

Scott,

Wes Wootan
stopped by to meet
you and to update
you on his BLM
negotiations. Attached
is the latest corres-
pondance. Wes
would like you to
call him



BLACK MESA FARMS
APRIL 15, 2004

Background

Black Mesa Farms has obtained statements from adjoining landowners attesting to irrigation erosion elimination since the property was obtained in 1991 from BLM via the Nature Conservancy. Black Mesa Farms owners reviewed on site with the BLM representatives the area, and the BLM can attest to the use of best management practices being in effect. In addition, no notable run off occurred this past winter, even with heavier than average snowfall. High cost of water does not justify applying water to non-croplands or letting it be discharged needlessly. Through rotation practiced by Black Mesa Farms, each piece of ground is farmed every six years.

Preferred Option

BLM removal of patent restriction off Black Mesa Farms patent by reason of a "no effect" history.

Option II

BLM removal of patent restrictions off of Black Mesa Farms patent. Black Mesa Farms agrees to a conservation plan that includes building retention ponds and seeding of non-farmable lands.

X Option III

BLM removes patent restrictions and Black Mesa Farms implements a conservation plan that seeds a buffer zone of 60 feet from the edge of farmable land and also some non-farmable land where it joins the BLM. Conservation plan would be monitored or revised for desired results.

Option IV

BLM changes patent restrictions to reflect good conservation by Black Mesa Farms of seedings and by measurement, designate lands that are applicable. (See attached map.)

To: Eddie Guerrero, Jarbidge Field Office Manager
From: Paul Seronko, Environmental Protection Specialist
Subject: Black Mesa Farms

03/19/04

The Black Mesa Farms patent violation lands have been analyzed for erosion potential and current status. This analysis looked at the lands that had been patented under the existing lands agreement. The original patent was implemented for erosion control purposes and created a buffer around the lands that would be allowed into agricultural production. The patented lands buffered areas where slopes are steep, soils are very erosive, and past agricultural activities had resulted in accelerated soil erosion. Black Mesa Farms has put much of these lands into agricultural production in violation of the existing patent.

On March 5, 2004 a field visit was conducted to view the existing agricultural sites, the current farming practices, and to ascertain the current erosional conditions and potentials at the site. Current farming practices use a number of techniques to aid in controlling erosion. These include sprinkler irrigation, crop row configuration, crop rotation, and use of green crops and stubble mulch. It was evident during the site visit that these practices have greatly aided in controlling the amount of run off from the irrigated lands and thus the site specific erosion. In several areas (particularly the south and southwest patented sections) the cultivated lands have extended right up to, or very close to, the badland escarpments. In all but a few of these areas the general slope of the land and surface drainage is away from these escarpments. In the southwest area the patented fields border public lands and in the north portion they border private holdings. These later areas are where farming practices from the previous owners created situations of severe accelerated soil erosion and prompted the adjacent landowners to ask for the existing patents to be included in the lands action. The current owners have recent affidavits from these same individuals saying that the erosional problems have been fixed and they no longer feel the need for these patents. Soils at and around the lands in question have a high to severe erosion hazard potential from either wind or water. With the soils on the flat more gently sloping areas being more susceptible to wind erosion and the soils on the more sloping areas (especially the escarpments) rated more for water erosion. When erosional processes occur on the soils on the steeper side slopes often the result is rapid irreversible rilling and gullyng.

After the field visit and time reviewing topographic maps and aerial photo coverage of the area I have made the following recommendation:

1. The existing patent can be altered to accommodate the recent changes in management for these lands. The new patent still needs to maintain a buffer zone in areas for both present and future site management. This assures that under future management these areas are protected from changes in farming practices. The lands that are currently in unauthorized crop production and that will be affected by this new buffer are not that extensive and should not cause any hardship to the viability of this operation especially when one considers that the existing water right allows for limited use and production of these lands in the first place. These zones are depicted on the attached map. The zones that are on the bottom portion of the parcel are to insure no impacts from potential erosion occur on adjacent public lands. The zones on the other portion of the parcel are to assure no impacts to private lands.

2. The buffer zones that need to be maintained should be taken out of crop production where they currently have been farmed and maintained in a perennial crop for long term stabilization. In areas the current practice has taken the surface disturbance right up to the badlands boundary. Farming right up to the edges in these areas is poor land stewardship and this practice needs to be halted. The areas that have not been farmed can remain as is or treated in the same manner as stated. Attached is a list of seeded species that would do well in this environment as a perennial crop and also supply forage for livestock if the owner wishes to graze these portions.

3. It is unclear whether the ephemeral drainage running along the southeast portion of the parcel (the drainage is marked on the map and runs up to the northeast toward the river) actually drains into the Snake River (there is a canal and road that dissects it within a quarter mile of the river). Drainage from the parcels does have the potential to leave the crop lands and enter this drainage. If runoff from this drainage can in fact reach the Snake River then there will be issues concerning the Spring Snail.

If there are any questions concerning this issue or my recommendations please contact me.

Attachment – Recommended Species for Seeding No-Farm Zones

**Bozoisky Russian Wildrye
Vavilov Siberian Wheatgrass
Hycrest Crested Wheatgrass
CDII Crested Wheatgrass**

Other forms of crested wheatgrass should also work

Could also include Ladak alfalfa or other forms and Fourwing Saltbush into the mixture.

It is best to rest the seeded areas for two complete growing seasons before allowing livestock to graze in the seeding.

March 3, 2004

To: Bureau of Land Management
Twin Falls Office
Twin Falls, ID 83303

In regard to land use on Black Mesa Farms, Glenns Ferry, Idaho

There has not been any erosion caused by irrigation use by Black Mesa Farms since 1990, as attested to by King Hill Irrigation District Manager, Gib Brown.

Additional comments: Every water user that
I've talked to tells me they have
never seen water from Black Mesa
Farm down on our canal area


Gib Brown, Manager
King Hill Irrigation

March 3, 2004

To: Bureau of Land Management
Twin Falls Office
Twin Falls, ID 83303

In regard to land use on Black Mesa Farms, Glens Ferry, Idaho

There has not been any erosion caused by irrigation use by Black Mesa Farms since 1990, as attested to by adjoining land owner, Rocky Trail, Trail Ranches.

Additional comments: To: BLM

I have lived and farmed in Pasadena Valley my entire life, where my father and I shared a

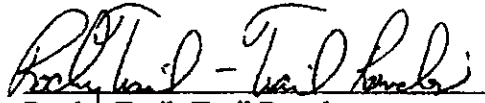
common boundary with the Black Mesa Farm Project. Up until the time BLM cancelled the

Desert Land Entries, the Black Mesa Farm (under Anderson- Grigg Management) was extremely
careless with the irrigation water, often times letting it run over the rim and causing huge gullies

with large amounts of erosion. After Wes Wootan & Don Bryant acquired the farm, the irrigation
practices are very well managed. I have not seen any irrigation water escape the farm nor

have we experienced any erosion off the rim. If you have any questions please call me at either

366-7762 or 599-1113


Rocky Trail, Trail Ranches

March 3, 2004

To: Bureau of Land Management
Twin Falls Office
Twin Falls, ID 83303

In regard to land use on Black Mesa Farms, Glenns Ferry, Idaho

There has not been any erosion caused by irrigation use by Black Mesa Farms since 1990, as attested to by adjoining land owners, Don and Donna Carnahan.

Additional comments: _____

Don Carnahan
Don Carnahan

Donna Carnahan
Donna Carnahan

BLACK MESA FARMS
APRIL 29, 2004

ATTENTION JIM KLOTT RE: BLACK MESA FARMS ROTATION PRACTICES.

Black Mesa Farms raises 640 acres of potatoes annually in our normal operating procedure. Each year, 560 acres are raised on a rotation basis on the 3,776 acres of farmable ground. The other 80 acres that brings total acreage to 640 acres annually is leased from Trail Ranches.

Black Mesa Farms has two rotation programs, as follows:

- 1) 3,010 acres. On approved farmable ground, Black Mesa Farms leases 320 acres annually to Trail Ranches for sugar beets. Our rotation then begins the cycle of potatoes – rye – rye – sugar beets – rye – rye – potatoes, etc. . .
- 2) 766 acres. On potential approved ground, the rotation would be potatoes – rye – rye – rye – rye – potatoes, etc. . . On this rotation, the rye is disked and replanted on the 3rd year in order to incorporate organic material into the soil profile.

We propose to plant a 60-foot buffer into a rangeland type of forage grass for conservation and erosion control. Black Mesa Farms utilizes BMP (best management practices) to maintain a good stewardship with adjoining properties. Buffers and seeding operation would be worked out between Black Mesa Farms and BLM field staff for approval. Review of progress would be ongoing with the BLM. Black Mesa Farms will also seed our non farmable acreage to rangeland grasses where terrain permits.

Black Mesa Farms, through its BMP, seeks the opportunity to utilize good farmable ground for crop production while maintaining practices that will enhance the environment through grazing, habitat development, and conservation. For further information, please contact Wes Wootan at 208-599-3131 or 208-366-7406.

CMCC Notes

11/13/03 SNK

Issues -

2-2209 C

BCMs or CMCCs?

could recommend, or disallow and include Q, V, A in 2-10208.

Q-103

Patent states ~~3~~ 3 tracts "nonirrigated"

Left these off recommendation.

2-10208 Rec less Q, Vol, Acres than claimed.

A remainder of right after splits, etc.

✓ 2-4021

Awaiting ~~proof~~ evidence of priority.

CMCC UZ

75-131-6131

77-134-2499

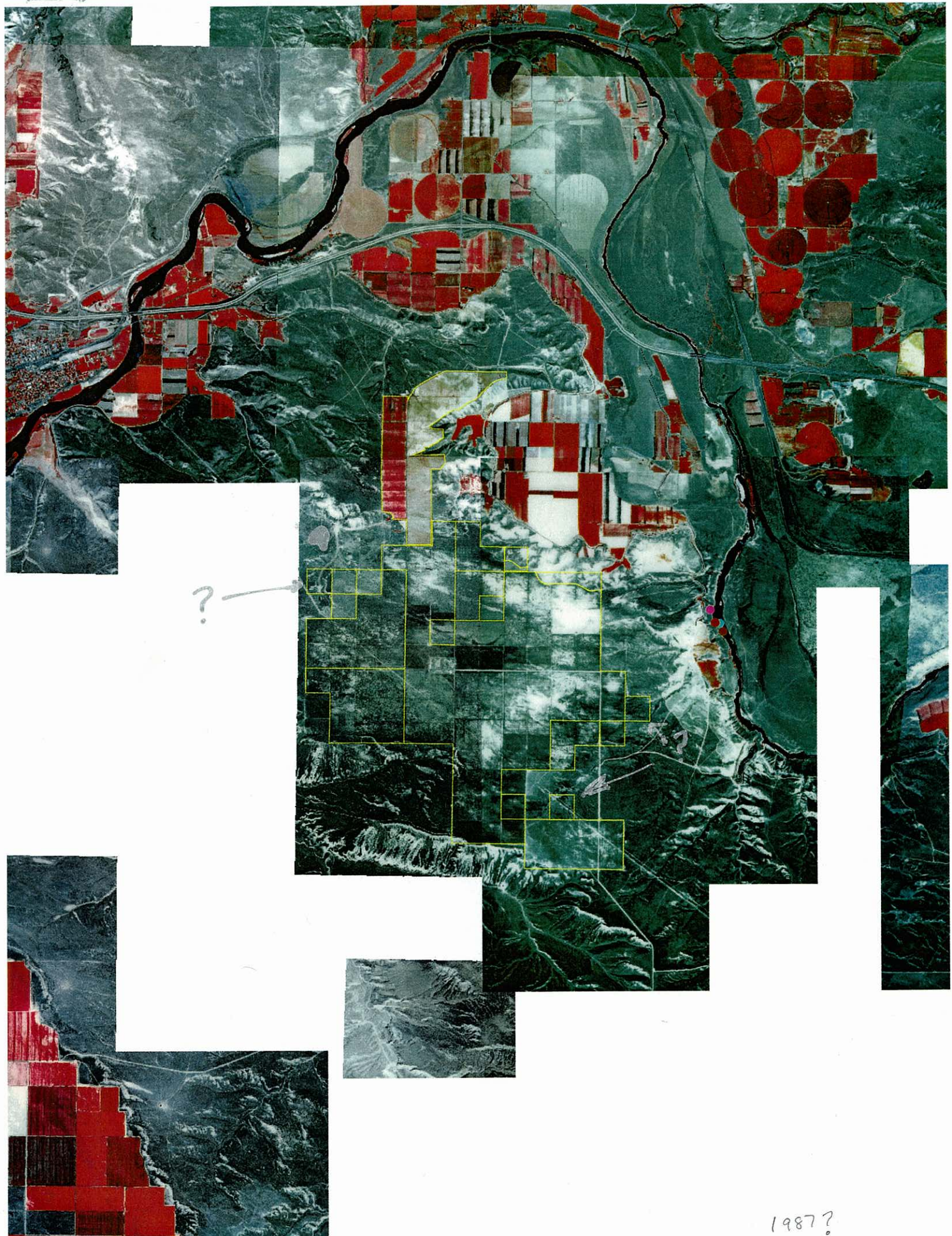
80-152-3475 ?

3474 partial

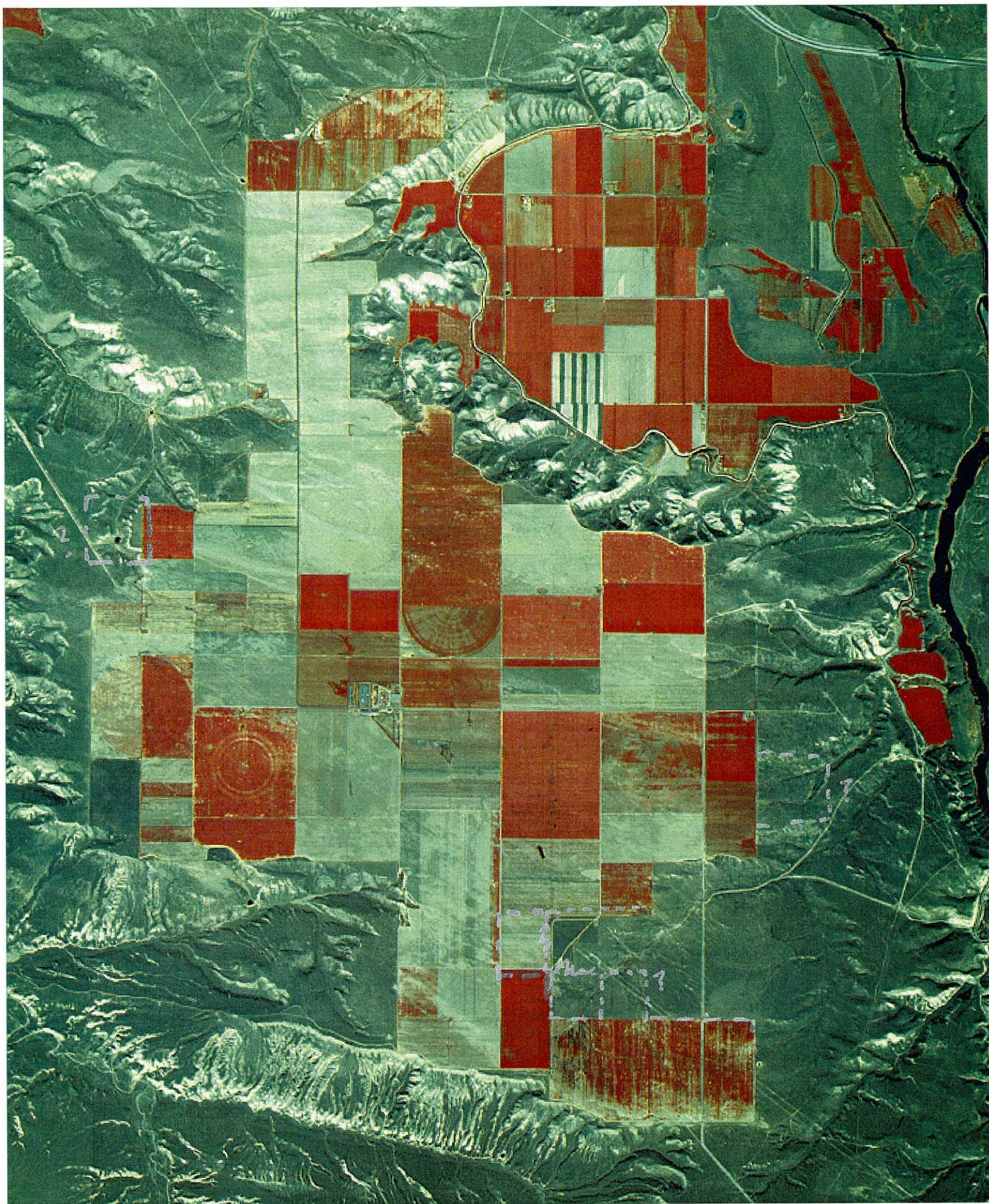
83-095-2311 partial

~~85-110-2312~~

AA 117 Pareda Valley
DOQQ=1998

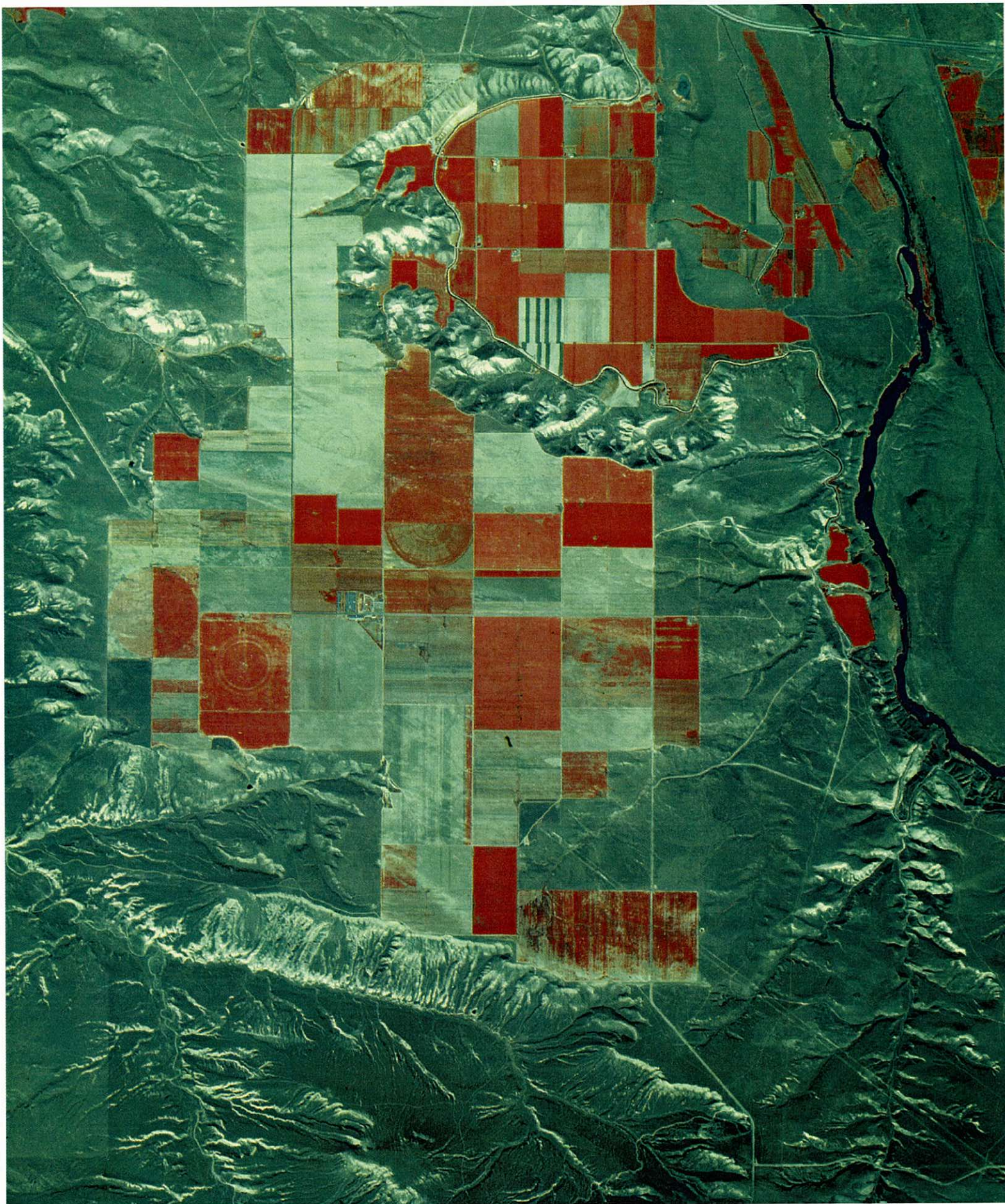


1987?



