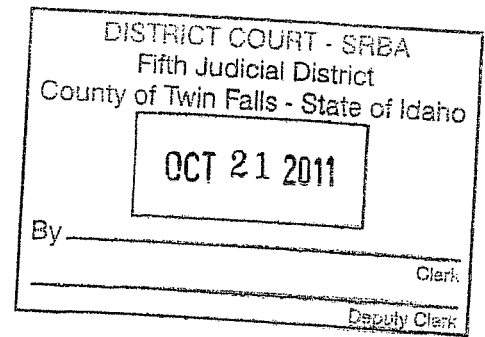


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DEPARTMENT OF
WATER RESOURCES



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	)	ORDER DENYING MOTION TO FILE
	)	LATE OBJECTION
	)	
	)	SUBCASE NOS.: 22-265E, 22-594, 22-
	)	13479, 22-13987, AND 22-13988

I. PROCEDURAL BACKGROUND

These subcases were claimed by DKJ Farms LLC and Woodmansee Johnson Canal Company (hereafter collectively referred to as “DKJ Farms”). George Brown and James Wood (hereafter “Objectors”) filed timely *Objections* to the original *Director’s Report* recommendations. *Amended Objections* were lodged on July 17, 2007, July 23, 2007, August 20, 2008, and August 25, 2008. The *Objections* lodged on August 25, 2008 were treated as *Motions to File Amended Objections*. The Court allowed the August 25, 2008 *Amended Objections* to be filed in *Order Granting Motion to Amend Objection and Setting Deadline* (Dec. 22, 2008). However, that *Order* cautioned that the *Objections* could not seek to overrule past administrative transfer decisions.

Subsequently, IDWR filed *Amended Director’s Reports* (December 30, 2010) for these subcases. The Objectors did not file timely *Objections* to the *Amended Director’s Reports*. However, the Objectors filed *Motions for Late Objections*. The *Motions* were opposed by DKJ Farms. DKJ Farms argued that the late *Objections* do not allege a meritorious position.

II. STANDARD OF REVIEW

A. Late Objections

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections. However, the court’s administrative rules set forth that *Motions to File a Late Notice*

of Claim are to be reviewed under the criteria of I.R.C.P. 55(c) and 60(b). *SRBA Administrative Order 1 (AO1) § 4 (d)(2)(d)*.

According to case law and the Rules of Civil Procedure, a court applies the criteria of I.R.C.P. 55(c) when determining whether to allow the filing of a late answer. Motions for Late Objections have been reviewed in the SRBA under the same criteria of Rule 55(c). The proponent of a Motion for Late Objection, like a party seeking to file an untimely answer, must show both “good cause” for untimeliness and the existence of a “meritorious position.” I.R.C.P. 55(c).

The SRBA has recently affirmed the legal standard of what must be shown to satisfy “good cause” and “meritorious position.” The legal standard for “good cause” for untimeliness of an objection is determined under the standard for setting aside the entry of a default under I.R.C.P. 55(c). The “good cause” standard under Rule 55(c) is more lenient than the standard under Rule 60(b). The I.R.C.P. 55(c) standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting aside the judgment would prejudice the opponent; and
- 3) whether a meritorious position has been presented.

Order on Motion to Set Aside Partial Decrees and File Late Objections (A.L. Cattle) (Jan. 31, 2001).

The SRBA District Court has held that a party may not subsequently challenge elements or conditions decided in a license or transfer. *Objections* can be dismissed under I.R.C.P. 12(b) if the only issues raised were decided by prior transfers. Collateral attacks on licenses or transfer decisions are not appropriately raised in the SRBA. A party may raise issues based on facts which occur after an administrative decision if they impact the elements of a water right. The SRBA court is not the proper venue for appeals of IDWR administrative decisions. *Order on Motion to Dismiss Objections* (Subcase no. 37-494 et. al.) (Oct. 10, 2008)

Abandonment and forfeiture are distinct legal concepts. Forfeiture is a statutory notion based on I.C. §42-222(2) which establishes that a water right may be lost if not applied to a beneficial use for five consecutive years. I.C. §42-222(2); *Jenkins v. State Dept. of Water Resources*, 103 Idaho 384, 647 P.2d 1256(1982). Forfeitures are disfavored under Idaho law, and forfeiture must be proven by clear and convincing evidence. *Id.* at 389, 647 P.2d at 1261.

