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Eastern Shoshone & Northern Arapaho Tribes' GLOBAL NO. 10



ORDER RECORD No. 16 - STATE BOARD OF CONTROL

IN THE MATTER OF THE PETITION OF THE WESTLAND IRRIGATION DISTRICT FOR TRANSFER OF PORTIONS OF APPROPRIATIONS OF WATER FROM THREE MILE CREEK, TRIBUTARY OF ROCK CREEK, (IRRIGATING LANDS IN THE DUTTON CREEK DRAINAGE) THROUGH THE ENLARGEMENT FLEX NO. TWO DITCH UNDER PERMIT 1324 EXL., WITH PRIORITY OF FEBRUARY 10, 1901 (O.R. 3, P. 334; C. R. 10, P. 85; FR. 1842) AND THROUGH THE FLEX NO. THREE DITCH, UNDER STRUCTURAL PRIORITY OF JUNE 11, 1890 (O.R. 2, P. 344 C.R. 1, P. 17; FR. 2836) AND UNDER PERMIT 1481 EXL. WITH PRIORITY OF DECEMBER 30, 1903, THROUGH THE ENLARGEMENT FLEX NO. THREE DITCH (O.R. 4, P. 87; C.R. 35, P. 137; FR. 1282) TO CERTAIN LANDS WITHIN THE WESTLAND IRRIGATION DISTRICT; FOR CHANGE IN POINT OF DIVERSION AND MEANS OF CONVEYANCE OF SAID PORTIONS OF APPROPRIATIONS OF WATER FROM THE ENLARGEMENT FLEX NO. TWO DITCH AND FROM THE FLEX NO. THREE DITCH AND ENLARGEMENT THROUGH, TO THE CANON DITCH, THROUGH TENNIS A SYSTEM OF CANALS AND LATERALS TO LANDS WITHIN THE BOUNDARIES OF THE WESTLAND IRRIGATION DISTRICT, AND FOR AMENDED CERTIFICATES OF APPROPRIATION OF WATER THEREFOR.

IN WATER DIVISION NUMBER ONE

FINDINGS, CONCLUSIONS AND ORDER

The above entitled matter came on for hearing in the House Chambers, State Capitol Building, Cheyenne, Wyoming, upon due notice, on January 13, 14 and 15, 1964, before the Wyoming State Board of Control, the Petitioner, Westland Irrigation District appearing and being represented by William E. Jones and Jones, its attorneys, of Westland, Wyoming, the Protestants, Rock Creek Water Users Association of Carbon and Albany Counties appearing and being represented by Clarence L. Brimmer, Jr., of Brimmer and Brimmer, its attorneys, of Rawlins, Wyoming, and testimony having been offered and received and briefs filed by all parties and the Board of Control after hearing oral argument, after considering the records of the State Engineer and State Board of Control, and taking the matter under advisement and being fully informed, makes the following findings and conclusions:

1. The Board of Control has jurisdiction over the subject matter and parties, to hear, consider and act upon the Petitions for transfer of water rights, herein filed.
2. The original petition was filed herein on April 14, 1958, and a revised one on August 3, 1963. Upon consideration thereof on May 16, 1958, the original petition was referred by the Board of Control for hearing to the Superintendent of Water Division One which hearing was held in abeyance at the request of Petitioner until a consumptive use study and report thereon could be completed by Petitioner. Protests were made to the original petition on May 13, 1958, by J. S. Malsquist, Roy Sims, Lance Robinson, Alfred Munsell, Noel Hall, Bryan White, Cincle Kasahn, Jim Jankovsky, Thomas Britton and Clifford White, by their attorneys, J. Russel Armstrong, K. V. Kildean and C. A. Brimmer, Jr., together with a letter from Robert S. Low, County and Prosecuting Attorney, Carbon County, Wyoming, advising that Carbon County joins with the aforementioned. The setting of a hearing date was postponed from meeting to meeting of the Board of Control at the instance of Petitioner until its investigations could be completed and it was not until November 21, 1963, that the matter was finally referred again to the same Superintendent for the hearing held in January, 1964, aforesaid. All original protestants and any others were represented at such hearing by C. A. Brimmer, Jr.
3. Petitioner, Westland Irrigation District is the sole owner of appropriations of water and lands irrigated thereby on what is known as the Slagby Ranch, as follows:

