: That is true, but at the same time we must be fair, and not do the testifying yourself.

Q (Mr. Ray, continuing:) I call your atatention to Sheet No. 5 of this abstract where the articles of incorporation of the Malad Reservoir Company, Limited are set forth, - Sheets five and six, - filed August 6th, 1912, John J. Evans, Recorder Oneida County, Idaho, and from which it appears that James J. Chambers, E. W. Ryberg and David W. Tovey were the stockholders and parties that formed this corporation,--

MR. MERRILL: May I inquire: Is that the same corporation that makes this application?

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MR. RAY: Well, this is the successor to the other corporation. This is an Idaho corporation, and the present successor,-- the present corporation is the successor to the Malad Reservoir Company, Limited.

MR. MERRILL: This company that makes this application is evidently a Utah corporation?

MR. RAY: Yes; it is the successor to the Idaho corporation.

MR. MERRILL: I think it would make no difference whatever as to the other corporation. That would be entirely immaterial, and merely taking up the time of the parties here.

Q (Mr. Ray, continuing:) I call your attention to Sheet No. 15 of this abstract which is entitled "In the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida,"in which Fred W. Thomas and Mary E. Thomas appear as plaintiff, and the Malad Reservoir Company, Limited, defendant, do you remember that suit having been brought in the district court.

MR. MERRILL: We object on the ground that is immaterial for any purpose in this matter.

COMMISSIONER KULP: The witness may answer.

A Yes; I remember it.

Q (Mr. Ray, continuing:) And in that complaint,

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which was signed by Fred W. Thomas, who is the heir at law, with his wife, of Fred Thomas, patentee of this land, you stated in paragraph five that the defendant Malad Reservoir Company, a corporation,--

MR. MERRILL: Now, we object to counsel leading the witness and reciting what this purports to be. It is in evidence, and your Honor can read it.

Q (Mr. Ray, continuing:) Read paragraph five.

MR. MERRILL: We object to that on the ground it is immaterial and not the proper way to interrogate a witness. There is no need of him reading it. It takes up additional time, to no purpose.

COMMISSIONER KULP: The witness may read it.

A "That the defendant claims some interest in said land by reason of the application for right-of-way filed by E. W. Ryberg for the Malad Reservoir Company, in the land office at Blackfoot, Idaho, which was approved September 26th, 1913, which said application was finally allowed by the General Land Office under and by virtue of the Acts of March 3, 1891 (26 Stat. 1095) and May 11, 1898 (30 Stat. 404) but in this connection the plaintiffs allege that upon the approval of said filing the said defendant did not proceed diligently upon the

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construction of the reservoir hereinafter referred to, but for more than two years failed and neglected to comply with the requirements of said sections and thereby abandoned all their right, title and claim thereto."

MR. CLARK: Your Honor, we object to that being in the record. We submit it shold be stricken for the reason it does not pertain to this protest or to this filing at all. It pertains to a case our record already shows, - the record of county shows it, and it shouldn't be taken out of this abstract and placed in there as evidence in this case. We are not trying the old case; we are not trying that case over; that case may have been filed when they did have time to complete their constructions, and that is why, possibly, the demurrer was sustained. If that action was brought today it would be a different kind of case entirely. It has no bearing on the protest whatever.

MR. RAY: The abstract has been admitted in evidence. I am merely bringing this out so there wouldn't be any question about the date of this reservoir filing, and the date of the filing on the homestead, your Honor.

MR. CLARK: What the Malad Reservoir Company, Limited, did has nothing to do with this case any way.

MR. RAY: We take the position, your Honor, the reservoir right-of-way was approved one day before the homestead

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filing was made on this land. Now then, if there were an abandonment, that is a different matter. What I want to show to the Commissioner is that we are not proceeding upon any theory of beating this man out of anything. We areproceeding on the theory we have had rights in that land, and we claim we have them at the present time. Now, there is another paragraph in this complaint which states,--

Q (Mr. Ray, continuing:) Read Paragraph Four, Doctor Ray.

A (Reading:)

"That on or about the 27th day of September, 1913, Frederick Thom as, now deceased, made homestead filing upon the above described land and such proceedings were afterwards taken that patent therefor issued to the plaintiffs, a copy of which is hereunto attached and made 'Exhibit 'A'."

Q Now, the Malad Reservoir Company, Limited, the Idaho corporation, constructed this dam that is standing there at the present time in the year 1917?

A Yes, sir; about that time.

Q And it was a complete structure and they attempted to close the gates of that dam, and they tried to impound the water under the permit they then at that time had?

MR. MERRILL: That is objected to on the ground it is

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wholly immaterial, and has nothing to do with the application for this permit made at this time.

COMMISSIONER KULP: He may answer.

A That is true.

Q (Mr. Ray, continuing:) Were they able to hold that water behind the dam?

A Not for very long at a time.

Q Did the water escape otherwise than through the opening in the dam?

A Not through the dam, but in the lands above.

Q In case the gates weren't opened, the water escaped with the gates closed in that dam; is that true?

A That is right.

Q And how long did that condition continue there?

A Well, it has continued right along since the dam was built.

Q Was any attempt everymade to close the leaks in that dam?

A Yes, there has been numerous times.

Q When was that done?

A Well, following when we found it wouldn't hold there was a lot of holes dug and shafts put in, and tunneling, trying to find where the water went out in thebottom.

Q About what time was that? About the year 1928 or

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1930 or somewhere along there?

A Somewhere around there.

MR. MERRILL: I suggest counsel take the witness stand. It would probably be a little quicker. He is doing the testifying here any way.

MR. RAY: I have got to ask questions, your Honor.

COMMISSIONER KULP: Go ahead, Mr. Ray

A That was between, - that was between when the dam was built, and about 1928 that all this tunneling and shafts were made, and then about 1928 or 1929 the company tried to stop the leaks by putting cement through pipes to the bottom of the earth above the stone on the bottom.

Q After that work was done, did you notice whether it accomplished anything?