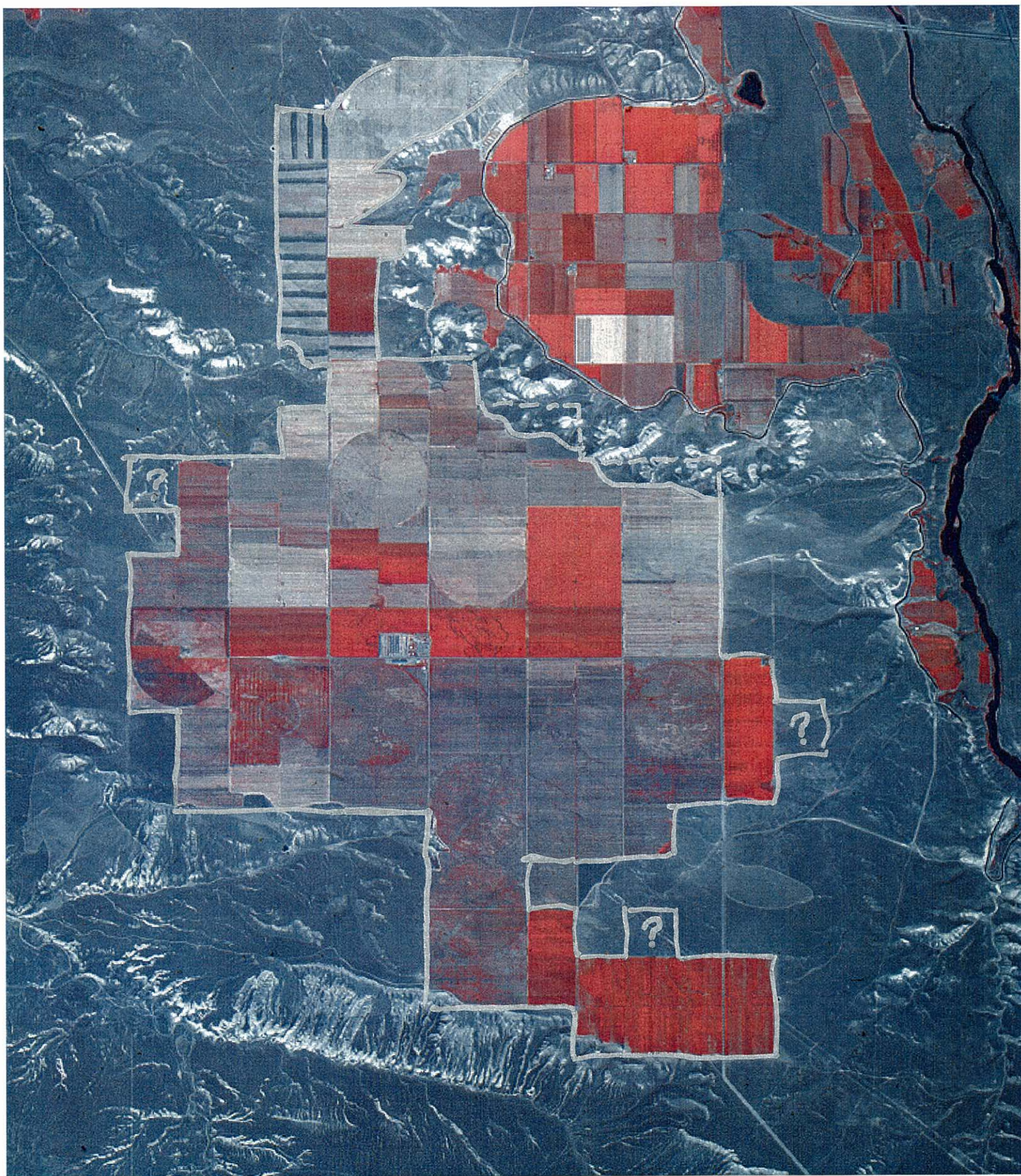
UZ Image 9/80
9/80

80-152-3475



U2 Image 1980
9/7

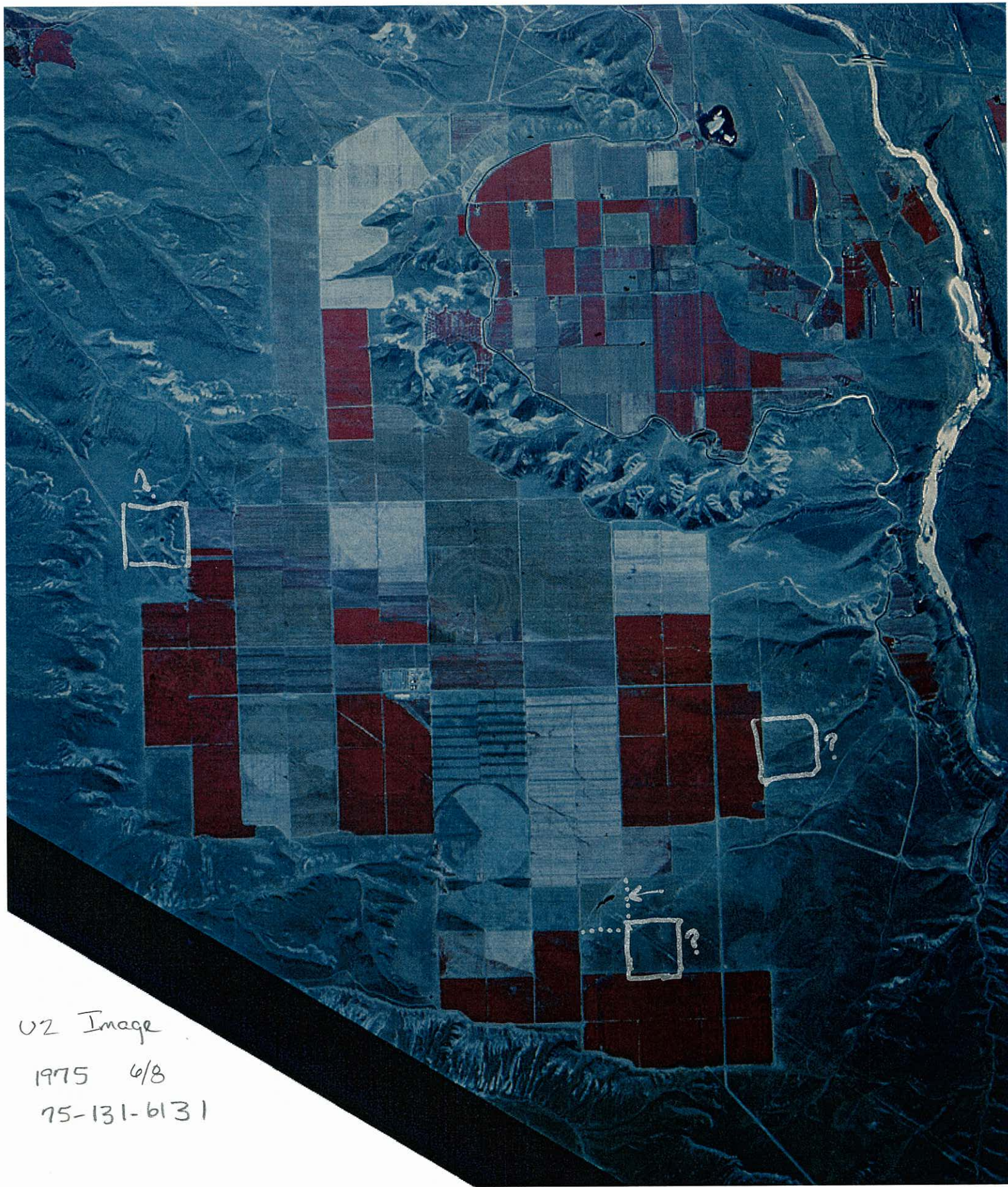
80-152 - 3475



U2 Image

1977
10/8

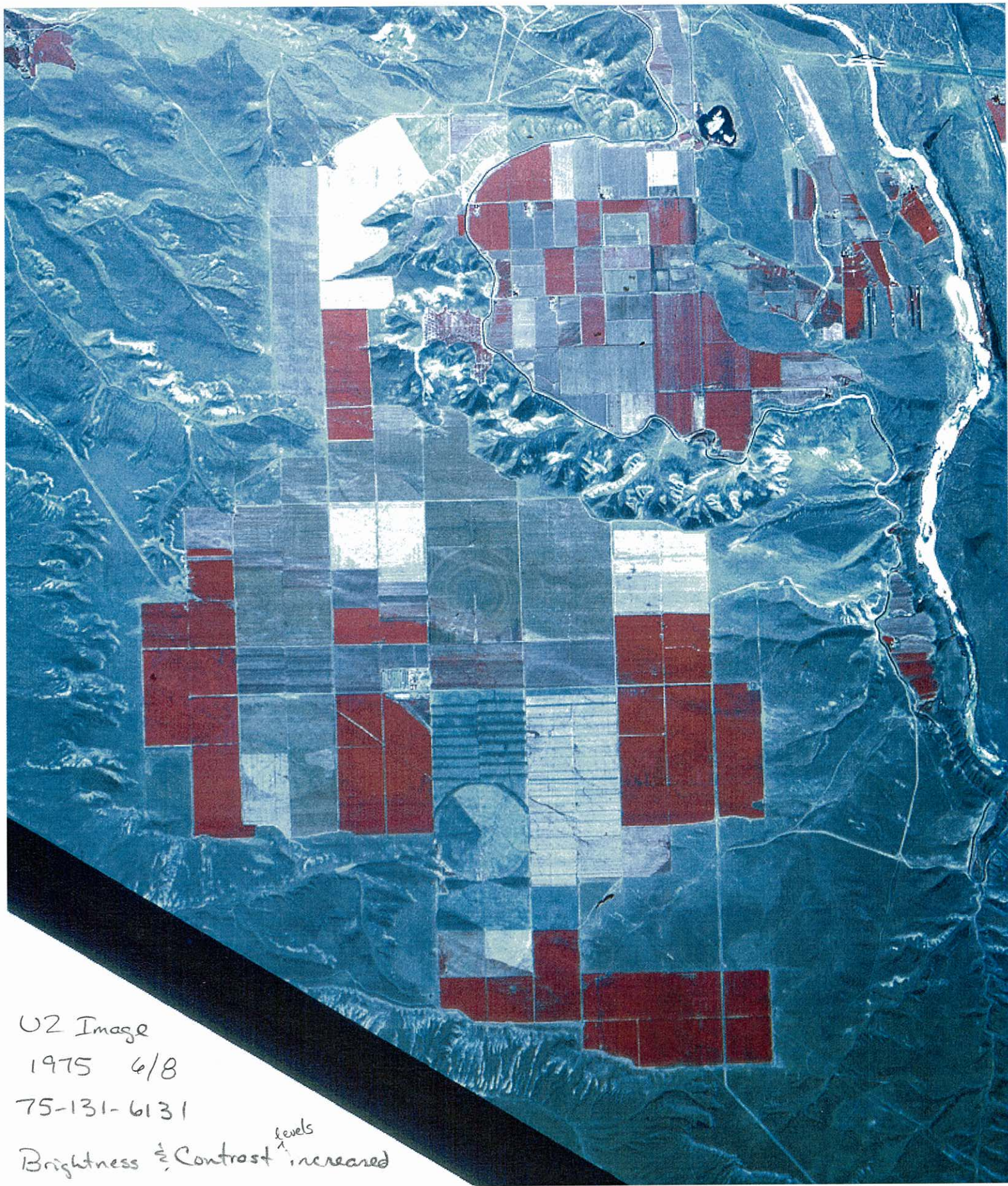
77-134-2499



U2 Image

1975 6/8

75-131-6131



U2 Image

1975 6/8

75-131-6131

Brightness $\frac{1}{2}$ Contrast ^{levels} increased

10/16/2003

10:30 -
12:45 am.

Black Mesa / CMCC Meeting

2-2209, 2-103

Dave T., Phil R., Susan H., Beech, A., Scott K
by phone Steve L., Jan S., Lori G., Western

1 action pending: Peter's Recommended Order.

1 action proposed: PPU transfer for Black Mesa's
rights, (2-2209B & 2-103) ? rec'd 12/20/2002

We would expect CMCC to protest transfer.

1988 Extension of Time to avoid forfeiture filed 1988.
Claimed last BU made 10/24/1981

Extended forfeiture until 1991. For 2-2209 ONLY.

2-103 filed in 1984 or prior.

Can consider for this case that tolling of
forfeiture occurred during little or adjudication
through to SRBA.

Potential problem, SRBA claim filed.

Irrigation resumed in

Note - UZ imagery documents irrigation in

1975, 1977, 1980

Later - personal discussion w/ Susan. Wait 2 weeks
and check back on progress of order.

August 12, 2003 1:30

include in review

Cottonwood Canal

2-2209

Wootan's filed Transfer

Steve L.
Lori G.
Jon S.
Scott K.
David T.

Can claim 514 acres, but we won't include in license per Peter's order. (not yet approved).

(Dan Stenson
Charlotte Stensinger
Now probably more
involved than
Renger)

2209-

Bill Renger involved. Selling lots of little pieces.

2209D No such record. Now split.

2-10208 - Portion still residing w/
company

-10209- C.O. soon will change to McDonald.
~~2~~

on 2403 Will / should this be forfeited?

Fact finding hearing - Trivial in Western
Lori's memo may be good 1st cut in our
knowledge of claims / ~~usage~~

Create Notice of F.F.H. - Fact Finding Hearing

History of Transfers

Dept makes presentation

Memo is Joe's testimony

* Transfer history / Memo Steve/Joie

** Application for transfer (current of Webster's)

Scott - ② 2-103 ③ Develop magazine

Dave - Hearing Officer

Joie - Can update data entry to catch claims w/ Transfers. Check on this.

Process transfer and make AT recommendations
2-103

Current court case re: ownership BLM & Webster

** Would app for transfer be appropriate to attach to dec.
- " seek

Black Mesa / Cottonwood Mutual Canal Company / etc review
Created by: S.King, 9/5/2003. Updated 10/17/2003.

[illegible]

LICENSE										RECOMMENDATION												
Volume - a	Right Acres	PPU	Acres/cfs/acre	af/acre	af/cfs	Status	Owner	POD	Use	Comments	Flow - cfs	Volume - af	Right Acres	PPU	Acres/cfs/acre	af/acre	af/cfs	Status	Owner	Use	Comments	
13339.33	3985		0.02	3.35		Parent - Split into A & 167 B by T5125.	CMCC				79.7	13339.33	3985		0.02	3.35		167 Parent				
12937.63	3865		0.02	3.35		Parent - Split into C & 167 D by T5714.	CMCC				66.9	11197	3345		0.02	3.35		167 Parent	CMCC			
401.7	120		0.02	3.35		167 Active	Glenns Ferry		Municipal		12.8	2142	640	2655	0.02	3.35		167 Active	Black Mesa, Bryant, Wootan			
13339.33	3985		0.02	3.35		167					79.7	13339.33	3985		0.02	3.35		167				
10902.4	3257		0.02	3.35		167 Active Transferred	CMCC		Irrigation	Transfers Pending	0	0	0					Disallow	BLM		Recommended as 2-10208	
								5S 4E S34 SESW Lot														
2035.2	608		0.02	3.35		167 Active	J R Simple	9	Irrigation	Claimed as 2-10187	64.5	10795	3225		0.02	3.35		167 Parent	CMCC			
											2.4	401.7	120		0.02	3.35		167 Active	City of Glenns Ferry	Municipal		
											66.9	11197.003	3345		0.02	3.35		167				
											52.34	8760	2617		0.02	3.35		167 Parent	CMCC			
											12.16	2035	608		0.02	3.35		167 Active	J R Simple Revocable Trust			
											64.5	10795.303	3225		0.02	3.35		167				
13814.2	3115.5		0.0159	4.43		Parent - Split by 279 T66124	CCMC				49.51	8266.5	2475.5		0.02	3.35		167 Parent	CMCC			
											2.83	473.6	141.5		0.02	3.35		167 Active	Smith, Robert & Connie			
											52.34	8760.1	2617		0.02	3.35		167				
13797.5	3110.5		0.0159	4.44		Parent - Split by 279 T68552	CCMC				49.41	8269.8	2470.5		0.02	3.35		167 Parent	CMCC			
16.7	5		0.0200	3.34		167	Crowley				0.1	16.7	5		0.02	3.34		167 Active	Crowley, Ralph & Alma			
13814.2	3115.5		0.0159	4.43		279					49.51	8266.5	2475.5		0.02	3.35		167				
13782.5	3109		0.0159	4.44		Parent - Split by 279 T69980	CMCC				49.38	8264.8	2469		0.02	3.35		167 Parent	CMCC			
5	1.5		0.0200	3.33		167	CMCC				0.03	5	1.5		0.02	3.33		167 Active	CMCC			
13797.5	3110.5		0.0159	4.44		279					49.41	8269.8	2470.5		0.02	3.35		167				
13755.7	3098		0.0159	4.44		280 Active	CMCC		Irrigation		49.16	8227.9	2458		0.02	3.35		167 Active	CMCC		640	
36.8	11		0.0200	3.35		167 Active	CMCC		Irrigation		0.22	36.8	11		0.02	3.35		167 Active	CMCC			
13782.5	3109		0.0159	4.44		279					49.38	8264.7	2469.0		0.02	3.35		167				
											Flow - cfs	Volume - af	Right Acres									
											79.7	13339.2	3985									
											0	-0.1	0									
											6.4		320	0.020		Active	Black Mesa, Bryant, Wootan		priority 6/11/1965			
											10.54		600	0.018		Active	Trail		recommended priority 5/10/1965			
											96.64											
											90.24											

AGENDA

Cottonwood Mutual Canal Company,
Black Mesa, Trail, Wootan, Bryant, etc. claims

December 30, 2003

1. Introduction
2. Review of Summary Spreadsheet
 - a. Active recommendations highlighted in yellow in left column
 - b. Recommended numbers match claim numbers, but not necessarily license numbers
 - c. Split trails identified by arrows
3. Primary Issues
 - a. The license for 2-2209 authorized 3.35 acre-feet per acre, a non-standard volume with unclear origin. Recommended irrigation rights keep this rate.
 - b. 2-2209B, Black Mesa. PPU acres reduced from 3545 (claimed) to 2655 (recommended) based on patent transferring ownership from BLM to Wootan; irrigable acres unchanged (640).
 - c. 2-2209C, BLM. Disallowed, recommended as 2-10208 (CMCC). BLM did not show they own any portion of the canal company right.
 - d. 2-10196, CMCC. Actual owner (Glenn) needs to file an ownership change.
 - e. 2-10208, CMCC.
 - i. Recommended fewer acres and less volume than claimed. Much of this reduction can be attributed to land in section 14 (recommended as 2-103), and item (a) above.
 - ii. Place of use is not owned by claimant, and overlaps 2-2209B (Black Mesa).
 - f. 2-10209, CMCC. Actual owner (McDonough) needs to file an ownership change.
 - g. 2-103, Black Mesa / Bryant / Wootan.
 - i. Claimed 426 acres, recommended 320. Per patent transferring ownership from BLM to Wootan, several quarter-quarter tracts could not be used for irrigated agriculture; these tracts were excluded from the recommendation.
 - ii. Forfeiture. Right was not used for numerous years and was not enrolled in the water bank as was 2-2209. However, a claim was made in the prior Snake River adjudication and therefore a tolling of forfeiture may be applicable.
 - iii. Priority. Claimed 5/10/1965, recommended 6/11/1965 based on the notice of proof of completion of works for 2-2209.
 - h. 2-4021, Trail. Claimed priority date of 5/10/1965. Supplied documents including an affidavit from Don Carnahan support irrigation during the 1965 season, but do not provide an exact starting date.
4. Decisions – are these recommendations appropriate, or are changes needed?
5. Adjourn

Map for Lori G of BLM
Excluded lands

Lori - send Co letter

DRAFT MEMO

DATE: 1/7/03

FROM: Lori Graves

TO: Transfer File No. 70343

Advertising

For farming flexibility, applicant proposes a 3971 acre permissible place of use for rights 2-2209B and 2-103. When combined, the rights will be limited to 21.34 cfs and irrigation of 1066 acres within sections 1,2,11,12,13,14,24 T6S R10E and sections 6,7,17,18,19 T6S R11E. Proposed place of use is also known as the Black Mesa Project located SE of Glenns Ferry and the Snake River.

Brief

The Cottonwood Mutual Canal Co. (CMCC) project was started in 1962. The field exam for license 2-2209 described lands irrigated in S14 T6S R10E, but the resulting license issued by the department did not list lands in S14. No appeal was filed regarding the exclusion of S14 acres. CMCC filed a petition to correct license 2-2209 to include the S14 acres 10/31/2000. A recommended decision and order by Peter Anderson dated 1/24/2002 denied the petition. The Director has yet to rule on Peter's decision.

The department started an adjudication of Snake River rights in the mid-eighties, which was never completed. At the time, CMCC filed an amended claim on 2-2209 to account for the acres in S14, which resulted in creation of beneficial use claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture were filed by CMCC and BLM, which protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan. The Wootans then became partners Don and Brenda Bryant and formed Black Mesa Farms LLC.

In 1998, approved transfer 5125 resulted in the split of license 2-2209 with Black Mesa's portion recognized as 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 ppu. The 3985 ppu incorrectly included 440 acres of BLM land. The ppu for 2-2209B should have listed 3545 acres. On 1/10/2003, Black Mesa Farms amended SRBA claim 2-2209B from 3985 acres to 3545 acres.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14, plus Black Mesa Farm's 3545 acre ppu.

Validity of claim 2-103

As described in the petition to correct license 2-2209 (Attachment B, Findings of Fact, Part 3, no.s 10, 12, 13 and 15), irrigation of acres in section 14 was supported by signed statements dated June 11, 1965, July 29, 1965 and January 26, 1970. The dept. field examiner also found and referenced acres in S14, but was limited to licensing only those acres that the permit holder, CMCC, listed in their deposition, which did not include S14 acres. The permit holder did not appeal the license recommendation.

