

18-1

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
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P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Black Mesa Farms, LLC

RECEIVED

OCT 11 2011

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase Nos. 2-103 and 2-10300

**AFFIDAVIT OF MICHAEL P.
LAWRENCE**

State of Idaho)
) ss.
County of Ada)

MICHAEL P. LAWRENCE, being first duly sworn upon oath, deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to Black Mesa Farms, LLC.
2. I make this affidavit based on my own personal knowledge. All exhibits attached hereto are true, correct and complete copies of the documents represented to be contained therein.
3. Attached hereto as Exhibit A is copy of the January 5, 2006 Notice of Claim to a Water Right filed in the Snake River Basin Adjudication, numbered 2-10300 and filed by Cottonwood Canal Company, which was obtained from the Idaho Department of Water Resources ("IDWR") files for water right no. 2-10300.

4. Attached hereto as Exhibit B is copy of the December 28, 2006 Director's Report showing that claim no. 2-10300 was recommended as "disallowed" by the Idaho Department of Water Resources for the reason that it was "Recommended as Right No. 2-103 and 2-2209B."

5. Attached hereto as Exhibit C is a copy of the July 10, 2009 *Final Order Disallowing Water Right Claims* issued by SRBA Presiding Judge Melanson, stating that the water right claims listed on its Exhibit A, which includes claim no. 02-10300, are hereby disallowed with prejudice.

6. Attached hereto as Exhibit D is a copy of Cottonwood Mutual Canal Company's 2011 Annual Report Form obtained from the Idaho Secretary of State, listing William F. Ringert and Charles L. Honsinger as Directors, and Daniel V. Steenson as President.

7. Attached hereto as Exhibit E is a copy of a Notice of Claim to a Water Right dated 8/29/84 in item no. 8, filed *In the Matter of the General Determination of Rights to the use of Snake River From Base of Milner Dam to Oregon Border*, numbered 2-103 and filed under the name Cottonwood Mutual Canal Company. This claim is for a water right to irrigate lands in Section 14, T6S, R10E, and states in item no. 8 that "(Black Mesa Project) Right split from Amended Claim 02-2209." This document was obtained from the IDWR files for water right no. 2-103.

8. Attached hereto as Exhibit F is a copy of an August 24, 1984 memorandum from D. Shaff to D. Tuthill on the subject of License 02-2209 obtained from the IDWR files for water right no. 2-103. Based on information and belief, I recognize "D. Shaff" and "D. Tuthill" as being IDWR employees Don Shaff and David Tuthill. The memorandum states, in part:

The accuracy of this license issued February 11, 1970, came to my attention through the process of the adjudication. The license holder filed an amended claim maintaining land not described in the license should be included in the water right represented by the license.

The land in question is Section 14, T 6S, R10E.

9. Attached hereto as Exhibit G are copies of an August 28 and an August 29, 1984 "inter-department" memoranda from Dave Tuthill to Glen Saxton and from "Dave T" to "Don," respectively, obtained from the IDWR files for water right no. 2-103. Based on information and

belief, I recognize “Dave T” and “Don” as being IDWR employees David Tuthill and Don Shaff, respectively. The memoranda discuss license 02-2209 and the issue of “how to expand a licensed water right found in the adjudication process to have been issued too restrictively?”

10. Attached hereto as Exhibit H is a copy of a September 11, 1979 Proposed Decision issued by IDWR Hearing Officer W. Hugh O’Riordan in re *Application for Transfer of License No. 02-2164 by Mud Flat Canal Company* obtained from the IDWR files for water right no. 2-2164.

11. Attached hereto as Exhibit I is a copy of an October 6, 2011 Subcase Summary Report 02-00103 obtained from the Snake River Basin Adjudication website showing that Cottonwood Mutual Canal Co.’s first objection to Black Mesa’s claim no. 2-103 was filed in September 7, 2011.

12. Attached hereto as Exhibit J is a copy of the file entitled “Claim Backfile 2-103” obtained from the IDWR website database records for water right no. 2-103.

13. Attached hereto as Exhibit K is a copy of the file entitled “Review Notes” obtained from the IDWR website database records for water right no. 2-103.

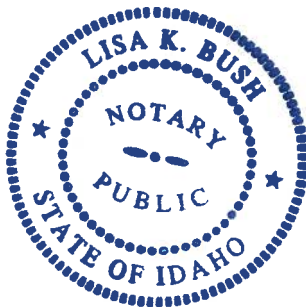
14. On January 19, 2011, Black Mesa filed a petition for judicial review in Ada County District Court, Case No. CV-OC-2011-1273 (the “Judicial Review Case”), challenging IDWR’s December 22, 2010 *Order Denying Petition for Reconsideration and Request for Stay*. The Judicial Review Case was reassigned to the SRBA Court pursuant to the Idaho Supreme Court’s July 1, 2010 *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009*, and stayed pending the outcome of the above-captioned subcases. In accordance with the rules governing judicial review actions, on April 8, 2011 IDWR prepared and lodged with the SRBA Court the agency record in the Judicial Review Case (“Agency Record”) which, pursuant to Idaho Rule of Civil Procedure 44 and Idaho Rule of Evidence 201, the court may properly judicially notice in determining the above-captioned subcases. By this reference, the Agency Record, including its Table of Contents and Index, is hereby incorporated in full to this affidavit.

DATED this 7th day of October, 2011.



Michael P. Lawrence

Subscribed and sworn to before me this 7th day of October, 2011.



Notary Public for Idaho

Residing at Bose

My Commission expires: 7/12/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2011, Black Mesa Farms, LLC filed and served the foregoing document as indicated below:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax: 208-736-2121

☐ U. S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

SERVICE

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Chief of Natural Resource Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
Fax: 208-334-2690

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

United States Department of Justice
Environment & Nat'l Resource Div
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Charles L. Honsinger
Daniel V. Steenson
Ringert Law Chartered
PO Box 2773
Boise, ID 83701

☐ U. S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail


Michael P. Lawrence

RECEIVED

JAN 05 2006

DEPARTMENT OF
WATER RESOURCES

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

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

CIVIL CASE NUMBER: 39576
Indent. Number 02-10300
Date Received 1-5-06
Receipt Number 6079983

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant(s) Cottonwood Canal Company Phone: (208) 342-4591
Mailing Address c/o Ringert Clark, Chartered, P.O. Box 2773, Boise, ID Zip 83701
2. Date of Priority only (1) per claim) 2/25/1963
3. Source of water supply (a) Snake River
which is tributary to (b) Columbia River
4. a. Location of existing point of diversion is: Township 06S Range 11E Section 9,
1/4 of NW 1/4 SW 1/4, Govt. Lot 6 B.M., County of Elmore
Additional points of diversion if any: _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works. _____
6. Water is claimed for the following purposes:
For Irrigation purposes from 4/1 to 10/31 amount 8.0 (cfs) or 1,338.95 (acre feet)
7. Total quantity claimed (a) 8.0 (cfs) and/or (b) 1,338.95 (acre feet)
8. Total consumptive use claimed is N/A acre fee per annum.
9. Non-Irrigation uses _____
10. Description of place of use:
a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b. If water is used for other purposes, place a symbol of use (example: D for Domestic)

Last Name Cottonwood Canal Co. Ident. Number 02-10300

EXHIBIT

A

in the corresponding place of use below. See instructions for standard symbols.

Twp	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6S	10E	14	40	40	40	40	40	40		40	40				40	40			400

Total number of acres irrigated 400

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

12. Do you own the property listed above as place of use? Yes No X

13. Other water rights used:

14. Remarks: Petition to Correct License 02-02209 was filed with IDWR on October 31, 2000. A Recommended Decision was issued by the hearing officer on January 18, 2002. Cottonwood Canal Company filed Exceptions filed to that Recommended Decision on February 12, 2002. No action has ever been taken relative to Cottonwood Canal Company's Exceptions. Cottonwood Canal Company's water right No. 02-10208 (part of original licensed water right no. 02-02209) is to be recommended shortly. So as not to upset the processing of that claim, this claim is being submitted separately and should be assigned a separate water right number.

15. Basis of Claim (check one) Beneficial Use Posted Notice License X Permit
Decree

If applicable provide IDWR Water Right Number 02-02209

Court Case Number Decree Date

Plaintiff vs Defendant

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

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

Signature or Claimant (s) Date
 Date

For Organizations: I do solemnly swear or affirm that I am President
Title

of Cottonwood Canal Company, that I have signed the foregoing
Organization

Last Name Cottonwood Canal Co. Ident. Number 02-12300

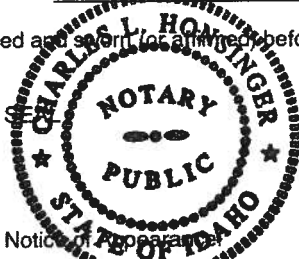
document in the space below as President of Cottonwood Canal Company
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent *Daniel Steenson*

Title and Organization Daniel V. Steenson, President, Cottonwood Canal Company Date _____

State of Idaho/or _____)
County of Ada _____) SS.

Subscribed and sworn to before me this 4th day of January, 2006



Notary Public *Charles L. Honsinger*

Residing at Boise, IDAHO

My Commission Expires 7/30/2010

16. Notice of Appearance

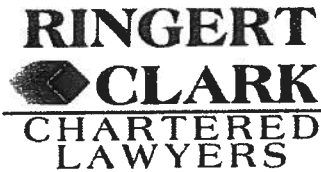
Notice is hereby given that we, Daniel V. Steenson and/or Charles L. Honsinger will be acting as attorneys at law on behalf of the claimant signing above, and all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature *Charles L. Honsinger*

Address Ringert Clark, Chartered, P.O. Box 2773, Boise, ID 83701

Date 1/4/06

Last Name Cottonwood Canal Co. Ident. Number 02-10300



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JAN 05 2006

DEPARTMENT OF
WATER RESOURCES

David E. Burn
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
S. Bryce Farris
Patrick D. Furey
David Hammerquist
Charles L. Honsinger
Joseph H. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Alynn L. Sweetney
Samuel Kaufman (1921-1986)

January 5, 2006

Delivered by Hand

Mr. Don Shaff
Idaho Department of Water Resources
P.O. box 83720
Boise, ID 83720-0098
Fax: (208)287-6700

Re: Cottonwood Canal Company water right claim

Dear Don:

Per our conversation of yesterday, I am transmitting an SRBA claim together with the statutory fee of \$450.00 in the form of a check made out to the Idaho Department of Water Resources on behalf of my client, Cottonwood Canal Company.

Please contact myself or Dan Steenson with questions or concerns regarding this claim.

Sincerely,

A handwritten signature in black ink that reads "Charles L. Honsinger". The signature is fluid and cursive.

Charles L. Honsinger

enclosures

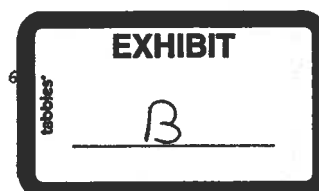
cc: Client

12/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
2-10300	COTTONWOOD MUTUAL CANAL CO C/O RINGERT CLARK CHARTERED PO BOX 2773 BOISE ID 83701	Disallowed	Recommended as Right No. 2-103 and 2-2209B.
2-10302	KENTON G DIRKS PO BOX 565 GRAND VIEW ID 83624 MICHELLE R DIRKS PO BOX 565 GRAND VIEW ID 83624	Disallowed	Recommended as Right No. 2-7212 and 2-7090A.

Basin 02 Director's Report - Disallowed



RECEIVED

JUL 14 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JUL 10 2009
By _____ Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Water Right Claims: See Exhibit A

FINAL ORDER DISALLOWING
WATER RIGHT CLAIMS

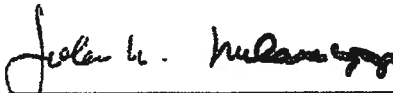
On December 29, 2006, the Idaho Department of Water Resources filed its *Director's Report for Irrigation & Other Uses, IDWR Basin 02*, recommending that the water right claims listed on Exhibit A be dismissed. No objections were filed to these recommendations and the time for filing objections has expired.

THEREFORE IT IS ORDERED AND ADJUDGED that the water right claims listed on Exhibit A are hereby **disallowed with prejudice** and shall not be confirmed in any partial decree or in any final decree entered in the SRBA, Case No. 39576, in whatever form that final decree may take or be styled.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED July 10, 2009.


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

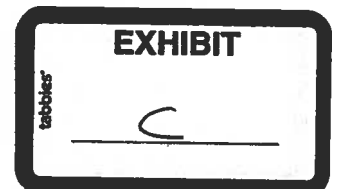


EXHIBIT A

02-00003	H W & K PARTNERSHIP LLC
02-00044	ANDERSON, DENNIS J
02-00054	REYNOLDS IRRIGATION DIST
02-00055A	VAN HALL, VANCE
02-00069	KNIGHT, DOROTHY G
02-00082	EASTERN WESTERN CORP
02-00097	AYARRA, DANIEL J
02-00106	STONE, PAULINE A
02-02114	LOYAL L HOWER TRUST
02-02209C	UNITED STATES OF AMERICA
02-02256	DICK, RICHARD
02-02268A	HAUSNER, JILL RUDY
02-02314	GRINDSTONE BUTTE MUTUAL CANAL
02-04006A	ANDREWS, JUDY L
02-04025B	WEST INDIAN COVE WATER CO INC
02-04033	HAGERMAN CATTLE ASSN
02-07017A	GERDES, HENRY D
02-07172E	VAN HANDEL, AMBROSE B
02-07230B	ASHE, SAM
02-07230C	ASHE, SAM
02-07249A	SALMON FALLS LAND & LIVESTOCK
02-07249B	SALMON FALLS LAND & LIVESTOCK
02-07274B	SCHAAL, GISELA
02-07281	SCHAAL, GISELA
02-07320	MALLANE, VONNIE
02-07412	DANSKIN CATTLE LLC
02-10001	VAN HALL, VANCE
02-10002	J R SIMPLOT COMPANY
02-10005A	SALMON FALLS LAND & LIVESTOCK
02-10005B	SALMON FALLS LAND & LIVESTOCK
02-10030	CHRISTENSEN, MICHAEL
02-10040	LAWRENCE, VELDA J
02-10070	UNITED STATES OF AMERICA
02-10074	UNITED STATES OF AMERICA
02-10083	UNITED STATES OF AMERICA
02-10094	UNITED STATES OF AMERICA
02-10096	UNITED STATES OF AMERICA
02-10110	UNITED STATES OF AMERICA
02-10111	UNITED STATES OF AMERICA
02-10113	UNITED STATES OF AMERICA
02-10114	UNITED STATES OF AMERICA
02-10115	UNITED STATES OF AMERICA

02-10116 UNITED STATES OF AMERICA
02-10117 UNITED STATES OF AMERICA
02-10128 FELDTMAN, LADEANA
02-10133 PHILLIPS, SHARI A
02-10141 GRAND VIEW IRRIGATION DIST
02-10142 GRAND VIEW IRRIGATION DIST
02-10263 MC DONOUGH, MARK A
02-10300 COTTONWOOD MUTUAL CANAL CO
02-10302 DIRKS, KENTON G
02-10306 MOONEY, CAROL A

No. C 32573	Due no later than Apr 30, 2011 Annual Report Form		2. Registered Agent and Address (NO PO BOX)																																										
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address: Correct in this box if needed. COTTONWOOD MUTUAL CANAL COMPANY DANIEL V STEENSON P. O. BOX 2773 BOISE ID 83701		DANIEL V SHEENSON 455 SOUTH THIRD ST BOISE ID 83702																																										
			3. <u>New</u> Registered Agent Signature:*																																										
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional). <table border="1"> <thead> <tr> <th>Office Held</th> <th>Name</th> <th>Street or PO Address</th> <th>City</th> <th>State</th> <th>Country</th> <th>Postal Code</th> </tr> </thead> <tbody> <tr> <td>DIRECTOR</td> <td>WILLIAM F RINGERT</td> <td>PO BOX 105</td> <td>HAMMETT</td> <td>ID</td> <td>USA</td> <td>83627</td> </tr> <tr> <td>DIRECTOR</td> <td>PAUL HOGG</td> <td>450 S. HWY 27</td> <td>BURLEY</td> <td>ID</td> <td>USA</td> <td>83318</td> </tr> <tr> <td>DIRECTOR</td> <td>CHARLES L HONSINGER</td> <td>PO BOX 2773</td> <td>BOISE</td> <td>ID</td> <td>USA</td> <td>83701</td> </tr> <tr> <td>SECRETARY</td> <td>KATIE R KELLY</td> <td>PO BOX 2773</td> <td>BOISE</td> <td>ID</td> <td>USA</td> <td>83701</td> </tr> <tr> <td>PRESIDENT</td> <td>DANIEL V STEENSON</td> <td>PO BOX 2773</td> <td>BOISE</td> <td>ID</td> <td>USA</td> <td>83701</td> </tr> </tbody> </table>				Office Held	Name	Street or PO Address	City	State	Country	Postal Code	DIRECTOR	WILLIAM F RINGERT	PO BOX 105	HAMMETT	ID	USA	83627	DIRECTOR	PAUL HOGG	450 S. HWY 27	BURLEY	ID	USA	83318	DIRECTOR	CHARLES L HONSINGER	PO BOX 2773	BOISE	ID	USA	83701	SECRETARY	KATIE R KELLY	PO BOX 2773	BOISE	ID	USA	83701	PRESIDENT	DANIEL V STEENSON	PO BOX 2773	BOISE	ID	USA	83701
Office Held	Name	Street or PO Address	City	State	Country	Postal Code																																							
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SECRETARY	KATIE R KELLY	PO BOX 2773	BOISE	ID	USA	83701																																							
PRESIDENT	DANIEL V STEENSON	PO BOX 2773	BOISE	ID	USA	83701																																							
5. Organized Under the Laws of: ID C 32573	6. Annual Report must be signed.* Signature: Daniel V. Steenson Name (type or print): Daniel V. Steenson Date: 04/19/2011 Title: President																																												
Processed 04/19/2011		* Electronically provided signatures are accepted as original signatures.																																											