A Not a great deal. It held water, maybe, a little bit longer in the spring.

Q And during all these times did you have a valid water right in connection with that?

A Yes; we had a permit from the state.

MR. MERRILL: We object to that as a pure conclusion of the witness, as to whether they had a permit from the state. The documentary evidence would be the only evidence that would be proper as to that.

MR. RAY: As I understand the evidence, your Honor,

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all of this is in the State Engineer's office, and will be reviewed by the Commissioner.

MR. MERRILL: Then why ask him.

COMMISSIONER KULP: If necessary; yes. We will also use any other information that comes to hand that we can rely on.

MR. MERRILL: I didn't understand?

COMMISSIONER KULP: We will also use any other information we may have.

Q (Mr. Ray, continuing:) And after this work was done, Doctor Ray, were attempts made each year to impound water behind that dam?

A Well, most every year we had the gates down, thinking that probably the silt that came down from the, - through the stream might eventually seal the leaks.

Q You never attempted to sell any of that water, or to lease any of it, just because you didn't know whether you would be able to deliver it; is that true?

A That is it.

Q And did you do some work recently that led you to believe that you would eventually be able to seal the leaks in this dam and be able to store the water behind the dam?

MR. MERRILL: We object on the ground that it is immaterial, and calls for a conclusion of the witness. This

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man is not qualified as an engineer, and it is outside the issues involved in this hearing.

COMMISSIONER KULP: Will you read the question, Mr. Reporter?

(Whereupon, the pending question was read by the Reporter as above recorded.)

MR. MERRILL: I think the question should be a more direct question.

Q (Mr. Ray, continuing:) Calling your attention to 1949, was any workdone on this reservoir site behind the dam in closing the leaks that had developed from the storage of water previously?

A We did a lot of work in 1948, 1949 and 1950, endeavoring to close the leaks.

Q The work you did in 1948 and 1949, did it have any effect when you stored the water last year behind that dam? Did that work have any effect upon closing the leaks?

A Yes; it held water quite a lot longer, and more.

Q Ddid the water apparently escape through the leaks you had been working on and trying to close?

A It did not.

Q And the work you did at that time, was it, - did it cause considerable expense to the company?

A It did.

Q

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Q The company was able to meet that expense, was it?

A It did.

Q Have you done any more work on the reservoir site behind that dam attempting to close leaks since the water was let out this spring?

A We have.

Q Was that rather extensive work?

A It was.

Q And expensive?

A Quite.

Q Did the company pay for that work, or intend to pay for it?

A Yes.

Q And this work you did was done when you held a valid permit from the state of Idaho to appropriate waters? Was it?

A That is it.

Q Now, you state to the Commissioner anything else that you think would throw any light on this application, or be a reason for him granting the application to the Malad Reservoir Company of the waters of Little Malad River and its tributaries.

MR. MERRILL: We object to the question on the ground it is too general, calls for a conclusion of the witness; that it is not a question that can be answered properly.

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COMMISSIONER KULP: Will you read the question, Mr. Reporter, please?

(Whereupon, the pending question was read by the Reporter as above recorded.)

COMMISSIONER KULP: I think the witness may answer that question.

A The Malad Reservoir Company, Limited, had a water right from the State Reclamation Engineer which at various times was continued, and which had been kept in contact,-- is that the right word? -- which had been kept in continuous renewal from the time of inception, and which was in April, 1950, renewed for the purpose of storing water in the Malad reservoir.

MR. MERRILL: We move that last be stricken as not at all the best evidence, that the application had been renewed for the purpose of storing water. I presume he means this application which they have filed for permit. It doesn't have that construction at all.

COMMISSIONER KULP: You may develop that in your cross examination.

A Well, this permit was given through your land office, Reclamation Department, was it not?

COMMISSIONER KULP: You are the witness.

THE WITNESS: All right.

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MR. RAY: What was the answer, Mr. Reporter? I didn't catch it.

(Whereupon, the following answer was read by the Reporter: "Well, this permit was given through your land office, Reclamation Department, was it not?")

A He said, "You are the witness."

Q (Mr. Ray, continuing) Well, Doctor Ray, you, of course, are familiar, and have been, with this company ever since it was organized, and familiar with what you thought were the rights of the company as to right-of-way behind the dam, and did you ever talk to Mr. Jones here, the protestant, about buying this land from him?

A No; I never had any conversation with him.

Q You didn't have any conversation with him?

A Some of the directors had a meeting with him, I understand.

MR. RAY: I think that is all.

CROSS EXAMINATION

BY MR. CLARK:

Q Doctor Ray, it is the intention of your company now to complete any works under your application for permit within three years from the date you filed it; is that correct now?

A I would like to have you ask that question again.

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MR. CLARK: Will you read it to him, Mr. Reporter?

(Whereupon, the pending question was read by the Reporter as above recorded.)

A That is true.

Q And why did you file this permit at this particular time, in April?

A I happened to be in Boise.

Q Is that the only reason?

A Well, I wanted to keep that alive, that water permit.

Q You felt then that the first permit you had back thirty years ago was not good at the present time, did you?

A No. I just felt you had to keep your permit alive to, - if we let it drop we didn't have any rights.

Q Why didn't you do that several other times during the last thirty years?

A They have been.

Q Have you made these applications before?

A I have.

Q Since the first one made by the Malad Reservoir Company, Limited?

A I have.

Q And you have received permits each time on that?

A I have.

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Q And when was the last one you made prior to this time?

A Well, it was two years previous to this one, I think.

Q And you published your notices in the paper?

A Yes, sir.

Q Of course, we don't know what the record before the Commissioner is now, but this is the first permit we have ever heard of except the first one made thirty years ago.

MR. RAY: Is counsel trying to testify?

MR. CLARK: I am telling you what we don't know. I can't tell him very much when I don't know it. We stipulated to the record there, and we don't know that that has been done.

THE WITNESS: There was a protest two years ago.

Q (Mr. Clark, continuing:) Well, did you comply with that permit?

A We did.