THREE MILE CREEK, TRIBUTARY OF ROCK CREEK		DUTTON CREEK DRAINAGE	
Ditch	Priority	Acres of Land to be Transferred	Total
Ditch No. 2 Ditch	February 10, 1901, Permit 1324 Exl.	182	
Ditch No. 3 Ditch	June 11, 1890, Territorial	10	
Ditch No. 3 Ditch	December 30, 1903, Permit 1481 Exl.	33	
			225

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All of the foregoing appropriations have priorities before February 20, 1909.

4. The lands to which the above described appropriations of water are to be transferred for supplemental supply consist of 39,640.8 acres under the Tunnel Ditch, Tunnel, Canal No. One and Canal No. Two, and are described in a Decree of the District Court of Laramie County, State of Wyoming, under date of December 27, 1912, with priority of May 25, 1883, and as adjudicated under Permit 3119 Em. for beneficial use of water stored in the Wyoming Development Company No. Two Reservoir under Permit 1724, as described in the attached tabulation immediately following and marked Exhibit "A", and for direct flow supply for 3,364.8 acres having only a secondary supply under Permit No. 3119 Em., as described in a further tabulation, attached hereto immediately following and made a part of these findings as Exhibit "B":

EXHIBIT A
Detailed description of lands to be transferred to the State of Wyoming under Permit 1724 and Permit 3119 Em.

Permit	Acres	Priority	Beneficial Use	Remarks
1724	39,640.8	May 25, 1883	Beneficial use of water stored in the Wyoming Development Company No. Two Reservoir	
3119 Em.	3,364.8	Secondary	Direct flow supply	

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3. The foregoing described appropriations in the Dutton Creek Drainage furnish no return flow to the Rock Creek Drainage. The petitioner is the sole owner of the Fleck No. 2 Ditch and the part owner of the Fleck No. 3 Ditch and the consent of the other owner of the Fleck No. 3 Ditch to the proposed change accompanies the petition. The petitioner is the major owner of the Canon Ditch with sufficient carrying capacity for the water sought to be conveyed through it. There are no intervening tributaries or other sources of water supply between the present points of diversion and the proposed new point of diversion and no intervening beneficiaries except those owned by the petitioner.

6. Petitioner is authorized as a regularly organized irrigation district to carry water to lands to which the foregoing water rights are to be transferred by this Order as hereinafter provided.

7. Petitioner owns, controls and proposes to construct adequate ditches, canals and other water works necessary to carry the water in a practical fashion to the lands to which water rights hereinafter transferred will be beneficially used.

8. The amount of water to be taken at any given time will depend on the quantity of natural flow available for diversion by these water rights, and regulation on a priority basis will be necessary for proper administration of water under the conditions of transfer hereinafter imposed.

9. All facts found are generally in favor of the petitioner and against the Protestants. The Board makes the following conclusions of law:

1. The Board of Control has jurisdiction over the subject matter and parties, to hear, consider and act upon the Petition for transfer of water rights, herein filed.

2. Due and lawful notice has been given.

3. A full hearing has been afforded all parties in interest.

4. In the absence of any objection from the parties, the full Board may hear the evidence presented upon referral for hearing to the Superintendent of Division No. 1.

5. Direct flow rights to water accruing prior to February 20, 1909, the effective date of Chapter 49, Session Laws of Wyoming, 1909, now Section 41-2 Wyoming Statutes, 1957, may be transferred, if not injurious to the rights of others.

