

Dacota Canal Co. Water

63-123 - Right #2 uncuttable

with. Rupture to the north side
of the river. River built back. Low lies
of those for that pumping. Pumping
June 8, 1914 changed 1800" to
Dacota Canal Co. Water

1916 - Membership - Key - which
a deal that of Darned Darn Darned
the water then came they would receive
1/3rd Key would still have 2/3rd.

1934 Key - split .6875 cpi - no
claim filed & no proof the hands
was also perfect.

Capital View admits they have been
delivered & covered for only 350"
of the 667" returned by USA Key.
.6875 cpi split - no error. Key
perfect

*

What if they got me - should
we change the membership laws
on the matter Declaration stating
that they w

Shurte, Jan

From: Courtney, Andrea
Sent: Tuesday, March 11, 2008 12:30 PM
To: Spencer, Nick; Shurte, Jan
Cc: Williams, Ray; Ridgeway, Renea
Subject: 63-123D, -123F & -123G Lexington HOA/East Hills Dev.

Nick and Jan~

Here is the brief summary of this morning's PTC for these three:

1) The Parties have exchanged written direct testimony of their experts and will file the same with the Court today. They agreed to exchange written rebuttal testimony on 3/17.

2) Evidently the Parties agreed to this streamlined approach to expert testimony based on an understanding that they'd agreed upon a range of number of irrigated acres. According to John Simpson (counsel for Lex HOA), the expert report John Marshall (counsel for East Hills Dev & Lexington Hills Inc.) submitted is not consistent with that understanding. Seems that now the Parties have not agreed upon a range of # of acres. Lex Hills originally said there were 177 irrigated acres, but upon further review (and now in the expert report) has concluded there are only 170. The HOA sees the number as more 182-185 acres.

3) SMBooth (and John Simpson) want an IDWR witness to begin the trial and discuss the three rights. [Marshall said he didn't think a Dept witness was necessary.] When I asked for clarification as to whether the agent should discuss the director's reports for these three or incorporate the findings of the summary judgment decision, I didn't receive a clear response from Simpson. SMB tried to narrow the scope of the needed testimony to the following: (a) how the Dept determined the number of irrigated acres for each recommendation, (b) how the Dept determined the duty of water for each right, and (c) was IDWR looking at the rights as farm ground or subdivisions when it made the recommendations. But Simpson stated he thought all elements needed to be covered by agent testimony.

4) Nick/I need to confirm who the Dept witness is with the Parties (and for courtesy probably SMBooth, too). Simpson asked if we could make the agent available prior to the hearing to discuss. I reminded him that Jan, and all the Dept agents, are available to discuss ongoing subcases, and not just on the eve of trial. I reported that I thought Mel was the agent who did the recs originally but that it looked like Jan knew about them. I said I thought Mel was no longer with the Dept so we couldn't produce the agent who did the recs (as Simpson wanted) but we'd have an agent available who knew about them. (Jeesh!)

5) The Parties agreed to mark the exhibits at the trial instead of pre-marking so we'll just need copies of the Director's Report and possibly the claims file (Jan?). I would hope that to the extent we talk/meet with the Parties before the trial that we'd be able to better identify what, if anything else, we'd need to take with (or what specifically from the claims file...).

6) No written report is needed from the Dept.

7) The trial will be held in the upstairs courtroom of the Supreme Court building, not the downstairs conference room.

4/2/08 at 9am.

Nick, this actually wasn't one of my B63 subcases, but I can help you with it.

Andrea

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 542.

—006—

THIS IS TO CERTIFY That the FEDERAL LAND BANK is the owner

of and using a certain water right for

1.81 c.f.s. with a priority date of June 1, 1864

of the waters of the BOISE RIVER, County of Ada, State of Idaho,

decreed to the JACOB'S CANAL COMPANY, by Decree of Judge Geo. H. Ste-

art, of the Third Judicial District of the State of Idaho, in and for

the County of Canyon, in the case of:

FARMERS' COOPERATIVE DITCH CO. vs. RIVERSIDE TRUL. DIST., Ltd.

said decree bearing date of January 18, 1906, for the purpose of irri-

gating the following described lands, situate, lying and being in water

District No. 12-A in the County of Ada, State of Idaho, to wit:

S $\frac{1}{2}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22,
Township 5 North, Range 1 East, B. M.