Q What did you do in the way of work?

A Well, we closed the gates and thought probably the silt would help to fill the leaks.

Q Well, haven't you permitted most of the land under this reservoir, or most of the land in the basin of the reservoir to be farmed for several years?

A Yes; when it didn't hold water.

Q Has your company ever filed a bond with the depart-

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ment to back up any damages or injuries, or payments, that you might have to make to provide for this reservoir?

MR. RAY: I object to that as not being material in this matter.

MR. CLARK: I think it is material, if the Commissioner please.

COMMISSIONER KULP: The objection is over-ruled. He may answer.

A We haven't done anything except just keep our water filings alive and do the best we could and try to get it to hold water.

Q (Mr. Clark, continuing:) Then it is your understanding that you don't have to pay for this land for the reason you have a prior right; is that the understanding of your company?

A Well, that is what I feel, that the department, - the land department of the United States Government has given us a permit to use that land to store water.

MR. CLARK: That is all.

MR. RAY: That is all, Doctor.

(Witness excused.)

COMMISSIONER KULP: You may call your next witness, gentlemen.

MR. RAY: Call Mr. Tovey.

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MORGAN W. TOVEY,

called as a witness on behalf of the Applicant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

Q Your name is Morgan W. Tovey?

A Yes, sir.

Q And you reside in Malad, Idaho?

A Yes, sir.

Q And have lived there all of your life?

A Yes.

Q Are you a director in the Malad Reservoir Company, the applicant for this water right?

A Yes, sir.

Q And have been for all the years last past?

A Yes, sir.

Q Did you have a talk with Mr. Dewey T. Jones, the protestant, in regard to this reservoir right-of-way that the Malad Reservoir Company claims on his land that is back of the dam?

A Yes, sir.

Q State what was said in that conversation with him?

A Do you mean this year?

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Q Well, whenever it was. You didn't state the time. Did you have a conversation with him?

A Yes; I went to see Mr. Jones last fall when we started to work there, the work we did prior to this summer's work, and we had quite a little talk about the work. He didn't want us to haul clay in on the land there, and we had a couple more days to go. I asked if it would be all right if we went ahead, and he wouldn't make any promise, but he didn't say he would stop us, so we went ahead and put the clay on there. That is the work we did last fall, a year ago.

Q Did you do some more work up there this spring of the same nature?

A Yes, sir.

Q Did you talk to Mr. Jones about that?

A Yes; we held a little meeting, the other directors and myself and Mr. Jones.

Q Who were the other directors?

A Mr. Dredge and Lawrence Jones.

Q And state what was said in that meeting with respect to the use of the clay?

A Well, we tried to make some kind of an agreement with Mr. Jones so we could go ahead with the work there, and made him an offer for the clay, and also told him if the dam didn't hold water that we would pay the damage for the land

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that the clay was put on.

Q Well, was that offer based upon the premise that you had a reservoir right to store water on that land?

A Yes.

Q The land in question?

A Yes, sir.

Q Granted by the United States Government?

A Yes.

MR. RAY: I think that is all.

CROSS EXAMINATION

BY MR. CLARK:

Q You pulled a lot of fences down for Mr. Jones, too, did you not?

A No; I didn't pull any fences down.

Q I mean the company, and its officers?

A Yes; they took some fence downto get the clay.

Q And they have never been fixed, - there has been nothing done by the board of directors or anything, to Mr. Jones?

A The fence was put back there a few days ago for work done this year, and I worked there one day myself last spring trying to straighten the fence out some, and the next time I went up Mr. Jones and his son were putting the fence up, and I told them to keep track of the posts and repair stuff they needed, and also their labor, and put in a bill to the company,

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and we would pay the bill but it was never done. He never put in a bill.

Q Did you personally, as a director of the company, every approach Mr. Jones on the price, or on the damage you might cause him?

A Only in this one meeting that Lawrence Jones and Mr. Dredge and myself had with Dewey.

Q And you made him an offer at that time? Or decided to make him one, or what?

A Well, we made him an offer for the clay, and also told him if the dam didn't hold that we would pay reasonable damage for the land that was covered with the clay in the bottom.

Q Were you an officer in the Malad Reservoir Company, Limited?

A No, sir.

Q To your knowledge then, the present application for a permit filed is the first that you know anything about, is it?

A No, sir; I know they have kept the permits alive all the time on the reservoir.

Q How did you happen to know that?

A Well, my father was connected with the first construction on the dam, along with Doctor Ray, and I have kept in touch with the stuff all the way through. I know they have kept their permits alive.

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Q Did you see the records?

A Part of them.

Q Doctor Ray testified that you did work in 1948, 1949 and 1950. Now this work was done based upon what permit?

A Based upon the permit we had prior to this application we made now.

Q Has the Malad Reservoir Company ever had a permit prior to this one?

A Yes; they have had permits all the time. They were,--

Q The Malad Reservoir Company, Limited, now, and the Malad Reservoir Company are two distinct corporations, are they not?

A Yes; the Malad Reservoir Company has kept their rights alive ever since it was taken over from the Malad Reservoir Company, Limited.

Q When was that?

MR. RAY: The abstract will show on that.

A I think about 1924, somewhere along in there.

DOCTOR RAY: 1920.

Q (Mr. Clark, continuing:) Do you know of your own knowledge what particular work the Malad Reservoir Company has done from time to time to maintain its rights?

A You mean since the building of the dam?

Q Yes.

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A Well, the first work was, as Doctor Ray stated, when they saw the dam wouldn't hold water, they spent a lot of money trying to find the leak. I think there was something over two hundred test holes of different kinds put in the bottom of the dam. Then it went along until they formed the Elkhorn Closure Company, - that was in connection with the reservoir company, - and spent a lot of money trying to grout the bottom of the dam.

Q And when was that?

A Well, they finished that up, I think, along about 1933 or 1934, - somewhere along there I believe that was finished. Then they closed the gates down all the time, practically every year, to see if that wouldn't help seal the thing off.

