

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: A43-10526
Date Received: 6/19/1989
Receipt No: S008294
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: WAYNE R. RICH 801-752-8887
Address: 1636 E. 1030 N.
LOGAN, UT 84321

2. Date of Priority: JAN 26, 1961

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
15S	27E	20	NW	SW			CASSIA

5. Description of diverting works:
365' WELL AND 75 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	4.200		

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

8. Total consumptive use is 720.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	27E	18	NE	NE		IRR	13.0
						Section Acres	13.0
		19	SW	NE		IRR	25.0

A43-10526

Page 1

Date: 06/19/89

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10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
15S	27E	19	SE		NE		IRR	36.0
			NE		SE		IRR	38.0
			NW		SE		IRR	26.0
			SW		SE		IRR	26.0
			SE		SE		IRR	38.0
							Section Acres	189.0
		30	NE		NE		IRR	38.0
							Section Acres	38.0
							Total Acres	240.0

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:

A43-02386, A43-02554B, A43-00082A, A43-02285, A43-10517

14. Remarks:

THE SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ IN SEC. 19 AND THE NE $\frac{1}{4}$ NE $\frac{1}{4}$ IN SEC. 30 WERE PURCHASED ON JULY 10, 1975 WITH ALL RIGHTS UNDER LIC. 43-2509 REPRESENTING 4.2 CFS FOR SAID 240 ACRES. AS PART OF THE AGREEMENT THE DIVERSION POINT WAS TO BE CHANGED TO SEC. 20 AND WEST PORTIONS OF THE SE $\frac{1}{4}$ WERE TO BE TRADED FOR THE EASTERLY PORTION OF THE SW $\frac{1}{4}$ OF NE $\frac{1}{4}$ WITH A TRANSFER TO TRADED LANDS OF WATER RIGHT. CHANGE IN DIVERSION POINT AND WATER TRANSFER HAS OCCURRED. ADDITIONAL TRANSFERS OF PLACE OF USE HAVE OCCURRED TO SEC. 18 AS SHOWN.

*****DWR NOTE*****

THIS WR CLAIMS TO BE BASED ON THE WR 43-02509. P/U DOES NOT MATCH. P/U DOES MATCH WITH WR 43-02387. MORE INFORMATION IS NEEDED TO IDENTIFY CORRECT CORE NUMBER FOR THIS RIGHT.

15. Basis of Claim: LICENSE

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 _____

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: 39356

Ident. Number A43-10526

Date Received _____

Receipt Number 3

RECEIVED

JUN 09 1989

Department of Water Resources
Southern Region Office

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Wayne R. Rich Phone (801) 752-8887Mailing Address 1636 East, 1030 North, Logan, Utah Zip 843212. Date of Priority (Only one (1) per claim) January 26, 19613. Source of water supply (a) Groundwater
which is tributary to (b) _____4. a. Location of existing point of diversion is: Township 15S Range 27E Section 20,
_____ 1/4 of NW 1/4 of SW 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. 365 foot well with 200 feet of 14 inch
casing and 165 feet of 10 inch casing. 104 feet up lift with 75 H.P. pump
and motor with booster pump. Mainline and handline sprinkler system.

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Copies: White-State, Yellow-Claimant MAR 8 5 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 3/15 to 11/15 amount 4.2 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.2 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 720 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	
15S	27E	19			25	36									38	26	26	38	189
15S	27E	30	38																38
15S	27E	18	13																13

Total number of acres irrigated 240

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 X 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 (X)

14. Remarks:

The SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ in Sec. 19 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ in Sec. 30 were purchased on July 10, 1975 with all rights under Lic. 43-2509 representing 4.2 cfs for said 240 acres. As part of the agreement, the diversion point was to be changed to Sec. 20 and West portions of the SE $\frac{1}{4}$ were to be traded for the easterly portion of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ with a transfer to traded lands of water right. Change in diversion point and water transfer has occurred. Additional transfers of place of use have occurred to Sec. 18 as shown.

Last Name Rich Ident No. _____

Copies: White - State Yellow - Claimant

MICROFILMED
MAR 05 1993

J

125

+ 15 S, R 27 E BM

1233

1058

T 16 17

HANDLINES

HANDLINES

886

89.7

5
68.9

2
149.6

MAINLINE

19 20
30 29

HANDLINES

MAINLINE

896

MICROFILME

MAR 05 1993

Last Name Rich

Ident No. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 43-2509
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) *Wayne R. Rivo* Date June 8, 1989

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 Minidoka) SS.

Subscribed and sworn (or affirmed) before me this 8th day of June 19 89

SEAL

Notary Public *Roger D. Ling*
Residing at Rupert, Idaho

My Commission Expires 10/30/94

Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, Roger D. Ling 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 *Roger D. Ling*
Address P.O. Box 396, Rupert, Idaho 83350
Date June 8, 1989

Last Name Rich Ident. Number _____

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MAR 05 1993
Copies White-States, Yellow-Claimant

Water Right Number - 43-02387

Adj. Flag Translation: Standard Water Right Number

Old (D) Number - 23670

+ - - - - Last Name - - - - + + - - - - First Name - - - - + - - - - Address - - - - - +

*** C - CURRENT OWNER ***
STEWART

REID S.

1 - STEWART RANCH

2 -

3 -

City- MALTA

Phone -

State- ID Zip- 83342

STEWART

RUTH O.

