

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 43-2409A
Date Received: 2/22/93
Receipt No: X777777
Received By:

AMENDED

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

BARBARA GARDINER Phone: (208)645-2563

HC 72 BOX 2038
MALTA ID USA 83342

2. Date of Priority: 04/23/1954

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13S	26E	36	SE SE	CASSIA	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	10/31	3.2	640

7. Total Quantity Appropriated is:
3.2 C.F.S. and/or 640 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
13S	26E	36	NE SE	IRRIGATION	30
			NW SE	IRRIGATION	30
			SW SE	IRRIGATION	33

			SE	SE	IRRIGATION	40
					Section Acres	133
14S	26E	1	NE	NE	IRRIGATION	27
					Section Acres	27
					Total Acres	160

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS
THE BLM HAS QUIT-CLAIMED TO ME THE WATER RIGHT I AM CLAIMING, AND I PLAN TO TRANSFER
THE WATER TO LAND THAT I OWN. THE LAND IS UNDER THE CARE OF THE BUREAU OF LAND
MANAGEMENT (BLM). FOR INFORMATION WRITE: BLM, BURLEY DISTRICT, RT. 3 BOX 1, BURLEY,
ID 83318

***** AS A RESULT OF
BEING CLAIMED BY BOTH GARDINER AND BLM, THIS CLAIM HAS BEEN RENUMBERED TO A43-02409A
***** 6/28/1995, DJ: CHANGE OF OWNER PER 1409(7) REC'D 4/7/94. PLACE OF USE AND
DIVERSION DESCRIPTION AMENDED PER APPROVED TRANSFER #4294. BOTH A & B PARTS OF RIGHT
ARE IN WATER SUPPLY BANK

CORRECTED DATA ENTRY ERROR IN SESE SECTION 36 FROM R27E TO R26E.

15. Basis of Claim: License

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A43-02409A

Date Received: 2/22/1993

Receipt No: X777777

Received By: DF 6/28/95

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: BARBARA GARDINER 208-645-2563
Address: HC 72 BOX 2038
MALTA ID 83342

2. Date of Priority: APR 23, 1954

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	26E	36		SE	SE		CASSIA

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	10/31	3.200		640.00

7. Total Quantity Appropriated is:
3.200 C.F.S. (and/or) 640.00 A.F.A.

8. Total consumptive use is 480.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	26E	36	NE	SE		IRR	30.0
			NW	SE		IRR	30.0
			SW	SE		IRR	33.0

10. Place of Use: Continued

Range	Section	1/4 of 1/4	Lot	Use	Acres
				Section Acres	93.0
27E	36	SE	SE	IRR	40.0
				Section Acres	40.0
26E	1	NE	NE	IRR	27.0
				Section Acres	27.0
Total Acres					160.0

S/b
R26E →

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS.
THE BLM HAS QUIT-CLAIMED TO ME THE WATER RIGHT I AM CLAIMING, AND
I PLAN TO TRANSFER THE WATER TO LAND THAT I OWN. THE LAND IS UNDE
R THE CARE OF THE BUREAU OF LAND MANAGEMENT (BLM). FOR INFORMATI
ON WRITE: BLM, BURLEY DISTRICT, RT. 3 BOX 1, BURLEY, ID 83318.

AS A RESULT OF BEING CLAIMED BY BOTH GARDINER AND BLM, THIS CLAIM
HAS BEEN RENUMBERED TO A43-02409A

6/28/1995, DJ: CHANGE OF OWNER PER 1409(7) REC'D 4/7/94. PLACE
OF USE AND DIVERSION DESCRIPTION AMENDED PER APPROVED TRANSFER
#4294. BOTH A & B PARTS OF RIGHT ARE IN WATER SUPPLY BANK.

15. Basis of Claim: LICENSE

Water Right Number: 24883

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: _____



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED

Please print or type
(see instructions on back of page)

APR 07 1994

Department of Water Resources
Southern Region Office

DATE OF CLOSING: 3-29-1994

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.

Lot _____, Block _____, Subdivision/Townsite _____.

If you have additional legal descriptions, please attach separate sheet.

[] Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

[] Water Right Number(s)
Assigned by IDWR: A43-02409A

[] Name and Address of Former
Owner/Claimant(s)(Seller): Nathan F. Gardiner

HC 72 Box 2038

Malta, ID 83342

[] New Owner/Claimant
(Purchaser): Barbara Gardiner

[] New Mailing Address: HC 72 Box 2038

Malta, ID 83342

[] New Telephone Number: () 645 - 2563

[] Does the change in ownership result in a splitting of the water right owned/claimed? yes X no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

NOTE: I have purchased this water right but not the land to which it

is appurtenant. Transfers will be filed to move the right to

other lands. I am the mother of former owner Nathan Gardiner.

[] Attach proof of
ownership, describe
proof attached: Quitclaim Deed

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

[] Signature of New
Owner/Claimant(s) Barbara Gardiner

Date 4-7-94

Date _____

[] Signature of Former
Owner/Claimant(s): _____

Date _____

Date _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: 6/28/95 By: [Signature]

Further Action Needed: _____

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any: _____

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner



Priority Date - April 23, 1954;

Point of Diversion - SE1/4SE1/4 of Section 36, Township 13 South, Range 26
East B.M.

Quantity - 3.20 c.f.s., not to exceed 640 acre-feet per year;

Period of Use - March 15 to November 15:

Place of Use - A total of 160 acres in the SE1/4 of Section 36, Township 13 South, Range 26 East B.M. and the NE1/4NE1/4 of Section 1, Township 14 South Range 26 East B.M.;

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

IN WITNESS WHEREOF, Grantor has hereunto subscribed his name to this instrument this 29th day of March, 1994.

Nathane. Zardine

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of March, 1994 before me the undersigned, a Notary Public for Idaho, personally appeared Nathan F. Gardiner, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Mary Bostrom
Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 7/17/98



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

June 28, 1995

PHILIP E. BATT
Governor

KARL J. DREHER
Director

BARBARA GARDINER
HC 72 BOX 2038
MALTA, ID 83342

RE: SRBA Claim(s)

Dear Mrs Gardiner:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. In addition, the place of use and point of diversion under this right has been amended based on the approved transfer #4294. Please note that diversion of water under this right is not authorized until the right is released from the Water Supply Bank by the Water Resource Board.

Please find the enclosed copies of the computer record of the claim(s) noting the changes in claimant, well site and farmland description. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Douglas Jones, P.E.
Water Rights Supervisor

enc.

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: **A43-02409A**

Date Received: 2/22/1993

Receipt No: C017674

Received By: _____

suffix added

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: NATHAN F. GARDINER 208-645-2563
Address: HC 72 BOX 2038
MALTA ID 83342

2. Date of Priority: APR 23, 1954

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
13S	27E	34	NE	SE	NW		CASSIA

5. Description of diverting works:
20" X 800' WELL WITH 250 HP PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.200		640.00

7. Total Quantity Appropriated is:
3.200 C.F.S. (and/or) 640.00 A.F.A.

8. Total consumptive use is 480.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
13S	27E	33	SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0

10. Place of Use: Continued

Section Acres 160.0

Total Acres 160.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS.
THE BLM HAS QUIT-CLAIMED TO ME THE WATER RIGHT I AM CLAIMING, AND
I PLAN TO TRANSFER THE WATER TO LAND THAT I OWN. THE LAND IS UNDE
R THE CARE OF THE BUREAU OF LAND MANAGEMENT (BLM). FOR INFORMATI
ON WRITE: BLM, BURLEY DISTRICT, RT. 3 BOX 1, BURLEY, ID 83318.

AS A RESULT OF BEING CLAIMED BY BOTH GARDINER AND BLM, THIS CLAIM
HAS BEEN RENUMBERED TO A43-02409A

15. Basis of Claim: LICENSE

Water Right Number: 24883

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: _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

22-Nov-1993

NATHAN F GARDINER
HC 72 BOX 2038
MALTA ID 83342

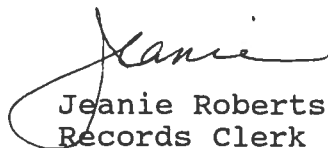
RE: Snake River Basin Adjudication (SRBA)
Cassia County - #A43-02409
Identification Number Change

Dear Claimants:

The Identification Number of your Notice of Claim to a Water Right has been changed from A43-02409 to A43-02409A. The suffix has been added to the number in order to distinguish your claim from other claims that may claim a portion of the same original water right. This change does not affect your claim in any other way.