Q And when it didn't, why, you proceeded to farm the land that you owned, and permitted Mr. Jones to farm the land he owned; isn't that correct?

A Well, the water has never held in long enough to interfere with spring work on the land. Some springs it would be a little late, but they have always been able to raise a crop there after the water was out of the dam.

Q Other than shutting the gates down, you have done no work to try to maintain your rights since the closure company was organized in 1933 of 1934?

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A Yes; there has been other work done from time to time, some work on the gates, and other stuff since that time. In 1948 we did a lot of work, in 1949 and this year.

MR. CLARK: That is all.

MR. RAY: That is all.

(Witness excused.)

MR. RAY: I would like to recall Doctor Ray.

COMMISSIONER KULP: I would like to ask the witness a question or two: Mr. Tovey, was relation did this closure company have to either the Malad Reservoir Company, Limited, or to the Malad Reservoir Company?

A Well, it was a company formed by Young Hovey and Mr. Hovey at that time, I think, was a majority stockholder in the Malad Reservoir Company.

COMMISSIONER KULP: That is all.

MR. MERRILL: May I ask: What connection did it have with this company? What did it have to do? What was its business?

THE WITNESS: It was just another attempt to try to seal the bottom of the reservoir.

MR. MERRILL: What did it do? What property did it own?

THE WITNESS: The closure company?

MR. MERRILL: Yes.

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THE WITNESS: Well, Mr. Hovey was the majority stockholder in the Malad Reservoir Company, and he turned over the stock, I think, to form thisclosure company.

MR. MERRILL: And it failed in its attempts?

THE WITNESS: That is right.

MR. MERRILL: That is all.

REDIRECT EXAMINATION

BY MR. RAY:

Q The contractor got so much stock out of the Malad Reservoir Company for doing the work?

A That is right.

COMMISSIONER KULP: Is that all with Mr. Tovey? That will be all.

(Witness excused.)

MR. RAY: I would like to recall Doctor Ray for one question.

DR. D. C. RAY,

recalled as a witness on behalf of the Applicant, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAY:

Q Doctor Ray, has it been discussed in the board meeting about this trouble with Mr. Dewey T. Jones, and has the Board talked about whether they would buy this right-of-way

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from Mr. Jones in case the right-of-way the department of Interior had granted them should be held to be valueless?

MR. MERRILL: That is objected to on the ground it is leading, incompetent and immaterial. The minute books of the company would be the best evidence in that matter, and it is predicated upon an assumption. It isn't a direct matter.

MR. RAY: The question was asked, yourHonor, for the purpose of showing there is no disposition on the part of the company to take something for nothing. If they haven't any rights, if it should develop they have no right in this land claimed by protestant, it is their intention to purchase this land from Mr. Jones.

COMMISSIONER KULP: The witness may answer.

A We have talked some in the meetings, and we have felt that if we had no right, then Dewey Jones had a right for damages; otherwise, if we had the right, he didn't have a right for damages. That is as far as it has been talked.

MR. RAY: That is all.

CROSS EXAMINATION

BY MR. CLARK:

Q It is your intention then, not to make any effort to settle this until the Courts, - until you feel you have to?

A We didn't see where he had any basis for filing a protest against our water right. He said nothing about our

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water right. He said nothing about wanting to use that water or anything in connection with the permit, for us to have the water.

Q No; but the permit is asking for the construction upon his land, and that construction is the thing that injures him, and if you have to have this construction to use this water, it is our contention you should make some settlement with him.

A Could I ask Mr. Jones a question?

COMMISSIONER KULP: Not unlesshe wants to answer it.

A Well, it isn't material, any way.

MR. CLARK: That is all.

REDIRECT EXAMINATION

BY MR. RAY:

Q There is no disposition on the part of the company to take this land without paying for it in case it may be shown there is any damage?

A That is the attitude of the board of directors, there has been no disposition in any way to harm Mr. Jones. It was just that we think we have our legal rights in the matter. The thing we are interested in is the permit to store that water.

MR. RAY: That is all.

COMMISSIONER KULP: Any other witnesses?

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MR. RAY: That is all.

COMMISSIONER KULP: Is there anything else to come before this hearing?

MR. MERRILL: We would like to know if yourHonor wants it argued, or briefed, or submitted. We may simply say that it seems so abundantly clear that they are attempting by this method of application for permit to get around the statute which requires the construction of the work, or completion of the work to be done within five years under the original permit, and with extension of time of not to exceed five years, with which statute your Honor is thoroughly familiar.

Thirty or forty years ago they made their first application for permit. When they made any other applications for permits, we don't know. Your Honor will know that from your records. This is the only one we know of. But their whole case must of necessity be predicated upon this permit. They must start anew from this. Everything preceding that is under the bridge, and all this talk about the Federal Government giving the right and all that sort of thing is entirely eliminated by the case of Carnes versus Idaho Land Company, 34 Idaho 330, and Hurst versus Idaho Land Company, in 34, Idaho, 343. When they originally commenced the construction of this work under their first permit, they had to do it within the statutory period of time. They didn't do it. It proved to be a complete failure.

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OFFICIAL REPORTER
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They have been fooling along, apparently, making tests they say, now and again, now and again. This man has been farming his land, developing it, and during all the period of time they have not used his land until the last year or so. Now they come in, and under some old claim, - we don't know, we can't find out how, - they have been going ahead trying to do some work, but now they make an application for permit, which would, of course, date from the date of its application, and that is April 29th, 1950, and, of course, it couldn't be retroactive. It couldn't extend back, nor those rights could not be dragged out in this manner, because it is absolutely contrary to the statutes.

Our position is simply this: This permit should not be granted for several reasons:

First: They have made no arrangements whatever, - definite arrangements to pay this man, or care for him; if the permit should be granted it necessarily should be conditional upon their proper settlement with Dewey Jones;

Second: They have no right to commence work or construction until after the permit is granted. It has never yet been granted, and they have already testified to a violation of that theory of law in this matter by going ahead during the period of time the application has been pending, trying to make this construction.

