

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: A43-02530B
Date Received: 5/24/1989
Receipt No: 5007304
Received By: AD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ART WHITAKER 208-645-2292
Address: P.O. BOX 64
MALTA, ID 83342
AND/OR
Name: LARENE WHITAKER 208-645-2292
Address: P.O. BOX 64
MALTA, ID 83342
2. Date of Priority: JUL 11, 1961
3. Source: GROUNDWATER Trib. to:
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	26E	12	SE	NE			CASSIA
5. Description of diverting works:
WELL & 50 H.P. PUMP DELIVERING TO POND TO BOOSTER TO SPRINKLERS
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.600		
7. Total Quantity Appropriated is:
1.600 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 240.0 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE

A43-02530B

Page 1

Date: 05/24/89

MICROFILMED
MAR 03 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	26E	12	SW	NE		IRR	37.0
			SE	NE		IRR	34.0
			SE	NW		IRR	9.0
						Section Acres	80.0
						Total Acres	80.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:
A45-00297, 00298 & 00299

14. Remarks:
TRANS. 2627.

15. Basis of Claim: LICENSE
Water Right Number: 29931

16. Signature(s)

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

Number of attachments: A43-00297

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): Art W. Harker Date: 5/24/89

Date: _____

State of Idaho)
County of Thur Falls) SS.

Subscribed and sworn (or affirmed) before me this 24th day
of May 19 89 Lee D. Harker
Notary Public

Seal

Residing at _____

My Commission Expires _____

**Idaho Dept of Water Resources
Claims review notes and narrative**

Date: 7-20-2001

File:

Prepared by Kelly K Christensen

DALAN SPENCER FILED A NOTICE OF ERROR FOR HIS CLAIMS (43-12969 THRU 43-12975). I CHANGED THE PLACE OF USE BOUNDARY FOR ARTS CLAIMS IN THE SWNW OF SEC 12 BASED UPON THE PLAT MAP SUBMITTED BY DALAN. THIS CHANGE DID NOT CHANGE THE ACRE RECOMMENDATION FOR ART.

120
05/11/2001

**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 15, 2001

Water right number: 43-2530B

ART WHITAKER
PO BOX 64
MALTA ID 83342
Telephone Number: (208)645-2292

LARENE WHITAKER
PO BOX 64
MALTA ID 83342
Telephone Number: (208)645-2292

RECEIVED

JUN 20 2001

**Department of Water Resource
Southern Region**

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

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

3. Give a brief explanation as to why you disagree with these portions:

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

DATE: JUNE 15, 01 SIGNATURE: Art D Whitaker
Please print your name: ART D WHITAKER

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

10/18/2000

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

RIGHT NUMBER: 43-2530B
NAME AND ADDRESS: ART WHITAKER
LARENE WHITAKER
PO BOX 64
MALTA, ID 83342

SOURCE: GROUND WATER

VERIFIED BY *KKC*
10-18-00

QUANTITY: 1.6 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS. 43-297A, 43-298B, 43-299B, 43-2530, AND 43-10263.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.60 CFS AND A COMBINED DIVERSION VOLUME OF 320 AF. COMBINED RIGHT NOS: 43-2530B AND 43-10236.

PRIORITY DATE: 07/11/1961

POINT OF DIVERSION: T13S R26E S12 SESENE Within CASSIA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03-15 11-15	1.60 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County			
T13S R26E S12	SENE	38	T13S R26E S12 SWNE 38
T13S R26E S12	SENE	10	
86 ACRES TOTAL			

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 80 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS. 43-297A, 43-298B, 43-299B, 43-2530B, AND 43-10263

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

RIGHT NO. 43-10236 IS AN EXPANSION OF THIS RIGHT PURSUANT TO SECTION 42-1416B, IDAHO CODE.