EXHIBIT

tabbles

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE GENERAL DETER-
MINATION OF RIGHTS TO THE USE OF
SNAKE RIVER FROM BASE OF
MILNER DAM TO DRAINAGE BASIN.
OREGON BORDER

**NOTICE OF CLAIM
TO A
WATER RIGHT**

02-0103	
I.D. No.	Map No.
\$	Receipt No.
Fee Paid	

Notice is hereby given that COTTONWOOD MUTUAL CANAL COMPANY

P.O. Box 789, Burley, ID 83318

(Name of Claimant)

Telephone No. 678-9471

(Mailing Address)

(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use, or priority date of decreed, licensed or permit right) May 10, 1965
- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water) Snake River tributary to Columbia River
- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
Quantity 8.54 772 Use Irrigation A Period of Use From 3-15 To 11-15
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- (4) 8.54 772 TOTAL QUANTITY CLAIMED. Lot 6
(CFS, GPD, AF)
- (5) A) Point of Diversion: Give location of point where water is diverted from its source (NW 1/4 SW 39) %
Sec. 9, Twp. 6S, Rgs. 11E, B.M., Elmore 39 County
Additional Points: SEC: 2720(1) 554.1
B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.
Pumps, motors, pipelines, and sprinkler system.
- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL
			NEX	NW1/4	SW1/4	SE1/4	NEX	NW1/4	SW1/4	SE1/4	NEX	NW1/4	SW1/4	SE1/4	NEX	NW1/4	SW1/4	SE1/4	
6S	10E	14	39	39	40	40	40	40	40	39					39	30			426 386

Total no. of acres 426 386

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: _____

NOTE: Include here the type and number of stock watered: _____

- (7) If you are claiming water as a member of an organization, list name of organization: _____
- (8) Remark: (Black Mesa Project) Right split from Amended Claim 02-2209.
No signature necessary. DVS 8/29/84
- (9) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.
☐ B) Right decreed by court, cite title of case. _____
☐ C) Right based on application, permit, license, or previous statutory claim filed with the Idaho Department of Water Resources. Give No. _____

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

(Signature of Claimant)

(Date)

(Signature of Spouse)

State of _____

Organization

Organization

County of _____

Seal

(Signature of Authorized Agent)

On this _____ day of _____, In the year _____, before me, a notary public, personally appeared _____ known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporate partnership or _____) executed the same.

My commission expires _____

Notary Public residing at _____

EXHIBIT

E

TO: D. Tuthill *DT*
FROM: D. Shaff *DS*
DATE: August 24, 1984
SUBJECT: License 02-2209

The accuracy of this license issued February 11, 1970, came to my attention through the process of the adjudication. The license holder filed an amended claim maintaining land not described in the license should be included in the water right represented by the license.

The land in question is Section 14, T 6S, R10E. The Proof of Beneficial Use submitted in 1965 by the holder and one (1) witness did not include Section 14. A second witness and the notice of Proof published in June and July 1965 did include lands in Section 14. The field report is somewhat confusing because the water right was apparently examined by two agents, each one on different dates. The land in Section 14 appears on the Field Report map as irrigated apparently, but the individual tracts in the section were excluded from a count of the subdivisions irrigated. The letter transmitting the results of the permit examination describes 3,985 acres irrigated including certain tracts in Section 14. The license was issued for 3,985 acres but excluded any lands in Section 14.

A 1964 aerial photograph recently received showed the Section 14 land undeveloped. A 1969 aerial photograph (DLG-4KK-89; 5/10/1969) showed the land in Section 14 irrigated as described on the attached land list. *(Proof of B/U states first use was in '65)*

I conclude and recommend the staff of the Department issue to the holder an Amended License 02-2209 that includes the 426 acres in Section 14. The remaining question would be the extent of beneficial use, or number of irrigated acres. The attached land list reflects the review of the lands now irrigated in this project under this water right. Permit 02-2389 covers one irrigated tract not described on the land list. By simply adding the 426 acres found in Section 14 to the 3,985 acres on the license would exceed the 4,283 acres that will be recommended to the court for this water right, if Section 14 is included.

License	Adjudication
3,985 acres	3,857 acres
+ 426 ---Section 14---	+ 426
4,411	4,283

I suggest amending the license to 4,283 acres by changing the rest of the land list to reflect the extent of beneficial use shown by the 1974 orthophotoquad (Pasadena Valley). This would require at .02 cfs per acre a diversion rate of 85.7 cfs. The capacity of the system was measured at 90.24 cfs.

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AUG 10 1994

EXHIBIT

F

The license file is, of course, at your disposal. If you want to review the other materials described above, these are available to you at your request.

MICROFILMED

AUG 10 1994

POOR ORIGINAL

INTER-DEPARTMENT MEMO — 1

FROM

Dave T

DATE

8/29/81

TO

Don

SUBJECT

As per our conversation, Glen has suggested that we start by recommending the additional lands under a beneficial use right.

RECEIVED
AUG 30 1981

Department of Water Resources
Western Regional Office

Dave

SIGNATURE

INTER-DEPARTMENT MEMO — 1

FROM

Dave Tuttle

DATE

8/28/84

TO

Glen Saxton

SUBJECT

02-2209 / Attached Memo

EXHIBIT

G

The situation regarding the need to change this licensed water right raises a basic adjudication question—how to expand a licensed water right found in the adjudication process to have been issued too restrictively?

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Per a conversation w/ Don Shaff, he feels, based on a previous decision, that it may be adverse to recommending an adjudicated right to be larger than the original license.

In this case we have two choices: (1) Issue an amended license and base the adjudication proposed finding on the amended license, or (2) not change the

SIGNATURE

license and preparatory proposed finding of 6-2209 using the combination of documented evidence, in this case proposing a larger list than the one shown on the license due to the interpretation that an error was made in issuing the original license.

Assuming the documentation in the file is complete, I prefer the latter method because it is more efficient, and I perceive the changing of a licensed right as a legitimate task of the adjudication procedure, even if the effect is to enlarge a licensed right.

POOR ORIGINAL

DR

MICROFILMED

AUG 10 1994

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

In Re: APPLICATION FOR TRANSFER OF)
LICENSE NO. 02-2164 BY MUD) PROPOSED DECISION
FLAT CANAL COMPANY)
_____)

STATEMENT OF FACTS

Mud Flat Canal Company on October 19, 1977, pursuant to Idaho Code § 42-222 filed an application to change the point of diversion and place of use license No. 02-2164 with the Idaho Department of Water Resources (IDWR). The United States, who claims ownership of license 02-2164, protested the application on October 31, 1977. On February 8, 1978, a hearing was held on the protest. At that hearing, Mud Flat Canal Company filed a Motion to Dismiss the hearing for lack of jurisdiction, asserting that IDWR was without authority to examine the validity of a licensed water right. IDWR on July 24, 1978, issued a decision denying the motion to dismiss stating that IDWR had quasi-judicial duties under Idaho Code § 42-222 and had jurisdiction to look into the ownership and validity of the affected water rights. All parties were allowed sixty days from the decision to notify IDWR if the issues of validity of the licenses were to be taken to another forum.

The parties did not take the issues to another forum. On March 19, 1979, a hearing with all parties was held before the IDWR in which witnesses and exhibits were presented.

ISSUES PRESENTED

Despite the numerous and complex issues that have been raised by the parties, the central issue to this dispute is straightforward. In its essential form the issue is whether water right license No. 02-2164 was appurtenant to the Desert Land Entry voided by the Ninth Circuit Court of

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H

Appeals in Reed v. Morton, 480 F.2d 634 (9th Cir. 1973). The Mud Flat Canal Company asserts that this water right was separate realty from the land in question and did not transfer to the United States. The United States asserts to the contrary that the water right contained in license No. 02-2164 was appurtenant to the land in question and passed with the land.

DECISION

The Idaho Department of Water Resources finds that the water right license No. 02-2164 is appurtenant to the lands in question and that the protest of the United States is well taken. Therefore, the application for transfer of water rights No. 02-2164 is denied.

LEGAL ANALYSIS AND FINDINGS OF FACT

Idaho Code § 42-101 states,

... and the right to the use of any of the public waters ... shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied;

Other sections of Idaho Code establish the same public policy.

Idaho Code § 43-1701 states,

The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state.

By the workings of this statute the water rights in question automatically became appurtenant to the land in question. 1/

The Idaho Supreme Court has repeatedly asserted the

1. Moreover, Idaho Code § 55-101 states, "Real property or real estate consists of: ... (3) that which is appurtenant to land."

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AUG 19 1987

validity of this principle. In Anderson v. Cummings, 81 Idaho 327, 335 (1959) the court stated, "... such right is appurtenant to appellants' lands to which the water represented thereby has been beneficially applied." Regardless of the method of appropriation the water right becomes appurtenant to the land. See, Hutchins, The Idaho Law of Water Rights, 5 Idaho L. R. 1, 31 (1968).

Mud Flat Canal Company asserts that this water right was severed from the land by actions of Indian Hills Irrigation Company. Under the theory of the applicant the entrymen and Hoodco had rights only as consumers of water and not as appropriators. Further, the United States merely stands in the shoes of the entrymen and gains no water right without a specific conveyance.

Mud Flat Canal Company is correct in the assertion that water rights may be severed from the land and sold separately. Such a conveyance of land and water can occur, however, only when the water rights were specifically reserved in the deed or unless it was clearly shown to be known to all parties. Russell v. Irish, 20 Idaho 194 (1911). A heavy burden is placed upon applicant in this case.

This conveyance would carry with it the water right appurtenant to the land at the time of the conveyance, unless it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed. Russell v. Irish, supra at 199.

From the facts in this case, applicant has not met this burden. The decision of the Ninth Circuit in Reed v. Morton, 480 F.2d 634 (9th Cir. 1973) and the stipulation entered into by the parties do not specifically recognize the separation of the water right from the land. Moreover, the quitclaim deed from Hoodco Farms, Inc. to the United States on December 18, 1975, for the section 16 land contains a transfer in fee simple with no mention of any reservation of water rights. The other evidence presented by

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AUG 19 1981

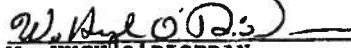
Canal Company by testimony and exhibit lacks sufficient specificity to establish the specific and unequivocal intent of the parties to override the policy of the state to treat water rights as appurtenant to the land upon which it is beneficially applied.

Mud Flat Canal Company relies heavily upon Benentts v. Twin Falls North Side Land and Water Company, 27 Idaho 643 (1915) to support the application for transfer. In Bennetts a purchaser of Carey Act lands at a tax sale was held to receive the title of an entryman to the land but not title to the water right as the water right was not taxable under Idaho law and therefore not subject to a tax lien. Contrary to applicant's assertion, the court recognized the water right of the previous owner as appurtenant to the land. Moreover, it passed to the purchaser subject only to the burden of an outstanding contract. See, Orson Story v. Twin Falls Canal Co., 44 Idaho 427, 433 (1927). The purchaser, like the United States here, received the land with the appurtenant water rights. 2/

CONCLUSION

For the above reasons IDWR has concluded that the protest of the United States is well taken. The parties to this proceeding are to be commended for presenting well done and thorough briefs which have assisted the Department in reaching this decision.

DATED this 11 day of September, 1979.


W. HUGH O'RIORDAN
Hearing Officer

MICROFILMED
AUG 19 1981

2. Applicant's contention that the United States abandoned the water right by allowing the removal of the irrigation system is not well founded. The irrigation system and water right are separate properties and abandonment of the system is not abandonment of the water right. See Hutchins, 5 Idaho L. R. 1, 36 (1968)

SRBA

SUBCASE SUMMARY REPORT 02-00103

[Return to SRBA Home Page](#)SRBA
10-06-2011

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 02-00103 FILE#: 00219
CLAIMANT: WOOTAN, WESLEY R
PO BOX 636GLENN'S FERRY ID 83623
STATUS: RESPONSES DUE SPECIAL MASTER: DOLAN, TERRENCE A.
WATER SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER
ISSUES: QUANTITY OF WATER USED
PRIORITY DATE
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
0
NAME AND ADDRESS DESCRIPTION
SOURCE OF WATER
POINT(S) OF DIVERSION DESCRIPTION
INSTREAM FLOW BEGINNING AND ENDING
PURPOSE OF USE DESCRIPTION
PERIOD OF YEAR WHEN WATER IS USED

**** PARTIES INVOLVED ****

WESLEY R WOOTAN C PRO SE
BLACK MESA FARMS LLC O ATTY: MICHAEL C CREAMER
COTTONWOOD MUTUAL CANAL CO O ATTY: CHARLES L. HONSINGER
BRENDA BRYANT C PRO SE
CHRISTINE W WOOTAN C PRO SE
DON J BRYANT C PRO SE
BLACK MESA FARMS LLC C ATTY: MICHAEL C CREAMER
COTTONWOOD MUTUL CANAL CO I ATTY: CHARLES L. HONSINGER

**** ROA ENTRIES ****

<u>07-02-2009</u>	REPORT & RECOMMENDATION OF MASTER	CB	08-28-2009
<u>07-02-2009</u>	NOTICE OF ISSUANCE - MASTERS R&R		
<u>07-02-2009</u>	CERTIFICATE OF MAILING - MASTER R&R		
<u>07-02-2009</u>	MASTER WAS: 700 DOLAN, TERRENCE A.		
<u>08-28-2009</u>	MOTION TO ALTER OR AMEND SPECIAL MASTER	MG	10-29-2009
	RECOMMENDATION FOR PARTIAL DECREE (FAXED)		
<u>08-31-2009</u>	MOTION TO FILE AMENDED NOTICE OF CLAIM	MG	10-29-2009
<u>08-31-2009</u>	AMENDED NOTICE OF CLAIM TO A WATER RIGHT		
<u>08-31-2009</u>	MOTION TO FILE LATE OBJECTION	MG	10-29-2009 0001
<u>08-31-2009</u>	LODGED: LATE OBJ 01 F/B BLACK MESA FARMS LLC		
	ASSIGNED MASTER WAS: 700 DOLAN, TERRENCE A		
<u>09-03-2009</u>	ORDER SETTING HEARING	HS	10-22-2009 1030
	MOTION TO ALTER OR AMEND; MOTION TO FILE		
10-22-2009	HEARING HELD ON MOTION TO ALTER/AMEND ET AL	HH	10-22-2009 1030
10-22-2009	MINUTES		
<u>10-29-2009</u>	ORDER GRANTING MOTIONS TO ALTER OR AMEND; TO		

EXHIBIT

tabb's

I

	AMEND CLAIM; & TO FILE A LATE OBJECTION & REQUESTING AMENDED DIRECTOR'S REPORT			
	AMENDED DIR'S REPORT DUE	2V	01-29-2010	0500
	OBJECTIONS TO AMENDED DIR'S RPT DUE	8V	03-01-2010	0500
10-29-2009	STATUS CONFERENCE SET	UV	04-01-2010	1100
<u>10-29-2009</u>	OBJ 01 F/B BLACK MESA FARMS LLC	RB	02-05-2008	0001
<u>01-25-2010</u>	ORDER AMENDING DEADLINES			
	AMENDED DIRECTOR'S REPORT DUE	2B	02-26-2010	0500
	OBJECTIONS TO AMENDED DIR'S REPORT DUE	8B	03-29-2010	0500
01-25-2010	STATUS CONFERENCE SET	US	04-01-2010	1100
<u>03-01-2010</u>	(FAX FILED) AMENDED DIRECTOR'S REPORT CHANGE: PD/REMARKS			
<u>03-17-2010</u>	NOTICE IN CHANGE OF TELECONFERENCE NUMBER			
<u>03-23-2010</u>	OBJ 02 F/B BLACK MESA FARMS LLC			0002
04-01-2010	STATUS CONFERENCE HELD	UH	04-01-2010	1100
04-01-2010	MINUTES			
<u>04-01-2010</u>	ORDER SETTING SCHEDULING CONFERENCE	SS	08-12-2010	1000
08-12-2010	SCHEDULING CONFERENCE HELD	SH	08-12-2010	1000
08-12-2010	MINUTES			
<u>08-12-2010</u>	ORDER SETTING HEARING	HS	03-03-2011	1000
	CONTINUED SCHEDULING CONFERENCE			
<u>01-07-2011</u>	MOTION TO PARTICIPATE - COTTONWOOD CANAL	MG	03-07-2011	
<u>01-07-2011</u>	LDG: MEMO IN SUPPORT OF MOTION TO PARTICIPATE			
<u>01-07-2011</u>	AFFIDAVIT OF CHARLES HONSINGER IN SUPPORT OF MOTION TO PARTICIPATE			
<u>01-10-2011</u>	NOTICE OF HEARING FOR MOTION TO PARTICIPATE	HS	03-03-2011	1000
<u>02-24-2011</u>	(FAX) RESPONSE TO COTTONWOOD'S MOTION TO PARTICIPATE		02-24-2011	
03-03-2011	HEARING HELD ON MOITON TO PARTICIPATE	HH	03-03-2011	1000
03-03-2011	CONTINUED SCHEDULING CONFERENCE	HH	03-03-2011	1000
<u>03-03-2011</u>	MINUTES			
<u>03-07-2011</u>	ORDER GRANTING COTONWOOD CANAL COMPANY MOTION TO PARTICIPATE			
<u>06-29-2011</u>	ORDER SETTING SCHEDULING CONFERENCE	SH	07-28-2011	1030
07-28-2011	HEARING HELD	HH	07-28-2011	1030
<u>07-28-2011</u>	MINUTES			
<u>07-29-2011</u>	ORDER GRANTING MOTION TO AMEND CLAIM (02-10300) AND SETTING DEADLINES FOR DIRECTOR'S REPORT AND OBJECTIONS, SUMMARY JUDGMENT SCHEDULE AND TRIAL SETTING			
	AMENDED DIRECTOR'S REPORT DUE	2B	08-12-2011	0500
	OBJECTIONS TO AMENDED DIRECTORS RPT DUE	8B	09-28-2011	0500
	SUMMARY JUDGMENT MOTIONS DUE	MB	10-07-2011	0500
	RESPPONSES DUE	RB	10-28-2011	0500
	REPLIES DUE	YB	11-14-2011	0500
	HEARING ON SUMMARY JUDGMENT	HS	11-17-2011	1000
	TRIAL - SRBA - TWIN FALLS	TS	03-08-2012	1000
<u>08-12-2011</u>	AMENDED DIRECTOR'S REPORT CHANGE: QTY/REMARKS			
<u>09-07-2011</u>	OBJ 03 F/B COTTONWOOD MUTUAL CANAL CO			0003
<u>09-09-2011</u>	OBJ 04 F/B BLACK MESA FARMS LLC			0004

