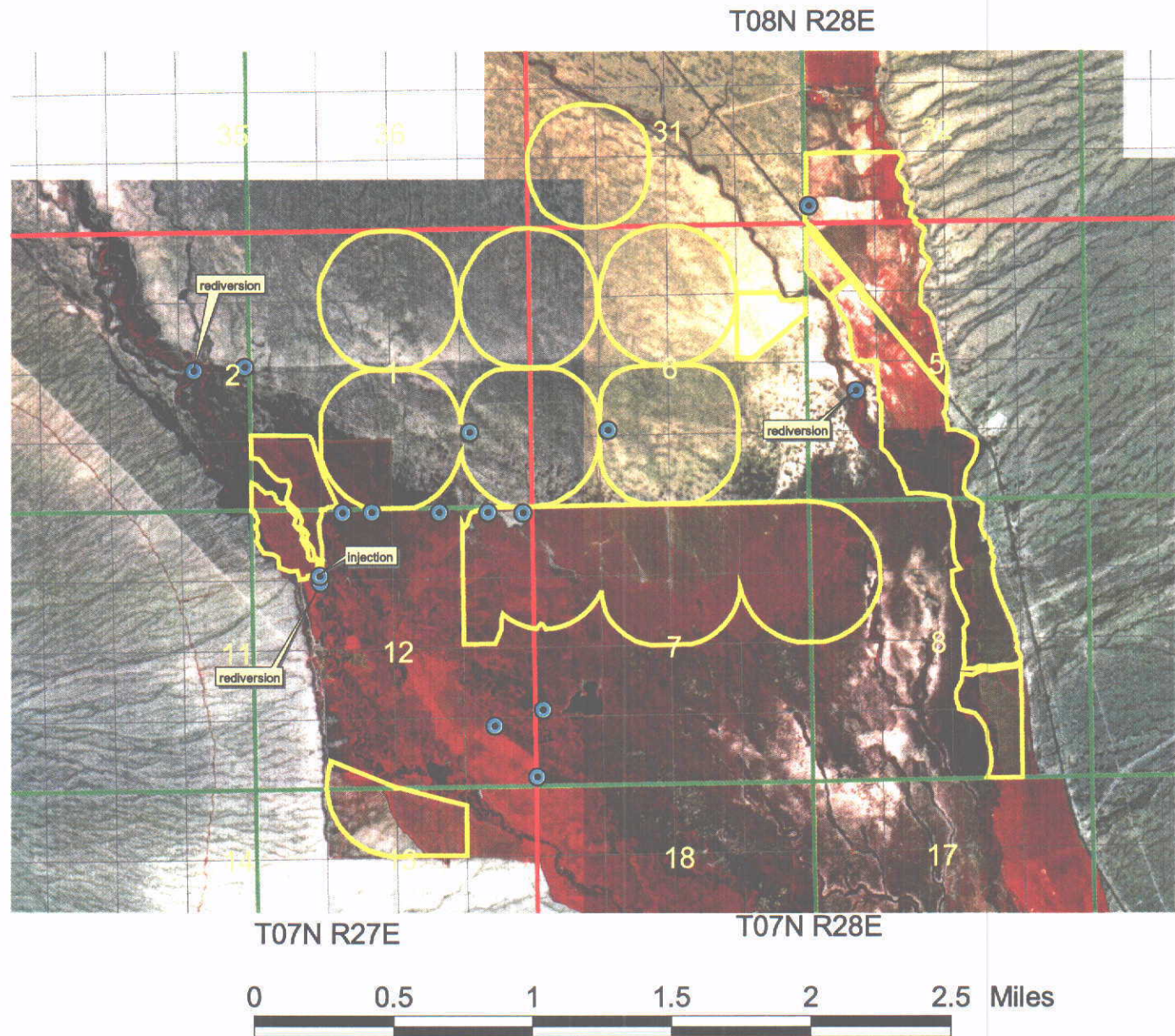
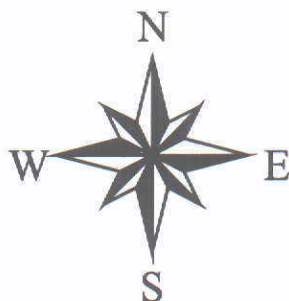


DEPARTMENT OF WATER RESOURCES

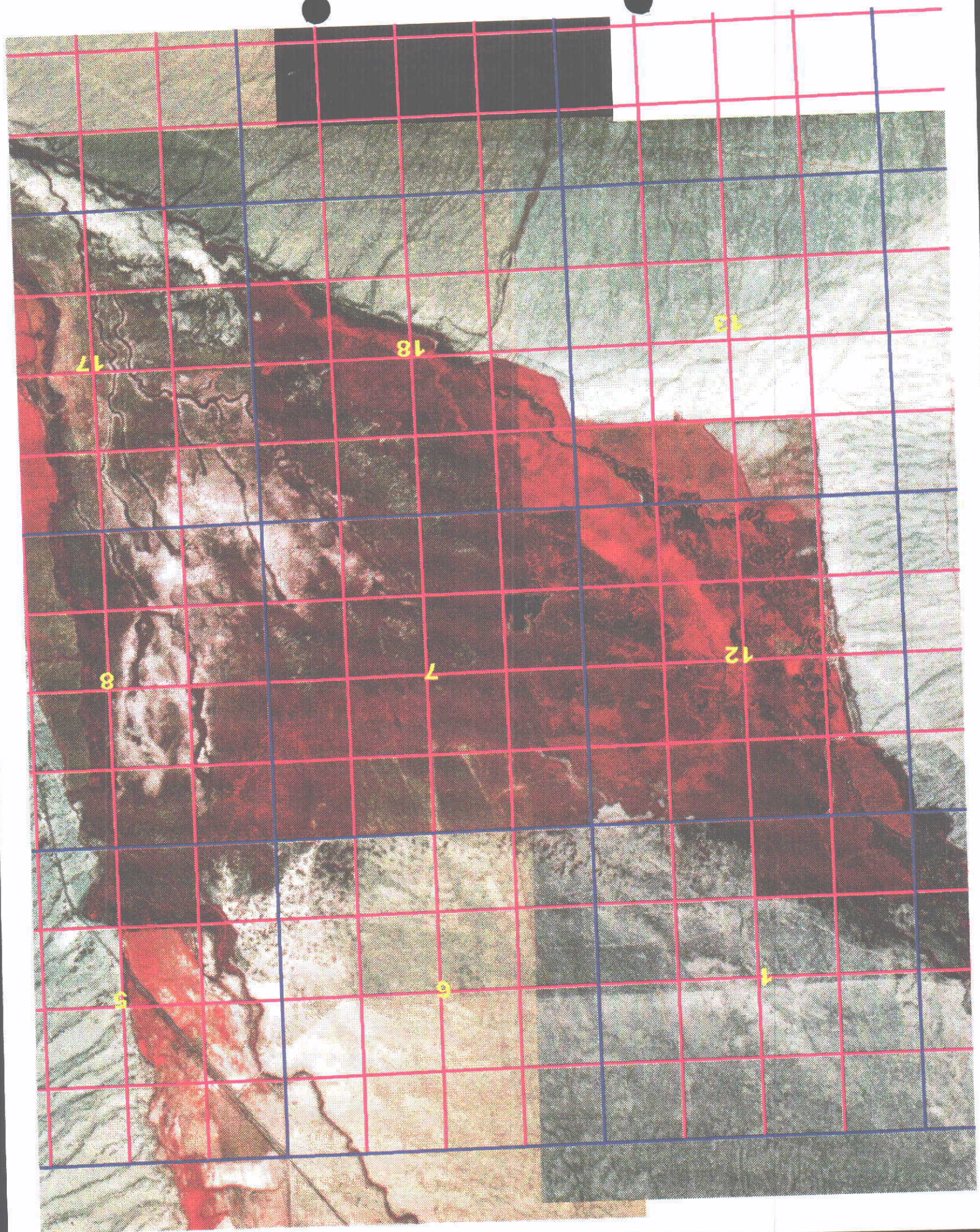
Claim No.: 33-2057, 33-2083,
33-2086, 33-2091, and 33-7018



- Point of diversion.shp
- Place of use.shp
- Township/Range
- Sections
- QQ



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: July 2004



Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 1198

RECEIVED

DEC 1 2 2003

Department of Water Resources

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 35976

A. Subcase 33-2091

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO
FILE LATE OBJECTION**

Objections to the Director's Amended Recommendations for water rights numbers 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2086A, 33-2086B, 33-2090, 33-2091, and 33-7018, were due, in accordance with the Special Master's Amended Trial Scheduling Order of July 22, 2003, on October 17, 2003. Because of the mistake, inadvertence or neglect of counsel for the claimant, Sage Willow, Inc., the objections were not filed until October 27, 2003. The "Motion for Leave to File Late Objection" in this and in each of the referenced subcases calls upon the court's discretion under ICRP 55(c), and is based upon the grounds set forth in ICRP 60(b), which states, in part;

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ...that motion shall be made within a reasonable time, and for reasons (1), (2), (3) and (6) not more than six (6) months after the judgment, order, or proceeding was entered or taken. ..."

SCANNED

DEC 15 2003

Sage Willow, Inc. first filed motions in each of the referenced subcases with the late objections seeking an extension of time in which to file the late objections. The court denied these motions, but specifically invited the filing of motions for leave to file late objections. These motions for leave to file late objections, with the accompanying affidavits and this memorandum will be filed about December 15, 2003. That is still several months short of the six (6) month time period mentioned in Rule 60(b) as a reasonable time for such a motion.

The case law construing this rule (60(b)) seems to be consistent that the decision to grant relief is committed to the sound discretion of the trial court. *Sherwood and Roberts, Inc. v Riplinger*, 103 Idaho 535, 650 P.2d 677 (1982); *Catledge v. Transport Tire Co.*, 107 Idaho 602, 691 P.2d 1217 (1984). In those and additional cases (*Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979) and *Baldwin v. Baldwin*, 114 Idaho 525, 757 P.2d 1244 (Ct. App.1988).), the Idaho Supreme Court and Appellate Court have indicated that under Rule 60(b)(1) there is a tempering policy favoring relief in doubtful cases, but especially if the moving party pleads facts which, if established, would constitute a meritorious defense to the entry of default.

As the Special Master is aware, the dispute between Sage Willow, Inc., and the protestants has been of long duration, having commenced with the filing of seven Applications for Transfer by Sage Willow, Inc., in 1994. The matter has been before the Idaho Supreme Court twice. The most recent opinion of that court with respect to the issue of "resumption of use" is dated April 10, 2003, (*Sage Willow, Inc. v. IDWR, James May, Mays Land and Livestock, Blaine County Canal Co.*, 2003 Idaho Lexis 62 (Idaho April 10, 2003)) in which the Idaho Supreme Court held that Idaho Department of Water Resources incorrectly applied the resumption of use defense raised by Sage Willow to the Idaho Department of Water Resource order of forfeiture of all of certain Sage Willow rights and partial forfeiture of others, and vacated the department's order.

We understand the undisputed facts relied upon by the Supreme Court in its decision include the following: (1) the water rights originally appurtenant to the properties purchased by Sage Willow authorize the irrigation of a total of 2,383 acres, (2) for approximately 20 years before acquisition of the land by Sage Willow, the total irrigated acreage did not exceed 1,412 acres and (3) after purchasing the properties in 1989, Sage Willow began increasing the number of acres irrigated,

culminating in the irrigation of 2,390 acres in 1993, the irrigation season prior to the filing of the seven Applications for Transfer.

The Supreme Court concluded that resumption of use is still a valid defense to forfeiture of a water right unless junior appropriators would be harmed by the senior's resumption because the senior resumed using the same water which the juniors had been using and relying upon during the forfeiture period. In other words, the resumption of use by the senior is appropriate and effective unless it injures the water rights of the juniors. The Supreme Court pointed out the Idaho Department of Water Resources had made no finding that: (1) Any junior appropriator used the water which could otherwise have been used by the senior during the period of non-use by the senior, (2) during the period of non-use by the senior, any third party had applied for and obtained a right to the use of the very water not being used by the senior, or (3) the two water courses involved in this case were over appropriated and because of continued non-use of the senior's rights by Sage Willow and its predecessors, junior appropriators received water they would otherwise not have received.

From our understanding of the record before Idaho Department of Water Resources in the transfer proceedings, there was not sufficient evidence from which the department could have made such findings. We therefore requested Dr. Charles E. Brockway, a noted expert on such matters, to examine the evidence and prepare testimony relevant to the issue of use of the water available to fill the Sage Willow water rights during the approximately 20 year period of non-use or partial non-use prior to full resumption in 1993.

Dr. Brockway's report is filed with this memorandum, in affidavit form, in support of Sage Willow's motion. It is our understanding that he would testify essentially as follows as to the items for which there were no findings by the Idaho Department of Water Resources: Resumption of use of water to irrigate 2,390 acres instead of 1,412 acres did result in an additional depletion from the surface or groundwater system in the Little Lost River Basin of an increased amount of water transpired by the plants irrigated on 978 extra acres. Considering water requirements at this location for the type of crops grown (pasture grass and alfalfa), as well as average irrigation season precipitation, Dr. Brockway estimated that consumptive irrigation requirement to be 2.5 acre feet per acre or a total of 2,464 acre feet. He next analyzed where that extra water came from and concluded that whether diverted directly from a well or diverted from a surface stream on an exchange basis

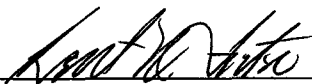
so that the stream water is replaced with groundwater, the source of all this 2,464 acre feet diverted and used during the irrigation season is groundwater. Next, he analyzed where and when the effects of such additional depletion would be realized. He concluded that because of the geology of the basin at this location, there is a narrowing of the impervious bedrock materials near the southern end of the Sage Willow land forcing the groundwater to the surface, so that virtually all of the surface and groundwater join again in the river from this narrowing approximately down to the Blaine diversion. Consequently almost all of the impact from the extra water use is expressed in the Little Lost River itself. However, there is a significant time lag between the removal of the water from the ground on or near the upper portion of the ranch where it is applied to irrigation, and the time when the river flows begin to become reduced as a result of those diversions. Dr. Brockway estimates the effect will begin to be reflected in reduced flow in the river about 4.37 months after the diversion and use, and then will extend through the fall and winter following the irrigation season diversions. The amount of reduction that will show up in the river below the Sage Willow land during the irrigation season will be about twenty-four percent (24%) of the total diverted, or some 584.7 acre feet. This 584.7 acre feet will convert to a depletion of up to 5.97 cubic feet per second in the flow of the Little Lost River in the affected reach between the end of August and the end of October each irrigation season. The measuring devices in the river, such as that at the Blaine diversion where the Blaine Canal Company receives its surface water diversions are generally accurate to plus or minus five to ten percent (5% to 10%). The average flow of the Little Lost River at this location during August, September and October of each year is approximately 61.6 cfs. 5.97 cfs is slightly less than ten percent (10%) of this amount, and consequently difficult to measure accurately. Although the theoretical depletion would actually result in reductions between the lower end of the Sage Willow Ranch and the Blaine diversion, as a practical matter, the depletion would be difficult for a water master to measure. It is therefore impossible to demonstrate by any measurement evidence that junior water users ever relied upon or used extra water that would have been available during the period of non-use of the Sage Willow water rights, or that the junior appropriators were materially or measurably injured by Sage Willow's resumption of the use of water under its groundwater rights.

In conclusion, we submit that the evidence which will be presented by Dr. Brockway would be substantial and provide a meritorious defense under the doctrine of resumption of use as recently

articulated by the Idaho Supreme Court to the findings of forfeiture and partial forfeiture by the Idaho Department of Water Resources in the transfer proceedings. We request the Special Master to grant our motions for leave to file the late claims so that this meritorious defense might be presented at the trial herein.

RESPECTFULLY SUBMITTED this 12th day of December, 2003.

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.



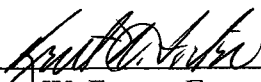
Kent W. Foster, Esq.
Attorneys for Sage Willow, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of December, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
2. One copy to the claimant of the water right at the following address:
Name: Sage Willow, Inc.
c/o Holden, Kidwell, Hahn & Crapo, PLLC
330 Shoup Ave., Third Floor
P.O. Box 50130
Idaho Falls, ID 83405-0130
3. Copies to:

IDWR Document Depository P.O. Box 83720 Boise, ID 83720-0098	Michael C. Creamer Givens Pursley, LLP P.O. Box 2720 Boise, ID 83701-2720
Chief, Natural Resources Division Office of the Attorney General State of Idaho P.O. Box 44449 Boise, ID 83711-4449	
United States Department of Justice Environmental and Natural Resource Division 550 West Fort Street, MSC 033 Boise, ID 83724	



Kent W. Foster, Esq.

2091
COPY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Water Rights: BASIN 33 (SEE
ATTACHED LIST)

Case No. 39576)

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

IDWR has completed the following Administrative proceeding:

☐ Address change

☐ Substitution of Party

☒ I.C. § 42-222 transfer SAGEWILLOW (TRX 4221 - 4227)

☒ point of diversion ☒ place of use

☐ period of use ☐ nature of use

☐ split of water right ☐ change in ownership

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: July 9, 2004

Ernest Carlson
Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on July 9, 2004, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls ID 83303-2707

2. One copy to:

Claimant/Seller for Substitution of Party or attorney of record:
SAGEWILLOW INC
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405-0130

3. One copy to:

Claimant/Purchaser for Substitution of Party, or attorney of record:
N/A

4. One copy to:

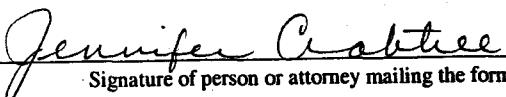
Each party in the subcase, or attorney of record
BLAINE COUNTY CANAL CO
MAYS LAND & LIVESTOCK
C/O MICHAEL CREAMER
GIVENS PURSLEY LAW OFFICE
PO BOX 2720
BOISE ID 83701-2720

5. One copy each to:

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449

6. One Copy to:

United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724



Signature of person or attorney mailing the form

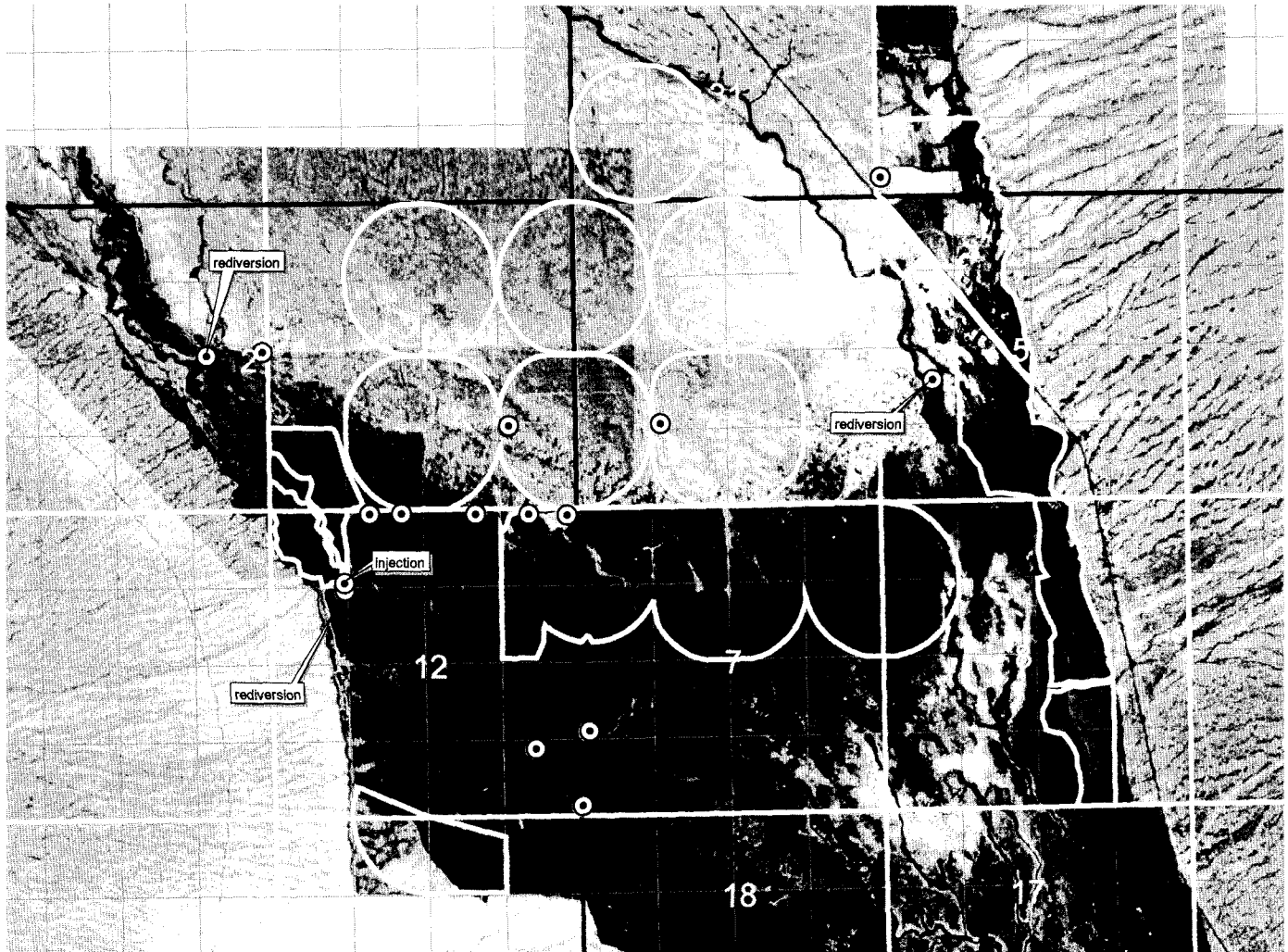
SAGE WILLOW WATER RIGHTS

33-69
33-70
33-71
33-72
33-73
33-74
33-76
33-78
33-79
33-80
33-81
33-82
33-2007
33-2008
33-2057
33-2083
33-2086
33-2090
33-2091
33-2133
33-7018

DEPARTMENT OF WATER RESOURCES

Claim No.: 33-2057, 33-2083,
33-2086, 33-2091, and 33-7018

T08N R28E

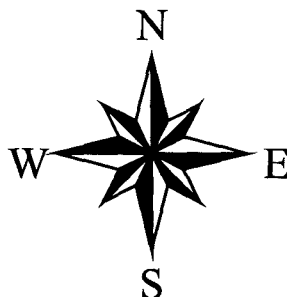


T07N R27E

T07N R28E

0 0.5 1 1.5 2 2.5 Miles

- ⊙ Point of diversion.shp
Place of use.shp
- Township/Range
Sections
- QQ



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: July 2004

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 33-2091

NAME AND ADDRESS:

SAGEWILLOW INC
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405-0130

SOURCE:

Source:
GROUND WATER

Tributary:

Point of injection into Little Lost River. Point of redirection from Little Lost River and Big Spring Creek.