CLAIM NUMBER
43-2530 } GW
43-10263 }
DATE
10-17-00
TRANSFER NUMBER

AGENT
KKC
CLAIMED ACRE TOTAL

43-297A } Surface
43-298B } Water Chims
43-299B }
GIS ACRE TOTAL

	TWP	RNG	SEC	NE				NW				SW				SE				
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
43-2530	13S	26E	12			37	34				9									80
43-10263			12			3	5				3									11
Surface Chims			12			40	39				12									
GIS						38.3	38.2				10.2									
RECOM			12			38	38				10									86
43-10263						1	4				1	(6 ac within PPU)								
CLAIM																				
GIS																				
RECOM																				

B43-POU.SHP
43-2530 per transfer 2627 the P/U is as claimed 80 Ac; found 86 ac
SHAPE NOS.
Recom 80 Ac within PPU of 86 Ac.) transfer recognizes standard in season

43-10263 is an exp claim in a crit GWarea (42-1416B) I found 6 Acres more than licensed. Recommend this right for 6 Ac w.thin the 86 PPU. condition as an exp right Sec 12 SESENE according to 42-1416B. (P/D is very close to the 10 a tract line)
Site tag A0004891

* Sec 12 NW SWSW. P/D location as of 1987. this is the recom P/D abandoned in 1998
Cassia Creek P/D in use since 1998
Sec 14 NENENE the P/U for the surface water rights match the GW right P/U.
SITE tag A0007924
DBF TABLES UPDATED

B43-DBPOU.DBF
B43-DBPOD.DBF
JPEG LAYOUT

Payout in also 43-297A field notes.

**43-297A, 43-298B, & 43-299B CASSIA CREEK RIGHTS
43-2530B & 43-10236 GROUNDWATER RIGHTS**

The decreed place of use is owned by three separate individuals and claimed by each one. The split between Beyler (43-298A, 43-299A, and a portion of 43-10794 {split into 43-11263 and 43-11264})

Beyler has claimed 22/120ths of the decreed rights

Whitaker has claimed the entire decreed rate for each right on his portion of the decreed place of use

Loock has claimed 0.10 cfs of 43-00297

I am recommending Beyler's claims for 20 acres and 22/120ths of the decreed rates.

I am recommending Whitaker claims for 86 acres and 98/120ths of the decreed rates of 43-298 and 43-299 rates. I am recommending Whitaker's claim 43-279A at 98/120ths less Loock's share of that right.

I am recommending the Loock claim for 4.6 acres and 0.10 cfs (this is less than the legal limit of 1.5 inches per acre for parcels less than 5 acres.

Whitaker Analysis Surface water Rights

The claimed place of use is entirely within the decreed place of use. There is some indication that a portion of the decreed place of use was not always irrigated. However, as of 1987 the place of use was fully farmed and irrigated. Currently there is a small feedlot located in the southeast corner of the recommended place of use. It does not appear on the 1987 NAPP photography and is only an acre or so in size. I am not excluding this ground from my recommendation.

I am recognizing the diversion rates for each claim as follows;

43-297A $1.20 \text{ cfs} * (98/120) = 0.98 \text{ cfs}$. $.98 \text{ cfs} - 0.10 \text{ cfs (Loock portion)} = .88 \text{ cfs}$

43-298B $0.60 \text{ cfs} * (98/120) = 0.49 \text{ cfs}$

43-299B $1.40 \text{ cfs} * (98/120) = 1.14 \text{ cfs}$
total 2.51 cfs

The three rights are limited to 1 inch per acre when used together on the 86 acres which is;
 $86 \text{ acres} * 0.02 \text{ cfs/acre} = 1.72 \text{ cfs}$

Whitaker Analysis Ground Water Rights

There are two claims from one well for the irrigation of the same ground. Transfer 2627 for 43-02530B was approved in 1981 to add a point of diversion and split off a portion of the licensed place of use based upon the sale of a portion of that ground. The license covered all but 6 of the currently irrigated acres. As irrigation of the additional 6 acres occurred after the establishment of the critical groundwater management area those 6 acres are being recommended under 43-10236 as an expansion in a critical groundwater area (42-1416B).