1 - STEWART RANCH

2 -

3 -

City- MALTA

Phone -

State- ID Zip- 83342

*** O - ORIGINAL OWNER ***
GUNNELL, JR.

L. J.

1 -

2 -

3 -

City-

Phone -

State- Zip-

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
01/28/1953 17 L - LICENSE+ - - - - Source - - - - - + + - - - - Tributary - - - - - + + - - - - +
GROUNDWATER+ - - - - - - - - - - - Point of Diversion - - - - - + - - - - - +
Twn Rng Sec Tract Lot RFlg County

15S 27E 20 NW SW (31) CASSIA

+ - - - - - - - - - - - Water Use - - - - - Diversion Rate Diversion Volume
Code Description Period From Period To

01 - IRRIGATION 03/15 11/15 2.440

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
2.440+ - - - - - - - - - - - Place of Use - - - - - Description - - - - - County
Twn Rng Sec Tract Lot Acres Code

| | | | | | | | | |
|-----|-----|----|-------|------|----|------------|------|--------|
| 15S | 27E | 19 | SW NE | 15.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 19 | SE NE | 20.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 19 | NE SE | 20.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 19 | NW SE | 15.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 19 | SW SE | 15.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 19 | SE SE | 20.0 | 01 | IRRIGATION | (31) | CASSIA |
| 15S | 27E | 30 | NE NE | 20.0 | 01 | IRRIGATION | (31) | CASSIA |

Total Acres: 125.0

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MAR 05 1993

| | | | | | | | |
|------------------|---|------------|-----------------|---|------------|------------------|---|
| proof Due Date | - | 00/00/0000 | Field Exam Made | - | 00/00/0000 | Field Exam Fee | - |
| Approved/Denied | - | 00/00/0000 | Protested Date | - | 00/00/0000 | Swan Falls | - |
| Proof Made Date | - | 00/00/0000 | Hearing Date | - | 00/00/0000 | Temporary Right | - |
| Start Work Date | - | 00/00/0000 | Verified Date | - | 02/11/1985 | DLE/Carey Act | - |
| Order Show Cause | - | 00/00/0000 | Receipt Number | - | | Water District | - |
| Licensed Date | - | 06/28/1979 | Appl Received | - | 00/00/0000 | Transfer/Amended | - |
| Decree Date | - | 00/00/0000 | | | | | |

MICROFILM
MAR 05 1993

Water Right Number - 43-02509

Adj. Flag Translation: Standard Water Right Number

Old (D) Number - 29353

+ - - - - Last Name - - - - + + - - - - First Name - - - - + + - - - - Address - - - - - +

*** C - CURRENT OWNER ***
STEWART

REID S.

1 - STEWART RANCH

2 -

3 -

City- MALTA

Phone -

State- ID Zip- 83342

STEWART

RUTH O.

1 - STEWART RANCH

2 -

3 -

City- MALTA

Phone -

State- ID Zip- 83342

*** O - ORIGINAL OWNER ***
OLSON

FRANK

1 -

2 -

3 -

City-

Phone -

State- Zip-

+ - - Priority Date - - + + - - - Region - - - + + - - Stage - - - + + - - Status - - - +
01/26/1961 L - LICENSE

+ - - - - Source - - - - + + - - - Tributary - - - - - +

GROUNDWATER

+ - - - - - - - - - - - - - - - Point of Diversion - - - - - +

Twn Rng Sec Tract Lot Rflg County

15S 27E 29 SW NW (31) CASSIA

+ - - - - - - - - - - - - - - - Water Use - - - - - Diversion Rate Diversion Volume

01 - IRRIGATION
43 - DOMESTIC03/15 11/15
01/01 12/31

5.550

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +

5.550

+ - - - - - - - - - - - - - - - Place of Use - - - - - Description County

Twn

Sec

Tract

Lot

Acres

Code

Description

County

| | | | | | | | |
|-----|-----|----|-------|------|----|------------|-------------|
| 15S | 27E | 20 | SW NW | 20.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | NE SW | 40.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | NW SW | 20.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | SW SW | 20.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | SE SW | 40.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | NW SE | 10.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 20 | SW SE | 10.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 29 | NW NE | 20.0 | 01 | IRRIGATION | (31) CASSIA |
| 15S | 27E | 29 | SW NE | 20.0 | 01 | IRRIGATION | (31) CASSIA |

MICROFILME

MAR 05 1993

Adj. flag translation: Standard Water Right Number

Total Acres: 320.0

MAR 05 1993

From: DWR03::BAUMHOFF 10-JAN-1992 10:46:51.85
To: DWR60::ROBERTSON
CC: BAUMHOFF
Subj: CLAIM NO. A43-10526

HI JEANIE,

IT HAS BEEN A WHILE. HOPE YOUR VACATION TIME WAS GOOD.

I NEED FOR YOU TO FAX ME A COPY OF THE ORIGINAL SIGNED CLAIM
#A43-10526.... PLEASE LET ME KNOW WHEN YOU HAVE SENT IT BY
SENDING ME A MAIL MESSAAGE...

THANKS,

ANNA

From: DWR60::ROBERTSON 10-JAN-1992 11:18:39.21
To: DWR03::BAUMHOFF
CC: ROBERTSON
Subj: RE: CLAIM NO. A43-10526

Hi Anna!

FAX is on its way.....

Jeanie

MESSAGE CONFIRMATION
TRANSMISSION

JAN-10-1992 FRI 12:20

TERM ID: IDWR SOUTHERN
TEL NO.: 1-206-736-3037

P-9999

| NO. | DATE | ST. TIME | TOTAL TIME | ABSR/SBD | ID | DEPT CODE | #FGS |
|-----|-------|----------|------------|----------|-------------|-----------|-------------|
| 492 | 01-10 | 12:16 | 00:03:52 | 00 | IDWR FAX #1 | | OK- 4 NG- 0 |

MICROFILM
MAR 05 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

.July 19, 1989

.WAYNE R RICH
.1636 E 1030 N
.LOGAN UT 84321

Re: A43-10526
A43-10517
A43-02386
A43-10516
A43-02554B
A43-10515
A43-00082A
A43-02285

Dear Claimant(s):

Please find enclosed your receipt and a copy of a computer generated claim based on the information from your original claim(s) which has been entered in our computer records.

Please review the computer generated claim 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,

A handwritten signature in black ink, appearing to read 'Judy Givens'.