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RECEIVED

MAR - 7 2003

Department of Water Resources

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

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

CIVIL CASE NUMBER: 39576

Ident. Number 2-103
Date Received: 4/17/1991
Receipt No: C020248
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CHRISTINE W WOOTAN Phone: (208)366-2575
PO BOX 636
GLENNS FERRY ID USA 83623

BRENDA BRYANT Phone:
GLENNS FERRY ID USA 83623

BLACK MESA FARMS Phone:
PO BOX 82
GLENNS FERRY ID USA 83623

WESLEY R WOOTAN Phone: (208)366-2575
PO BOX 636
GLENNS FERRY ID USA 83623

DON J BRYANT Phone:
GLENNS FERRY ID USA 83623

2. Date of Priority: 05/10/1965

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

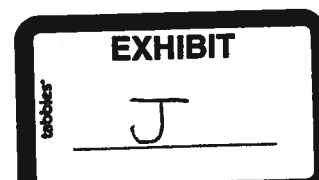
Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06S	11E	9	NW SW 6	ELMORE	

5. Description of diverting works:

PUMPS, MOTORS, PIPELINES & SPRINKLERS SYSTEM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
---------	------	----	--------	------------



IRRIGATION

3/15 11/15 8.54

7. Total Quantity Appropriated is:
8.54 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06S	10E	14	NE	NE	IRRIGATION	39
			NW	NE	IRRIGATION	39
			SW	NE	IRRIGATION	40
			SE	NE	IRRIGATION	40
			NE	NW	IRRIGATION	40
			NW	NW	IRRIGATION	40
			SE	NW	IRRIGATION	40
			NE	SW	IRRIGATION	39
			NE	SE	IRRIGATION	39
			NW	SE	IRRIGATION	30
			SW	NW	IRRIGATION	40
					Section Acres	426
					Total Acres	426

11. Place of use in counties: ELMORE

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

13. Other Water Rights Used:

14. Remarks:

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.

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.

15. Basis of Claim: Beneficial Use

16. Signature(s)

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

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

For Organizations:

I do solemnly swear or affirm that I am OWNER / Partner of _____ Title

Black Mesa Farms LLC, that I have signed the foregoing Organization

document in the space below as OWNER / Partner of Title

Black Mesa Farms LLC and that the statements contained in the Organization

foregoing document are true and correct. Wesley R. Waters Signature of Authorized Agent

Black Mesa FARMS INC Title and Organization

Jan 10 2003 Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this
of Jan 2003

10th day
Lori Graves

Notary Public

Residing at Boise

My commission Expires 6/18/04



IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF
SNAKE RIVER FROM BASE OF
MILNER DAM TO DRAINAGE BASIN
OREGON BORDER

NOTICE OF CLAIM TO A WATER RIGHT

02-0103	
I.D. No.	Map No.
\$	
Fee Paid	Receipt No.

Notice is hereby given that COTTONWOOD MUTUAL CANAL COMPANY

P.O. Box 789, Burley, ID 83318 (Name of Claimant)
(Mailing Address) (Zip Code) Telephone No. 678-9471

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or priority date of decree, license or permit right)
May 10, 1965

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Snake River tributary to Columbia River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
Quantity 8.54 Use Irrigation Period of Use From 3-15 To 11-15
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)

Quantity _____ Use _____ Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)

Quantity _____ Use _____ Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)

Quantity 8.54 Use 772 Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)

(4) 8.54 772 TOTAL QUANTITY CLAIMED.

(5) A) Point of Diversion: Give location of point where water is diverted from its source Lot 6 %
Sec. 9 Twp. 6S Rge. 11E B.M., Elmore 39 County
Additional Points: SCI: 2720(1) 554.1

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.
Pumps, motors, pipelines, and sprinkler system.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NEX				NWX				SWX				SEX				TOTAL
			NEX	NWX	SWX	SEX	NEX	NWX	SWX	SEX	NEX	NWX	SWX	SEX	NEX	NWX	SWX	SEX	
6S	10E	14	39	39	40	40	40	40	40	89					39	30			426 386

Total no. of acres 426 386

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered:

(7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks Black Mesa Project Right split from Amended Claim 02-2209.

No signature necessary. DVS 8/29/84

(9) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case.

☐ C) Right based on application, permit, license, or previous statutory claim filed with the Idaho Department of Water Resources. Give No. _____

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

(Individual)

(Date)

(Signature of Claimant)

State of _____

Organization _____

Organization _____

(Signature of Spouse)

County of _____

ss.

Seal

(Signature of Notary Public)

On this _____ day of _____, in the year _____ before me

a notary public, personally appeared _____, known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or _____) executed the same.

My commission expires 8/30/84 Notary Public residing at _____

TO: D. Tuthill *DET*

FROM: D. Shaff *g*

DATE: August 24, 1984

SUBJECT: License 02-2209

The accuracy of this license issued February 11, 1970, came to my attention through the process of the adjudication. The license holder filed an amended claim maintaining land not described in the license should be included in the water right represented by the license.

The land in question is Section 14, T 6S, R10E. The Proof of Beneficial Use submitted in 1965 by the holder and one (1) witness did not include Section 14. A second witness and the notice of Proof published in June and July 1965 did include lands in Section 14. The field report is somewhat confusing because the water right was apparently examined by two agents, each one on different dates. The land in Section 14 appears on the Field Report map as irrigated apparently, but the individual tracts in the section were excluded from a count of the subdivisions irrigated. The letter transmitting the results of the permit examination describes 3,985 acres irrigated including certain tracts in Section 14. The license was issued for 3,985 acres but excluded any lands in Section 14.

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I conclude and recommend the staff of the Department issue to the holder an Amended License 02-2209 that includes the 426 acres in Section 14. The remaining question would be the extent of beneficial use, or number of irrigated acres. The attached land list reflects the review of the lands now irrigated in this project under this water right. Permit 02-2389 covers one irrigated tract not described on the land list. By simply adding the 426 acres found in Section 14 to the 3,985 acres on the license would exceed the 4,283 acres that will be recommended to the court for this water right, if Section 14 is included.

<u>License</u>	<u>Adjudication</u>
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4,411	4,283

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MICROFILMED

AUG 10 1984

The license file is, of course, at your disposal. If you want to review the other materials described above, these are available to you at your request.

MICROFILMED

AUG 10 1994

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A02-00103
Date Received: 4/17/1991
Receipt No: C020248
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: BLACK MESA FARMS
Address: BOX 82
GLENN'S FERRY ID 83623
OR
Name: WESLEY R WOOTAN 208-366-2575
Address: PO BOX 636
GLENN'S FERRY ID 83623
OR
Name: CHRISTINE W WOOTAN 208-366-2575
Address: PO BOX 636
GLENN'S FERRY ID 83623
OR
Name: DON J BRYANT
Address: GLENN'S FERRY ID 83623
OR
Name: BRENDA BRYANT
Address: GLENN'S FERRY ID 83623

2. Date of Priority: MAY 10, 1965

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	11E	9	NW	SW		6	ELMORE

5. Description of diverting works:
PUMPS, MOTORS, PIPELINES & SPRINKLERS SYSTEM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.540		

7. Total Quantity Appropriated is:
8.540 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
06S	10E	14	NE		NE		IRR	39.0
			NW		NE		IRR	39.0
			SW		NE		IRR	40.0
			SE		NE		IRR	40.0
			NE		NW		IRR	40.0
			NW		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	39.0
			NE		SE		IRR	39.0
			NW		SE		IRR	30.0
Section Acres								386.0
Total Acres								386.0

11. Place of use in counties: ELMORE

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

13. Other Water Rights Used:

14. Remarks:

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.

15. Basis of Claim: BENEFICIAL USE

RECEIVED

APR 25 2000

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

CHANGE IN ADDRESS OF NOTICE OF CLAIM

[] Water Right Number(s): AD2-00103
AD2-02209 B
61-072716

[] Claimant Name(s): _____

[] Old Mailing Address: Star Rt Box 26
Hammett ID 83627

[] New Mailing Address: P.O. Box 636
Glenns Ferry ID 83623

Telephone Number: (208) 366-2575

[] Signature of Claimant(s): Christine Wootan
Date: 4/24/00

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A02-00103
Date Received: 7/17/1989
Receipt No: 6020248
Received By: OK 4-17-91

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BLACK MESA FARMS
Address: BOX 82
GLENNS FERRY, ID 83623
OR
Name: WESLEY R. WOOTAN
Address: STAR ROUTE BOX 26
HAMMETT, ID 83627
OR
Name: CHRISTINE W. WOOTAN
Address: STAR ROUTE BOX 26
HAMMETT, ID 83627
OR
Name: DON J. BRYANT
Address: GLENNS FERRY, ID 83623
OR
Name: BRENDA BRYANT
Address: GLENNS FERRY, ID 83623
 2. Date of Priority: MAY 10, 1965
 3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER
 4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06S	11E	9	NW	SW		6	ELMORE
 5. Description of diverting works:
PUMPS, MOTORS, PIPELINES & SPRINKLERS SYSTEM.
 6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.540		
- A02-00103 Page 1 Date: 04/17/91

MICROFILMED
AUG 07 1992

7. Total Quantity Appropriated is:
8.540 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	10E	14	NE	NE		IRR	39.0
			NW	NE		IRR	39.0
			SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	30.0

Section Acres 386.0

Total Acres 386.0

11. Place of use in counties: ELMORE

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

13. Other Water Rights Used:

14. Remarks:

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.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am Partner of
Title
Black Mesa Farms, that I have signed the foregoing
Organization
document in the space below as Partner of
Title
Black Mesa Farms and that the statements contained in the
Organization
foregoing document are true and correct.

Wesley R. Wooten
Signature of Authorized Agent

Partner / Black Mesa Farms
Title and Organization

April 17, 1991
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 17 day

of April 19 91

Seal

[Signature]
Notary Public

Residing at Boise ID

My Commission Expires June 10, 1994

12/04/2005

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

RIGHT NUMBER: 2-103

NAME AND ADDRESS: CHRISTINE W WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

BLACK MESA FARMS LLC
PO BOX 82
GLENN'S FERRY ID 83623

WESLEY R WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

DON J BRYANT
PO BOX 215
GLENN'S FERRY ID 83623

BRENDA BRYANT
PO BOX 215
GLENN'S FERRY ID 83623

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 8.540 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 90.24 CFS. COMBINED RIGHT NOS.: 2-103, 2-4021, AND
ALL PARTS OF BASE RIGHT 2-2209 INCLUDING 2-2209B, 2-2209C, 2-2209E,
2-10187, 2-10189, 2-10191, 2-10196, 2-10208, & 2-10209.

PRIORITY DATE: 06/11/1965

POINT OF DIVERSION:

T06S R11E S9 NWSW Lot 6 Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	8.540 CFS

PLACE OF USE: IRRIGATION Within ELMORE County

T06S R10E S01	NESW	35.0	T06S R10E S01	SWSW	39.0
T06S R10E S01	SESW	40.0	T06S R10E S01	NWSE	30.0
T06S R10E S01	SWSE	40.0	T06S R10E S01	SESE	30.0
T06S R10E S02	SESE	39.0	T06S R10E S11	NENE	40.0
T06S R10E S11	SWNE	40.0	T06S R10E S11	SENE	39.0
T06S R10E S11	NESW	40.0	T06S R10E S11	NWSW	40.0
T06S R10E S11	SWSW	40.0	T06S R10E S11	SESW	40.0
T06S R10E S11	NESE	39.0	T06S R10E S11	NWSE	40.0
T06S R10E S11	SWSE	40.0	T06S R10E S11	SESE	40.0
T06S R10E S12	NENE	40.0	T06S R10E S12	NWNE	40.0
T06S R10E S12	SWNE	40.0	T06S R10E S12	SENE	40.0
T06S R10E S12	NENW	40.0	T06S R10E S12	NWNW	39.0
T06S R10E S12	SWNW	39.0	T06S R10E S12	SENW	40.0
T06S R10E S12	NESW	40.0	T06S R10E S12	NWSW	39.0

12/04/2005

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

T06S R10E S12	SWSW	38.0	T06S R10E S12	SESW	21.0
T06S R10E S12	NESE	40.0	T06S R10E S12	NWSE	40.0
T06S R10E S12	SWSE	39.0	T06S R10E S12	SESE	39.0
T06S R10E S13	NENE	39.0	T06S R10E S13	NWNE	39.0
T06S R10E S13	SWNE	40.0	T06S R10E S13	SENE	40.0
T06S R10E S13	NENW	39.0	T06S R10E S13	NWNW	39.0
T06S R10E S13	SWNW	40.0	T06S R10E S13	SENW	40.0
T06S R10E S13	NESW	40.0	T06S R10E S13	NWSW	40.0
T06S R10E S13	NESE	40.0	T06S R10E S13	NWSE	40.0
T06S R10E S13	SWSE	40.0	T06S R10E S13	SESE	40.0
T06S R10E S14	NENE	40.0	T06S R10E S14	NWNE	40.0
T06S R10E S14	SWNE	40.0	T06S R10E S14	SENE	40.0
T06S R10E S14	NENW	40.0	T06S R10E S14	NWNW	40.0
T06S R10E S14	SWNW	40.0	T06S R10E S14	SENW	40.0
T06S R10E S14	NESW	39.0	T06S R10E S14	NESE	39.0
T06S R10E S14	NWSE	30.0	T06S R10E S24	NENE	40.0
T06S R10E S24	NWNE	39.0	T06S R10E S24	SWNE	40.0
T06S R10E S24	SENE	40.0	T06S R10E S24	NESE	40.0
T06S R10E S24	NWSW	40.0	T06S R11E S06 Lot 7	SWSW	10.0
T06S R11E S07	NENE	25.0	T06S R11E S07	NWNE	25.0
T06S R11E S07	SWNE	40.0	T06S R11E S07	SENE	40.0
T06S R11E S07	NENW	30.0	T06S R11E S07 Lot 1	NWNW	37.0
T06S R11E S07 Lot 2	SWNW	37.0	T06S R11E S07	SENW	40.0
T06S R11E S07	NESW	40.0	T06S R11E S07 Lot 3	NWSW	38.0
T06S R11E S07 Lot 4	SWSW	37.0	T06S R11E S07	SESW	39.0
T06S R11E S07	NESE	40.0	T06S R11E S07	NWSE	40.0
T06S R11E S07	SWSE	39.0	T06S R11E S07	SESE	40.0
T06S R11E S17	NWNW	40.0	T06S R11E S17	SWNW	40.0
T06S R11E S17	NWSW	40.0	T06S R11E S18	NENE	38.0
T06S R11E S18	NWNE	39.0	T06S R11E S18	SWNE	40.0
T06S R11E S18	SENE	39.0	T06S R11E S18	NENW	39.0
T06S R11E S18 Lot 1	NWNW	37.0	T06S R11E S18 Lot 2	SWNW	38.0
T06S R11E S18	SENW	40.0	T06S R11E S18	NESW	40.0
T06S R11E S18 Lot 3	NWSW	38.0	T06S R11E S18 Lot 4	SWSW	38.0
T06S R11E S18	SESW	40.0	T06S R11E S18	NESE	40.0
T06S R11E S18	NWSE	40.0	T06S R11E S18	SWSE	40.0
T06S R11E S19 Lot 1	NWNW	39.0	T06S R11E S19 Lot 2	SWNW	39.0
T06S R11E S19 Lot 3	NWSW	39.0			
3948 ACRES TOTAL					

This right is limited to the irrigation of 428 acres within the place of use described above in a single irrigation season.