The law of the case in the SRBA is that the five-year statutory period for forfeiture is tolled once a claim is filed. The issue was address in *Order on Challenge* (Subcases 36-02708 et. al.) (Dec. 29,

1999) (“*Facility Volume Decision*”). In that decision, the SRBA held that the filing of a claim to a water right is akin to a quiet title action; the filing of a quiet title action tolls the running of the statute of limitations for establishing title by adverse possession. *Id.* at 26-28. The *Facility Volume Decision* held, therefore, that the filing of a claim in the SRBA tolls the running of the statutory forfeiture period. The tolling of forfeiture was recently upheld by the SRBA District Court in *Memorandum Decision and Order on Challenge* (Subcase 02-2318A) (Aug. 29, 2011).

Abandonment of a water right is a common law concept. The abandonment of a water right requires both the intent to abandon and the actual surrender or relinquishment of a water right. *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 15, 156 P.3d 502, 516 (2007). In addition, the intent to abandon a water right must be shown by clear, unequivocal and decisive acts. *Id.*

III. DISCUSSION

A. Amended Director’s Reports.

These water rights are claimed on Moody Creek in Basin 22. IDWR filed *Amended Director’s Reports* for 22-265E, 22-594, 22-13479, 22-13987, and 22-13988 on Dec. 30, 2010.

1. 22-265E and split rights 22-13987 and 22-13988

22-265E was split into 22-13987 and 22-13988. Subcase 22-265, from which these rights are derived, was subject to two administrative transfers. T-2034 was approved October 7, 1977. Transfer T-3002 was approved July 22, 1985. Transfers T-2034 and T-3002 are attached hereto as Exhibit A. Both transfers were approved pursuant to I.C. § 42-222.

The *Director’s Report* recommended 22-13987 for 4.0 cfs on 547.7 acres with a priority of March 15, 1879. This water right included a change in the place of use. 22-13988 was recommended for 4.0 cfs on 547.7 acres with a priority of March 15, 1879. The Objectors assert that these rights should not exist. There was no assertion of forfeiture or abandonment of these rights.

2. 22-594

22-594 was claimed August 24, 1988 by Woodmansee Johnson Canal Co. The *Amended Director’s Report* recommended the right for 6.4 cfs with a priority of March 15, 1881. The right was recommended with a place of use of 1982.2 acres. A timely *Objection* was filed by DKJ Farms. The late *Objection* asserts that the water right should not exist. The *Objection* asserts that I.C. § 42-222 does not allow transfers to harm existing water rights or to damage the public interest or to violate conservation laws. The *Objection* states “SRBA will also need to decide

water right issues that were not addressed by the IDWR, such as violations of conservations laws and loss of public interest, that have resulted from use and misuse of these water rights.” The late *Objection* also claims this right was forfeited or abandoned.

3. 22-13479

22-13479 was claimed by DKJ Farms. The *Amended Director’s Report* recommended the right for 3.1 cfs on 547.7 acres with a priority of May 1, 1980. This right was claimed as a beneficial use enlargement of rights 22-4195, 22-13987, and 22-13988 pursuant to I.C. § 42-1426.

A timely *Objection* was filed by DKJ Farms.

The late *Objection* did not dispute the elements. Instead, the late *Objection* asked the SRBA court to resolve conservation issues, public interest issues, and the “use or misuse of these water rights.” There was no assertion of forfeiture or abandonment of this right.

B. Objections

To determine whether a meritorious position was alleged, the Court scrutinized the late *Objections*, the Objectors’ *Trial Briefs*, and *Witness and Exhibit Lists*. Usually, parties to the SRBA file *Objections* to particular elements, such as quantity or priority. Here, the Objectors did not dispute the elements of the water rights. They argued instead that the water rights should be disallowed in their entirety. However, the Objectors alleged forfeiture or abandonment only for 22-594. The *Objections* did not allege forfeiture or abandonment for the other rights. DKJ Farms argued that the late *Objections* lack a meritorious position because they do not allege a valid period of forfeiture for 22-594 or raise valid disputes for the other rights. DKJ Farms argued that Objectors’ environmental concerns and disputes with prior transfers lack merit in the SRBA.

1. Objections Seek General Environmental Protection for Moody Creek

The *Exhibit and Witness List* show the *Objections* raise general environmental issues rather than disputes with elements of these rights. For example, the *Exhibit List* includes photos of fish in Moody Creek, photos of stagnant water of Moody Creek, and photos of dead cutthroat trout in Moody Creek.