QUANTITY:

0.990 CFS

255.500 AFY

Use of the rights listed below is limited to a total combined diversion rate of 35.19 cfs and to a total combined annual diversion volume of 6356.0 af. Combined Right Nos.: 33-2057, 33-2083, 33-2086, 33-2091, and 33-7018

Use of the rights listed below is limited to a total combined diversion rate of 67.19 CFS. Combined Right Nos.: 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091 and 33-7018.

PRIORITY DATE:

01/22/1960

POINT OF DIVERSION:

T07N R27E S1 SWNESE	Within BUTTE County
T07N R27E S2 SWSENE Rediversion	Within BUTTE County
T07N R27E S2 SESENE	Within BUTTE County
T07N R27E S12 NENENE	Within BUTTE County
T07N R27E S12 NWNENE	Within BUTTE County
T07N R27E S12 NENWNE	Within BUTTE County
T07N R27E S12 NENENW	Within BUTTE County
T07N R27E S12 NWNENW	Within BUTTE County
T07N R27E S12 SENWNW Injection	Within BUTTE County
T07N R27E S12 NWSESE	Within BUTTE County
T07N R28E S5 NENWSW Rediversion	Within BUTTE County
T07N R28E S6 SWNESW	Within BUTTE County

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T07N R28E S7 SWNSW Lot 3	Within BUTTE County
T07N R28E S7 SWSWSW Lot 4	Within BUTTE County
T08N R28E S32 NWNWSW	Within BUTTE County
T08N R28E S32 SWSWSW	Within BUTTE County

PURPOSE AND
PERIOD OF USE:

Purpose of use	Period of use:	Quantity:
IRRIGATION	04/15 10/15	0.990 CFS 255.50 AFY

PLACE OF USE:

IRRIGATION	within BUTTE County
T07N R27E S01 NENE Lot 1 31.0	
T07N R27E S01 NWNE Lot 2 31.0	
T07N R27E S01 SWNE 32.0	
T07N R27E S01 SENE 32.0	
<u>T07N R27E S01 NENW Lot 3 32.0</u>	~~T07N R27E S01 NENW Lot 3 31.0~~
T07N R27E S01 SENW 32.0	
T07N R27E S01 NESW 35.0	
<u>T07N R27E S01 NWSW 2.7</u>	~~T07N R27E S01 NWSW 2.6~~
T07N R27E S01 SWSW 32.0	
T07N R27E S01 SESW 36.0	
T07N R27E S01 NESE 36.0	
T07N R27E S01 NWSE 35.0	
<u>T07N R27E S01 SWSE 33.0</u>	~~T07N R27E S01 SWSE 32.0~~
<u>T07N R27E S01 SESE 34.0</u>	~~T07N R27E S01 SESE 33.0~~
T07N R27E S12 NENE 39.0	
T07N R27E S12 SENE 32.0	
<u>T07N R27E S12 NWNW 27.0</u>	~~T07N R27E S12 NWNW 26.0~~
T07N R27E S12 SESW 8.6	
T07N R27E S13 NWNE 34.0	
T07N R27E S13 NENW 30.0	
T07N R28E S05 NENW Lot 3 27.0	
<u>T07N R28E S05 NWNW Lot 4 33.0</u>	~~T07N R28E S05 NWNW Lot 4 32.0~~
<u>T07N R28E S05 SWNW 17.0</u>	~~T07N R28E S05 SWNW 18.0~~
T07N R28E S05 SENW 31.0	
T07N R28E S05 NESW 38.0	
	~~T07N R28E S05 NWSW 1.5~~
<u>T07N R28E S05 SESW 30.0</u>	~~T07N R28E S05 SESW 25.0~~
T07N R28E S05 SWSE 12.0	
T07N R28E S06 NWNE Lot 2 31.0	
T07N R28E S06 SWNE 32.0	
T07N R28E S06 SENE 26.0	

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T07N R28E S06 NENW Lot 3 31.0
T07N R28E S06 NWNW Lot 4 31.0
T07N R28E S06 SWNW Lot 5 32.0
T07N R28E S06 SENW 32.0
T07N R28E S06 NESW 37.0
T07N R28E S06 NWSW Lot 6 34.0
T07N R28E S06 SWSW Lot 7 31.0
T07N R28E S06 SESW 35.0

T07N R28E S06 NWSE 36.0
T07N R28E S06 SWSE 34.0

T07N R28E S07 NENE 40.0
T07N R28E S07 NWNE 40.0
T07N R28E S07 SWNE 34.0
T07N R28E S07 SENE 32.0
T07N R28E S07 NENW 40.0
T07N R28E S07 NWNW Lot 1 39.0
T07N R28E S07 SWNW Lot 2 24.0
T07N R28E S07 SENW 35.0
T07N R28E S08 NWNE 19.0
T07N R28E S08 SWNE 25.0
T07N R28E S08 NWNW 31.0
T07N R28E S08 SWNW 32.0
T07N R28E S08 NWSE 32.0
T07N R28E S08 SWSE 21.0
T08N R28E S31 NESW 18.0
T08N R28E S31 NWSW Lot 3 24.0
T08N R28E S31 SWSW Lot 4 34.0
T08N R28E S31 SESW 25.0
T08N R28E S32 SWSW 39.0
T08N R28E S32 SESW 18.0

1816.3 ACRES TOTAL

~~T07N R28E S06 NENW Lot 3 32.0~~
~~T07N R28E S06 NWNW Lot 4 33.0~~

~~T07N R28E S06 NESE 0.7~~
~~T07N R28E S06 NWSE 35.0~~

~~T07N R28E S06 SESE 0.6~~
~~T07N R28E S07 NENE 39.0~~

~~T08N R28E S31 NESW 19.0~~
~~T08N R28E S31 NWSW Lot 3 22.0~~
~~T08N R28E S31 SWSW Lot 4 35.0~~
~~T08N R28E S31 SESW 30.0~~

~~1816 ACRES TOTAL~~

Use of the rights listed below is limited to the irrigation of a combined total of 1816.3 acres in a single irrigation season. Combined Right Nos.: 33-2057, 33-2083, 33-2086, 33-2091, and 33-7018.

Use of the rights listed below is limited to the irrigation of a combined total of 2096 acres in a single irrigation season. The 2096 acres are comprised of 1816 acres irrigated by ground water and 655 acres irrigated by surface water sources that overlap 375 of the ground water acres. Combined Right Nos.: 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091 and 33-7018.

Use of the rights listed below is limited to the irrigation of a combined total of 3026 acres in a single irrigation season. Combined Right Nos.: 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091, 33-2133 and 33-7018.

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

Rights 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81 and 33-82 overlap 268 acres within the 1483 acres authorized under Rights 33-2057 and 33-2083; and overlap 382 acres within the 1436.1 acre place of use described under Right 33-2133.

This right is limited to the irrigation of 73.0 acres within the place of use described above in a single irrigation season.

~~USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 1816 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 33-2057, 33-2083, 33-2086, 33-2091 AND 33-7018~~

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

Continued diversion of water under the resumed portions of Rights 33-2057 and 33-2083 (301 acres), and Right 33-2091 (73 acres) are deemed mitigated by, and therefore are expressly contingent upon, continued diversion of winter water use under Right 33-2133 to the extent water is available for diversion under that water right.

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The remainder of this right, in the amount of 3.37 cfs and 247.0 acres, was forfeited for non-use from 1969 to 1989.

Prior to diversion of water under transfer nos. 4221 thru 4227, the right holder shall provide a means of measurement and lockable controlling works for the authorized point of injection into Little Lost River and at the points of redirection from Little Lost River and Big Spring Creek. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.

~~THE REMAINDER OF THIS RIGHT WAS FORFEITED FOR
NON USE FROM 1969 TO 1989.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within State Water District No. 33.

This right when combined with all other rights shall provide no more than 0.02 cfs and 3.5 afa per acre at the field headgate for irrigation of the lands above.

The right holder shall accomplish the change authorized by transfer nos. 4221 thru 4227 by June 28, 2005.

Failure of the right holder to comply with the conditions of transfer nos. 4221 thru 4227 is cause for the Director to rescind approval of the transfer.

RECEIVED

DEC 16 2003

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 35976

A. Subcase 33-2091

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Sage Willow, Inc.

Address: c/o Holden, Kidwell, Hahn & Crapo, PLLC,

330 Shoup Ave., Third Floor, P.O. Box 50130

Idaho Falls, ID 83405-0130

Daytime Phone: 208-523-0620

Name & Address of Attorney, if any:

Kent W. Foster

Holden, Kidwell, Hahn & Crapo

330 Shoup Ave., Third Floor

Idaho Falls, ID 83405-0130

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Sage Willow, Inc.

Address: 545 Shoup Ave.,

Idaho Falls, ID 83402

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: 320 acres

10. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** Claimant acquired the property where this water right was historically used in 1989 and by 1993 had fully resumed the use of this water right without injury to any other water rights.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Bonneville)

Sage Willow, Inc., duly sworn, upon oath, deposes and says:

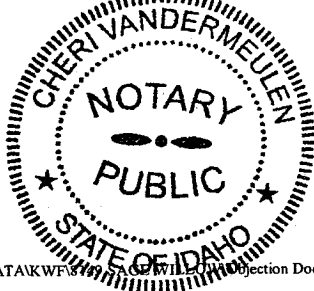
That I am the party/claimant filing this objection, as defined by I.C. §§42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Signature of person filing objection

Kent W. Foster

Kent W. Foster, Attorney

Subscribed and sworn to before me on: December 12, 2003



Cheri Vandermeulen
Notary Public for *Idaho*
Residing at: *Idaho Falls*
My Commission Expires: *July 2009*

G:\WPDATA\KWF\objection\objection Docs\Objection.2091.wpd:cdv

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I hereby certify that on December 12th, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Sage Willow, Inc.
Address:

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Michael C. Creamer
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701-2720

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney mailing
on Objector's behalf

G:\WPDATA\AKWF\8149 SAGE WILLOW\Objection Docs\Objection.2091.wpd

WATER RIGHT NO. 33-2091
As Modified by Transfer Nos. 4221 thru 4227

In accordance with the approval of Transfer Nos. 4221 thru 4227, Water Right No. 33-2091 is now described as follows.

Right Holder: SAGEWILLOW INC
 C/O KENT FOSTER
 HOLDEN KIDWELL HAHN & CRAPO
 PO BOX 50130
 IDAHO FALLS ID 83405-0130

Priority Date: January 22, 1960

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	to 10/15	0.99 CFS	255.5 AF
			0.99 CFS	255.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SWNESE	Sec. 1	Twp 07N	Rge 27E	BUTTE County
GROUND WATER (Rediversion)	SWSENE	Sec. 2	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	SESENE	Sec. 2	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	NENENE	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	NWNENE	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	NENWNE	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	NENENW	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	NWNENW	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER (Injection)	SENWNW	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER	SESE	Sec. 12	Twp 07N	Rge 27E	BUTTE County
GROUND WATER (Rediversion)	NENWSW	Sec. 5	Twp 07N	Rge 28E	BUTTE County
GROUND WATER	SWNESW	Sec. 6	Twp 07N	Rge 28E	BUTTE County
GROUND WATER	L3 (SWNWSW)	Sec. 7	Twp 07N	Rge 28E	BUTTE County
GROUND WATER	L4 (SWSWSW)	Sec. 7	Twp 07N	Rge 28E	BUTTE County
GROUND WATER	NWNWSW	Sec. 32	Twp 08N	Rge 28E	BUTTE County
GROUND WATER	SWSWSW	Sec. 32	Twp 08N	Rge 28E	BUTTE County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
07N	27E	1	31.0	31.0	32.0	32.0	32.0					32.0	35.0	2.6	32.0	36.0	36.0	35.0	33.0	34.0	433.6
07N	27E	12	39.0			32.0		27.0							8.4						106.4
07N	27E	13		34.0			30.0														64.0
07N	28E	5					27.0	33.0	17.0	31.0	38.0				30.0			12.0			188.0
07N	28E	6		31.0	32.0	26.0	31.0	31.0	32.0	32.0	37.0	34.0	31.0	35.0		36.0	34.0				422.0
07N	28E	7	40.0	40.0	34.0	32.0	40.0	39.0	24.0	35.0											284.0
07N	28E	8		19.0	25.0			31.0	32.0							32.0	21.0				160.0
08N	28E	31									18.0	24.0	34.0	25.0							101.0
08N	28E	32										39.0	18.0								57.0

Total Acres: 1816

WATER RIGHT NO. 33-2091
As Modified by Transfer Nos. 4221 thru 4227
CONDITIONS OF APPROVAL

1. Right 33-2091 is limited to the irrigation of 73.0 acres within the place of use described above in a single irrigation season.
2. The remainder of this right, in the amount of 3.37 cfs and 247.0 acres, was forfeited for non-use from 1969 to 1989.
3. The total instantaneous diversion of water from all points of diversion under Rights 33-2057, 33-2083, 33-2086, 33-2091, and 33-7018 shall not exceed 35.19 cfs, nor a total combined annual volume of 6356.0 af for the irrigation of 1816 acres.
4. Rights 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091 and 33-7018 when combined shall not exceed a total diversion rate of 67.19 cfs, and the irrigation of 2089.8 acres. The 2089.8 acres are comprised of 1816 acres irrigated by ground water and 648.8 acres irrigated by surface water sources that overlap 375.0 of the ground water acres.
5. Rights 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091, 33-2133 and 33-7018 when combined shall not exceed the irrigation of 3019.8 acres.
6. Continued diversion of water under the resumed portions of Rights 33-2057 and 33-2083 (301 acres), and Right 33-2091 (73 acres) are deemed mitigated by, and therefore are expressly contingent upon, continued diversion of winter water use under Right 33-2133 to the extent water is available for diversion under that water right.
7. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 33.
8. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for the authorized point of injection into Little Lost River and at the points of redirection from Little Lost River and Big Spring Creek. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
9. This right when combined with all other rights shall provide no more than 0.02 cfs and 3.5 afa per acre at the field headgate for irrigation of the lands above.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

T3785 VOIDED / RESENNED

\$50 Fee 5.0. 1-8-91

status unknown

COPY

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3285

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant Sage Willow Inc. c/o Edmund Dumke Phone 622-5385
Post Office address Howe, ID 83244

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes To utilize better, more level ground for our agriculture use.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|-----------------|------------------|--------------------|-------------------|---------------------------|
| <u>33-2091</u> | <u>1-22-1960</u> | <u>4.36</u> | <u>Irrigation</u> | <u>4-1</u> to <u>11-1</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 4.36 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SW	6	7N	28E	Butte	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	27E	1													40			40	80
	28E	6									40	40	40	40		40	40		240

Total acres 320

PART 1**6. General Information:**

a. Description of diversion system Well & pump to sprinklers

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

We will dry farm this old place of use.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 33-2091 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 1-22-1960

5. Water is used for the following purpose:

amount 4.36 for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.36 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	34	8N	27E	Butte	

8. Lands irrigated or place of use:

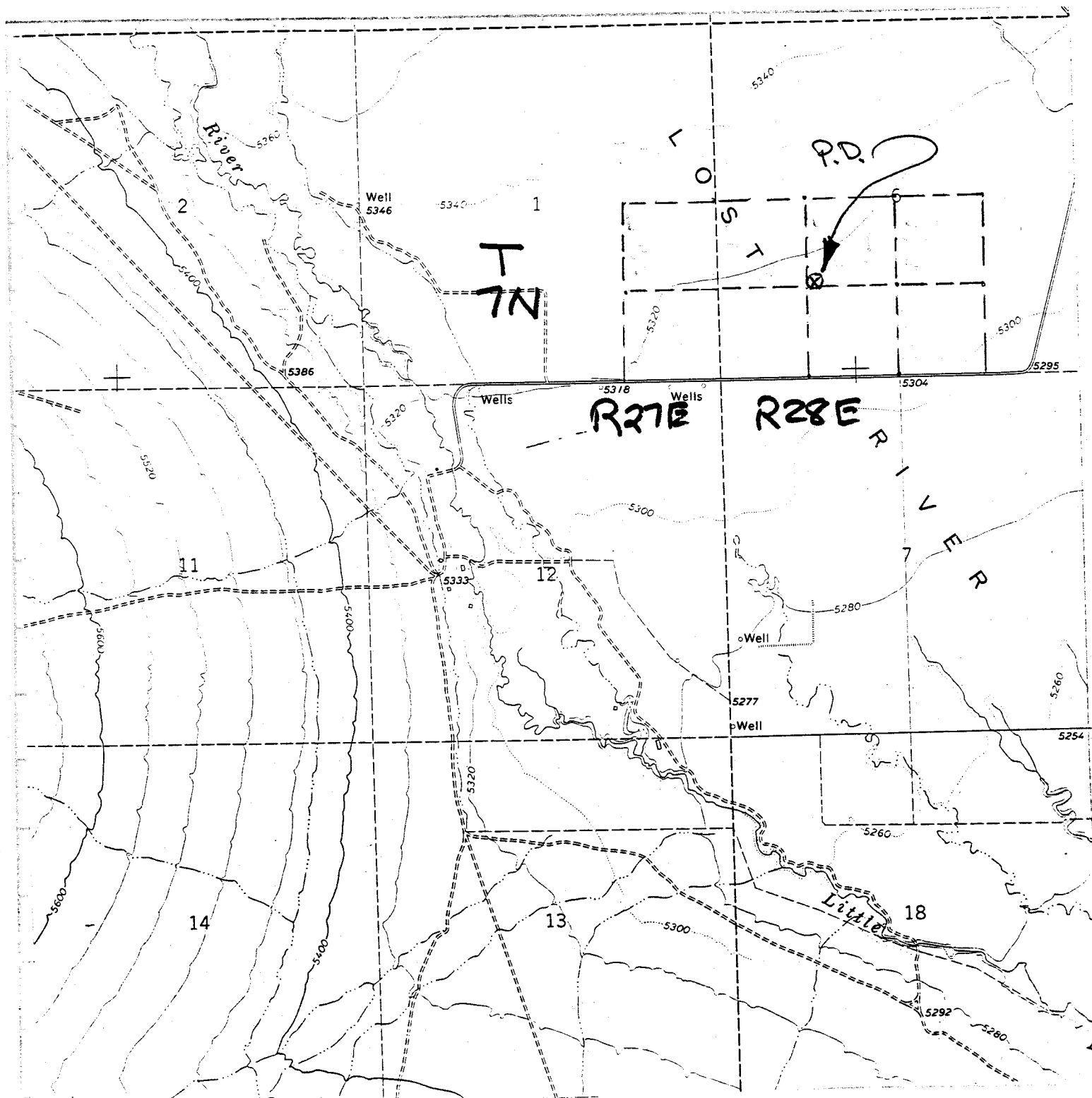
Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8N	27E	34	40			40									40				120
		35						40	40	40		40	40						200

Total acres 320

9. Describe any other water rights used for the same purpose as described above None

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Seguillo Inc
Edmund W. Dumble Pres
 (Signature of Applicant)

Subscribed and sworn to before me this 11th day of October, 19 90.

Della L. Hansen
 (Notary Public)

My commission expires 8/8/96

Assist by HWS

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by AW Date 10-15-90 Protest filed by _____Prelim. check by HWS KAW Fee \$50.00 # E015327Receipted by HWS Date 10-15-90Published in Area Advertiser Copies of protest forwarded by _____Pub. dates Dec. 2 & 13, 90 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

RECEIVED

JAN 04 1999

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR) AMENDED
TRANSFER NOS. 4221, 4222, 4223, 4224,) FINAL ORDER
4225, 4226 AND 4227 IN THE NAME OF)
SAGE WILLOW, INC.)

Also 505 TX 3785

TR 4221-4226
SAGE WILLOW

INTRODUCTION

Sage Willow, Inc. (Sage Willow) filed seven applications for transfer with the Idaho Department of Water Resources (Department). The applications propose changing the place of use for several surface and ground water rights. The multiple applications were filed to define portions of various ground water and surface water rights that would be appurtenant to each of seven independent delivery systems. A map depicting the system described by each application is attached at the end of this decision. Some of the applications were protested by the Blaine County Canal Co. (the Canal Co.), James Mays, Mays Land and Livestock Co. (collectively referred to as "Mays") and Simplot Land and Development Co. Simplot Land and Development Co. subsequently withdrew its protest.

After expiration of the protest period Mays discovered they had not protested all of the applications for transfer filed by Sage Willow. Mays filed a motion to amend the protest to include protests opposing all of the applications for transfer and to add issues of forfeiture and enlargement to the issues raised by the original protests. The motion to amend was granted prior to the hearing.

On January 18, 1995, the Canal Co. filed a motion to amend its protests. The hearing officer initially denied the motion to amend from the Canal Co. because it was untimely. At the hearing, however, the hearing officer revoked the order denying the motion to amend and granted the motion to amend. The Canal Co. and Mays participated as full parties in all the proceedings. A hearing regarding the protest was conducted on January 31 and February 1, 1995.

A recommended order was issued on May 22, 1995. Counsel for Sage Willow timely filed a petition for reconsideration that the hearing officer granted. The order granting reconsideration limited reconsideration to two (2) issues:

1. Whether use of water pursuant to water right no. 33-02091, although previously transferred/abandoned, should be recognized because of the approval of transfer no. 3785, which was approved in 1992.
2. Whether the number of acres authorized for irrigation pursuant to rights nos. 33-02086 and 33-07018 should have been reduced solely on the basis of Terry Scanlan's testimony.

Briefs were to be filed regarding the petition for reconsideration on or before July 14, 1995.

Sage Willow requested a transcript of the record, and after issuance of the order granting reconsideration, the parties agreed to delay briefing until the transcript was prepared. The parties both filed briefs on or about September 1, 1995.

An amended recommended order (ARO) was issued on November 7, 1995. Sage Willow filed a second petition for reconsideration which was denied.

Sage Willow filed exceptions to the amended recommended order, and Mays filed a brief in response to the exceptions. The exceptions will be discussed in the following analysis portion of the decision. Findings of fact, conclusions of law and the order will follow the analysis section.

ANALYSIS

Sage Willow filed exceptions to the amended recommended order as follows:

- (1) The ARO misinterprets the resumption of use doctrine and its application to any portion of the water rights that may have been unused for a period of five or more years, but have since been resumed;
- (2) The ARO improperly concludes that transfer number 3785 can, and should, be voided; and
- (3) The ARO improperly concludes that only 230 acres have historically been irrigated on the Frew Place, rather than 260.

Resumption of Use

Sage Willow alleges several elements must be satisfied before a resumption of use after forfeiture can be defeated:

1. A new water right must be established by appropriation that will prevent a resumption of use.

2. A new water right established by appropriation to prevent a resumption of use must be established after the five (5) year forfeiture period has run. Water rights perfected with dates of priority between the priority of the alleged forfeited right and the date when forfeiture occurred cannot prevent a resumption of use.

3. Use of water must be by adverse possession. There must be open and notorious use, and the notice must be directed toward the original owner.