12/04/2005

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

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

11/09/2005

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: December 2, 2005

RECEIVED

NOV 30 2005

Department of Water Resources
Adjudication Bureau

Water right number: 2-103

CHRISTINE W WOOTAN
PO BOX 636
GLENNS FERRY ID 83623
Telephone Number: (208)366-2575

BRENDA BRYANT
GLENNS FERRY ID 83623

PO Box 215

BLACK MESA FARMS LLC
PO BOX 82
GLENNS FERRY ID 83623
Telephone Number: (208)366-7433

WESLEY R WOOTAN
PO BOX 636
GLENNS FERRY ID 83623
Telephone Number: (208)366-2575

DON J BRYANT
~~NO BOX 15~~
~~GLENNS FERRY ID 83623~~
Telephone Number: (208)366-7453

PO Box 215

Glenns Ferry, ID 83623

Daytime Phone: 366-7433
Evening Phone: 366-7453

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Quantity, Place of Use

2. Describe the changes you wish to make in the proposed recommendation:

Increase Quantity from 6.4 C.F.S. to original 8.54 C.F.S.

Place of Use to include Place of Use under Water Right # Z-2209 B.

3. Place of Use to include land in which BLM irrigation restriction was lifted.
Give a brief explanation as to why you disagree with these portions:

(see supporting documents)

I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/29/05 SIGNATURE: Don J Bryant
Please print your name: Don J. Bryant

11/09/2005

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

RIGHT NUMBER: 2-103
NAME AND ADDRESS: CHRISTINE W WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

BRENDA BRYANT
GLENN'S FERRY ID 83623

BLACK MESA FARMS LLC
PO BOX 82
GLENN'S FERRY ID 83623

WESLEY R WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

DON J BRYANT
HC BOX 15
HAMMETT ID 83627

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 6.400 CFS
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 90.24 CFS. COMBINED RIGHT NOS.: 2-103, 2-4021,
AND ALL PARTS OF BASE RIGHT 2-2209 INCLUDING 2-2209B, 2-2209C,
2-2209E, 2-10187, 2-10189, 2-10191, 2-10196, 2-10208, & 2-10209.

PRIORITY DATE: 06/11/1965

POINT OF DIVERSION:
T06S R11E S9 NWSW Lot 6 Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	6.400 CFS

PLACE OF USE: IRRIGATION Within ELMORE County

T06S R10E S14	NENE	40.0	T06S R10E S14	NWNE	40.0
T06S R10E S14	SWNE	40.0	T06S R10E S14	SENE	40.0
T06S R10E S14	NENW	40.0	T06S R10E S14	NWNW	40.0
T06S R10E S14	SWNW	40.0	T06S R10E S14	SENW	40.0

320 ACRES TOTAL

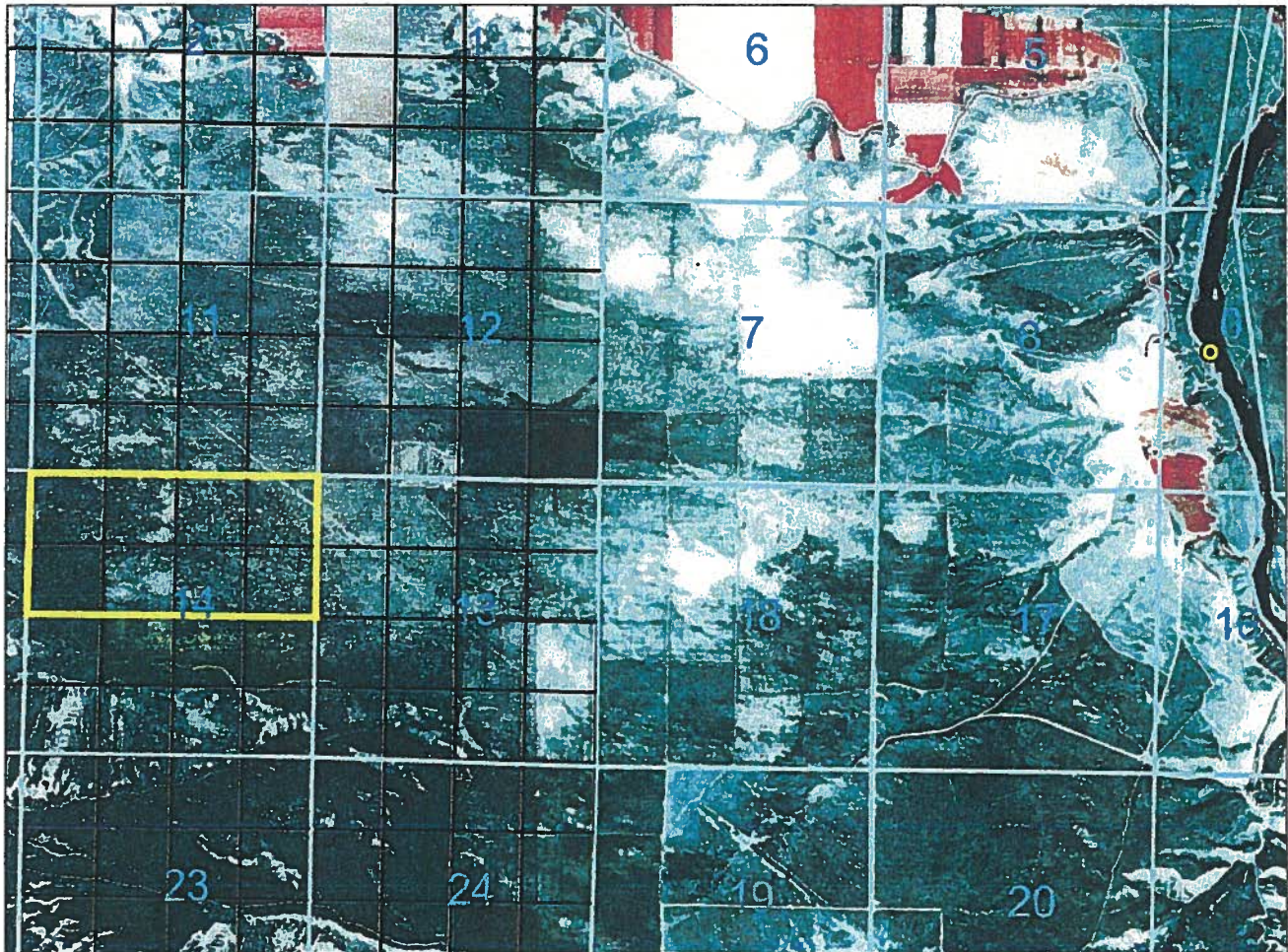
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Idaho Department of Water Resources

Place of Use Layout 2-00103



0 0.25 0.5 Miles



Township 6S Range 10E Section 14



GIS Place of Use Presentation
1987 NAPP photography.
Map prepared by: JWilson
Date prepared: Nov. 4, 2005



Point of Diversion



Place of Use



PLSS Township



PLSS Section Lines



PLSS quarter-quarter lines

Black Mesa Farms, LLC.

Ident. Number: 2-103

Total Quantity Appropriated is: 8.54 C.F.S.

Township	Range	Section	Lot	1/4 of 1/4	Acres
06S	10E	14		NE NE	40
				NW NE	40
				SW NE	40
				SE NE	40
				NE NW	40
				NW NW	40
				SW NW	40
				SE NW	40
				NE SW	39
				NW SE	30
				NE SE	39
				Section Acres	428
				TOTAL ACRES	428

3520
3948



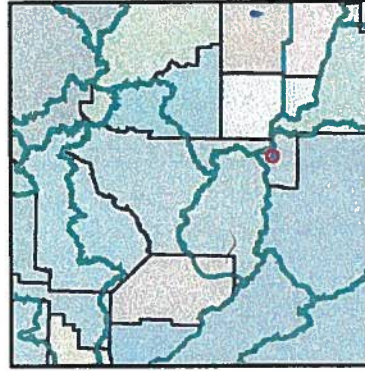
Idaho Department of Water Resources

Adjudication Claim Number: **2-103, 2-2209B**

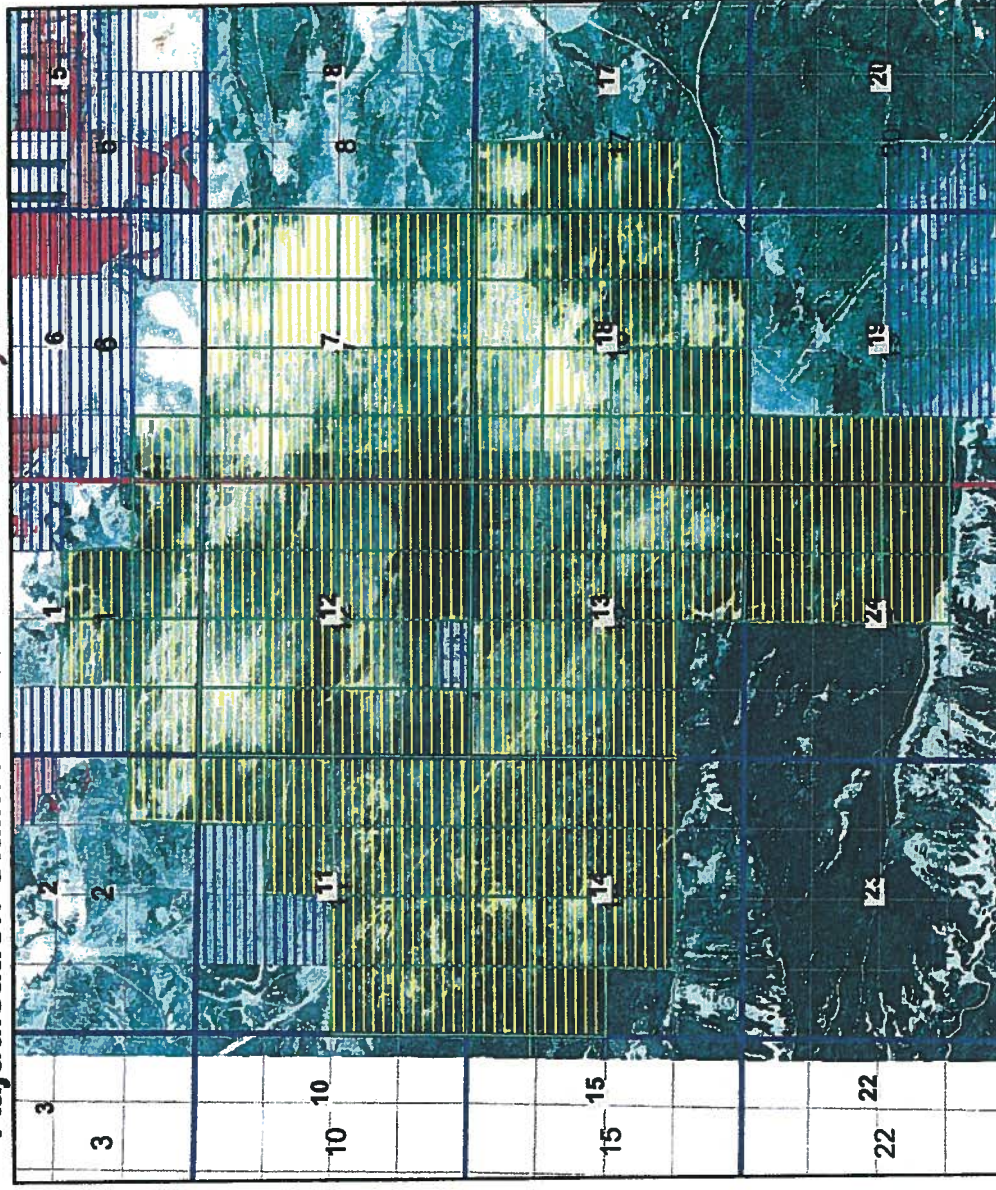
T06S R10E
T06S R11E

Legend

- Blackmesa.shp
- Township/Range
- Sections
- GCDB06S11E GCDB
- GCDB06S10E GCDB
- Recommendation POU



Gooding County
IDWR Basin 2



Prepared by D. SHAFF
On Sunday, December 4, 2005
1987/88 Aerial Photography



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 12, 2005

DON J BRYANT
PO BOX 215
GLENN'S FERRY ID 83623

RE: Snake River Basin Adjudication (SRBA)
Preliminary Recommendations of Water Right Claims #2-103 and 2-2209B

Dear Don,

Enclosed are preliminary recommendations of the claims you filed for Black Mesa Farms LLC. I have also enclosed the layout for these water rights. I had to adjust the acres in one lot downward from Jeff's list because the acreage in the government lot is less than he had. I compensated in another tract.

You may keep these documents for your records. Please refer to the claim numbers in any inquiries or correspondence.

Please contact me if you have any questions.

Sincerely,

Donald V. Shaff, MPA
Adjudication Bureau Chief

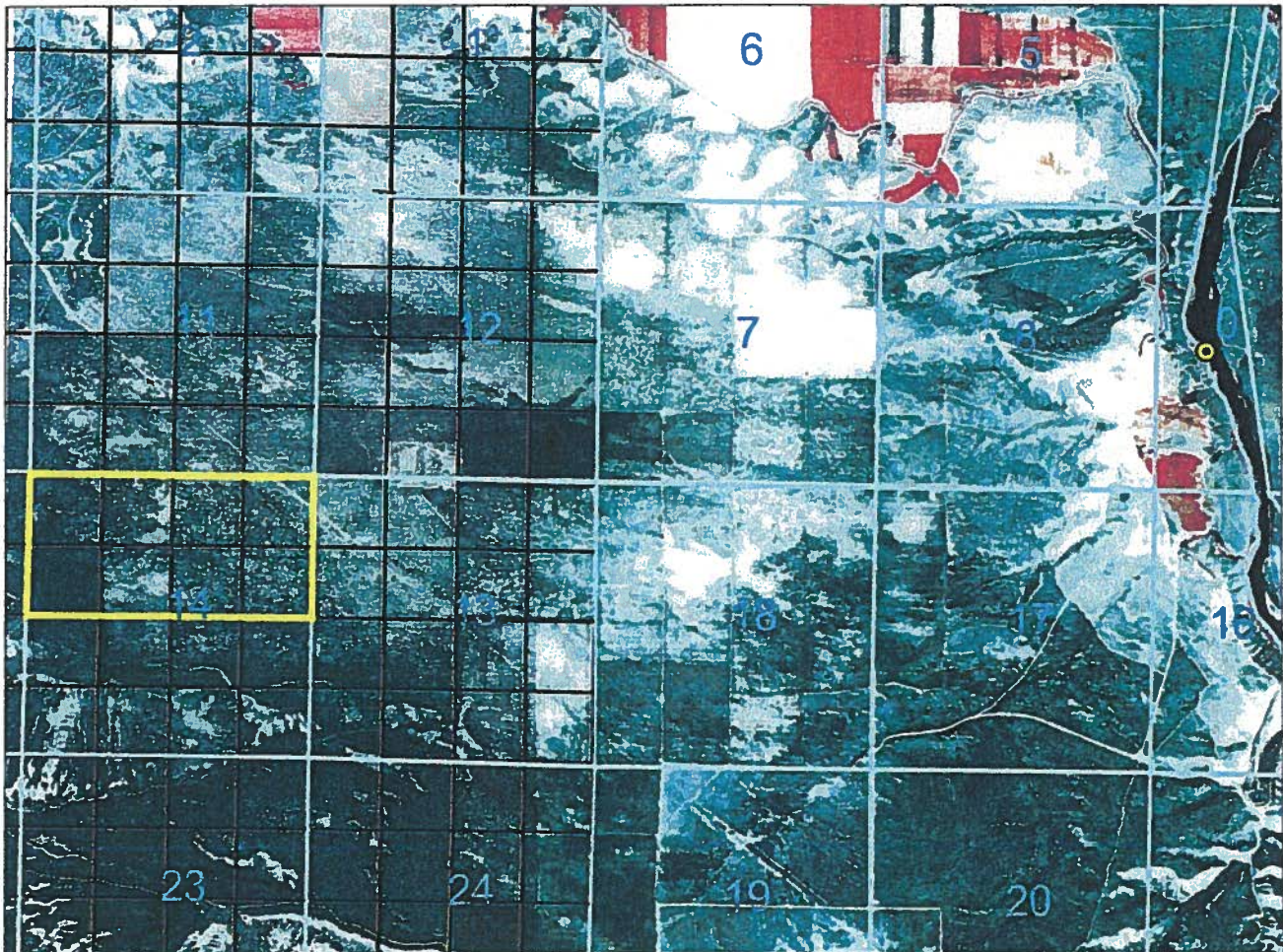
DVS:ss:region
Enclosures:

Preliminary Recommendations of Claims Referenced Above

SCANNED
DEC 12 2005

Idaho Department of Water Resources

Place of Use Layout 2-00103



0 0.25 0.5 Miles



Township 6S Range 10E Section 14



GIS Place of Use Presentation
1987 NAPP photography.
Map prepared by: JWilson
Date prepared: Nov. 4, 2005