A review of the *Trial Brief* shows a focus on Moody Creek, rather than the individual water rights or their elements: “This Court has jurisdiction to decide this issue since injury to the Objectors has occurred following IDWR approval. DKJ Farms significantly dewatered Moody Creek starting in 2001, killing cutthroat trout and harming downstream water users each year.” *Trial Brief* at 2. The *Objections* seek protection of fish and water levels in Moody Creek:

“Objectors request this Court to restore the water flow in Moody Creek so it can regain its beneficial status as a nature and wildlife habitat for the citizens of Idaho.” *Trial Brief* at 8.

2. Objections Seek Review of Past Administrative Decisions

The *Objections* request that these rights be disallowed based on a dispute with IDWR’s administrative transfers. The *Objections* argued IDWR’s administrative decisions resulted in harm to Objectors’ water rights, illegal enlargement of rights, loss of public interest, and violation of conservation laws. *Trial Brief* at 1.

Assertions in the *Objections* and *Trial Briefs* illustrate that the late *Objections* seek reversal of prior administrative transfers: “Prior administrative decisions that approved Rights 22-00265E, 22-00594, and 22-13479 to the point of diversion of DKJ Farms and facts that occur after these decisions are illegal. These decisions and consequential facts breach Idaho Codes 42-222, 42-1425, 42-1426, and 42-202B. These rights should not exist.” *Trial Brief* at 8.

3. Objections Allege Forfeiture/Abandonment of 22-594

The *Objection* to 22-594 asserted that the right should be disallowed because it was not used for a period of five years. The *Objection* asserts that this right was not delivered by the Water Master for a period of five years. The final *Trial Brief* identified the time frame of non-use as between 1986 and 1997. *Trial Brief* (Oct. 5, 2011) at 1.

C. General Environmental Concerns

The general health of the environment and of river systems is important. However, the SRBA is not the legal forum for those issues. The SRBA Court has previously recognized that water quality and general environment issues are outside the scope of the elements to be determined by this court. The SRBA District Court acknowledged limits to environmental issues brought before the SRBA in *Order on Challenge (Consolidated Issues) of “Facility Volume Issue and “Additional Evidence” Issue* (Subcase No. 36-02708) (Dec. 29, 1999). In that decision, Presiding Judge Barry Wood recognized IDWR’s limited role in policing water quality.

IDWR’s duty with respect to water quality was outlined by the Idaho Supreme Court in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). In that case, the Supreme Court held that the primary function of “policing water quality” rests with the Department of Health and Welfare [now DEQ and EPA], not with IDWR. *Id.* at 341. The Supreme Court held that “Water Resources should condition the issuance of a permit on a showing by the applicant that a proposed facility will meet the mandatory water quality standards.” *Id.* However, once the facility is complete, “later compliance with those laws after construction of a facility generally will be a proper concern of the Department of Health and Welfare.” In these subcases before

the Court, the water rights are not in the permit stage. All the water rights have ripened into licenses, or were beneficial use claims. Since the water rights have vested and the structures are complete, it is not the current function of IDWR to police water quality. Water quality is policed by DEQ and EPA. As such, if there were to be a legitimate remark in either a permit or a license relative to water quality, it would not be directed to the existing size of the facility, but rather would be directed that the facility, regardless of its size, would be managed to meet required water quality standards.

It appears that compliance with water quality standards is a prerequisite for a water permit. However, once a water right has vested, IDWR does not police compliance with water quality standards. The Idaho Department of Environment Quality and the Environmental Protection Agency oversees water quality.

The Objectors asked this court to declare these water rights disallowed based on alleged harm to the water quality and/or quantity in Moody Creek. It should be emphasized that state and federal laws generally apply to water rights. However, water quality standards are not statutory elements of water rights in Idaho. The SRBA decides the elements of water rights, and whether water rights have been abandoned or forfeited. However, the SRBA Court is not the proper venue for determining how a water right should be used in compliance with environmental laws. Consequently, *Objections* which raise general issues about the environment do not state a meritorious position within the SRBA.

D. Transfers

22-265E and splits 22-13987 and 22-13988 were subject to two prior transfer proceedings which sought changes to the point of diversion and place of use. Transfer T-2034 approved changes in point of diversion and place of use. The approval of Transfer T-2034 allowed 4.0 cfs to be moved from 85 acres on a new place of use. Although the right was limited to 85 acres, it could be used on a 320 acre permissive place of use. Transfer T-2034 also allowed a change in point of diversion from one point on Moody Creek to another point on Moody Creek. The change was requested to better utilize the water in a sprinkler irrigation system. T-2034 was approved October 7, 1977.