4. A person wanting to appropriate the forfeited water cannot simply sit by and wait, holding a water right in the ladder of priority. He is required to do something affirmative once the right in question has been forfeited.

5. A forfeited water right can be resumed until it is declared forfeited by a competent authority.

There must be an appropriation of water with an intervening priority date that will be injured by the resumption to prevent a resumption of use. All of the other criteria proposed by Sage Willow are inconsistent with the prior appropriation doctrine.

If a new appropriation is required, a water user holding a water right with a date of priority between the priority of the alleged forfeited right and the date of forfeiture who wanted to improve his water supply would be required to file another application for appropriation. If the new appropriation assumes its place in the order of priority, water users with earlier in time priority water rights would receive the excess water. This result would require that a water user would be required to file for a new appropriation simply as a matter of form to receive water which he would have received pursuant to the priority system anyway. This is promoting form over substance.

Idaho Code § 42-222(2) states that when a water right is forfeited the water right reverts back to the state and is subject to appropriation. If the water reverts back to the state upon forfeiture, and is subject to appropriation, the original owner has no title to a water right that can be acquired through adverse possession. To allow a person to gain ownership of a water right after it has been forfeited is inconsistent with the doctrine of prior appropriation.

Sage Willow argues that the owner of an existing water right with a date of priority later than the alleged forfeited right cannot sit and wait to defeat a resumption of use, but must act affirmatively as described above. This theory would require a water right holder on a stream to continuously monitor the uses of water of all the users up and down a river, hoping to improve his

water supply. When continuous monitoring reveals a forfeited right, he must file an application for a new appropriation of water, in addition to somehow taking the water of another person openly and notoriously, even though he may be diverting that water several miles upstream or downstream from the point of diversion for the water right alleged to be forfeited. This kind of requirement is outside of the law. A water user who has forfeited his water rights should not be allowed to resume the right where junior users have come to rely on the water made available as a result of the forfeiture.

Finally, Sage Willow argues that a resumption of use cannot be defeated unless forfeiture is declared prior to the time the resumption occurs. Recognition of this theory would result in a race for declaration of forfeiture prior to any resumption.

Sage Willow analyzes the Idaho cases on resumption of use along with cases from other jurisdictions. Sage Willow argues convincingly that Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) recognizes resumption of use for a right diverted from a fully appropriated stream long after the forfeiture period had expired. In Boyer, the protestants produced evidence that the water rights allegedly forfeited had not been used for several decades. The evidence also showed that use of water under the right had been resumed only a short time period prior to consideration of the application for transfer by the State Reclamation Department (predecessor to the Department of Water Resources). Sage Willow argues that the hearing officer misinterpreted the case and its finding by implying that the right may never have been forfeited because the water was used on a different place of use. Sage Willow argues that the right was forfeited, but resumed, even though there were intervening water rights.

The Boyer case leaves some questions about when a forfeited right can be resumed and whether some of the earlier requirements raised by Sage Willow, such as adverse possession, must be proven. Even more important, the resumption of use analysis in Boyer does not discuss injury to other water rights that would result from a resumption of use.

The issue of injury is central to the considerations of the Department in reviewing an application for transfer. There was uncontroverted evidence presented at the hearing that Sage Willow's resumption of use would enlarge the traditional use of water on the lands now owned by Sage Willow, would deplete stream flows in the Little Lost River, and would make further demands on the ground water resources of the basin. The Department will not ignore the injurious effects on other water users that will be caused by Sage Willow's diversion and use of water beyond the traditional use of water on the lands acquired by Sage Willow. The original holding regarding the resumption of use in the amended recommended order will not be changed.

Voiding of Transfer No. 3785

The ARO held that transfer no. 3785, previously approved by the Department in 1992, should be voided. The transfer approved moving the point of diversion and place of use for water

right no. 33-02091. At the hearing on the applications for transfer now pending, evidence was presented to show that water right no. 33-02091 was forfeited prior to the approval of transfer no. 3785.

The ARO recognized administrative *res judicata*. The Department should not entertain duplicative "claims" or "issues" except under extraordinary circumstances. The purpose for *res judicata* before administrative agencies is similar to the purpose before the courts: (1) to prevent litigation of the same matter with inconsistent results; (2) to avoid repetitious litigation; and (3) to avoid the harassment of repetitive claims. The Department should exercise restraint in disturbing a prior decision. Nonetheless, the Department of Water Resources is charged not only with deciding what should be done where there are disputed proposals for use of water before the Department, but also with general oversight of the water resources of the state of Idaho. Because of its oversight responsibility, the Department should have wider latitude in setting aside a prior decision.

Sage Willow asserts that the ARO did not sufficiently analyze *res judicata*, and its component parts. The Idaho Supreme Court has adopted the Restatement (Second) Judgments (1982). *Res judicata* is divided into two component parts, claim preclusion and issue preclusion. Claim preclusion prevents a party from pursuing other remedies "with respect to all or any part of the transaction . . . out of which the action arose." Aldape v. Akins, 105 Idaho 254, 259, 668 P.2d 130 (1983). Issue preclusion, or collateral estoppel, "bars the relitigation of issues actually adjudicated and essential to the judgment in a prior litigation between the parties." Aldape at 256.

The most compelling reason for voiding transfer no. 3785 and reviewing water right no. 33-02091 against the test of forfeiture is set forth in Section 28 of the Restatement:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

- (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interest of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issues would arise in the context of a subsequent action, or (c) because the parties sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Restatement (Second) of Judgments § 28.

At the hearing for the now pending transfers, the evidence showed that there would be adverse impacts to the public interest and interests of water users not parties to the initial action if the approval of transfer no. 3785 is not reconsidered.

Sage Willow criticizes the Department for discussing some equitable reasons why transfer no. 3785 should be reconsidered. These reasons included a short time period since the approval of transfer no. 3785, the expenditure of money by Sage Willow prior to approval of transfer no. 3785, the attempt in the pending transfers to correct a misdescription of the place of use in the approval of transfer no. 3785, and the omissions regarding questions of forfeiture on the application for transfer form. Sage Willow alleges these facts should not be considered by the Department.

Sage Willow supplemented its submittal of legal authority on January 2, 1996. In the supplemental brief, Sage Willow quotes Keller v. Magic Water Co., 92 Idaho 276, 441 P.2d 725 (1968). The Keller court states that principles of equity should be applied in determining whether issues before the Department should be reconsidered. It raises three of those equitable issues: (1) the long period of time which had expired since the permit approval, (2) the substantial sums of money which had been expended by the permit holder in reliance on the approval, and (3) the issue of whether other water users were damaged by the omission of the financial information. Two of the three equitable issues raised by the Keller court, the injury issue and the expiration of time issue, are resolved in Mays' favor. Only the expenditure of money by Sage Willow is a consideration in its favor, and Sage Willow's expenditure occurred prior to the transfer approval. Furthermore, there are other equitable reasons briefly discussed above why this reconsideration does not impose an unreasonable hardship on Sage Willow. Issue preclusion does not prohibit the Department from voiding transfer no. 3785 and reconsidering the issue of forfeiture.

Whether the Department of Water Resources characterizes the issues before it as claim preclusion or issue preclusion, the result is the same. The Department should not be barred from reconsidering a prior decision which is inconsistent with the general statutory scheme of protecting other water users. It also should not be barred from reconsidering a prior decision where there are extraordinary reasons for the reconsideration.

Sage Willow also argues that the Department is prohibited from voiding or reconsidering transfer no. 3785 because of equitable estoppel. Both parties agree that equitable estoppel can apply to government agencies acting in their sovereign capacity under extraordinary circumstances. In addition to applying only in extraordinary circumstances, the proponent of equitable estoppel must establish that the Department either concealed or falsely represented facts with actual or constructive knowledge of the truth. Sage Willow did not prove that the Department concealed or falsely represented the facts. Equitable estoppel does not apply to the Department in this case.

Finally, Idaho Code § 42-350 states:

If the director of the department of water resources finds, on the basis of available information *at any time after a license is issued*, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years . . . then the director of the department of water resources may issue . . . an order to show cause before the director of the department . . . why the director of the department should not revoke said license (Emphasis added).

While this statute directs a specific administrative process and does not discuss the effect of a transfer approval, it supports a holding that the director can review forfeiture issues, even after a transfer approval has been granted.

Forfeiture of a Portion of the Frew Place of Use

In the ARO, the hearing officer held that the place of use for water right nos. 33-02086 and 33-07018 should be limited to 230 acres because of the testimony of Terry Scanlan (Scanlan) and corroborating evidence by Charles Brockway (Brockway), the expert for Sage Willow. Sage Willow states that Brockway's testimony and exhibits do not corroborate Scanlan's testimony. Sage Willow recites facts regarding the purchase of the water rights and the land by Sage Willow which were not introduced into evidence at the hearing and were not available to the hearing officer in reaching his decision. The number of acres in the Frew Place, authorized by water right nos. 33-02086 and 33-07018, will be limited to 230 acres.

Based on the above analysis, the Director issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. In 1989, Sage Willow acquired a ranch, located near the confluence of the Little Lost River and Spring Creek, commonly known as the Knollin Ranch. At the same time, Sage Willow also acquired other parcels contiguous to or nearby the Knollin Ranch.
2. One of the other parcels is located approximately 1½ miles northwest of the Knollin Ranch. The parcel is divided into two pieces by the east 16th line of Sec. 35, T27N, R28E, B.M. The property located on the west side of the 16th line is commonly known as the Bird Ranch. The property located east of the 16th line is commonly known as the Homestead Place.
3. Another parcel is located on the north side of an east-west county road, which was the northern boundary of the original Knollin Ranch, and will herein be referred to as the "North of Road Place."
4. In 1993, Sage Willow acquired additional land contiguous to and northeast of the Knollin Ranch from David and Terry Hawley (the Frew Place).
5. The Knollin Ranch was originally owned by A.J. Knollin. Several surface water rights were appurtenant to the Knollin Ranch. Because of financial difficulties, A.J. Knollin conveyed his interest in the Knollin Ranch to the first mortgage holder in 1942. In the same year, the Canal Co. purchased the Knollin Ranch from the mortgage holder. During the late 1940's, the Canal Co. sold the ranch land to L.R. "Slim" Hawley (Hawley). The earliest priority water rights appurtenant to the Knollin Ranch were not conveyed to Hawley, however, but were retained by the Canal Co. and later transferred to downstream lands. The Canal Co. rights are some of the earliest water rights diverted from the Little Lost River, bearing priority dates of 1879 to 1891.
6. Several late priority surface water rights remained appurtenant to or were developed for use on the Knollin Ranch. These later rights are described below:

Irrigation Rights

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-00069✓	3.2	06/01/1908	Little Lost River
33-00070✓	2.8	10/01/1906	Spring Creek
33-00071✓	3.2	03/15/1909	Spring Creek
33-00072✓	.8	05/01/1908	Little Lost River
33-00073✓	6.4	04/01/1912	Spring Creek
33-00074	1.6	08/06/1913	Little Lost River
33-00076	6.8	04/01/1913	Little Lost River
33-00078	3.2	10/15/1913	Little Lost River
33-00079	1.6	04/01/1912	Little Lost River
33-00080✓	.8	05/01/1908	Spring Creek
33-00081✓	.8	05/01/1908	Spring Creek
33-00082✓	.8	05/01/1908	Spring Creek
33-02007	2.9 32	02/15/1909	Little Lost River
33-02008	6.4	06/12/1909	Spring Creek
	41.3		

Soil Root Zone Storage Right

<u>Water Right No.</u>	<u>Acre-Feet</u>	<u>Priority</u>	<u>Source</u>
33-02133	2,960	06/02/1949	Little Lost River Spring Creek

7. The late priority surface water rights listed in Finding 6 could only be delivered to Hawley during high water flows, however, and there was insufficient surface water to irrigate the Knollin Ranch. Hawley subsequently obtained two licenses to irrigate the Knollin and Bird Ranches with ground water, numbered 33-02057 and 33-02083. The ground water rights for the Knollin and Bird Ranches are described as follows:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02057	24.0	02/01/1950	8 wells # 1-8
33-02083	5.0	08/23/1957	8 wells #1-8

8. In addition, ground water rights were also perfected for the Frew Place, which Sage Willow acquired from David and Terry Hawley. The Frew Place water rights are listed below:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02086	4.1	01/12/1959	well # 13
33-07018	3.26	09/12/1972	well # 12

9. Finally, Hawley and some of his contemporary relatives obtained patents for two parcels of federal property pursuant to the Desert Land Entry Act. Two licenses to appropriate ground water were issued by the Department for these parcels. License no. 33-02091 was perfected for irrigation of the Homestead Place. License no. 33-02090 was perfected for irrigation of the North of Road Place. The following describes components of these rights:

<u>Water Right No.</u>	<u>CFS</u>	<u>Priority</u>	<u>Source</u>
33-02090	5.93	12/21/1959	well # 11
33-02091	4.36	01/22/1960	well on Bird Ranch

10. The places of use and points of diversion prior to Sage Willow's acquisition of the water rights described in the preceding paragraphs are depicted on the map labeled as applicant's exhibit no. 1 "a".

11. Sage Willow filed application for transfer nos. 4221, 4222, 4223, 4224, 4225, 4226 & 4227, proposing to change the place of use for all of the rights listed in the preceding paragraphs. The multiple applications for transfer were filed to define portions of the water rights that would be appurtenant to each of seven independent delivery systems. Application nos. 4221, 4222 and 4223 propose the irrigation of land primarily north of the original Knollin Ranch with pressurized circular pivots. Application nos. 4224, 4225, 4226 and 4227 propose gravity irrigation of other land. The proposed places of use are depicted on a map labeled as applicant's exhibit no. 1 "b". For further clarity, a map depicting the system (or place of use) described by each of the applications is attached. The original and proposed places of use described in the applications are not restated in this decision because of their size and complexity.

12. A geologic formation near the confluence of the Little Lost River and Spring Creek impedes the southward flow of ground water in the underlying aquifer, causing the ground water and surface water to merge in the southern half of the Knollin Ranch. The Little Lost River loses water to the underground aquifer above the Knollin Ranch, but as the ground water and surface water merge, the Little Lost River and Spring Creek gain water as they flow through the

Knollin Ranch. The Little Lost River continues to gain water downstream several miles to the Canal Co. diversion.

13. The Little Lost River and the aquifer underlying the Little Lost River Basin downstream of the Knollin Ranch are dependent on water flows which pass the Knollin Ranch, either on the surface or underground.

14. The Hawley wells were drilled into the shallow portion of the aquifer which is hydrologically connected to the surface water. There is a direct hydrologic connection between the water pumped by the Hawley wells and the surface water that flows downstream into the Little Lost River below the Knollin Ranch.

15. Vance Hawley, a son of Slim Hawley, grew up in the Little Lost Valley and helped farm the Knollin and Bird Ranches as a youth, although he did not reside on the Knollin Ranch. After attending college, Vance Hawley returned and assisted in farming the property from 1970 through 1978. During these eight (8) years, he did not manage the farm but resided on the Knollin Ranch. From 1978 through 1980, he leased the Knollin Ranch property. After the lease expired, he was acquainted with the operation of the farms until 1989, when the Knollin Ranch was sold to Sage Willow.

16. Vance Hawley was also aware of the operation of the Bird Ranch, the Homestead Place, the North of Road Place, and other surrounding lands.

17. Vance Hawley testified about the extent of beneficial use of water on the properties now owned by Sage Willow. He testified that the total number of acres irrigated on the Bird Ranch did not exceed 297 acres. He also testified that irrigation of individual parcels on the Knollin Ranch totaled 879 acres.

18. Vance Hawley testified that the Homestead Place, located just east of the Bird Ranch, was irrigated with water pursuant to license no. 33-02091 in the early 1960's until a patent of ownership was issued by the federal government. He testified that the land was converted back to early season dry range land and was never irrigated in the late 1960's, all of the 1970's, and the 1980's until Sage Willow bought the property.

19. Vance Hawley also stated that the North of Road Place, patented by his aunt and uncle and located north of the main east-west access road into the Knollin Ranch, was irrigated with water pursuant to license no. 33-02090 in the early 1960's until a patent of ownership was issued by the federal government. He testified that after the patent was issued, the property was converted back to early season dry rangeland. He testified that water had not been applied to the lands pursuant to license no. 33-02090 during the late 1960's, all of the 1970's, and the 1980's until the property was purchased by Sage Willow.

20. James Mays, a lifelong resident of the Little Lost River Valley, testified he was familiar with both the Homestead Place and the North of Road Place and had not observed any irrigation on the Homestead Place or North of Road Place, at least until Sage Willow acquired the parcels.

21. Vance Hawley drew the boundaries of the various parcels comprising the Sage Willow property as depicted on protestant's exhibit no. 3 and estimated the number of acres irrigated during his acquaintance with the property. The estimate includes lands irrigated with both surface water and ground water. He estimated that no more than 1,176 acres were irrigated within the boundaries of the Knollin Ranch and Bird Ranch.

22. The testimony of Vance Hawley is the most credible evidence regarding the traditional use of water on the entire Sage Willow land holdings before 1989.

23. Terry Scanlan (Scanlan), an engineer and geologist hired by Mays, consulted aerial photographs and estimated that approximately 230 acres were irrigated in the Frew Place. This estimate is consistent with the irrigated acreage estimates prepared by Dr. Charles E. Brockway, P.E. (Brockway), a consultant hired by Sage Willow.

24. Scanlan also estimated that 1,182 acres were irrigated in the Knollin Ranch and the Bird Ranch, six more acres than estimated by Vance Hawley. Adding the 230 acres irrigated in the Frew Place, Scanlan estimated the total acreage irrigated prior to 1989 was 1,412 acres. Because of the six acre discrepancy between Vance Hawley's estimate and Scanlan's estimate, the difference will be resolved in favor of Sage Willow. A total of 1,412 acres were irrigated prior to 1989.

25. In 1989, Sage Willow purchased the Knollin Ranch, the Bird Ranch, the Homestead Place, and the North of Road Place. Jerry Pancheri was hired as the manager of the ranch and was instructed to apply the water to the land as efficiently as possible and to recommend changes to the system to more efficiently use the water.

26. Pancheri testified about his attempts to use the water and identified land irrigated during the years he managed the farm. Pancheri identified on protestant's exhibit no. 21 the lands which were irrigated in various years. He approximated the areas irrigated in several individual parcels, and the parties summed his estimates in their briefs as set forth below:

Total Number of Acres Irrigated

<u>Year</u>	<u>Sage Willow's Estimate</u>	<u>Mays' Estimate</u>
1989	1,300	1,400
1990	1,560	1,740
1991	2,000	2,004
1992	2,130	2,100
1993	2,390	-----

27. During 1990 and 1991, Pancheri determined that several preexisting ponds located on the Knollin property should be repaired and filled with water. These ponds, when filled with water, contribute significant sub-water to the shallow aquifer and sub-irrigate some of the lower elevation pastures located on the Knollin Ranch.

28. Pancheri also determined that the lands within the Bird Ranch and the Homestead Place were the poorest agricultural lands of the Sage Willow holdings and recommended that the water rights appurtenant to the Bird Ranch and Homestead Place be transferred to other lands located north of the Knollin Ranch. These lands north of the Knollin Ranch were acquired by Jerry Pancheri, and subsequently by Sage Willow, through an exchange of lands with the Bureau of Land Management.

29. In October, 1990, Sage Willow, through its president Edmund Dumke, applied to transfer license no. 33-02091 (transfer no. 3785) from the Homestead Place to land located in the SE $\frac{1}{4}$ of Section 1, T7N, R27E, and the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 6, T7N, R28E, B. M. The transfer application was signed by Dumke as president of Sage Willow. Part 1 of the transfer application requests the applicant to "[d]escribe the effect on the land now irrigated if the place of use is changed pursuant to this transfer." Dumke responded that "[w]e will dry farm this old place of use." There was no response to question 10 in part 2 of the application which asks "To your knowledge, has any portion of this water right undergone a period of five (5) or more consecutive years of non-use?" By signing the application, Dumke asserted that "no one will be injured by such change and that the change does not constitute an enlargement in use of the original right."

30. Dumke testified at the hearing that he had no personal knowledge regarding license no. 33-02091. He did not personally know whether a well was located at the licensed point of diversion or if any irrigation had occurred pursuant to license no. 33-02091 on the licensed place of use. Dumke stated that he relied entirely on others to prepare the application.

31. Harold Jones, an employee in the Department's Eastern Regional Office, testified that the Department relied on the representations made in the transfer application for a licensed right because no protests are filed. In reviewing the Sage Willow application for transfer no. 3785, the Department did not independently investigate the existence of a well and pump at the licensed point of diversion or diversion for beneficial use on the licensed place of use for license no. 33-02091.

32. Transfer no. 3785 was approved and allowed a change in the place of use for license no. 33-02091 from the Homestead Place to part of the North of Road Place. The transfer resulted in an overlap of license no. 33-02091 on the place of use for license no. 33-02090. One of the purposes of the pending transfers is to correct transfer no. 3785 by moving license no. 33-02091 to lands not already described as a place of use by license no. 33-02090.

33. In 1991, two new pivots (pivots 6 and 7) were installed on the lands in Sections 1 and 6, and irrigation commenced that same year. (See protestant's exhibit no. 13, 1991 Landsat Image, and testimony of Mr. Pancheri and Mr. Scanlan). Although the pivots were installed and operated in 1991, the record indicates transfer no. 3785, which authorized license no. 33-02091 to be used in Sections 1 and 6, was not approved until October of 1992.

34. Vance Hawley testified that lands owned by Hawley were flood irrigated, and many of the fields were only irrigated once during the season. When hay was harvested from these lands, only one half to one ton per acre of hay was harvested, compared to a full average harvest of approximately three tons per acre for the Little Lost River Valley.

35. Brockway was hired by Sage Willow in 1989 to conduct various studies regarding the Little Lost River Basin and its hydrologic and hydrogeologic characteristics, particularly with reference to the Sage Willow holdings. In preparation for the hearing, Brockway walked the Sage Willow property, noted existing ditches and the location of abandoned ditches thereon, and consulted aerial photography to determine the number of acres that could have been irrigated on the Sage Willow property. Brockway prepared applicant's exhibit no. 7 which lists the acreage owned by Sage Willow and estimates consumptive use prior to the Sage Willow purchase of the property. The consumptive use calculated represents consumption by crops irrigated by both sprinkler and flood applications and also includes consumption by bottom land and rangeland vegetation. Lands which showed some evidence of past irrigation, even though not irrigated at the time Sage Willow acquired the property, were assigned irrigation consumptive use values.

36. Brockway concluded that the consumptive use prior to the Sage Willow purchase was 10,192 acre-feet. He also testified that consumptive use increased approximately 760 acre-feet between 1989 and 1992, and will increase another 137 acre-feet if the applications for transfer are approved.

37. Brockway also testified that the additional 137 acre-feet consumptive use would be a depletion, reducing stream flows to the Little Lost River by 0.20 cfs, but that the effect on the aquifer levels would not be detectable.