Enclosed is a computer-generated copy of your claim with the new Identification Number. Refer to this record number in any future inquiries or correspondence.

Sincerely,


Jeanie Robertson
Records Clerk

/jr
Enclosures:
Claim A43-02409A

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: A43-02409
Date Received: ~~7/16/1990~~ 2/22/93
Receipt No: C017674
Received By: HHT

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: NATHAN F. GARDINER 208-645-2563
Address: HC 72 BOX 2038
MALTA ID 83342

2. Date of Priority: APR 23, 1954

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
13S	27E	34	NE	SE	NW		CASSIA

5. Description of diverting works:
20" X 800' WELL WITH 250 HP PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.200		640.00

7. Total Quantity Appropriated is:
3.200 C.F.S. (and/or) 640.00 A.F.A.

8. Total consumptive use is 480.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
13S	27E	33	SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	160.0
					Total Acres	160.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS.
THE BLM HAS QUIT-CLAIMED TO ME THE WATER RIGHT I AM CLAIMING, AND
I PLAN TO TRANSFER THE WATER TO LAND THAT I OWN. THE LAND IS UNDER
THE CARE OF THE BUREAU OF LAND MANAGEMENT (BLM). FOR INFORMATION
ON WRITE: BLM, BURLEY DISTRICT, RT. 3 BOX 1, BURLEY, ID 83318.

15. Basis of Claim: LICENSE

Water Right Number: 24883

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): Matthew L. Hardin Date: 2-22-93

Date: _____

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 22nd day
of February 19 93 Helen Warrick
Notary Public

Seal

Residing at Boise Idaho
My Commission Expires 12-1-94

DATA ENTERED BY AD
DATE 8/8/90

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: A43-02409
Date Received: 8/08/1990
Receipt No: C017674
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: NATHAN F. GARDINER 208-645-2563
Address: HC 72 BOX 2038
MALTA, ID 83342

2. Date of Priority: APR 23, 1954

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	27E	34	NE	SE	NW		CASSIA

5. Description of diverting works:
20" X 800' WELL WITH 250 HP PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	6.400		1280.00

7. Total Quantity Appropriated is:
6.400 C.F.S. (and/or) 1280.00 A.F.A.

8. Total consumptive use is 960.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	27E	33	SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0

A43-02409

Page 1

Date: 08/08/90

MICROFILMED

MAR 03 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	160.0
		34	SW	NW	IRR	40.0
			SE	NW	IRR	40.0
			NE	SW	IRR	40.0
			NW	SW	IRR	40.0
					Section Acres	160.0
					Total Acres	320.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

DLE CANCELLED.

I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS. THE PLACE OF USE IS THE SITE OF A FAILED DESERT ENTRY. I AM TRYING TO GET A DESERT ENTRY ON THE LAND OR PURCHASE IT. IF I AM UNSUCCESSFUL I WILL TRANSFER THE WATER RIGHT. THE LAND IS UNDER THE CARE OF THE BUREAU OF LAND MANAGEMENT. FOR INFORMATION WRITE:
BLM, BURLERY DISTRICT, RT. 3 BOX 1, BURLEY, ID 83318.

15. Basis of Claim: LICENSE

Water Right Number: 24883

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: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

MICROFILMED
MAR 03 1993

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 A43-02409
Date Received 7/16/90
Receipt Number 0017674

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED
JUL 16 1990

Department of Water Resources

Please type or print clearly

1. Name of Claimant (s) Nathan F. Gardiner Phone (208) 645-2563

Mailing Address HC 72 Box 2038, Malta, Idaho Zip 83342

2. Date of Priority (Only one (1) per claim) April 23, 1954

3. Source of water supply (a) groundwater
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 13S Range 27E Section 34,
NE 1/4 of SE 1/4 of NW 1/4, Govt. Lot, _____ B.M., County of CASSIA

Additional points of diversion if any: _____

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

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. The well is 20 inches in diameter and 800 feet deep. The column is twelve inches. The pump is 250 horsepower. The license states that the works have a capacity for the diversion of 6.57 cfs. Up until now the water has been used for flood irrigation through a network of ditches. The main ditch is cement lined. The other ditches were only of earth. However, I plan on converting over to sprinkler irrigation. When the conversion is complete the ditches will be replaced by a mainline.

MICROFILMED

MAR 03 1993

6. Water is claimed for the following purposes:

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

For irrigation purposes from March 15 to Nov. 15 amount 6.40 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 6.40 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 960 acre feet per annum.

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

10. Description of place of use:

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

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			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	
13S	27E	33			40	40									40	40			160
		34						40	40	40	40								160

Total number of acres irrigated 320

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

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

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None (✓)

14. Remarks:

Question 12 (Authority): I purchased this water right from the previous owners. The place of use is the site of a failed desert entry. I am trying to get a desert entry on the land or purchase it. If I am unsuccessful, I will transfer the water right. The land is under the care of the Bureau of Land Management. For more information write: Bureau of Land Management, Burley District, Route 3, Box 1, Burley, Idaho 83318

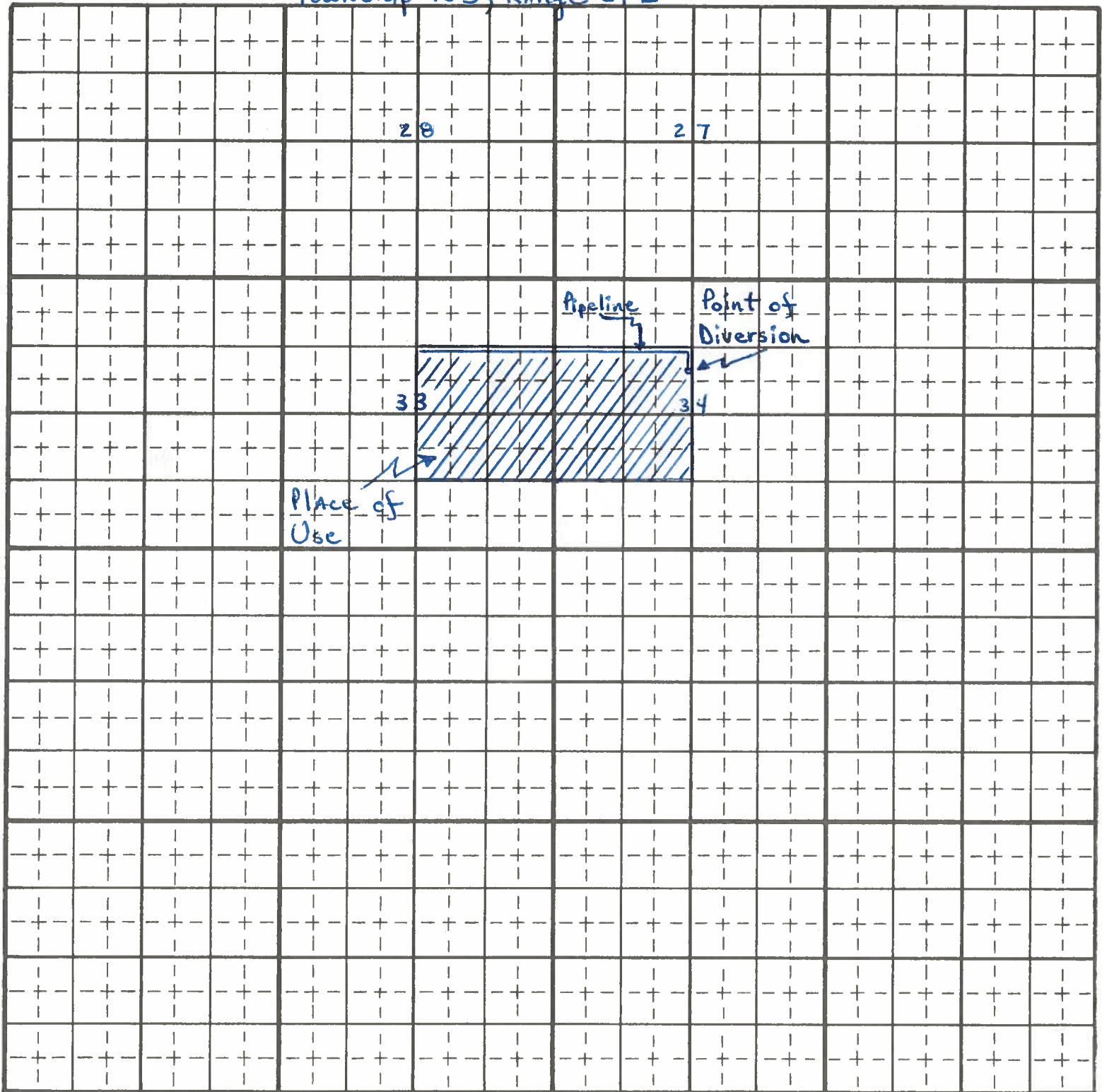
Last Name Gardiner Ident No. _____

MAR 03 1993
Copies: White - State, Yellow - Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

Township 13S, Range 27E



MICROFILMED

MAR 03 1993

Last Name

Gardiner

Ident No.