AND THAT SAID Decree has been entered in the records of the

Department of Reclamation of the State of Idaho, in Book 5 of Decrees,

at page 410.

THAT THE SAID FEDERAL LAND BANK became the owner of said land

and said water right by the foreclosure thereof.

THAT, NOW, UPON THE APPLICATION OF THE FEDERAL LAND BANK for

a Transfer of

0.6875 c.f.s. of the waters of the Boise River

made before the Commissioner of Reclamation of the State of Idaho, and

the said Application having been granted, the right to the use of

0.6875 cubic feet per second of water

upon the lands above described is hereby ABANDONED, and the lands to be

irrigated under such right, and the right, hereby confirmed,

shall become appurtenant, by this Certificate, for irrigation and domestic purposes, are described as follows:

W¹/₂ SW¹/₄ SE, N¹/₂ SW¹/₄ SE, N¹/₂ SW¹/₄ SE, or
Section 4, Township 4 North, Range 1 East,

situate, lying and being the County of Ada, State of Idaho, said water to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to wit:

0.6875 cubic feet per second.

THAT THE WATER RIGHT, Heretofore transferred has heretofore

been diverted from the said BOISE RIVER at a point in Section 4, Township 4 North, Range 1 East, through the Farmers' Union Ditch, and thence into the pumping system of the Capital View Irrigation District, and will hereafter be diverted from the

Said Boise River at the same point but through the Farmers' Union Ditch Company's ditch only.

THAT, IN ADDITION TO THE FOREGOING, The last above named lands have appurtenant to them, nine (9) shares of water from the

Farmers' Union Ditch Company.

THAT THE RIGHT TO THE USE OF The waters aforesaid, hereby continued, is restricted to the lands or place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have Hereto set my hand and caused the seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 1st day of December, 1924.

A. J. WELLS
Commissioner of Reclamation
James H. Coffin
Director of Water Resources

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

—00—

In the Matter of the Application of
THE FEDERAL LAND BANK
}
} ORDER GRANTING TRANSFER
} For a Transfer of Water, County of Ada.

WHEREAS, On the 26th day of December, 1934, at the Department of Reclamation of the State of Idaho, the matter of the Application of the FEDERAL LAND BANK for a Transfer of Water Right came on regularly for hearing, pursuant to the publish a notice; and

WHEREAS, No protest has been filed against the said application and the evidence filed by the applicant with the said application shows that a greater duty of water would result by reason of the transfer and that no one would be injured thereby;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the said Application be and the same is HEREBY GRANTED and that a Certificate of Transfer of Water Right be issued the applicant herein, as provided by the Laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Reclamation of the State of Idaho to be affixed at Boise, Idaho, this 31st day of December, 1934.

R. W. Paris
Commissioner of Reclamation
By *Wm. H. Coffin*
Wm. H. Coffin
Director of Water Resources

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TRANSFER NO.	NAME	AMOUNT	C.F.S.	RIGHT
542	Jacobs Canal Company	20.0	63-0123	
	Federal Land Bank	0.6875	19.3125	63-0123A

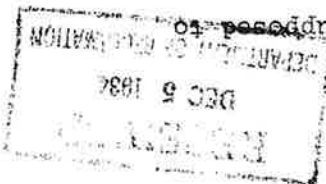
out for the first time about June first, and subsequent not at the present irrigated. However, this water right is land are watered. About forty acres of the bench land is ditch. The lower land, and about twenty acres of the bench 108 inches, supplied from the Farmers' Union Ditch Company's vation. Nominally, the Fleming land has a water right of 60 acres lies on a bench and the remainder at a lower elevation. The Fleming land, is a 200 acre tract of which refer to as the Fleming land, which for convenience we will

the irrigation season of 1934. ever since the arrangement above noted was made, including The water has been delivered to the other land

close the physical situation. sketch map on the back of the application form will dis- is proposed to transfer this water permanently. The had that portion delivered to the other land to which it the Farmers' Union Ditch Company, the Federal Land Bank done. Accordingly, some years later, by agreement with gate that part of the land since the 90-foot lift was abandoned, of course, been impossible to use the water or to irrigate a part of the land at the 90 foot elevation. It has, total right, being the water that was formerly used on The water concerned in this application is a part of the the 90 foot lift was abandoned as being too expensive. water used on the land was raised by pumping. In 1925 established 30, 60 and 90 foot elevations to which the will call it the Neal land. Originally the district Capital View Irrigation District. For convenience we be irrigated by the water in question, lies within the