6. All changes herein granted are without loss of priority.

7. Any county tax loss as a result of changes here authorized is immaterial.

8. Beneficial use is the basis, the measure and limit of the right to use water at all times.

9. The Petition should be allowed to the extent and under the terms and conditions hereinafter ordered.

IT IS THEREFORE ORDERED THAT:

1. The petition of the Wheatland Irrigation District for transfer of certain portions of appropriations of water from Three Mile Creek, tributary of Rock Creek, to lands within the boundaries of the Wheatland Irrigation District be and is hereby allowed as hereinafter provided.

2. The petition of the Wheatland Irrigation District is hereby GRANTED subject to the condition that the granting thereof will not affect the amount of water historically available to the Ferriss Ditch, diverting water from Dutton Creek under Permit 1944, and the Cavender Reservoir, storing water from Dutton Creek under Permit 2320 Per., or the amount historically available to any other water rights from Dutton Creek not owned by the Wheatland Irrigation District.

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3. The Westland Irrigation District is hereby permitted to transfer the following portions of appropriations of water from Three Mile Creek, tributary of Rock Creek, from the following described lands:

Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)

Total appropriation of 268 acres, being reduced to 273 acres by petition simultaneously granted, of which:

18 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 10 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 40 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 40 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 8 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 25 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 40 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~
 113 Ac. ~~Enl. Flack No. 2 Ditch, Permit 1224 Enl., Priority of February 10, 1905 (O.R. 3, P. 136; C.R. 10, P. 89; Pr. 8882)~~

91 acres attaches to District owned lands irrigated in the Rock Creek Drainage and

Flack No. 3 Ditch, Territorial Priority of June 11, 1890 (O.R. 2, P. 344; C.R. 1, P. 17; Pr. 8336)

Total appropriation of 20 acres, of which:

10 Ac. ~~Enl. Flack No. 3 Ditch, Permit 1481 Enl., Priority of December 30, 1905 (O.R. 4, P. 672; C.R. 32, P. 127; Pr. 12542)~~
 10 acres attaches to District owned lands in the Dutton Creek Drainage and

Enlargement Flack No. 3 Ditch, Permit 1481 Enl., Priority of December 30, 1905 (O.R. 4, P. 672; C.R. 32, P. 127; Pr. 12542)

Total appropriation of 236 acres, of which:

20 Ac. ~~Enl. Flack No. 3 Ditch, Permit 1481 Enl., Priority of December 30, 1905 (O.R. 4, P. 672; C.R. 32, P. 127; Pr. 12542)~~
 3 Ac. ~~Enl. Flack No. 3 Ditch, Permit 1481 Enl., Priority of December 30, 1905 (O.R. 4, P. 672; C.R. 32, P. 127; Pr. 12542)~~
 113 Ac. ~~Enl. Flack No. 3 Ditch, Permit 1481 Enl., Priority of December 30, 1905 (O.R. 4, P. 672; C.R. 32, P. 127; Pr. 12542)~~

19 acres attaches to District owned lands in the Rock Creek Drainage and

114 acres to remain in the original Certificate of Appropriation;

4. The lands to which the above described appropriations of water are to be transferred for supplemental supply consist of 29,640.8 acres under the Tunnel Ditch, Tunnel, Canal No. One and Canal No. Two, and are described in a Decree of the District Court of Laraine County, State of Wyoming, under date of December 27, 1912, with priority of May 23, 1883, and as adjudicated under Permit 3119 Enl. for beneficial use and for direct flow supply for 7,364.9 acres having only a secondary supply under Permit No. 2319 Enl., as described in the preceding attached tabulation marked Exhibit "A", and made a part of these findings as Exhibit "B".