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Again, they propose to raise the proposed dam in this application from fifty feet to seventy feet, an additional twenty foot raise, backing the water up further, and thus indicating and showing it is a complete new permit, and not of the type or character of the old one, and under the permit itself, or the application itself, and in view of the testimony here adduced, we think the permit should be denied, and if granted at all it must of necessity be conditional upon the protection of the property rights around there.

MR. RAY: Your Honor, the case to which counsel refers states that an abandonment of a right-ofway, - and this was a canal in this case, - granted by the Department of the Interior, that there should be a judicial proceeding brought in order to get before the Court the question of abandonment. They can't attack it in any other way. It has to be either by Act of Congress, or by judicial process. We have a later case on the same subject of Wagner vs. Jeffery, 66 Idaho, 455, which cites the Carnes case, which is in 34 Idaho, in which they state that

> "Abandonment of any right is dependent upon an intention to abandon and must be evidenced by a clear, unequivocal and decisive act of the party. 'The owner of a ditch on public lands of the United States does not forfeit the same merely by nonuser."

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POCATELLO, IDAHO

There must be a declaration of forfeiture by Act of Congress, or an appropriate judicial proceeding in order that they can enforce a forfeiture or an abandonment, and that hasn't been done in this case.

MR. RAY: We take the position that this is all beside the point; that all the Commissioner has to decide in this case is whether the right to appropriate the waters should be granted to this applicant. Now, he is not concerned as to whether they have got the right or not, because they have got the power of eminent domain, and they can't take a man's property without due compensation. The law wouldn't permit that. So I don't see that the Commissioner has that to consider at all. There is no protest here based upon a right to use the water that this company is seeking to appropriate. If there was, it would be a different matter entirely. Thenm the Commissioner, who has discretionary power about granting permits, or refusing to grant permits, or contests between people claiming the same water, or other rights he figures ought to be protected in the water, he would have the right to take those things into consideration, but as to whether they have the right to flood this land behind the dam, I don't think that enters into this at all. To start out, I don't believe it is material, but there is no disposition on the part of this company to take something for nothing. If they haven't a right there, why, then they will

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procure a right. They will compensate this protestant, and if they can't agree with him, then they will take the proper procedure to get the land.

COMMISSIONER KULP: Reading from Section 42-203 of the Idaho Codes:

"The Commissioner shall find and determine from the evidence presented what use or uses the waters sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated,--

Is there any controversy over that, - any of those items?

MR. MERRILL: Yes; because the testimony here is that they don't know whether they can keep it in that reservoir or not. There is no proof that there method of attempting to store it is going to be of any use. They said it has been leaking every since they started it, thirty-five years ago. They think they have a way of preventing the leaks now. I don't know how in the world the water can thus be attempted to be stored under those circumstances. There will never be any end to this situation.

MR. RAY: The company has spent a lot of money, your Honor, closing these leaks. Now, if it is going to lose

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all that money on a question as to whether this man has been compensated, when the question is doubtful as to whether he has any rights at all, - of course this company is trying to back that water up for the purpose of making a beneficial use of it below the dam. Plenty of land down there on which to put it, and I think they should have another chance. Now they feel they are able to close those leaks, to make a beneficial use of that water.

MR. MERRILL: It ought to be apparent to anyone, your Honor, that the additional chance they are claiming is under a new permit. It can't date back. All this matter that they talk about, that this man's title was one day later than the application for the reservoir site is past now, because they should have finished that within not to exceed ten years, and they didn't do it. And that is the end of the situation so far as the water right is concerned.

Speaking of abandonment, and of the intention to abandon, that they claim, that is the proof of it, the very fact that they are filing another application for another permit is additional proof of abandonment of the original right, else they wouldn't have filed a new application. So those things are all water under the bridge. Our position is very simply that.

COMMISSIONER KULP: Well, I am interest principally in the items listed in this section of ths tatutes.

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MR. MERRILL: Yes; that is right.

COMMISSIONER KULP: There has been no testimony offered, except by implication in the application for permit itself, as to what use this water when it is stored would be put to. Do the protestants object to any of that?

MR. MERRILL: Yes, of course, because they put that use to a damage, a damage to us, and we have had testimony as to what the damage would be.

MR. CLARK: There is no testimony that it has been put to a beneficial use at any time.

MR. RAY: We will ask permission of the Commissioner to recall the president of the company if he wants testimony as to what they are going to do with this water. He can testify to it.

COMMISSIONER KULP: I think that will be unnecessary. (Readings) "Where it appears to the satisfaction of the department that this application is not made in good faith, is made for delay or speculative purposes,--"

MR. MERRILL: We feel it is purely speculative. They have been working thirty-five years, they say, trying to stop those leaks, and still making an application in an attempt to try to stop those leaks. The testimony shows it is clearly speculative

MR. RAY: We have evidence, your Honor, that some

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POCATELLO, IDAHO

of those leaks have been closed, and that the water stayed in there longer, and we are doing work to close other leaks, with substantial insurance that will hold the water in the reservoir behind the dam.

COMMISSIONER KULP (Reading:) "That the applicant has not sufficient financial resources with which to complete the work involved therein."

MR. MERRILL: I think that is very apparent from their application there. I think that is clear.

MR. RAY: The testimony is to the effect, your Honor, that they have paid for the work done in the past, and will pay for it in the future.

COMMISSIONER KULP: (Reading:) "That such applicant has not proceeded diligently in applying the water involved therein to any beneficial use or purposes," - that is the renewal permit.

MR. MERRILL: Exactly. For thirty-five years they have been fooling along with this.

MR. RAY: We say that is immaterial. We contend that the reason we haven't been able to do it is because we haven't been able to make it hold. We have tried to do so every year.

MR. CLARK: Our point is that you have failed, so far as your governmental right, - of your first governmental

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permit is concerned, you have failed in that respect, therefore it is an original new permit, and you still have to act to protect Mr. Jones.