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 24883/43-2409
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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

Number of attachments _____

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

Signature of Claimant (s) Nathan F. Gardiner Date July 12, 1990

Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

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

Subscribed and sworn (or affirmed) before me this 12th day of July 19 90

SEAL

Notary Public Paul L. Chambers

Residing at Boise, Id.

My Commission Expires 12.31.92

Please Print Name

17. Notice of Appearance:

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

Signature _____

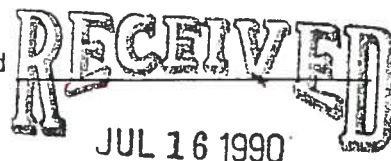
Address _____

Date _____

MICROFILMED
MAR 03 1993

Last Name Gardiner Ident. Number _____

Copies White-State, Yellow-Claimant



State of Idaho
Department of Water Resources
REQUEST FOR EXTENSION OF TIME
TO FILE ADJUDICATION CLAIM(S)

Department of Water Resources

The Idaho Department of Water Resources will consider this form as a request by the claimant for an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

Nathan F. Gardiner (208) 645-2563
Name of Claimant Phone Number

HC 72 Box 2038 Malta Idaho 83342
Mailing Address City State Zip

CASSIA June 8, 1989
County(s) where place of use is located Date claim originally due

IDWR Water Right Number 24883/43-2409
Identify water right(s) for which extension is requested

State why an extension of time is requested explaining how a diligent effort has been made to meet the deadline:

I Acquired the water right within the last week.

Claimant requests an extension to July 17, 19 90

Nathan F. Gardiner July 16, 19 90
Signature Date of request

Title

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby [☒ granted] [☐ denied] for the following reasons:

No mailed notice to this party.

and if granted the filing deadline is extended to July 17, 19 90

Signed this 21 day of July, 19 90

DAVID B. SHAW
Director or his designated agent

Mail to: Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

MICROFILMED
MAR 03 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. E, Twin Falls, Idaho 83301

(208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

.Aug. 10, 1990

Re: A43-02409

.NATHAN F GARDINER
.HC 72 BOX 2038
.MALTA ID 83342

Dear Claimant(s):

Please review the computer generated claim(s) for accuracy. In a few instances clarifications may have been added by the Department at the time of data entry. If you have any questions or objections regarding the computer record of your claim(s), please contact this office.

Yours truly,

Judy Givens
Adjudication Secretary

/jg

Enclosures:

MICROFILMED
MAR 03 1993

August 28, 1990

RECEIVED

AUG 30 1990

Department of Water Resources
Southern Region Office

Ted Milesnick
Bureau of Land Management
Route 3, Box 1
Burley, ID 83318

RE: LICENSE 43-2409

Dear Mr. Milesnick:

The Idaho Water Resource Board has been briefed with respect to your letter dated July 19, 1990. Subsequent to your letter, the department has received some assignments which purport to convey the ownership of the license to Nathan Gardiner.

The ownership of the water right will ultimately have to be determined by the district court in the pending Snake River Basin adjudication. In that regard, I note that Nathan Gardiner has filed an adjudication claim for the right and that the BLM has not. If the BLM claims the water right, as I think you do, it appears you should also file an adjudication claim based on the licensed water right.

I will respond to your inquiry concerning withdrawal of a portion of the right from the Water Supply Bank as if the question of ownership of the right has not arisen. The portion of the right remaining in the bank after the amount described in your letter of July 19, 1990 is removed, is as follows:

Rate: 0.02 (320 - 40) = 5.6 cfs
Acreage: 280 acres
Volume: 4.0 (280) = 1120 AF

In your letter, you also asked the Board to advise you with respect to any other legalities before you start your game bird habitat improvement project. It appears at this point the question of ownership is overriding matter of issue. Any application to rent water from the water supply bank at this point will be difficult to approve due to the ownership question.

Please feel free to contact the department if you have questions.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

MICROFILMED
MAR 03 1993

04/25/2001

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

RIGHT NUMBER: 43-2409A

NAME AND ADDRESS: BARBARA GARDINER
HC 72 BOX 2038
MALTA, ID 83342

SOURCE: GROUND WATER

QUANTITY: 3.2 CFS
640 AFY

PRIORITY DATE: 04/23/1954

POINT OF DIVERSION: T13S R26E S36 SESESE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	3.20 CFS
		640.00 AFY

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>					
T13S R26E S36	NESE	31	T13S R26E S36	NWSE	31
T13S R26E S36	SWSE	30	T13S R26E S36	SESE	37
T14S R26E S1	LOT 1 NENE	31			

160 ACRES TOTAL

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

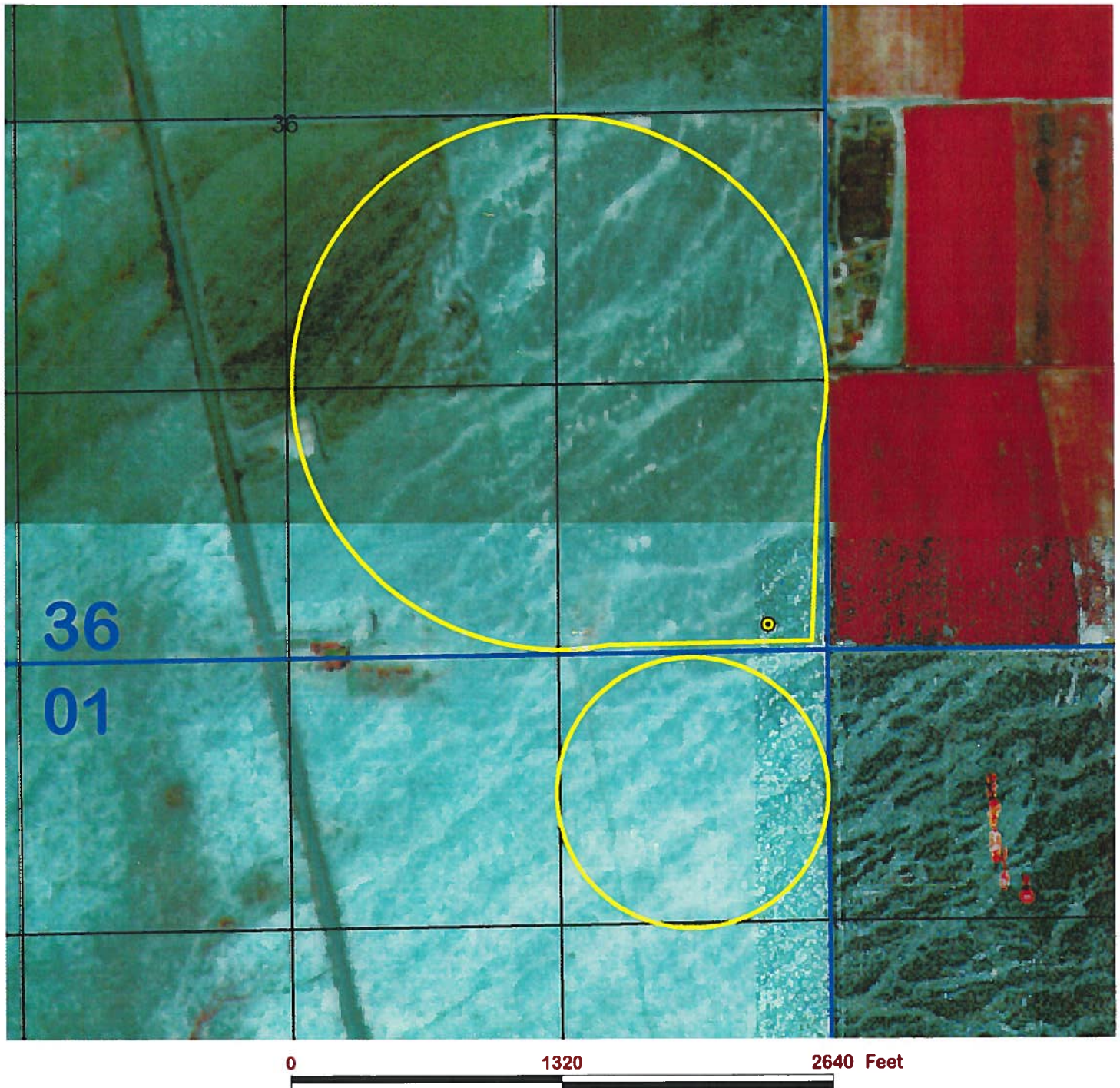
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Idaho Department of Water Resources