After 2-2209 was licensed in 1970 without S14, CMCC filed an amended claim in the first Snake River Adjudication on right 2-2209, maintaining that S14 acres should have been included in the license. Dave Tuthill and Don Shaff agreed that license 2-2209 should be amended to include the S14 acres. However, Glen Saxton felt the additional lands should be listed under a beneficial use right, resulting in claim 2-103 created for 426 acres in S14. The adjudication was never completed and a final decision never made resulting in the filing of the above referenced petition to correct the license (Attachment B).

Note: The 1984 dept. review of claim 2-103 found no irrigation of S14 on a 1964 aerial photo. Proof of beneficial use for right 2-2209 indicated lands were first irrigated in 1965. Irrigation in S14 was verified on a 1969 aerial photo and a 1974 orthophotoquad.

The recommended order for the petition concluded that modifying the license would constitute an enlargement. Assuming this decision is finalized, claim 2-103 should be recommended for decree based on the evidence on file with the dept. The claim lists a priority date of May 10, 1965. The evidence on file supports June 11, 1965, as the earliest priority date. Wes Wootan stated that June 11, 1965 was early enough and that he did not have anything to support May 10, 1965. The original claim lists 8.54 cfs for irrigation of 426 acres. During the first adjudication, 40 acres in the SWNW were crossed out on the claim by dept reviewers because they appeared to be covered on permit 2-2389. This permit lapsed and went away. Since 426 acres have been documented and historically irrigated in S14, the applicant amended SRBA claim 2-103 back to the original 426 acres.

The capacity of the system was measured at 90.24 cfs, of which 79.7 was licensed for right 2-2209 for 3985 acres. The 426 acres in S14 were not included in the licensed acres or flow rate calculations. The irrigation system has the capacity for the additional 8.54 cfs and 426 acres under right 2-103.

Validity of 2-2209B

Right 2-2209 was licensed for 3985 acres and 79.7 cfs in the name of CMCC. A long-standing dispute between BLM and CMCC has been ongoing over the ownership of the water right. Partial resolution was reached in 1990 when BLM conveyed all but 440 acres of the 3985 acre p/u to the Wootans without any reservations to the water right. The Wootans then assigned all but 12.8 cfs appurtenant to those acres to CMCC. Based on dept. review of right 2-2209 for a water bank application filed by CMCC in 1991, it was determined that CMCC had undisputed ownership of 58.1 cfs of the original right

and Black Mesa Farms had undisputed ownership of 12.8 cfs of the original right. However a dispute continues between CMCC and BLM over the remaining 8.8 cfs licensed to the 440 acres BLM retained. Basically, CMCC thought that BLM only retained 280 acres (5.6 cfs) of the original p/u and had conveyed the rest to the Wootans. This being the case, CMCC would have 61.3 cfs assigned to them rather than 58.1 cfs. This dispute will likely be resolved in the SRBA. Regardless, BLM and CMCC agreed in 1990 that the Wootans have entitlement to 12.8 cfs of the original license for irrigation of 640 acres within the lands conveyed to them by BLM.

In 1998, CMCC filed transfer no. 5125 on right 2-2209 to give 2.4 cfs of their portion to the City of Glenn Ferry for municipal use. After the transfer was approved, right 2-2209 was split into 2-2209A for CMCC and the City (58.1 cfs) and 2-2209B for the applicants (12.8 cfs). The only problem is that 2-2209B described the original 3985 acres listed on license 2-2209 as the applicant's ppu. As indicated above, 440 of those acres belong to BLM and are not farmed by the applicants. Applicants amended their SRBA claim to the appropriate 3545 acres conveyed to them by BLM as reflected in this transfer.

Ownership

As discussed above, all but 440 acres of the 3985 acres licensed on right 2-2209 have been conveyed to the applicants in the attached patent document issued by the BLM (Attachment D). The lands listed on page 3 of the document have been included in the proposed ppu but appear to be subject to no irrigation per the BLM patent. Wes Wootan told me that the deal was made before he revised the sprinkler irrigation system. The lands in question border the ppu. BLM wanted to make sure that irrigation water did not run off onto BLM lands outside of the ppu. Wes stated that with the revised system, run off is not an issue. BLM will be sent a comment letter addressing this matter.

Issues

In 1985, BLM and CMCC filed Extensions of Time to Avoid Forfeiture on right 2-2209, which was approved in 1988 until July 1991. Farming began again in 1990, when the Wootans purchased the property. An SRBA claim was filed in 1990 on right 2-2209 and in 1991 on claim 2-103. Aerial photos were supplied by Elmore County Farm Service Agency verifying irrigation occurred on 600 acres of cropland in S7 T6S R11E during the 1991 irrigation season.

If the department denies CMCC's petition to correct license 2-2209 to include S14 acres, is 2-103 a valid water right? Can we assume the 426 acres listed on 2-103 have been protected under the Extensions of Time filed for license 2-2209? Based on the 1991 FSA photo, it does not appear that irrigation occurred in S14, however an additional 160 acres of pasture in S7 and S12 could probably be counted as irrigated, along with 244 acres of Rye grass in S12. *assuming for*

Associated SRBA claims are as follows:

2-2209B-Applicants- 12.8 cfs

2-2209C-BLM- 8.8 cfs
2-2209D-CMCC- 64.5 cfs
2-2209E-Glenns Ferry- 2.4 cfs

Right 2-2209 has obviously been overclaimed in the SRBA due to the complex history relating to ownership and validity of the right.

The system capacity is 90.24 cfs. If BLM's claim 2-2209C is approved for 8.8 cfs, only 1.74 cfs remains left for appropriation. This would affect conditions for 2-103, if determined as a valid water right, since it is later in priority and would be limited to 14.54 cfs when combined with 2-2209B (12.8 + 1.74).

also
2-1021

Original Claims

Found

NOT FOUND

2-103 4/17/1991 Black Mesa/Wootan

2-4021 12/11/1989 Walter Trail

2-2209 B 4/17/1991 Black Mesa/Wootan

2-2209 C 5/7/1991 BLM

2-2209 ^{signed} 12/4/1989 CMCC
^{received} 3/7/1990 signed by McCormick
and Ringert - ADNY

~~2-2209~~ - 2.012 ac. filed by BLM

2-2209A CMCC - Not Signed
"Split into A02-2209 D & E per
transfer #5125"

3985 acres, 79.7 cfs

19,925 AFA listed as TOTAL & CONSUMPTION

See file A02-2209D, near bottom left.

Don shaft ~~entered as~~ Part A (see his 4/19/91 letter)
after receiving, WOOTAN/Black Mesa's claim on 4/17/91

Transfer ^{of A} to D&E signed April 18, 1997 by applicants

rec'd April 10, 97

Approved May 12, 1998

LICENSE

/acre	af/acre	af/cfs	Status	Owner	POD	Use	Comments
0.02	3.35	167	Parent - Split into A & B by T5125.	CMCC			
0.02	3.35	167	Parent - Split into C & D by T5714.	CMCC			
0.02	3.35	167	Active	Glenns Ferry		Municipal	
0.02	3.35	167	Active Transferred	CMCC		Irrigation	Transfers Pending
0.02	3.35	167	Active	J R Simple 9	5S 4E S34 SESW Lot	Irrigation	Claimed as 2-10187
0.0159	4.43	279	Parent - Split by T66124	CCMC			
0.0159	4.44	279	Parent - Split by T68552	CCMC			
0.0200	3.34	167		Crowley			
0.0159	4.43	279					
0.0159	4.44	279	Parent - Split by T69980	CMCC			
0.0200	3.33	167		CMCC			
0.0159	4.44	279					
0.0159	4.44	280	Active	CMCC		Irrigation	
0.0200	3.35	167	Active	CMCC		Irrigation	
0.0159	4.44	279					

RECOMMENDATION

Flow - cfs	Volume - af	Right Acres	PPU Acres	cfs/acre	af/acre	af/cfs	Status	Owner	POD	Use	Comments
79.7	13339.33	3985		0.02	3.35	167	Parent				
66.9	11197	3345		0.02	3.35	167	Parent	CMCC			
12.8	2142	(640)		0.02	3.35	167	Active	Black Mesa, Bryant, Wootan			
79.7	13339.33	3985		0.02	3.35	167					
RECOMMEND 2-2209C AS DISALLOWED, OR SPLIT UP PART A FURTHER. PART C, IF IT EXISTS FOR BLM, IS PART OF A.											
8.8	1473	440									
64.5	10795	3225		0.02	3.35	167	Parent	CMCC			
2.4	401.7	120		0.02	3.35	167	Active	City of Glenns Ferry	Municipal		
66.9	11197.003	3345		0.02	3.35	167					
52.34	8760	2617		0.02	3.35	167	Parent	CMCC			
12.16	2035.1	608		0.02	3.35	167	Active	J R Simplot Revocable Trust			
64.5	10795.303	3225		0.02	3.35	167					
49.51	8286.5	2475.5		0.02	3.35	167	Parent	CMCC			
2.83	473.6	141.5		0.02	3.35	167	Active	Smith, Robert & Connie			
52.34	8760.1	2617		0.02	3.35	167					
49.41	8269.8	2470.5		0.02	3.35	167	Parent	CMCC			
0.1	16.7	5		0.02	3.34	167	Active	Crowley, Ralph & Alma			
49.51	8286.5	2475.5		0.02	3.35	167					
49.38	8264.8	2469		0.02	3.35	167	Parent	CMCC			
0.03	5	1.5		0.02	3.33	167	Active	CMCC			
49.41	8269.8	2470.5		0.02	3.35	167					
49.16	8228.0	2458		0.02	3.35	167	Active	CMCC			
40.2	67.55	2018		0.02	3.35	167	Active	CMCC			
0.22	36.8	11		0.02	3.35	167	Active	CMCC			
49.38	8264.8	2469.0		0.02	3.35	167					

Flow - cfs Volume - af Right Acres
79.7 13339.33 3985
0 0 0

Highlighted rights were transferred and have administrative finality.

~~Recommended - Active~~ Disallow per here

mini - No acres

4/1-10/31 licensed Period of Use

Created by: Caring, 06/2000

CLAIM																	
Basin	Sequence	Suffix	Flow - cfs	Volume - af	Right Acres	PPU Acres	cfs/acre	af/acre	af/cfs	Status	Owner	POD	Use	Comments	Flow - cfs	Volume - a Right Acre	PPU
2	2209		79.7 ✓	19925 ✓	3985 ✓		0.02	5.00		250 Parent - split to parts A & B per transfer 5125					79.7	13339.33	3985
										Parent - split to parts D & E per transfer 5125 (D, Cottonwood CC, 64.5 cfs, 3865 acres; E,							
	2209 A	<i>split</i>	66.9	16725	3985		0.016788	4.20		250 Glenns Ferry, 2.4 cfs municipal)					77.3	12937.63	3865
	2209 B		12.8	3200	640	3545	0.02	5.00		250 Active	Black Mesa, Bryant, Wootan		Irrigation		2.4	401.7	120
			79.7	19925	4625		0.017232	4.31		250					79.7	13339.33	3985
	2209 C	✓	8.8	3735.33	440		0.02	8.49		424 Active	BLM	6S 11E S9 NWSW Lot 6	Irrigation		65.14	10902.4	3257
										Parent - split to 2-10186, 2-10187 by							
	2209 D	<i>split</i>	64.5	16323	3865		0.016688	4.22		253 Transfer 5714		5S 4E S34 SESW Lot 9	Irrigation	See also T5714 in file. See transfer conditions of approval, right combined with 2-2308, 2-7206	12.16	2035.2	608
	2209 E		2.4	401.7	120		0.02	3.35		167 Active	City of Glenns Ferry	5S 10E S28 SWNW Lot 7, S32 SENW Lot 3	Municipal	T5125			
			66.9	16724.7	eq, 3985												
										Parent - split to 2-10188, 2-10189 by							
	10186	<i>split</i>	52.34	14287.8	3257		0.01607	4.39		273 ownership change	CMCC	6S 11E S9 NWSW Lot 6	irrigation				
	10187		12.16	2035.2	608		0.02	3.35		167 Active	J R Simplot Revocable Trust	5S 4E S34 SESW Lot 9	irrigation				
			64.5	16323	3865		0.016688	4.22		253							
										Parent - split to 2-10190, 2-10191 by							
	10188	<i>split</i>	49.51	13814.2	3115.5		0.015892	4.43		279 Transfer 66124	CMCC	6S 11E S9 NWSW Lot 6	irrigation		49.51	13814.2	3115.5
	10189	✓	2.83	473.6	141.5		0.02	3.35		167 Active	Smith, Robert & Connie	6S 11E S9 NWSW Lot 6	irrigation				
			52.34	14287.8	3257		0.01607	4.39		273							
										Parent - split to 2-10195 & 10196 by Transfer							
	10190	<i>split</i>	49.41	13797.5	3110.5		0.015885	4.44		279 68552	CMCC	6S 11E S9 NWSW Lot 6	irrigation		49.41	13797.5	3110.5
	10191	✓	0.1	16.7	5		0.02	3.34		167 Active	Crowley, Ralph & Alma	5S 10E S12 NESE Lot 7 & SENWSE Lot 6	irrigation		0.1	16.7	5
			49.51	13814.2	3115.5		0.015892	4.43		279					49.51	13814.2	3115.5
										Parent - split to 2-10208 & 10209 by Transfer							
	10195	<i>split</i>	49.38	13792.5	3109		0.015883	4.44		279 69980	CMCC	6S 11E S9 NWSW Lot 6	irrigation		49.38	13792.5	3109
	10196	✓	0.03	5	1.5		0.02	3.33		167 Active	CMCC	5S 10E S12 NESE & SENWSE	irrigation		0.03	5	1.5
			49.41	13797.5	3110.5		0.015885	4.44		279					49.41	13797.5	3110.5
										Parent - split to 2-10208 & 10209 by Transfer							
	10208	<i>split</i>	49.16	13755.7	3098		0.015868	4.44		280 Active	CMCC	6S 11E S9 NWSW Lot 6	irrigation		49.16	13755.7	3098
												1N 2W S31 SESWSW Lot 4 & 1S 2W Sec 6 NWSE Lot 2	irrigation				
	10209	✓	0.22	36.8	11		0.02	3.35		167 Active	CMCC		irrigation		0.22	36.8	11
			49.38	13792.5	3109		0.015883	4.44		279					49.38	13792.5	3109

	Flow - cfs	Volume - af	Right Acres
Sum of active portions:	88.5	23660.03	5065
Amount exceeding original right:	8.8	10320.7	1080

Enter Water Right Number

Basin #: Sequence #: Split Suffix:

☒ AJ ☐ WR

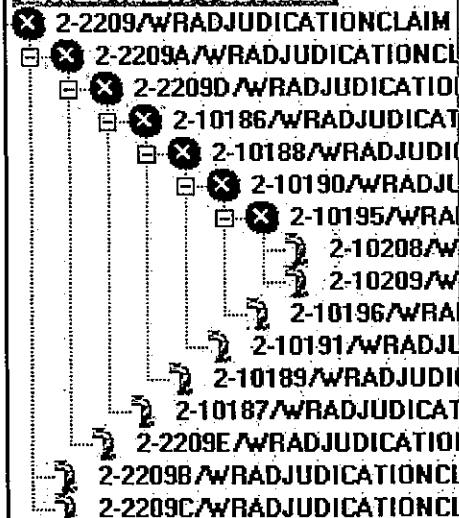
Total Acreage, Volume, and Rate for 2-2209E/WRADJUDICATIONCLAIM

Parent Acreage: Parent POU Acreage: Parent Rate: Parent Volume:

Children Acreage: Children POU Acreage: Children Rates: Children Volumes:

Difference: Difference: Difference: Difference:

WATER RIGHT PEDIGREE



Water Right	Status	Owner List	Priority	Date	Wa.	Rate	Acres	Vol.	Pedigree Type
2-2209 W...	See Rem...			02/25/1963	01	79.7		199...	
2-2209A ...	See Rem...			02/25/1963	01	66.9		167...	Ownership Change
2-2209D ...	Parent			02/25/1963	01	64.5	3865	163...	Transfer
2-10186 ...	Parent			02/25/1963	01	52.34	3257	142...	Transfer
2-10188 ...	Parent	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	49.51	3115.5	138...	Ownership Change
2-10190 ...	Parent	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	49.41	3110.5	137...	Transfer
2-10195 ...	Parent	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	49.38	3109	137...	Transfer
2-10208 ...	Active	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	49.16	3098	137...	Transfer
2-10209 ...	Active	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	0.22	11	36.8	Transfer
2-10196 ...	Active	COTTONWOOD MUTUAL CANAL CO;		02/25/1963	01	0.03	1.5	5	Transfer
2-10191 ...	Active	CROWLEY, RALPH R; CROWLEY, ALMA J;		02/25/1963	01	0.1	5	16.7	Transfer
2-10189 ...	Active	SMITH, ROBERT; SMITH, CONNIE;		02/25/1963	01	2.83	141.5	473.6	Ownership Change
2-10187 ...	Active	J R SIMPLOT SELF DECLARATION REVOCAB...		02/25/1963	01	12.16	608	203...	Transfer
2-2209E ...	Active	CITY OF GLENNS FERRY;		02/25/1963	40	2.4		401.7	Transfer
2-2209B ...	Active	BLACK MESA FARMS; BRYANT, BRENDA; WO...		02/25/1963	01	12.8	3545	3200	Ownership Change
2-2209C ...	Active	UNITED STATES OF AMERICA ACTING THRO...		02/25/1963	01	8.8	440	373...	Ownership Change

View Combined Water Right

Generate Proof Report

To view the combined rights, make sure to click on the combined right in the tree view before clicking the button.

Tuthill, Dave

From: Tuthill, Dave
Sent: Thursday, October 09, 2003 4:47 PM
To: Lester, Steve
Cc: Graves, Lori; Westra, John; King, Scott; Hamlin Nygard, Susan; Harvey, Becky
Subject: RE: Fact finding hearing re Cottonwood Canal Co. & Black Mesa Farms pending transfer

Thanks, Steve. This sounds good.

By copy of this message I am requesting that Scott King work with Susan Hamlin and Becky Harvey to draft the Notice of Fact Finding Hearing.

Let's plan to conduct this in mid-November.

Regards, Dave

-----Original Message-----

From: Lester, Steve
Sent: Thursday, October 09, 2003 4:40 PM
To: Tuthill, Dave
Cc: Graves, Lori; Westra, John
Subject: Fact finding hearing re Cottonwood Canal Co. & Black Mesa Farms pending transfer

Dave:

Per our recent meeting in the above matter, I worked with Lori to revise the information for the anticipated adjudication fact finding hearing. Lori did almost all of the work and did a very good job of assembling and explaining the information. She will send the information packet to Susan & Nick soon to get that ball rolling.

Lori said she is ready to be an expert witness if necessary regarding her memo related to Black Mesa Farms' transfer application. I think you will find her work very useful in this matter.

A nice bonus resulting from this effort is that we now have a handy electronic record (tables in Lori's memo, more user-friendly than pedigree information in database) of the evolving pieces of parent right 2-2209. This will be useful to consult & update as the canal company files more transfers in the future.

Steve

Fact Finding Hearing for 02-2209 # Parts
02-103

Transfer history/^{Memo} - Steve Lester or Lori

Attachments

Rec Dec # Order for 02-2209

Lori's Memo

New App for Transfer

- Update adj claims

Interested Parties - Claimants of record

BLM

Bill Ringer (CMCC)

Wooters

Others

FF Hearing - Argumentation/All info for attachments

Steps:

1. ~~Issue Petitioner's order~~

2. Send ^{Hearing} or Notice

3. Update adj claims

4. Process transfer & make SRBA recommendations

DRAFT MEMO

DATE: 1/7/03

FROM: Lori Graves

TO: Transfer File No. 70343

Advertising

For farming flexibility, applicant proposes a 3971 acre permissible place of use for rights 2-2209B and 2-103. When combined, the rights will be limited to 21.34 cfs and irrigation of 1066 acres within sections 1,2,11,12,13,14,24 T6S R10E and sections 6,7,17,18,19 T6S R11E. Proposed place of use is also known as the Black Mesa Project located SE of Glenns Ferry and the Snake River.

Brief

The Cottonwood Mutual Canal Co. (CMCC) project was started in 1962. The field exam for license 2-2209 described lands irrigated in S14 T6S R10E, but the resulting license issued by the department did not list lands in S14. No appeal was filed regarding the exclusion of S14 acres. CMCC filed a petition to correct license 2-2209 to include the S14 acres 10/31/2000. A recommended decision and order by Peter Anderson dated 1/24/2002 denied the petition. The Director has yet to rule on Peter's decision.

The department started an adjudication of Snake River rights in the mid-eighties, which was never completed. At the time, CMCC filed an amended claim on 2-2209 to account for the acres in S14, which resulted in creation of beneficial use claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture were filed by CMCC and BLM, which protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan. The Wootans then became partners Don and Brenda Bryant and formed Black Mesa Farms LLC.

In 1998, approved transfer 5125 resulted in the split of license 2-2209 with Black Mesa's portion recognized as 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 ppu. The 3985 ppu incorrectly included 440 acres of BLM land. The ppu for 2-2209B should have listed 3545 acres. On 1/10/2003, Black Mesa Farms amended SRBA claim 2-2209B from 3985 acres to 3545 acres.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14, plus Black Mesa Farm's 3545 acre ppu.

Validity of claim 2-103

As described in the petition to correct license 2-2209 (Attachment B, Findings of Fact, Part 3, no.s 10, 12, 13 and 15), irrigation of acres in section 14 was supported by signed statements dated June 11, 1965, July 29, 1965 and January 26, 1970. The dept. field examiner also found and referenced acres in S14, but was limited to licensing only those acres that the permit holder, CMCC, listed in their deposition, which did not include S14 acres. The permit holder did not appeal the license recommendation.