COMMISSIONER KULP: Do you wish to prepare briefs, or will this oral argument take the place of briefs?

MR. MERRILL: Whatever your Honor wishes we will conform to.

MR. RAY: We are willing to submit it, yourHonor.

COMMISSIONER KULP: All right. Unless there is something else that should be brought up, the hearing is closed.

MR. MERRILL: We may say this, your Honor: If you care, if there are any points upon which, when you give this consideration in examining your own files and records, as I assume you would want to do, if there are any matters upon which you would like a brief, if you will let us know we will immediately respond and render any assistance we can.

COMMISSIONER KULP: I suppose your offer would be the same on that, Mr. Ray?

MR. RAY: Yes, your Honor.

COMMISSIONER KULP: All right. That is all. The hearing is closed.

(Whereupon, the hearing was closed at 12:10 P. M., on Wednseday, August 23, 1950.)

- - -

R. D. BISTLINE
OFFICIAL REPORTER
POCATELLO, IDAHO

REPORTER'S CERTIFICATE:

- - -

STATE OF IDAHO
: ss.
County of Bannock

R. D. BISTLINE, being first duly sworn, upon oath, deposes and says:

That he is one of the duly appointed, qualified and acting Official Reporters of the Fifth Judicial District of the State of Idaho; that he reported in shorthand the evidence and proceedings adduced in the above and foregoing matter before HONORABLE MARK R. KULP, State Reclamation Engineer of the State of Idaho, on the 23rd day of August, 1950, at the hour of ten o'clock A. M., and thereafter transcribed said shorthand notes into longhand typewriting, and that the within and foregoing constitutes and is a full, true and correct copy of the transcript of said evidence and proceedings adduced at said hearing, consisting of seventy-two pages. Further affiant sayeth not.

R. D. BISTLINE

SUBSCRIBED AND SWORN TO before me this the 31st day of August, 1950.

ANNA KEEFE, Clerk District Court
Bannock County

By _____ Deputy

R. D. BISTLINE
OFFICIAL REPORTER
POCATELLO, IDAHO

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R. D. BISTLINE
OFFICIAL REPORTER
POCATELLO, IDAHO

Instrument No. 34040

Part 3

UNITED STATES PATENT
TO
MORGAN T. JONES

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:
Blackfoot 027618
Homestead Certificate No.)
Application) WHEREAS, There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Blackfoot, Idaho, whereby it appears that pursuant to the Act of Congress approved 20th May, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain", and the Acts supplemental thereto, the claim of Morgan T. Jones, has been established and duly consumated, in conformity to law for the

Southwest quarter of the Northeast quarter of Section seven in Township thirteen south of range thirty-five East of the Boise Meridian, Idaho, containing Forty acres.

according to the Official Plat of the Survey of the said land, returned to the General Land Office by the Surveyer General,

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimant the tract of land above described:

TO HAVE AND TO HOLD the said tract of land with the appurtenances thereof, unto the said claimant and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by authority of the United States.

IN TESTIMONY WHEREOF, I WOODROW WILSON President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the Twenty-second day of July, in the year of our Lord, one thousand nine hundred and Nineteen, and of the Independence of the United States the one hundred and Forty-fourth.

BY THE PRESIDENT: WOODROW WILSON
BY, E.D.Bouldin Assistant Secretary.
L.Q.C.Lamar Recorder of the General Land Office.
(Compared)

Patent No. 699670

STATE OF IDAHO,
County of Oneida,/SS

I hereby certify that this instrument was recorded at the request of Morgan T. Jones at 3:10 o'clock P.M., this 14 day of November, A.D. 1919.

J.Peter Jensen, Recorder
By D.L.Bush, Assistant.

CERTIFICATE

STATE OF IDAHO, }
COUNTY OF ONEIDA } ss.

I, John H. McAllister, Clerk of the District Court and Ex-Officio Auditor and Recorder in and for Oneida County, State of Idaho, do hereby certify that the annexed is a full, true and correct copy of ..the..Patent..from..the..United..States..of..America..to..Morgan..T..Jones.....

.....

now on file in my office, as the same appears on record in Book No. .."E".. of ..Patents..... at Page .83....., Records of Oneida County, State of Idaho.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this .....22nd..... day of August....., 1950...

.....John H. McAllister
Clerk, Ex-Officio Recorder

By .....Cleone Williams, Deputy

R-859

Admitted in Evidence
AUG 23 1950
Pltf's Exhibit
For Identification P-857

Instrument No.28253
Blacfoot, 011728.

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME-- GREETINGS:

WHEREAS, A Certificate of the Register of the Land Office at Blackfoot, Idaho, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of

The Heirs of Fredrick Thomas

has been established and duly consummated, in conformity to law, for the Lots one and two and the east half of the northwest quarter of Section seven in Township thirteen South of Range thirty-five East of the Boise Meridian, Idaho, containing one hundred five and seventy-nine-hundredths acres.

according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimants the tract of Land above described: TO HAVE AND TO HOD the said tract of land, with the appurtenances thereof unto the said claimants and to the heirs and assigns of the said claimants forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States;

IN TESTIMONY WHEREOF, I, Woodrow Wilson, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the twenty-ninth day of May in the year of our Lord one thousand nine hundred and sixteen and of the Independence of the United States the one hundred and fortieth.

By the President: Woodrow Wilson
By M.P.LeRoy , Secretary.
L.Q.C.Lamar, Recorder of the General Land Office.

Recorded: Patent No.531315.

STATE OF IDAHO,
County of Oneida, /ss
I hereby certify that this instrument was filed for record at the request of Fred W.Thomas Jr., at 3 o'clock P.M., this 31st day of August, 1916.

Jenkin Jones, Ex-officio Recorder
By Letitia Jones, Assistant.

(Compared)

CERTIFICATE

STATE OF IDAHO, }
COUNTY OF ONEIDA } ss.