Point of Diversion



Place of Use



PLSS Township



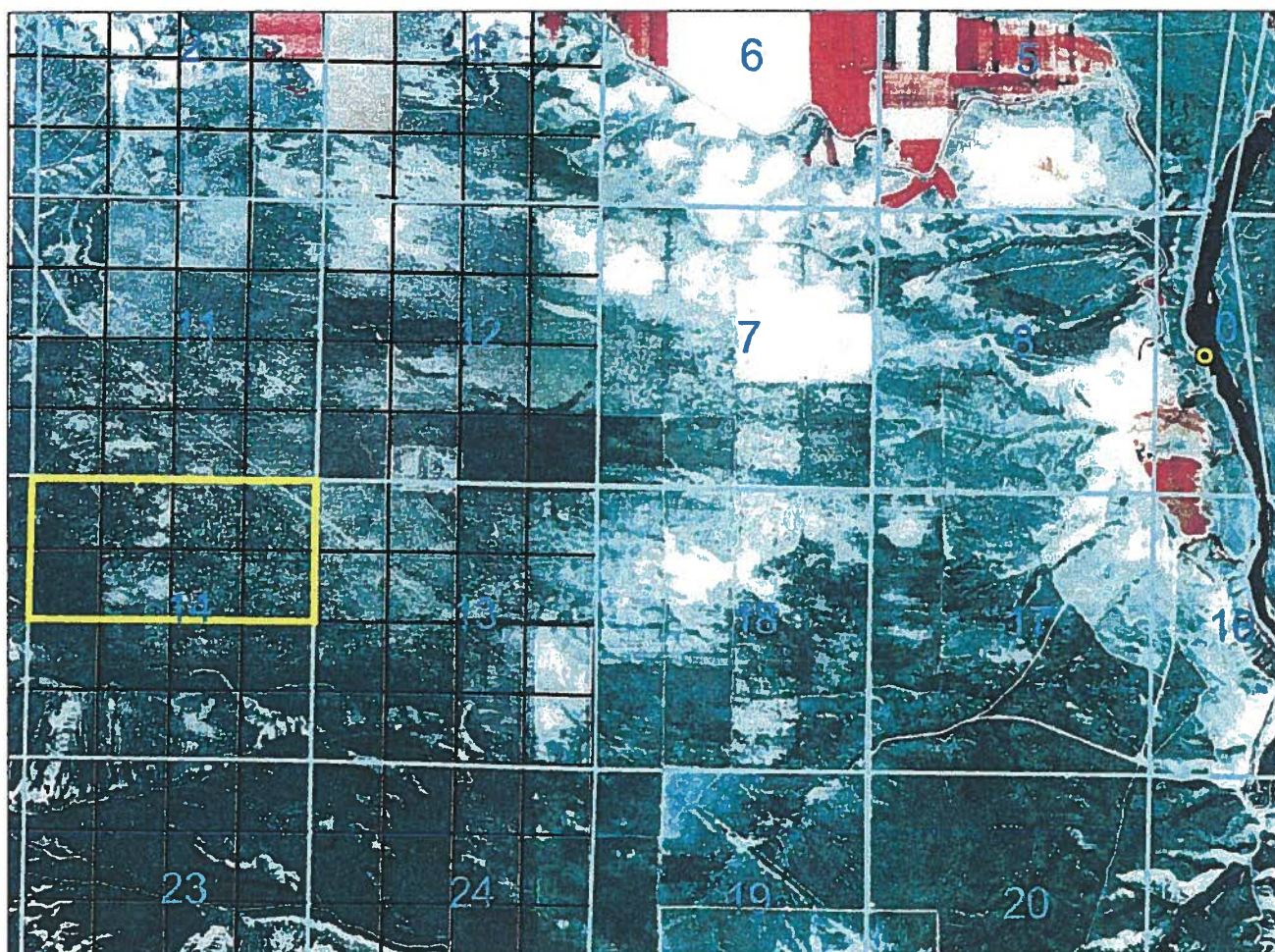
PLSS Section Lines



PLSS quarter-quarter lines

Idaho Department of Water Resources

Place of Use Layout 2-00103



0 0.25 0.5 Miles



Township 6S Range 10E Section 14



GIS Place of Use Presentation
1987 NAPP photography.
Map prepared by: JWilson
Date prepared: Nov. 4, 2005

- | | |
|--|----------------------------|
| | Point of Diversion |
| | Place of Use |
| | PLSS Township |
| | PLSS Section Lines |
| | PLSS quarter-quarter lines |

11/13/2003

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

RIGHT NUMBER: 2-103
NAME AND ADDRESS: CHRISTINE W WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

BRENDA BRYANT
GLENN'S FERRY ID 83623

BLACK MESA FARMS
PO BOX 82
GLENN'S FERRY ID 83623

WESLEY R WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

DON J BRYANT
HC BOX 15
HAMMETT ID 83627

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER
QUANTITY: 6.400 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 90.24 CFS. COMBINED RIGHT NOS.: 2-103, 2-4021, AND
ALL PARTS OF BASE RIGHT 2-2209 INCLUDING 2-2209B, 2-2209C, 2-2209E,
2-10187, 2-10189, 2-10191, 2-10196, 2-10208, & 2-10209.

PRIORITY DATE: 06/11/1965
POINT OF DIVERSION:

T06S R11E S9 NWSW Lot 6 Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	6.400 CFS

PLACE OF USE: IRRIGATION Within ELMORE County

T06S R10E S14	NENE	40.0	T06S R10E S14	NWNE	40.0
T06S R10E S14	SWNE	40.0	T06S R10E S14	SENE	40.0
T06S R10E S14	NENW	40.0	T06S R10E S14	NWNW	40.0
T06S R10E S14	SWNW	40.0	T06S R10E S14	SENW	40.0

320 ACRES TOTAL

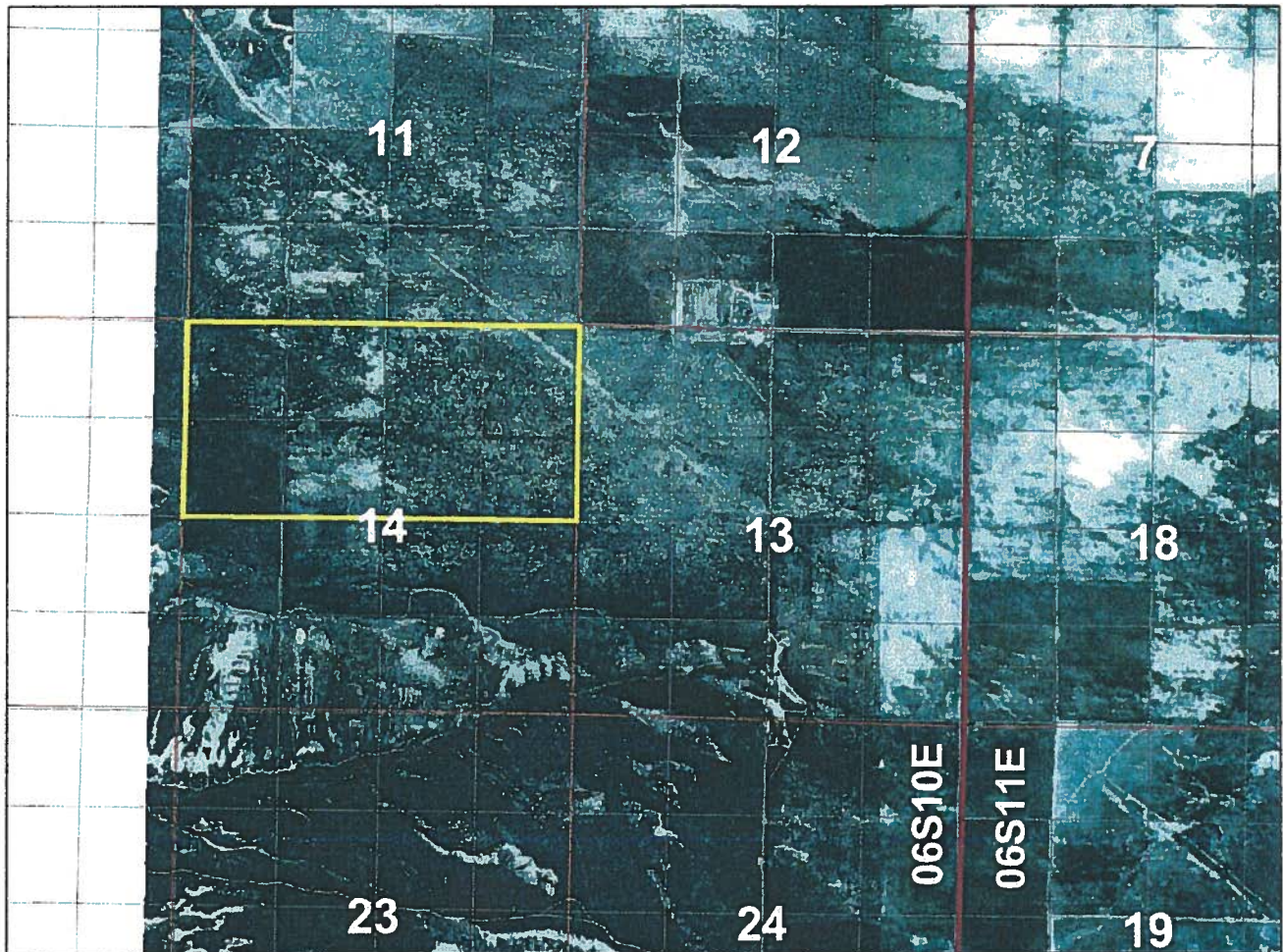
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

EXPLANATORY MATERIAL: Beneficial Use

Idaho Department of Water Resources

Place of Use Layout 2-103

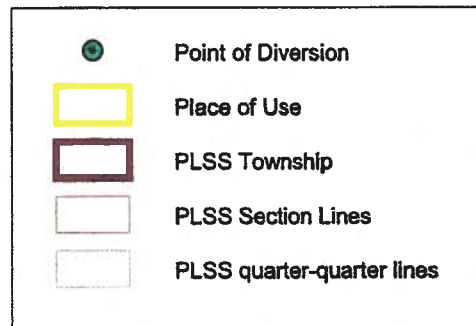


1 0 1 Miles

Township 6S Range 10E Section 14



GIS Place of Use Presentation
1987 NAPP photography.
Map prepared by: Scott King
Date prepared: November 13, 2003



Review Notes
S. King.

2-103

Claimed, SRBA, filed 4/17/1991

May 10, '65 Priority

8.54 cfs

386 acres

Amended Jan 10, 2003

426 acres

included 40 additional, left off Little 02. Recommendation due to Permit.

SW NW 6S 10E 14

lapsed permit 2-2389

Potential for Forfeiture

Remedies: Resumption

Little Snake Adj, the SRBA

Tolling - enjoined in legal proceedings.

Forfeiture not convincing.

Recommend

June 11, 1965

426 acres

8.54 cfs

0.02 cfs/acre

no Volume limit

Combined use limits

90.24 cfs
90 cfs

w/ 2-2209^{am} parts

79.7

2-103

6.4
8.52 cfs

2-4021

10.54 cfs

98.76
96.64

6.4
8.52 over
claimed

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WESTERN REGION ADJUDICATION SECTION
CLAIM VERIFICATION FIELD EXAM SHEET
(Use with the ECVR)

CLAIM NO(s). 2-103

1. No Change NAME IS SAME.
NEW OWNER: _____
No Change ADDRESS
NEW ADDRESS: _____

2. No Change - DATE OF PRIORITY: Completed evidence submitted
Incomplete - Claimant should be asked during the exam when was water first
used and submit proof of date of priority.

Priority date, per claimant, is: 5/10/1965
(If the priority date, based on your exam, seems questionable, explain below.)

Recommend 6/11/1965 based on Lori Graves
1/2/03 memo and Notice of Proof of Completion of Works received
and dated 6/11/1965

3. ☒ No Change — SAME SOURCE
Source is different than that claimed:

Source found: _____

4. ☒ No Change — POINT OF DIVERSION Same Pod as 2-4021,
Point of diversion is different than the claim and/or new P/D's: 2-2209 B, C, etc

Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____
Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____

5. No Change - DESCRIPTION OF DIVERTING WORKS
Incomplete description, list below:

6. ☒ No Change - WATER USES
Different uses, (list uses found):

Use <u>Irr</u>	From <u>3/15</u>	To <u>11/15</u>	Amount <u>6.4</u>	CFS	AFA
Use _____	From _____	To _____	Amount _____	CFS	AFA
Use _____	From _____	To _____	Amount _____	CFS	AFA

7. No Change - TOTAL VOLUME N/A

Incomplete on claim, the total is, Amount _____ CFS _____ AFA

Changes found, the new total is, Amount 6.4 CFS AFA

8. No Change - NON-IRRIGATION USES: N/A

Changes Exam found:

Domestic # of homes: _____ Stock # _____ List types: _____

Additional comments: _____

9. No Change — PLACE OF USE: (If changed, list below.) 320 acres

Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____

320 x .02
= 6.4 cfs

Remarks: (Comments pertinent to field examination) See additional attachment

Claimed 426 acres. Previous exams (2-2202) support. However,
Patent (11-91-0001) transferred ownership from BLM to Wootens
and with NESW 1/4 NE 1/4 SE section 14 lands subjected
not to be used for irrigated farming. These tracts excluded

SYSTEM DIAGRAM INCLUDED

NA

Shown on GIS Layout

CK IF IN OFFICE EXAM
DATE EXAM CONDUCTED: 11/13/2003

FIELD EXAMINER: _____

Print Name

Scott King
Signature

IDI-23538

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 $\frac{1}{4}$, 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

MICROFILMED

AUG 07 1992

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. IDH-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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AUG 07 1992

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, consent 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 $\frac{1}{4}$ E $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 - sec. 17, W $\frac{1}{4}$ 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.



Patent Number 11-91-0001

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. 476), 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 TWELFTH 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 FIFTEENTH

By John Davis
 Deputy State Director for Operations

MICROFILMED

AUG 07 1992

END

OCT 18 '90 15:53

1 208 366 2549 PAGE.004

JUN 11 1965

Department of Reclamation

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) June 10, 1965

(P. O.) Box 2161, Boise, Idaho 83701

TO THE STATE RECLAMATION ENGINEER

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Mountain Home News of

Mountain Home, Idaho

published in the

county in which the works are situated. Please send the statement of charges and Affidavit of Publication to COTTONWOOD CANAL COMPANY Idaho Land & Appraisal Service, P. O. Box 2161, Boise, Idaho. Thank you.

BY: *W. Williams*

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer

30990

NOTICE OF PROOF OF COMPLETION OF WORKS
and
APPLICATION OF WATER TO BENEFICIAL USE

RECEIVED
JUN 11 1965

Department of Reclamation

NOTICE is hereby given that at 10:00 A. M., on the 29th day of July
1965, at Burley, County of Cassia, State of Idaho, before
Phyllis Butterfield, Notary Public, at (address) Burley, Idaho
proof will be submitted of the completion of works for the diversion of
89.6 cubic feet per second of the waters of Snake River
and of the application to beneficial use of said water, in accordance with
the terms and conditions of Permit No. 30990, heretofore issued by the Department of
Reclamation of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit
is: Cottonwood Canal Company, P. O. Box 269, Burley, Idaho
2. Said works of diversion will be fully completed on the date set for such completion
and the amount of water which said works are capable of conveying to the place of use is
89.6 cubic feet per second.
3. The use to which said water has been applied is irrigation
purposes, and the amount applied to beneficial use is 89.6 cubic
feet per second.

4. The point of diversion of said water is Lot 6, Sec. 9, T6S-R11E, R.M.

5. The place where said water is used is S1SE1/4, NE1SW1/4, NW1SE1/4, Sec. 1; SE1SE1/4, Sec. 2;
E1/2, E1/2NW1/4, W1/2SW1/4, Sec. 11; All, Sec. 12; E1/2, NW1/4, N1/2SW1/4, Sec. 13; NE1/4, N1/2SE1/4, N1/2NW1/4,
SE1/4NW1/4, NE1/4SW1/4, Sec. 14; NE1/4, N1/2SE1/4, Sec. 24, T6S-R10E, R.M. Lot 7, Sec. 6; All,
Sec. 7; N1/2, SW1/4, W1/2SE1/4, NE1/4SE1/4, Sec. 18; Lot 2, 3, E1/2SW1/4, SE1/4, Sec. 19; W1/2NW1/4, NW1/4SW1/4,
Sec. 17; W1/2SW1/4, Sec. 20, T6S-R11E, R.M. Total 4480 acres.

6. The date of priority which said user is prepared to establish is February 25, 1963

Carl E. Tappan

State Reclamation Engineer

30990

16

Harris, Lori

From: Shurte, Jan
Sent: Tuesday, January 07, 2003 10:45 AM
To: Harris, Lori
Subject: FW: Pending Transfer 70343

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

From: Graves, Lori
Sent: Tuesday, January 07, 2003 10:22 AM
To: Shaff, Don
Cc: Shurte, Jan
Subject: Pending Transfer 70343

Transfer 70343 proposes a 4371 acre ppu to the following right:

AJC 2-103



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 4, 2000

WESLEY WOOTAN
CHRISTINE WOOTAN
PO BOX 636
GLENN'S FERRY ID 83623

RE: Water Right No. 61-07276

Dear Property Owners:

Enclosed is a copy of the above referenced water right, which reflects your change in address. Also enclosed is a copy of the Notice of Completed Administrative Proceedings which has been sent to the Snake River Basin Court as notification of the change.

Please note, your address has also been changed on claim numbers A02-00103 and A02-02209B, and copies of those claims are enclosed.

Thank you for your patience and cooperation. If you have any questions concerning the enclosed water rights, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Denise Buffington".

Denise Buffington
Office Specialist I
Adjudication Section
Western Region

DB:db

Enclosures

cc: James Blanksma

State of Idaho
Department of Water Resources

ADJUDICATION CLAIM ANALYSIS SHEET

Review by D. Shaff Date 8/30/84
Right No. 02-0103 Claimant Co. Haywood

Recommendation differs from claim: ☐ Yes ☒ No ☐ Disallow
(Document any differences)

Claim Details Verified Against:

Check (X or ✓) those searched. Circle records used for recommendation.
Include copies or memos where applicable to explain findings.