Transfer T-3002 approved changes in the point of diversion and place of use. Approval of Transfer T-3002 allowed 4.0 cfs to be moved from 115 acres in T6N R40E S13 to 115 acres in T5N R41E S20 and S21. The transfer allowed the water to be used on 115 acres within a permissible place of use of 515 acres. The point of diversion was changed from one point on

Moody Creek to another point on Moody Creek. This change was requested to better utilize water in a sprinkler system. The transfer was approved July 22, 1985. There is no indication that the Objectors or their predecessors filed a protest to either transfer.

The law of the case in the SRBA is that a party may not subsequently challenge elements or conditions decided in a license where the party was involved in the original proceeding. The SRBA Court has applied that analysis to transfer procedures because the two procedures are similar. See, *Order on Motion to Dismiss Objections and Request for Attorney Fees* (Subcase 37-494 et. al. Oct. 10, 2008) p. 5. The SRBA Court has prohibited nonparties from collaterally attacking licensing decisions if they or their predecessors had an opportunity to protest the license, but failed to do so. Accordingly, the late *Objections* would be dismissed if the only issues raised were decided by prior transfers. Collateral attacks on licenses or transfer decisions are not appropriate in the SRBA. However, a party may raise issues based on facts which occur after the administrative decision if they impact the elements of a water right. Here, the Objectors alleged facts which occurred after the transfer decision, but the court must determine whether any of those allegations have any impact on the elements of the water rights.

E. Forfeiture

The *Objections* asserted forfeiture for 22-594 based on five years of non-use. The Objectors argued: "Because this right has not been beneficially used by DKJ Farms or Woodmansee Canal in over five years, this right becomes abandoned and should not exist." *Trial Brief* at 9. The latest *Trial Brief* identified the period of forfeiture as 1986 through 1997. *Trial Brief* (Oct. 5, 2011) at 1. The issue is whether Objectors have asserted a meritorious position with regard to forfeiture.

The rule is that a water right may be lost if not applied to a beneficial use for five consecutive years. I.C. § 42-222(2); *Jenkins v. State Dept. of Water Resources*, 103 Idaho 384, 647 P.2d 1256(1982). Forfeitures are disfavored and must be proven by clear and convincing evidence. *Id.* at 389.

In addition, the SRBA District Court has held that the five-year period for forfeiture is tolled once a claim is filed. *Order on Challenge* (Subcases 36-02708) (Dec. 29, 1999) ("Facility Volume Decision"). Water right 22-594 was claimed in the SRBA by Woodmansee Johnson Canal Co. on August 24, 1988. Objectors assert that forfeiture occurred beginning in 1986. As a matter of law, the forfeiture period tolls once the claim is filed. Since the forfeiture period tolls after the

claim was filed in 1988, there is not a valid five-year period alleged by the *Objections*. If Objectors could show forfeiture occurred beginning in 1986, the forfeiture period tolls in 1988 when the claim was filed. Consequently, the *Objection* to 22-594 based on forfeiture is insufficient to show a valid five year period. Based on the forgoing, the Objectors have failed to establish a meritorious position in support of their contention that 22-594 was forfeited.

Abandonment of a water right is a common law concept. The abandonment of a water right requires both the intent to abandon and the actual surrender or relinquishment of a water right. *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 15, 156 P.3d 502, 516 (2007). In addition, the intent to abandon a water right must be shown by clear, unequivocal and decisive acts. *Id.* The *Objections* fail to set forth facts showing abandonment by clear, unequivocal and decisive acts. To the contrary, the fact that Woodmansee Johnson Canal Co. filed and actively pursued a claim for 22-594 in the SRBA tends to show that it did not intend to abandon that right. Based on the forgoing, the Objectors have failed to establish a meritorious position in support of their contention that 22-594 was abandoned.

III. FINDINGS

The SRBA Court has previously held that this court lacks jurisdiction to consider the public trust in the adjudication of water claims. The SRBA court cited the Idaho Supreme Court's decision in *Idaho Conservation League, Inc. v. State*, 128 Idaho 155, 911 P.2d 748 (1995) which determined that the public trust is not an element of a water right used to determine the priority of that right in relation to competing claims of other water right claimants. *Order on Challenge* (Facility Volume) (Subcase 36-02708) (December 29, 1999).

The SRBA Court also cited the Supreme Court's decision in *Matter of Hidden Springs Trout Ranch, Inc.*, 102 Idaho 623, 636 P.2d 745 (1981). In that case, the Supreme Court held that the public interest could not be considered with respect to rights which had vested. The water rights here have vested. These are not applications to appropriate water. These are not transfer proceedings under I.C. § 42-222. As such, the local public interest is not an element of a water right in SRBA proceedings. *Order or Challenge* at 13.