Judy Givens
Adjudication Secretary

/jg

Enclosures:

MICROFILMED
MAR 05 1993

RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE

WATER USE

USE PERIOD
FROM TO

MAXIMUM
DIVERSION

STAGE

A43-10526

WAYNE R. RICH
1636 E. 1030 N.
LOGAN UT 84321

01/26/1961 IRRIGATION

03-15 11-15

4.20 CFS LICENSE

TOTAL DIVERSION RATE:
TOTAL DIVERSION VOLUME:
CONSUMPTIVE USE:

4.20 CFS
0.00 AFA
720.0 AFA

SOURCE: GROUNDWATER

TRIBUTARY:

POINT OF DIVERSION:
T15S R27E S20

NWSW

PLACE OF USE: IRRIGATION
T15S R27E S18

S19 NENE 13.0
SESE 25.0
SESE 38.0

SENE 36.0

NESE 38.0

NWSE 26.0

SWSE 26.0

S30
240.0 ACRES TOTAL

CONDITIONS OF APPROVAL:

REMARKS: THE SEC. 19 AND THE NE1/4 IN SEC. 30 WERE PUR-
CHASED ON JULY 10, 1975 WITH ALL RIGHTS UNDER LIC. 43-2509
REPRESENTING 4.2 CFS FOR SAID 240 ACRES. AS PART OF THE AGREEMENT
THE DIVERSION POINT WAS TO BE CHANGED TO SEC. 20 AND WEST POR-
TIONS OF THE SEC. 19 WERE TO BE TRADED FOR THE EASTERLY PORTION OF
THE SW1/4 OF NE1/4 WITH A TRANSFER TO TRADED LANDS OF WATER RIGHT.
CHANGE IN DIVERSION POINT AND WATER TRANSFER HAS OCCURRED.
ADDITIONAL TRANSFERS OF PLACE OF USE HAVE OCCURRED TO SEC. 18
AS SHOWN.

DWR NOTE
THIS WR CLAIMS TO BE BASED ON THE WR 43-02509. P/U DOES NOT
MATCH. P/U DOES MATCH WITH WR 43-02387. MORE INFORMATION IS
NEEDED TO IDENTIFY CORRECT CORE NUMBER FOR THIS RIGHT.

OTHER RIGHTS: A43-02386, A43-02554B, A43-00082A, A43-02285, A43-10517

SEE
T3697
dated 2/20/01
VH

This claim is based on a part of licensed
right 43-02509 and the remarks describe
an accomplished transfer of both the
811D and 811E - this right should be
recommended under the inc. license number.

MICROFILMED

MAR 05 1993

02/21/2001

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

RIGHT NUMBER: 43-10526
NAME AND ADDRESS: WAYNE R RICH
1636 E 1030 N
LOGAN, UT 84321

SOURCE: GROUND WATER

QUANTITY: 4.16 CFS
960 AFY

PRIORITY DATE: 01/26/1961

POINT OF DIVERSION: T15S R27E S20 SWNWSW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|------------------------|
| IRRIGATION | 03-15 11-15 | 4.16 CFS
960.00 AFY |

PLACE OF USE:

| <u>IRRIGATION Within CASSIA County</u> | | | |
|--|------|----|-----------------------|
| T15S R27E S19 | SWNE | 27 | T15S R27E S19 SENE 40 |
| T15S R27E S19 | NESE | 40 | T15S R27E S19 NWSE 27 |
| T15S R27E S19 | SWSE | 26 | T15S R27E S19 SESE 40 |
| T15S R27E S30 | NENE | 40 | |

240 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

RIGHT: 43-10526

RECOMMENDED PLACE OF USE
TWP 15S, RNG 27E,
Data entry on February 20, 2001



0 2640 5280 Feet

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



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

NOTE TO FILE

From: Vikie Hancock
7/18/01

Regarding: Ownership 43-00082A, 43-2285B, 43-2386A,
43-2554B, 43-10517, 43-10526

Contact: Brian Hansen / Wayne Rich

Brian Hansen has purchased the property with these appurtenant water rights with a contract of sale that has not been fulfilled or recorded at the court house as of this writing.

Please note that he would have an interest in any administrative or court proceeding that may affect the validity or value of these water rights.

Brian Hansen
26705 N One Mile Canyon Rd
Malta, Idaho 83342
435-827-5743

acres 18
100 8c
in T 36 9T
8c
1440

RECOMMENDATION NOTES

From: Vikie Hancock

2/20/01

Regarding: 43-10526

This claim is based upon the A portion of license 43-2509, split according to transfer 3697 in 1990. At the time of the transfer, Reid Stewart was owner of record of this property, however Wayne Rich was farming it under a contract of sale. *See documents in file, and a copy of T3697.*

This right was claimed with 13 acres in section 18, and remarks alluded to this transfer of acres, however a review of the database shows no transfer subsequent to transfer 3697 associated with this water right number or in the name of Rich. Since T3697 was filed and approved after the commencement of the adjudication, and no subsequent transfer was found, the claim must be recommended as described in transfer 3697. Furthermore, 1987 NAPP aerial photography indicates that the 13 acres were still being irrigated at the location identified in T3697 at commencement of the adjudication.

If Mr Rich wishes to transfer, or now has transferred, 13 acres from section 19 to section 18, he must file an administrative transfer with the allocations bureau.

Rich-Hansen

A43-02254B 38Ac.

A43-02285B 90Ac.

A43-00082A 152Ac.