I, John H. McAllister, Clerk of the District Court and Ex-Officio Auditor and Recorder in and for Oneida County, State of Idaho, do hereby certify that the annexed is a full, true and correct copy of ....the Patent from the United States of America to The Heirs of.....
....Fredrick Thomas,.....
now on file in my office, as the same appears on record in Book No."D"... of Patents.....
at Page .260....., Records of Oneida County, State of Idaho.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this .....22nd..... day of ..August....., 1950...

.....John H. McAllister....
Clerk, Ex-Officio Recorder

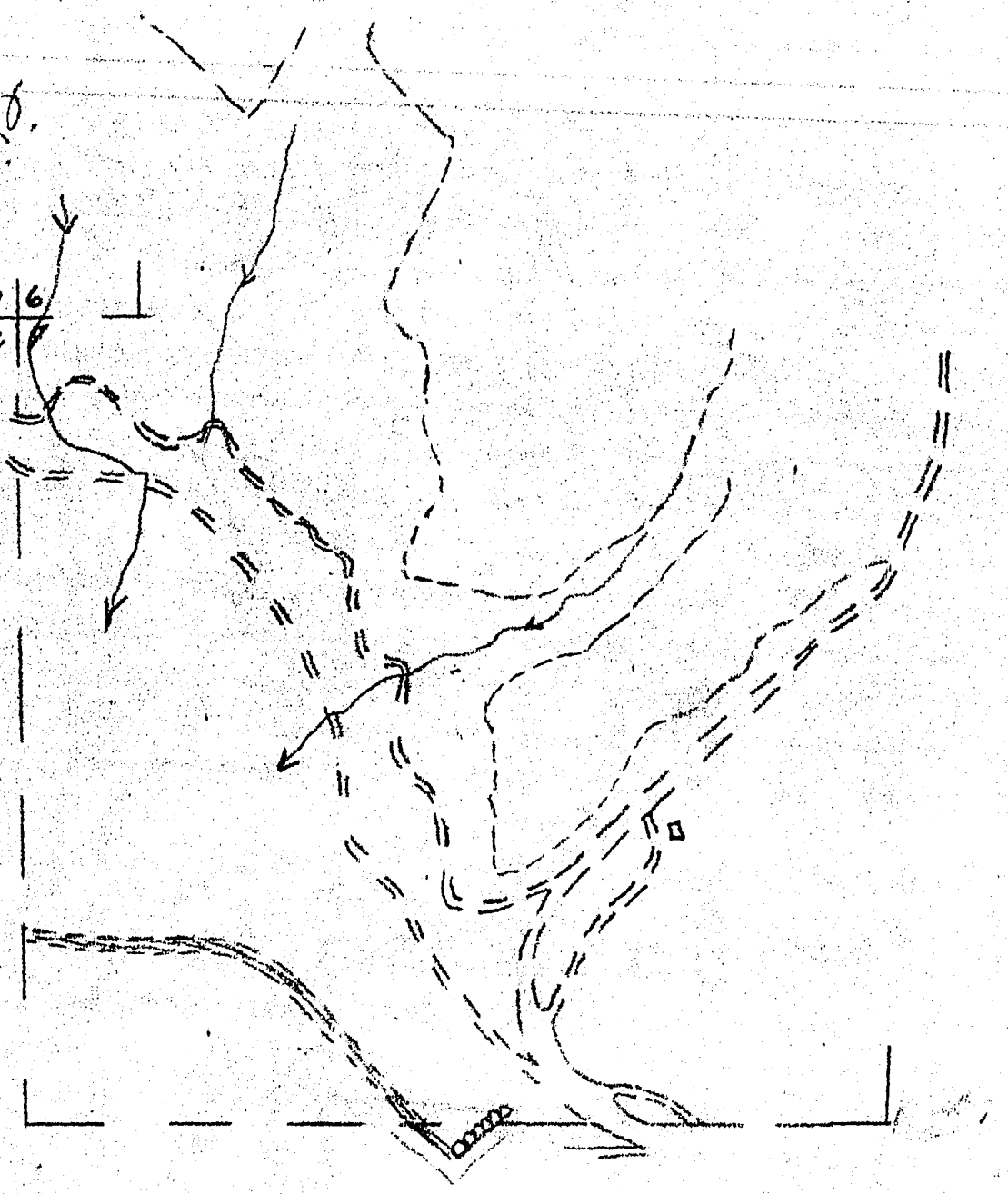
By .....Elvera Williams.....Deputy

P-857

Checks Exhibit 3 for Identification

Admitted in Evidence

Report



Scale 1" = 660'

Tp 13 S. R. 35 E.B.M.

R-857

No

ABSTRACT OF TITLE

TO

the following described land
situated in the County of Oneida,
State of Idaho, to-wit:

the Southwest quarter of the
Northwest quarter, the Northwest quarter of
the Southwest quarter, and the South half of
the Southwest quarter of Section 1;
the Northeast quarter of Section 12;
in Township 13 South, Range 34 East, Boise Meridian;
Lots 1 and 2, and the East half of
the Northwest quarter, and the Southwest quarter
of the Northeast quarter of Section 7,
in Township 13 South, Range 35 East, Boise Meridian;
Also, Beginning at the center of
Section 7, Tp. 13 S. R. 35 EBM, thence running
South 160 feet, thence South 53°00' West 450 feet,
thence North 45°00' West 530 feet, thence East
along center line of Section 7, 640 feet, to the
point of beginning, containing 3.75 acres,
Also, Beginning at the center of
Section 7, Tp. 13 S. R. 35 EBM, thencerunning
East 125 feet, thence South 225 feet, thence
West 125 feet, thence North 225 feet, to the
point of beginning