43-2530B is limited to the transferred acre total of 80 acres within the PP/U at the licensed rate of 1.60 cfs.

By Kelly K Christensen Date: October 17, 2000 File: 43-297 beyler whitaker loock analysis.doc

43-10236 is also limited to the same diversion rate of 1.60 cfs and is limited to 6 acres within the PP/U.

When the two rights are combined, they are limited to a total diversion volume of;
 $80 \text{ acres} * 4 \text{ afa} = 320 \text{ afa}$.

Beyler Analysis Surface water Rights

The surface water rights are diverted in Sec 14 NENENE and delivered through the Harper ditch. This ditch is shared with other users. The ditch enters the property in the southwest corner and splits with one ditch going north and the other one going east. There is no farmstead on the property.

The original decreed rights have been split through property sales and the proportionate split for Beyler was calculated on a 22/120 ratio based upon ownership of his respective portion of the decreed place of use. The claimed place of use is entirely within the decreed place of use. Based upon the currently available information, it appears that all or nearly the entire place of use is irrigated. The claim was for 22 acres, however I found 20 acres after excluding the highway right of way, the well site, and a small portion of ground around Cassia Creek.

I am recommending the Cassia Creek rights as follows;

43-11264	1.20 cfs * (22/120) =	0.22 cfs
43-298A	0.60 cfs * (22/120) =	0.11 cfs
43-299A	1.40 cfs * (22/120) =	0.256 cfs
	total	0.586 cfs

The three rights are limited to 1 inch per acre when used together on the 20 acres which is;
 $20 \text{ acres} * 0.02 \text{ cfs/acre} = 0.40 \text{ cfs}$

Beyler Analysis Ground Water Right

Beyler filed 43-4162 as a beneficial use right. The evidence of priority supports a 'dug' well in 1926 which was eventually replaced by the current 'drilled' well in 1957. This water has been used to supplement the surface water on that ground. Grant Beyler stated that the 22 acres was owned by the Church for a long period of time and that he had leased the property and farmed the ground. He indicated that the groundwater was used on the 20 acres only. It did not go to the ground now owned by Loock and claimed under 43-10370. He did state that surface water did enter the property in the southwest corner and flow either north or east from that point and that Loock did receive surface water at times from the ditch going east.

Mr Beyler submitted data to Scot King (Sr. Dept Agt.) and he analyzed the information and determined that the well has the capacity to deliver in excess of 1 inch to the acre. Therefore I am recommending this right for the irrigation of the same 20 acres described above and for a diversion rate of 0.40 cfs ($20 \text{ acres} * 0.02 \text{ cfs/acre}$).

Loock Analysis Surface Water Right

Loock claimed 43-297B for the irrigation of 5 acres. The 5 acres were irrigated in 1987 per the NAPP photography. After visiting with Art Whitaker, I am recognizing this right as valid for 4.6 acres and at the claimed rate of 0.10 cfs as an unrecorded transfer. Art had indicated that it was his intent at the time of the original sale that the property would be 'dry'. However the buyer and his predecessors irrigated the property with Cassia Creek water. Art decided that he would not contest Loock's filing for this water so long as it was delivered according to the 1894 priority date.

The point of diversion recommended is a 'dug hole' next to Cassia Creek. The water level in the hole is directly related to the flows in Cassia Creek and is therefore recognized as the point of diversion for this right. The exact date that this was constructed but based upon currently available information it was in existence prior to 1987.