38. Scanlan combined Vance Hawley's recollection of water use with information derived from aerial photography and determined the total number of acres traditionally irrigated in the Knollin, Bird and Frew properties. For purposes of comparison, in protestant's exhibit no. 15 Scanlan grouped lands by the same classifications as Brockway and applied the same consumptive use values to estimate a consumptive use prior to Sage Willow acquisition. Scanlan estimated a consumptive use of the 9,077 acre-feet. Based on allegations of nonuse on the Homestead Place (license no. 33-02091) and the North of Road Place (license no. 33-02090), Scanlan concluded the approval of these transfers would increase consumptive use by 1,504 acre-feet annually from the pre-1989 consumptive use values.

39. In protestant's exhibit no. 20, Scanlan disagreed with the consumptive values for crops irrigated with surface water used by Brockway in applicant's exhibit no. 7 and reduced the initial consumptive use values by 20 percent to account for the testimony of Vance Hawley regarding reduced crop harvest. He calculated a pre-1989 consumptive use of 8,273 acre-feet. He estimated consumptive use would increase by 1,809 acre-feet after the transfer is approved.

40. The assumptions by Scanlan are supported by direct evidence and testimony presented by Vance Hawley and are consistent with a careful review of aerial photography. These factors provide a more credible estimate of the acres historically irrigated and the historical total consumptive use.

41. Protestant's exhibit no. 18 proposes pro rata reductions in flow rates and acreage irrigated for each of the applications based on a ratio between the licensed places of use and the historical places of use as established by Vance Hawley. Despite detailed consumptive use calculations by two expert witnesses, Mays' proposal is based solely on irrigated acreage comparisons, not consumptive use comparisons.

42. Don Isham, a prior officer of the Canal Co., testified that to his knowledge, the later in time surface water rights alleged to be owned and proposed for transfer by Sage Willow have been delivered to the Canal Co. for decades. He testified that although the application for transfer that moved the water from the Knollin Ranch to the Canal Co. only included the early in time rights, the Canal Co. was entitled to the rights claimed by Sage Willow because of the long history of delivery.

43. The watermaster for the Little Lost River testified that in 1993, he delivered some of the surface water rights claimed by Sage Willow to Sage Willow.

CONCLUSIONS OF LAW

1. The parties agree about most of the facts pertaining to the traditional use prior to Sage Willow's acquisition of the property and the expanded use of Sage Willow following its acquisition. There is some disagreement regarding the consumptive use calculations of the expert witnesses and which consumptive use numbers are most accurate. Both parties admit, however, that Sage Willow's proposal will increase the consumptive use on the Sage Willow property.

2. The first issue to be resolved is whether all or portions of the original water rights were lost by abandonment or forfeiture. License nos. 33-02090 and 33-02091 were forfeited because of non-use for over 20 years. Forfeiture was established by clear and convincing evidence.

3. One of the most difficult issues is the status of transfer no. 3785. The application for transfer was incomplete and contained representations that were not correct. Dumke explicitly represented, by signing the affidavit, that the right had not been forfeited and that there would be no injury or enlargement as a result of the transfer. An integral portion of the application, asking whether the applicant knew of any continuous five year period of non-use, was left blank. The Department did not independently investigate the possibility of forfeiture. In addition, the applications for transfer now pending were filed to revise what was previously approved.

4. There is no evidence that Dumke or Sage Willow fraudulently misled the Department, or that the transfer is void because of fraud. Because the pending applications for transfer attempt to correct previously approved transfer no. 3785, and because there were misrepresentations and omissions of fact in the filing of application for transfer no. 3785, transfer no. 3785 should be voided. Furthermore, although there has been some development pursuant to transfer no. 3785, Sage Willow constructed two of the pivots prior to approval of transfer no. 3785.

5. Because of the reasons set forth above, the finding of forfeiture should supersede the prior approval of transfer no. 3785.

6. The combined testimony of Vance Hawley and Terry Scanlan regarding the total place of use for the remainder of the Bird Ranch, the Knollin Ranch, and the Frew Place, establishes a historically irrigated acreage of 1,412 acres during a period of at least two decades.

7. The total number of acres authorized for irrigation pursuant to license nos. 33-02086 and 33-07018 is 230 acres. The total number of acres authorized for irrigation pursuant to license nos. 33-02057 and 33-02083 is 1,182 acres. Combined surface water and ground water irrigation should not exceed 1,412 acres, except for sub-irrigation. The total number of acres that

can be irrigated by applying water (surface water and ground water) directly to the land is 1,412 acres. The right to irrigate any additional lands described by ground water and surface water rights in excess of 1,412 acres has been forfeited, except for benefits derived by subwater.

8. Applicants do not admit forfeiture, but emphasize the doctrine of resumption of use as a defense against forfeiture. Several Idaho court cases generally mention the resumption of use defense to forfeiture. Only two of the decisions find that there may have been a forfeiture and that resumption of use might resurrect the water right.

9. Wagoner v. Jeffrey, 66 Idaho 455, 162 P.2d 400 (1945) was a dispute between a water right holder who had perfected rights in wells located on federal property and another settler who subsequently obtained a patent to the property where the wells were located. More than five years of non-use elapsed. When the water right holder unsuccessfully attempted to resume his use, the subsequent settler, even though he had no water rights in the wells, attempted to block the resumption by alleging forfeiture. In Wagoner, there were no junior water right holders claiming a right to the water which was being diverted out of the wells. The resumption doctrine was applied because there was no intervening claim to the water.

10. In Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), a water user attempted to transfer water rights diverted from the Big Lost River approximately 20 miles downstream. The protestants alleged the rights were forfeited. Unrefuted evidence established that the water right had not been applied to the original place of use for several decades, but the evidence also established that at least for a portion of that period, water was delivered to the proposed place of use and assessments for the delivery of the water had been paid. In its holding, the Idaho Supreme Court said:

Thus, bills were rendered and payments made by respondent for water delivered by the District. The District showed no water was delivered to [the old place of use], so the water must have been, and two of the exhibits show the water was, delivered to the [proposed place of use].

73 Idaho at 159.

11. The court seemed to be concluding that the water right was not forfeited because it was delivered to other lands. Nevertheless, the court subsequently stated, quoting Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944):

Although statutory abandonment of a water right has occurred, forfeiture is not effective if after five-year period original owner or appropriator resumes the use of the water prior to claim of right by a third party.

73 Idaho at 160.

12. The court explained the quotation with two statements, the first implying the right had been forfeited but resumed, and the second implying the right had never been forfeited:

No one claims this particular decreed water by adverse possession and clearly, so far as this proceeding is concerned, it was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited.

The trial court was justified in holding that water had been so used by respondent that he had not abandoned or forfeited his water rights

73 Idaho at 160.

13. More importantly, the court did not consider or discuss injury to other water rights that might be caused by the resumption of use.

14. Other cases discuss the resumption defense, but decide that the right was not forfeited. Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944) (held not abandoned and was not a resumption case); Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937) (held burden of proof on the party alleging forfeiture not satisfied). Another case, Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), held that the right was forfeited but proof was not offered regarding the resumption of use defense.

15. The law does not require that a claim of ownership to the specific water delivered by a specific water right must be filed prior to resumption of use to prevent the resumption. Language in Zezi that the use must be resumed prior to other appropriations and the discussion of movement up the priority ladder by junior right holders in Jenkins narrowly limits when a water right can be resumed after it is forfeited.

16. Recognition of the resumption of use defense would frustrate the doctrine of prior appropriation in streams where: (1) junior appropriators have established water rights and have relied on water not diverted by a senior user; or (2) in this case, where senior surface water users and other water right holders have relied on related ground water not diverted by Sage Willow's predecessor. While the prior appropriation doctrine is crafted to protect water users by delivering in order of priority, its requirement of beneficial use of water prevents a water right holder from

retaining unused water rights for a long period of time and then reasserting the right to the detriment of other right holders.

17. Other users are not required to assert a specific claim to the water rights or water represented by rights held by the user attempting to resume his use. The existence or establishment of a junior water right is sufficient claim to the water. The resumption doctrine cannot restore portions of water rights forfeited by Sage Willow's predecessor in interest to the detriment of other water right holders.

18. Detailed consumptive use comparisons by both parties implicitly invite the Department to microscopically look at the application of water upon the place of use and restrict the future consumptive use based on an estimated consumptive use. Nevertheless, protestant's exhibit no. 18 proposes to reduce water use proposed by the applications for transfer based solely on historical acres irrigated, not based on consumptive use. The Department declines, in this case, to limit the total diversion based on increased consumptive use which may result from improved efficiency of water application. Total diversion volumes and consumptive uses values will be assigned according to Department standards. Flow rates will be reduced to a rate of 0.02 cfs per acre unless Sage Willow can demonstrate the need for additional diversion rate.

19. These applications for transfer can only be approved if the applicant identifies 1,412 acres to which water will be physically diverted and applied by some means other than subirrigation. Annual volume for physical diversion, delivery, and application should be limited to 4,942 acre feet. Annual consumptive volume will be limited to 3,530 acre feet. The diversion rate will be limited to 28.24 cfs.

20. A plan identifying 1,412 acres that will be irrigated together with the individual water rights that will be appurtenant to the acreage must be submitted to the Department. The Department will then allocate volumes and diversion rates to each right.

21. As part of the proposal, the applicant may continue to derive the benefits of subirrigation from ponds and return flows to the Little Lost River, provided the ponds or the return channels are not reconstructed to increase subirrigation beyond the acreage historically subirrigated. Water shall not be diverted from ground water for the sole purpose of filling ponds or subirrigating. Surface water can only be diverted for root zone storage (presumably subirrigation) pursuant to license no. 33-02133 when all prior surface water rights are being satisfied.

22. Water rights cannot be obtained by adverse possession if the rights are being delivered by a watermaster in a water district. Idaho Code § 42-607.

23. The Canal Co. is not entitled to ownership of water rights owned by Sage Willow.

ORDER

IT IS HEREBY ORDERED that transfer no. 3785 is VOIDED.

IT IS FURTHER ORDERED that license no. 33-02090 and license no. 33-02091 and portions of all other rights diverted and directly applied to lands in excess of 1,412 acres are FORFEITED.

IT IS FURTHER ORDERED that application for transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226 and 4227 are **CONDITIONALLY APPROVED** provided the applicant does not irrigate more than 1,412 acres within the place of use proposed by the applications, and the applicant complies with the following:

1. A plan must be submitted to the Department of Water Resources within 56 days of the final disposition of this dispute or after any final appeal period has run identifying 1,412 acres that will be irrigated together with the individual water rights that will be appurtenant to the acreage. The plan must also be provided to the Protestants for review and comment. Comments from the Protestants must be submitted to the Department and to the Applicant one month following submittal of the plan. A hearing may be requested by either party within sixty (60) days of submittal of the plan.
2. Failure to submit the plan is cause for the Department to revoke its conditional approval of the application for transfer.

IT IS FURTHER ORDERED that the Department will issue another recommended decision if additional testimony is required following submittal of the plan.

DATED this 8th day of April, 1996.



KARL J. DREHER, Director

Attachment

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of April, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **AMENDED FINAL ORDER** to the following:

Kent Foster
HOLDEN KIDWELL HAHN
& CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

Blaine County Canal Co.
HC 65 Box 1018
Howe, ID 83244

Michael C. Creamer
GIVENS PURSLEY & HUNTLEY
P.O. Box 2720
Boise, ID 83701

J. Evan Robertson
Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

Deborah Drew-Ellis
Deborah Drew-Ellis
Legal Secretary

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

) Water Rights: See Exhibit A

)
)
Case No. 39576

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

IDWR has completed the following Administrative proceeding:

☐ Address change

☐ Substitution of Party

☒ I.C. § 42-222 transfer 4221, 4222, 4223, 4224, 4225, 4226, 4227

☒ Withdrawn per letter from attorney Kent Foster attached

☐ point of diversion ☐ place of use

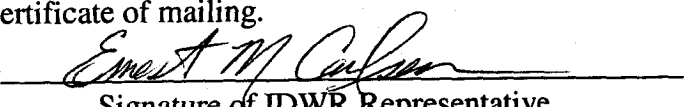
☐ period of use ☐ nature of use

☐ split of water right ☐ change in ownership

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: 15 June 2003


Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on June 26, 2003, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls ID 83303-2707

2. One copy to:

Claimant/Seller for Substitution of Party or attorney of record:
SAGEWILLOW INC
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

3. One copy to:

Claimant/Purchaser for Substitution of Party, or attorney of record:
N/A

4. One copy to:

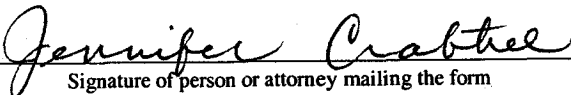
Each party in the subcase, or attorney of record
BLAINE COUNTY CANAL CO
MAYS LAND & LIVESTOCK INC
C/O MICHAEL C CREAMER
PO BOX 2720
BOISE ID 83701-2720

5. One copy each to:

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449

6. One Copy to:

United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724



Signature of person or attorney mailing the form

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. PALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEL W. CASPER
SHAN B. PERRY
AMELIA A. SHEETS
DEANNE CASPERSON**

*Also Licensed in Utah and Arizona
**Also Licensed in Missouri & Kansas

US BANK BUILDING
330 SHOUF AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1938-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

June 20, 2003

VIA FACSIMILE: (208) 327-7866

Idaho Department of Water Resources
1301 North Orchard Street
PO Box 83720
Boise, ID 83720-0098

*Re: Application for Transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226, and 4227
In the name of Sagewillow, Inc.*

Dear Ladies and Gentlemen:

We are writing this letter at the request of our client, Sagewillow, Inc. We hereby withdraw the above-numbered applications for transfer. The decision of the Idaho Supreme Court appears to be final in the appeal of this matter and the final order of the director in these transfer proceedings has now been vacated. Sagewillow, Inc., is considering the filing of new applications for transfer.

Yours very truly,



Kent W. Foster

c: Norman M. Semanko
Thomas C. Praggastis
Dr. Charles Brockway
Michael C. Creamer
Harold Jones (via fax)
Philip J. Rassier

Exhibit A

Subcase Nos:

33-00069
33-00070
33-00071
33-00072
33-00073
33-00074
33-00076
33-00078
33-00079
33-00080
33-00081
33-00082
33-02007
33-02008
33-02057A
33-02057B
33-02057C
33-02057D
33-02057E
33-02057F
33-02083A
33-02083B
33-02083C
33-02083D
33-02083E
33-02083F
33-02086A
33-02086B
33-02090
33-02091
33-02133
33-07018
33-11003

~~not found~~
file in
33-2091

For Transfer #'s 4224, 4225, 4226, and for Amended Final Order, Final Order, Order Denying Petition for Reconsideration, Amended Recommended Order, Order Granting Petition for Reconsideration, and Recommended Order see #A33-00069.

~~A33-00069~~	A33-00079
A33-00070	A33-00080
A33-00071	A33-00081
A33-00073	A33-00082
A33-00072	A33-02007
A33-00074	A33-02008
A33-00076	A33-02133
A33-00078	

Transfer #'s 4221, 4222, and 4223 are in files:

A33-02057A
A33-02057B
A33-02057C
A33-02083A
A33-02083B
A33-02083C
A33-02086A
A33-02086B
A33-02090
A33-02091A
A33-02091B
A33-07018B

SEP 20 1993

Page 1 of 12STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDepartment of Water Resources
Transfer No. 4221APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Sagewillow, Inc. Phone (208) 523-0620Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls ID 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes To make more effective use of water on land owned by applicant, some of which will be brought under sprinkler irrigation.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>33-02057A</u>	<u>02/01/1950</u>	<u>5.06 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>
✓ <u>33-02083A</u>	<u>08/23/1957</u>	<u>1.06 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>
✓ <u>33-02086A</u>	<u>01/12/1959</u>	<u>1.37 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>
✓ <u>33-02091A</u>	<u>01/22/1960</u>	<u>4.26 cfs</u>	<u>Irrigation</u>	<u>04/01</u> to <u>11/01</u>

2. Total amount of water being transferred 11.75 cubic feet per second and/or _____ acre-feet per annum.3. Source of water ground water tributary to _____

4. Point(s) of Diversion: _____

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	SW	SW	32	8N	28E	Butte	Well No. 12
	SE	SE	NE	2	7N	27E	Butte	Well No. 11

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	27E	1	33	33	33	33	33	40	40	33									278
7N	28E	5					25	20											45
		6		33	33		38	38	33	33									208
8N	28E	31									24	24	37	37					122
		32											25	35					60

PART 1**6. General Information:**

a. Description of diversion system Wells and electric pumps.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

Portions of the lands now irrigated will no longer be irrigated and other portions will be irrigated under other water rights.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 33-02057A, -02083A, -02086A, & 02091A
And said application is hereby conditionally approved, subject to the following limitations and conditions:
Pursuant to Final Order.

Witness my hand this 12th day of March, 19 96

Karl J. Dreher, Director

RECEIVED
MAR 27 1996

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 33-02057

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	to	24.00 CFS
DOMESTIC	to	
	Totals	24.00 CFS

SOURCE

GROUNDWATER

Priority: 02/01/1950

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 12, Township 07N, Range 27E
 NWNE , Sec. 12, Township 07N, Range 27E
 NENW , Sec. 12, Township 07N, Range 27E
 SESE , Sec. 12, Township 07N, Range 27E
 NWSW , Sec. 7, Township 07N, Range 28E
 SWSW , Sec. 7, Township 07N, Range 28E
 BUTTE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
07N	27E	1	SWSW 31	SESW 40		71
		12	NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 30	
			SWNW 10	NESW 15	SESW 40	
			SESE 40			335
		13	NENE 40	NWNE 40	NENW 40	120
28E		7	NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 38	
			SWNW 38	SESW 40		316
		8	NWNE 5	SWNE 15	NWNW 10	
			NWSE 30	SWSE 30		90
		17	SWSW 30			30
		18	SWNE 40	SENE 40	NWNW 39	
			SWNW 25	SESW 40	NESE 40	224
08N	27E	34	SWNE 37	SESW 40	NESW 40	
			NWSW 35	SWSW 30	SESW 35	
			NWSE 40	SWSE 40		297
Total number of acres irrigated:						1483

MAR 27 1996

Water Right No. 33-02057

PLACE OF USE: DOMESTIC, same as IRRIGATION use

CONDITIONS/REMARKS:

1. LIC. INCORRECTLY INDICATES P/D IN S7, T7N, R27E.

MAR 27 1996

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 33-02083

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	to	5.00 CFS

SOURCE

GROUNDWATER

Priority: 08/23/1957

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 12, Township 07N, Range 27E
 NWNE , Sec. 12, Township 07N, Range 27E
 NENW , Sec. 12, Township 07N, Range 27E
 SESE , Sec. 12, Township 07N, Range 27E
 NWSW , Sec. 7, Township 07N, Range 28E
 SWSW , Sec. 7, Township 07N, Range 28E
 BUTTE County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
07N 27E 1	SWSW 31	SESW 40		71
12	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 30	
	SWNW 10	NESW 15	SESW 40	
	SESE 40			335
13	NENE 40	NWNE 40	NENW 40	120
28E 7	NENE 40	NWNE 40	SWNE 40	
	SENE 40	NENW 40	NWNW 38	
	SWNW 38	SENW 40		316
8	NWNE 5	SWNE 15	NWNW 10	
	NWSE 30	SWSE 30		90
17	SWSW 30			30
18	SWNE 40	SENE 40	NWNW 39	
	SWNW 25	SENW 40	NESE 40	224
08N 27E 34	SWNE 37	SENW 40	NESW 40	
	NWSW 35	SWSW 30	SESW 35	
	NWSE 40	SWSE 40		297
Total number of acres irrigated:				1483

CONDITIONS/REMARKS:

MAR 27 1996

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 33-02086

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	to	4.10 CFS

SOURCE

GROUNDWATER

Priority: 01/12/1959

LOCATION OF POINT(S) OF DIVERSION:NWSW , Sec. 32, Township 08N, Range 28E
BUTTE CountyPLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
07N	28E	5	NENW 35	NWNW 38	SWNW 33	
			SEnw 36	NESW 31		173
08N	28E	32	NWSW 31	SWSW 39	SESW 17	87
Total number of acres irrigated:						260

CONDITIONS/REMARKS:

MAR 27 1996

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 33-02091

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	4.36 CFS	1120.0 AF

SOURCE

GROUNDWATER

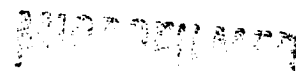
Priority: 01/22/1960

LOCATION OF POINT(S) OF DIVERSION:NESW , Sec. 6, Township 07N, Range 28E
BUTTE CountyPLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
07N	27E	1	NESE 40	SESE 40		80
	28E	6	NESW 40	NWSW 40	SWSW 40	
			SESW 40	NWSE 40	SWSE 40	240
Total number of acres irrigated:						320

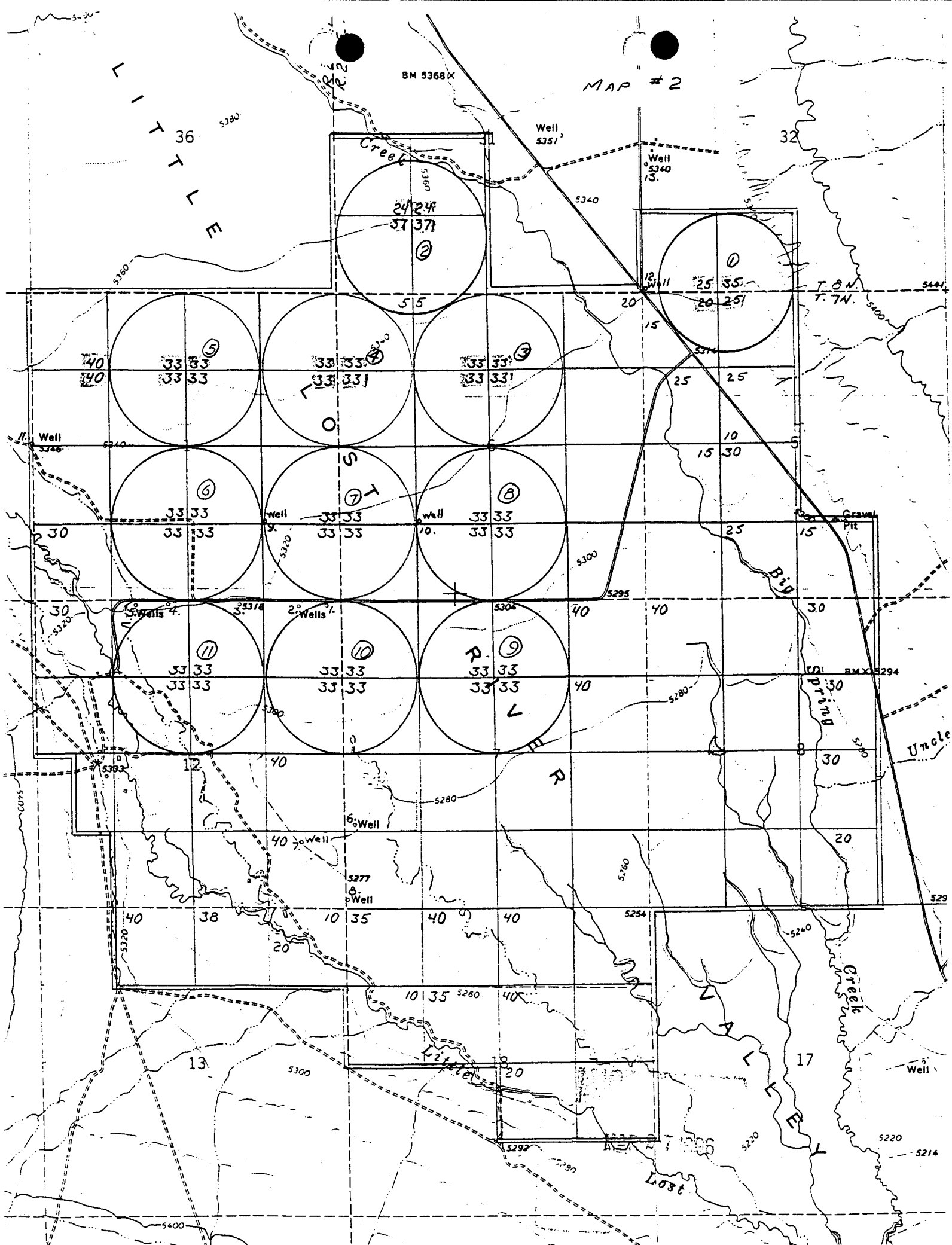
CONDITIONS/REMARKS:

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.