After 2-2209 was licensed in 1970 without S14, CMCC filed an amended claim in the first Snake River Adjudication on right 2-2209, maintaining that S14 acres should have been included in the license. Dave Tuthill and Don Shaff agreed that license 2-2209 should be amended to include the S14 acres. However, Glen Saxton felt the additional lands should be listed under a beneficial use right, resulting in claim 2-103 created for 426 acres in S14. The adjudication was never completed and a final decision never made resulting in the filing of the above referenced petition to correct the license (Attachment B).

Note: The 1984 dept. review of claim 2-103 found no irrigation of S14 on a 1964 aerial photo. Proof of beneficial use for right 2-2209 indicated lands were first irrigated in 1965. Irrigation in S14 was verified on a 1969 aerial photo and a 1974 orthophotoquad.

The recommended order for the petition concluded that modifying the license would constitute an enlargement. Assuming this decision is finalized, claim 2-103 should be recommended for decree based on the evidence on file with the dept. The claim lists a priority date of May 10, 1965. The evidence on file supports June 11, 1965, as the earliest priority date. Wes Wootan stated that June 11, 1965 was early enough and that he did not have anything to support May 10, 1965. The original claim lists 8.54 cfs for irrigation of 426 acres. During the first adjudication, 40 acres in the SWNW were crossed out on the claim by dept reviewers because they appeared to be covered on permit 2-2389. This permit lapsed and went away. Since 426 acres have been documented and historically irrigated in S14, the applicant amended SRBA claim 2-103 back to the original 426 acres.

The capacity of the system was measured at 90.24 cfs, of which 79.7 was licensed for right 2-2209 for 3985 acres. The 426 acres in S14 were not included in the licensed acres or flow rate calculations. The irrigation system has the capacity for the additional 8.54 cfs and 426 acres under right 2-103.

Validity of 2-2209B

Right 2-2209 was licensed for 3985 acres and 79.7 cfs in the name of CMCC. A long-standing dispute between BLM and CMCC has been ongoing over the ownership of the water right. Partial resolution was reached in 1990 when BLM conveyed all but 440 acres of the 3985 acre p/u to the Wootans without any reservations to the water right. The Wootans then assigned all but 12.8 cfs appurtenant to those acres to CMCC. Based on dept. review of right 2-2209 for a water bank application filed by CMCC in 1991, it was determined that CMCC had undisputed ownership of 58.1 cfs of the original right

and Black Mesa Farms had undisputed ownership of 12.8 cfs of the original right. However a dispute continues between CMCC and BLM over the remaining 8.8 cfs licensed to the 440 acres BLM retained. Basically, CMCC thought that BLM only retained 280 acres (5.6 cfs) of the original p/u and had conveyed the rest to the Wootans. This being the case, CMCC would have 61.3 cfs assigned to them rather than 58.1 cfs. This dispute will likely be resolved in the SRBA. Regardless, BLM and CMCC agreed in 1990 that the Wootans have entitlement to 12.8 cfs of the original license for irrigation of 640 acres within the lands conveyed to them by BLM.

In 1998, CMCC filed transfer no. 5125 on right 2-2209 to give 2.4 cfs of their portion to the City of Glenn Ferry for municipal use. After the transfer was approved, right 2-2209 was split into 2-2209A for CMCC and the City (58.1 cfs) and 2-2209B for the applicants (12.8 cfs). The only problem is that 2-2209B described the original 3985 acres listed on license 2-2209 as the applicant's ppu. As indicated above, 440 of those acres belong to BLM and are not farmed by the applicants. Applicants amended their SRBA claim to the appropriate 3545 acres conveyed to them by BLM as reflected in this transfer.

Ownership

As discussed above, all but 440 acres of the 3985 acres licensed on right 2-2209 have been conveyed to the applicants in the attached patent document issued by the BLM (Attachment D). The lands listed on page 3 of the document have been included in the proposed ppu but appear to be subject to no irrigation per the BLM patent. Wes Wootan told me that the deal was made before he revised the sprinkler irrigation system. The lands in question border the ppu. BLM wanted to make sure that irrigation water did not run off onto BLM lands outside of the ppu. Wes stated that with the revised system, run off is not an issue. BLM will be sent a comment letter addressing this matter.

Issues

In 1985, BLM and CMCC filed Extensions of Time to Avoid Forfeiture on right 2-2209, which was approved in 1988 until July 1991. Farming began again in 1990, when the Wootans purchased the property. An SRBA claim was filed in 1990 on right 2-2209 and in 1991 on claim 2-103. Aerial photos were supplied by Elmore County Farm Service Agency verifying irrigation occurred on 600 acres of cropland in S7 T6S R11E during the 1991 irrigation season.

If the department denies CMCC's petition to correct license 2-2209 to include S14 acres, is 2-103 a valid water right? Can we assume the 426 acres listed on 2-103 have been protected under the Extensions of Time filed for license 2-2209? Based on the 1991 FSA photo, it does not appear that irrigation occurred in S14, however an additional 160 acres of pasture in S7 and S12 could probably be counted as irrigated, along with 244 acres of Rye grass in S12.

Associated SRBA claims are as follows:

2-2209B-Applicants- 12.8 cfs

2-2209C-BLM- 8.8 cfs
2-2209D-CMCC- 64.5 cfs
2-2209E-Glenns Ferry- 2.4 cfs

Right 2-2209 has obviously been overclaimed in the SRBA due to the complex history relating to ownership and validity of the right.

The system capacity is 90.24 cfs. If BLM's claim 2-2209C is approved for 8.8 cfs, only 1.74 cfs remains left for appropriation. This would affect conditions for 2-103, if determined as a valid water right, since it is later in priority and would be limited to 14.54 cfs when combined with 2-2209B (12.8 + 1.74).

Copy

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PETITION TO) CORRECT LICENSE NO. 02-02209) IN THE NAME OF COTTONWOOD) CANAL COMPANY) _____)) _____)) IN THE MATTER OF CROSS) PETITION TO CORRECT AND) PETITION TO CHANGE OWNERSHIP) OF LICENSE NO 0202209 IN THE) NAME OF BLACK MESA FARMS, LLC) _____)) _____)	RECOMMENDED DECISION AND ORDER
--	---

STANDARD FOR DECISION

This matter comes before the Idaho Department of Water Resources ("IDWR") on an *Petition to Correct License* dated October 31, 2000, filed by Cottonwood Canal Co. (the "Petitioner") seeking to amend water right license no. 02-02209, issued on February 11, 1970. In response, a *Cross-Petition to Correct License and Petition to Change Ownership of License* was filed by Black Mesa Farms, also seeking amendments to water right license no. 02-02209 (the "Cross-Petition"). The Petition and Cross-Petition request IDWR to modify license no. 02-02209 pursuant to I.C. § 67-5254, which provides, in part, that:

(1) An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

For purposes of this section, a license is "the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." I.C. §67-5201(9).

Although the language of I.C. § 67-5254 does not provide a direct authorization to amend a water right license, the language presupposes an agency may modify or amend a license, and then adds the condition that notice and opportunity for a contested case be provided before doing so. IDWR previously used this interpretation of I.C. § 67-5254 to authorize the amendment of a water right license. *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999); *In the Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000).

The authority to amend or modify a water right license under I.C. § 67-5254 is circumscribed by I.C. § 42-220, which provides that a water right license “shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right....” IDWR cannot use I.C. § 67-5254 to increase or change the beneficial use described by a water right license. Such an amendment would be an unlawful enlargement of the beneficial use under the licensed priority date. See Fremont-Madison v. Ground Water Approp., 129 Idaho 454, 461 (1996). The time for making such substantive changes in 1970 was through an appeal filed within sixty days of license issuance. I.C. § 42-219 (1967 Supp.); § 42-224 (1948).

Amendments to water right licenses under I.C. § 67-5254 may be issued to correct errors made by IDWR in describing the licensed beneficial use. Such errors may be patent—as when there is an obvious transposition of numbers or two elements of the described beneficial use are obviously contradictory or incompatible.¹ Latent errors may also be corrected where

¹For instance, a right to irrigate 50 acres which is described as using 0.01 cubic feet per second (“cfs”) has a patent error in the description of the beneficial use. This was the case *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999) where IDWR erroneously licensed an industrial use for 0.67 cfs, but only 12.9 acre feet per annum (afa). IDWR amended the license to correctly describe the annual volume of the use as 58 afa.

investigation reveals a licensing provision that does not correctly describe the beneficial use.² In each instance, the license to be amended must have given junior appropriators some notice of the extent of beneficial use under the license. Completely new beneficial uses may not be shoe-horned into a licenses' priority date, under the guise of a license amendment.

The Idaho Department of Water Resources (IDWR), having examined the Petition and the written record, and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Course of Proceedings

1. The *Petition to Correct License* was filed on October 31, 2000, by Petitioner seeking to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E, Sec. 14, with an additional 8.0 cfs and 1,338.95 AFA. A filing fee of \$50 from Petitioner was received by IDWR on January 11, 2001. A Notice of Petition to Change Water Right License No. 02-02209 in the Name of Cottonwood Canal Company was published on January 24 and 31, 2001, in the Mountain Home News. A Notice of Protest was filed by Black Mesa Farms, LLC with IDWR on February 13, 2001.

2. Cross-Petitioner filed the *Cross-Petition to Correct License and Petition to Change Ownership of License* with IDWR on April 27, 2001, and also sought to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E, Sec. 14, with 8.0 cfs and 1,338.95 AFA, but requested such amended license be issued in the name of Cross-Petitioner.

² This was the case *In the Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000) where IDWR removed approval conditions requiring the use of appurtenant surface water before using the licensed groundwater right, when information revealed that the

3. On June 6, 2001, IDWR issued its *Order Authorizing Discovery and Order of Recusal*. On June 19, 2001, IDWR issued its *Order Appointing Hearing Officer*. Following a prehearing conference on July 20, 2001, the Hearing Officer issued a *Prehearing Order* on July 23, 2001, that, among other things, bifurcated the issues in this matter as follows:

Two issues are raised by the Petitions and Cross-Petitions:

1. Whether License No. 02-02209 should be modified to include more acres and an increased quantity of water; and
2. Whether the additional acres and increase quantity of water should be shown on the License as owned by Cottonwood Canal Co. or Black Mesa Farms.

Because *the* second issue need not be decided if IDWR does not modify License No. 02-02209, the parties agreed that the first issue should be processed prior to the second issue. If the Hearing Officer determines that License No. 02-02209 should not be modified, he will issue that decision in the form of a recommended order to the Director of IDWR. If the Hearing Officer determines that License No. 02-02209 should be modified, he will issue that decision in the form of a draft decision to the parties and set an additional prehearing conference to discuss resolution of the second issue.

4. The *Prehearing Order* also provided that the determination of whether License No. 02-02209 should be modified would be made upon a written record and established a schedule for submission of written materials.

5. On July 23, 2001, the Hearing Officer issued a *Request for Submission of IDWR Staff Memorandum*. IDWR responded with its *Response to Request for Submission of IDWR Staff Memorandum* on September 31, 2001. Cross-Petitioner submitted its inappropriately named *Black Mesa's Response to IDWR Staff Memorandum* on October

right was never used with appurtenant surface water. The change in this case did nothing to change the beneficial use, it simply removed essentially meaningless approval conditions.

26, 2001.³ The Petitioner filed its similarly name *Memorandum in Response to IDWR Staff Memorandum* on November 2, 2001, with supporting affidavits.

II. Evidence Considered.

6. IDWR considered the following evidence in making the substantive findings of facts:

- a. Application for Permit to appropriate the Public Waters of the State of Idaho No. 39069, including map. Approved as Permit No. 30990, and subsequently renumbered 02-2209.
- b. Application for Amendment LAND LIST Permit No. 30990 received April 25, 1963.
- c. State of Idaho Water License no. 30990/02-2209.
- d. Notice of Proof of Completion of Works and Application of Water to Beneficial Use received on June 11, 1965, by the Department of Reclamation, with accompanying letter signed by Otis Williams on behalf of Cottonwood Canal Company.
- e. Letter dated June 15, 1965, from Carl E. Tappan, State Reclamation Engineer, to Cottonwood Canal Company re Permit No. 30990.
- f. Affidavit of Publication received August 3, 1965 by the Department of Publication.

³ This document is inappropriately named because the IDWR staff memorandum is not a pleading to which a "response" is filed. It is a factual memorandum by IDWR staff, akin to an affidavit. IDWR is not a party to this matter, it is the decision-maker.

- g. Deposition of Holder signed by Otis Williams and notarized by Phyllis Butterfield on July 29, 1965.
- h. Deposition of Witness signed by George R. Lake and notarized by Phyllis Butterfield on July 29, 1965.
- i. Deposition of Witness signed by Lawrence Roemer and notarized by Phyllis Butterfield on July 29, 1965.
- j. Letter dated August 4, 1965, from Carl E. Tappan, State Reclamation Engineer to Otis H. Williams, Secretary, Cottonwood Canal Co.
- k. Draft Report of Examiner for Permit No. 30990, and loose map
- l. Letter dated January 26, 1970 from Dorian Clay, Field Examiner, to Cottonwood Canal Company, c/o Wm. A. Anderson..
- m. Memorandum dated August 24, 1984, from D. Shaff to D. Tuthill.
- n. Inter-Department Memo dated August 28, 1984, from Dave Tuthill to Glen Saxton.
- o. Inter-Department Memo dated August 29, 1984, from Dave Tuthill to Don Shaff.
- p. Letter dated December 29, 2000, from Charles L. Honsinger to Glen Saxton, with attachments.
- q. Response to Request for Submission of IDWR Staff Memorandum, dated September 13, 2001.
- r. Affidavit of Shelley Keen, dated November 1, 2001.

s. Affidavit of Clifford Smith, dated October 22, 2001.

III. Permitting and Licensing Process

7. On February 25, 1963, Cottonwood Canal Company filed an Application for Permit to Appropriate the Public Water of the State of Idaho with the Idaho Department of Reclamation. Cottonwood Canal Company was identified as a non-profit corporation. The Idaho Department of Reclamation is a predecessor agency of the current Idaho Department of Water Resources, and will also be referred to as IDWR. That Application was assigned application no. 39069.

8. The Application requested authorization to develop a water right with which to irrigate 4480 acres, with 89.6 cfs of water to be diverted from the Snake River. The Application envisioned the construction of a pumping plant, canals ditches and pipeline over 5 years, and application of the water to the proposed use within an additional 5 years. The land to be irrigated was located in Township 5 South, Range 10 East and Township 6 South, Ranges 10 and 11 East. Among these lands, 400 acres was identified within Section 14 of Township 6 South, Range 10 East ("Section 14 lands").

9. The Application was approved and a permit issued for the development of this water use on March 1, 1963. The Permit was assigned no. 30990, subsequently renumbered to 02-2209, and required one-fifth of the work to be completed by September 1, 1965, and the remainder was to be completed by September 1, 1968. Beneficial use of all the water to be used under the Permit was required to be made by March 1, 1973.

10. A Notice of Proof of Completion of Works and Application of Water to Beneficial Use was submitted for publication by Otis Williams of the Cottonwood Canal Company on June 11, 1965. The Notice indicated that the place where the water was

used under Permit No. 30990 included the Section 14 lands. The Notice indicated that proof of completion was to be submitted to Phyllis Butterfield, Notary Public, on July 29, 1965, at 10:00 a.m. in Burley Idaho. On June 15, 1965, the State Reclamation Engineer sent three depositions to Cottonwood Canal Company. The first deposition was to be executed by Cottonwood Canal Company, as the "holder" and the other two by two disinterested witnesses. All three were to be submitted on July 29, 1965. The June 15, 1965, letter provided, "It is very important and necessary that each question be answered in detail." (Underscoring in original). The Notice of Proof of Completion of Works and Application of Water to Beneficial Use was published in the Mountain Home News and included reference to the Section 14 lands.

11. The Deposition of Holder for Permit No. 30990, signed by Otis Williams, Secretary of Cottonwood Canal Company, was submitted on July 29, 1965. In its answer to a portion of question 6. "If for irrigation, name each subdivision in which used and number of acres in each subdivision that have actually been irrigated with said water:" the Holder stated "See attached list." A listing of lands which was unattached to the first page of the Holder Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Holder Deposition was 3985 acres.

12. The Deposition of Witness for Permit No. 30990, signed by George R. Lake, the supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision:" George Lake stated "there (sic) are 14 320 acre tracts of which nearly all of each is irrigated as per attached list." A listing of

lands which was unattached to the first page of the Lake Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Lake Deposition was 3985 acres.

13. The Deposition of Witness for Permit No. 30990, signed by Lawrence Roemer, farm manager and partial supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision:" George Lake stated "irrigation 14 - 320 acre tracts described below" and then there is a listing of lands, including the Section 14 lands. Total land area listed in the Roemer Deposition was 4350 acres, although he also indicates 14 -320 acre tracts as the total land area, which is 4480 acres.

14. On August 4, 1965, the State Reclamation Engineer wrote to the Cottonwood Canal Co. acknowledging the receipt of the Holder, Lake and Roemer Deposition and the affidavit of publication submitted in proof of completion of Permit No. 30990. The letter indicated that before final action could be taken a field examination had to be made by the department.

15. The form for the Report of Examiner requires in paragraph 7 as follows: "List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact numbers of acres under cultivation in each forty-acre tract. ... (Submit map on attached plat, showing location and details of above description." The Report lists the lands to be irrigated as provided in Permit No. 30990, including the Section 14 lands. It does not list the exact number of acres under cultivation in each forty-acre tract, either in writing or on

the attached map (although the attached map does show some erased pencil figures on some of the "quarter-quarters" that could be irrigated acreages). It does indicate adjacent to the term "Area" the number 3,985 acres, which corresponds to the total number of acres indicated in both the Holder and Lake Depositions. Behind the Report of Examiner in the file is a map of Cottonwood Canal Co.'s proposed place of use with each "quarter-quarter" numbered, with acreage figures written in red. The red figures correspond to the Holder and Lake Depositions which indicated a total of 3985 irrigated acres, and does not include the Section 14 lands. By letter dated January 26, 1970, Field Examiner Dorian Clay indicated that the field examination for Permit 02-2209 found irrigation of 3,985 acres of irrigation within the lands under Permit 02-2209, including lands in Section 14. Mr. Clay found 79.70 cfs of water to be beneficially used. This amount was likely calculated by multiplying the statutory limit of 0.02 cfs per acre by 3,985 acres. The January 26, 1970, then indicated that upon the payment of a fee of \$231.00 a water license would be issued consistent with the findings in the letter.

16. Water Right License No. 30990, issued on February 11, 1970. The License indicated that the proposed works of pumps, motors and sprinkler system with a capacity of 90.24 cfs were completed on May 10, 1965. The License indicates that on July 29, 1965, proof of beneficial use of 13,339.33 acre feet per season with a maximum rate of diversion of 79.70 cfs of Snake River water for irrigation was made to the satisfaction of the State Reclamation Engineer. The place of use was found to include 3,985 acres within Township 6 South, Ranges 10 and 11 East. The described place of use included no land within Section 14 of Township 6 South, Range 10 East. No appeal was filed by the Petitioner regarding the Section 14 lands.

IV. Irrigation of Section 14 Lands.

17. The Section 14 lands were irrigated commencing May 10, 1965, using the irrigation system of the Cottonwood Canal Co.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

1. IDWR made no error regarding the Section 14 lands in the issuance of License No. 02-02209. The permit holder, Cottonwood Canal Co., did not include those lands in its deposition. IDWR could not issue the license for more acres than submitted by the permit-holder. There is no evidence that Cottonwood Canal Co. ever tried to change its deposition, or amend the attached list of irrigated lands. If Cottonwood Canal Co. disagreed with License No. 02-02209 it could have appealed that license pursuant to I.C. § 42-219 (1967 Supp.); § 42-224 (1948). If there was an error made in the licensing process, it was Petitioner's.
2. There is no patent error on the face of License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
3. Neither Petitioner nor Cross-Petitioner have shown a latent error in the description of the beneficial use in License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
4. The Petition and Cross-Petition request that an entirely new beneficial use, 400 acres of irrigation using 8 cfs and 1,338.95 AFA on the Section 14 lands, be licensed under the February 25, 1963, priority date of License No. 02-02209. Such a modification

would constitute an enlargement of the water use under License No. 02-02209 and injure junior water rights.

RECOMMENDED ORDER

Based upon these Findings of Fact and Conclusions of Law the Petition and Cross-Petition are **DENIED**.

PROCEDURAL RIGHTS

This is the Recommended Decision and Order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Section 67-5243(3) Idaho Code.

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer;

- ii. The service date of a denial of a petition for reconsideration by the hearing officer; or
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

DATED this 18th day of January, 2002.