RECOMMENDED PLACE OF USE
TWP 13S, RNG 26E, Sec 36
TWP 14S, RNG 26E, Sec 01
Data entry on April 25, 2001

RIGHT: 43-2409A



-  **RECOMMENDED POINT OF DIVERSION**
-  **RECOMMENDED PLACE OF USE**
-  **SECTION LINES**
-  **QUARTER/QUARTER LINES**



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK

Idaho Department of Water Resources

Analysis for Recommendation

Prepared by: Vikie Hancock

4/25/01

Regarding: 43-2409 parts A & B

HISTORY

Right 43-2409 was originally licensed to Biggers in 1975 for use upon a Desert Land Entry that was ultimately denied by the BLM. The water use continued on the federal lands (see 1987 NAPP photo), and ownership of the water right license was conveyed from Biggers to Bishop. In 1989 the entire right was placed in the Water Bank by BLM who also claimed ownership of the water right, as it was appurtenant to federal land. The right was subsequently purchased by Nathan Gardiner, who applied to transfer the right onto private lands. This application for transfer #3768 was protested by the BLM and subsequently withdrawn by Gardiner at the advice of IDWR.

A hearing on the validity of the water right was held in 1993, and the Department of Water Resources determined that the license was indeed valid. Quit Claim deeds between Gardiner and the BLM split the water right equally between the two parties into parts A and B. Part A (Gardiner) has now been removed from the Water Bank. Part B (BLM) has remained in the water bank.

43-2409B

The BLM filed SRBA claim 43-2409 (renumbered 43-2409B) for 320 acres and 6.4 cfs listing the original point of diversion and place of use. Amendments to adjust the diversion rate to 3.2 cfs were filed in 1997 and 2000. The BLM claims are unclear as to how many acres are claimed, however according to the 1993 Order, the BLM has ownership of half the original license or 3.2 cfs for irrigation use on 160 acres. All of right 43-2409B is currently in the Water Bank. See email from Glen Saxton dated 04-10-2001. Confusion existed at one time, because the BLM had requested a portion of 43-2409B be removed from the water bank. The BLM had proposed to develop some uses for wildlife, which were never completed. Temporary splits were prepared within the water right database. The BLM subsequently requested that the removed portion of 43-2409B be returned to the water bank. As of this date, right 43-2409B is best described as one intact right. There is a pending

request to rent this right from the water bank - see letter in file from Glen Saxton dated April 10, 2001.

43-2409A

In the meantime, Gardiner filed adjudication claim 43-2409 in 1990 for 6.4 cfs and 320 acres listing the original licensed place of use and noting his intent to transfer the entire place of use and point of diversion. In 1993 he amended this claim to 160 acres and 3.2 cfs, and his right was renumbered 43-2409A. He then filed transfer #4294 to change the place of use and point of diversion of the 160 acres claimed in the SRBA. This transfer was not protested and was approved in 1994. An application for extension of time to avoid forfeiture was filed by Gardiner in 1994 which extended his deadline for completion of works to April 1999.

The place of use and point of diversion were visited 4-24-2001. According the renter at the house located in the SWSWSE of Section 36, the land is owned by Gardiner but farmed by Peter Grush.

POD:

The well was found and GPS'd. It was equipped with a Layne and Bowler WellLine 4 stage pump stamped with the date 10-17-94. Serial number LP 94358. The motor was a 100 HP General Electric, serial number ER 1523322. Rainbird brand pressure gauge was reading steady at 52 psi.

POU:

The place of use was irrigated by two pivots. The smaller one to the south of the well in the NENE Section 1 T14S R26E was 4 towers long, therefore a radius of approximately 600 feet is assumed. The center of that pivot was GPS'd.

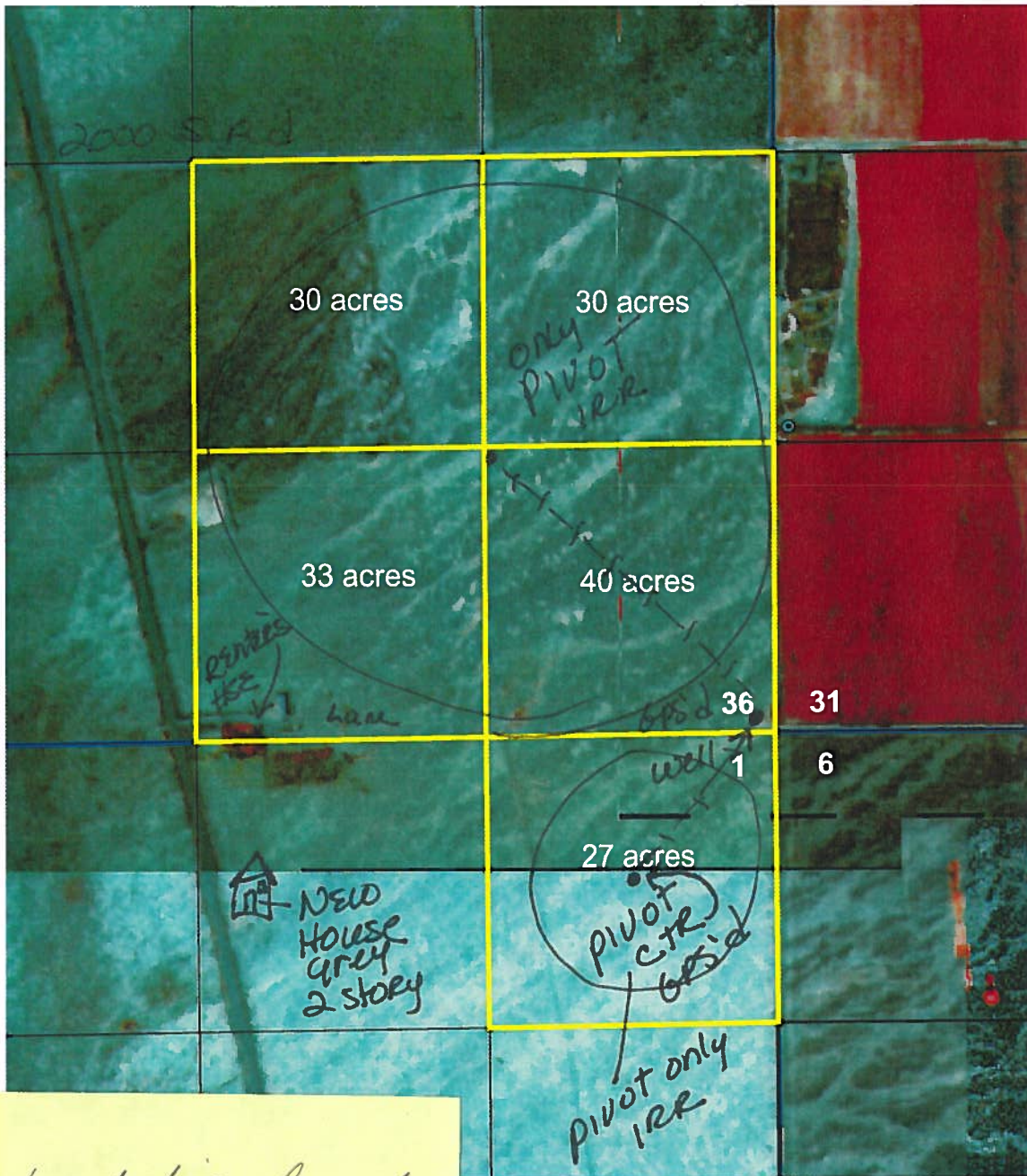
The larger pivot was to the north of the well; the center lay in the approximate middle of the SE quarter of Section 36, T13S R26E. This pivot was 8 towers long. Both pivots were equipped with low pressure sprinkler heads and were running at the time of the visit.