- ☒ License 02-2209
☐ Previous Statutory Claim.
☐ Permits, valid or lapsed. Number(s) if different than above _____
☐ Decree. Name & date _____
☐ Conveyance Loss Calculations. See printout included.
☐ Title abstract. ☐ In file. Or, Name & location _____
☐ County records. ☐ In file. Or, Name & location _____
☐ Affidavits. ☐ In file.
☐ Posted Notices, Water Locations Notices. ☐ In file.
☐ Deed Records. ☐ In file. Or, Name & location _____
☐ Patent Records. ☐ In file. Or, Name & location _____

☐ Metzker Maps. Identify _____

☒ A.S.C.S. Records. Year & Photograph No. 5/10/1969 1964
DLG-44K-89 DLG-3EE-97X

☐ Irrigation Company/District Records. ☐ In file. Or Name & location _____

☐ Historical Books. Name(s) & location _____

☐ Interview(s). Attach conversation memorandum.

☐ Other _____

☐ _____

Field Exam Made: ☒ Yes ☐ No Date _____

☐ Adj. Report in file ☒ Beneficial Use Report in License (S.O.) File 02-2209

Measurement 90.24 cfs. Amount recommended 854 cfs.
Type of measuring device: _____ Meter No. _____
Condition _____ Date _____ Time _____

Adjudication Photo(s) Used: Name or No. 197400
Pandora Valley

Field Photographs Taken ☐ Yes ☒ No

Memorandum in file ☒ Yes ☐ No

Remarks _____

VNC 10 1984

WICHOLMED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE GENERAL DETER-
MINATION OF RIGHTS TO THE USE OF
SNAKE RIVER FROM BASE OF
MELNER DAM TO DRAINAGE BASIN.
OREGON BORDER

**NOTICE OF CLAIM
TO A
WATER RIGHT**

02-0103	
I.D. No.	Map No.
\$	Fee Paid
	Receipt No.

Notice is hereby given that COTTONWOOD MUTUAL CANAL COMPANY

P.O. Box 789, Burley, ID 83318

(Name of Claimant)

Telephone No. 678-9471

(Mailing Address)

(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use, or priority date of decreed, licensed or permit right) May 10, 1965
- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water) Snake River tributary to Columbia River
- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
Quantity 8.54 Use Irrigation Period of Use From 3-15 To 11-15
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity Use Period of Use From To
(CFS, GPD, AF) (Domestic, Irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- (4) 8.54 772 TOTAL QUANTITY CLAIMED.
(CFS, GPD, AF)
- (5) A) Point of Diversion: Give location of point where water is diverted from its source Lot 6 NW % SW %
Sec. 9, Twp. 6S, Rge. 11E, B.M. Elmore 39 County
Additional Points: SCI: 2720(1) 554.1
B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.
Pumps, motors, pipelines, and sprinkler system.
- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
6S	10E	14	39	39	40	40	40	40	40	39					39	30			426 386

Total no. of acres 426 386

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered:

- (7) If you are claiming water as a member of an organization, list name of organization:
- (8) Remark Black Mesa Project Right split from Amended Claim 02-2209.
No signature necessary. DVS 8/29/84
- (9) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.
☐ B) Right decreed by court, cite title of case.
☐ C) Right based on application, permit, license, or previous statutory claim filed with the Idaho Department of Water Resources. Give No.

KEVIN HUGHES

9/15/84

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

(Date)

(Signature of Claimant)

State of

Organization

Organization

(Signature of Spouse)

County of

ss.

Seal

(Signature of Notary Public)

On this day of , in the year before me
a notary public, personally appeared
known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation,
partnership or) executed the same.

My commission expires

9/15/84 Notary Public residing at

POOR ORIGINAL

INTER-DEPARTMENT MEMO — 1

FROM

Dave T

DATE

8/29/81

TO

Don

SUBJECT

As per our conversation, Glen has suggested that we start by recommending the additional lands under a beneficial use right.

RECEIVED
AUG 30 1981

Department of Water Resources
Western Regional Office

Dave

SIGNATURE

INTER-DEPARTMENT MEMO — 1

FROM

Dave Tuttle

DATE

8/28/84

TO

Glen Saxton

SUBJECT

02-2209 / Attached Memo

The situation regarding the need to change this licensed water right raises a basic adjudication question — how to expand a licensed water right found in the adjudication process to have been issued too restrictively?

MICROFILMED

AUG 10 1984

Per a conversation w/ Don Shaff, he feels, based on a previous decision, that it may be adverse to recommending an adjudicated right to be larger than the original license.

In this case we have two choices: (1) Issue an amended license and base the adjudication proposed finding on the amended license, or (2) not change the

SIGNATURE

license and preparatory proposed finding of 6-2209 using the combination of documented evidence, in this case proposing a larger list than the one shown on the license due to the interpretation that an error was made in issuing the original license.

Assuming the documentation in the file is complete, I prefer the latter method because it is more efficient, and I perceive the changing of a licensed right as a legitimate task of the adjudication procedure, even if the effect is to enlarge a licensed right.

POOR ORIGINAL

DR

MICROFILMED

AUG 10 1994

TO: D. Tuthill *Det*

FROM: D. Shaff *DS*

DATE: August 24, 1984

SUBJECT: License 02-2209

The accuracy of this license issued February 11, 1970, came to my attention through the process of the adjudication. The license holder filed an amended claim maintaining land not described in the license should be included in the water right represented by the license.

The land in question is Section 14, T 6S, R10E. The Proof of Beneficial Use submitted in 1965 by the holder and one (1) witness did not include Section 14. A second witness and the notice of Proof published in June and July 1965 did include lands in Section 14. The field report is somewhat confusing because the water right was apparently examined by two agents, each one on different dates. The land in Section 14 appears on the Field Report map as irrigated apparently, but the individual tracts in the section were excluded from a count of the subdivisions irrigated. The letter transmitting the results of the permit examination describes 3,985 acres irrigated including certain tracts in Section 14. The license was issued for 3,985 acres but excluded any lands in Section 14.

A 1964 aerial photograph recently received showed the Section 14 land undeveloped. A 1969 aerial photograph (DLG-4KK-89; 5/10/1969) showed the land in Section 14 irrigated as described on the attached land list. (*Proof of B/u states first use was in '65*)

I conclude and recommend the staff of the Department issue to the holder an Amended License 02-2209 that includes the 426 acres in Section 14. The remaining question would be the extent of beneficial use, or number of irrigated acres. The attached land list reflects the review of the lands now irrigated in this project under this water right. Permit 02-2389 covers one irrigated tract not described on the land list. By simply adding the 426 acres found in Section 14 to the 3,985 acres on the license would exceed the 4,283 acres that will be recommended to the court for this water right, if Section 14 is included.

<u>License</u>	<u>Adjudication</u>
3,985 acres	3,857 acres
+ 426 ---Section 14---	+ 426
4,411	4,283

I suggest amending the license to 4,283 acres by changing the rest of the land list to reflect the extent of beneficial use shown by the 1974 orthophotoquad (Pasadena Valley). This would require at .02 cfs per acre a diversion rate of 85.7 cfs. The capacity of the system was measured at 90.24 cfs.

MICROFILMED

AUG 10 1984

The license file is, of course, at your disposal. If you want to review the other materials described above, these are available to you at your request.

MICROFILMED

AUG 10 1994

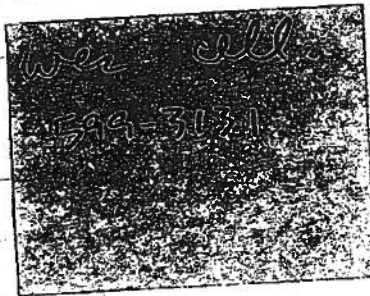
Town- ship	Range	Sec	NE ¹ / ₄				NW ¹ / ₄				SE ¹ / ₄				NW ² / ₄				SE ² / ₄				Totals
			NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ² / ₄	NW ² / ₄	SW ² / ₄	SE ² / ₄	NE ² / ₄	NW ² / ₄	SW ² / ₄	SE ² / ₄	NE ³ / ₄	NW ³ / ₄	SW ³ / ₄	SE ³ / ₄	
65	10E	1					35		40	40													
		2																					
		11	40	40	40	40	30			40	40	40	40	40	40	40	40	40	40	40	40	40	559
		12	40	40	40	40	40	40	40	40	40	40	40	19	40	40	40	40	40	40	40	40	620
		13	40	40	40	40	36	40	40	40	35	35	-	-	40	40	31	40	40	40	40	40	537
		14	39	39	40	40	40	40	-	40	39				39	30							426
		24	40	38	40	40									40	33							231
63								4.1	4.2			4.3	4.4										
	11E	7	14	25	40	40	30	37	38	40	40	38	38	40	40	40	40	40	40	40	40	40	580
		17						39	40			30											109
								4.1	4.2			4.3	4.4										
		18	40	40	40	40	40	38	38	40	40	38	38	40	35	40	40	40	40	40	40	40	587
		19							4.2			4.3	4.4										
		19							39		40	39		25	40	40	40	40	40	40	40	40	303
		20										40	40										80
																							4283

MICROFILMED

AUG 10 1994

Scott,

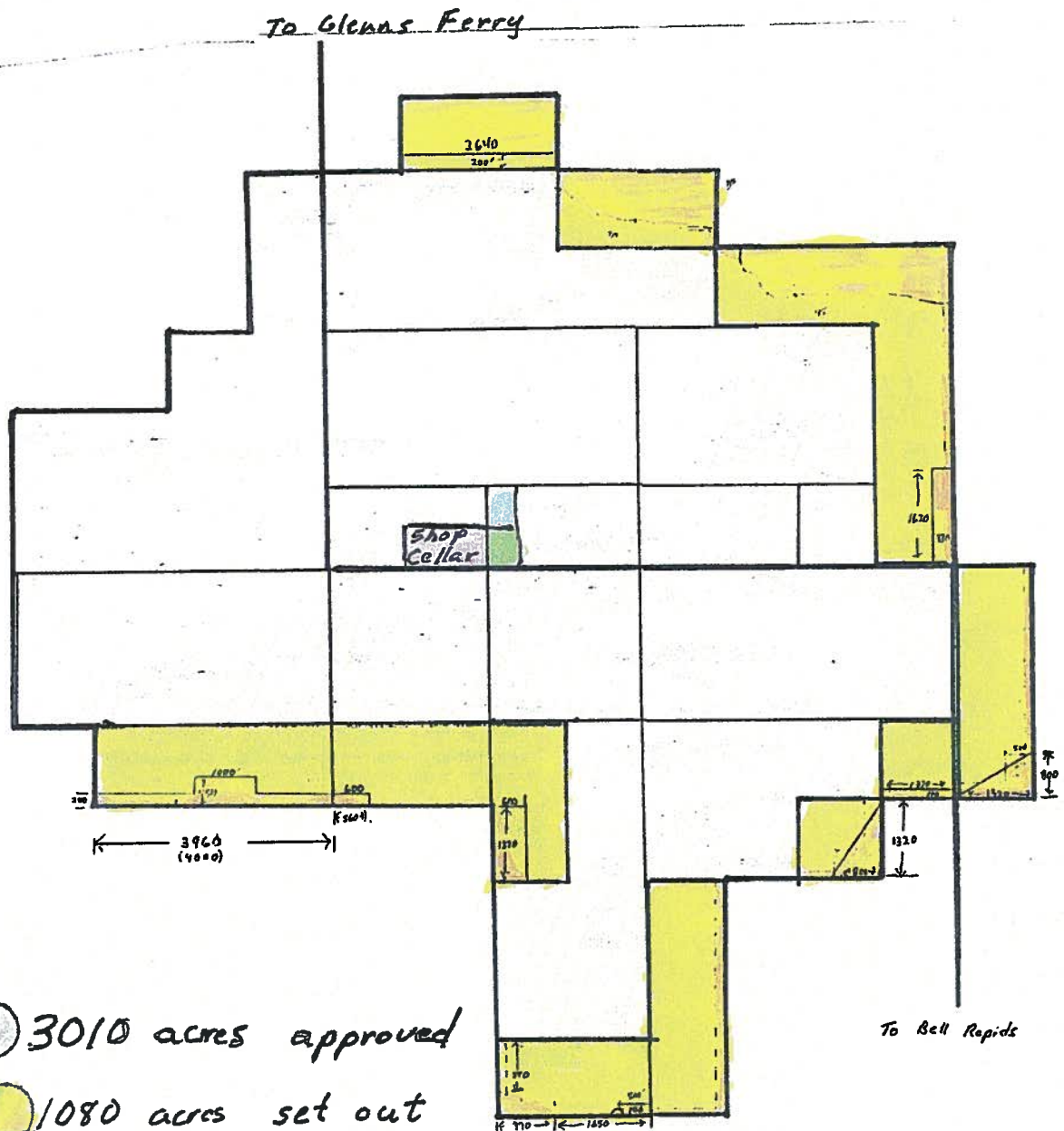
Wes Wootan
stopped by to meet
you and to update
you on his BLM
negotiations. Attached
is the latest corres-
pondance. Wes
would like you to
call him



EXHIBIT

K

Black Mesa Farms



- 3010 acres approved
- 1080 acres set out
- 766 acres potential approval
- 293 acres Not Farmable
- 20.87 Buffer Zone

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

**Bozoiaky 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 areas


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

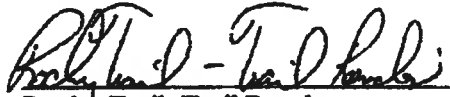
I have lived and farmed in Pasadena Valley my entire life, where my father and I shared a

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.