Disputes about prior IDWR administrative decisions are not within the scope of the SRBA. The Idaho Supreme Court has previously held that the proper procedure for seeking judicial review of an administrative decision is under the Administrative Procedures Act, not through other causes of action. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984). The SRBA

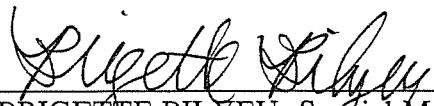
Court has upheld that reasoning in water cases. In *Memorandum Decision and Order on Challenge* (River Grove Farms) (Subcase 36-08099) (Jan. 11, 2000) the SRBA Court held that a party could not use the SRBA as a forum to bring collateral attacks on previous licensing decisions. *Id.* at 17. The SRBA Court has prohibited both parties to the prior administrative proceeding and nonparties from collaterally attacking administrative decisions if they had an opportunity to protest the decision, but failed to do so. *Order Adopting Special Master's Report and Recommendation*, (Ruby Springs) (Subcase no. 36-7092A)(Dec. 10, 1997).

Therefore, the late *Objections* fail to state a meritorious position where they raise issues already decided by prior transfers. In this instance, the *Objections* alleged that prior transfers T-3002 and T-2034 incorrectly allowed changes to these water rights. Any disputes regarding the appropriateness of the changes requested in the transfer proceedings were decided in the transfer decisions. Parties who disagreed with the transfer applications should have filed protests. Once the transfers were approved, parties who disagreed could have filed appeals under the Administrative Procedures Act. The time for appealing those administrative decisions has long passed. The SRBA is not a forum for a second, collateral appeal of IDWR administrative decisions.

The Objectors asserted that they are not disputing the transfer decisions, but the actions taken by DKJ Farms after the transfers. However, the actions referred to are utilizing the changed point of diversion and irrigating the changed places of use. Since those actions were allowed by the transfer decision, the *Objections* are attempting an end run at the transfer decisions. The SRBA does not allow collateral attacks of licensing or transfer decisions. *Objections* may raise facts which arise after a licensing or transfer decision if the facts impact the existence of the water right or the elements of the right. For example, if a valid five year period of non-use occurs after a transfer, an *Objection* on those grounds could raise a meritorious position. For subcases 22-265E, 22-13479, 22-13987, and 22-13988, no allegations of forfeiture or abandonment were alleged.

Consequently, the *Motion to File Late Objections* is **denied** because the late *Objections* fail to state a meritorious position.

Dated: October 21, 2011.


BRIGETTE BILYEU, Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO FILE LATE OBJECTIONS was mailed on October 21, 2011, with sufficient first-class postage to the following:

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UNITED STATES OF AMERICA
USDI BUREAU OF RECLAMATION

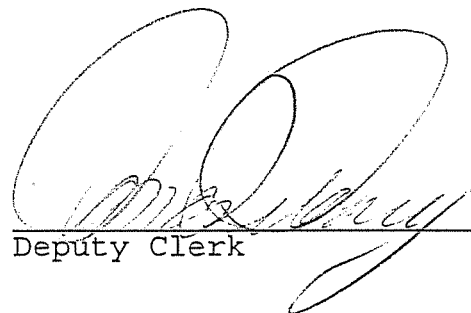
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DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098



Transfer No. 2034
 Application No. 22-0265

STATE OF IDAHO
 DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant K. Merle &/or Janice Jeppesen Phone 356-3638
 Post office address Rt. #2, Rexburg, Idaho 83440

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree to Martin Garn (Name)
 in case of Rexburg Irrigation Co. et al vs Teton Irrigation Co. et al
 dated 12/16/10 in 6th Judicial Dist. county of Fremont
 (Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
From Martin Garn to Frank Garn to applicant (copy of deed attached)

3. Source of water Moody Creek tributary to Snake River

4. Date of priority March 15, 1879

5. Water is used for the following purposes:

amount 9.60* for Irrigation purposes from Apr. 1 to Nov. 1

amount _____ for _____ purposes from _____ to _____

amount _____ for _____ purposes from _____ to _____

* right reduced to 4.80 cfs after June 20 (month/day - both dates inclusive)

6. Total amount of water under right: a. 9.60* cubic feet per second

b. _____ &/or
 acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 13
 Township 6N Range 40E, B.M., in Madison County

Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
6N	40E	13					X	X	X	X									160
		14	X			X													80
		(14)			40				10										
NOTE: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ (40 acres) and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ (10 acres) Sec. 14, T. 6N, R. 40E, was added to the above described lands in the late 30's or early 40's and has been considered a part of the original decree without benefit of filing a transfer. (see warranty deed, Instrument #78479)																			