5. The Westland Irrigation District be permitted to change the point of diversion and means of conveyance of the hereinbefore portions of appropriations of water from Three Mile Creek, from the Flack No. 3 Ditch with point of diversion in the NW¹/₄ of Section 4, Township 18 North, Range 78 West, and from the Flack No. 3 Ditch and enlargement with point of diversion in the SW¹/₄ of Section 4, Township 18 North, Range 78 West, to the Canon Ditch diverting water from the same source at a point South 61° 13' East 4336 feet from the Northwest Corner of Section 33, Township 18 North, Range 78 West;

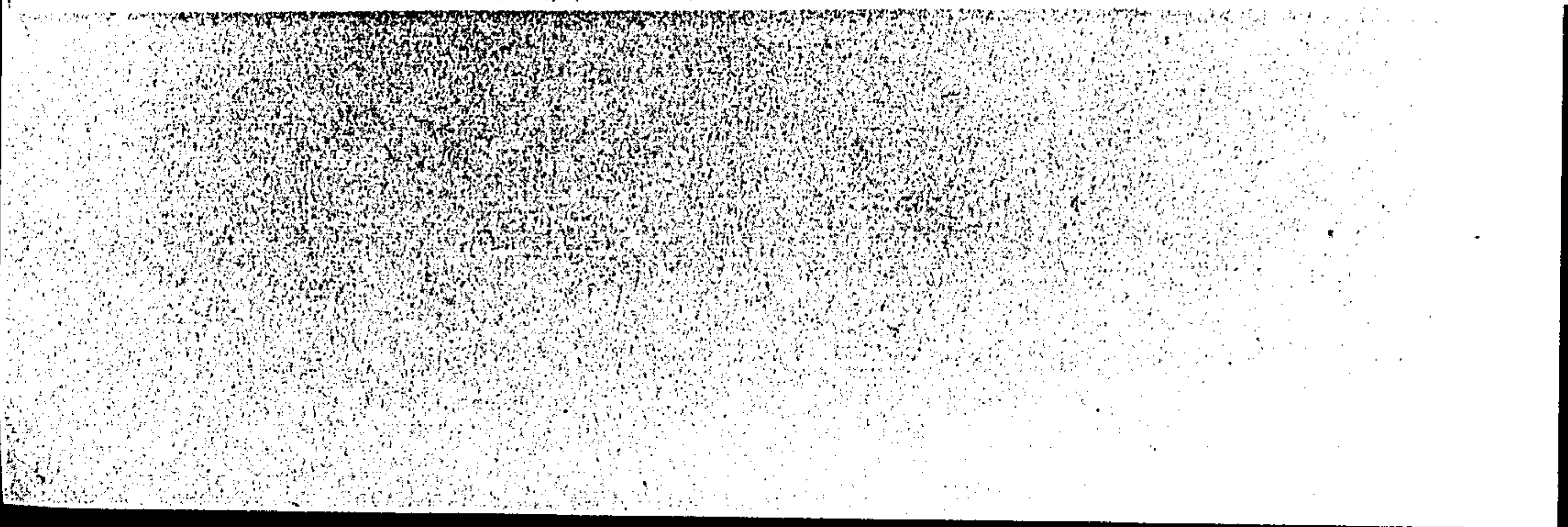
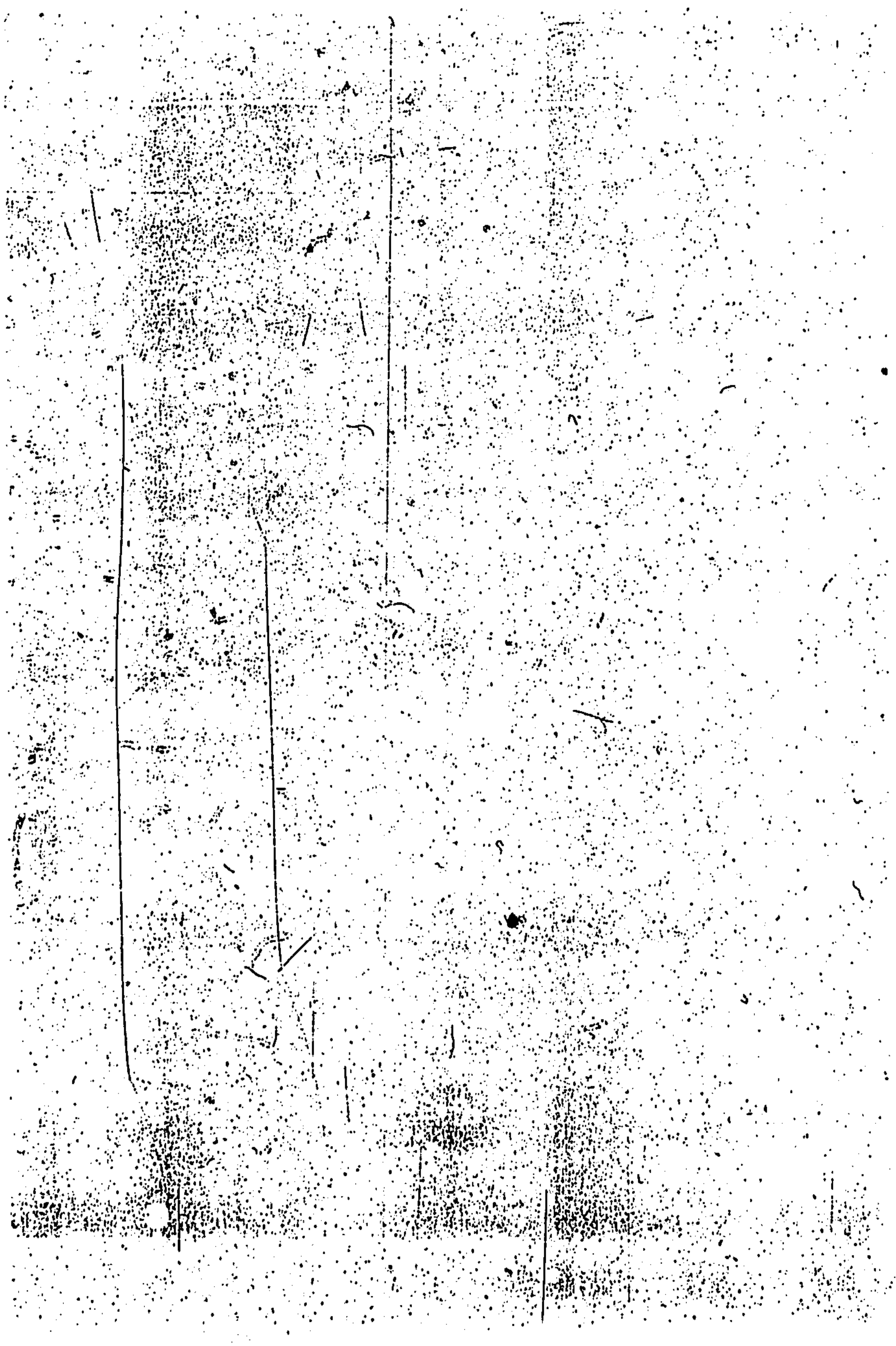
6. The Canon Ditch will be used as the means of conveyance for appropriations from Three Mile Creek to the Dutton Creek area and thence into the Dutton Creek Channel to the point of diversion of the Dutton Creek-Laraine River Ditch with point of diversion located South 41° 04' East 606 feet from the North Quarter Section Corner of Section 13, Township 18 North, Range 78 West and being located in the NW¹/₄ of said Section 13, thence