The place of use corresponds ^{Fairly well} with that outlined in approved transfer 4294, however the corner area around the well did not seem to be irrigated as proposed. 160 acres are outlined and included in my recommendation per the approved transfer.

See attached GIS layout with notations.

43-02409A

FIELD NOTES



tentative layout,
assuming right
is still valid &
will be recommended

1320 2640 Feet

~~ED PLACE OF USE~~
~~ON APR. 10, 2001~~
~~26E, SEC. 36~~
~~3 26E, SEC. 1~~

FE 4-24-01
V Hancock



P
P
Q
S

1. DRILLING PERMIT NO. 43-94-12-11-1
Other IDWR No. 43-024096

2. OWNER:

Name GILLEN GARDNER
Address HL 72 BOX 203E
City MALTA State IL Zip 6334E

3. LOCATION OF WELL by legal description:

Sketch map location must agree with written location.

Address of Well Site HW 8: 4MI S MALTA

(Give at least Direction + Distance to Road or Landmark)

Lot No. _____ Block No. _____ Subd. Name _____

4. PROPOSED USE: IRRIGATION

☐ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK NEW WELL

☒ New Well ☐ Modify or Repair ☐ Replacement ☐ Abandonment

6. DRILL METHOD

☐ Mud Rotary ☐ Air Rotary ☐ Cable ☐ Other_____

7. SEALING PROCEDURES

SEAL/FILTER PACK			AMOUNT	METHOD
Material	From	To	Sacks or Pounds	
Bentonite	0	18	2500#	pour

Was drive shoe seal tested? Y ☐ N ☒ How? _____

8. CASING/LINER:

Diameter	From	To	Gauge	Casting	Liner	Steel	Plastic	Welded	Threaded
16"	+	120	.250			☒	☐	☐	☐
16"	160	200	.250			☐	☐	☐	☐
16"	220	305	.250			☐	☐	☐	☐
16"	325	385	.250			☐	☐	☐	☐

Final location of shoes _____

Top Packer or Headpipe _____ Bottom Tailpipe _____

9. PERFORATIONS/SCREENS

☐ Perforations Method _____
☒ Screens Type VEE Material CARBON

From	To	Slot Size	Number	Diameter	Tele/Pipe Size	Casting	Linear
120	160	.40		16"	P.P.E	☒	☐
200	220	.40		16"	11	☐	☐
305	325	.40		16"	4	☐	☐
385	415	.40		16"	11	☐	☐

10. WELL TESTS:

☐ Pump ☐ Bailer ☐ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Depth	Time
112.7	24	124	30 min
131.3	30	130	30 min
142.9	36	136	30 min

Temperature of water _____ Was a water analysis done? Yes ☐ No ☒

By whom? _____

Water Quality (odor, etc.) _____

Bottom Hole Temperature _____

11. STATIC WATER LEVEL:

100 ft. below surface Depth artesian flow found

Artesian pressure _____ lb. Describe access port _____

Describe Controlling Devices: _____

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	GPM	SW
28"	0	3	TOPSOIL		
	3	10	SAND, SMALL GRAVEL		
	10	25	GRAVEL AND HARDPAN		
	25	50	LARGE GRAVEL AND BROKEN ROCK		
	50	54	BURNT CLAY W/ SANDSTONE		
	54	61	BRN CLAY & BROKEN ROCK		
	61	65	BRN CLAY		
	65	73	FINE TO CRSE SAND & GRAVEL		
	73	85	BRNT, BRN CLAY W/ GRAVEL		
	85	89	BRN CLAY		
	89	106	COARSE SAND & GRAVEL		
	106	108	BRN CLAY		
	108	118	CRSE SAND & GRAVEL		
	118	122	BRN CLAY		
	122	151	CRSE SAND & GRAVEL		
	151	155	BRN CLAY		
	155	162	MED TO CRSE SAND		
	162	167	BRN CLAY		
	167	172	FINE TO CRSE SAND		
	172	201	BRN CLAY		
	201	205	FINE TO MED SAND & PEA GRAVEL		
	205	209	BRN CLAY		
	209	220	CRSE SAND & PEA GRAVEL		
	220	237	BRN CLAY		
	237	241	CRSE SAND & PEA GRAVEL		
28"	241	299	BRN CLAY		

RECEIVED

JUN 02 1994

WATER RESOURCES
WESTERN REGION

CONTINUED

Date: Started 5/5/94 Completed 5/9/94

13. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with a the time the rig was removed.

Firm Name PETE COPE DRILLING Firm No. 213

Firm Official [Signature] Date 5/17/94

and
Supervisor or Operator Kevin Chastain Date _____

(Sign once if Firm Official & Operator)

AJ5809NP
No. A43-02409A

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 12/28/99
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BARBARA GARDINER HC 72 BOX 2038 MALTA ID 83342 (208) 645-2563	04/23/1954	IRRIGATION	04-01 10-31	3.200 CFS	640.00 AFA
TOTAL DIVERSION:					3.200 CFS	640.00 AFA
CONSUMPTIVE USE:						480.00 AFA

Water Source: GROUNDWATER

Tributary to:

Stage: LICENSE

Point(s) of Diversion:

T13S R26E S36

SESE

CASSIA County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE								
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:	SUM
				Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac	
13S	26E	36	:					:					:					:	30	30	33		:	93.0
13S	27E	36	:					:					:					:				40	:	40.0
14S	26E	1	:	27				:					:					:					:	27.0
TOTAL ACRES																							160.0	

POU County: CASSIA

Other Rights: NONE

Remarks: GEN I PURCHASED THIS WATER RIGHT FROM THE PREVIOUS OWNERS.
THE BLM HAS QUIT-CLAIMED TO ME THE WATER RIGHT I AM CLAIMING, AND
I PLAN TO TRANSFER THE WATER TO LAND THAT I OWN. THE LAND IS UNDE
R THE CARE OF THE BUREAU OF LAND MANAGEMENT (BLM). FOR INFORMATI
ON WRITE: BLM, BURLEY DISTRICT, RT. 3 BOX 1, BURLEY, ID 83318.

AS A RESULT OF BEING CLAIMED BY BOTH GARDINER AND BLM, THIS CLAIM
HAS BEEN RENUMBERED TO A43-02409A

6/28/1995, DJ: CHANGE OF OWNER PER 1409(7) REC'D 4/7/94. PLACE
OF USE AND DIVERSION DESCRIPTION AMENDEO PER APPROVED TRANSFER
#4294. BOTH A & B PARTS OF RIGHT ARE IN WATER SUPPLY BANK.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 12/01/93 ROBERTSO 03/30/95 POST-STD 06/28/95 DJONES

doesn't
match
W.R. ?
data entry
error?

T4294
APPROVED

Robertson, Jean

From: Saxton, Glen
Sent: Tuesday, April 10, 2001 11:22 AM
To: Robertson, Jean
Cc: Gibson, Deborah
Subject: FW: 43-02409A and B

I have reviewed license file 43-02409 in the state office and have determined the following:

- The entire license was accepted into the Water Supply Bank on September 15, 1989.
- The right presently is best described as parts A and B.
- 43-02409A is represented by transfer no. 4294 in the name of Nathan F. Gardiner. This part of the water right is not in the water supply bank.
- 43-02409B in the name of the BLM is in the water supply bank. At one time, the BLM split off 0.08 cfs and 60 AF for wildlife habitat purposes, thus removing that amount of part B from the bank. On March 20, 1998, the BLM asked that the split-off part B be included with the remainder of part B, since the split-off part was never used by the BLM for the planned wildlife habitat purposes. Hence part B in the bank is for 3.2 cfs of water.
- Frederick Nielson applied to rent all of part B from the bank for a 10 year period. The department prepared a rental agreement for Nielson to sign, but he has not signed and returned it. I need to correspond with Nielsen withdrawing the draft rental agreement from further consideration.

If you have additional questions, please feel free to contact me or Debbie. lgs

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

From: Gibson, Deborah
Sent: Tuesday, April 10, 2001 10:26 AM
To: Robertson, Jean
Cc: Saxton, Glen
Subject: RE: 43-02409a, b, & whatever...

Hi. Gosh this one's a mess. I'll need to have Glen review this, because I'm not sure where part B is presently at. Nathan Gardiner (B split) was removed from the Water Supply Bank (WSB) for 3.2 cfs around the time IDWR issued an Amended Final Order. However, he applied for an Extension of Time to Avoid Forfeiture on 3/23/94 was granted the extension until 4/1/99. There was a transfer filed by Barbara Gardiner (D split) which ultimately was withdrawn. So I don't know where that leaves Nathan with his extension of time.

