

NOV - 4 2008

By

Clerk
Deputy Clerk

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. 39576)

**AFFIDAVIT OF
STEPHEN J. McGRATH**

STATE OF IDAHO)

) ss.

County of Bonneville)

STEPHEN J. McGRATH, being first duly sworn upon oath, deposes and states:

1. I make this affidavit based on my own personal knowledge.
2. That your affiant resides at 980 Rainey Creek Road, Swan Valley, Idaho where he farms and ranches, raising hay, grain, pasture, nursery stock and livestock.
3. That he is the current owner of water right #23-00020B, having acquired the same as the result of a transfer of said water right in 1998;
4. That attached hereto, marked as Exhibit "A", and by this reference included herein, is a true and correct copy of the records pertaining to said transfer as contained in the records of the State of Idaho, Department of Water Resources, consisting of 8 pages, relevant portions of which have been high-lighted in an attempt to assist the court.
5. That said transfer is designated as transfer #4851 and was made pursuant to the provisions of Idaho Code § 42-108 and Idaho Code § 42-222.

6. That no one appeared or otherwise protested or objected to said transfer #4851 despite proper notice and opportunity to have any objections considered prior to the transfer.

7. Accordingly, Transfer #4851 is entitled to administrative finality under the law. The Partial Decree of January 2005 awarding water right #23-00020B to your affiant should be upheld in all respects. Claimants' Motion to Set Aside Partial Decree should be denied.

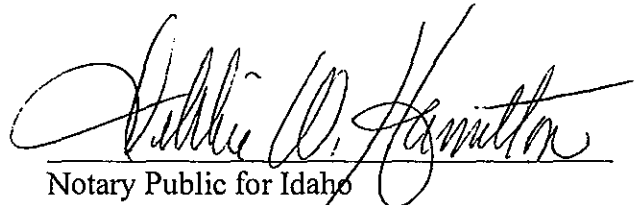
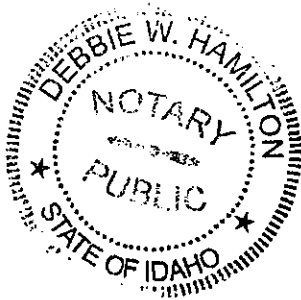
8. Further sayeth your affiant naught.

DATED this 3RD day of November, 2008.



Stephen J. McGrath

SUBSCRIBED AND SWORN to before me this 3RD day of November, 2008.



Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 04/11/11

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing **AFFIDAVIT OF STEPHEN J. McGRATH** was mailed on November 3, 2008, with sufficient first-class postage to the following:

Andrea Courtney, Esq.
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

Glen Bills
Represented by:
Paul B. Rippel
P. O. Box 51219
Idaho Falls, Idaho 83405-1219

Que S. Hansen
New Century Management Co.
288720 Riverside Drive #399
Agora Hills, CA 91301

Thomas M. Walsh
P. O. Box 112
Swan Valley, ID 83449

Gary Clark
1111 Yellowstone Avenue
Pocatello, Idaho 83201



Stephen J. McGrath

EXHIBIT "A"

Eastern

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

AMENDED

AMENDED

TRANSFER NO. 4851
WATER RIGHT NO(S). 23-00019D/23-00020B/23-00047D/23-00093B

This is to certify that: STEPHEN J MCGRATH
PO BOX 50731
IDAHO FALLS ID 83405

RECEIVED

NOV 23 1998

Department of Water Resources
Eastern Region

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 23-00019D : IRRIGATION Priority: 04/15/1889	04/15 to 10/15	0.34 CFS	117.6 AF
Right No. 23-00020B : IRRIGATION Priority: 06/20/1889	04/15 to 10/15	0.34 CFS	123.4 AF
Right No. 23-00047D : IRRIGATION Priority: 05/15/1896	04/15 to 10/15	0.32 CFS	57.8 AF
Right No. 23-00093B : IRRIGATION Priority: 01/22/1916	04/15 to 10/15	1.00 CFS	157.5 AF
TOTAL:		* 2.00 CFS	* 157.5 AF

SOURCE

TRIBUTARY OF

RAINEY CREEK

SNAKE RIVER, SOUTH FORK

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 8, Township 01N, Range 44E
BONNEVILLE County

PLACE OF USE: IRRIGATION

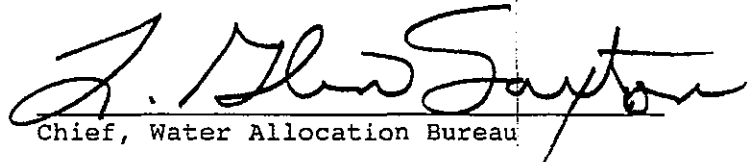
<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
01N	44E	8	SWNW 30	SENW 15		45
Total number of acres irrigated:						** 45