MAR 27 1996

MAP #2



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

SEE ATTACHED MAPS

Map #1 shows former points of diversion highlighted in blue and places of use highlighted in yellow.

Map #2 shows proposed change: Circles Nos. 1, 2, 3, 4 & 5 (highlighted in yellow) plus 80 acres in W1/2 NW S.1; T.7N; R.27E; acreages highlighted in blue; and two wells highlighted in pink.

MAR 27 1996

PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	None			_____ to _____
				_____ to _____

2. Quantity and quality of return flows and location of discharge:

No change

3. Describe effects on other water uses resulting from the proposed change:

We anticipate no significant effects.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Sege Willow Inc
Edmund W. Danke

(Signature of Applicant)

Subscribed and sworn to before me this 16th day of September, 1993.

Alla VanZepiel

(Notary Public)

Commission expires 8/8/96**FOR DEPARTMENT USE ONLY**

Transfer contains _____ pages and _____ attachments

Received by J. VansantDate 9-21-93

Protest filed by _____

Prelim. check by _____

Fee 50.00Receipted by CV CO28624Date 9-21-93

Published in _____

Copies of protest forwarded by _____

Pub. dates _____

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

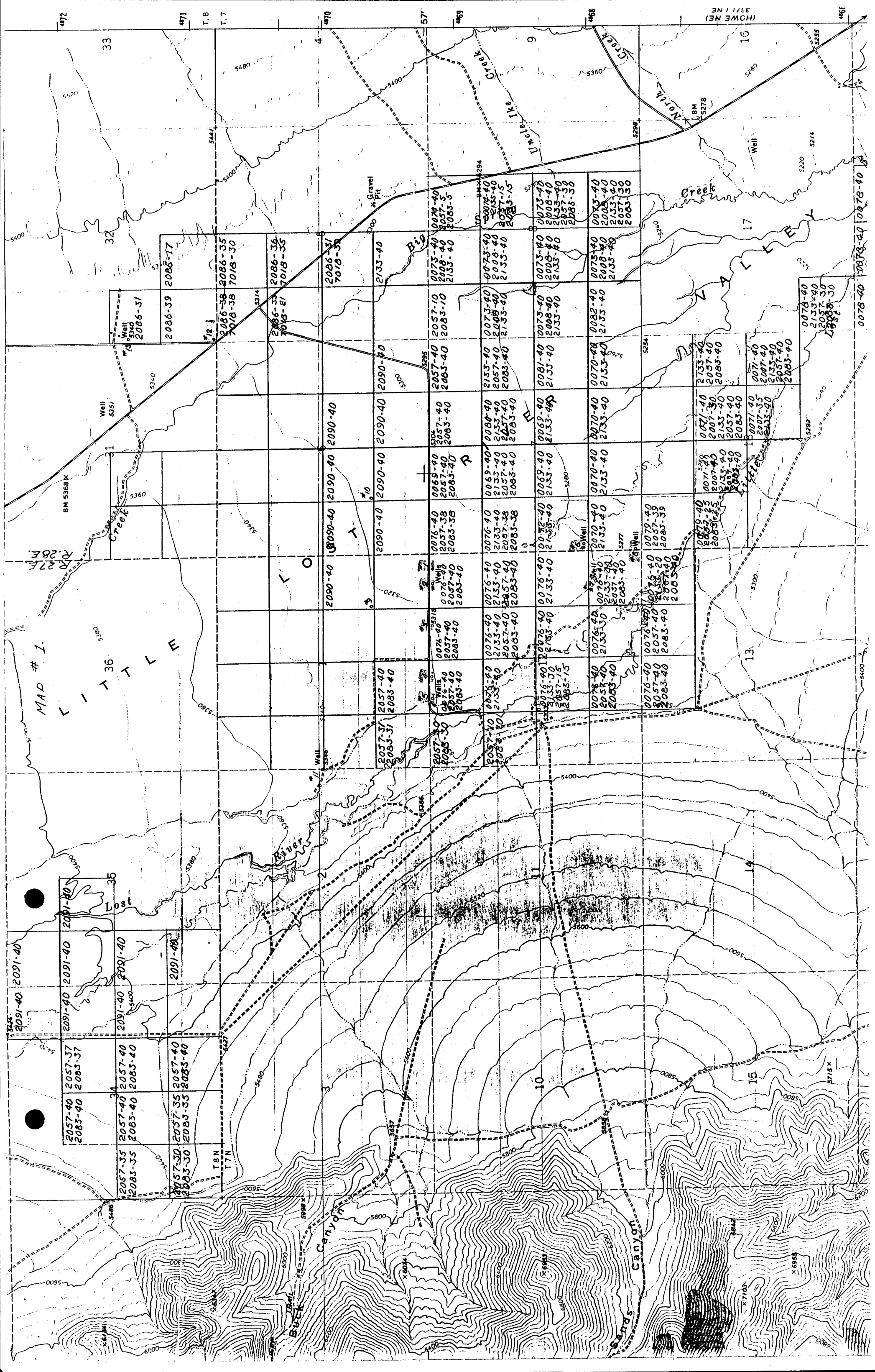
Recommended for ☐ approval ☐ denial

_____ rec'd. _____

by _____

Copy of transfer sent to lien holder _____

RECEIVED
 MAR 27 1996



MAR 12 1993

CORPORATION WARRANTY DEED

March

A.M. 12:00 P.M.

BUTTE COUNTY RECORDER

THIS INDENTURE, made this 9 day of February, 1993,

between PANCHERI, INC., an Idaho corporation, Grantor, and
 SAGEWILLOW, INC., Grantee, whose mailing address is 2416 Plaza
 Del Grande, Las Vegas, Nevada 89102.

WITNESSETH, That Grantor having hereunto authorized by
 resolution of its Board of Directors, for and in consideration of
 the sum of Ten Dollars (\$10.00), lawful money of the United
 States of America, to it in hand paid by Grantee, the receipt
 whereof is hereby acknowledged, has granted, bargained and sold,
 and by these presents does grant, bargain, sell, convey and
 confirm unto Grantee, and to its heirs and assigns forever, all
 the following described real estate situated in Howe, county of
 Butte, State of Idaho, to wit:

Township 7 North, Range 27, E.B.M., Butte County, Idaho
 Section 1: Lots 1-4 inclusive, and S $\frac{1}{2}$ N $\frac{1}{2}$

Township 7 North, Range 28, E.B.M., Butte County, Idaho
 Section 5: W $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 6: Lots 1-5 inclusive, S $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ &
 NE $\frac{1}{4}$ SE $\frac{1}{4}$. NE $\frac{1}{4}$ SP

Township 8 North, Range 28, E.B.M., Butte County, Idaho
 Section 31: Lots 3 and 4 and E $\frac{1}{2}$ SW $\frac{1}{4}$

ALL SUBJECT TO highway right-of-ways, easements for
 utilities, real property taxes and irrigation
 assessments for 1993 and subsequent years, reservations
 and exceptions in state deeds and federal patents, and
 building and zoning laws, ordinances, and regulations
 of governmental agencies.

TOGETHER With all and singular the tenements, hereditaments
 and appurtenances thereunto belonging or in any wise
 appertaining, and the reversion and reversions, remainder and
 remainders, rents, issues and profits thereof, and all estate

MAR 27 1993

right, title and interest in and to the said property, as well in law as in equity, of Grantor.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto Grantee, and to its heirs and assigns forever. And the Grantor, and its successors, the said premises in the quiet and peaceable possession of the Grantee heirs and assigns against Grantor, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim to same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The Grantor has caused its corporate name to be hereto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

PANCHERI, INC.

By: [Signature]
Its President

STATE OF IDAHO)
) ss.
County of Bingham)

On this 9 day of ~~February~~ March, 1993, before me, the undersigned, a notary public in and for said State of Idaho, personally appeared Jerry Pancheri known to me to be the President of PANCHERI, INC. the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]
Notary Public for Idaho
Residing at: Blackfoot
My Commission Expires: 5/30/96

MAR 27 1996

WARRANTY DEED

930021D.DOC

12:05 P.M.

BUTTE COUNTY RECORDER

FOR VALUE RECEIVED Terry Hawley, a ~~single person dealing~~ with his sole and separate property; David E. Hawley, a/k/a David Hawley, and Connie Hawley, husband and wife, the Grantors, do hereby grant, bargain, sell, and convey unto Sage Willow Inc., the Grantee, whose current address is 2416 Plaza Del Grande, Las Vegas, Nevada, 89102 the following described premises, to-wit:

DESCRIPTION OF A PARCEL OF PROPERTY

Within: SEC. 32, T8N, R28E, B.M., the S1/2SW1/4 and a portion of NW1/4SW1/4 and

Within: SEC. 5, T7N, R28E, B.M., the NE1/4SW1/4 and a portion of the NW1/4

Little Lost River Valley, Butte County, Idaho

A single parcel of property to be described by metes and bounds:

Commencing at a 1/2" rebar marking the SW Corner of Sec. 32, T8N, R28E, B.M., and the NW corner of Sec. 5, T7N, R28E, B.M., Butte County, Idaho, said corner lying S 00°19'15" E, 5264.79 feet from a 1/2" rebar marking the NW Corner of Section 32, and said Corner being the True Point of Beginning.

Thence N 00°19'15" W, 1316.20 feet along the Westerly boundary of said Sec. 32 to the S 1/16 Corner common to Sections 31 and 32; thence N 00°19'15" W, 990.00 feet along said section line; thence N 90°00'00" E, 40.00 feet; thence S 00°19'15" E, 990 feet, more or less, to the northerly 1/16 boundary line of the SW1/4 SW1/4 of said Sec. 32; thence Easterly, 1280 feet, more or less, along said northerly 1/16 line of the SW1/4 SW1/4 to the SW 1/16 corner of said Sec. 32; thence Easterly, 1320 feet, more or less, along the northerly 1/16 boundary line of SE1/4 SW1/4 to the CS 1/16 Corner of said Sec. 32; thence Southerly, 1320 feet, more or less, along the easterly 1/16 boundary line of SE1/4 SW1/4 to the 1/4 Corner common to said Sec. 32 and Sec. 5, T7N, R28E, B.M.; thence S 00°04'18" W, 3895.50 feet to the CS 1/16 Corner of Sec. 5; thence S 89°54'05" W, 1321.30 feet to the SW 1/16 Corner; thence N 00°11'50" E, 1316.47 feet to the CW 1/16 Corner; thence S 89°48'09" W, 391.71 feet along the 1/4 section line; thence N 31°41'39" W, 149.59 feet;

MAR 27 1996

thence N 03°42'07" W, 442.43 feet;
thence N 21°07'24" W, 283.84 feet;
thence N 39°11'32" W, 176.63 feet;
thence N 27°52'36" W, 266.90 feet;
thence N 50°23'36" W, 58.75 feet;
thence N 39°08'42" W, 656.73 feet;
thence N 89°52'48" W, 9.70 feet to the westerly boundary of
said Section 5;
thence N 00°19'27" E, 826.90 feet along the westerly boundary
of said Section 5 to the True Point of Beginning.

Also contained within this description are 2 60-foot wide
roads: 1) The Howe Northwest Highway 2) A county road within
the NW1/4 Sec. 5.

Said described property contains 252 acres, more or less,
minus 6.5 acres, more or less, within said roads for a net
acreage of 245.5 acres, more or less.

(Note: The parties intend by this description to include an
irrigation well and sufficient area surrounding said
irrigation well for access, operation, use, maintenance and
repair of the well. As soon as the weather permits, grantor
shall obtain a formal survey of the land intended to be
conveyed where the irrigation well is located. If this
description needs to be corrected the parties agree to make
such corrections.)

EXCEPTING THEREFROM Oil and Gas rights, and particularly Oil
and Gas Lease and Assignment thereof.

TOGETHER With all water and ditch rights appurtenant thereto,
including, but not limited to: State of Idaho Water Rights
License Nos. 33-2086 and 33-0718.

TOGETHER With all irrigation equipment including the
following:

1. Motor, U.S. Motors, 50 HP #882566
2. Pump, Berkley, Mod #1200SH-3, with panel #5110301
3. Pump, G.E. Motor, 50 HP Model #5K6248XH4A, #FHJ628450
4. Pump, Verti Line Layne Bowler, Model 14RL, #18 2110

Together with tenements, hereditaments, appurtenances, ditches
and ditch rights and water and water rights thereunto belonging or
in anywise appertaining.

Subject to reservations in United States patents and State
deeds or other restrictions imposed by law, easements and right-of-
way, zoning and building ordinances, use restrictions of record,
and taxes and assessments for the year 1993 and thereafter.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, it's heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

DATED and signed this 9 day of ^{March}~~February~~ 1993.

David Hawley
David Hawley

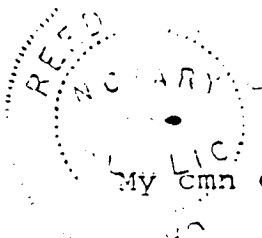
Connie Hawley
Connie Hawley

Terry Hawley
Terry Hawley

STATE OF IDAHO)
County of Bingham) ss.

On this 9 day of ^{March}~~February~~ 1993, before me, the undersigned, a notary public in and for said state, personally appeared David Hawley and Connie Hawley, husband and wife, known to me to be the person whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



My comn expires:

Reed L. Reed
Notary Public for State of Idaho
Residing at Blackfoot, Idaho
3-12-99

WARRANTY DEED - 3

MAR 27 1996

STATE OF IDAHO)

County of Bingham)

ss.

On this 24th day of ~~February~~ ^{March} 1993, before me, the undersigned, a notary public in and for said state, personally appeared Terry Hawley, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My cmn exprs:

Anita McQuistrey
Notary Public for State of Idaho
Residing at Blackfoot
Comm Exp 5/20/94



MAR 27 1996

WARRANTY DEED

For Value Received VENICE HAWLEY, a widow, and VENICE HAWLEY as personal representative of the estate of Lawrence R. Hawley aka L. R. Hawley aka "Slim" Hawley, whose full name was Lawrence Roy Hawley

the grantor S. do hereby grant, bargain, sell, and convey unto SAGEWILLOW, INC., a Nevada corporation authorized to do business in Idaho,

the grantee whose current address is

the following described premises, to-wit:

Those lands in Butte County, Idaho, described on the attached Exhibit "A".

SUBJECT TO taxes and assessments for the year 1989, to easements, roads and rights of way, to building and zoning ordinances and use regulations and restrictions, to reservations in federal patents and state deeds, and to any liens suffered or created by the grantees.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its successors ~~here~~ and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all incumbrances except as hereinabove set forth and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

MAR 27 1996

Venice Hawley
Venice Hawley, a widow

Venice Hawley
Venice Hawley as personal representative of the estate of Lawrence R. Hawley aka L. R. Hawley aka "Slim" Hawley, whose full name was Lawrence Roy Hawley.

STATE OF IDAHO, COUNTY OF Bingham

On this 26th day of April, 1989,
before me, a notary public in and for said State, personally
appeared Venice Hawley, a widow,

known to me to be the person who SE name is
subscribed to the within instrument, and acknowledged to
me that she executed the same.

Residing at Idaho, Idaho
Comm. Expires 1992

Notary Public

STATE OF IDAHO, COUNTY OF BINGHAM

On this 26th day of April, 1989, before
me, a Notary Public in and for said State,
personally appeared Venice Hawley, known or
identified to me to be the person whose name is
subscribed to the within instrument as personal
representative of the estate of Lawrence R.
Hawley aka L. R. Hawley aka "Slim" Hawley, whose
full name was Lawrence Roy Hawley, deceased, and
acknowledged to me that she executed the same as
such personal representative.

Residing at Idaho, Idaho
Commission expires 1/14/92

Robert M. Kenna
Notary Public

INSTRUMENT NO.

Exhibit "A"

The property referred to is situated in the State of Idaho, County of Butte and is described as follows:

In Township 7 North, Range 27 East of the Boise Meridian:

Section 1: The South half.

Section 12: The North half; the East half of the Southwest Quarter; the Southeast Quarter; and the East half of the Northwest Quarter of the Southwest Quarter.

Section 13: The North half of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter.

In Township 7 North, Range 28 East of the Boise Meridian:

Section 5: The Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter.

Section 6: Lots six and seven (W2SW4); the East half of the Southwest Quarter; the West half of the Southeast Quarter; and the Southeast Quarter of the Southeast Quarter.

Section 7: All.

Section 8: The West half of the East half; and the West half.

Section 18: The North half; and the North half of the Southeast Quarter.

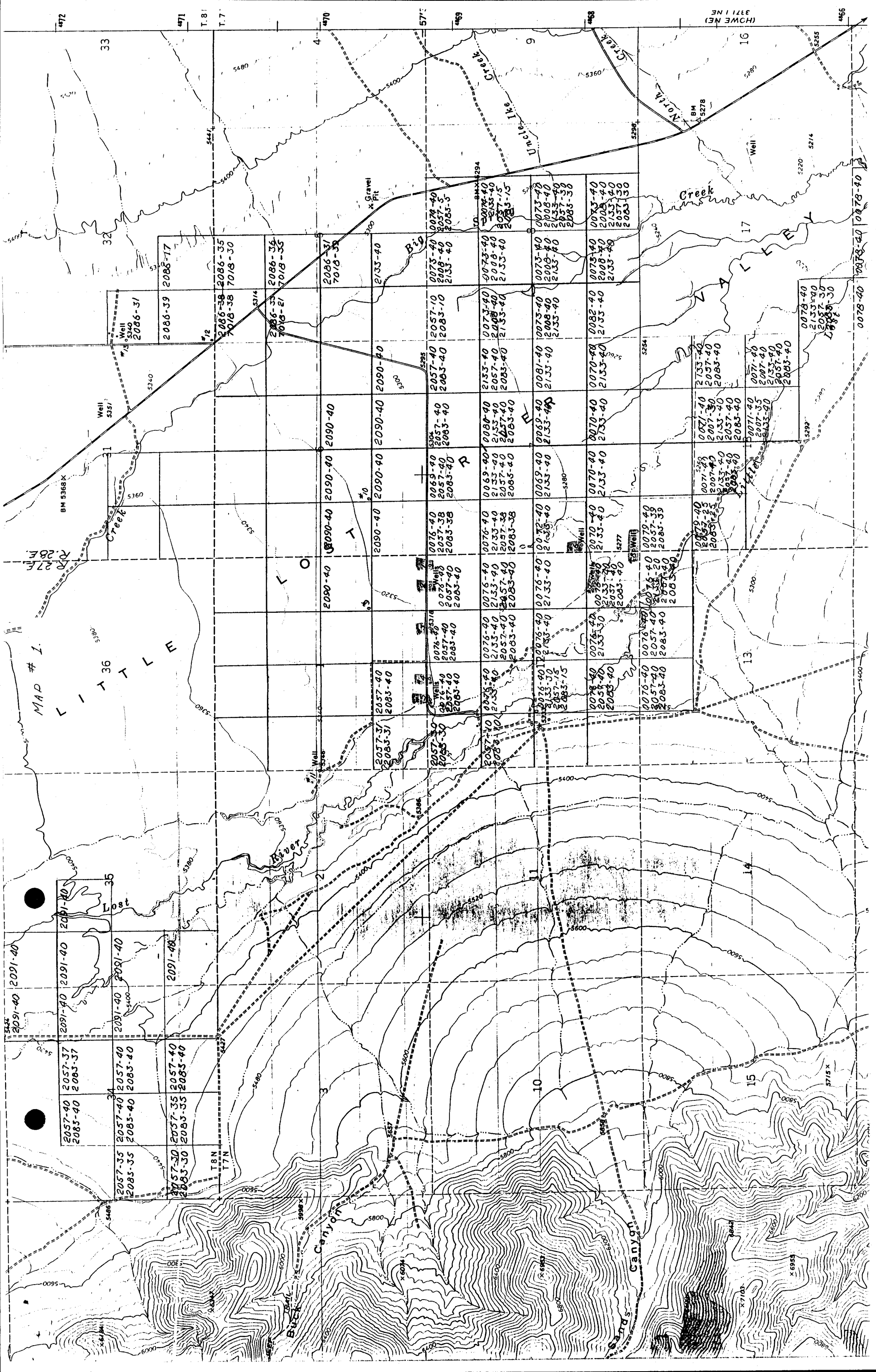
In Township 8 North, Range 27 East of the Boise Meridian:

Section 34: The east half of the Northeast Quarter; the Southwest Quarter of the Northeast Quarter; the Southeast Quarter of the Northwest Quarter; the Southwest Quarter; the West half of the Southeast Quarter; and the Northeast Quarter of the Southeast Quarter.

Section 35: The West half of the West half; the Southeast Quarter of the Northwest Quarter.

Together with all water, water rights, ditches, ditch rights of way, wells, pumps, motors, panels, and irrigation equipment and structures, all appurtenances and easements, and all grazing privileges and permits with the Bureau of Land Management and the U.S. Forest Service in so far as they are applicable to the above described property and livestock thereon.

MAR 27 1935



RECEIVED

NOV - 9 2000

Department of Water Resources

2000 NOV 08 PM 12:56
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) ORDER SETTING STATUS
Case No. 39576) CONFERENCE
_____) SUBCASE NOS: SEE ATTACHED EXHIBIT A

Please be advised that Special Master BRIGETTE BILYEU
has set a Status Conference in the above subcase(s)
as follows:

WEDNESDAY, FEBRUARY 07, 2001 at 10:00 AM

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Option: Parties may participate by phone if they contact the
clerk at (208) 736-3011 prior to FEBRUARY 05, 2001.