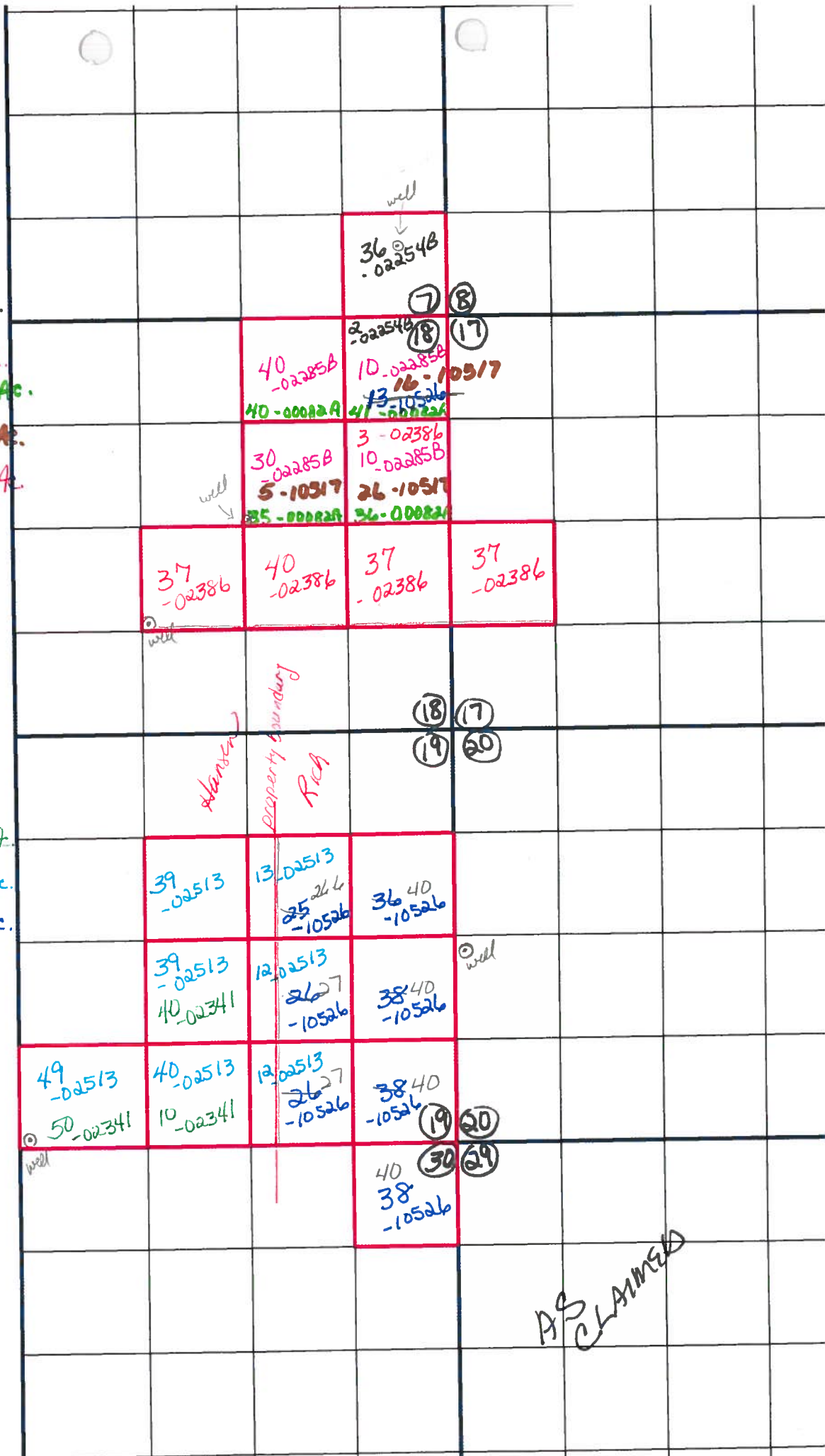
A43-10517 47Ac.

A43-02386 154Ac.

A43-02341 100Ac.

A43-02513 204Ac.

A43-10526 240Ac.



5/18
 NENE 13. ✓
5/19

10E NE
 Sec 18
 *13 ac

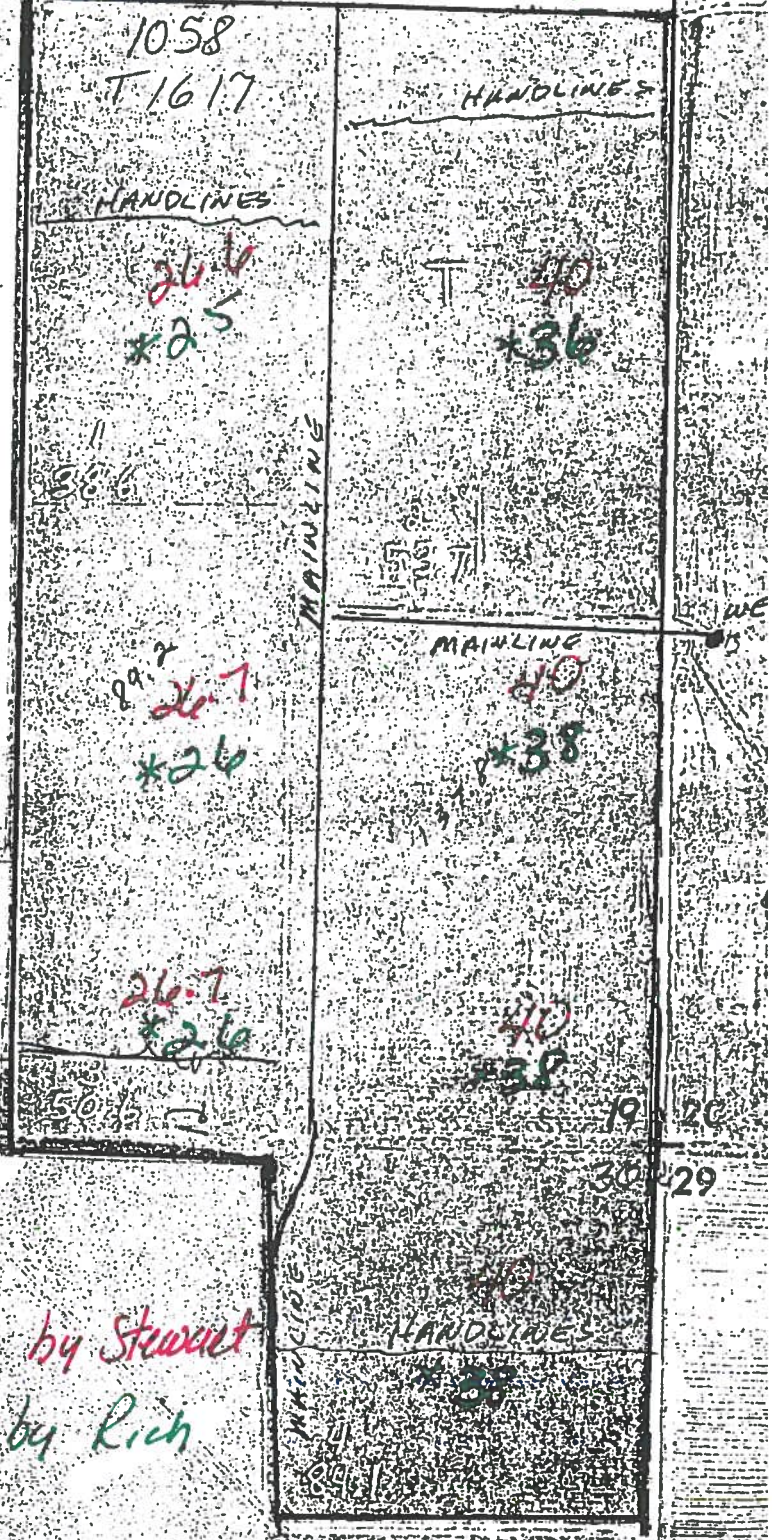


SENE 25. ✓
 SE 36. ✓
 NESE 38. ✓
 NW 26. ✓
 SW 26. ✓
 SE 38. ✓

5/30
 NENE 38

240
 5
 68.9

+ 15 S, R 27 E BM



T 3697 1990 by Stewart
 * CLAIMED 1989 by Rich

POD: 520 NWSW

Last Name Rich

Ident No. A43-10526

155 27E 5 18, 19 & 30

Reid S. Stewart
1655 Sunset Drive
Logan, Utah 84321

RECEIVED

NOV 06 1996

Department of Water Resources
Southern Region

October 30, 1996

Frank Hitchcock
Sr. Water Resource Agent
Southern Regional Office
222 Shoshone St. East
Twin Falls, ID 83301