Admitted in Evidence

AUG 2 3 1950

Appl. Exhibit 4

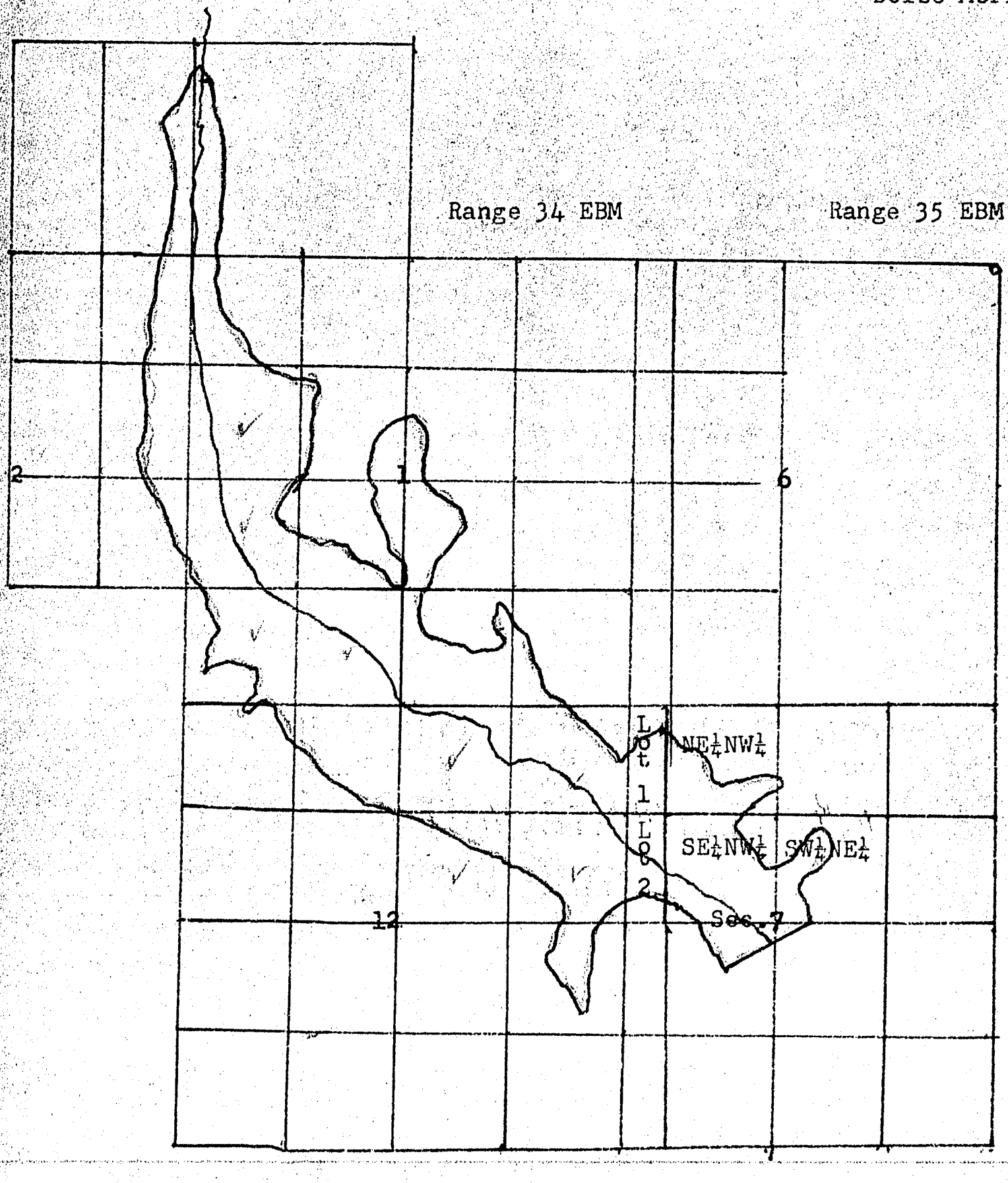
For Identification R.S.B.

Malad Abstract Company
Malad City
Idaho

NO. 96.

P-857

Plat of the property described in the foregoing Caption
Situate in Township 13 South, Range 34 and Range 35 East
Boise Meridian



Scale: 880 ft to 1 inch

R-857

Sheet No 1 Instrument No

the United States of America, Grantor

To

Morgan Williams, Grantee

PATENT

Dated July 18, 1912
Recorded August 8, 1912, Book D Patents page 256
Act May 20, 1862
Wm. H Taft, President: (Seal) Genl Land Officee

Description and remarks

the Northeast quarter of Section 12,
in Township 13 South, Range 34 East, Boise Meridian.

P-851

Sheet No 2 Instrument No

Morgan Williams and wife,
Alice Williams, Grantors

To

Malad Reservoir Company, Limited,
a corporation, Grantee

Warranty Deed

Dated August 10, 1916
Recorded August 16, 1916, Book 11 Deeds page 643
Consideration: $6400.00
Acknowledged August 10, 1916, before T. E. Ray, Notarypublic
Oneida Co. Idaho; Seal of Notqry affixed

Description and remarks

the Northeast quarter of Section 12,
Township 13 South, Range 34 East, Boise Meridian,

R-851

Sheet No 3 Instrument No

the United States of America, Grantor

To

Morgan P. Jones, Grantee

PATENT

Dated February 9, 1911
Recorded December 29, 1916, Book D Patents page 317
Act Congress May 20, 1862
Wm. H. Taft, President; (Seal) Genl Land Office

Description and remarks

the Southwest quarter of the Northwest quarter, the Northwest quarter of the Southwest quarter, and the South half of the Southwest quarter, of Section 1, in Township 13 South, Range 34 East, Boise Meridian

R-857

Sheet No 4 Instrument No

Morgan P. Jones and wife,
Margaret Jones, Grantors

To

Malad Reservoir Company, Limited,
a corporation, Grantee

Warranty Deed

Dated August 12, 1916
Recorded February 16, 1917, in 11 Deeds page 642
Consideration: $4500.00
Acknowledged August 12, 1916, before T. E. Ray, Notarypublic
Oneida Co. Idaho; Seal of Notary affixed

Description and remarks

the Southwest quarter of the Northwest quarter,
the Northwest quarter of the Southwest quarter and
the South half of the Southwest quarter, of
Section 1, in Township 13 South, Range 34 East,
Boise Meridian

R-857