IT IS SO ORDERED.

Dated: NOVEMBER 08, 2000

/S/ BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 11/08/00

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING STATUS CONFERENCE was mailed on NOVEMBER 08, 2000, with sufficient first-class postage to the following:

SAGEWILLOW INC

Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

BLAINE COUNTY CANAL COMPANY
MAYS LAND AND LIVESTOCK INC

Represented by:
MICHAEL C. CREAMER
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Exhibit A

Subcase Nos:

33-02007
33-02008
33-02057A
33-02057B
33-02057C
33-02057D
33-02057E
33-02057F
33-02083A
33-02083B
33-02083C
33-02083D
33-02083E
33-02083F
33-02086A
33-02086B
33-02090
33-02091
33-02133
33-07018

RECEIVED

MAR 24 2000

Department of Water Resources

RECEIVED

APR 12 2000

Department of Water Resources
Eastern Region

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 35976

A. Subcase 33-02091

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Sage Willow, Inc.

Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130
Idaho Falls, Idaho 83405

Daytime Phone: (208) 523-0620

Name & Address of Attorney, if any:

Kent W. Foster of Holden, Kidwell, Hahn & Crapo, PLLC
P.O. Box 50130
Idaho Falls, ID 83405

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Sage Willow, Inc.

Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130
Idaho Falls, Idaho 83405

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: Sage Willow, Inc.
2. ☒ **Source**
Should be: Groundwater
3. ☒ **Quantity**
Should be: January 22, 1960
4. ☒ **Priority Date**
Should be: 4.36 cfs
5. ☒ **Points of Diversion**
Should be: See attached list
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Irrigation
8. ☒ **Period of Year**
Should be: April 1-October 31
9. ☒ **Place of Use**
Should be: 320 of 2,383 acres shown in attached land list
10. **I object because:**
 - ☐ This water right should not exist.
 - ☒ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** The issue of forfeiture of this right is presently before the Idaho Supreme Court in the case of Sage Willow, Inc. v. Idaho Department of Water Resources, James Mayes, Mayes Land and Livestock and Blaine County Canal Company, Supreme Court Case No. 24431. The issues have been fully briefed and oral argument has been completed. It is the claimants position that licenses nos. 33-02090 and 33-02091 should not have been declared forfeited nor should there have been any partial forfeitures by IDWR because of the resumption of use, and that the 1,412 acre and 28.24 cfs limitations should be eliminated.

The director's report should be changed by a finding that rights nos. 33-02090 and 33-02091 are valid and that there have been no forfeitures or partial forfeitures because of the resumption of use by Sage Willow, that the total 2,383 acres to which the combination of all of the water rights are appurtenant may be irrigated each season; and that the total authorized combined diversion rate is 46.65 cfs.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Bonneville)

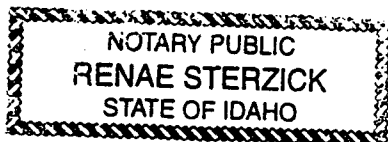
Kent W. Foster, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Signature of person filing objection

Kent W. Foster
Attorney signing in representative capacity

Subscribed and sworn to before me on: March 21, 2000



Residing at Idaho Falls, Idaho
My Commission Expires Jan. 14, 2004

Renae Sterzick
Notary Public for *Idaho*
Residing at: *Idaho Falls*
My Commission Expires: *1-14-2004*

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I hereby certify that on March 27, 2000, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Sage Willow, Inc., c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Address: P.O. Box 50130, Idaho Falls, Idaho 83405

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney mailing on
Objector's behalf

G:\WPDATA\KWF\8149\OBJECTIO 2kmc

DIVERSION LIST

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
	SW	NE	SE	01	7N	27E	Butte	
	SW	SW	NE	02	7N	27E	Butte	
	SE	SE	NE	02	7N	27E	Butte	
	NE	NE	NE	12	7N	27E	Butte	
	NW	NE	NE	12	7N	27E	Butte	
	NW	NW	NE	12	7N	27E	Butte	
	NE	NE	NW	12	7N	27E	Butte	
	NE	SW	NW	12	7N	27E	Butte	
	NW	SE	SE	12	7N	27E	Butte	
	NW	NE	NW	12	7N	27E	Butte	
	NE	NW	SW	5	7N	28E	Butte	
	SW	NE	SW	6	7N	28E	Butte	
	SW	NW	SW	7	7N	28E	Butte	
	SW	SW	SW	7	7N	28E	Butte	
	SW	SW	SW	32	8N	28E	Butte	
	NW	NW	SW	32	8N	28E	Butte	

LAND LIST

[illegible]

A33-02091
SAGE WILLOW, INC.
545 SHOUP AVE.
IDAHO FALLS

ID 83402

NEEDS:

☐ FIELD EXAM OF P.O.D & P.O.U.

☐ MEASUREMENT OF WELL OUTPUT
_____ cfs

(3.5) (Ac.) = _____ Div. Vol.

(2.5) (Ac.) = _____ Con. Vol.

☐ PHOTOS P.O.D. / P.O.U.
WELL DATA

7-3785 completed

Letter(s) sent

14 JAN 97

Atty & Claimant



A3302091

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
GAYLE A. SORENSON, P.A.
DONALD L. HARRIS, P.A.
DALE W. STORER
MARIE T. TYLER
JOHN G. SIMMONS
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
SHAN B. PERRY

U.S. BANK OF IDAHO BUILDING
330 SHOUP AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL HOLDNLAW@SRV.NET

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

January 31, 1997

Allen B. Ruberry
IDAHO DEPARTMENT
OF WATER RESOURCES
900 N. Skyline
Idaho Falls, Idaho 83402-1718

RECEIVED
FEB 03 1997
Department of Water
Eastern District

Re: SRBA Claim A33-02091, Transfer No. 3785

Dear Al:

I received your letter of January 14, 1997, regarding the above matter. Jerry Pancheri has now sent to me your handwritten note to him dated January 24, 1997. There is no change of address for Sage Willow and although additional counsel has been associated for purposes of the appeal, there is no change in the attorney so far as notices of appearance are concerned in the SRBA.

It appears to us that nothing needs to be changed.

Very truly yours,



Kent W. Foster

14 JANUARY 1997

HOLDEN KIDWELL HAHN & CRAPO
ATTN KENT W FOSTER
P O BOX 50130
IDAHO FALLS ID 83405

RE: SRBA CLAIM A33-02091, TRANSFER NO. 3785

Dear Kent:

I have completed the review of Transfer No. 3785, filed by Sage Willow, Inc., to change the Point of Diversion and Place of Use of the above referenced water right claim. A copy is enclosed for your records.

You will be contacted later in the year to arrange a field exam of this and other Sage Willow, Inc. SRBA claims.

Should questions arise regarding this water right please contact me.

Respectfully submitted,

Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

CC: Sage Willow, Inc.
File A33-02091

Enclosure: SRBA claim A33-02091, per T.#3785

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

Transfer No. 3785

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

OCT 19 1992

Department of Water Resources
Eastern District Office

APPROVED

Name of applicant Sage Willow Inc. c/o Edmund Dumke Phone 622-5385

Post Office address Howe, ID 83244

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

Completed
1/97
GME

2. Describe the reason for the proposed changes To utilize better, more level ground for our agriculture use.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>33-2091</u>	<u>1-22-1960</u>	<u>4.36</u>	<u>Irrigation</u>	<u>4-1</u> to <u>11-1</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 4.36 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		<u>N</u>	<u>SW</u>	<u>6</u>	<u>7N</u>	<u>28E</u>	<u>Butte</u>	

5. Lands irrigated or place of use:

Twp	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	27E	1													40			40	80
	28E	6									40	40	40	40		40	40		240

PART 1

6. General Information:

a. Description of diversion system Well & pump to sprinklersb. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes ☒ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

We will dry farm this old place of use.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCESThis is to certify that I have examined Application for Transfer of Water Rights No. 33-02091And said application is hereby APPROVED, subject to the following limitations and conditions:
SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

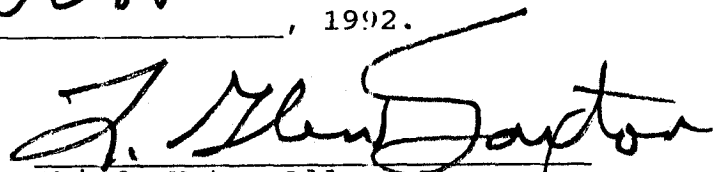
Witness my hand this

8th day ofOctober, 19 92J. Glen Saylor
CHIEF, WATER ALLOC. BUREAU

CONDITIONS OF APPROVAL
Transfer of Water Rights
No. 33-02091

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre for the lands above.

Dated this 8th day of October, 1992.


Chief, Water Alloc. Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 33-2091 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 1-22-1960

5. Water is used for the following purpose:

amount 4.36 for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.36 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	34	8N	27E	Butte	

8. Lands irrigated or place of use:

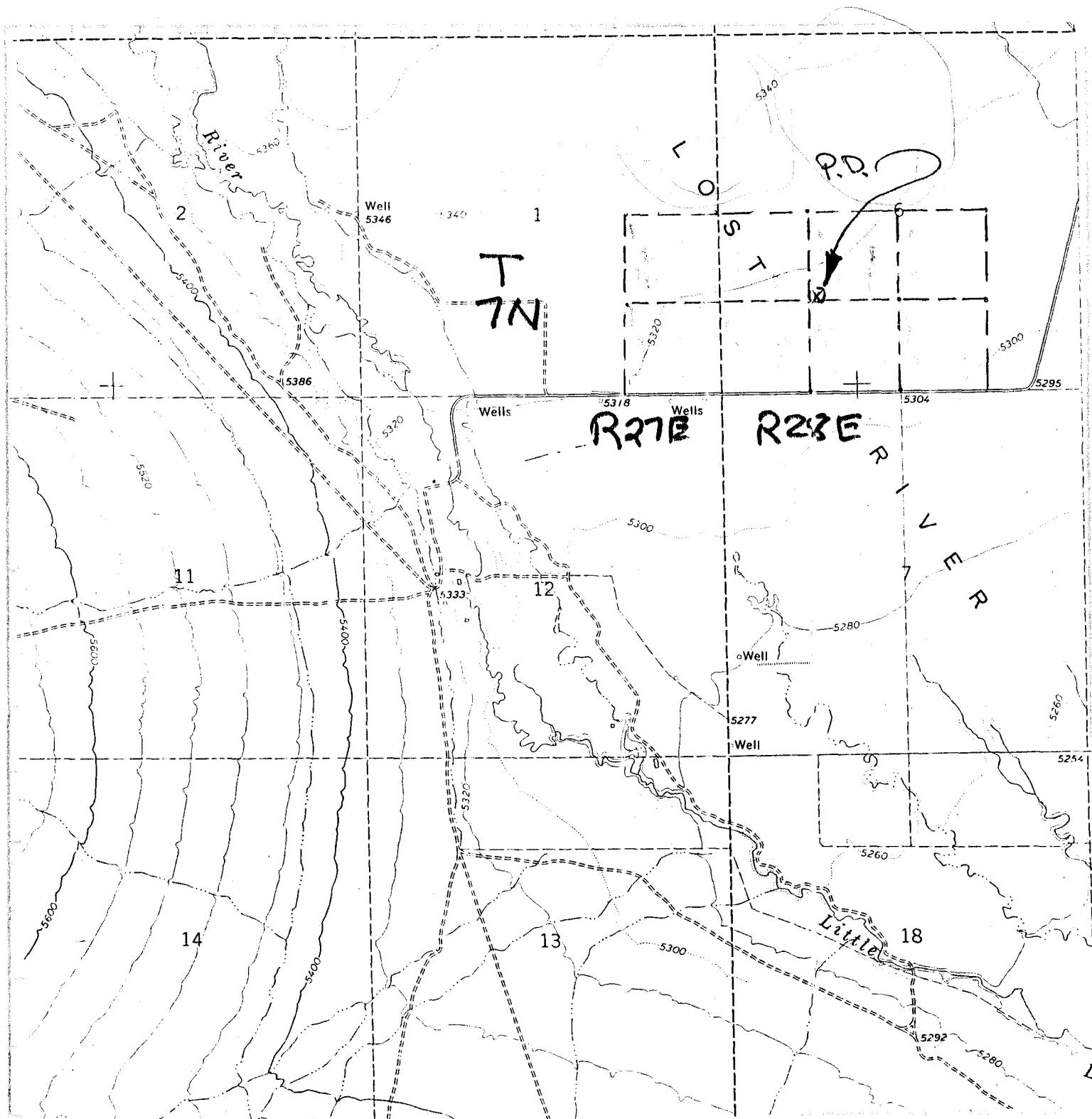
Twp	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8N	27E	34	40			40									40				120
		35						40	40	40		40	40						200

Total acres 320

9. Describe any other water rights used for the same purpose as described above None

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
				to _____
				to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Seppawillow Inc
Richard W. Dambke Pres
 (Signature of Applicant)

Subscribed and sworn to before me this 11th day of October, 19 90.

Milla L. Hansen
 (Notary Public)

My commission expires 8/8/96

Assist by HWS

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by HW Date 10-15-90 Protest filed by _____

Prelim. check by HWS KAW Fee \$50.00 # E015327

Receipted by HWS Date 10-15-90

Published in Area Advertiser Copies of protest forwarded by _____

Pub. dates Dec. 2 & 13, 90 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☒ approval ☐ denial

_____ rec'd. _____ by RAC

Copy of transfer sent to lien holder _____

4/11/1989

SRBA CLAIMS RECEIVING CHECKLIST #2

CLAIMANT'S NAME	<u>SAGE W. FLOW INC.</u>	CLAIM IDENT. NO.	<u>A33-02091</u>
DATE RECEIVED	<u>10/6/89</u>	CK #	
AMOUNT \$			

	YES	NO	Required Info?
1. Is the name and address complete with zip code?	<u>X</u>		*
2. Is a priority date entered?	<u>X</u>		*
Is the priority date acceptable in view of mandatory filing dates?	<u>X</u>		*
See Adjudication Memos #1 and #4 to determine if a Permit is required.	<u>X</u>		*
3. (a) Is a source entered?	<u>X</u>		*
x (b) Is a tributary to entered? (if required)	N/A <u>X</u>		*
4. Is the legal description of the p.d. sufficient?	<u>X</u>		*
5. Is there a description of the diverting works?	<u>X</u>		
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form.	<u>X</u>		*
Is the period of use included?	<u>X</u>		
Is a quantity claimed for each use?	<u>X</u>		*
7. Is a total quantity claimed entered?	<u>X</u>		
x 8. If required is a consumptive use entered?	N/A <u>X</u>		
x Is the consumptive use correct?	N/A <u>X</u>		
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4.	N/A <u>X</u>		*
10. Is (are) the place(s) of use and purpose(s) indicated?	<u>X</u>		*
11. Is (are) the county(ies) entered?	<u>X</u>		
12. Is the ownership of p.u. checked?	<u>X</u>		
x 13. Are other water rights listed or "none" indicated?	<u>X</u>		
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.)	N/A <u>X</u>		
15. Is the basis of the claim indicated?	<u>X</u>		
x 16. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.)	N/A <u>X</u>		
17. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block.	<u>X</u>		*
18. Has the claim been signed, sealed, and dated by a notary?	<u>X</u>		*
19. Was this claim filed on time, or was an extension granted?	<u>X</u>		*
20. Is the fee enclosed correct?	Exempt <u>X</u>		*
x 21. If this claim is based on an existing water right, has the identification number been entered?	N/A <u>X</u>		
22. Should this claim be data entered?	<u>X</u>		

Claim checked by: TO Date: 10/18/89Claim must be returned to claimant: (Yes) X (No)Claimant must be notified of modifications: (Yes) X (No)

Receipt Prepared by:	Date:	Checked by:	Date:
Claim data entered by:	Date:		
Sent to claimant by:	Date:		

Comments: ENTIRE FLOW RATE CLAIMED BUT ONLY PORTION OF LICENSEDACREAGE CLAIMED

MICROFILMED

NOV 18 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEELER
MARIE T. FEELEY
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

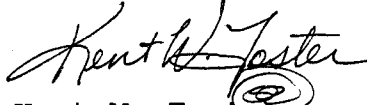
October 5, 1989

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Gentlemen:

We are returning the claims for Sage Willow, Inc. together with our check in the amount of \$3,478.00. Thank you for your assistance with this matter.

Yours very truly,


Kent W. Foster

#8149.00/srr

Enclosures

MICROFILMED

NOV 18 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

Date: October 3, 1989

Kent W. Foster
P.O. Box 50130
Idaho Falls, ID 83405

RE: Sage Willow, Inc. Notices of Claim
to a Water Right Returned

Dear Mr. Foster:

The Idaho Department of Water Resources (IDWR) is returning your check #44170 (\$2,891.00) and The Sage Willow, Inc. Notices of Claim to a Water Right because of insufficient information and/or fees. All items on the notices must be correctly completed and fees submitted before the IDWR can process the claims.

Please correct the items identified below and return the forms to the IDWR before the Butte County filing deadline, January 12, 1990. Failure to return the corrected notices before the deadline may result in an assessment of an additional late-fee.

- Insufficient Fee: The total fee for all 15 claims is \$3478.00. Please refer to the individual filing fee for each claim in the upper right corner of the notice.
- Item #12 must be completed on Notice A33-10009.
- The priority date (Item #2) for Notice A33-02057 should be Feb. 1, 1950, instead of Feb. 3, 1950 (see enclosed report for License 33-02057).
- The IDWR number for the basis of claim (Item #15) in Notice A33-02090 should be 33-2090 instead of 33-2890 (see enclosed report for License 33-02090).
- The IDWR number for the basis of claim (Item #15) in Notice A33-00081 should be 33-0081 instead of 33-0082 (see enclosed report for Decreed Right 33-0081).
- The IDWR number for the basis of claim (Item #15) in Notice A33-00082 should be 33-0082 instead of 33-0083 (see enclosed report for Decreed Right 33-0082).

MICROFILMED

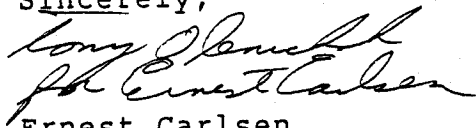
NOV 18 1992

Kent W. Foster
Page -2-

- The title was omitted in the "For Organizations" signature block (Item #16) on all but one of the notices. Please type the claimants title in the appropriate spaces on each notice.

If you have any questions, please call Tony Olenichak, Water Right Agent, at (208)-525-7161.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ernest Carlsen".

Ernest Carlsen
Adjudication Supervisor

Enclosure

MICROFILMED
NOV 18 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEELER
MARIE T. FEELEY
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

October 2, 1989

RECEIVED
OCT 03 1989

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Department of Water Resources
Eastern District Office

Dear Gentlemen:

We are enclosing for filing claims on behalf of Sage Willow Inc., which owns property in Butte County, Idaho. The filing fees have been calculated as follows:

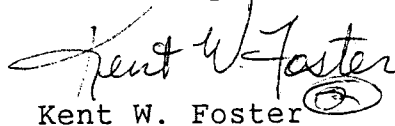
\$25.00 for the single family dwelling Domestic Claim

\$50.00 for the two dwelling Domestic Claim

\$50.00 Flat Fee for each of the 13 irrigation claims
and \$1.00 per acre for each of the acres to which we
claim a water right is appurtenant.

We have also enclosed our check in the amount of \$2,891.00
for the total amount of the filing fees. Thank you for your
assistance with this matter.

Yours very truly,


Kent W. Foster

#8149.00/srr

Enclosure

MICROFILMED

NOV 18 1992

Howe 204

April 7, 1949

Department of Reclamation

Dear Sirs;

I have bought the
Knowlen Ranch from
the Blain County Canal Co.

I would like to file on
winter water from Little Lost
River & upper Spring Creek.

This water will be used
on the Knowlen Ranch
in the winter to make
summer pasture. It will
also help the summer
flow of the river.

I would like this filing
to go into effect when
the water master asks of

in the fall and until
he goes on in the spring.

This Ranch has 238⁶
acres, a good part of it
is sub ground and a
natural Reservoir to
the River.

Running water on it
in the winter will
greatly increase this
sub.

Please send me
the form for a filing
of this kind.

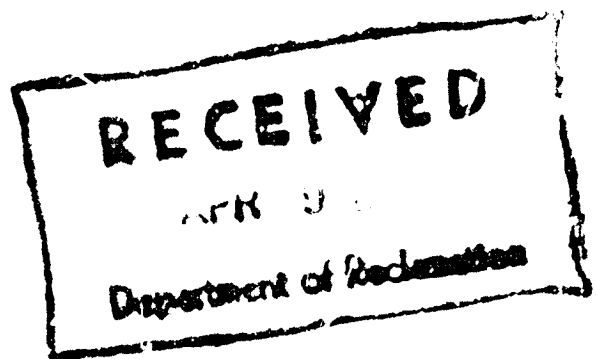
For information about
this, write Mr Hansen
or John Hansen of Howe
Idaho.

L-833

I will be glade
to answer any question
and give you all
the information I can
on this.

Yours Truly
L. P. Hawley

Howe.
Ida



R-833



U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF RECLAMATION

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARSHALL R. RULP, State Reclamation Engineer

BOISE

May 11, 1949

Mr. L. R. Hawley
Howe, Idaho

Dear Mr. Hawley:

We wish to apologize for the delay in answering your letter of April 7, in which you requested information on filing on winter flow water to irrigate what is called the Knowlen ranch, from the waters of Little Lost River, to be used during the winter months only.

Approximately three weeks ago, the writer was in Arco, and intended, at that time, to come over to Howe to see you. Your letter and the map prepared has been in my brief case, unnoticed, ever since.

The reason why I wanted to talk the matter over with you is because this is an unordinary request, and the application will have to be made on our storage water from for application for permit. The Permit, after approval, will allow you to store so many acre feet as ground storage during the winter months, to be diverted from Little Lost River and Upper Spring Creek.

We can prepare the application for permit in this office, providing you furnish the following information. We are enclosing a sketch map, showing the land location of the Knowlen ranch and will request that you show on said map the points of diversion from Little Lost River and Spring Creek within a 40 acre subdivision. Also, if the land description, as shown on the plat, is not all under your ownership, please designate on said map what is owned by you and what is not.

If you will return this map with the information requested, we will mail you the application, for your signature, at an early date.