Signed _____
PETER R. ANDERSON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of January, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701

MIKE CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701

WES WOOTEN & DON BRYANT
BLACK MESA FARMS
PO BOX 82
GLENN'S FERRY ID 83623

NORMAN C YOUNG
IDAHO DEPT OF WATER
RESOURCES
1301 N. ORCHARD ST
BOISE ID 83706

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

MEMORANDUM

RECEIVED

OCT 14 2003

Department of Water Resources

DATE: 10/6/2003
FROM: Lori Graves
TO: Nick Spencer, Susan Hamlin Nygard
CC: Dave Tuthill, Jan Shurte, Scott King, Steve Lester

RE: Notice of Fact Finding Hearing

Black Mesa Farms, LLC, (BMF) filed the attached transfer, no. 70343, proposing a permissible place of use for claims 2-103 and 2-2209B. Before processing can proceed on this transfer, guidance has been requested regarding the SRBA recommendations for these claims. Because of the complicated history associated with these claims, as reviewed in the attached draft memo dated 9/22/2003, a meeting was held with Dave Tuthill, Jan Shurte, Scott King, Steve Lester and myself 8/12/03. After discussing the issues, Dave decided that a fact finding hearing was necessary in this case for the following reasons:

1. Peter Anderson's Recommended Decision and Order denying Cottonwood Canal Company's petition to correct license 2-2209 is still pending the Director's approval. If a resolution is reached, the petition may no longer be necessary.
2. Additional information brought forth in the hearing will assist the SRBA staff in making their recommendations to the court on the associated claims involved and may alleviate possible objections to those recommendations.
3. A resolution may also alleviate possible protests to the proposed transfer application no. 70343 when advertised.

Dave requested that a copy of transfer application no. 70343, including the application's attachments A through D, and my draft memo dated 9/22/03 be included with the hearing notice. He also requested that a copy of Peter Anderson's recommended decision be included, which is attachment B of the transfer application.

The hearing notice, transfer application and draft memo need to be sent to the following parties:

Black Mesa Farms LLC
PO Box 82
Glenns Ferry ID 83623

Wesley and Kristine Wootan
PO Box 636
Glenns Ferry ID 83623

Givens Pursley LLP
Attn: Mike Creamer
PO Box 2720
Boise ID 83701

United States of America Acting Through
USDI Bureau of Land Management
Idaho State Office
1387 S Vinnell Way
Boise ID 83709-1657

Cottonwood Mutual Canal Company
C/o Ringert Clark Chartered
PO Box 2773
Boise ID 83701

Walter and Terrie Trail
Rt 1 Box 65
King Hill ID 83633

Please note that Mike Creamer represents Black Mesa Farms but has not officially made himself their attorney of record, however Wes Wootan requested notice of the hearing be sent to Mr. Creamer. Walter and Terrie Trail are being notified because they share the same Snake River pump station (point of diversion) for their water right/claim 2-4021 with the rights involved with this case. The Trails are not required to attend the hearing.

Please let me know if you have any questions.

DRAFT MEMO

DATE: 9/22/2003
FROM: Lori Graves
TO: Transfer File No. 70343

Advertising

For farming flexibility, applicant proposes a 3971 acre permissible place of use (ppu) for rights 2-2209B and 2-103. When combined, the rights will be limited to 21.34 cfs and irrigation of 1066 acres within sections 1,2,11,12,13,14,24 T6S R10E and sections 6,7,17,18,19 T6S R11E. Proposed place of use is also known as the Black Mesa Project located SE of Glenns Ferry and the Snake River.

Brief

The Cottonwood Mutual Canal Co. (CMCC) project was started in 1962. The field exam for license 2-2209 described lands irrigated in S14 T6S R10E, but the resulting license issued by the department did not list lands in S14. No appeal was filed regarding the exclusion of S14 acres. CMCC filed a petition on 10/31/2000 to correct license 2-2209 to include the S14 acres. A recommended decision and order by Peter Anderson dated 1/24/2002 denied the petition. The director has yet to rule on Peter's decision.

The department started an adjudication of Snake River rights in the early 1980s, which was not completed but was later incorporated into the Snake River Basin Adjudication (SRBA). At the time, CMCC filed an amended claim on 2-2209 to account for the acres in S14, which resulted in creation of beneficial use claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture were filed by CMCC and BLM, which protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan. The Wootans then became partners with Don and Brenda Bryant and formed Black Mesa Farms LLC.

In the SRBA, Black Mesa Farms filed claim 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 ppu. The 3985 ppu incorrectly included 440 acres of BLM land. The ppu for 2-2209B should have listed 3545 acres. On 1/10/2003, Black Mesa Farms amended SRBA claim 2-2209B from 3985 acres to 3545 acres.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14, plus Black Mesa Farm's 3545 acre ppu.

Validity of 2-103

As described in the petition to correct license 2-2209 (Attachment B, Findings of Fact, Part 3, nos. 10, 12, 13 and 15), irrigation of acres in section 14 was supported by signed

statements dated June 11, 1965, July 29, 1965 and January 26, 1970. The IDWR field examiner also found and referenced acres in S14, but was limited to licensing only those acres that the permit holder, CMCC, listed in its deposition, which did not include S14 acres. The permit holder did not appeal the license recommendation.

After 2-2209 was licensed in 1970 without S14, CMCC filed an amended claim in the first Snake River Adjudication on right 2-2209, maintaining that S14 acres should have been included in the license. Dave Tuthill and Don Shaff agreed that license 2-2209 should be amended to include the S14 acres. However, Glen Saxton felt the additional lands should be listed under a beneficial use right, resulting in claim 2-103 created for 426 acres in S14. The adjudication was never completed and a final decision never made, resulting in the filing of the above referenced petition to correct the license (Attachment B).

Note: The 1984 IDWR review of claim 2-103 found no irrigation of S14 on a 1964 aerial photo. Proof of beneficial use for right 2-2209 indicated lands were first irrigated in 1965. Irrigation in S14 was verified on a 1969 aerial photo and a 1974 orthophotoquad.

The recommended order for the petition concluded that modifying the license would constitute an enlargement. Assuming this decision is finalized, claim 2-103 should be recommended for decree based on the evidence on file with the IDWR. The claim lists a priority date of May 10, 1965. The evidence on file supports June 11, 1965, as the earliest priority date. Wes Wootan stated that June 11, 1965 was early enough and that he did not have anything to support May 10, 1965. The original claim lists 8.54 cfs for irrigation of 426 acres. During the first adjudication, 40 acres claimed in the SWNW were eliminated by IDWR review because they appeared to be covered on permit 2-2389. That permit lapsed. Since 426 acres have been documented and historically irrigated in S14, the applicant amended SRBA claim 2-103 back to the original 426 acres.

The capacity of the system was measured at 90.24 cfs, of which 79.7 was licensed for right 2-2209 for 3985 acres. The 426 acres in S14 were not included in the licensed acres or flow rate calculations. The irrigation system has the capacity for the additional 8.54 cfs and 426 acres under right 2-103.

Validity of 2-2209B

Right 2-2209 was licensed for 3985 acres and 79.7 cfs in the name of CMCC. A long-standing dispute between BLM and CMCC has been ongoing over the ownership of the water right. Partial resolution was reached in 1990 when BLM conveyed all but 440 acres of the 3985 acre p/u to the Wootans without any reservations to the water right. The Wootans then assigned all but 12.8 cfs appurtenant to those acres to CMCC. Based on IDWR review of right 2-2209 for a water bank application filed by CMCC in 1991, it was determined that CMCC had undisputed ownership of 58.1 cfs of the original right and Black Mesa Farms had undisputed ownership of 12.8 cfs of the original right. However a dispute continues between CMCC and BLM over the remaining 8.8 cfs licensed to the 440 acres BLM retained. Basically, CMCC thought that BLM only

retained 280 acres (5.6 cfs) of the original p/u and had conveyed the rest to the Wootans. This being the case, CMCC would have 61.3 cfs assigned to them rather than 58.1 cfs. This dispute will likely be resolved in the SRBA. Regardless, BLM and CMCC agreed in 1990 that the Wootans have entitlement to 12.8 cfs of the original license for irrigation of 640 acres within the lands conveyed to them by BLM.

Ownership

As discussed above, all but 440 acres of the 3985 acres licensed on right 2-2209 have been conveyed to the applicants in the attached patent document issued by the BLM (Attachment D). The lands listed on page 3 of the document have been included in the proposed ppu but appear to be subject to no irrigation per the BLM patent. Wes Wootan told me that the deal was made before he revised the sprinkler irrigation system. The lands in question border the ppu. BLM wanted to make sure that irrigation water did not run off onto BLM lands outside of the ppu. Wes stated that with the revised system, run off is not an issue. BLM will be sent a comment letter addressing this matter.

Issues

In 1985, CMCC filed an Extensions of Time to Avoid Forfeiture on right 2-2209, which was approved in 1988 until July 1991. Farming began again in 1990, when the Wootans purchased the property. An SRBA claim was filed in 1990 on right 2-2209 and in 1991 on claim 2-103. Aerial photos were supplied by Elmore County Farm Service Agency verifying irrigation occurred on 600 acres of cropland in S7 T6S R11E during the 1991 irrigation season.

Based on the 1991 FSA photo, it does not appear that irrigation occurred in S14, however an additional 160 acres of pasture in S7 and S12 could probably be counted as irrigated, along with 244 acres of Rye grass in S12.

The water right records and the SRBA records do not coincide due to the nature of IDWR's data base system. The tables located on pages 4 and 5 of this memo display the current water right and SRBA records. For purposes of this transfer and/or future proceedings, please refer to the SRBA records. Note that transfer no. 5125 is abbreviated as T5125 and so forth.

Right 2-2209 has obviously been over-claimed in the SRBA due to the complex history relating to ownership and validity of the right.

The system capacity is 90.24 cfs.

Note: the pump station developed for 2-2209 also serves water right 2-4021, which was claimed by Walter and Terrie Trail in the SRBA for 10.54 cfs and 600 acres irrigation. The priority date listed on the claim is May 10, 1965. The Trails will be notified about the current transfer application and any related proceedings.

TABLE 1
WATER RIGHT RECORDS

Number	Name	CFS	Notes
2-2209B	City of Glenns Ferry	2.40	T5125
2-2209C	Cottonwood	65.14	T5714
2-2209D	JR Simplot	12.16	T5714

TABLE 2
SRBA RECORDS

Number	Name	CFS	Notes
2-2209	Cottonwood	79.70	Claimed excess volume
2-2209A	Cottonwood	66.90	2-2209 split
2-2209B	Black Mesa	12.80	"
2-2209C	BLM	8.80	Duplication of 2-2209A
2-2209D	Cottonwood	64.50	SRBA record "A" Split by T5125
2-2209E	Glenns Ferry	2.40	"
2-10186	Cottonwood	52.34	SRBA record "D" split by T5714
2-10187	Simplot	12.16	"
2-10188	Cottonwood	49.51	2-10186 split (not a transfer)
2-10189	Smith	2.83	"
2-10190	Cottonwood	49.41	2-10188 split by T66124
2-10191	Crowley	.10	"
2-10195	Cottonwood	49.38	2-10190 split by T68552
2-10196	Glenn	.03	"
2-10208	Cottonwood	49.16	2-10195 split by T69980
2-10209	McDonough	.22	" Ownership change pending

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 70343

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Black Mesa Farms, LLC Phone 366-7433
Post Office address P.O. Box 82, Glenns Ferry ID 83623

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 General place of 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>2-103</u>	<u>5/10/1965</u>	<u>8.54 cfs</u>	<u>irrigation</u>	<u>March 15</u> to <u>Nov 15</u>
<u>2-2209B</u>	<u>2/25/1963</u>	<u>12.8 cfs</u>	<u>irrigation</u>	<u>March 15</u> to <u>Nov 15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 21.34 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Snake River tributary to Columbia River

4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use: *plus general place of use listed on 2-2209B (attachment B)*

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	

Part 2

[illegible]

Total acres 3971

PART 1

6. General Information:

a. Description of diversion system See old exam
Improvements include New 18" main Lines Portable
18" Buried To Fields - use 3" solid set for crop delivery

b. 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:

N/A

d. Remarks:

See attachment A

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)

(2-103 & 2-2209B
claim reports
attached to this
Part 2 page)

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. _____ 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 _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purpose:

amount _____ 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 _____ 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

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	

Total acres _____

9. Describe any other water rights used for the same purpose as described above _____

PART 2 ATTACHMENT

03/05/2003

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-103

WATER RIGHT NUMBER: 2-103

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	BRENDA BRYANT GLENN'S FERRY, ID 83623
Original Owner	COTTONWOOD MUTUAL CANAL CO PO BOX 789 BURLEY, ID 83318
Current Owner	BLACK MESA FARMS PO BOX 82 GLENN'S FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENN'S FERRY, ID 83623

Priority Date: 05/10/1965

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	8.540 CFS	
	<u>Total Diversion:</u>	8.540 CFS	

Location of Point(s) of Diversion

SNAKE RIVER	L6 (NW1/4SW1/4)	Sec. 9,	Twp 06S,	Rge 11E, B.M.
ELMORE 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	
06S	10E	14	39.0	39.0	40.0	40.0	40.0	40.0	40.0	40.0	39.0					39.0	30.0		426.0

Total Acres: 426

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 2-103

Conditions of Approval:Remarks:

1. General BLACK MESA PROJECT.
FIELD EXAMINATION FOR 02-02209 IDENTIFIED THE LAND CLAIMED HEREIN WAS IRRIGATED AT THE TIME. THIS CLAIM IS TO COVER THE ADDITIONAL PLACE OF USE NOT COVERED IN THE LICENSE ISSUED FOR 02-02209.
ADDRESS CHANGED PER CLAIMANT REQUEST. DB 5/2/2000.
2. General Claim amended to include 40 acres in SWNW, 06S, 10E, Sec. 14 that were not licensed on permit 2-2389, but were included in original Snake River Adjudication on claim 2-103.

Comments:Dates and Other Information:

Claim Received Date: 4/17/1991
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-2209B

WATER RIGHT NUMBER: 2-2209B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACK MESA FARMS PO BOX 82 GLENN'S FERRY, ID 83623
Original Owner	COTTONWOOD MUTUAL CANAL CO C/O RINGERT CLARK CHARTERED PO BOX 2773 BOISE, ID 83701 (208)342-4591
Current Owner	BRENDA BRYANT GLENN'S FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENN'S FERRY, ID 83623
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575

Priority Date: 02/25/1963

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	12.800 CFS	3,200.00 AF
	<u>Total Diversion:</u>	12.800 CFS	3,200.00 AF

Location of Point(s) of Diversion

SNAKE RIVER	L6 (NW1/4SW1/4)	Sec. 9,	Twp 06S,	Rge 11E, B.M.
ELMORE 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		
06S	10E	1									35.0		40.0	40.0			30.0	40.0	30.0	215.0
06S	10E	2																40.0	40.0	

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-2209B

06S 10E 11	40.0	40.0	40.0						40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	440.0
06S 10E 12	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
06S 10E 13	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0				40.0	40.0	40.0	560.0
06S 10E 24	40.0	40.0	40.0	40.0										40.0	40.0		240.0
06S 11E 6										10.0							10.0
06S 11E 7	25.0	25.0	40.0	40.0	30.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	600.0
06S 11E 17						40.0	40.0			40.0							120.0
06S 11E 18	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0		600.0
06S 11E 19						40.0			40.0								80.0

Total Acres: 3545

Conditions of Approval:

1. 016 See remarks for additional conditions of approval.

Remarks:

1. General DESC. OF DIVERTING WORKS - RIVER PUMPING STATION, PENSTOCK, RELIFT STATION, RELIFT PENSTOCK, MAIN TRUNKLINE AND LATERAL MAIN LINES, WITH SOME BOOSTER PUMPS.
NOTE: PLACE OF USE ON CLAIM STATES: LANDS AND ACREAGES IN EACH SUBDIVISION, IN TOWNSHIP 6 SOUTH, RANGES 10 AND 11 EAST, ARE AS STATED IN THE COPY OF THE APPLICATION FOR EXTENSION OF TIME TO AVOID FORFEITURE OF A WATER RIGHT ATTACHED HERETO AS EXHIBIT A & INCORPORATED HEREIN BY THIS REFERENCE. SECTION ACRES ARE AS SHOWN IN EXHIBIT A OF INITIAL CLAIM BY COTTONWOOD CANAL CO. FOR THIS WATER RIGHT.
PLACE OF USE IS 640 ACRES WITHIN TOTAL PERMITTED PLACE OF USE DESCRIBED IN LICENSE FOR THIS WATER RIGHT AND SECTION 14 COVERED BY A02-00103. PLACE OF USE IS ROTATED WITHIN THE TOTAL PLACE OF USE.
*ADDRESS CHANGED PER CLAIMANT REQUEST. DB 5/2/2000.
2. General Claim amended to eliminate 440 acres that belong to BLM. 1/10/03

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 2-2209B

Dates and Other Information:

Claim Received Date: 3/7/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
N/A If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

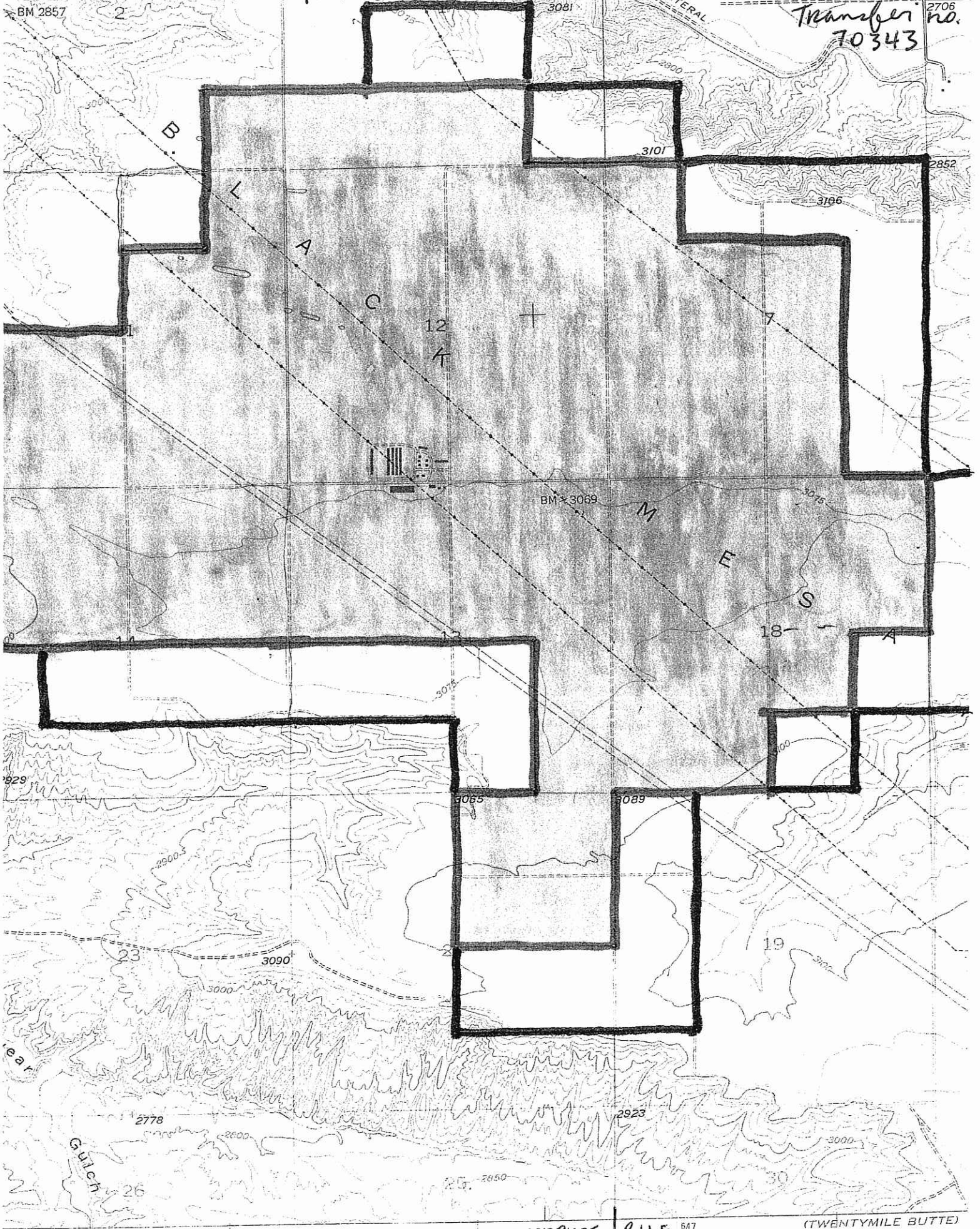
Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

PROPOSED PPU MAP

PART 3A

Transfer no. 70343



RIOE RILE 647

(TWENTYMILE BUTTE)

TIC

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
N/A If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

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

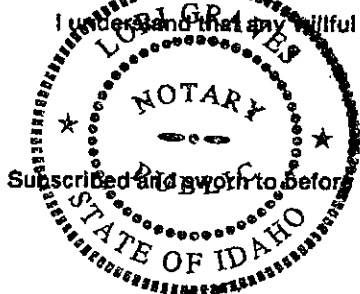
1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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.



Subscribed and sworn to before me this

18th

day of

Dec2002

(Signature of Applicant)

Loi Craver

(Notary Public)

My commission expires

6/18/04**FOR DEPARTMENT USE ONLY**

Transfer contains 6 pages and 4 attachments (A-D)

Received by g Date 12/20/02 Protest filed by _____

Prelim. check by _____ Fee \$570 W029939

Receipted by g Date 12/20/02

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 _____

Attachment A

The Cottonwood Canal Co. project was started in 1962. The field exam for license 2-2209 described lands irrigated in section 14, T6S R10E but the resulting license issued by the department did not list lands in section 14. No appeal was filed regarding the exclusion of section 14. Cottonwood Canal Co. filed a Petition to Correct License 2-2209 to include the Section 14 acres 10/31/2000. A Recommended Decision and Order dated 1/24/2002 denied the petition explaining the reason for this transfer (see attachment B).