Loock Analysis Ground Water Right

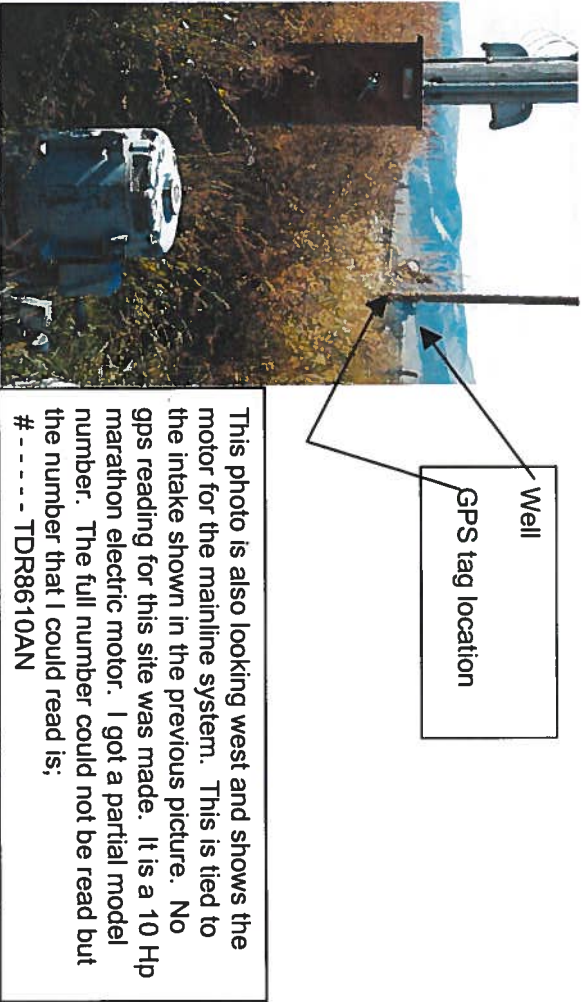
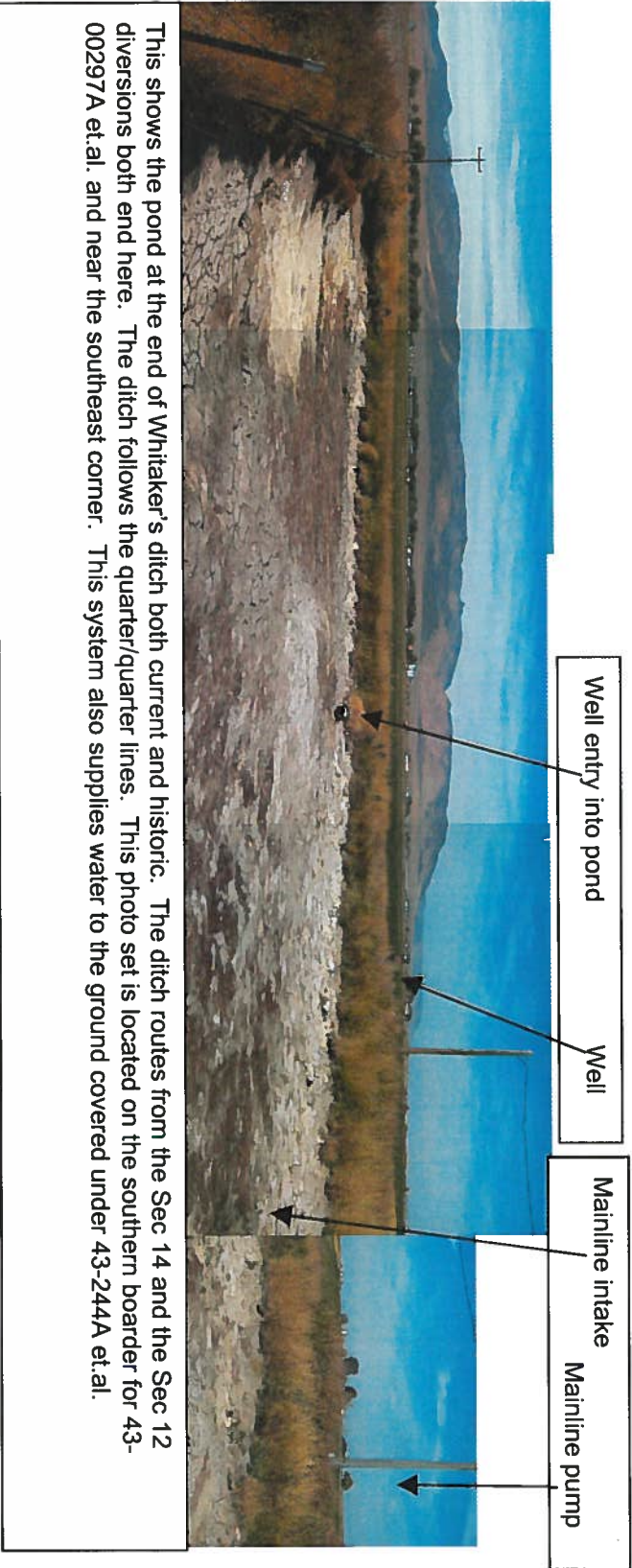
The point of diversion recommended above was the claimed point of diversion for the groundwater right 43-10370. I visited with Grant Beyler and he stated that the well water was never used on the 5 acres under the claim. This contrasts with the affidavit submitted by Grant. The other elements of the history indicate that the well water was not used on the 5 acres. Therefore, I am recommending the claim for disallowal; No Beneficial Use Found.