Total number of acres to be irrigated 240

APPROVED

1. Amount of water: a. 4.00* cubic feet per second &/or 21 acre feet per annum
*Reduced to 2.00 cf.s. after June 20
b. _____

2. Point of diversion SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21 Township 5N
Range 41E, B.M., Madison County
Additional points _____

3. Place of use: _____

[illegible]

85

- a. Amount of water to be diverted 4.00 c.f.s. &/or _____ acre feet
Reduced to 2.00 after June 20 _____
- b. Point(s) of diversion SE 1/4 NW 1/4, Section 21 Township 5N
Range 41E, B.M., Madison County _____
- Additional points _____

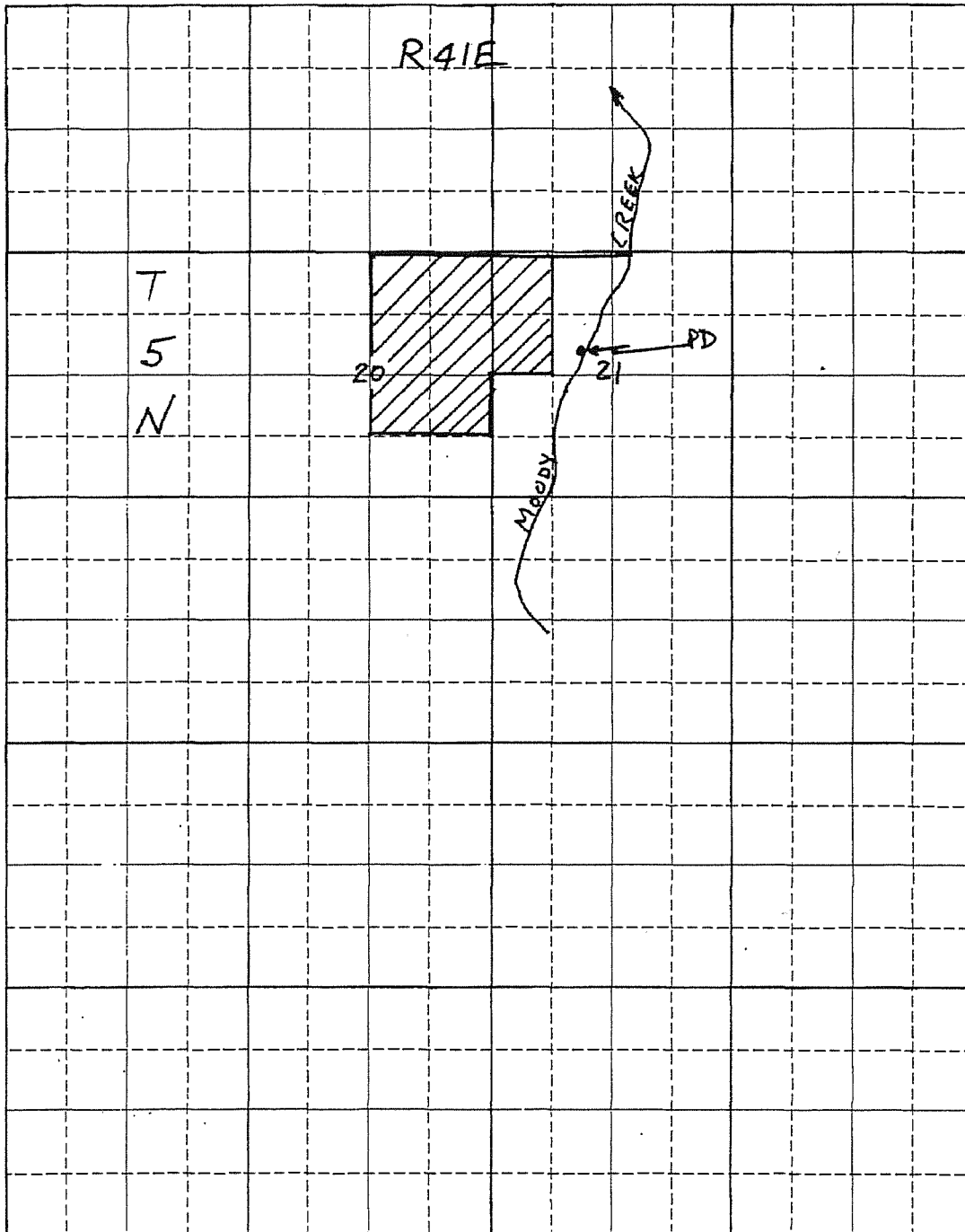
- c. Description of diverting works water to be pumped from Moody Creek within the above
description into a sprinkler system
- d. Describe the reasons for applying for a change in the point(s) of diversion _____
Better utilization of water at a point where it can be put to a beneficial
use through pipeline before it sinks and is lost in the creek channel

- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS	
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼		
*5N	41E	20	40	40	40	40										40	40			240
		21						40	40											80
			*However, no more than 85 acres of this total will be irrigated in any one year. The place of use will be rotated annually.																	