The land which at the present is supposed to

S T A T E M E N T



cuts thereafter occur which reduce the amount of water to about 40% of the nominal water right. Therefore, the water sought to be transferred, can be used to the very best advantage, and probably the unirrigated portion of the Fleming lands can be watered, at least in part. The applicant has not undertaken to water this land as yet, since it is necessary to raise the water for that purpose and it is therefore desirable to procure a permanent transfer before incurring the necessary expense. So far as the diversion to the Fleming land is concerned, the water here sought to be transferred is and will be diverted at the same point on the Farmers' Union Ditch, at which the other water for that land is diverted.

In addition, the applicant is required to pay a carrying charge for this water, as well as assessments for payment of the watermaster and drainage assessments for District No. 2 of the County of Ada. The existing situation therefore, is that it is impossible for this applicant to use the water in the Capital View Irrigation District, it proposes to and can use it to the best advantage on the Fleming lands and unless the applicant can thus put it to use, its right to the water in question must eventually be lost entirely.

Additional facts to be considered are, that this applicant made a loan on the Neal land, in the Capital View Irrigation District, to which the water in question is ostensibly dedicated, many years ago, before the Capital View Irrigation District was organized. The mortgage taken as security covered the water right as well as the land. Eventually the applicant was compelled to take over this land and the water right by foreclosure of its mortgage. In the meantime, the district had been formed. Thereafter, as

already noted, pumping to the 90 foot elevation was discontinued, which discontinuance created the present situation. The organization of this district was without the knowledge or consent of the applicant. The amount of land which was intended to have been watered by the water here sought to be transferred, is 55.45 acres. The 50, 60 and 90 foot elevations on the Neal land are shown to a close approximation on the sketch map on the back of this application. The location of the Fleming land, the Farmers' Union Ditch, the Irrigation District's pumping plant, etc., are all shown on the map.

DEPARTMENT OF AGRICULTURE
DEC 5 1934

Application for Transfer of Water Right

Albert Allen
Edward Allen
Lorne Allen
Spokane, Wash.

WASHINGTON
STATE OF WASHINGTON

ss.

O. H. Junod
being first duly sworn, deposes and says:

That his name is O. H. Junod, and that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is Spokane, Washington.

That he is Vice-President and Treasurer of the Federal Land Bank of Spokane, Washington.

That he is the owner and using a certain water right, bearing date of priority of June 1, 1916, for 1.81 (90 1/2 inches) cubic feet per second of the waters of Boise River

County of Ada, State of Idaho, decreed to Jacob's Canal Company by decree of Judge Geo. H. Stewart

of the 3rd Judicial District of the State of Idaho, in and for the County of Canyon, in the case of Farmers Co-operative Ditch Co. vs. Riverside Irrigation Dist., Ltd., said decree bearing date of January 18, 1906

(or amended by writ of Habeas Corpus No. 19, bearing date of January 18, 1906)

dated by the State Engineer of the State of Idaho, for the purpose of irrigating the following described lands situate, lying and being in Water District No. 12-A, in the County of Ada, and State of Idaho, to-wit: originally used on 55.69 Acres in S 1/2 of NW 1/4 and N 1/2 of SW 1/4, Sec. 33, T. 5 North, R. 1E. Not possible to use it there now -- see attached statement, hereby made a part of this application.

and is the person for representative of the corporation to whom such right so issued, or has become the owner thereof in the following manner, i. e., by mortgage foreclosure

as per abstract of title of said water right hereto attached and made a part of this statement: That said waters were formerly diverted from said stream in the SW 1/4 of SW 1/4 of Section 34, Township 5 N, Range 1E, B. M., and con-

ducted to the above described lands through the pumping system of Capital View Irrigation Dist.

as per map herewith and of this affidavit made a part: That affiant and petitioner desires to abandon the use of 0.6875 cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Ada, and State of Idaho, to-wit:

E 1/2 of SW 1/4, W 1/2 of SW 1/4, N 1/2 of SW 1/4, and E 1/2 of SW 1/4 of SW 1/4, Sec. 4, Township 4 North, R. 1E

That his reasons for desiring to make such transfer are as follows. See statement attached hereto and by this reference made a part hereof.