Log for claim A43-02530B

Spatial Dynamics LRR

1/31/00

T	R	SEC	QQ	Acres Claimed	Acres Found	COMMENT
13	26	12	SWNE	37	40	
13	26	12	SENE	34	40	
13	26	12	SENW	9	12	
Totals:				80	92	



Iaho Dept of Water Resources
Claims review notes and narrative
Photo page 1 of 1

Photo Date: 90-29-2000

File: 43-297a whitaker

Prepared by Kelly K Christensen

Pg 1



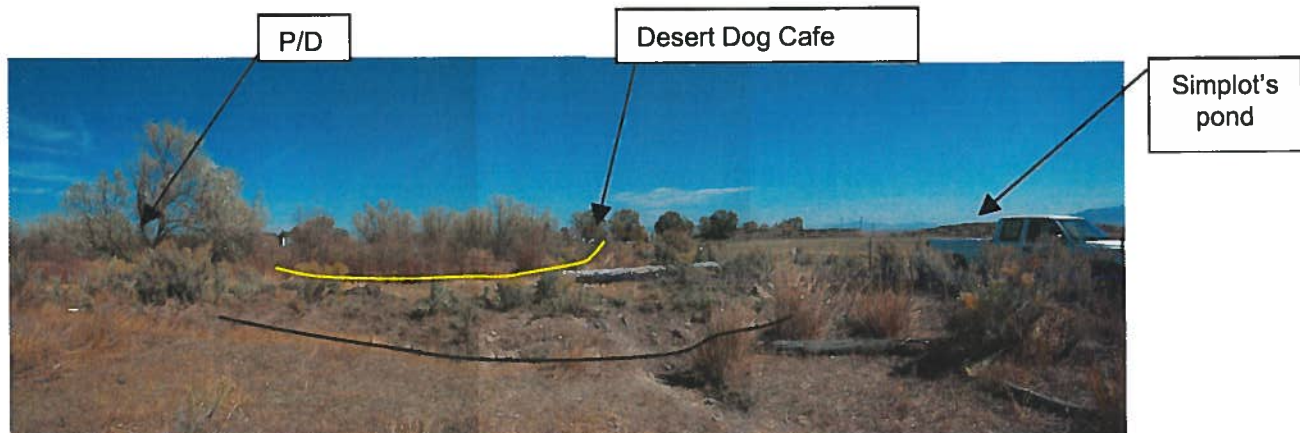
This is the point of diversion located in TWP 13S, RNG 26E, SEC 12 SWSW. This point of diversion has not been used since approximately 1998 per Art Whitaker. The water instead has been taken from the point of diversion in SEC 14 NENENE. You are looking East-northeast to east in this photo set.