Total number of acres to be irrigated	320
---------------------------------------	-----

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

UNRECORDED

3. Remarks _____

I hereby assert that no one will be injured by such change and 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.

K. M. J. J. J. J.
(Signature of applicant)

Subscribed and sworn to before me this 17th day of December, 1976

Loren O. Halmer
(Notary public)

My commission expires March 21, 1979

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 22-0265, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

A measuring devices of a type approved by this Department shall be permanently installed and maintained as part of the diverting works. Use of water under this permit is subject to control by the watermaster of State Water District No. 01, Snake River.

Witness my hand this 7 day of October, 1977

[Signature]
Deputy Director

FOR DEPARTMENT USE ONLY

Received by aw Date 12-17-76
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Watermaster recommendation requested on 12-23-76

W.D. # 01 rec'd. _____

Art Halmer

Protest filed by _____

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial

by Gene Johnson

Transfer No. 3002Water Right No. 22-0265

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant K. Merle &/or Janice Jeppesen Phone 356-3638
Post Office address 434 Morgan, Rexburg, ID 83440

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 22-0265 Decreed to Martin Garn
in case of Rexburg Irrigation Co. et al vs Teton Irrigation Co. et al
dated in 12/16/1910 in 6th Judicial Court county of Fremont
(Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant I have a continuous lease with the present holder of this right authorizing my use of this water right in exchange for his use of water from the East Teton Canal.

3. Source of water Moody Creek tributary to Teton River

4. Date of priority 3/15/1879

5. Water is used for the following purposes:

amount 9.60 cfs for Irrigation purposes from 4/1 to 6/20
amount 4.80 cfs for Irrigation purposes from 6/21 to 11/1
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 9.60 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 13
Township 6N Range 40E, B.M., in Madison County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
6N	40E	13					X	X	X	X									160
		14	X			X													80

Total number of acres to be irrigated 240

9. Describe any other water rights used for the same purpose as described above Water delivered through the East Teton Canal based on the purchase of stock in 1966.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

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B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (if the entire right is owned by the applicant, omit part B).

4.00 cfs 4/1 6/20
2.00 6/21 11/1
1. Amount of water: a. _____ cubic feet per second &/or
b. _____ acre feet per annum
2. Point of diversion SE ¼ NW ¼, Section 13 Township 6N
Range 40E, B.M., Madison County
Additional points _____

MICROFILMED

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	40E	13					35	40	40										115

Total number of acres to be irrigated 115

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information 4.00 cfs 4/1 6/20
2.00 cfs 6/21 11/1
a. Amount of water to be diverted _____ c.f.s. &/or _____ acre feet
b. Description of diverting works Two electric motors (150 & 200 hp) with pumps, 12 inch mainline with handlines and 2 center pivots.
c. Describe the reasons for the proposed changes I wish to change the Department's records to reflect a lease agreement initiated in 1966 between Dean Graham and myself.

2. Change in point of diversion

Point of diversion SE ¼ NW ¼, Section 21 Township 5N
Range 41E, B.M., Madison County
Additional points _____