Part A (BLM) was originally in the WSB until 8/26/94 when they requested 0.08 cfs for use in development for a wildlife project. However that didn't work out and so they requested that it be replaced into the WSB on 3/20/98. Frederick Nielson applied for rental from the WSB, however, on 5/19/2000 I mailed a Rental Agreement to him for his signature and return with the appropriate rental fee, and haven't had a response from him, to this day. So all of BLM's 3.2 cfs is still remaining in the WSB.

I'll talk to Glen and ask him to review Nathan Gardiner's status and we'll get back to you.

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

From: Robertson, Jean
Sent: Friday, April 06, 2001 4:43 PM
To: Gibson, Deborah
Subject: 43-02409a, b, & whatever...

Hi there,

I'm trying to put together my recommendation for these rights and I have a few questions...are they both (all) still in the water bank? What are the actual numbers or suffixes of the splits? In the remarks of part C, it talks about part of it being split off into a wildlife area and right being split into parts E and F.

(I even found an old printout from the Vax of part F, but part F doesn't seem to show up on the new system and part C looks to be the same as part F?) Then I noticed in the water right file here that Neilson was going to rent part of this right, did that ever happen? And how can he rent the entire right from the BLM if part of it is in the wildlife portion? Thanks for any help you can provide in clearing this up! Jeanie Robertson/Southernn Aj

Robertson, Jean

From: Shaff, Don
Sent: Thursday, April 12, 2001 9:02 AM
To: Robertson, Jean
Subject: RE: water bank claims...

Yes. Of course, the review confirms the right is still in the water bank.

Don
dshaff@idwr.state.id.us
208/327-7932

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

From: Robertson, Jean
Sent: Thursday, April 12, 2001 8:54 AM
To: Shaff, Don
Subject: water bank claims...

Hi Don,

Just wanted to make sure one last time that recommendations for rights in the **water bank** don't get any special remarks or anything? And the shapefile shows the acres where the right was originally claimed, even though there may be no activity there now, right? Thanks, Jeanie

30

30

33

40

T13S, R26E
T14S, R26E

③⑥

①

27



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

RECEIVED

March 23, 1994

MAR 25 1994

Department of Water Resources
Southern Region Office

Nathan F. Gardiner
HC 72 Box 2038
Malta, ID 83342

RE: Water Right No. 43-02409A, Transfer No. 4294

Dear Permit Holder:

Enclosed is a copy of the approved Application for Extension of Time to Avoid Forfeiture of a Water Right. Please note that you must resume use of the water on or before April 1, 1999.

Additionally, enclosed is a copy of the Transfer of a Water Right for the above referenced permit. Please note condition number six (6), which requires the permit holder to remove the water right from the Water Supply Bank before any water can be diverted.

Please notify the Department as soon as you resume use. If you have not notified the Department, 60 days prior to April 1, 1999, the Department will notify you by certified mail of the need to do so.

If you have any questions, or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

Enclosure

C: IDWR - Region Office

SRBA copy

43-02409A T#4294

RECEIVED

Water Right No. 43-02409A

NOV 18 1993

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Department of Water Resources

Southern Region Office **Application for Extension of Time to Avoid Forfeiture
of a Water Right**

Section 42-222 of the Idaho Code provides that a water right shall be lost and forfeited and the water revert to the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

Complete fully the following application and submit it to the Department of Water Resources, Statehouse, Boise, Idaho, 83720, with the statutory fee.

1. Name of water right holder Nathan F. Gardiner
Post office address HC 72 Box 2038, Malta ID 83342

2. The right was obtained or is evidenced by:

a. Decree to _____ in Case of _____
(Name)

vs. _____, Dated _____ in _____
(Name of Court)

Court, County of _____. Fully describe decree _____

b. License No. 43-02409A issued by the Department of Water Resources.

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

3. Source of water Groundwater tributary to _____
(Name of stream or source)

4. Date of priority of right April 23, 1954

5. Amount of water a. 3.20 c.f.s. and/or

b. 640.0 acre feet/annum

6. Water is used for Irrigation from March 15 to November 15
from _____ to _____
from _____ to _____
(Purpose) (Month-Day) (Month-Day)

7. Location of point of diversion is SE 1/4 NW 1/4 of Section 34
Township 13S, Range 27E, B.M., in Cassia County;
Additional points of diversion, if any _____

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	
13S	27E	33			40	40									40	40			160

Total number of acres irrigated 160

9. Give last date when water was applied to beneficial use 1984 irrigation season
Length of extension of time requested 5 years, or until November 1, 1998
(Date)

10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use My understanding is that water right No. 43-2409A is currently in the water bank. This water right has not been used these last few years because of a legal dispute between BLM and myself has prevented either one of us from using it. I am making this request for an extension of time to allow myself enough time to transfer the water right and put it back to beneficial use.

I hereby assert that no one will be injured by such extension. The information contained in this application is true to the best of my knowledge.

Nathan C. Gardiner
(Signature of Applicant)

Subscribed and sworn to before me this 17th day of November, 19 93.

Mary Bosstrom
(Notary Public)

My commission expires 7-17-98

Residing at Boise, ID

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby APPROVED said application subject to the following conditions or reasons.

The water right holder must resume use of the water right on or before April 1, 1999.

Witness my hand this 23rd day of March, 1994.

L. Glen Saxton
Chief, Water Allocation Bureau

For Department Use Only

Received by DET Date 11-18-93 Time 10:00 am Preliminary check by JA
Receipt# 5013604 Fee \$ 50.00 Received by DET Date 08-02-94 Publication prepared by MB
Published in So. Id Press Dates 1/10 & 1/17/94
Publication approved by _____ Date _____ Protests filed by: _____

Copies of protests forwarded by _____ Hearing held by _____ Date _____
Recommended for // Approval // Denial by _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4294
WATER RIGHT NO. 43-02409A

RECEIVED

MAR 25 1994

Department of Water Resources
Southern Region Office

This is to certify that: NATHAN F GARDINER
HC 72 BOX 2038
MALTA ID 83342

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	3.20 CFS	640.0 AF

SOURCE

GROUNDWATER

Priority: 04/23/1954

LOCATION OF POINT(S) OF DIVERSION:

SESE , Sec. 36, Township 13S, Range 26E
CASSIA County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
13S 26E 36	NESE 30	NWSE 30	SWSE 33	133
14S 26E 1	SESE 40			27
	NENE 27			160

Total number of acres irrigated:

CONDITIONS/REMARKS:

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
3. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
4. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

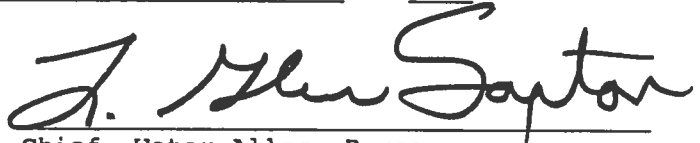
13S 26E 33 1 10 10

TRANSFER NO. 4294
WATER RIGHT NO. 43-02409A

CONDITIONS/REMARKS:

5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. Prior to diversion of water under Transfer No. 4294, the right holder is required to remove the right from the Water Supply Bank.

Dated this 23rd day of March, 1994.


Chief, Water Alloc. Bureau

Date to S.O. 03-17-84

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4294

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

JAN 17 1984

Department of Water Resources/
Southeast RegionName of Applicant Nathan F. Gardiner Phone (208) 645-2563Post Office address HC 72 Box 2038, Malta, Idaho 83342

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 The present place of use is public land owned by the United States. The site is part of a failed desert land entry. I recently purchased the water right and I now want to move it to land where it can be used to grow crops.

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>43-2409A</u>	<u>April 23, 1954</u>	<u>3.20 cfs</u>	<u>Irrigation</u>	<u>March 15</u> to <u>November 15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 3.20 cubic feet per second and/or 640 acre-feet per annum.