This photo shows the parshall flume location. It is overgrown with grass and partly filled in with silt. It does appear to be in good physical condition otherwise. The staff gauge has been removed. You are looking southeast in this photo.

This site was not GPSed. Art indicated that he is interested in filing a transfer to change the point of diversion from this location to the one in Sec 14. He indicated that it is difficult to maintain diversion works at this point and that at times of high water, the ditch can pose problems with the Desert Dog Café located east of this point by about $\frac{3}{4}$ ths of a mile.

Simplot's flume across Cassia Creek coming from the Sec 14 diversion is approximately 40 feet west of this diversion.



This location is south and a little west of the point of diversion. You are looking northeast on the left to east-southeast on the right. Whitaker's ditch route follows the younger red willows as highlighted by the yellow line. Simplot's ditch that leads to the flume is in the foreground highlighted in black.

RECEIVED
APR 16 1982
Department of Water Resources
Southern District Office

Transfer

2627

Water Right No.

43-2530

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPROVED

APPLICATION FOR TRANSFER OF WATER RIGHT

To Change the Point of Diversion and/or the Place of Use

Name of applicant Arthur Whitaker Phone 645-2292Post office address Box 64, Malta, Idaho 83342

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree to _____ (Name)
in case of _____ vs _____
dated _____ in _____ county of _____
(Name of court)

b. License No. 43-2530 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 Required
Through purchase

3. Source of water Ground water tributary to _____4. Date of priority July 11, 1961

5. Water is used for the following purposes:

amount 4.66 cfs for Irrigation purposes from March 15 to Nov. 15

amount _____ for _____ purposes from _____ to _____

amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)

6. Total amount of water under right: a. 4.66 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 12
Township 13 S. Range 26 E., B.M., in Cassia 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 $\frac{1}{4}$	
<u>13 S.</u>	<u>26 E.</u>	<u>12</u>			<u>37</u>	<u>34</u>			<u>9</u>						<u>39</u>	<u>37</u>	<u>39</u>	<u>38</u>	<u>233</u>

Total number of acres to be irrigated 2339. Describe any other water rights used for the same purposes as described above .6 cfs 4-25-1883

8 cfs 5-31-1884, 1.4 cfs 5-31-1885, .4 cfs 4-30-1886, 2.4 cfs 4-1-1894, 1.2 cfs 4-1-1894 all
from Cassia Creek.

43-2530 T-2627

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

1. Amount of water: a. 1.6 cubic feet per second &/or
b. _____ acre feet per annum
2. Point of diversion SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12 Township 13 S.
Range 26 E., B.M., Cassia County
Additional points _____

3. 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 $\frac{1}{4}$	
<u>13 S</u>	<u>26 E</u>	<u>12</u>			<u>37</u>	<u>34</u>				<u>9</u>									<u>80</u>

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

1. Change in point of diversion

- a. Amount of water to be diverted 1.6 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 12 Township 13 S
Range 26 E., B.M., Cassia County
Additional points _____