2-103

Patent states 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

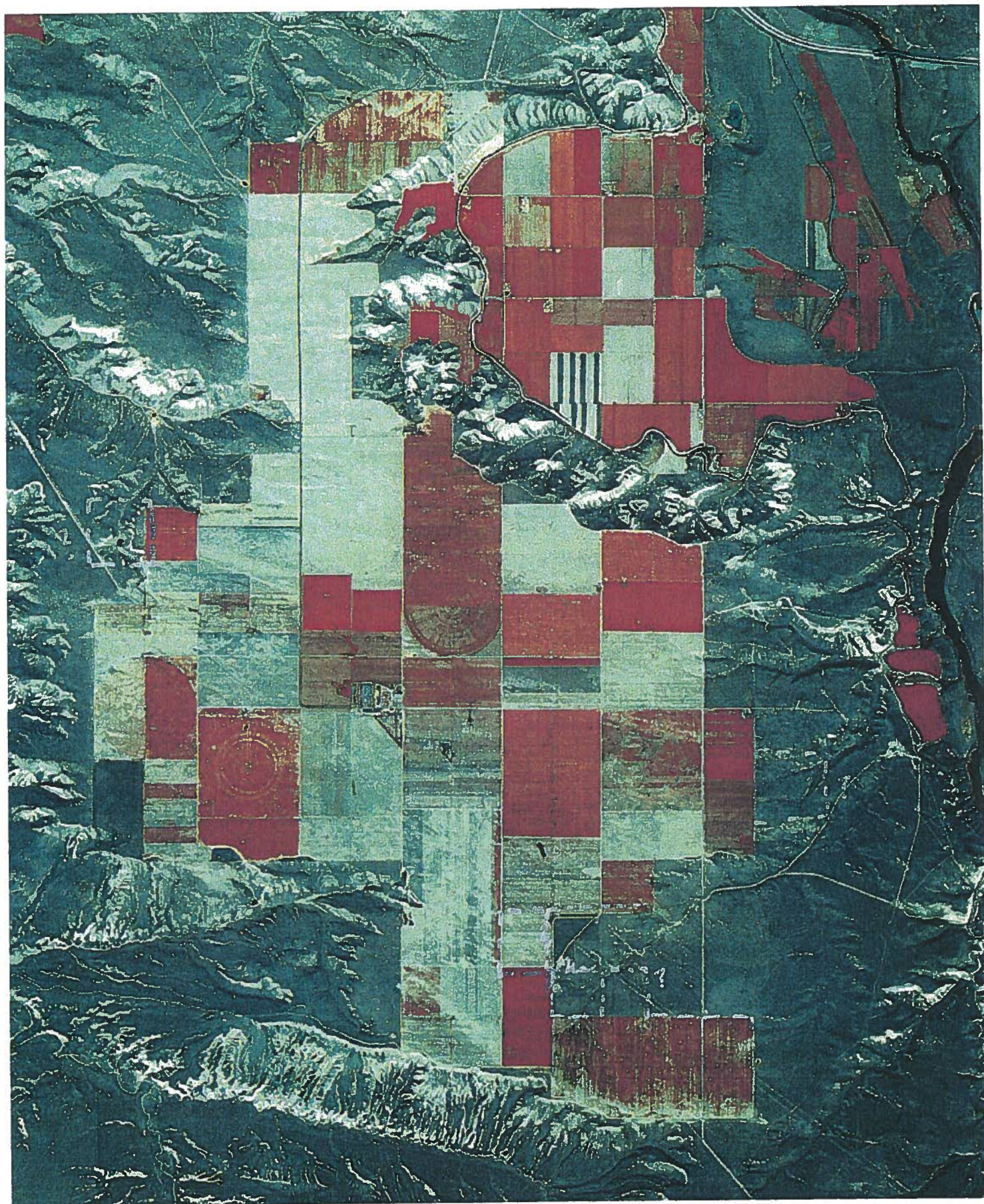
83-095-2311 partial

~~83-095-2312~~

AA 17 Panda Valley
DOQQ=1998

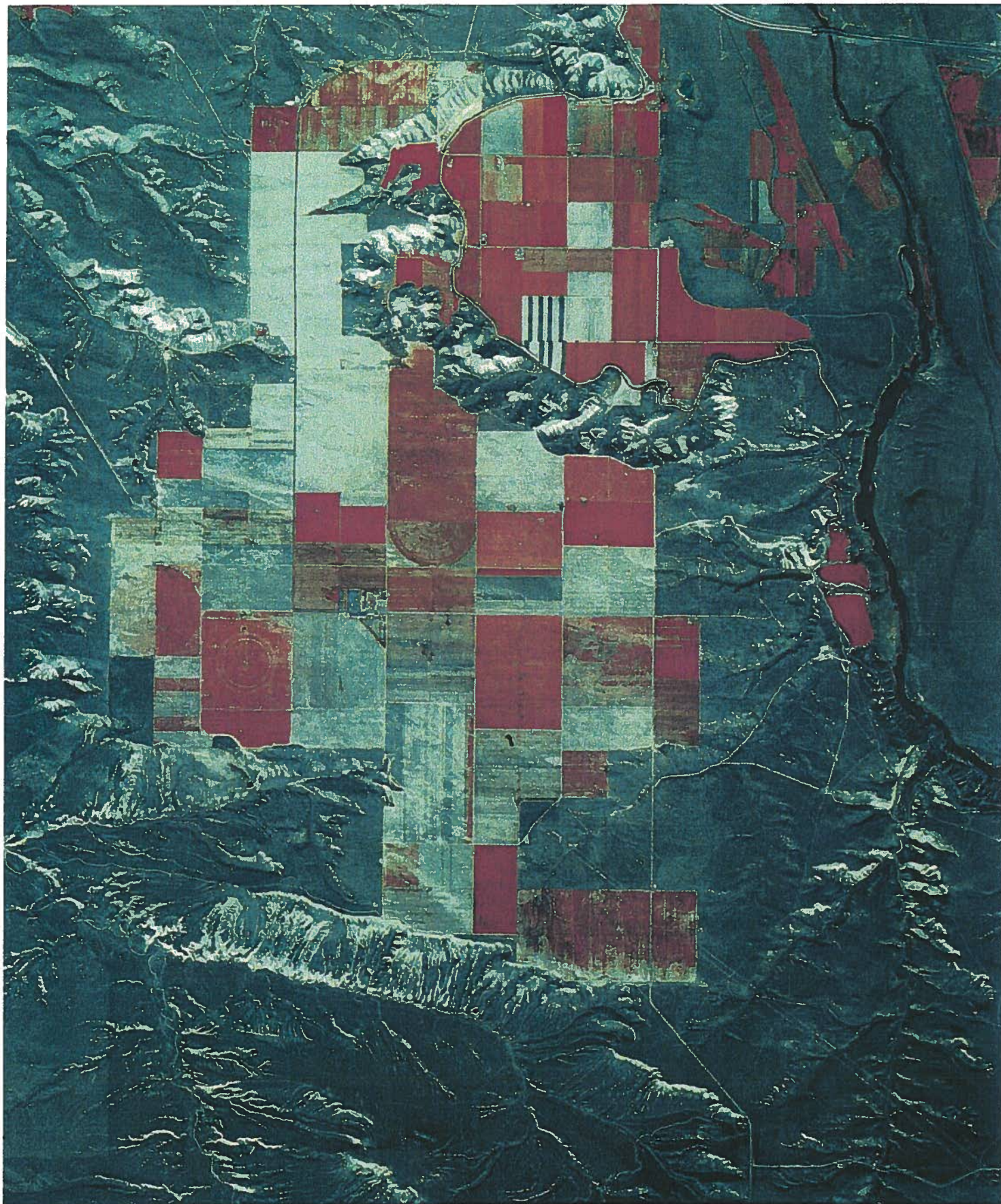


1987?



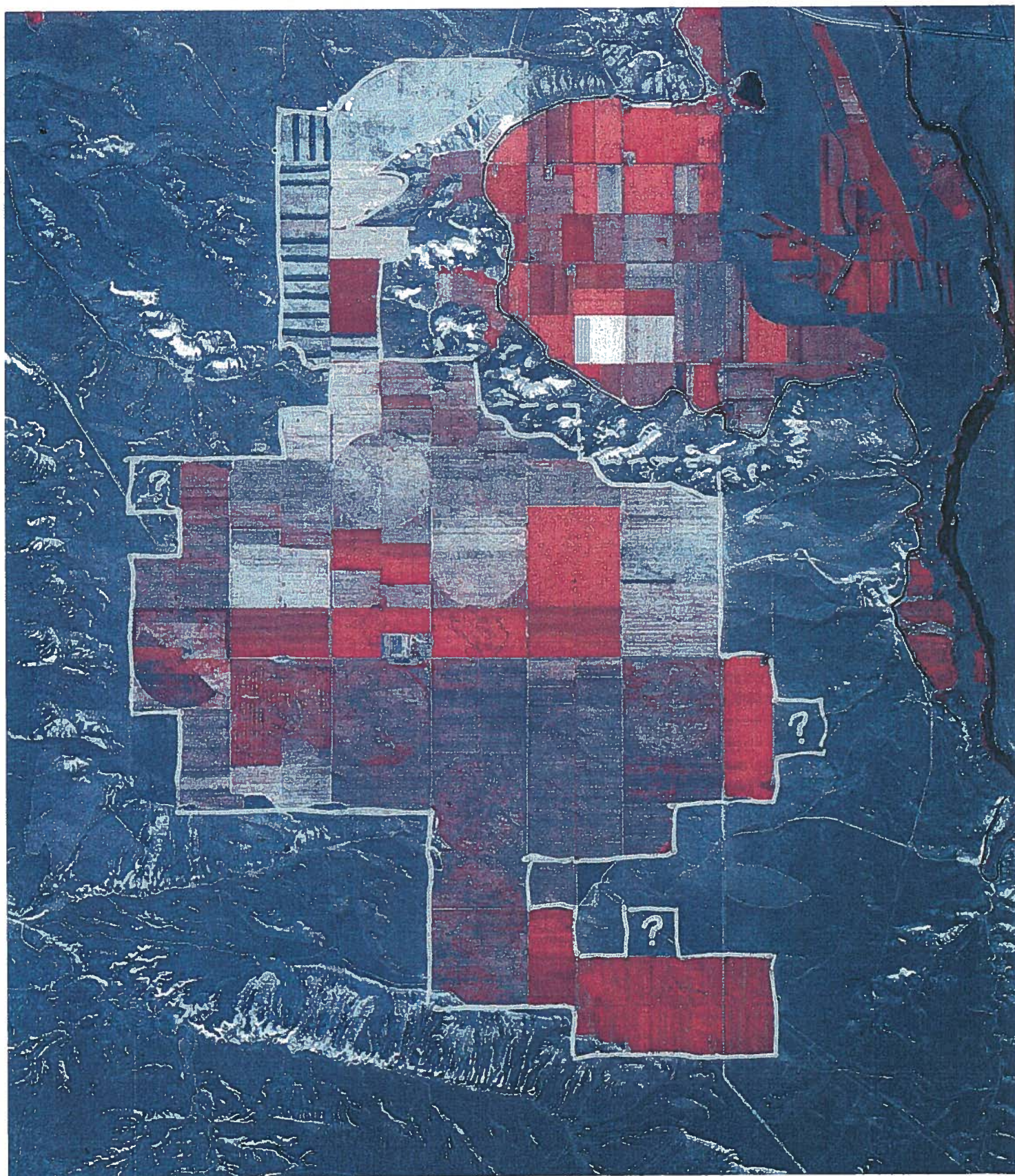
U2 Image 1980
9/15

80-152-3475



U2 Image 1980
9/7

80-152 - 3475



U2 Image

1977
10/8

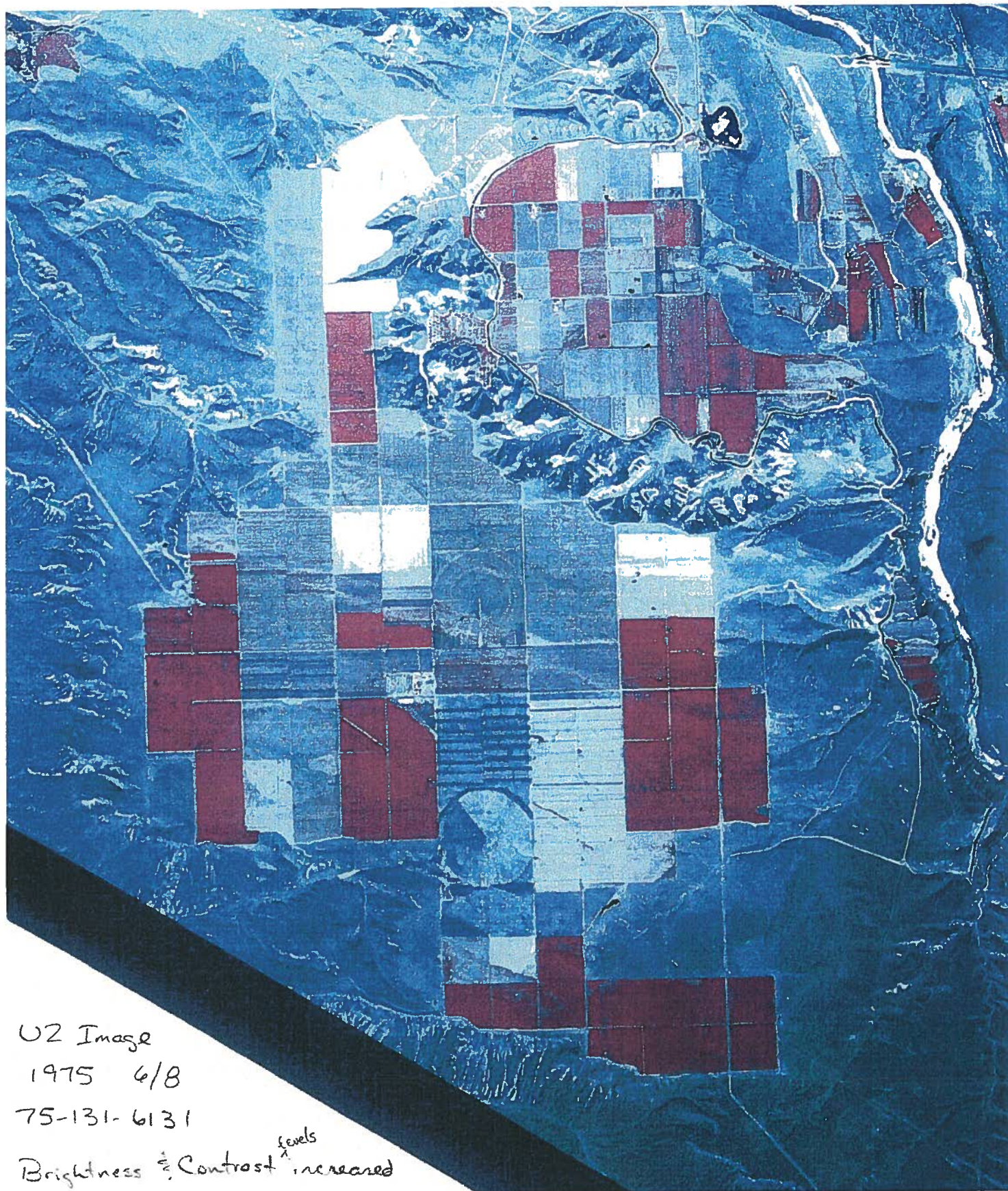
77-134-2499



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., Beeth H., 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
lights, (2-2209B & 2-103) ? rec'd 12/20/2002

We would expect CMCC to protect 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

Stew 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).

(Don Stinson
Charlotte Hunsinger)

Now probably more
involved than

2209-

Bill Ringert involved. Selling lots of
little pieces. Ringert

2209D No such record. Now
split.

2-10208 - Portion still residing w/
company

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

~~2~~

ori 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 / ~~status~~

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

History of Transfers

1) Dept makes presentation

Memo is Joe's testimony

* Transfer history / Memo	Steve/Lou
---------------------------	-----------

Application for transfer (current of Woodson).

Scott - 2-103 Develop imagery
Dave - Hearing officer

Loic - 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 & Wootan

Would app for transfer be appropriate to attach to dec. ^{request}

Scott King

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

Basin	Sequence	Subirrigation	Flow - cfs	Volume - af	Right Acres	FPU Acres	cfs/acre	af/acre	Status	Owner	POD	Use	Comments	Flow - cfs
2	2208		70.7	18225	3865		0.02	5.00	250	Parent - split to parts A & B per transfer 5125				70.7
	2208 A		68.9	16725	3865		0.0168	4.20	250	Parent - split to parts D & E per transfer 5125				77.3
	2208 B		12.8	3000	640		0.02	3.00	250	Parent - split to parts D & E per transfer 5125				70.7
			70.7	19625	4625		0.0172	4.31	250	Black Mesa, Bryant, Woolan				70.7
	2208 C		8.6	3736.33	440		0.02	6.49	424	Active	BLM	68 11E S9 NWSW Lot 6	Irrigation	65.14
	2208 D		64.5	16323	3865		0.0167	4.22	253	Parent - split to 2-10186, 2-10187 by Transfer 5714				12.16
	2208 E		2.4	401.7	120		0.02	3.35	187	Active	City of Glendale Ferry	68 11E S9 NWSW Lot 6	Irrigation	65.14
			66.9	16724.7	4017		0.0167	4.22	253	Parent - split to 2-10186, 2-10187 by Transfer 5714				12.16
	10188		92.34	14297.8	3257		0.0161	4.39	273	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	92.34
	10187		12.16	2038.2	608		0.02	3.35	187	Active	J R Simplot Revocable Trust	68 11E S9 NWSW Lot 6	Irrigation	12.16
			64.5	16323	3865		0.0167	4.22	253	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	64.5
	10186		49.51	13814.2	3115.5		0.0159	4.43	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	49.51
	10185		2.83	735.6	141.5		0.02	3.35	187	Active	Smith, Robert & Connie	68 11E S9 NWSW Lot 6	Irrigation	2.83
			52.34	14267.8	3257		0.0161	4.39	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	52.34
	10190		48.41	13767.5	3110.5		0.0159	4.44	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	48.41
	10191		0.1	16.7	5		0.02	3.34	187	Active	Crowley, Ralph & Alma	68 11E S9 NWSW Lot 6	Irrigation	0.1
			48.51	13814.3	3115.5		0.0159	4.43	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	48.51
	10183		49.38	13762.6	3109		0.0159	4.44	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	49.38
	10184		0.03	6	1.5		0.02	3.33	187	Active	CMCC	68 11E S9 NWSW Lot 6	Irrigation	0.03
			48.41	13767.5	3110.5		0.0159	4.44	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	48.41
	10208		48.16	13755.7	3098		0.0159	4.44	280	Active	CMCC	68 11E S9 NWSW Lot 6	Irrigation	48.16
	10209		0.22	36.8	11		0.02	3.35	187	Active	CMCC	68 11E S9 NWSW Lot 6	Irrigation	0.22
			48.38	13762.5	3109		0.0159	4.44	279	Parent - split to 2-10186, 2-10187 by ownership change	CMCC	68 11E S9 NWSW Lot 6	Irrigation	48.38

Flow - cfs	Volume - af	Right Acres
Sum of active portions:	88.5	23630.03
Amount exceeding original right:	8.8	10280.7
Sum of all rights:	107.56	33910.73
Capacity:	107.56	33910.73

LICENSE										RECOMMENDATION									
Volume - at Right Acres PPU Acres/decade	all/dec	status	Owner	POD	Use	Comments	Flow - cfs	Volume - at Right Acres PPU Acres/decade	all/dec	status	Owner	Use	Comments						
13309.39	3985	0.02	3.35	167 B by 15125	CMCC			79.7	13309.39	3985	0.02	3.35	167 Parent						
12937.69	3985	0.02	3.35	167 D by 15174	CMCC			68.9	11167	3945	0.02	3.35	167 Parent	CMCC					
401.7	120	0.02	3.35	167 Active	Glenn Ferry	Municipal		12.8	2142	640	0.02	3.35	167 Active	Black Mesa, Bryant, Woodan					
13338.39	3985	0.02	3.35	167				79.7	13338.39	3985	0.02	3.35	167						
10602.4	3257	0.02	3.35	167 Active Transferred	CMCC	ES 4E S&SW Lot	Transfers Pending	0	0	0			Deadlow	BLM	Recommended as 2-10206				
2052.2	600	0.02	3.35	167 Active	J R Simple 9	Irigation	Claimed as 2-10187	64.5	10785	3225	0.02	3.35	167 Parent	CMCC					
								2.4	401.7	120	0.02	3.35	167 Active	City of Glenn Ferry	Municipal				
								68.9	11167.003	6345	0.02	3.35	167						
13814.2	3115.5	0.0189	4.43	278 T66124	CMCC			82.34	8760	2617	0.02	3.35	167 Parent	CMCC					
								12.16	2035	609	0.02	3.35	167 Active	J R Simple 9 Revocable Trust					
								64.5	10785.303	3225	0.02	3.35	167						
13762.5	3110.5	0.0189	4.44	278 T66532	CMCC			49.51	8268.9	2470.5	0.02	3.35	167 Parent	CMCC					
								0.1	15.7	5	0.02	3.34	167 Active	Crowley, Ralph & Alma					
								49.51	8268.5	2478.5	0.02	3.35	167						
13762.5	3109	0.0159	4.44	278 T66980	CMCC			49.59	8264.9	2469	0.02	3.35	167 Parent	CMCC					
								0.03	5	1.5	0.02	3.35	167 Active	CMCC					
13697.5	3110.5	0.0189	4.44	278	CMCC			49.41	8268.8	2470.5	0.02	3.35	167						
13763.7	5098	0.0159	4.44	280 Active	CMCC		Irigation	49.16	8227.9	2458	0.02	3.35	167 Active	CMCC	640				
38.8	11	0.0200	3.35	167 Active	CMCC		Irigation	0.22	28.8	11	0.02	3.35	167 Active	CMCC					
13922.5	3109	0.0159	4.44	278	CMCC			49.59	8264.7	2468.0	0.02	3.35	167						
Flow - cfs Volume - at Right Acres																			
								79.7	13338.3	3985									
								0	-4.1	0									
								8.4		320	0.020		Active	Black Mesa, Bryant, Woodan	priority 8/11/1985				
								10.54		600	0.016		Active	Trail	recommended priority 8/10/1985				
								98.84											
								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.