3. Source of water groundwater tributary to _____

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SE	36	13S	26E	CASSIA	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
13S	26E	36													30	30	33	40	133
14S	26E	1	27																27

Total acres 160

PART 1

6. General Information:

- a. Description of diversion system I plan on installing the following: Well approx 400 feet deep, well casing 16 inches in diameter, pump-approximate 100 hp pump, mainlines and sprinkler irrigation system.
- 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:
There will be no effect on the present place of use. Under the direction of the Bureau of Land Management, the present place of use has been planted to drought-resistant grasses, forbes, and shrubs.
- d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 43-2409A 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 IDWR Final Order

3. Source of water groundwater tributary to _____

4. Date or priority April 23, 1954

5. Water is used for the following purpose:

amount 3.20 cfs for irrigation purposes from March 15 to November 15
(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 3.20 cubic feet per second and/or 640 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	34	13S	27E	CASSIA	

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	
13S	27E	33			40	40									40	40			160

Total acres 160

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes If yes, describe This water right was put in the water bank before the 5 years had run. It has been over 5 years, if the time in the water bank is included.

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 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

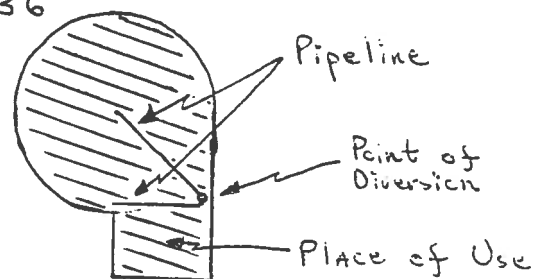
- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

Range 26 E Range 27 E

35

Township 13S
Township 14S

36



2

1

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.

William C. Harding
(Signature of Applicant)

Subscribed and sworn to before me this 25th day of January, 19 94.

Mary Bastron
(Notary Public)

My commission expires 7/17/98

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 0 attachments

Received by MB Date 1/27/94

Prelim. check by MTS Fee 30.00 5016509

Received by J. F. Stanton Date 1-27-94

Published in So. Id. Press

Pub. dates 2/21 + 2/28/94

Watermaster recommendation requested on 1/A

rec'd. _____

Protest filed by _____

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for ☒ approval ☐ denial

by MA

Copy of transfer sent to lien holder _____

*This transfer
(T# 4294)
approved on
3/23/94*

RECEIVED

JAN 27 1994

Department of Water Resources
Southern Region Office

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 24883/43-2409 Priority April 23, 1954 Amount 6.40 cfs

THIS IS TO CERTIFY, that BETTY L. BISHOP
of Ontario, Oregon, has complied with the terms and conditions of Permit
No. 24883/43-2409 issued pursuant to Application for Permit dated April 23, 1954
and has submitted proof to the Department of Water Resources on October 15, 1973
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 6.57 cfs of water from a ground water source
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>March 15</u> to <u>Nov. 15</u>	at <u>6.40</u> cfs and	<u>1,280</u> acre feet or
	from _____ to _____	at _____ cfs and	<u>4.0</u> af per acre
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 6.40 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
1,280 acre feet per year, said waters to be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 34,
Twp. 13 S, Rge. 27 E, B. M. in the County of Cassia

Description and location of 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 $\frac{1}{4}$	
13 S	27 E	33			40	40									40	40			160
		34						40	40	40	40								160

Total number of acres irrigated 320

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 29 day of
April, 19 75.

Director

43-2409

A43-02409

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 3768 (WATER RIGHT
NO. 43-02409) IN THE NAME OF
NATHAN F. GARDINER

)
)
)
)
)
)
AMENDED FINAL
ORDER

A Final Memorandum Decision and Order was issued by the Director of the Department of Water Resources (Department) on August 28, 1992, which found that water right no. 43-02409 was developed in speculation and trespass. The order revoked the water right license pursuant to Idaho Code § 42-350.

Both the applicant, Nathan Gardiner, and the protestant, the Bureau of Land Management (BLM), filed petitions for rehearing. In response to the petitions for rehearing, the Director requested a statement of the nature and quantity of new or additional evidence the petitioners would offer if rehearing was granted. Gardiner and the BLM exchanged quitclaim deeds, each granting to the other one-half of water right no. 43-02409. Gardiner claimed this was new information which should be considered by the Department. Nathan Gardiner subsequently withdrew the application for transfer.

Despite withdrawal of the Gardiner transfer, the portion of the Final Memorandum Decision and Order revoking license no. 43-02409 was not affected by the withdrawal of the transfer. Nathan Gardiner requested clarification from the Department regarding the status of the Final Order now that the application for transfer has been withdrawn.

I have reviewed all of the evidence from the hearing and the exhibits. Since the application for transfer has been withdrawn, this amended order will not deal further with the transfer issues. This order addresses only the question about the status of the water right.

FINDINGS OF FACT

1. Transfer no. 3768 proposed a change in the point of diversion and place of use for water right no. 43-02409. Water right no. 43-02409 is a license which authorizes diversion of 6.40 cfs from groundwater for the irrigation of 320 acres.

2. Groundwater diverted pursuant to license no. 43-02409 was developed in conjunction with Desert Land Entry (DLE) application no. I-5070. The DLE application was filed with BLM on April 23, 1954.

3. Application for permit to appropriate water right no. 43-02409 filed by Phoebe Biggers (Biggers), was approved by the Department of Water Resources on April 27, 1954, and amended on May 21, 1954. The amended permit authorized diversion of 6.40 cfs of water for irrigation of 320 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 33, and the S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 34, T13S, R27E, B.M. The place of use described by the amended permit is the same land that was sought for DLE classification.

4. The place of use identified above is federal land surveyed by the Department of Interior in 1872 and 1873, and resurveyed in 1947.

5. On July 23, 1963, the lands covered by the DLE and water permit no. 43-02409 were included within the Raft River Critical Ground Water Area.

6. In 1964, BLM granted Biggers the right to enter the place of use for water right permit no. 43-02409 and the Department extended the time for filing of proof of beneficial use until October 15, 1969. In 1966, prior to filing of proof of beneficial use with the Department, Biggers assigned the approved DLE no. I-5070 to Betty Bishop (Bishop). Willard and Katherine Yates leased the DLE land from Bishop in October, 1967. Bishop filed final proof of development with BLM in 1968. In 1969, Biggers assigned her interest in water right permit no. 43-02409 to Bishop. The Department approved applications for extension of time filed by Bishop in 1969, 1971, and 1972.

7. In 1970, the federal government filed a complaint against DLE entry no. I-5070, alleging that the entry was not made and maintained in good faith and that the original entryman had not intended to reclaim the land for her own use and benefit. An administrative hearing officer, Judge Dalby, determined in October, 1972, that, prior to the 1964 allowance of entry to Biggers, she had abandoned the entry and any intent to reclaim the land.

8. In the original decision by Judge Dalby, he details some of the history surrounding the development of the well on the property:

The Biggers applied for and were issued special land use permits for the period from June 10, 1963 to June 10, 1964, which contained stipulations that failure to discover sufficient quantity of water by the expiration date would result in the rejection of the Desert Land applications.

Clarence D. Bishop, a well driller residing in Burley, Idaho, drilled three wells to service the entries in May, 1964.

On June 3, 1964, Mr. Thomas H. Church filed an amended application for Phoebe Biggers which included the 40 acre subdivision on which one well had been drilled. Dennis Biggers' entry was allowed on June 26, 1964, and Phoebe Biggers' on October 15, 1964. In July and August of 1965 annual proofs were submitted on behalf of the Biggers by Mr. Church. The annual proofs showed expenditures of \$22,800 for drilling wells and \$1,000 for clearing brush on the two entries.

Pursuant to arrangements made by Clarence Bishop, the Biggers quitclaimed the entries on April 11, 1966, to Chester Bishop, Clarence's nephew, and Betty Bishop, Chester's wife. Clarence Bishop paid the Biggers \$1,000 for their entries. In September, 1966, Chester and Betty Bishop executed a promissory note to Clarence Bishop for \$43,200 secured by a mortgage on the entries. The note was ostensibly given to evidence Chester and Betty Bishop's obligation to pay Clarence Bishop for the development work previously performed on the entries.

9. A hand written letter written by Phoebe Biggers, contained in the Department files, dated April 24, 1969, explains the reason why the desert land entry was assigned to Bishop:

About 15 years ago Phoebe Biggers and D D Biggers filed on some land near Malta Ida[.] . . . Cattlemen brought suit that government had classified land wrong but after many suits had used up our capital we were told we could go on the land but had to relinquish the land to Clarence Bishop of Burley Idaho. Of course the water permits which we got from you went with the land.

10. The lengthy litigation alleged by Phoebe Biggers was confirmed by the 1973 decision of Judge Dalby:

Dennis B. Biggers and his wife, Phoebe F. Biggers, filed applications on April 23, 1954 for Desert Land entries . . .