Very truly yours,

MARSHALL R. RULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

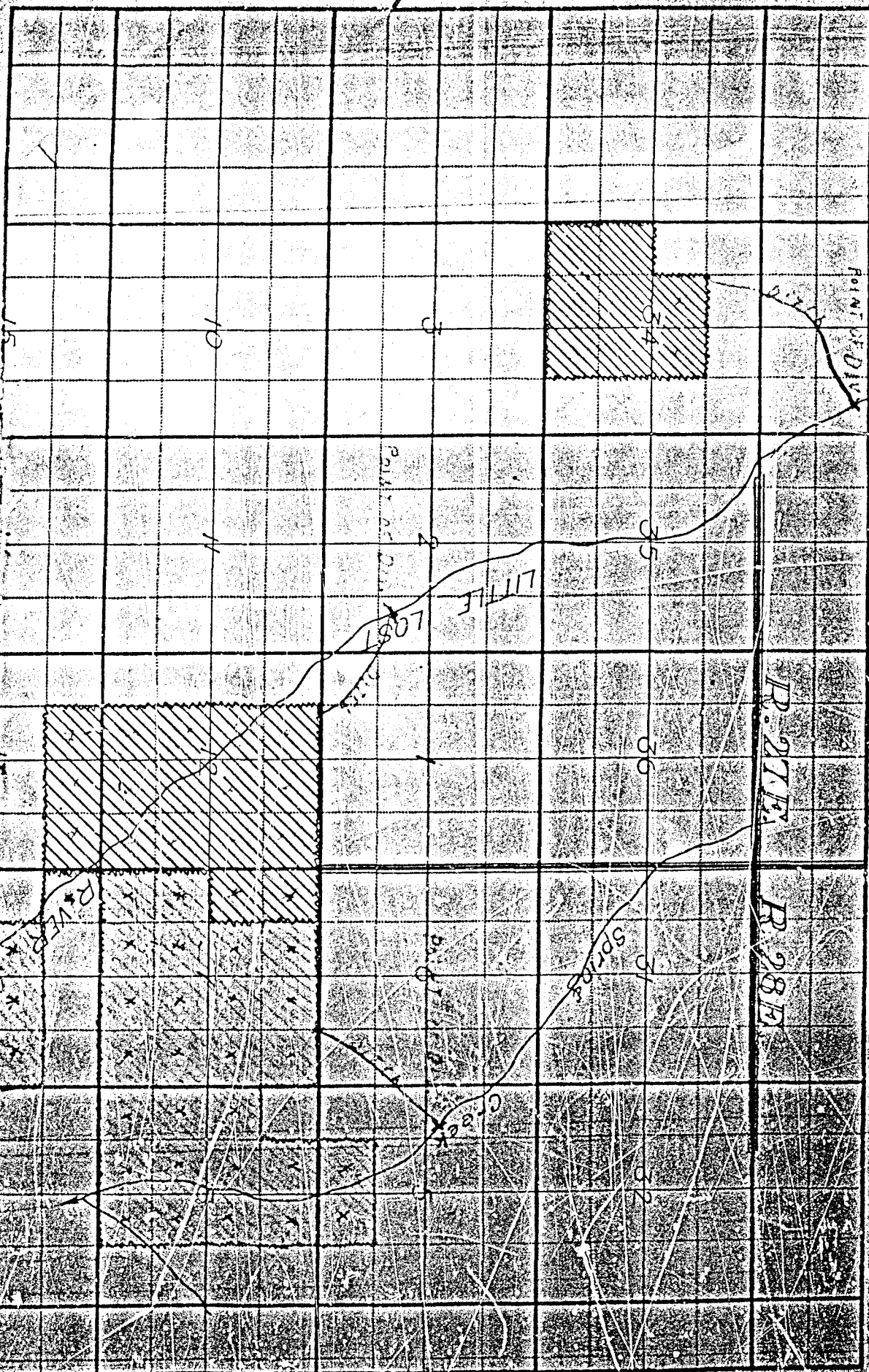
RWT:sh
Enc.

P-223

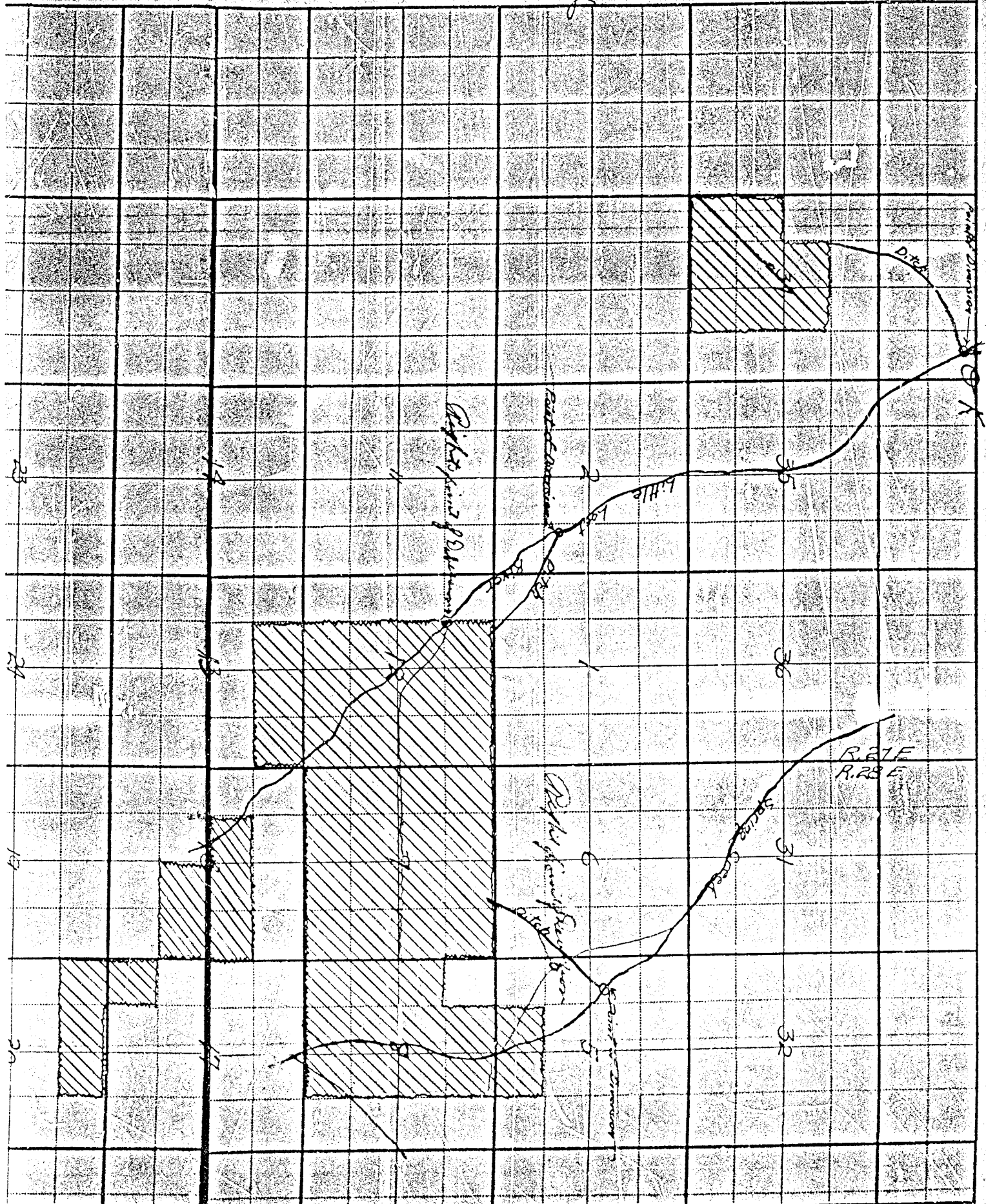
NAME OF APPLICANT

L. R. Hawley

FORM No. 0



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



STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. R-833

REPORT ON PROOF OF Completion of Works and Beneficial Use

L. R. HAWLEY, Howe, Idaho

2960 ac ft ditched water
between labels of life and
bank

24p. 4140 a 7.

R-833

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

Permit No. R-833This proof is for Completion of works and Beneficial use in Water District No. 9

1. Name of applicant L. R. Hawley, Howe, Idaho
2. Source of water supply: Little Lost River & Upper Spring Creek
E., B.M.; from Little Lost River
from Spring Creek
3. Location of point of diversion/ Is in the SW $\frac{1}{4}$ Sec. 5, T. 7 N., R. 28 E. of Section NE $\frac{1}{4}$ Sec. 27,
T. 8 N., R. 27 E., B.M., and NE $\frac{1}{4}$ Sec. 2, T. 7 N., R. 27 E., B.M.
T. 8 N., R. 27 E., B.M., and NE $\frac{1}{4}$ Sec. 2, T. 7 N., R. 27 E., B.M.
County of Butte.

4. Describe works as they exist, giving dimensions and capacities of same: The diversion dam located in the SW $\frac{1}{4}$ Sec. 5, T. 7 N., R. 28 E. is a concrete headgate with 10" thick walls. The main opening is 10' wide. Wing walls extend onto bank on each side and then support walls parallel the stream. There is a concrete floor in the headgate opening. The dam height is approx. 4' above the stream bed. This dam was built when Molens owned the ranch. There is a large ditch or canal leading from each side. The one carrying the flood water under this permit takes out upstream approx. 30 ft. from the dam into a canal 6' wide at the bottom and extends to the S. and W. Division No. 2 in the farm yard in the NW $\frac{1}{4}$ Sec. 12, T. 7 N., R. 27 E. is a new concrete structure. There is a 10' headgate to the East and a 12' headgate to the S. which is down the main branch of the stream. East is approx. 5' high and each has a concrete floor 16' long. Side walls are also 16' long. Short wing wall extends out to the banks. The water control is through use of 2" planks placed in headgates.

5. Water is used for: Ground storage during winter months for winter 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):

SW $\frac{1}{4}$ Sec. 5 and SW $\frac{1}{4}$ Sec. 12 Section 5; All of Section 7; W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ Section 8;
SW $\frac{1}{4}$ Sec. 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 13; NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20;
All in Township 7 North, Range 28 East, B. M.
NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13;
All in Township 7 North, Range 27 East, B. M.
SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34;
Township 8 North, Range 27 East, B. M.

See Map

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

8. What large stream would the water here appropriated finally reach? No river, flows into Little Lost River sinks.

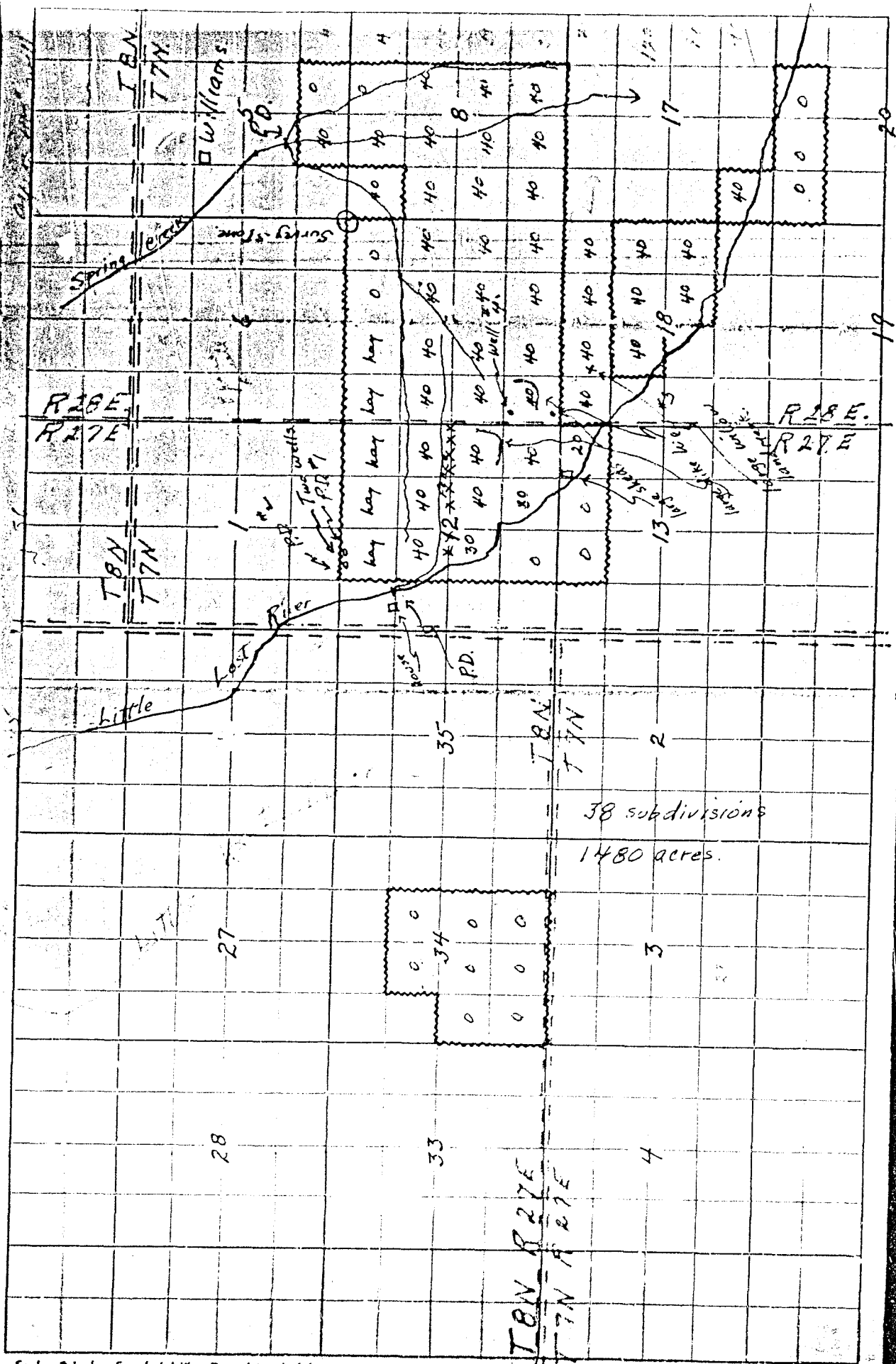
Remarks: The lands were too wet on this date for satisfactory inspection and a return for a closer check of the land acreage will be made in July. Mr. Hawley is well pleased with the improvement in grass and the increase in flowing of springs below the place that he feels is due to the winter spreading program.

There are 8 small ponds to aid in holding and distribution.

This examination was made on the 20th day of May, 19 58(Signed) E. M. Humphrey Examiner.

Completed the check up on Aug 1, 1958

R-833



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

State of Idaho
License and Certificate of Water Right

Water License No. R-833

Amount 2960 acre feet

Water District No.

Priority June 22, 1949

THIS IS TO CERTIFY that L. R. HAMLEY

of Howe, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated June 22, 1949; that Permit No. R-833 was issued under said application; that Certificate of Completion of works, with a ^{storage} ~~capacity~~ capacity of 2960 ~~second foot~~ acre feet, was issued thereunder on May 5, 1954, showing that said works were completed on the 28th day of July, 1951; and that on the 28th day of July, 1951,

L. R. HAMLEY

of Howe, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of Little Lost River & Upper Spring Creek, ~~contributory to~~ for the purpose of Soil Moist Zone Storage only, under Use Permit No. R-833 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 9 of Licenses at page 5258, on the 5th day of May, 1954;

The right hereby confirmed dates from June 22, 1949;

The Point of Diversion is located in the NE 1/4 Section 5, Twp. 7 N., Rng. 28 E., B.M. and from Little Lost River in the NW 1/4 Section 12, Twp. 7 N., Range 27 E., B.M. in the 1/4 Sec. Tp. R. B. M. County Blaine.

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 2960 acre ~~foot~~ feet per ~~second~~ annum, equally divided between Upper Spring Creek and Little Lost River.

Description and location of use:

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 5th day of May, 1954.

MARK R. KULP

State Reclamation Engineer.

(SEAL)

of Howe, State of Idaho, made proof to the satisfaction of the
 State Reclamation Engineer of Idaho, of the right to use the waters of Little Lost River &
 Creek, for the purpose of Soil Moist Zone Storage only
 Upper Spring / , under Use Permit No. R-833 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
 9 of Licenses at page 5258, on the 5th day of May, 1954 ;

The right hereby confirmed dates from June 22, 1949 ;
 from Upper Spring Creek

The Point of Diversion is located in the NE1/4 Section 5, Twp. 7 N., Rgn. 28 E., B.M. and from
 Little Lost River in the NW1/4 Section 12, Twp. 7 N., Range 27 E., B.P.
 in the 1/4 1/4 Sec. , Tp. , R. , B. M. County Butte

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 2960 acre feet per annum, equally divided between Upper Spring Creek
 and Little Lost River.

Description and location of use:

Twp.	Range	Section	Forty-Acre Tract	No. Acres described in Permit	No. Acres Actually Irrigated
7 N.	28 E.	5	SE1/4	40	40
			SW1/4	40	--
			NE1/4	40	--
			NW1/4	40	--
			SW1/4	40	40
			SE1/4	40	40
			NE1/4	40	--
			NW1/4	40	--
			SW1/4	40	40
			SE1/4	40	40
			NW1/4	40	40
			SW1/4	40	40
		8	SE1/4	40	40
			NE1/4	40	40
			SW1/4	40	40
			SE1/4	40	40
			NW1/4	40	40
			SW1/4	40	40
			SE1/4	40	40
			NW1/4	40	40
			SW1/4	40	40
			SE1/4	40	40
			NW1/4	40	40
			SW1/4	40	40
		17	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
		18	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
7 N.	27 E.	12	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
			SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
		13	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
			SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
8 N.	27 E.	34	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40
7 N.	28 E.	20	SE1/4	40	40
			SW1/4	40	40
			NE1/4	40	40
			NW1/4	40	40

Number of Acres Actually Irrigated 1480

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

A. Subcase 33-02091

In Re SRBA)

Case No. 39576)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print of type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Blaine County Canal Company

Address: HC 65 Box 1058

Howe, Idaho 83244

Daytime Phone: (208) 767-3474

Name & Address of Attorney, if any:

Michael C. Creamer of Givens Pursley LLP

P.O. Box 2720

Boise, Idaho 83701

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: Sage Willow, Inc.

Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C.

P.O. Box 50130

Idaho Falls, Idaho 83405

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. ☒ Name and Address
2. ☒ Source
3. ☒ Quantity
4. ☒ Priority Date
5. ☒ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ Purpose(s) of Use
8. ☒ Period of Year
9. ☒ Place of Use

11. **Recommendation:** This water right should be decreed with elements as recommended by the IDWR.

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **VERIFICATION (Must be Completed)**

State of Idaho)
)ss.
County of Ada)

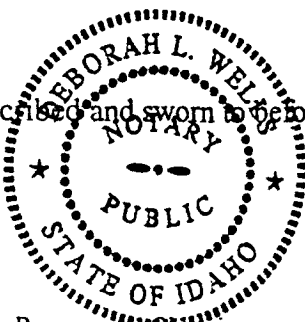
Michael C. Creamer, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)

Michael C. Creamer
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:



August 23, 2000
Notary Public for State of Idaho
Residing at: Boise
My Commission Expires: 9-16-01

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on August 2nd 2000, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Sage Willow, Inc.
Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C.
P.O. Box 50130, Idaho Falls, Idaho 83405

3. One copy to the party who filed the objection at the following address

Name: N/A
Address: _____

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449


Your signature or signature of attorney mailing
on your behalf

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

A. Subcase 33-02091

In Re SRBA)

Case No. 39576)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print of type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Mays Land and Livestock, Inc.

Address: P.O. Box 1

Howe, Idaho 83244

Daytime Phone: (208) 767-3405

Name & Address of Attorney, if any:

Michael C. Creamer of Givens Pursley LLP

P.O. Box 2720

Boise, Idaho 83701

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: Sage Willow, Inc.

Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C.

P.O. Box 50130

Idaho Falls, Idaho 83405

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. ☒ Name and Address
2. ☒ Source
3. ☒ Quantity
4. ☒ Priority Date
5. ☒ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ Purpose(s) of Use
8. ☒ Period of Year
9. ☒ Place of Use

11. **Recommendation:** This water right should be decreed with elements as recommended by the IDWR.

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Ada)

Michael C. Creamer, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:



Notary Public for

Residing at:

My Commission Expires:

State of Idaho

Boise

9-16-04

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on August 7th 2000, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Sage Willow, Inc.
Address: c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C.
P.O. Box 50130, Idaho Falls, Idaho 83405

3. One copy to the party who filed the objection at the following address

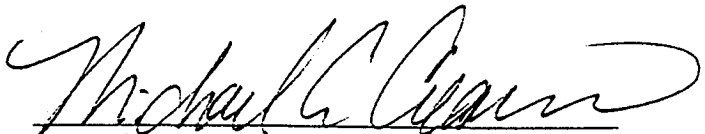
Name: N/A
Address: _____

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449


Your signature or signature of attorney mailing
on your behalf

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

PAGE: 1
GENERAL INFORMATION

LAST: HAWLEY
ADDRESS:
CITY: HOME
PHONE NUMBER: 208-000-0000
OWNER CODE: 0
FIRST: VENICE A.
STATE: ID ID ZIP: 99999

LAST: SAGE WILLOW, INC.
ADDRESS: 545 SHOUP AVE.
CITY: IDAHO FALLS
PHONE NUMBER: 208-522-7784
OWNER CODE: C
FIRST:
STATE: ID ID ZIP: 83402

LAST: FOSTER
ADDRESS: P.O. BOX 50130
CITY: IDAHO FALLS
PHONE NUMBER: 208-000-0000
OWNER CODE: A
FIRST: KENT W.
STATE: ID ID ZIP: 83405
FIELD EXAM REQUIRED?
VERIFICATION REQUIRED DUE TO REMARKS?
NO REMARKS IN CLAIM
DATABASE N FIELD EXAMINER

CONTACT PERSON: _____ PHONE NUMBER: (____) _____
DATE OF FIELD EXAM: ____/____/____ APPOINTMENT MADE: Y(____) V(____) A(____) P(____)
ACCOMPANIED BY: _____ PHONE NUMBER: (____) _____
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / NOTES:

1/14/97 Claim ADJUSTED PER TRANS. NO. 3785. LETTERS SENT TO ATTORNEY & CLAIMANT.
CHANGED P.O.U. AND P.O.D. PER TRANS.

A. AJ CLAIM: # A33-02091 PRIORITY DATE: 01-22-1950 STAGE: L
B. WR RECORD: # 33-02091 PRIORITY DATE: 01-22-1950 STAGE: L

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) FIELD EXAMINER
N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N()
IF YES EXPLAIN.

NOTES: CLAIMED AS LICENSED, AND PER T. 3705.

RECOMMENDED PRIORITY DATE: As claimed
01-22-1960

REVIEWED BY [Signature] DATE 14 JAN 67

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT TWP. RGE. SEC. 1/4 1/4 1/4 LOT CNTY BUTTE

A33-02091

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE NONE

MR RECORDS IN SAME 40 ACRE TRACT

SOURCE: GROUNDWATER

TRIB:

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT TWP. RGE. SEC. 1/4 1/4 1/4 LOT CNTY BUTTE

33-02091

OTHER WR RECORDS WITH SAME WR POD
A PREFIX R PREFIX
NONE NONE

AJ CLAIMS IN SAME 40 ACRE TRACT

SOURCE: GROUNDWATER

TRIB:

C. FIELD EXAM REQUIRED?

DATE TO POD DISCREPANCY? (Y/N) Y
DATE TO SOURCE DISCREPANCY? (Y/N) N

NOTES: *TRANSFER #3785, APPROVED 8 Oct 92, CHANGES ROAD FROM SEC. 34, AS CLAIMED, TO SEC. 6, TWP. 28E.