c. Description of diverting works Well & pump, sprinklers

d. Describe the reasons for applying for a change in the point(s) of diversion

Original well & SE $\frac{1}{4}$ Sec. 12 have been sold

2. Change in place of use No Change

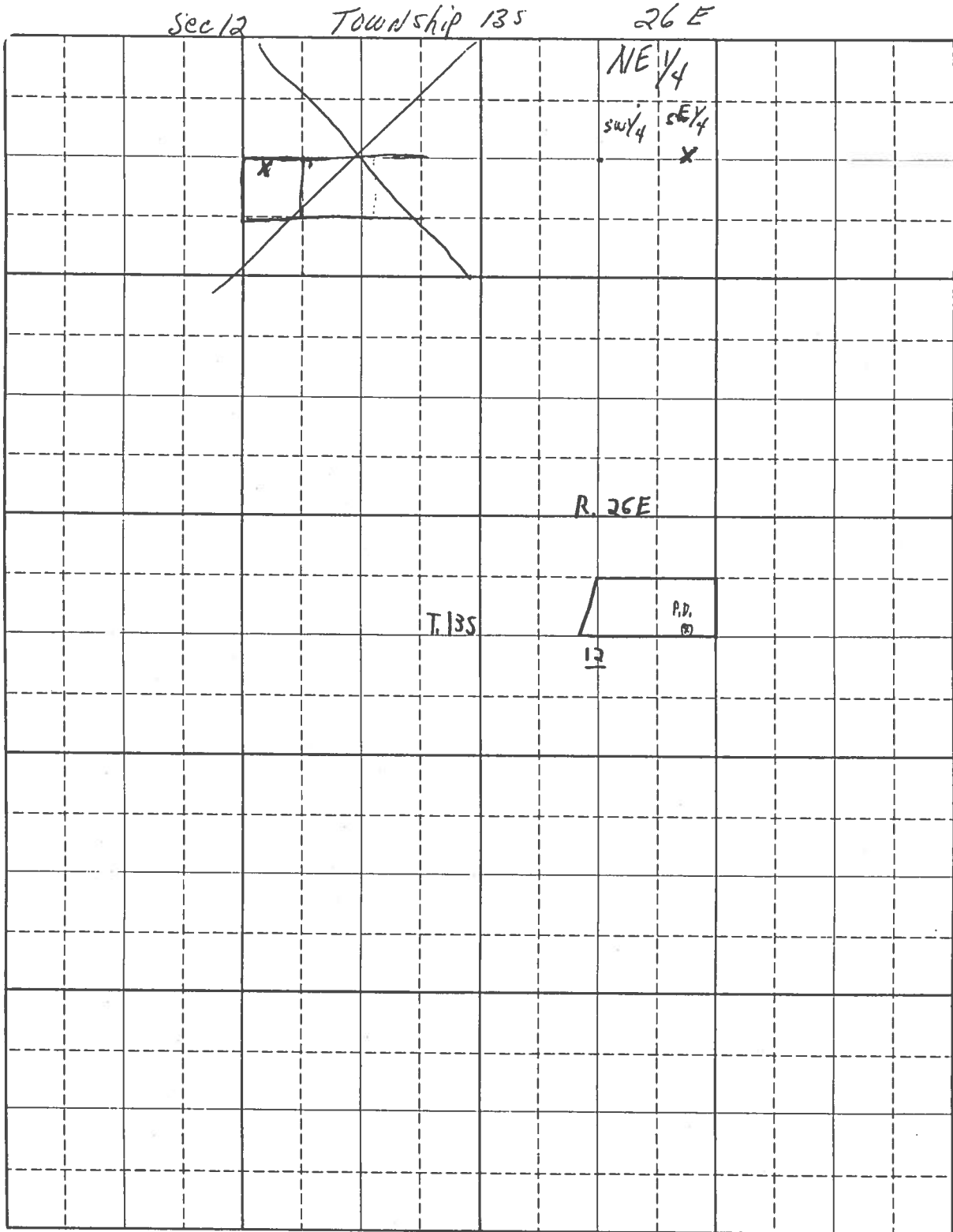
a. Describe the lands or place of use to which the right will be transferred:

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 $\frac{1}{4}$	

Total number of acres to be irrigated _____

73-2530 T-2627

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.

4. 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.

Art W. Whitaker
(Signature of applicant)

Subscribed and sworn to before me this 18 day of November, 19 81.

Mary A. Hill
(Notary public)

My commission expires life

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 43-2530 and said application is hereby APPROVED, subject to the following limitations and conditions:

Witness my hand this 8th day of April, 19 82.

J. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by JP Date 11-18-81

Protest filed by None

Prelim. check by T.G.B. Fee \$50⁰⁰ # 20663

Received by Mary A. Hill Date 11/18/81

Published in South Idaho Press

Pub. dates 12/3 & 12/10/81

Watermaster recommendation requested on N/A

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial

by ADCA Jim DLR

_____ rec'd. _____