Re: Filing of SRBA Claims for Grow Properties (43-0116, 43-0117, 43-0118, 43-0119, 43-2387, 43-2299, and 43-2509b)

Dear Frank:

As anticipated, attached hereto please find SRBA claims for the above referenced water rights. I greatly appreciate your assistance and the assistance of other IDWR personnel which has ultimately led me to and allowed me to file the above claims. Your most recent assistance has helped in the finalization of the effort and the filing of the attached claims.

As you know, questions and issues associated with these water rights have a rather long history. As you were not historically involved in these water rights, let me provide a brief summary of the many issues which have led to the filing of these claims. In the mid-1970's, I purchased the farm which is the subject of these claims. After we had worked the farm for several years, we divided it into two pieces. The eastern portion of the farm I sold to my son, who ultimately sold it to Melbourne Grow. I then entered into a contract to sell the western portion of the farm to Wayne Rich. At the time I owned the farm, there were several wells in use which we had integrated into a common distribution system. With the division of the farm, it became necessary to assign certain wells to each of the two portions. Therefore, in the sales, I agreed to divide the water rights such that certain wells would go to the portion purchased by Grow and other wells to the portion being purchased by Rich.

To that end, in the late 1970's, I came into IDWR's Twin Falls office and requested assistance in effectuating the intent of the above transfers. Transfer forms were prepared by IDWR and signed by me, and I believed that I had followed through with my commitments on dividing the water. In the late 1980's, as I began preparing claims for the SRBA, it was learned that in fact the above referenced transfers had erroneously created significant issues on my properties. Rather than simply changing and dividing the wells between the two properties, the water rights themselves had been moved via the transfers. This had the effect of mounding some water rights on existing water rights, while vacating other lands of any water rights. At the time, I was still the owner of record of the Rich properties, as Rich had not yet completed the terms

REID S. STEWART

Frank Hitchcock
October 30, 1996
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of the purchase contract. In fact, Rich refused to make final payment under the contract until such time as I was able to correct the water right transfers.

As of this point in time, the farms had been divided and the correction of the transfers required transfers to be filed by myself, as well as Mr. Grow. We contacted Mr. Grow and he was agreeable to the transfer. In fact, the transfers were to simply recognize what had been occurring since the division of the properties in the late 1970's. Therefore, transfer documents were prepared and signed and filed with IDWR. The applications were advertised and no protests were received. However, as IDWR prepared to finalize the approval of the transfers, the question arose regarding Grow's financial status and Grow's lending institution became a party to the transfers. As the time drew nigh for the filing of adjudication claims, we worked over a number of months with Norm Young in your office, as well as Grow's lending institution, to resolve any questions or issues associated with approval of the transfers. At that time, we even offered to file claims in behalf of Grow's lending institution. However, quite honestly the water issues were too complicated for the lending institution to follow and they ultimately responded by saying that they would not file claims in the SRBA, nor would they be willing to allow us to file claims, nor would they be willing to sign any transfer documents which they did not fully understand.

Given these circumstances and the deadline for filing claims in Cassia County about to expire, it appeared that we would not be able to immediately correct the previous erroneous transfers. Therefore, I believed that Rich would refuse to make final payment on the western portion of the farm and under default the farm would revert to me. Therefore, in an effort to comply with the requirements for filing claims in the SRBA, I prepared and filed adjudication claims for the Rich properties. This included preparing claims for some water rights which should have been on the Grow properties but because of the erroneous transfer were currently residing on the Rich properties. Likewise, Rich, who had been farming the properties for nearly 10 years, also filed adjudication claims. The claims were not competing with one another but rather we were simply both trying to appropriately file and protect the water rights on the Rich property; me because I was the owner of record of the property and Rich because he was actually in the process of farming the property and hoped to purchase it. Both of our claims were filed pursuant to the anticipated ultimate approval of the transfers correcting the water right situation.

With time, Grow's financial situation worsened and ultimately resulted in him taking out bankruptcy. We then began working with the bankruptcy court to try and resolve the water right issue. With time, there became an opportunity for me to simply purchase back the Grow property which I pursued and ultimately accomplished. With me then being the owner of record again of both properties, I was in a position to then request that IDWR approve the previously prepared and filed transfer documents which then corrected the erroneous transfers filed in the

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70's. With this putting of the water rights back in order, Wayne Rich ultimately made final payment for the western portion of the farm. With him then becoming the owner of the western portion of the farm, I no longer had, nor have, interest in the properties previously referred to herein as the Rich properties.

I then found myself in a situation where I had appropriately filed claims in the SRBA for the portion of the farm I believed I would ultimately maintain possession of. Instead, I ended up with the portion of the farm for which no adjudication claims had been filed. With the approval of the transfers correcting the water right situation, some of the water rights which I had filed claims for on the Rich properties were now on the Grow properties. As I am now no longer in possession of the Rich properties, it would be appropriate and I would like to herewith withdraw my claims to the duplicate claims which I had filed for on the Rich property.

Over the past several years, we have had a number of discussions with personnel in your office as to the appropriate way to correct the claims. Several years ago we had had a number of conversations with Anna Baumhoff, and she had suggested that we should file an extension request but that IDWR would not act upon the request pending their review of other options. At the time she had suggested that we could either simply amend the claims filed on the Rich properties to the Grow properties and/or withdraw the claims and ask that the payment of fees previously applied to the Rich properties by me be applied to the new claims being filed on the Grow properties.