4. Point(s) of Diversion: EXCERPT FROM T.3785, B.4.

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	SW	6	7N	28E	Butte	

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP. R5E. SEC. 1/4 1/4 1/4

7N 28E - 6

NE SW

COUNTY Butte

DIVERSION NAME

LOT

SOURCE: GROUNDWATER

TRIB:

REVIEWED BY: ABR DATE: 1/24/97

SYSTEM DESCRIPTION:

P.O.D. PER T. 3785

B. POU LISTING

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N()
IF YES SEE ATTACHED SHEET:

5. Lands irrigated or place of use: *EXCERPT FROM 7.3785, B.5.*

3785
TRANS
PERAS

FEXAM
 FEFEL
 PER AD

PER TRANS. 3785
P.O.M. IS AS
SHOWN BELOW

T. 3785 APPROVES
320 AC.

Approved

PRESUMPTION FLAG:

NOTES:

RECOMMENDATIONS:

TOTAL ACRES:

REVIEWED BY:

DATE:

A. AJ CLAIMED USES:

PURPOSES
433-02091 IRRIGATION

MONTH/DAY
FROM 04-01 TO 11-01
TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
4.360 CFS 960.00 AF/A
4.360 CFS 960.00 AF/A

B. WR RECORDED USES:

PURPOSES
33-02091 IRRIGATION

MONTH/DAY
FROM 04-15 TO 10-15
TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
4.360 CFS 1120.00 AF/A
4.360 CFS 1120.00 AF/A

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

DUE TO WATER-USE DISCREPANCY? (Y/N)
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)

FIELD EXAMINER
DATABASE N
N
Y

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N(✓)

Y(✓) N()

EXPLAIN IN NOTES, BELOW.

NOTES:

LICENSEE W. BROWN, BY DEPT. STD., HAVE PERIOD OF USE AS APRIL 15 TO OCT. 15.
So RECOMMENDED AS: APRIL 15 TO OCT. 15.

Y() N()

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

4J TOTAL CLAIMED DIVERSION RATE: 4.160 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: 4.160 CFS

CONFORMS PER T.3785

*** IF NO OR IF STATUTORY CLAIM OR BENEFICIAL USE THEN FLOW MEASUREMENT REQUIRED. ***

*** IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS ***

*** CLAIMED AND AN EXAM IS NOT REQUIRED, EXPLAIN IN NOTES. **

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) Y

FIELD DATABASE EXAMINER

B. FLOW MEASUREMENT

MEASUREMENT METHOD SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N() IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

NO CLAIMS FOUND WITH SAME PDU AND IRRIGATION USAGE

NO RIGHTS WITH SAME PDU BUT NOT USED FOR IRRIGATION

0. RATE/VOLUME CALCULATIONS: (IRRIGATION) 1B. CALCULATIONS

1A. IRRIGATION RATE X 3.02 CFS/ACRE = CFS
ACRES (TAKEN FROM P/U REVIEW)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N()

2. IRRIGATION CONSUMPTIVE USE
CLAIMED CONSUMPTIVE USE = 1120.0 AF/A
ACRES X CONSUMPTIVE VOL. AF/A FOR AREA =
TOTAL CONSUMPTIVE USE AF/A

3. IRRIGATION DIVERSION VOLUME
CLAIMED DIVERSION VOLUME = 960.00 AF/A
ACRES X DIVERSION VOL. AF/A FOR AREA =
TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:
SEE ATTACHED SHEET? Y() N()

NR RECORD CONDITIONS/REMARKS:
107 - THE CHANGE AUTHORIZED BY THIS TRANSFER SHALL BE ACCOMPLISHED
- WITHIN ONE (1) YEAR OF THE DATE OF THIS APPROVAL.
108 - FAILURE TO COMPLY WITH THE CONDITIONS OF THIS TRANSFER IS CAUSE
- FOR THE DIRECTOR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE APPROVAL
- OF THE TRANSFER SHOULD NOT BE RESCINDED.
109 - APPROVAL OF THIS TRANSFER DOES NOT PRECLUDE THE OPPORTUNITY FOR
- REVIEW OF THE VALIDITY OF THE WATER RIGHT(S) IN THE ONGOING
- SNAKE RIVER BASIN ADJUDICATION.
046 - RIGHT HOLDER SHALL COMPLY WITH THE DRILLING PERMIT
- REQUIREMENTS OF SECTION 42-235, IDAHO CODE.

omit 380 - THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO
- MORE THAN .02 CFS PER ACRE NOR MORE THAN 3.5 AFA PER ACRE FOR THE
- LANDS ABOVE.

NOTES: (INCLUDE LIMITATIONS ON CONSUMPTIVE USE FOR COMBINED RIGHTS.)

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. COMS. USE
IRRIGATION	<i>04-01</i> <i>10-15</i>	DATABASE EXAMINER 4.350	DATABASE EXAMINER 960.00	DATABASE EXAMINER 1120.0
TOTAL FOR THIS RIGHT		<i>4.350</i> <i>PETER T. STOS</i>	960.00	1120.0

REVIEWED BY: DATE:

ACCEPTED
AS CLAIMED

MUSKOGEE WELC

ROOT WATER RIGHT NUMBER: 33-02091

TOTAL DIVERSION RATE OF MR SPLITS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A33-02091	4.360	-		33-02091	4.360
	TOTAL CFS	4.360				4.360

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, IS THE WRITTEN REVIEW SHEET ATTACHED? (Y/N)

NOTES:

AS CLAIMED (NOT SPLIT) THIS RIGHT IS CLAIMED W-EXCL @ 4.36 cfs

AUTHENTICATION:

SIGNATURE: [Signature] DATE: 14 Jan 97

NAME OF FIELD EXAMINER: Arthur B. Rosenberg TITLE: Sr. Asst.

00:03:54
03/31/93

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

PAGE: 13
QUIKLOOK INFORMATION

1832
CLAIM NUMBER: A33-32091

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE								
POINT OF DIV	Y							
SOURCE								
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME								
CONSUMPTIVE USE								
PURPOSES								
PERIOD OF USE	Y							
BASIS OF CLAIM								
REMARKS								

VERIFIED BY CODES

- TOPD MAP/ORTHO-PQ = 1
- ASCS MAP = 2
- MASTER RECORDS = 3
- WAPP PHOTOS = 4
- FIELD EXAM = 5
- OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

CLAIM NUMBER: A33-02091

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SAGE WILLOW, INC. 545 SHOUP AVE. IDING FALLS ID 83402 (208) 522-7784	01/22/1950 <i>Q</i>	IRRIGATION	24-01 11-01 00-15 10-15	4.36 CFS <i>Q</i>	960.0 AFA 960.0 AFA 1120.0 AFA

WATER SOURCE: GROUNDWATER

TRIBUTARY TC:

* T07N R28E Sec 6 NESW
~~T08N R27E S34 NENE~~

POINT(S) OF DIVERSION:

PLACE OF USE LEGAL DESCRIPTION FOR: IRRIGATION

[illegible]

POW COUNTRY: BUYPE

NON-IRRIGATION USES: NONE

OTHER RIGHTS: NONE

DAIES:
EXAM MADE DATE:

VERIFIED DATE: 03/26/1985

MISC: WATER DISTRICT NUMBER:

FIELD INSPECTION FLAG:
PRESUMPTION FLAG:

*
*
T-37BS
CHANGES P.O.D. 2 P.O.U. TO AS LISTED.

COND / REMARKS

5. Lands irrigated or place of use:

PER T.3785, COMBINED
RIGHT LIMITATION OF 0.02
cfs, 3.5 AFA.

[illegible]

23. The Canal Co. is not entitled to ownership of water rights owned by Sage Willow.

ORDER

IT IS HEREBY ORDERED that transfer no. 3785 is VOIDED.

IT IS FURTHER ORDERED that license no. 33-02090 and license no. 33-02091 and portions of all other rights diverted and directly applied to lands in excess of 1,412 acres are FORFEITED.

IT IS FURTHER ORDERED that application for transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226 and 4227 are **CONDITIONALLY APPROVED** provided the applicant does not irrigate more than 1,412 acres within the place of use proposed by the applications, and the applicant complies with the following:

1. A plan must be submitted to the Department of Water Resources within 56 days of the final disposition of this dispute or after any final appeal period has run identifying 1,412 acres that will be irrigated together with the individual water rights that will be appurtenant to the acreage. The plan must also be provided to the Protestants for review and comment. Comments from the Protestants must be submitted to the Department and to the Applicant one month following submittal of the plan. A hearing may be requested by either party within sixty (60) days of submittal of the plan.
2. Failure to submit the plan is cause for the Department to revoke its conditional approval of the application for transfer.

IT IS FURTHER ORDERED that the Department will issue another recommended decision if additional testimony is required following submittal of the plan.

DATED this 8th day of April, 1996.



KARL J. DREHER, Director

Attachment

09/17/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 33-2091

DISALLOWED

NAME AND ADDRESS: SAGE WILLOW INC
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405-0130

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.360 CFS
960.000 AFY

PRIORITY DATE: 01/22/1960

POINT OF DIVERSION:

T07N R28E S6 NESW Within BUTTE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
4/15 10/15

QUANTITY
4.360 CFS
960.00 AFY

PLACE OF USE: IRRIGATION Within BUTTE County

T07N R27E S01	NESE	40.0	T07N R27E S01	SESE	40.0
T07N R27E S06	NESW	40.0	T07N R27E S06	NWSW	40.0
T07N R27E S06	SWSW	40.0	T07N R27E S06	SESW	40.0
T07N R27E S06	NWSE	40.0	T07N R27E S06	SWSE	40.0

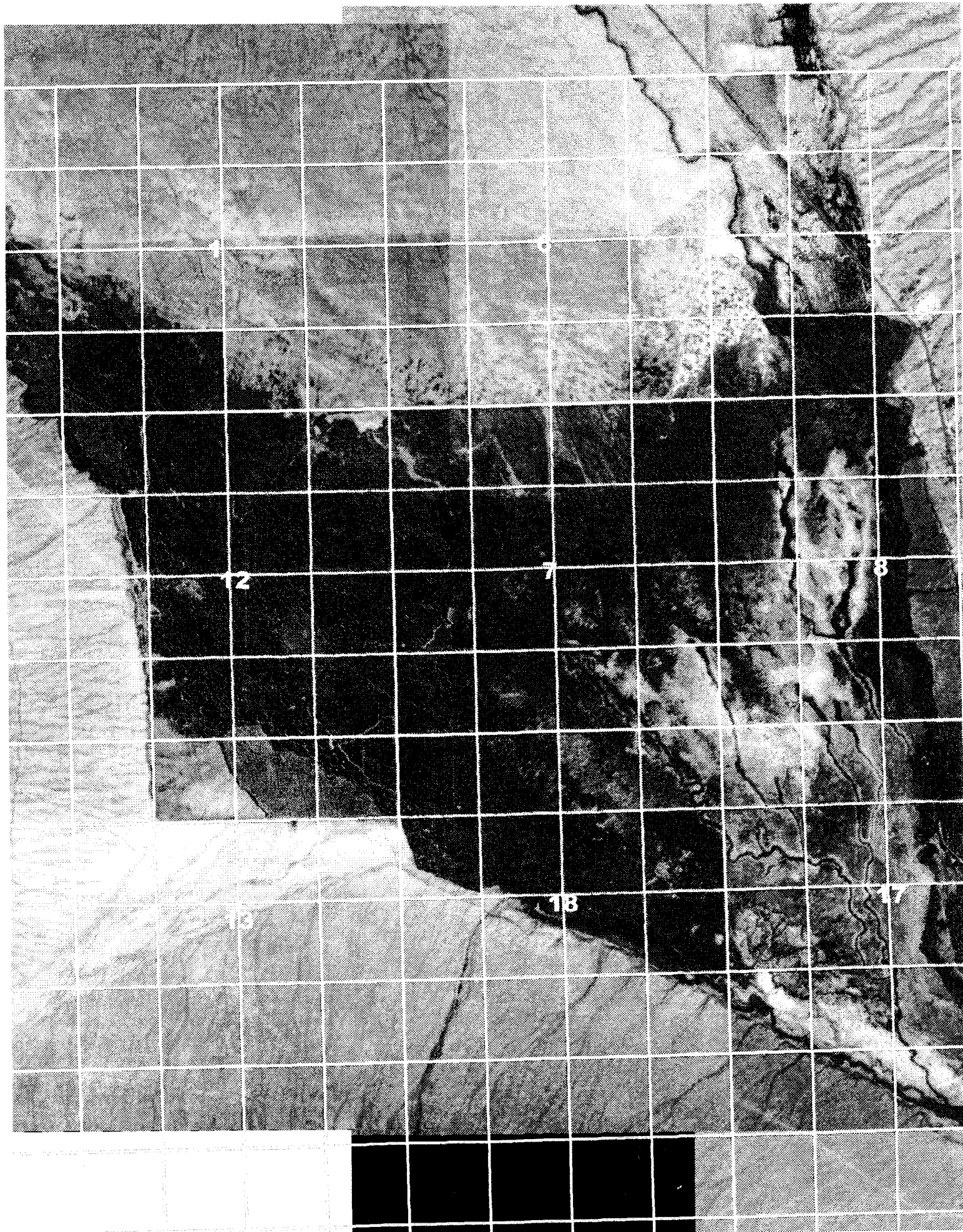
320 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

FORFEITED/ABANDONED IN AN AMENDED FINAL ORDER DATED 8 APRIL 1996, VOIDING TRANSFER 3785, IDWR FOUND THIS WATER RIGHT HAD BEEN LOST BECAUSE OF NONUSE FROM 1969 TO 1989.

FORFEITED/ABANDONED: This is included for a claim based on a decree or license that is PROPOSED to be disallowed on the basis that the water right no longer exists because forfeiture of the right by nonuse was confirmed and a defense to forfeiture was not confirmed, or because abandonment of the right was confirmed.

EXPLANATORY MATERIAL: License



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A33-02091**
Date Received: 10/ 6/1989
Receipt No: E010978
Received By: _____

**COPY FOR
YOUR FILES**

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

**COPY FOR
YOUR FILES**

1. Name: SAGE WILLOW INC
Address: 545 SHOUP AVE
IDAHO FALLS ID 83402
208-522-7784

2. Date of Priority: JAN 22, 1960

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07N	28E	6	NE	SW			BUTTE

5. Description of diverting works:
WELL AND PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	4.360		960.00

7. Total Quantity Appropriated is:
4.360 C.F.S. (and/or) 960.00 A.F.A.

8. Total consumptive use is 1120.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07N	27E	1	NE	SE		IRR	40.0
			SE	SE		IRR	40.0

*original
to
court*

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	80.0
		6	NE	SW	IRR	40.0
			NW	SW	IRR	40.0
			SW	SW	IRR	40.0
			SE	SW	IRR	40.0
			NW	SE	IRR	40.0
			SW	SE	IRR	40.0
					Section Acres	240.0
					Total Acres	320.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

14. Remarks:

CONFORMED ATTORNEY MAILING ADDRESS DMS

TRANSFER NO. 3785, CHANGES POU/POD, APPROVED 8 OCT 1992.

15. Basis of Claim: LICENSE

Water Right Number: 28692

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A33-02091
Date Received: 10/06/1989
Receipt No: E010978
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: SAGE WILLOW, INC. 208-522-7784
Address: 545 SHOUP AVE.
IDAHO FALLS, ID 83402

2. Date of Priority: JAN 22, 1960

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08N	27E	34	NE	NE			BUTTE

5. Description of diverting works:
WELL AND PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	4.360		960.00

7. Total Quantity Appropriated is:
4.360 C.F.S. (and/or) 960.00 A.F.A.

8. Total consumptive use is 1120.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08N	27E	34	NE	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	SE		IRR	40.0

Section Acres 120.0

A33-02091

Page 1

Date: 10/26/89

MICROFILMED
NOV 18 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08N	27E	35	NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NW	SW		IRR	40.0
			SW	SW		IRR	40.0

Section Acres 200.0

Total Acres 320.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE
Water Right Number: 28692

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEMCIVIL CASE NUMBER: 39576
Ident. Number 33-2091 A33-02091
Date Received 10/6/89
Receipt Number E010978**RECEIVED**
OCT 03 1989Department of Water Resources
Eastern District OfficeNOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW1. Name of Claimant(s) Sage Willow, Inc. Phone (208) 522-7784Mailing Address 545 Shoup Avenue, Idaho Falls, Idaho Zip 834022. Date of Priority (Only (1) per claim) January 22, 19603. Source of water supply (a) Groundwater

which is tributary to (b) _____

4.a. Location of existing

point of diversion is: Township 8N. Range 27E. Section 34 ,
1/4 of NE 1/4 of NE , Govt. Lot, _____ B.M., County of Butte

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____ , _____ 1/4 of _____ 1/4 of _____ 1/4 ,
Govt. Lot _____ B.M., County of _____ending point is: Township _____ Range _____ Section _____ , _____ 1/4 of
_____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____5. Description of existing diversion works (Dams, Reservoirs, Ditches,
Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any
changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Well and pump.

A3302091

MICROFILMED

NOV 18 1992

6. Water is claimed for the following purposes:

(Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 04/01 to 11/01 amount 4.36 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.36 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 1120 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.)

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP:RNG:SEC:	NE1/4	:	NW1/4	:	SW1/4	:	SE1/4	:TLS
:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:
8N:27E: 34:40	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:120
:	: 35:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:200
:	:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:
:	:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:
:	:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:
:	:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:
:	:	:	' ' ' '40	:	' ' ' '40	:	' ' ' '40	:

Total number of acres irrigated 320

11. In which county(ies) are lands listed above as place of use located?
Butte

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

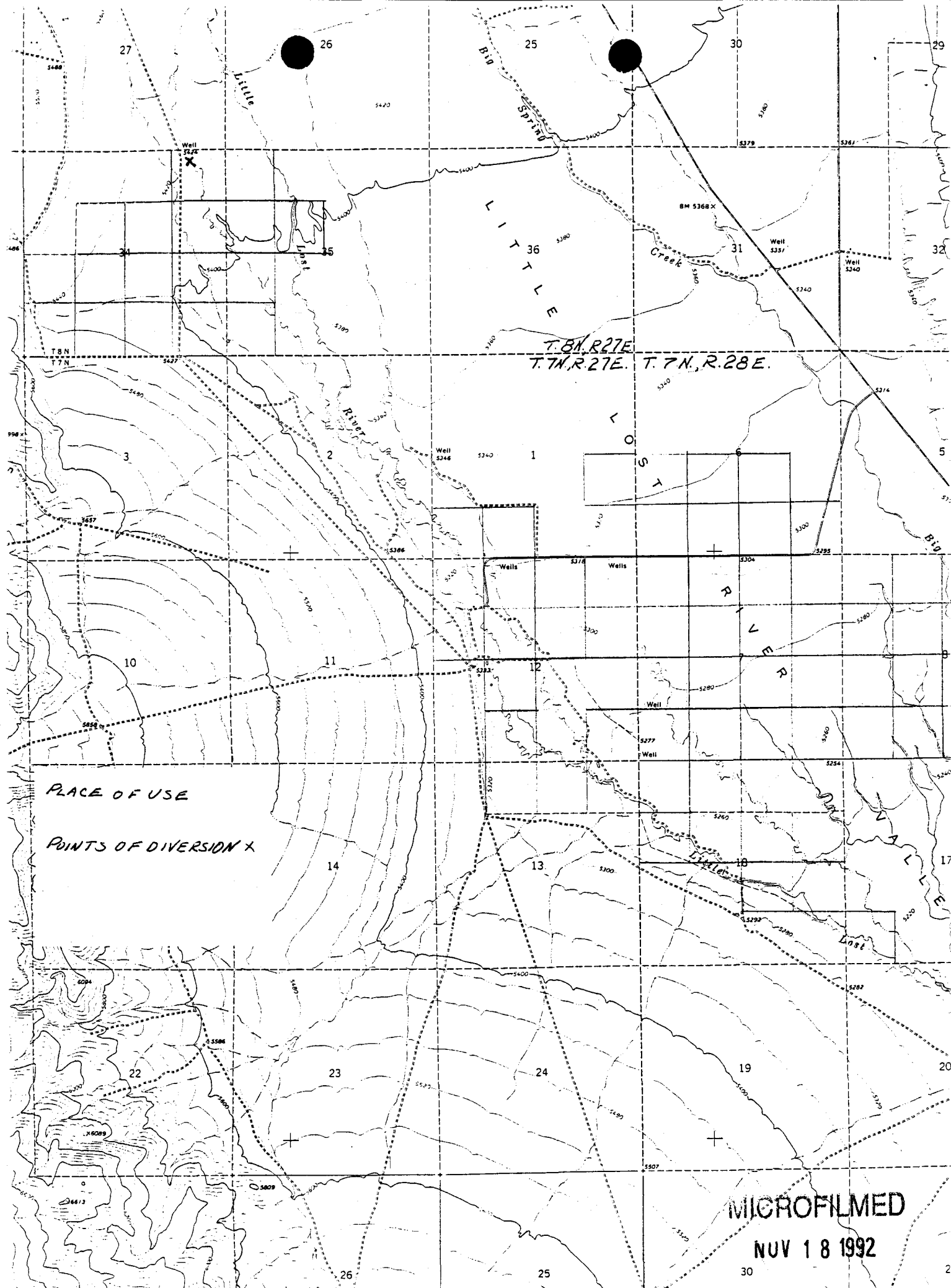
_____ or None (X)

14. Remarks:

Last Name Sage Willow, Inc. Ident No. A 33-02091

MICROFILMED

NOV 18 1992



MICROFILMED

NOV 18 1992

15. Basis of Claim (Check one) Beneficial Use ☐ Posted Notice ☐
Permit ☐ Decree ☐ License ☒

If applicable provide IDWR Water Right Number 33-2091
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am President of Sage Willow, Inc., that I have signed the
Title Organization

foregoing document in the space below as President
Title

of Sage Willow, Inc. and that the statements contained in the
Organization

foregoing document are true and correct.

Signature of Authorized Agent Edmund W. Dumble President

Title and Organization President, Sage Willow, Inc. Date 9/27/89

State of Idaho/or Idaho)
County of Blaine) SS.

Subscribed and sworn (or affirmed) before me this 27 day
of September, 1989.

Notary Public Supreme McCampbell
Residing at Blaine County
My Commission Expires 1994

17. Notice of Appearance:

Notice is hereby given that I, Kent W. Foster will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Kent W. Foster
Address P.O. Box 50130, Idaho Falls, Idaho 83405
Date 10/2/89

Last Name Sage Willow, Inc. Ident. Number A33-02091

MICROFILMED

NOV 18 1992