Protests were entered to classification for entry of the land covered by the . . . applications. The matter was in litigation for an extended period, but in March, 1963, the lands were favorably classified.

11. At the time Biggers filed their application to appropriate water in 1954, and the application was approved as a permit, there was no evidence that Biggers lacked intent to develop the water as proposed.

12. Betty Bishop appealed the decision of the hearing officer to the Interior Board of Land Appeals (IBLA). The IBLA stated in its December 10, 1973, appellate decision regarding the Biggers' entry:

An entryman must have the requisite good faith intention to reclaim the land for his own use and benefit at the time the entry is allowed. (Citations omitted). If it is later discovered that an entryman did not have the requisite intention to reclaim the land, the entry is subject to cancellation for "illegal inception" pursuant to 43 U.S.C. 329 (1970), which reads in pertinent part:

Provided however * * * the claims or entries * * * shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law * * *.

Judge Dalby, having found that the entrymen, prior to allowance, had abandoned the entries and any intent to reclaim the land, held the entries canceled. His decision contains a complete and accurate statement of the facts and law pertinent to this case. The Board finds itself in complete agreement with his decision . . .

13. Bishop represented in her 1972 application for extension of time for filing proof of beneficial use with the Department of Water Resources, that the Desert Land Entry had been contested. Proof of beneficial use was submitted by Bishop on October 15, 1973, after the original BLM decision which declared her DLE approval canceled. Bishop did not inform the Department at the time proof of beneficial use was filed that BLM had declared her DLE entry canceled.

14. After the decision by the Department of Interior Board of Land Appeals, BLM notified Chester and Betty Bishop in February, 1974, they must remove their improvements from the property and stated Bishops were no longer entitled to farm the lands, possess the lands, or occupy the lands. Between 1974 and 1976, BLM did not actively pursue eviction of anyone who might be using the land. Yates farmed the land without authorization between 1974 and 1976. BLM issued a trespass notice to Yates in December 1976. Yates negotiated a \$10,000 settlement with BLM to pay for the trespass. Yates leased the property from BLM, and continued to farm the property until 1987.

15. The Department issued license no. 43-02409 to Bishop on April 29, 1975.

16. In May, 1977, the Department received correspondence from BLM stating that the DLE entry no. I-5070 had been canceled on December 10, 1973, by the Secretary of the Interior, and asking the Department to change ownership of license no. 43-02409. The Department responded by letter as follows:

The Department has no procedure for changing the records of ownership on a water right license. These rights are considered to be appurtenant to the land to which they are licensed and are owned by the owner of that land.

17. Betty Bishop assigned her interest in license no. 43-02409 to Clarence D. Bishop on July 9, 1990, and Clarence D. Bishop assigned his interest in license no. 43-02409 to Nathan F. Gardiner. Gardiner bases his claimed ownership of license no. 43-02409 on the assignment from Clarence D. Bishop.

18. BLM originally objected to the alleged ownership of the water right by Nathan Gardiner and claimed ownership to itself.

19. At the hearing, BLM witnesses testified neither Phoebe Biggers nor Betty Bishop were trespassers on the land.

20. After issuance of the Final Memorandum Decision and Order on August 28, 1992, BLM and Gardiner exchanged quitclaim deeds, each granting to the other one-half interest in license no. 43-02409.

CONCLUSIONS OF LAW

1. In considering an application to appropriate water, the Department must determine whether the application is filed in good faith, or is filed for purposes of delay or speculation.

2. The filing of an application to appropriate water with the intent to establish a priority date, and prevent other prospective users from appropriating water, with no accompanying intent to develop the water at the time of filing is speculation, and filed for delay.

3. A person who files an application to appropriate water, and concurrently files an entry application with the federal government with the intent to assign the entry, or attempts to circumvent the federal entry law, files the water right in bad faith, and the application is speculative.

4. An application, even if approved as a permit or license, is void from the time it is filed if, at the time of the filing, the applicant was acting in bad faith or was speculating without any intent to develop the permit.

5. The DLE entry was cancelled because it was "illegal from its inception." Some case law could be interpreted to hold that the entry is viewed as if there was never permission for the entrymen, their successors, assignees or agents to be on federal land, Byron v. U.S., 259 F. 371, 376 (9th Cir. 1919); as if the patents and entries had never existed, Bradford v. U.S., 222 F. 258, 259 (5th Cir. 1915); and as between the United States and

their assignees, successors or agents might be viewed as trespassers on the surveyed public domain. See U.S. v. West, 232 F.2d 694, 699 (9th Cir. 1956).

6. In Idaho, a water right cannot be developed in trespass. Lemmon v. Hardy, 95 Idaho 778, 780, 519 P.2d 1168 (1974).

7. While the decision by BLM merits consideration, it does not bind the Department. The Department must determine the intent of the entryman between the time the application was filed and the time the permit was approved.

8. The filing of an application to appropriate water, where there is intent to develop the property, even if there is an accompanying intent to market the water or property after development, is not considered speculation.

9. In this case, although the BLM held that the DLE entry was illegal from its inception, the Department of Water Resources does not have similar information to show that the applicant, Phoebe Biggers, filed the application for permit to appropriate water for purposes of delay or speculation. Furthermore, there is no evidence of bad faith in filing the water right on the part of Phoebe Biggers. It appears that after the assignment, Betty Bishop also diligently attempted to perfect the water right, even though Yates was the actual farmer on the property.

10. There is no evidence in the record other than the decisions of the BLM which canceled the DLE entry, that Biggers, Bishop or Yates, the farmer of the land at the time of cancellation of the DLE entry, were trespassers prior to the final decision of the BLM. In fact, BLM witnesses testified that Biggers and Bishop were not trespassers. Yates was only found to be trespassing on the land following the issuance of the final decision rejecting the DLE entry.

11. Biggers, Bishop and Yates were all farming the property pursuant to an entry approval until the final decision by the IBLA. A water right could be perfected during the entry approval period.

12. Furthermore, a license was issued to Betty Bishop. A water right license is prima facie evidence of the existence of a

water right, and will not be revoked unless evidence is presented to show the non existence of the right.

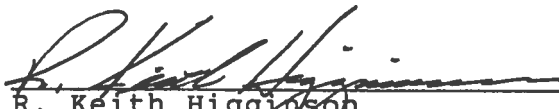
13. Water right license no. 43-02409 is valid in the records of the Department of Water Resources.

14. Because the parties have exchanged quitclaim deeds, and have agreed to share the water right, ownership of the water right as between the parties is no longer an issue.

ORDER

IT IS HEREBY ORDERED that these Findings of Fact and Conclusions of Law be entered in the records of the Department for water right no. 43-02409 and that the file reflect the ownership of the right by Nathan F. Gardiner and the U. S. Bureau of Land Management as evidenced by the quit claim deeds.

Dated this 28TH day of October, 1993.



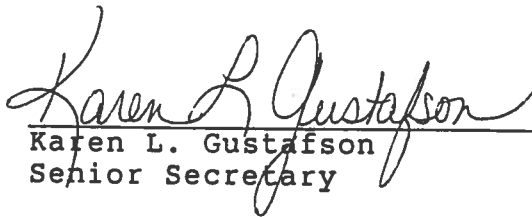
R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of November, 1993, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following:

Nathan Gardiner
HC 72 Box 2038
Malta, ID 83342

Jack Hockberger
U. S. Dept of Interior
Box 020
Boise, ID 83724



Karen L. Gustafson
Senior Secretary

INTER-DEPARTMENT MEMO

TO: File 43-02409A, N. Gardiner

SUBJECT: Ext. of Time to Avoid Forf.

FROM: Jim Stanton

DATE: 11-24-93

On 11-19-93, I spoke with Steve Davis of the Burley BLM office concerning this water right.
He told me that the property was leased for farming to a private individual until May of
1987, when the lease was cancelled. He though that the property was last farmed in 1986.
So it is likely that the land has not been farmed for the last seven years. Under Sec. 42-
222 Idaho Code, it appears that this right has been lost due to forfeiture. Failure of
anyone to obtain a proper lease from the BLM appears to be evidence in support of this
opinion. Because of this, I do not intend to visit the subject property. Recommend that
Mr. Gardiner's extension of time to avoid forfeiture be ~~canceled~~ denied, and the right be
declared forfeited.

(X) For your information

() Response required

J. E. Stanton
signature