Your most recent research has confirmed our belief that associated with the filing of claims 43-0083, 43-2509A and 43-2285A I have paid a total of \$550. At the time that these claims were filed, an additional claim (43-2387) was also filed. Your recent research has shown that though this claim was filed, fees were never paid. Upon a review, this is consistent with the circumstances at the time as a claim for the use of this water right on the Rich properties would only be applicable if we were to ultimately fail in reversing the erroneous transfer. Therefore, the payment of fees for this application would have been in direct conflict with other claims filed and would have mounded water rights on the Rich properties. The attached documents include seven claims totalling 703 unique acres of irrigation.

With this letter, I am hereby requesting that IDWR waive the late filing fee which would be associated with these claims under normal circumstances. I believe that the above history and the records in your files would indicate that I made concerted and significant efforts to comply with the claim filing deadlines, and that in fact I filed timely claims for the portion of the property I believed I would ultimately end up with and that I made significant efforts to even file claims for the Grow property to assist in the resolution of the matters. However, as was discussed above, because of ownership situations I was unable to fully resolve the issues prior

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to the time that claims needed to be filed. Then, through some strange course of fate, after all these efforts I ended up owning the properties for which claims were not filed.

If IDWR were to accept my request to waive the late filing fees, then I calculate that total adjudication filing fees associated with the Grow properties should be \$1,053 (7 claims x \$50 = \$350 + 703 acres x \$1 per acre = \$703, which equals \$1,053). I then request, as discussed with the Department previously, that the \$550 filed on the Rich properties now be applied to the claims being filed on the Grow properties. Therefore, I calculate the total remaining required fee of \$503. Therefore, also attached herewith please find my check payable to the Idaho Department of Water Resources for \$503.

Should you have any questions regarding this matter, please contact either myself or Don Barnett (801-292-4662). Again I greatly appreciate your efforts, as well as the efforts of many other people within IDWR's offices which has led to what I believe to be the ultimate resolution of the various water right issues associated with the Grow and Rich properties.

Sincerely,



Reid S. Stewart

attachments

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the matter of Application for)
Transfer No. 3583 of water right)
No. 43-2387 and Application for)
Transfer No. 3697 of water right)
No. 43-2509.)

PROPOSED MEMORANDUM
DECISION AND ORDER

REID S. and/or RUTH O. STEWART,)
and MELBOURNE B. and/or)
NADINE GROW,)
Applicants.)

On June 22, 1990, the Idaho Department of Water Resources ("department") issued a decision dismissing Applications for Transfer Nos. 3583 and 3697. On July 5, 1990, the department received a request for hearing on the matter pursuant to Section 42-1701A, Idaho Code, from Mr. Jack A. Barnett, as agent for Mr. Reid S. Stewart. A hearing was held on August 2, 1990, at Pocatello, Idaho. Mr. Reid S. Stewart was present and presented testimony. Mr. Reid G. Stewart, Mr. Jack Barnett, and Mr. Don Barnett testified on behalf of the applicants.

The following issues and arguments were raised by Stewart in support of either approving the applications for transfer or voiding transfers approved in 1978 that affect the same water rights:

1. The department erred in the preparation of the transfers

approved in 1978 and did not assist the applicants to achieve the results the applicants intended.

2. The department erred in the processing of the application by not following department policy requiring the applicant to disclose all ownership interests in the lands and water rights involved in the application and in allowing water rights to be "mounded" on some lands in excess of the normal duty of water.

3. Section 42-222, Idaho Code, specifies that "the original water right shall be presumed to have been amended by reason of such authorized change" (emphasis added). Because the change authorized by the approved transfers did not occur, the presumption does not apply and the water rights have not been amended by the 1978 approved transfers. Therefore, the approved transfers should be voided.

4. Section 42-1416A, Idaho Code, provides that in a basin-wide adjudication an accomplished change in place of use or point of diversion can be claimed and decreed even though other procedural requirements have not been followed. Because the change authorized by the approved transfers has not occurred, the rights can be claimed and decreed in the on-going Snake River Basin Adjudication as if the 1978 approved transfers do not exist. The department should use the present administrative action to expedite the outcome that will eventually be reached in the SRBA.

5. The objections of FmHA should not be heard in the absence of a valid protest.

6. The mortgage documents only refer to the license number and do not reference the license as changed by the approved transfer. Therefore, the mortgage only involves the water right license as it was prior to the transfer approved in 1978. The pending applications for transfer simply seek to return the water rights to the pre-1978 configuration. Therefore, FmHA should have no objection to approval of the applications.

Having heard the testimony and arguments, and having reviewed the evidence and applicable law, the hearing officer proposes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On November 10, 1958, the department issued license G-23670/43-2387 authorizing the diversion of 2.44 cfs from a well located in the NW1/4SW1/4, Section 20, Twp. 15S, Rge. 27E, B.M. for the irrigation of 125 acres located in parts of Sections 17, 19 and 20, Twp. 15S, Rge. 27E, B.M.

2. On September 8, 1967, the department issued license G-29353/43-2509 authorizing diversion of 5.55 cfs from a well located in the SW1/4NW1/4 Section 29, Twp. 15S, Rge. 27E, B.M. for the irrigation of 320 acres located in parts of Sections 19, 29 and 30 Twp. 15S, Rge. 27E, B.M.

3. On March 2, 1978, Reid S. and/or Ruth O. Stewart filed Application for Transfer No. 2219 in connection with licensed right No. 43-2509 and Application for Transfer No. 2221 in connection with licensed right No. 43-2387. The applications proposed a change in the place of use associated with each

licensed right. The applications were advertised as required by law and were approved by the department on May 24, 1978.

4. On August 7, 1978, applicant Grow mortgaged the land associated with the authorized place of use of license No. 43-2509 to the Farmers Home Administration (FmHA) which still holds a lien on the property. The mortgage document references "all water and water rights, ditches and ditch rights, used thereon or appurtenant thereto, including, but not limited to, State of Idaho License and Certificate of Water Right water license No. G-29353 and State of Idaho License and Certificate of Water Right water license No. 19965." License No. G-29653 was renumbered by the department to No. 43-2509. The mortgage document was recorded with the Cassia County Recorder on August 8, 1978.

5. FmHA has notified the department of the lien held on applicant Grow's property indicating that the mortgage agreement requires FmHA's written permission prior to making any changes affecting the property.