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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.

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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.

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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.

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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. *assumption*

Associated SRBA claims are as follows:

2-2209B-Aplicants- 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
2-4021*

Original Claims

FOUND

NOT FOUND

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

J-4021 12/1/1989 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 - ARMY

~~2-2209~~ - note defined by BLM

2-2209A CMCC - Not Signed
"Split into A02-2209 D9 E per transfer #5125"

3985 acres, 79.7 cfs

19,925 AFA listed as TOTAL & CONSUMPTIVE

See file A02-2209 D, near bottom left

Don Sharp 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 D9E signed April 18, 1997 by applicants

rec'd April 10, 97

Approved May 12, 1998

LICENSE

Acres	all/acre	eff/cfs	Status	Owner	POD	Use	Comments
0.02	3.35	187 B by T1125	Parent - Split into A & B	CMCC			
0.02	3.35	187 D by T5714	Parent - Split into C & D	CMCC			
0.02	3.35	187 Active	Glenns Ferry	CMCC		Municipal	
0.02	3.35	187 Active	Transfers Pending	CMCC		Irrigation	
0.02	3.35	187 Active	SS 4E SS 4 SESW Lot	J R Simplot		Irrigation	Claimed as 2-10187
0.0159	4.43	275 T66124	Parent - Split by	CCMC			
0.0159	4.43	275 T66552	Parent - Split by	CCMC			
0.0159	4.43	275 T66880	Parent - Split by	CCMC			
0.0200	3.33	187		CMCC			
0.0159	4.43	280 Active		CMCC		Irrigation	
0.0200	3.35	187 Active		CMCC		Irrigation	
0.0159	4.43	275		CMCC			

RECOMMENDATION

Flow - cfs	Volume - af	Right Acres	PPU Acres	cfs/acre	all/acre	eff/cfs	Status	Owner	POD	Use	Comments
79.7	13339.33	3985		0.02	3.35	187	Parent				
66.9	11197	3545		0.02	3.35	187	Parent	CMCC			
12.8	2142	647		0.02	3.35	187	Active	Black Mesa, Bryant, Woodson			
79.7	13339.33	3985		0.02	3.35	187					
RECOMMEND 2-2289C AS DISALLOWED, OR SPLIT UP PART A FURTHER, PART C, IF IT EXISTS FOR BLM, IS PART OF A.											
2.4	401.7	120		0.02	3.35	187	Parent	CMCC			
66.9	11197.003	3545		0.02	3.35	187	Active	City of Glenns Ferry	Municipal		
62.34	8760	2617		0.02	3.35	187	Parent	CMCC			
12.15	2035	608		0.02	3.35	187	Active	J R Simplot Revocable Trust			
64.5	10795.303	3225		0.02	3.35	187					
48.51	8268.5	2475.5		0.02	3.35	187	Parent	CMCC			
2.83	475.8	141.5		0.02	3.35	187	Active	Smith, Robert & Connie			
62.34	8760.1	2617		0.02	3.35	187					
48.41	8268.8	2470.5		0.02	3.35	187	Parent	CMCC			
0.1	18.7	5		0.02	3.34	187	Active	Crowley, Ralph & Alma			
48.51	8268.5	2475.5		0.02	3.35	187					
48.38	8264.8	2469		0.02	3.35	187	Parent	CMCC			
0.03	5	1.5		0.02	3.33	187	Active	CMCC			
48.41	8268.8	2470.5		0.02	3.35	187					
48.18	8268.0	2458		0.02	3.35	187	Active	CMCC			
0.22	38.8	11		0.02	3.35	187	Active	CMCC			
48.38	8264.8	2469.0		0.02	3.35	187					
Flow - cfs Volume - af Right Acres											
79.7	13339.33	3985									
0	0	0									

Highlighted rights were transferred and have administrative finality.

Disallow purchase - No action

4/1-10/31 Licensed Period of Use

Black Mesa / Cottonwood Mutual Canal Company / c/o review
Created by: S King, 9/5/2003

CLAIM

Basin	Sequence	Split	Flow - cfs	Volume - of Right Acres	PFU Acres	cfs/acre	alloc	status	Owner	POD	Use	Comments	Flow - cfs	Volume - of Right Acres
2	2209		76.7	18028	3985	0.02	5.00	250 Parent - split to para A & B per transfer 5125					76.7	18028
	2209 A Split		66.9	18725	3985	0.016788	4.20	Parent - split to para D & E per transfer 5125					77.3	18937.63
	2209 B		12.8	3000	840	0.02	5.00	(D, Cottonwood CC, 64.5 cfs, 3985 acres, E;	Black Mesa, Bryant, Woolan		Irrigation		2.4	401.7
	2209 C		76.7	18028	4626	0.017232	4.31	250 Active					76.7	18028
	2209 D		8.8	3765.33	440	0.02	8.49	250 Active	BLM	65 11E 59 NWSW Lot 6	Irrigation		86.14	10002.4
	2209 E		64.5	18028	3985	0.016688	4.22	253 Transfer 5714	City of Glenna Ferry	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation	See also T8714 in file. See transfer conditions of approval, right combined with 2-2308, 2-7208	12.16	2005.2
	10186 Split		52.34	14287.8	3257	0.01607	4.39	Parent - split to 2-10186, 2-10187 by	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.51	13914.2
	10187		12.16	2005.2	809	0.02	3.35	Transfer 5714	J H Simplot Revocable Trust	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		0.1	16.7
	10188 Split		64.5	18028	3985	0.016688	4.22	253 Active					49.51	13914.2
	10189		48.51	13814.2	3115.5	0.016892	4.43	Parent - split to 2-10188, 2-10189 by	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.51	13914.2
	10190		2.83	475.0	141.6	0.02	3.35	Transfer 5714	Saith, Robert & Condo	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		0.1	16.7
	10191		62.34	14287.8	3257	0.01607	4.39	253 Active					49.51	13914.2
	10192 Split		49.41	13797.5	3110.5	0.016893	4.44	Parent - split to 2-10192, 2-10193 by Transfer	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.41	13797.5
	10193		0.1	16.7	5	0.02	3.34	Transfer 5714	Crowley, Ralph & Alma	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		0.1	16.7
	10194 Split		49.38	13792.5	3109	0.016893	4.44	Parent - split to 2-10194, 2-10195 by Transfer	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.38	13792.5
	10195		0.03	5	1.5	0.02	3.33	Transfer 5714	CMCC	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		0.03	5
	10200 Split		49.41	13797.5	3110.5	0.016893	4.44	Parent - split to 2-10200, 2-10201 by Transfer	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.41	13797.5
	10201		49.16	13755.7	3088	0.016893	4.44	Parent - split to 2-10201, 2-10202 by Transfer	CMCC	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		49.16	13755.7
	10202		0.22	36.8	11	0.02	3.35	Transfer 5714	CMCC	65 11E 59 NWSW Lot 6 65 10E 59 NWSW Lot 7 65 10E 59 NWSW Lot 8 65 10E 59 NWSW Lot 9	Irrigation		0.22	36.8
	10203		49.38	13792.5	3109	0.016893	4.44	Parent - split to 2-10203, 2-10204 by Transfer	CMCC	65 11E 59 NWSW Lot 6	Irrigation		49.38	13792.5

Sum of active portions: 68.6 23000.03
Amount exceeding original right: 8.8 10320.7

Enter Water Right Number

Basin #: Sequence #:

Split Suffix:

Find Redegree

☒ 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

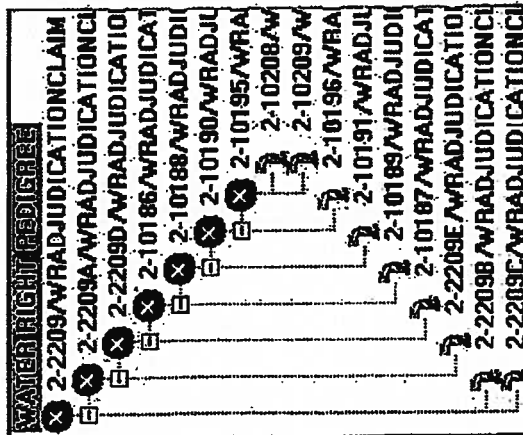
Difference

Difference

Difference

Difference

Calculate Total



Water Right	Status	Owner	Priority	Val.	Rate	Acreage	Vol.	Redegree
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	3665	163...	Transfer
2-10186 ...	Parent		02/25/1963	01	62.34	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	JR SIMPLOT SELF DECLARATION REVOCAB...	02/25/1963	01	12.16	608	203...	Transfer
2-2209E ...	Active	CITY OF GLENN'S 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 out ^{Hearing} 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.

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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

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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.

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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).

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer 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, Glenora 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 to Nov 15</u>
<u>2-2209B</u>	<u>2/25/1963</u>	<u>12.8 cfs</u>	<u>irrigation</u>	<u>March 15 to 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:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
<u>6</u>	<u>NW</u>	<u>SW</u>		<u>9</u>	<u>6S</u>	<u>11E</u>	<u>Elmore</u>	<u>Black Mesa Pump Base</u>

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	
<u>06S</u>	<u>10E</u>	<u>14</u>	<u>39</u>	<u>39</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>39</u>				<u>39</u>	<u>30</u>			<u>426AC</u>

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 GLENNS FERRY, ID 83623 (208)366-2575
Current Owner	BRENDA BRYANT GLENNS FERRY, ID 83623
Original Owner	COTTONWOOD MUTUAL CANAL CO PO BOX 789 BURLEY, ID 83318
Current Owner	BLACK MESA FARMS PO BOX 82 GLENNS FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENNS FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENNS 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 GLENNS 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 GLENNS FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENNS FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENNS FERRY, ID 83623
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENNS 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	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

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

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	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

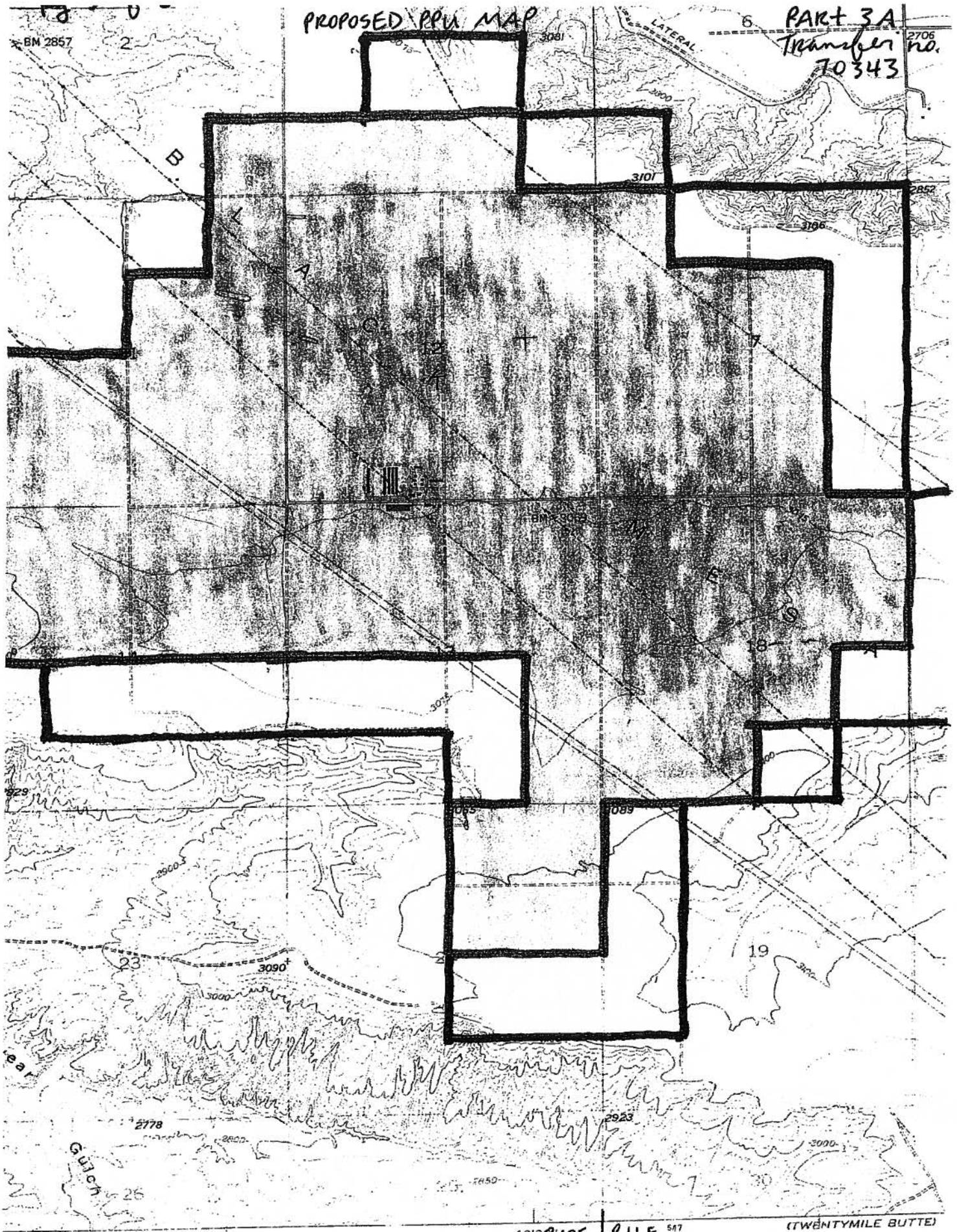
Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

PROPOSED PPU MAP

PART 3A

Transfer no.
70343



R10E | R11E 547

(TWENTYMILE BUTTE)

PART 2

Transfer No. 70343

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No 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	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

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

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	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

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

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

Wesley R. Johnston
(Signature of Applicant)

18th day of Dec, 2002

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 g Date 12/20/02 Protest filed by _____Prelim. check by _____ Fee \$570. W029939Received 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 licensee'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 *Master 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.

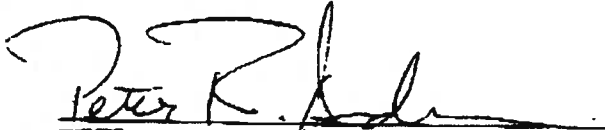
Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any 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. IDE-8875A, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Patent Number 11-91-COC1

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 Glenns 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 Glenns 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 1955

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 N $\frac{1}{4}$ 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 $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 - sec. 17, W $\frac{1}{4}$ SW $\frac{1}{4}$ 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 (82 Stat. 476), 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 NINETEEN 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 FIFTY-THREE

By John Davis
 Deputy State Director for Operations

Patent Number 11-91-0001

MICROFILMED

AUG 07 1992

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

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

2. 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 2-22098/attachment B*

Twp.	Rge.	Sec.	NE %				NW %				SW %				SE %				Totals
			1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	

(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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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 GLENNS 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 GLENNS FERRY, ID 83623
Current Owner	WESLEY R WOOTAN PO BOX 636 GLENNS FERRY, ID 83623 (208)366-2575
Current Owner	DON J BRYANT GLENNS FERRY, ID 83623
Current Owner	CHRISTINE W WOOTAN PO BOX 636 GLENNS 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 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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PART 2

Transfer No. 70343

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)

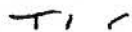
2. Point(s) of Diversion:

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**

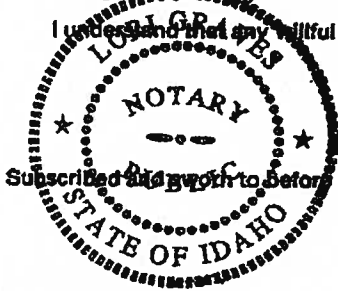
1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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 Dec, 192002.

Wesley R. Wooten
(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

Receipted 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).

ATTACHMENT B

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 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. 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.

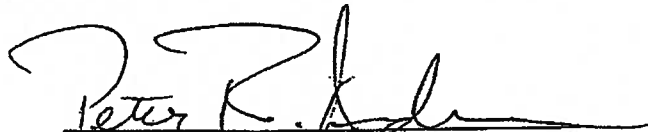
Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any 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.


PETER R. ANDERSON
Hearing Officer

CERTIFICATE OF SERVICE

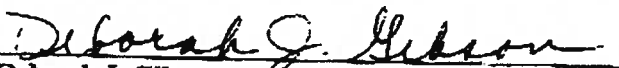
I HEREBY CERTIFY that on this 22nd day of January, 2002, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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 Christina 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. 943.

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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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 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-14858, 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 $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 - sec. 17, W $\frac{1}{4}$ 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 FIFTYTHIR.

By John Davis
 Deputy State Director for Operations

Patent Number 11-91-0001

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AUG '07 1992

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CIVIL SERVICE



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