3. Change in place of use

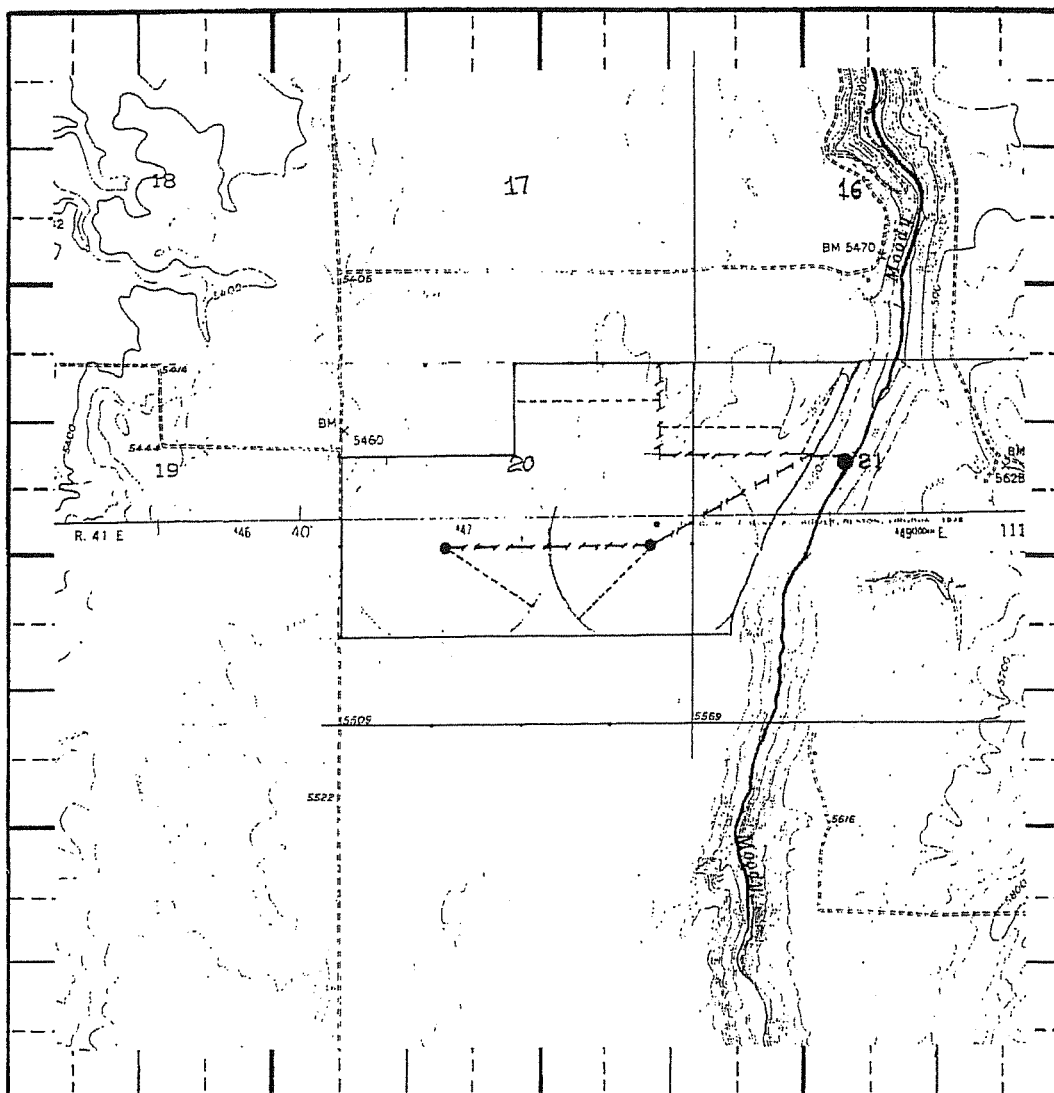
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer Land will continue to be irrigated with water obtained from purchasing stock in the East Teton Canal.

c. Describe the lands and place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	41E	20	40	40	35	40			35	40	40	35			40	35			380
		21					20	40	40	10	25								135

*No more than 115 acres of this total will be irrigated in any one year with water under this transfer. Total number of acres to be irrigated 515

- Describe any other water rights used for the same purpose as described above. T. #2034 covers 85 acres of the above lands.
- Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

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D. REMARKS

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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 17th day of February, 19 84

[Signature]
(Signature of Applicant)

[Signature]
(Notary Public)

My commission expires 6/15/85

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 22-0265 and said application is hereby APPROVED, subject to the following limitations and conditions:

1. A totalizing meter and lockable controlling works of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
2. Diversion under this right shall not exceed 288 acre-feet/annum.
3. Use of water under this right is subject to control by the watermaster of State Water District No. 01, Snake River.

Witness my hand this 22nd day of July, 19 85
[Signature]
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by <u>Emc</u>	Date <u>2-17-84</u>	Protest filed by <u>Garry J. Jeppesen - WITHDRAWN</u>
Prelim. check by <u>HWS</u>	Fee <u>50.00</u>	
Received by <u>BP</u>	Date <u>2/17/84</u> # <u>33455</u>	
Published in <u>Standard Journal</u>	Copies of protest forwarded by <u>CW</u>	
Pub. dates <u>3/8 & 3/15/84</u>	Hearing held by _____ Date _____	
Watermaster recommendation requested on _____	Recommended for <u>approval</u> denial	
<u>WD #1</u> rec'd. <u>4-02-84</u>	by <u>RSC Sim</u>	