The department started an adjudication of Snake River Rights in the mid eighties, which was never completed. At that time, Cottonwood Mutual Canal Co. filed an amended claim on 2-2209 to account for the acres in section 14, which resulted in creation of beneficial claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture filed by Cottonwood Mutual Canal Company and BLM protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan (see attachment D). The Wootans then became partners with Don and Brenda Bryant and formed Black Mesa Farms LLC.

In 1998, approved Transfer 5125 resulted in the split of license 2-2209 with Black Mesa's portion recognized as 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 permissible place of use (ppu). The 3985 ppu incorrectly included 440 acres of BLM land. The ppu should have been listed as 3545 on 2-2209B. On 1/10/2003, we amended SRBA claim 2-2209B from 3985 acres to 3545 acres in association with this transfer.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14 plus Black Mesa Farm's 3545 acre ppu.

Please refer to dept. files regarding the above rights and also the Petition to Correct License 2-2209 for farm history, affidavits and other information that supports development of this project.

Black Mesa Farms LLC partners are Wes and/or Christine Wootan and/or Don and/or Brenda Bryant.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

RECEIVED

JAN 24 2002

WATER RESOURCES
WESTERN REGION

IN THE MATTER OF PETITION TO)
CORRECT LICENSE NO. 02-02209)
IN THE NAME OF COTTONWOOD)
CANAL COMPANY)

**RECOMMENDED DECISION
AND ORDER**

IN THE MATTER OF CROSS)
PETITION TO CORRECT AND)
PETITION TO CHANGE OWNERSHIP)
OF LICENSE NO 0202209 IN THE)
NAME OF BLACK MESA FARMS, LLC)

STANDARD FOR DECISION

This matter comes before the Idaho Department of Water Resources ("IDWR") on an *Petition to Correct License* dated October 31, 2000, filed by Cottonwood Canal Co. (the "Petitioner") seeking to amend water right license no. 02-02209, issued on February 11, 1970. In response, a *Cross-Petition to Correct License and Petition to Change Ownership of License* was filed by Black Mesa Farms, also seeking amendments to water right license no. 02-02209 (the "Cross-Petition"). The Petition and Cross-Petition request IDWR to modify license no. 02-02209 pursuant to I.C. § 67-5254, which provides, in part, that:

(1) An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

For purposes of this section, a license is "the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." I.C. §67-5201(9).

Although the language of I.C. § 67-5254 does not provide a direct authorization to amend a water right license, the language presupposes an agency may modify or amend a license, and then adds the condition that notice and opportunity for a contested case be provided before doing so. IDWR previously used this interpretation of I.C. §67-5254 to authorize the amendment of a water right license. *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999); *In the Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000).

The authority to amend or modify a water right license under I.C. § 67-5254 is circumscribed by I.C. § 42-220, which provides that a water right license "shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right...." IDWR cannot use I.C. § 67-5254 to increase or change the beneficial use described by a water right license. Such an amendment would be an unlawful enlargement of the beneficial use under the licensed priority date. See Fremont-Madison v. Ground Water Approp., 129 Idaho 454, 461 (1996). The time for making such substantive changes in 1970 was through an appeal filed within sixty days of license issuance. I.C. § 42-219 (1967 Supp.); § 42-224 (1948).

Amendments to water right licenses under I.C. § 67-5254 may be issued to correct errors made by IDWR in describing the licensed beneficial use. Such errors may be patent—as when there is an obvious transposition of numbers or two elements of the described beneficial use are obviously contradictory or incompatible.¹ Latent errors may also be corrected where

¹For instance, a right to irrigate 50 acres which is described as using 0.01 cubic feet per second ("cfs") has a patent error in the description of the beneficial use. This was the case *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999) where IDWR erroneously licensed an industrial use for 0.67 cfs.

investigation reveals a licensing provision that does not correctly describe the beneficial use.² In each instance, the license to be amended must have given junior appropriators some notice of the extent of beneficial use under the license. Completely new beneficial uses may not be shoe-horned into a license's priority date, under the guise of a license amendment.

The Idaho Department of Water Resources (IDWR), having examined the Petition and the written record, and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Course of Proceedings

1. The *Petition to Correct License* was filed on October 31, 2000, by Petitioner seeking to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E, Sec. 14, with an additional 8.0 cfs and 1,338.95 AFA. A filing fee of \$50 from Petitioner was received by IDWR on January 11, 2001. A Notice of Petition to Change Water Right License No. 02-02209 in the Name of Cottonwood Canal Company was published on January 24 and 31, 2001, in the Mountain Home News. A Notice of Protest was filed by Black Mesa Farms, LLC with IDWR on February 13, 2001.
2. Cross-Petitioner filed the *Cross-Petition to Correct License and Petition to Change Ownership of License* with IDWR on April 27, 2001, and also sought to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E,

but only 12.9 acre feet per annum (afa). IDWR amended the license to correctly describe the annual volume of the use as 58 afa.

² This was the case in the *Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000) where IDWR removed approval conditions requiring the use of appurtenant surface water before using the licensed groundwater right, when information revealed that the right was never used with appurtenant surface water. The change in this case did nothing to change the beneficial use, it simply removed essentially meaningless approval conditions.

Sec. 14, with 8.0 cfs and 1,338.95 AFA, but requested such amended license be issued in the name of Cross-Petitioner.

3. On June 6, 2001, IDWR issued its *Order Authorizing Discovery and Order of Recusal*. On June 19, 2001, IDWR issued its *Order Appointing Hearing Officer*. Following a prehearing conference on July 20, 2001, the Hearing Officer issued a *Prehearing Order* on July 23, 2001, that, among other things, bifurcated the issues in this matter as follows:

Two issues are raised by the Petitions and Cross-Petitions:

1. Whether License No. 02-02209 should be modified to include more acres and an increased quantity of water; and
2. Whether the additional acres and increase quantity of water should be shown on the License as owned by Cottonwood Canal Co. or Black Mesa Farms.

Because the second issue need not be decided if IDWR does not modify License No. 02-02209, the parties agreed that the first issue should be processed prior to the second issue. If the Hearing Officer determines that License No. 02-02209 should not be modified, he will issue that decision in the form of a recommended order to the Director of IDWR. If the Hearing Officer determines that License No. 02-02209 should be modified, he will issue that decision in the form of a draft decision to the parties and set an additional prehearing conference to discuss resolution of the second issue.

4. The *Prehearing Order* also provided that the determination of whether License No. 02-02209 should be modified would be made upon a written record and established a schedule for submission of written materials.

5. On July 23, 2001, the Hearing Officer issued a *Request for Submission of IDWR Staff Memorandum*. IDWR responded with its *Response to Request for Submission of IDWR Staff Memorandum* on September 31, 2001. Cross-Petitioner submitted its inappropriately named *Black Mesa's Response to IDWR Staff Memorandum* on October

26, 2001.³ The Petitioner filed its similarly named *Memorandum in Response to IDWR Staff Memorandum* on November 2, 2001, with supporting affidavits.

II. Evidence Considered.

6. IDWR considered the following evidence in making the substantive findings of facts:

- a. Application for Permit to appropriate the Public Waters of the State of Idaho No. 39069, including map. Approved as Permit No. 30990, and subsequently renumbered 02-2209.
- b. Application for Amendment LAND LIST Permit No. 30990 received April 25, 1963.
- c. State of Idaho Water License no. 30990/02-2209.
- d. Notice of Proof of Completion of Works and Application of Water to Beneficial Use received on June 11, 1965, by the Department of Reclamation, with accompanying letter signed by Otis Williams on behalf of Cottonwood Canal Company.
- e. Letter dated June 15, 1965, from Carl E. Tappen, State Reclamation Engineer, to Cottonwood Canal Company re Permit No. 30990.
- f. Affidavit of Publication received August 3, 1965 by the Department of Publication.

³ This document is inappropriately named because the IDWR staff memorandum is not a pleading to which a "response" is filed. It is a factual memorandum by IDWR staff, akin to an affidavit. IDWR is not a party to this matter, it is the decision-maker.

- g. Deposition of Holder signed by Otis Williams and notarized by Phyllis Butterfield on July 29, 1965.
- h. Deposition of Witness signed by George R. Lake and notarized by Phyllis Butterfield on July 29, 1965.
- i. Deposition of Witness signed by Lawrence Roemer and notarized by Phyllis Butterfield on July 29, 1965.
- j. Letter dated August 4, 1965, from Carl E. Tappen, State Reclamation Engineer to Otis H. Williams, Secretary, Cottonwood Canal Co.
- k. Draft Report of Examiner for Permit No. 30990, and loose map
- l. Letter dated January 26, 1970 from Dorian Clay, Field Examiner, to Cottonwood Canal Company, c/o Wm. A. Anderson..
- m. Memorandum dated August 24, 1984, from D. Shaff to D. Tuthill.
- n. Inter-Department Memo dated August 28, 1984, from Dave Tuthill to Glen Saxton.
- o. Inter-Department Memo dated August 29, 1984, from Dave Tuthill to Don Shaff.
- p. Letter dated December 29, 2000, from Charles L. Honsinger to Glen Saxton, with attachments.
- q. Response to Request for Submission of IDWR Staff Memorandum, dated September 13, 2001.
- r. Affidavit of Shelley Keen, dated November 1, 2001.

s. Affidavit of Clifford Smith, dated October 22, 2001.

III. Permitting and Licensing Process

7. On February 25, 1963, Cottonwood Canal Company filed an Application for Permit to Appropriate the Public Water of the State of Idaho with the Idaho Department of Reclamation. Cottonwood Canal Company was identified as a non-profit corporation. The Idaho Department of Reclamation is a predecessor agency of the current Idaho Department of Water Resources, and will also be referred to as IDWR. That Application was assigned application no. 39069.
8. The Application requested authorization to develop a water right with which to irrigate 4480 acres, with 89.6 cfs of water to be diverted from the Snake River. The Application envisioned the construction of a pumping plant, canals ditches and pipeline over 5 years, and application of the water to the proposed use within an additional 5 years. The land to be irrigated was located in Township 5 South, Range 10 East and Township 6 South, Ranges 10 and 11 East. Among these lands, 400 acres was identified within Section 14 of Township 6 South, Range 10 East ("Section 14 lands").
9. The Application was approved and a permit issued for the development of this water use on March 1, 1963. The Permit was assigned no. 30990, subsequently renumbered to 02-2209, and required one-fifth of the work to be completed by September 1, 1965, and the remainder was to be completed by September 1, 1968. Beneficial use of all the water to be used under the Permit was required to be made by March 1, 1973.
10. A Notice of Proof of Completion of Works and Application of Water to Beneficial Use was submitted for publication by Otis Williams of the Cottonwood Canal Company on June 11, 1965. The Notice indicated that the place where the water was

used under Permit No. 30990 included the Section 14 lands. The Notice indicated that proof of completion was to be submitted to Phyllis Butterfield, Notary Public, on July 29, 1965, at 10:00 a.m. in Burley Idaho. On June 15, 1965, the State Reclamation Engineer sent three depositions to Cottonwood Canal Company. The first deposition was to be executed by Cottonwood Canal Company, as the "holder" and the other two by two disinterested witnesses. All three were to be submitted on July 29, 1965. The June 15, 1965, letter provided, "It is very important and necessary that each question be answered in detail." (Underscoring in original). The Notice of Proof of Completion of Works and Application of Water to Beneficial Use was published in the Mountain Home News and included reference to the Section 14 lands.

11. The Deposition of Holder for Permit No. 30990, signed by Otis Williams, Secretary of Cottonwood Canal Company, was submitted on July 29, 1965. In its answer to a portion of question 6. "If for irrigation, name each subdivision in which used and number of acres in each subdivision that have actually been irrigated with said water:" the Holder stated "See attached list." A listing of lands which was unattached to the first page of the Holder Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Holder Deposition was 3985 acres.

12. The Deposition of Witness for Permit No. 30990, signed by George R. Lake, the supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of + question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision:" George Lake stated "there (sic) are 14 320 acre tracts of which nearly all of each is irrigated as per attached list." A listing of lands

which was unattached to the first page of the Lake Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Lake Deposition was 3985 acres.

13. The Deposition of Witness for Permit No. 30990, signed by Lawrence Roemer, farm manager and partial supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision." George Lake stated "irrigation 14 - 320 acre tracts described below" and then there is a listing of lands, including the Section 14 lands. Total land area listed in the Roemer Deposition was 4350 acres, although he also indicates 14 -320 acre tracts as the total land area, which is 4480 acres.

14. On August 4, 1965, the State Reclamation Engineer wrote to the Cottonwood Canal Co. acknowledging the receipt of the Holder, Lake and Roemer Deposition and the affidavit of publication submitted in proof of completion of Permit No. 30990. The letter indicated that before final action could be taken a field examination had to be made by the department.

15. The form for the Report of Examiner requires in paragraph 7 as follows: "List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact numbers of acres under cultivation in each forty-acre tract. ... (Submit map on attached plat, showing location and details of above description." The Report lists the lands to be irrigated as provided in Permit No. 30990, including the Section 14 lands. It does not list the exact number of acres under cultivation in each forty-acre tract, either in writing or on

the attached map (although the attached map does show some erased pencil figures on some of the "quarter-quarters" that could be irrigated acreages). It does indicate adjacent to the term "Area" the number 3,985 acres, which corresponds to the total number of acres indicated in both the Holder and Lake Depositions. Behind the Report of Examiner in the file is a map of Cottonwood Canal Co.'s proposed place of use with each "quarter-quarter" numbered, with acreage figures written in red. The red figures correspond to the Holder and Lake Depositions which indicated a total of 3985 irrigated acres, and does not include the Section 14 lands. By letter dated January 26, 1970, Field Examiner Dorian Clay indicated that the field examination for Permit 02-2209 found irrigation of 3,985 acres of irrigation within the lands under Permit 02-2209, including lands in Section 14. Mr. Clay found 79.70 cfs of water to be beneficially used. This amount was likely calculated by multiplying the statutory limit of 0.02 cfs per acre by 3,985 acres. The January 26, 1970, then indicated that upon the payment of a fee of \$231.00 a water license would be issued consistent with the findings in the letter.

16. Water Right License No. 30990, issued on February 11, 1970. The License indicated that the proposed works of pumps, motors and sprinkler system with a capacity of 90.24 cfs were completed on May 10, 1965. The License indicates that on July 29, 1965, proof of beneficial use of 13,339.33 acre feet per season with a maximum rate of diversion of 79.70 cfs of Snake River water for irrigation was made to the satisfaction of the State Reclamation Engineer. The place of use was found to include 3,985 acres within Township 6 South, Ranges 10 and 11 East. The described place of use included no land within Section 14 of Township 6 South, Range 10 East. No appeal was filed by the Petitioner regarding the Section 14 lands.

IV. Irrigation of Section 14 Lands.

17. The Section 14 lands were irrigated commencing May 10, 1965, using the irrigation system of the Cottonwood Canal Co.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

1. IDWR made no error regarding the Section 14 lands in the issuance of License No. 02-02209. The permit holder, Cottonwood Canal Co., did not include those lands in its deposition. IDWR could not issue the license for more acres than submitted by the permit-holder. There is no evidence that Cottonwood Canal Co. ever tried to change its deposition, or amend the attached list of irrigated lands. If Cottonwood Canal Co. disagreed with License No. 02-02209 it could have appealed that license pursuant to I.C. § 42-219 (1967 Supp.); § 42-224 (1948). If there was an error made in the licensing process, it was Petitioner's.
2. There is no patent error on the face of License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
3. Neither Petitioner nor Cross-Petitioner have shown a latent error in the description of the beneficial use in License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
4. The Petition and Cross-Petition request that an entirely new beneficial use, 400 acres of irrigation using 8 cfs and 1,338.95 AFA on the Section 14 lands, be licensed

under the February 25, 1963, priority date of License No. 02-02209. Such a modification would constitute an enlargement of the water use under License No. 02-02209 and injure junior water rights.

RECOMMENDED ORDER

Based upon these Findings of Fact and Conclusions of Law the Petition and Cross-Petition are **DENIED**.

PROCEDURAL RIGHTS

This is the Recommended Decision and Order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

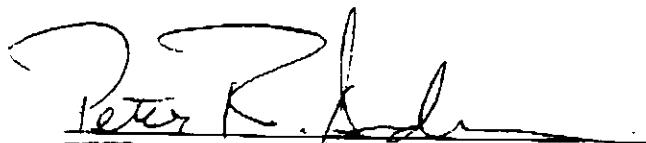
Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer;

- ii. The service date of a denial of a petition for reconsideration by the hearing officer;
or
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

DATED this 18th day of January, 2002.


PETER R. ANDERSON
Hearing Officer

CERTIFICATE OF SERVICE

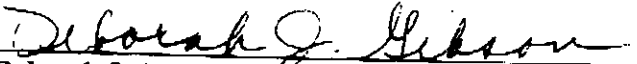
I HEREBY CERTIFY that on this 22nd day of January, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701

MIKE CREAMER
GIVENS PURLSEY LLP
PO BOX 2720
BOISE ID 83701

WES WOOTEN & DON BRYANT
BLACK MESA FARMS
PO BOX 82
GLENN'S FERRY ID 83623

NORMAN C YOUNG
IDAHO DEPT OF WATER
RESOURCES
1301 N. ORCHARD ST
BOISE ID 83706


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

WHEREAS

Wesley R. Wootan and Christine W. Wootan

are entitled to a land patent pursuant to the Act of October 21, 1976 (Section 206, 90 Stat. 2756; 43 U.S.C. 1716), for the following-described land:

Boise Meridian, Idaho

T. 6 S., R. 10 E.,

sec. 1, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 2, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 11, E $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{4}$;
sec. 12;
sec. 13, N $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
sec. 14, N $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 24, NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 6 S., R. 11 E.,

sec. 6, lot 7;
sec. 7;
sec. 17, W $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
sec. 18, lots 1 to 4, inclusive, NE $\frac{1}{4}$,
E $\frac{1}{4}$ W $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 19, lots 1 to 3, inclusive.

Containing 4,097.57 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the above named claimants the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimants, their successors and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

SUBJECT TO:

1. Those rights for powerline purposes granted to Pacific Power and Light Company, its successors or assigns, by Right-of-Way No. IDI-8875A, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Patent Number 11-91-0001

EXHIBIT A

MICROFILMED

AUG 07 1992

ATTACHMENT C

2. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDBL-056096, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
3. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-017359, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
4. Those rights for canal purposes granted to Glenss Ferry Land and Irrigation Company, its successors or assigns, by Right-of-Way No. IDE-027316, pursuant to the Act of March 3, 1891, as amended (43 U.S.C. 946-949).
5. Those rights for powerline and substation purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-016110, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
6. Those rights for irrigation pipeline purposes granted to Walter Trail, his successors or assigns, by Right-of-Way No. IDI-12250, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
7. Those rights for county road purposes granted to Glenss Ferry Highway District, its successors or assigns, by Right-of-Way No. IDI-20029, pursuant to the Act of July 26, 1866 (14 Stat. 253).
8. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-14749, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
9. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-14868, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
10. Those rights for petroleum pipeline purposes granted to Chevron Pipe Line Company, its successors or assigns, by Right-of-Way No. IDI-0602, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).
11. Those rights for natural gas pipeline purposes granted to Northwest Pipeline Corporation, its successors or assigns, by Right-of-Way No. IDI-14943, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).
12. Those rights for natural gas pipeline purposes granted to Northwest Pipeline Corporation, its successors or assigns, by Right-of-Way No. IDI-06421, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).

MICROFILMED

AUG 07 1982

13. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-2457, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
14. Those rights for fiber optic cable purposes granted to Mountain States Telephone and Telegraph Company, its successors or assigns, by Right-of-Way No. IDI-20976, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
15. Those rights for access road and communication site purposes granted to King Hill Irrigation District, its successors or assigns, by Right-of-Way No. IDI-16919, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

SUBJECT TO THE FOLLOWING:

The patentees, on behalf of themselves, their heirs, assigns and successors in interest, in consideration for receiving title to this property, covenant and agree that the following described lands will not be used for irrigated farming:

Boise Meridian, Idaho

T. 6 S., R. 10 E.,

- sec. 1, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 13, N $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 24, N $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 6 S., R. 11 E.,

- sec. 6, lot 7;
- sec. 7, E $\frac{1}{2}$ SE $\frac{1}{4}$, RW $\frac{1}{2}$ SE $\frac{1}{4}$, and NE $\frac{1}{2}$ NW $\frac{1}{4}$;
- sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- sec. 18, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 19, lots 1 to 3, inclusive.



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 475), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand in Boise, Idaho
the TWENTY day of OCTOBER in the year
of our Lord one thousand nine hundred and NINETY
and of the Independence of the United States the two hundred
and FIFTYTHREE

By (John) Davis
Deputy State Director for Operations

Patent Number 11-91-0001

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AUG 07 1992

Black Mesa Trails 1991

2 | 1
11 | 12

Rye Dryland

BLM

Dry Grazing

244.0
HEL/NW

3
1565
HE

Hel. Quail
HEL/NW

S. Bats

5/20/90
10950
HEL/NW

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*Fallow
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6
3165

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Fallow

UNCLASSIFIED

RECEIVED

OCT 14 2003

Department of Water Resources

MEMORANDUM

DATE: 10/6/2003
FROM: Lori Graves
TO: Nick Spencer, Susan Hamlin Nygard
CC: Dave Tuthill, Jan Shurte, Scott King, Steve Lester

RE: Notice of Fact Finding Hearing

Black Mesa Farms, LLC, (BMF) filed the attached transfer, no. 70343, proposing a permissible place of use for claims 2-103 and 2-2209B. Before processing can proceed on this transfer, guidance has been requested regarding the SRBA recommendations for these claims. Because of the complicated history associated with these claims, as reviewed in the attached draft memo dated 9/22/2003, a meeting was held with Dave Tuthill, Jan Shurte, Scott King, Steve Lester and myself 8/12/03. After discussing the issues, Dave decided that a fact finding hearing was necessary in this case for the following reasons:

1. Peter Anderson's Recommended Decision and Order denying Cottonwood Canal Company's petition to correct license 2-2209 is still pending the Director's approval. If a resolution is reached, the petition may no longer be necessary.
2. Additional information brought forth in the hearing will assist the SRBA staff in making their recommendations to the court on the associated claims involved and may alleviate possible objections to those recommendations.
3. A resolution may also alleviate possible protests to the proposed transfer application no. 70343 when advertised.