6. On July 18, 1989, applicant Stewart filed Application for Transfer No. 3583 seeking to return the recorded place of use of License No. 43-2387 to the location originally licensed and to change the point of diversion to two existing wells located in the SW1/4NE1/4 and the SW1/4NW1/4, Section 29, Twp. 15S, Rge. 27E, B.M.

7. On July 18, 1989, applicant Grow filed Application for Transfer No. 3697 seeking to return the recorded place of use of License No. 43-2509 to the location originally licensed except

26.6 acres would be designated in the SW1/4NE1/4 Section 19, Twp. 15S, Rge. 27E, B.M. in exchange for 26.6 acres originally licensed in the W1/2SE1/4 of the same section. The application would move 4.16 cfs of the right to a well located in NW1/4SW1/4, Section 20, Twp. 15S, Rge. 27E, B.M., and add an existing well in the SW1/4NE1/4, Section 29, Twp. 15S, Rge. 27E, B.M. to the remaining 1.39 cfs of the right.

8. Notice of Applications for Transfer Nos. 3583 and 3697 were given as required by statute and no protests against approval were received.

9. The changes in places of use authorized by approved transfers no. 2219 and 2221 have not been implemented.

10. Applications for Transfer Nos. 3583 and 3697 do not propose an expansion in rate of diversion or acreage to be irrigated. No additional land will be irrigated over that originally licensed and irrigated now and in the past.

11. Injury to other rights will not occur because no new wells will be drilled and the diversion pattern established for these rights in 1978 will be continued.

12. The pending applications for transfer are intended to record a physical change in the irrigation systems previously implemented to improve efficiency and conserve water.

13. The extent of department involvement in preparation of the applications for transfer filed and approved for Mr. Stewart in 1978 is not clear from the record. However, the applications bear Mr. Reid S. Stewart's notarized signature and the resulting approval was not contested for a period of more than ten years.

14. Water right holders and the general public are entitled to rely upon the department's records of water rights as indicating the authorized point of diversion and place, period, and nature of use for a water right.

15. When a licensed water right has been changed by an approved transfer, the right as changed may still be referred to by only the license number without reference to the transfer number.

CONCLUSIONS OF LAW

16. Section 42-222(1) provides in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources in the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code....

17. The changes proposed by Applications for Transfer Nos. 3583 and 3697 will not injure other water rights, will not result in an expansion in use of water, are in the local public interest and promote the conservation of water in the state of Idaho.

18. The applicants have provided evidence of ownership or other interests in the water rights and the lands to which the rights are appurtenant.

19. A licensed water right is real property which can be bought, sold, mortgaged, and otherwise treated as other real

property. Water rights can be severed from the land to which the license makes them appurtenant and moved to other land. Any lien on the water right follows the water right to the new place of use, and the holder of the land to which the water right is moved is subject to the security interest or equitable mortgage on the water right as long as he or she has actual or constructive knowledge of the security interest or mortgage.

20. The department did not commit error in the preparation or processing of Applications for Transfer Nos. 2219 and 2221.

21. Failure to implement an approved change is not cause to void approval of the change. The procedure of Section 42-222(1), Idaho Code, must be used to change the department's records.

22. Section 42-1416A, Idaho Code, is not applicable to applications for transfer filed pursuant to Section 42-222(1), Idaho Code.

23. Application for Transfer Nos. 3583 and 3697 should be approved.

24. The department is not empowered to enforce the provisions of a private agreement or contract between FmHA and the applicants.

ORDER

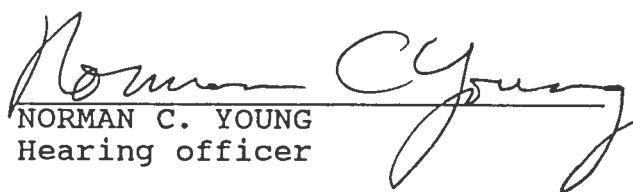
IT IS, THEREFORE, HEREBY ORDERED that the order dated June 22, 1990 dismissing Applications for Transfer Nos. 3583 and 3697 be, and the same is, set aside, and that Application for Transfer No. 3583 and 3697 be, and the same are, hereby approved subject to the following conditions:

1. FmHA retains the right to apply to the department to return the point of diversion and place of use of right No. 43-2509 to the locations recorded prior to this approval upon a showing that license No. 43-2509 is under their direct ownership as a result of a foreclosure or other action.

2. The department retains jurisdiction to amend the approval conditions of Application for Transfer Nos. 3583 and 3697 to facilitate approval of an application filed by FmHA pursuant to Condition 1. of this order.

3. The applicants shall submit to the department within one year of the date that this order becomes final information to document that the changes herein authorized have been implemented. Failure to submit the information is cause for the director of the department to void or amend the transfer approval.

SIGNED AT BOISE, IDAHO THIS 28TH DAY OF AUGUST, 1990.


NORMAN C. YOUNG
Hearing officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 30th day of August, 1990, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER and PROPOSED MEMORANDUM DECISION AND ORDER, were mailed postage prepaid to:

Reid S. &/or Ruth O. Stewart
1655 Sunset Drive
Logan, UT 84321

Melbourne B. &/or Nadine B. Grow
Bridge, ID 83315

FmHA
Rt. 2, Box 388
Rupert, ID 83350



RITA K. FLECK
Secretary/Records Manager

RECEIVED

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

AUG 30 1990

Department of Water Resources
Southern Region Office

| | | |
|--------------------------------------|---|---------------------|
| IN THE MATTER OF APPLICATION FOR |) | ORDER ISSUING |
| TRANSFER NO. 3583 OF WATER RIGHT NO. |) | PROPOSED MEMORANDUM |
| 43-2387 AND APPLICATION FOR TRANSFER |) | DECISION |
| NO. 3697 OF WATER RIGHT NO. 43-2509 |) | |

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, NORMAN C. YOUNG, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

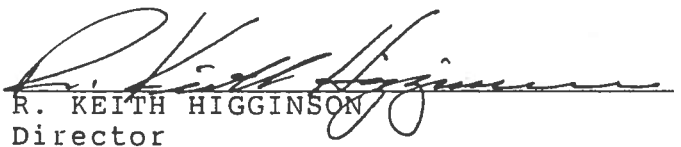
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 30th day of August, 19 90.