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through said ditch to the Laramie River and down said river to the distribution system of the Westland Irrigation District.

7. Amended Certificates of Appropriation of Water be issued to the Westland Irrigation District, as successor to the original appropriators, in lieu of those portions of Certificates of Appropriation now of record, to correctly describe the appropriations of water covered by this Order in accordance with the following tabulations:

1000
900
800
700
600
500
400
300
200
100
0



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Order No.	Fund No.	Project No.	CLASS OF DITCH	CLASS OF APPROPRIATION	POST OFFICE	DATE OF APPROPRIATION	AMOUNT	DESCRIPTION OF LAND
INDIAN MILE CREEK, TRIBUTARY OF ROCK CREEK								
* 66	413	3852	1324 E. Eul. Flack No. 2 (Changed to Canon Ditch)	Wheatland Irrigation District (As successor to V. C. Montgomery and Alva Burns, the original appropriator)	Wheatland, Wyo.	February 10, 1908 Irr., Sth., Dom.	2.60	3364.9* This appropriation is changed from 122 acres of land Original described as: Supply 19 Ac. N1/2S1, 10 Ac. S1/2S1, 40 Ac. S1/2E1, Sec. 33, 38&40.8* Twp. 19 N., Range 78 W., Supply 40 Ac. N1/2E1, 8 Ac. N1/2E2, 25 Ac. S1/2E1, 40 Ac. S1/2E2, Sec. 4, Twp. 19 N., Range 78 W. 1/2 Bottom Ch. Drainage for use on lands described in the tabulations referred to herein as Exhibits "A" and "B" attached to the petition for transfer of appropriations, and copies of which are attached to this Amended Certificate. An additional Amended Certificate for 91 acres of this appropriation, which lie in the Rock Creek Drainage, is included in the Order of the State Board of Control for change of lands which lie in the Rock Creek Drainage, and of record in Certificate Record 66, Page 463.
* 66	414	2636	Territorial Flack No. 3 (Changed to Canon Ditch)	Wheatland Irrigation District (As successor to Dury Flack, the original appropriator)	Wheatland, Wyo.	June 11, 1890 Irr.	0.14	3364.9** This appropriation is changed from 12 acres of land Original described as: Supply 10 Ac. N1/2E1, Sec. 4, Twp. 18 N., Range 78 W., 38&40.8* which lies in the Dutton Creek Drainage, for use on lands described in the tabulations referred to herein as Exhibits "A" and "B" attached to the petition for transfer of appropriations, and copies of which are attached to this Amended Certificate. An additional Amended Certificate for 10 acres of this appropriation, which lie in the Rock Creek Drainage, is included in the Order of the State Board of Control for change of lands which lie in the Rock Creek Drainage, and of record in Certificate Record 66, Page 466.
* 66	415	12342	1401 E. Eul. Flack No. 3 (Changed to Canon Ditch)	Wheatland Irrigation District (As successor to Anna B. McCormick, the original appropriator)	Wheatland, Wyo.	December 30, 1903 Irr.	0.47	3364.9* This appropriation is changed from 33 acres of land Original described as: Supply 30 Ac. N1/2E1, 3 Ac. N1/2E2, Sec. 34, Twp. 19 N., Range 78 W., which lies in the Dutton Creek Drainage, for use on lands described in the tabulations referred to herein as Exhibits "A" and "B" attached to the petition for transfer of appropriations, and copies of which are attached to this Amended Certificate. An additional Amended Certificate for the irrigation of 49 acres of land, which lie in the Rock Creek Drainage, is included in the Order of the State Board of Control for change of lands which lie in the Rock Creek Drainage, and is of record in Certificate Record 67, Page 407 and the remaining 134 acres of the 246-acre appropriation, originally adjudicated to Anna B. McCormick by the Order of record in Order Record 4, Page 671, shall remain in the Certificate of Appropriation of record in Certificate Record 39, Page 137.
*Lands on which this, together with other transferred appropriations, are to be used.								

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BOOK AS CHECKED, COUNTY OF LANARK, STATE OF MONTANA, THIS 15TH DAY OF NOVEMBER, 1944.

STATE BOARD OF CONTROL

David L. Currier
DAVID L. CURRIER, PRESIDENT

ATTEND:

Robert L. Schmitt
ROBERT L. SCHMITT, CLERK

RECORDED: January 15, 1945