Dave requested that a copy of transfer application no. 70343, including the application's attachments A through D, and my draft memo dated 9/22/03 be included with the hearing notice. He also requested that a copy of Peter Anderson's recommended decision be included, which is attachment B of the transfer application.

The hearing notice, transfer application and draft memo need to be sent to the following parties:

Black Mesa Farms LLC
PO Box 82
Glenns Ferry ID 83623

Wesley and Kristine Wootan
PO Box 636
Glenns Ferry ID 83623

Givens Pursley LLP
Attn: Mike Creamer
PO Box 2720
Boise ID 83701

United States of America Acting Through
USDI Bureau of Land Management
Idaho State Office
1387 S Vinnell Way
Boise ID 83709-1657

Cottonwood Mutual Canal Company
C/o Ringert Clark Chartered
PO Box 2773
Boise ID 83701

Walter and Terrie Trail
Rt 1 Box 65
King Hill ID 83633

Please note that Mike Creamer represents Black Mesa Farms but has not officially made himself their attorney of record, however Wes Wootan requested notice of the hearing be sent to Mr. Creamer. Walter and Terrie Trail are being notified because they share the same Snake River pump station (point of diversion) for their water right/claim 2-4021 with the rights involved with this case. The Trails are not required to attend the hearing.

Please let me know if you have any questions.

DRAFT MEMO

DATE: 9/22/2003
FROM: Lori Graves
TO: Transfer File No. 70343

Advertising

For farming flexibility, applicant proposes a 3971 acre permissible place of use (ppu) for rights 2-2209B and 2-103. When combined, the rights will be limited to 21.34 cfs and irrigation of 1066 acres within sections 1,2,11,12,13,14,24 T6S R10E and sections 6,7,17,18,19 T6S R11E. Proposed place of use is also known as the Black Mesa Project located SE of Glenns Ferry and the Snake River.

Brief

The Cottonwood Mutual Canal Co. (CMCC) project was started in 1962. The field exam for license 2-2209 described lands irrigated in S14 T6S R10E, but the resulting license issued by the department did not list lands in S14. No appeal was filed regarding the exclusion of S14 acres. CMCC filed a petition on 10/31/2000 to correct license 2-2209 to include the S14 acres. A recommended decision and order by Peter Anderson dated 1/24/2002 denied the petition. The director has yet to rule on Peter's decision.

The department started an adjudication of Snake River rights in the early 1980s, which was not completed but was later incorporated into the Snake River Basin Adjudication (SRBA). At the time, CMCC filed an amended claim on 2-2209 to account for the acres in S14, which resulted in creation of beneficial use claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture were filed by CMCC and BLM, which protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan. The Wootans then became partners with Don and Brenda Bryant and formed Black Mesa Farms LLC.

In the SRBA, Black Mesa Farms filed claim 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 ppu. The 3985 ppu incorrectly included 440 acres of BLM land. The ppu for 2-2209B should have listed 3545 acres. On 1/10/2003, Black Mesa Farms amended SRBA claim 2-2209B from 3985 acres to 3545 acres.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14, plus Black Mesa Farm's 3545 acre ppu.

Validity of 2-103

As described in the petition to correct license 2-2209 (Attachment B, Findings of Fact, Part 3, nos. 10, 12, 13 and 15), irrigation of acres in section 14 was supported by signed

statements dated June 11, 1965, July 29, 1965 and January 26, 1970. The IDWR field examiner also found and referenced acres in S14, but was limited to licensing only those acres that the permit holder, CMCC, listed in its deposition, which did not include S14 acres. The permit holder did not appeal the license recommendation.

After 2-2209 was licensed in 1970 without S14, CMCC filed an amended claim in the first Snake River Adjudication on right 2-2209, maintaining that S14 acres should have been included in the license. Dave Tuthill and Don Shaff agreed that license 2-2209 should be amended to include the S14 acres. However, Glen Saxton felt the additional lands should be listed under a beneficial use right, resulting in claim 2-103 created for 426 acres in S14. The adjudication was never completed and a final decision never made, resulting in the filing of the above referenced petition to correct the license (Attachment B).

Note: The 1984 IDWR review of claim 2-103 found no irrigation of S14 on a 1964 aerial photo. Proof of beneficial use for right 2-2209 indicated lands were first irrigated in 1965. Irrigation in S14 was verified on a 1969 aerial photo and a 1974 orthophotoquad.

The recommended order for the petition concluded that modifying the license would constitute an enlargement. Assuming this decision is finalized, claim 2-103 should be recommended for decree based on the evidence on file with the IDWR. The claim lists a priority date of May 10, 1965. The evidence on file supports June 11, 1965, as the earliest priority date. Wes Wootan stated that June 11, 1965 was early enough and that he did not have anything to support May 10, 1965. The original claim lists 8.54 cfs for irrigation of 426 acres. During the first adjudication, 40 acres claimed in the SWNW were eliminated by IDWR review because they appeared to be covered on permit 2-2389. That permit lapsed. Since 426 acres have been documented and historically irrigated in S14, the applicant amended SRBA claim 2-103 back to the original 426 acres.

The capacity of the system was measured at 90.24 cfs, of which 79.7 was licensed for right 2-2209 for 3985 acres. The 426 acres in S14 were not included in the licensed acres or flow rate calculations. The irrigation system has the capacity for the additional 8.54 cfs and 426 acres under right 2-103.

Validity of 2-2209B

Right 2-2209 was licensed for 3985 acres and 79.7 cfs in the name of CMCC. A long-standing dispute between BLM and CMCC has been ongoing over the ownership of the water right. Partial resolution was reached in 1990 when BLM conveyed all but 440 acres of the 3985 acre p/u to the Wootans without any reservations to the water right. The Wootans then assigned all but 12.8 cfs appurtenant to those acres to CMCC. Based on IDWR review of right 2-2209 for a water bank application filed by CMCC in 1991, it was determined that CMCC had undisputed ownership of 58.1 cfs of the original right and Black Mesa Farms had undisputed ownership of 12.8 cfs of the original right. However a dispute continues between CMCC and BLM over the remaining 8.8 cfs licensed to the 440 acres BLM retained. Basically, CMCC thought that BLM only

retained 280 acres (5.6 cfs) of the original p/u and had conveyed the rest to the Wootans. This being the case, CMCC would have 61.3 cfs assigned to them rather than 58.1 cfs. This dispute will likely be resolved in the SRBA. Regardless, BLM and CMCC agreed in 1990 that the Wootans have entitlement to 12.8 cfs of the original license for irrigation of 640 acres within the lands conveyed to them by BLM.

Ownership

As discussed above, all but 440 acres of the 3985 acres licensed on right 2-2209 have been conveyed to the applicants in the attached patent document issued by the BLM (Attachment D). The lands listed on page 3 of the document have been included in the proposed ppu but appear to be subject to no irrigation per the BLM patent. Wes Wootan told me that the deal was made before he revised the sprinkler irrigation system. The lands in question border the ppu. BLM wanted to make sure that irrigation water did not run off onto BLM lands outside of the ppu. Wes stated that with the revised system, run off is not an issue. BLM will be sent a comment letter addressing this matter.

Issues

In 1985, CMCC filed an Extensions of Time to Avoid Forfeiture on right 2-2209, which was approved in 1988 until July 1991. Farming began again in 1990, when the Wootans purchased the property. An SRBA claim was filed in 1990 on right 2-2209 and in 1991 on claim 2-103. Aerial photos were supplied by Elmore County Farm Service Agency verifying irrigation occurred on 600 acres of cropland in S7 T6S R11E during the 1991 irrigation season.

Based on the 1991 FSA photo, it does not appear that irrigation occurred in S14, however an additional 160 acres of pasture in S7 and S12 could probably be counted as irrigated, along with 244 acres of Rye grass in S12.

The water right records and the SRBA records do not coincide due to the nature of IDWR's data base system. The tables located on pages 4 and 5 of this memo display the current water right and SRBA records. For purposes of this transfer and/or future proceedings, please refer to the SRBA records. Note that transfer no. 5125 is abbreviated as T5125 and so forth.

Right 2-2209 has obviously been over-claimed in the SRBA due to the complex history relating to ownership and validity of the right.

The system capacity is 90.24 cfs.

Note: the pump station developed for 2-2209 also serves water right 2-4021, which was claimed by Walter and Terrie Trail in the SRBA for 10.54 cfs and 600 acres irrigation. The priority date listed on the claim is May 10, 1965. The Trails will be notified about the current transfer application and any related proceedings.

TABLE 1
WATER RIGHT RECORDS

Number	Name	CFS	Notes
2-2209B	City of Glenns Ferry	2.40	T5125
2-2209C	Cottonwood	65.14	T5714
2-2209D	JR Simplot	12.16	T5714

TABLE 2
SRBA RECORDS

Number	Name	CFS	Notes
2-2209	Cottonwood	79.70	Claimed excess volume
2-2209A	Cottonwood	66.90	2-2209 split
2-2209B	Black Mesa	12.80	"
2-2209C	BLM	8.80	Duplication of 2-2209A
2-2209D	Cottonwood	64.50	SRBA record "A" Split by T5125
2-2209E	Glenns Ferry	2.40	"
2-10186	Cottonwood	52.34	SRBA record "D" split by T5714
2-10187	Simplot	12.16	"
2-10188	Cottonwood	49.51	2-10186 split (not a transfer)
2-10189	Smith	2.83	"
2-10190	Cottonwood	49.41	2-10188 split by T66124
2-10191	Crowley	.10	"
2-10195	Cottonwood	49.38	2-10190 split by T68552
2-10196	Glenn	.03	"
2-10208	Cottonwood	49.16	2-10195 split by T69980
2-10209	McDonough	.22	" Ownership change pending

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 70343

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Black Mesa Farms, LLC Phone 366-7433
Post Office address P O Box 82, Glenns Ferry ID 83623

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 General place of 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>2-103</u>	<u>5/10/1965</u>	<u>8.54 cfs</u>	<u>irrigation</u>	<u>March 15</u> to <u>Nov 15</u>
<u>2-2209B</u>	<u>2/25/1963</u>	<u>12.8 cfs</u>	<u>irrigation</u>	<u>March 15</u> to <u>Nov 15</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>

2. Total amount of water being transferred 21.34 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Snake River tributary to Columbia River

4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use: *plus general place of use listed on 2-22098/attachment B*

[illegible]

Total acres 3971

PART 1

6. General Information:

a. Description of diversion system See old exam
Improvements include New 18" main lines Portable
18" Buried To Fields - use 3" solid set for crop delivery

b. 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:

N/A

d. Remarks:

See attachment A

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)

(2-103 + 2-2209B
claim reports
attached to this
Part 2 page)

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. _____ 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 _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purpose:

amount _____ 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 _____ 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

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	

Total acres _____

9. Describe any other water rights used for the same purpose as described above _____

PART 2 ATTACHMENT

03/05/2003

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-103

WATER RIGHT NUMBER: 2-103

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	BRENDA BRYANT GLENN'S FERRY, ID 83623
Original Owner	COTTONWOOD MUTUAL CANAL CO PO BOX 789 BURLEY, ID 83318
Current Owner	BLACK MESA FARMS PO BOX 82 GLENN'S FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENN'S FERRY, ID 83623

Priority Date: 05/10/1965

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	8.540 CFS	
	<u>Total Diversion:</u>	8.540 CFS	

Location of Point(s) of Diversion

SNAKE RIVER	L6 (NW1/4SW1/4)	Sec. 9,	Twp 06S,	Rge 11E, B.M.
ELMORE 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	
06S	10E	14	39.0	39.0	40.0	40.0	40.0	40.0	40.0	40.0	39.0					39.0	30.0		426.0

Total Acres: 426

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-103

Conditions of Approval:Remarks:

1. General BLACK MESA PROJECT.
FIELD EXAMINATION FOR 02-02209 IDENTIFIED THE LAND CLAIMED HEREIN WAS IRRIGATED AT THE TIME. THIS CLAIM IS TO COVER THE ADDITIONAL PLACE OF USE NOT COVERED IN THE LICENSE ISSUED FOR 02-02209.
ADDRESS CHANGED PER CLAIMANT REQUEST. DB 5/2/2000.
2. General Claim amended to include 40 acres in SWNW, 06S, 10E, Sec. 14 that were not licensed on permit 2-2389, but were included in original Snake River Adjudication on claim 2-103.

Comments:Dates and Other Information:

Claim Received Date: 4/17/1991
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 State or Federal: S
 Owner Name Connector: OR
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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PART 2 ATTACHMENT

01/15/2003

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-2209B

WATER RIGHT NUMBER: 2-2209B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BLACK MESA FARMS PO BOX 82 GLENN'S FERRY, ID 83623
Original Owner	COTTONWOOD MUTUAL CANAL CO C/O RINGERT CLARK CHARTERED PO BOX 2773 BOISE, ID 83701 (208)342-4591
Current Owner	BRENDA BRYANT GLENN'S FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENN'S FERRY, ID 83623
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENN'S FERRY, ID 83623 (208)366-2575

Priority Date: 02/25/1963

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	12.800 CFS	3,200.00 AF
	<u>Total Diversion:</u>	12.800 CFS	3,200.00 AF

Location of Point(s) of Diversion

SNAKE RIVER L6 (NW1/4SW1/4) Sec. 9, Twp 06S, Rge 11E, B.M.
ELMORE 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		
06S	10E	1									35.0		40.0	40.0			30.0	40.0	30.0	215.0
06S	10E	2																40.0	40.0	

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-2209B

06S 10E 11	40.0	40.0	40.0						40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	440.0
06S 10E 12	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
06S 10E 13	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0				40.0	40.0	40.0	560.0
06S 10E 24	40.0	40.0	40.0	40.0										40.0	40.0		240.0
06S 11E 6										10.0							10.0
06S 11E 7	25.0	25.0	40.0	40.0	30.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	600.0
06S 11E 17						40.0	40.0			40.0							120.0
06S 11E 18	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0		600.0
06S 11E 19						40.0				40.0							80.0

Total Acres: 3545

Conditions of Approval:

1. 016 See remarks for additional conditions of approval.

Remarks:

1. General DESC. OF DIVERTING WORKS - RIVER PUMPING STATION, PENSTOCK, RELIFT STATION, RELIFT PENSTOCK, MAIN TRUNKLINE AND LATERAL MAIN LINES, WITH SOME BOOSTER PUMPS.
NOTE: PLACE OF USE ON CLAIM STATES: LANDS AND ACREAGES IN EACH SUBDIVISION, IN TOWNSHIP 6 SOUTH, RANGES 10 AND 11 EAST, ARE AS STATED IN THE COPY OF THE APPLICATION FOR EXTENSION OF TIME TO AVOID FORFEITURE OF A WATER RIGHT ATTACHED HERETO AS EXHIBIT A & INCORPORATED HEREIN BY THIS REFERENCE. SECTION ACRES ARE AS SHOWN IN EXHIBIT A OF INITIAL CLAIM BY COTTONWOOD CANAL CO. FOR THIS WATER RIGHT.
PLACE OF USE IS 640 ACRES WITHIN TOTAL PERMITTED PLACE OF USE DESCRIBED IN LICENSE FOR THIS WATER RIGHT AND SECTION 14 COVERED BY A02-00103. PLACE OF USE IS ROTATED WITHIN THE TOTAL PLACE OF USE.
*ADDRESS CHANGED PER CLAIMANT REQUEST. DB 5/2/2000.
2. General Claim amended to eliminate 440 acres that belong to BLM. 1/10/03

Comments:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 2-2209B

Dates and Other Information:

Claim Received Date: 3/7/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
N/A If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rgs.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rgs.	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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rgs.	County	Local name for diversion

3. Lands irrigated or place of use:

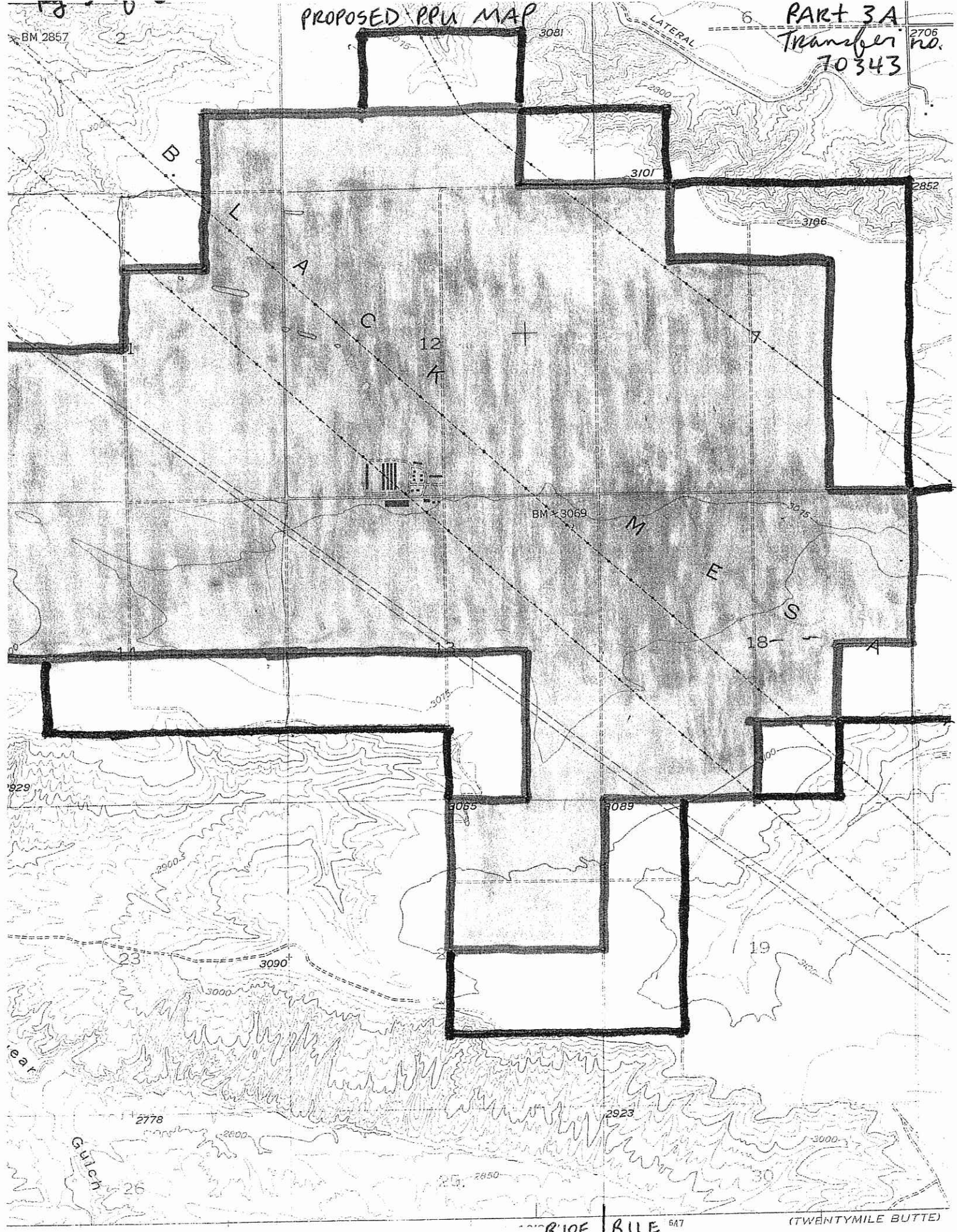
Twp.	Rgs.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

PROPOSED PPU MAP

PART 3A

Transfer no.
70343



TIC

R10E R11E 6A7

(TWENTYMILE BUTTE)

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

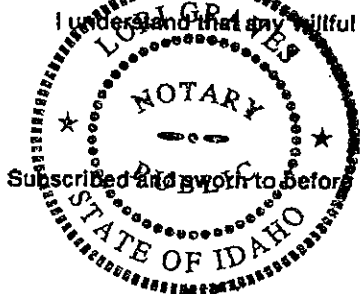
1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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.



Subscribed and sworn to before me this 18th day of Dec, 2002.

Wesley R. Johnston
(Signature of Applicant)

Loi Cranner
(Notary Public)

My commission expires 6/18/04**FOR DEPARTMENT USE ONLY**

Transfer contains 6 pages and 4 attachments (A-D)

Received by Ly Date 12/20/02 Protest filed by _____

Prelim. check by _____ Fee \$570. W029939

Received by Ly Date 12/20/02

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 _____

Attachment A

The Cottonwood Canal Co. project was started in 1962. The field exam for license 2-2209 described lands irrigated in section 14, T6S R10E but the resulting license issued by the department did not list lands in section 14. No appeal was filed regarding the exclusion of section 14. Cottonwood Canal Co. filed a Petition to Correct License 2-2209 to include the Section 14 acres 10/31/2000. A Recommended Decision and Order dated 1/24/2002 denied the petition explaining the reason for this transfer (see attachment B).