Form 20.

That he intends to divert and convey said 0.6676 second feet of water to the tract of land last above described in the following manner, to-wit: By diversion from the Farmers' Union Ditch Company's canal at same point at which the existing other water right for said land is diverted.

as set forth upon the map herewith; and that no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the Commissioner of Reclamation of the State of Idaho issue to him the proper certificate authorizing such transfer, in accordance with the provisions of Section 5582 of the Idaho Compiled Statutes.

Subscribed and sworn to before me this 9th day of August, 1934.

Applicant.

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water diverted? Boise River

Where is the diversion point located? Pumping plant of Capital View Irrigation Dist.

Through what ditch is it now conducted? Farmers' Union Ditch

How much land is now irrigated by the water sought to be transferred? see statement attached

Give the description: see statement attached and map herewith.

What is the total amount of water in inches, or second feet, dedicated to said land? 907 inches

What kind of crops are being raised? Hay, grain and pasture

How much water per acre is now required to irrigate said land? 8/8 inches, no farms possible to grow the water on the land. see statement.

What will be the effect on the land now irrigated, if the use of water on it is discontinued? see statement

Give location of new point of diversion, if change is to be made. See 4-4 N-1 E

Through what ditch will it be conducted after transfer? Farmers' Union Ditch

How much water will be required per acre to irrigate the land to which this water is transferred? at least 5/8 inches

Do you claim any other water right for the land from which you seek to abandon the use of this water? see statement attached hereto.

If so, give amount, date and source.

Is there now any other water right for the land to which you seek to make this transfer? If so, give amount, date and source.

For part- 9 shares, Farmers Union Ditch Co.

Signed The Federal Land Bank of Spokane
Applicant.

BY *Officer*
Notary Public

Attest:

Dated at Paris, Idaho, this 11th day of December, 1934.

Watermaster Dist. No. 12A

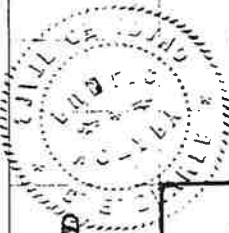
STATE OF IDAHO,
County of Blaine, ss.
I, Harry Nelson,
Watermaster of Boone River,
State of Idaho, whose postoffice address
is Boone Idaho, have read or heard read the foregoing affidavit and petition
of Chas Jones, and, of my own knowledge, believe the same to be
true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be
authorized; and I hereby endorse my approval of said petition, and request that the Commissioner of
Reclamation issue the certificate of transfer as petitioned; or ~~do not approve of the issuance of the~~
~~certificate of transfer prayed for~~ for the following reasons: Chas Jones
will not injure other watermen in
Boone River 124

My Commission expires July 15, 1928

STATE OF IDAHO, }
County of _____ } ss.

and _____

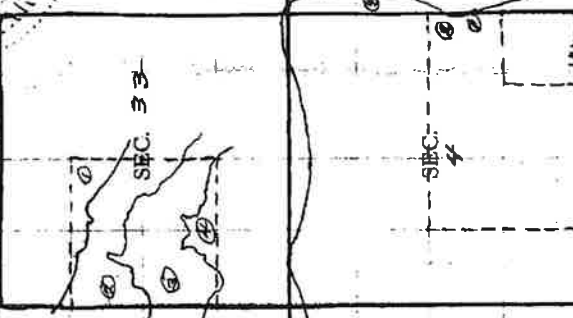
being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at _____
_____ in Water District No. _____, that he is user of water from _____
County of _____ State of Idaho; that he has read or heard read the foregoing affidavit and petition of _____ and is familiar with its allegations and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.



NEAL LAND

T. 5 N., R. 1 E.

FARMERS' UNION DITCH



FLEMING LAND

T. 4 N., R. 1 E.

- ① ABOVE ALL LIFTS - 17.53 A.
- ② 90-FOOT LIFT - 55.69 A.
- ③ 60 - " - 76.76 A.
- ④ 30 - " - 13.98 A.

⑤ PUMPING PLANT, CAPITAL VIEW IRR. DIST.

① ② ③ } POINTS OF DIVERSION, FLEMING LAND

TWP. LINE

SEC. 33

SEC. 33

SEC. 4

SEC. 4

SEC. 33

SEC. 33

SEC. 4

SEC. 4