TRANSFER NO. 4851
WATER RIGHT NO(S). 23-00019D/23-00020B/23-00047D/23-00093B

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 01.
2. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
3. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4. 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.
5. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
6. A lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
- * 7. The total instantaneous diversion of water from all points of diversion under Transfer No. 4851 shall not exceed 2.00 cfs, nor total combined annual volume of 157.5 af.
- ** 8. Right 23-00019D is limited to the irrigation of 33.6 acres in the place of use described above in a single irrigation season.
- ** 9. Right 23-00047D is limited to the irrigation of 16.5 acres in the place of use described above in a single irrigation season.
- ** 10. Rights 23-00019D and 23-00047D when combined shall not exceed a total annual diversion volume of 117.6 af and the irrigation of 33.6 acres.
11. Rights 23-00019D, 23-00020B, 23-00047D and 23-00093B when combined shall not exceed a total diversion rate of 2.00 cfs, a total annual diversion volume of 157.5, and the irrigation of 45.0 acres.
12. Two points of diversion are located within the SWNW, S08, T01N, R44E.

Dated this 16th day of November, 1998.


Chief, Water Allocation Bureau

MEMORANDUM

TO: FILES 23-00019A/00020/00047B/00093

FROM: PAM SKAGGS²/STATE OFFICE

SUBJECT: TRANSFER 4851

DATE: March 17, 1998

Transfer 4851 changes the point of diversion under a portion of Rights 23-00019A (C & D), 23-00020 (A & B), 23-00047B (C & D), and 23-00093 (A & B), splitting each right.

Review of the recorded rights show that the transfer also represents a change in place of use to the historically irrigated land. The place of use has been modified over the years through unrecorded transfer to include the 45 acres under the proposed place of use. No physical change occurs.

The applicant is the new owner of this portion of the ranch and wants to add two separate points of diversion; a diversion ditch to serve the west side of the property and a pump to serve the east side of the property. The creek bisects the property in a north south direction.

Recommended conditions include watermaster control, measuring devices and lockable controlling works, irrigation overlap, multiple points of diversion, combined right conditions, and standard transfer conditions.

\$100 Fee

SO 8-4-46

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4851

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant Stephen J McGrath Phone (208) 524-0731
Post Office address PO Box 50731, 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 I'm purchasing part of a ranch and I want my own point of diversion to minimize ditch losses. I will have a ditch on the west side of creek and a pump on the east side. Both are in SW NW 5.08 T01N R44E.

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 _____
See Attached Sheet #1 _____ to _____
_____ to _____
_____ to _____
_____ to _____
2. Total amount of water being transferred _____ cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Rainey Creek tributary to Snake River
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	8	1N	44E	Bonneville	Ditch & pump ("B" list) McGrath
		NE	SW	5	1N	44E	Bonneville	("A" list)

5. 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	
"B" list	1N	44E	8							30	15									45
"A" list	1N	44E	5											30	35					65
			6															30		30
			7	8																8
			8	32	35															67

Total acres 215

PART 1

6. General Information:

- a. Description of diversion system Ditch and flood irrigation on west field and
a pump and sprinkler on the east field
- N/A b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, contracts? _____ Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed trust, mortgage or contract agreeing to the proposed changes.
- N/A c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

- d. Remarks:
To my knowledge, no portion of these water rights has undergone a
period of five or more consecutive years on non-use.

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 _____

SHEET #1

	<u>RIGHT NUMBER</u>	<u>PRIORITY</u>	<u>AMT</u>	<u>NATURE</u>	<u>USE</u>	<u>PERIOD OF USE</u>
"B" LIST MCGRATH	23-00020B	6/20/1889	0.33 cfs	Irrigation		4-1 to 10-31
	23-00093B	1/22/1916	1.00	Irrigation		4-1 to 10-31
	23-00019D	4/15/1889	0.33	Irrigation		4-1 to 10-31
	23-00047D	5/15/1896	0.32	Irrigation		4-1 to 10-31
			1.98 cfs			
"A" LIST	23-00020A	6/20/1889	1.27 cfs	Irrigation		4-1 to 10-31
	23-00093A	1/22/1916	3.80	Irrigation		4-1 to 10-31
	23-00019C	4/15/1889	1.27	Irrigation		4-1 to 10-31
	23-00047C	5/15/1896	1.23	Irrigation		4-1 to 10-31
			7.57 cfs			

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

Transfer No. _____