The department started an adjudication of Snake River Rights in the mid eighties, which was never completed. At that time, Cottonwood Mutual Canal Co. filed an amended claim on 2-2209 to account for the acres in section 14, which resulted in creation of beneficial claim 2-103 for 426 acres. Around the same time, Extensions of Time to Avoid Forfeiture filed by Cottonwood Mutual Canal Company and BLM protected right 2-2209 until July, 1991. The farm was put back into production in 1990, when BLM conveyed the majority of the project acres to Wes and Christine Wootan (see attachment D). The Wootans then became partners with Don and Brenda Bryant and formed Black Mesa Farms LLC.

In 1998, approved Transfer 5125 resulted in the split of license 2-2209 with Black Mesa's portion recognized as 2-2209B for 12.8 cfs and irrigation of 640 acres within a 3985 permissible place of use (ppu). The 3985 ppu incorrectly included 440 acres of BLM land. The ppu should have been listed as 3545 on 2-2209B. On 1/10/2003, we amended SRBA claim 2-2209B from 3985 acres to 3545 acres in association with this transfer.

The purpose of this transfer is to describe a 3971 acre ppu for rights 2-2209B and 2-103, which accounts for 426 acres in S14 plus Black Mesa Farm's 3545 acre ppu.

Please refer to dept. files regarding the above rights and also the Petition to Correct License 2-2209 for farm history, affidavits and other information that supports development of this project.

Black Mesa Farms LLC partners are Wes and/or Christine Wootan and/or Don and/or Brenda Bryant.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED
JAN 24 2002
WATER RESOURCES
WESTERN REGION

IN THE MATTER OF PETITION TO)
CORRECT LICENSE NO. 02-02209)
IN THE NAME OF COTTONWOOD)
CANAL COMPANY)
_____)

**RECOMMENDED DECISION
AND ORDER**

IN THE MATTER OF CROSS)
PETITION TO CORRECT AND)
PETITION TO CHANGE OWNERSHIP)
OF LICENSE NO 0202209 IN THE)
NAME OF BLACK MESA FARMS, LLC)
_____)

STANDARD FOR DECISION

This matter comes before the Idaho Department of Water Resources ("IDWR") on an *Petition to Correct License* dated October 31, 2000, filed by Cottonwood Canal Co. (the "Petitioner") seeking to amend water right license no. 02-02209, issued on February 11, 1970. In response, a *Cross-Petition to Correct License and Petition to Change Ownership of License* was filed by Black Mesa Farms, also seeking amendments to water right license no. 02-02209 (the "Cross-Petition"). The Petition and Cross-Petition request IDWR to modify license no. 02-02209 pursuant to I.C. § 67-5254, which provides, in part, that:

(1) An agency shall not revoke, suspend, modify, annul, withdraw, or amend a license... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

For purposes of this section, a license is "the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." I.C. §67-5201(9).

Although the language of I.C. § 67-5254 does not provide a direct authorization to amend a water right license, the language presupposes an agency may modify or amend a license, and then adds the condition that notice and opportunity for a contested case be provided before doing so. IDWR previously used this interpretation of I.C. §67-5254 to authorize the amendment of a water right license. *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999); *In the Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000).

The authority to amend or modify a water right license under I.C. § 67-5254 is circumscribed by I.C. § 42-220, which provides that a water right license "shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right...." IDWR cannot use I.C. § 67-5254 to increase or change the beneficial use described by a water right license. Such an amendment would be an unlawful enlargement of the beneficial use under the licensed priority date. See Freemont-Madison v. Ground Water Approp., 129 Idaho 454, 461 (1996). The time for making such substantive changes in 1970 was through an appeal filed within sixty days of license issuance. I.C. § 42-219 (1967 Supp.); § 42-224 (1948).

Amendments to water right licenses under I.C. § 67-5254 may be issued to correct errors made by IDWR in describing the licensed beneficial use. Such errors may be patent—as when there is an obvious transposition of numbers or two elements of the described beneficial use are obviously contradictory or incompatible.¹ Latent errors may also be corrected where

¹For instance, a right to irrigate 50 acres which is described as using 0.01 cubic feet per second ("cfs") has a patent error in the description of the beneficial use. This was the case *In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, Final Order (January 22, 1999) where IDWR erroneously licensed an industrial use for 0.67 cfs.

investigation reveals a licensing provision that does not correctly describe the beneficial use.² In each instance, the license to be amended must have given junior appropriators some notice of the extent of beneficial use under the license. Completely new beneficial uses may not be shoe-horned into a licenses' priority date, under the guise of a license amendment.

The Idaho Department of Water Resources (IDWR), having examined the Petition and the written record, and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Course of Proceedings

1. The *Petition to Correct License* was filed on October 31, 2000, by Petitioner seeking to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E, Sec. 14, with an additional 8.0 cfs and 1,338.95 AFA. A filing fee of \$50 from Petitioner was received by IDWR on January 11, 2001. A Notice of Petition to Change Water Right License No. 02-02209 in the Name of Cottonwood Canal Company was published on January 24 and 31, 2001, in the Mountain Home News. A Notice of Protest was filed by Black Mesa Farms, LLC with IDWR on February 13, 2001.

2. Cross-Petitioner filed the *Cross-Petition to Correct License and Petition to Change Ownership of License* with IDWR on April 27, 2001, and also sought to amend water right license no. 02-02209 to include the irrigation of 400 acres in T. 6 S., R. 10 E,

but only 12.9 acre feet per annum (afa). IDWR amended the license to correctly describe the annual volume of the use as 58 afa.

² This was the case *In the Matter of Petition to Correct Water Right License Submitted by Darwin McKay*, Preliminary Order Correcting License (February 1, 2000) where IDWR removed approval conditions requiring the use of appurtenant surface water before using the licensed groundwater right, when information revealed that the right was never used with appurtenant surface water. The change in this case did nothing to change the beneficial use, it simply removed essentially meaningless approval conditions.

Sec. 14, with 8.0 cfs and 1,338.95 AFA, but requested such amended license be issued in the name of Cross-Petitioner.

3. On June 6, 2001, IDWR issued its *Order Authorizing Discovery and Order of Recusal*. On June 19, 2001, IDWR issued its *Order Appointing Hearing Officer*. Following a prehearing conference on July 20, 2001, the Hearing Officer issued a *Prehearing Order* on July 23, 2001, that, among other things, bifurcated the issues in this matter as follows:

Two issues are raised by the Petitions and Cross-Petitions:

1. Whether License No. 02-02209 should be modified to include more acres and an increased quantity of water; and
2. Whether the additional acres and increase quantity of water should be shown on the License as owned by Cottonwood Canal Co. or Black Mesa Farms.

Because the second issue need not be decided if IDWR does not modify License No. 02-02209, the parties agreed that the first issue should be processed prior to the second issue. If the Hearing Officer determines that License No. 02-02209 should not be modified, he will issue that decision in the form of a recommended order to the Director of IDWR. If the Hearing Officer determines that License No. 02-02209 should be modified, he will issue that decision in the form of a draft decision to the parties and set an additional prehearing conference to discuss resolution of the second issue.

4. The *Prehearing Order* also provided that the determination of whether License No. 02-02209 should be modified would be made upon a written record and established a schedule for submission of written materials.
5. On July 23, 2001, the Hearing Officer issued a *Request for Submission of IDWR Staff Memorandum*. IDWR responded with its *Response to Request for Submission of IDWR Staff Memorandum* on September 31, 2001. Cross-Petitioner submitted its inappropriately named *Black Mesa's Response to IDWR Staff Memorandum* on October

26, 2001.³ The Petitioner filed its similarly name *Memorandum in Response to IDWR Staff Memorandum* on November 2, 2001, with supporting affidavits.

II. Evidence Considered.

6. IDWR considered the following evidence in making the substantive findings of facts:

- a. Application for Permit to appropriate the Public Waters of the State of Idaho No. 39069, including map. Approved as Permit No. 30990, and subsequently renumbered 02-2209.
- b. Application for Amendment LAND LIST Permit No. 30990 received April 25, 1963.
- c. State of Idaho Water License no. 30990/02-2209.
- d. Notice of Proof of Completion of Works and Application of Water to Beneficial Use received on June 11, 1965, by the Department of Reclamation, with accompanying letter signed by Otis Williams on behalf of Cottonwood Canal Company.
- e. Letter dated June 15, 1965, from Carl E. Tappan, State Reclamation Engineer, to Cottonwood Canal Company re Permit No. 30990.
- f. Affidavit of Publication received August 3, 1965 by the Department of Publication.

³ This document is inappropriately named because the IDWR staff memorandum is not a pleading to which a "response" is filed. It is a factual memorandum by IDWR staff, akin to an affidavit. IDWR is not a party to this matter, it is the decision-maker.

- g. Deposition of Holder signed by Otis Williams and notarized by Phyllis Butterfield on July 29, 1965.
- h. Deposition of Witness signed by George R. Lake and notarized by Phyllis Butterfield on July 29, 1965.
- i. Deposition of Witness signed by Lawrence Roemer and notarized by Phyllis Butterfield on July 29, 1965.
- j. Letter dated August 4, 1965, from Carl E. Tappen, State Reclamation Engineer to Otis H. Williams, Secretary, Cottonwood Canal Co.
- k. Draft Report of Examiner for Permit No. 30990, and loose map
- l. Letter dated January 26, 1970 from Dorian Clay, Field Examiner, to Cottonwood Canal Company, c/o Wm. A. Anderson..
- m. Memorandum dated August 24, 1984, from D. Shaff to D. Tuthill.
- n. Inter-Department Memo dated August 28, 1984, from Dave Tuthill to Glen Saxton.
- o. Inter-Department Memo dated August 29, 1984, from Dave Tuthill to Don Shaff.
- p. Letter dated December 29, 2000, from Charles L. Honsinger to Glen Saxton, with attachments.
- q. Response to Request for Submission of IDWR Staff Memorandum, dated September 13, 2001.
- r. Affidavit of Shelley Keen, dated November 1, 2001.

s. Affidavit of Clifford Smith, dated October 22, 2001.

III. Permitting and Licensing Process

7. On February 25, 1963, Cottonwood Canal Company filed an Application for Permit to Appropriate the Public Water of the State of Idaho with the Idaho Department of Reclamation. Cottonwood Canal Company was identified as a non-profit corporation.

The Idaho Department of Reclamation is a predecessor agency of the current Idaho Department of Water Resources, and will also be referred to as IDWR. That Application was assigned application no. 39069.

8. The Application requested authorization to develop a water right with which to irrigate 4480 acres, with 89.6 cfs of water to be diverted from the Snake River. The Application envisioned the construction of a pumping plant, canals ditches and pipeline over 5 years, and application of the water to the proposed use within an additional 5 years. The land to be irrigated was located in Township 5 South, Range 10 East and Township 6 South, Ranges 10 and 11 East. Among these lands, 400 acres was identified within Section 14 of Township 6 South, Range 10 East ("Section 14 lands").

9. The Application was approved and a permit issued for the development of this water use on March 1, 1963. The Permit was assigned no. 30990, subsequently renumbered to 02-2209, and required one-fifth of the work to be completed by September 1, 1965, and the remainder was to be completed by September 1, 1968. Beneficial use of all the water to be used under the Permit was required to be made by March 1, 1973.

10. A Notice of Proof of Completion of Works and Application of Water to Beneficial Use was submitted for publication by Otis Williams of the Cottonwood Canal Company on June 11, 1965. The Notice indicated that the place where the water was

used under Permit No. 30990 included the Section 14 lands. The Notice indicated that proof of completion was to be submitted to Phyllis Butterfield, Notary Public, on July 29, 1965, at 10:00 a.m. in Burley Idaho. On June 15, 1965, the State Reclamation Engineer sent three depositions to Cottonwood Canal Company. The first deposition was to be executed by Cottonwood Canal Company, as the "holder" and the other two by two disinterested witnesses. All three were to be submitted on July 29, 1965. The June 15, 1965, letter provided, "It is very important and necessary that each question be answered in detail." (Underscoring in original). The Notice of Proof of Completion of Works and Application of Water to Beneficial Use was published in the Mountain Home News and included reference to the Section 14 lands.

11. The Deposition of Holder for Permit No. 30990, signed by Otis Williams, Secretary of Cottonwood Canal Company, was submitted on July 29, 1965. In its answer to a portion of question 6. "If for irrigation, name each subdivision in which used and number of acres in each subdivision that have actually been irrigated with said water:" the Holder stated "See attached list." A listing of lands which was unattached to the first page of the Holder Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Holder Deposition was 3985 acres.

12. The Deposition of Witness for Permit No. 30990, signed by George R. Lake, the supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision:" George Lake stated "there (sic) are 14 320 acre tracts of which nearly all of each is irrigated as per attached list." A listing of lands

which was unattached to the first page of the Lake Deposition, but which was directly behind that page in the file and with staple holes that corresponded to the first page, did not include the Section 14 lands. Total land area listed in the Lake Deposition was 3985 acres.

13. The Deposition of Witness for Permit No. 30990, signed by Lawrence Roemer, farm manager and partial supervisor of irrigators, was submitted on July 29, 1965. In his answer to a portion of question 6: "If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision:" George Lake stated "irrigation 14 - 320 acre tracts described below" and then there is a listing of lands, including the Section 14 lands. Total land area listed in the Roemer Deposition was 4350 acres, although he also indicates 14 -320 acre tracts as the total land area, which is 4480 acres.

14. On August 4, 1965, the State Reclamation Engineer wrote to the Cottonwood Canal Co. acknowledging the receipt of the Holder, Lake and Roemer Deposition and the affidavit of publication submitted in proof of completion of Permit No. 30990. The letter indicated that before final action could be taken a field examination had to be made by the department.

15. The form for the Report of Examiner requires in paragraph 7 as follows: "List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact numbers of acres under cultivation in each forty-acre tract. ... (Submit map on attached plat, showing location and details of above description." The Report lists the lands to be irrigated as provided in Permit No. 30990, including the Section 14 lands. It does not list the exact number of acres under cultivation in each forty-acre tract, either in writing or on

the attached map (although the attached map does show some erased pencil figures on some of the "quarter-quarters" that could be irrigated acreages). It does indicate adjacent to the term "Area" the number 3,985 acres, which corresponds to the total number of acres indicated in both the Holder and Lake Depositions. Behind the Report of Examiner in the file is a map of Cottonwood Canal Co.'s proposed place of use with each "quarter-quarter" numbered, with acreage figures written in red. The red figures correspond to the Holder and Lake Depositions which indicated a total of 3985 irrigated acres, and does not include the Section 14 lands. By letter dated January 26, 1970, Field Examiner Dorian Clay indicated that the field examination for Permit 02-2209 found irrigation of 3,985 acres of irrigation within the lands under Permit 02-2209, including lands in Section 14. Mr. Clay found 79.70 cfs of water to be beneficially used. This amount was likely calculated by multiplying the statutory limit of 0.02 cfs per acre by 3,985 acres. The January 26, 1970, then indicated that upon the payment of a fee of \$231.00 a water license would be issued consistent with the findings in the letter.

16. Water Right License No. 30990, issued on February 11, 1970. The License indicated that the proposed works of pumps, motors and sprinkler system with a capacity of 90.24 cfs were completed on May 10, 1965. The License indicates that on July 29, 1965, proof of beneficial use of 13,339.33 acre feet per season with a maximum rate of diversion of 79.70 cfs of Snake River water for irrigation was made to the satisfaction of the State Reclamation Engineer. The place of use was found to include 3,985 acres within Township 6 South, Ranges 10 and 11 East. The described place of use included no land within Section 14 of Township 6 South, Range 10 East. No appeal was filed by the Petitioner regarding the Section 14 lands.

IV. Irrigation of Section 14 Lands.

17. The Section 14 lands were irrigated commencing May 10, 1965, using the irrigation system of the Cottonwood Canal Co.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

1. IDWR made no error regarding the Section 14 lands in the issuance of License No. 02-02209. The permit holder, Cottonwood Canal Co., did not include those lands in its deposition. IDWR could not issue the license for more acres than submitted by the permit-holder. There is no evidence that Cottonwood Canal Co. ever tried to change its deposition, or amend the attached list of irrigated lands. If Cottonwood Canal Co. disagreed with License No. 02-02209 it could have appealed that license pursuant to I.C. § 42-219 (1967 Supp.); § 42-224 (1948). If there was an error made in the licensing process, it was Petitioner's.
2. There is no patent error on the face of License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
3. Neither Petitioner nor Cross-Petitioner have shown a latent error in the description of the beneficial use in License No. 02-02209. The beneficial use described on the face of the license is internally consistent, with adequate instantaneous flow and yearly volume for the number of acres irrigated.
4. The Petition and Cross-Petition request that an entirely new beneficial use, 400 acres of irrigation using 8 cfs and 1,338.95 AFA on the Section 14 lands, be licensed

under the February 25, 1963, priority date of License No. 02-02209. Such a modification would constitute an enlargement of the water use under License No. 02-02209 and injure junior water rights.

RECOMMENDED ORDER

Based upon these Findings of Fact and Conclusions of Law the Petition and Cross-Petition are **DENIED**.

PROCEDURAL RIGHTS

This is the Recommended Decision and Order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

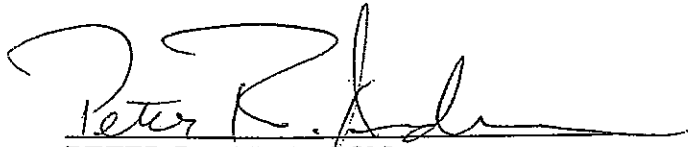
Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer;

- ii. The service date of a denial of a petition for reconsideration by the hearing officer;
- or
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

DATED this 18th day of January, 2002.


PETER R. ANDERSON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701

MIKE CREAMER
GIVENS PURLSEY LLP
PO BOX 2720
BOISE ID 83701

WES WOOTEN & DON BRYANT
BLACK MESA FARMS
PO BOX 82
GLENN'S FERRY ID 83623

NORMAN C YOUNG
IDAHO DEPT OF WATER
RESOURCES
1301 N. ORCHARD ST
BOISE ID 83706


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

WHEREAS

Wesley R. Wootan and Christice W. Wootan

are entitled to a land patent pursuant to the Act of October 21, 1976 (Section 206, 90 Stat. 2756; 43 U.S.C. 1716), for the following-described land:

Boise Meridian, Idaho

T. 6 S., R. 10 E.,

sec. 1, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 2, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 11, E $\frac{1}{4}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{4}$;
sec. 12;
sec. 13, N $\frac{1}{4}$, N $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
sec. 14, N $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 24, NE $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 6 S., R. 11 E.,

sec. 6, lot 7;
sec. 7;
sec. 17, W $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
sec. 18, lots 1 to 4, inclusive, NE $\frac{1}{4}$,
E $\frac{1}{4}$ W $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 19, lots 1 to 3, inclusive.

Containing 4,097.57 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the above named claimants the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimants, their successors and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

SUBJECT TO:

1. Those rights for powerline purposes granted to Pacific Power and Light Company, its successors or assigns, by Right-of-Way No. IDI-8875A, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Patent Number 11-91-0001

EXHIBIT A

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ATTACHMENT C

2. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDBL-056096, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
3. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-017359, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
4. Those rights for canal purposes granted to Glens Ferry Land and Irrigation Company, its successors or assigns, by Right-of-Way No. IDE-027316, pursuant to the Act of March 3, 1891, as amended (43 U.S.C. 946-949).
5. Those rights for powerline and substation purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-016110, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
6. Those rights for irrigation pipeline purposes granted to Walter Trail, his successors or assigns, by Right-of-Way No. IDI-12250, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
7. Those rights for county road purposes granted to Glens Ferry Highway District, its successors or assigns, by Right-of-Way No. IDI-20029, pursuant to the Act of July 26, 1866 (14 Stat. 253).
8. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-14749, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
9. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-14868, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
10. Those rights for petroleum pipeline purposes granted to Chevron Pipe Line Company, its successors or assigns, by Right-of-Way No. IDI-0602, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).
11. Those rights for natural gas pipeline purposes granted to Northwest Pipeline Corporation, its successors or assigns, by Right-of-Way No. IDI-14943, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).
12. Those rights for natural gas pipeline purposes granted to Northwest Pipeline Corporation, its successors or assigns, by Right-of-Way No. IDI-06421, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).

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13. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI-2457, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
14. Those rights for fiber optic cable purposes granted to Mountain States Telephone and Telegraph Company, its successors or assigns, by Right-of-Way No. IDI-20976, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
15. Those rights for access road and communication site purposes granted to King Hill Irrigation District, its successors or assigns, by Right-of-Way No. IDI-16919, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

SUBJECT TO THE FOLLOWING:

The patentees, on behalf of themselves, their heirs, assigns and successors in interest, in consideration for receiving title to this property, covenant and agree that the following described lands will not be used for irrigated farming:

Boise Meridian, Idaho

T. 6 S., R. 10 E.,

- sec. 1, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 13, N $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 24, N $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 6 S., R. 11 E.,

- sec. 6, lot 7;
- sec. 7, E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$;
- sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- sec. 18, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- sec. 19, lots 1 to 3, inclusive.



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 475), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand in Boise, Idaho
the TWENTY day of OCTOBER in the year
of our Lord one thousand nine hundred and NINETY
and of the Independence of the United States the two hundred
and XIX

By (Signature) Davis
Deputy State Director for Operations

Patent Number 11-91-0001

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