R. KEITH HIGGINSON
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3697APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Melbourne B. &/or Nadine B. Grow Phone 801-257-5908Post Office address Bridge, Idaho 83315

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 Correct the previous transfer as to the place of use
Also to change diversion points related to partial sale of the land.

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>43-2509A</u> | <u>1-26-1961</u> | <u>4.16 cfs</u> | <u>Irrigation</u> | <u>3-15</u> to <u>11-15</u> |
| <u>43-2509B</u> | <u>"</u> | <u>1.39 cfs</u> | <u>Irrigation</u> | <u>3-15</u> to <u>11-15</u> |
| | | | <u>Domestic</u> | <u>1-1</u> to <u>12-31</u> |
| | | | | to _____ |

2. Total amount of water being transferred 5.55 cubic feet per second and/or _____ acre-feet per annum3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

| Lot | ¼ | ¼ | ¼ | Sec. | Twp. | Rge. | County | Local name for diversion |
|-----|---|----|----|------|------|------|--------|--------------------------|
| | | NW | SW | 20 | 15S | 27E | Cassia | Part A well |
| | | SW | NW | 29 | " | " | " | Part B well |
| | | SW | NE | 29 | " | " | " | Part B well |

5. Lands irrigated or place of use:

| Twp. | Rge. | Sec. | NE ¼ | | | | NW ¼ | | | | SW ¼ | | | | SE ¼ | | | | Totals |
|------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|--------|
| | | | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | |
| Part A 15S | 27E | 19 | | | | 26.6 | 40 | | | | | | | | 40 | 26.7 | 26.7 | 40 | 200 |
| | | 30 | 40 | | | | | | | | | | | | | | | | 40 |
| Part B 15S | 27E | 29 | | | | | | 40 | 40 | | | | | | | | | | 80 |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |

Total acres 320

PART 1

6. General Information:

a. Description of diversion system Part A: well & pump, sprinklers. Part B: two connected v
& pumps, sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, contracts? XX Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed 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:

d. Remarks:

See attached letter

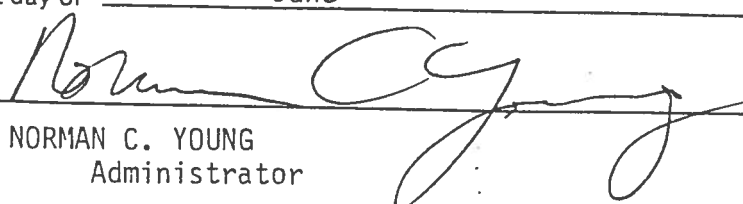
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 43-2387 AND 43-2509

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

PURSUANT TO MEMORANDUM DECISION AND ORDER

Witness my hand this 22nd day of June, 19 90


 NORMAN C. YOUNG
 Administrator

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. 43-2509 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. 2219 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 1-26-1961

5. Water is used for the following purpose:

amount 5.55 cfs for Irrig. purposes from Mar 15 to Nov 15
(cfs/ac-ft)

amount _____ for Domestic purposes from Jan 1 to Dec 31
(cfs/ac-ft)

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

6. Total amount of water under right 5.55 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

| Lot | ¼ | ¼ | ¼ | Sec. | Twp. | Rge. | County | Local name for diversion |
|-----|---|----|----|------|------|------|--------|--------------------------|
| | | SW | NW | 29 | 15S | 27E | Cassia | |
| | | | | | | | | |
| | | | | | | | | |

8. Lands irrigated or place of use:

| Twp. | Rge. | Sec. | NE ¼ | | | | NW ¼ | | | | SW ¼ | | | | SE ¼ | | | | Totals |
|--------|
| | | | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | NE ¼ | NW ¼ | SW ¼ | SE ¼ | |
| 15S | 27E | 20 | | | | | | | 20 | | 40 | 20 | 20 | 40 | | 10 | 10 | | 160 |
| | | 29 | | 20 | 20 | | 40 | 20 | 20 | 40 | | | | | | | | | 160 |
| |
| |
| |
| |

Total acres 320

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

Decreed surface rights

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use
No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

| Lot | ¼ | ¼ | ¼ | Sec. | Twp. | Rge. | County | Local name for diversion |
|-----|---|---|---|------|------|------|--------|--------------------------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

3. Lands irrigated or place of use:

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

Total acres _____

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

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

2. Point(s) of Diversion:

| Lot | ¼ | ¼ | ¼ | Sec. | Twp. | Rge. | County | Local name for diversion |
|-----|---|---|---|------|------|------|--------|--------------------------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

3. Lands irrigated or place of use:

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

Total acres _____

R10R

26 E. 27 E.

20

MALTA 12 MI.
BRIDGE 1.3 MI.

3368 III NE
(BRIDGE)

43-2509

Well
4775

Well's

Well
4757

Well
4776

Well
4780

BM 4785

43-2509 A
(REID STEWART)

Well
4802

26.7 AL

43-2509 B
(MEL GROW)

Well
4805

Spring

Creek

31

32

33

PART 3

B. CHANGES IN NATURE OF USE

| 1. | <u>New Nature of Use</u> | <u>Amount
(cfs/ac-ft)</u> | <u>Hours/days/year</u> | <u>Period of Use</u> |
|----|--------------------------|-------------------------------|------------------------|----------------------|
| | none | | | 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:

none

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.

Melbourne B. Lewis
(Signature of Applicant)

Subscribed and sworn to before me this 13th day of June, 19 89.

[Signature]
(Notary Public)

My commission expires 12-29-89

FOR DEPARTMENT USE ONLY

Transfer contains 4 pages and 1 attachments

Received by LRL Date 7-18-89 Check 50.00 Protest filed by _____

Prelim. check by DRJ Fee \$50, S008584 _____

Receipted by JF Stanton Date 7-18-89 _____

Published in So. Ind. Press Copies of protest forwarded by _____

Pub. dates 8/3 & 8/10/89 Hearing held by _____ Date _____

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

RECEIVED

JUL 16 1990

Department of Water Resources
Southern Region Office

July 12, 1990

Reid S. and/or Ruth O. Stewart
1655 Sunset Drive
Logan, UT 84321

RE: Application for Transfer No. 3583 of Water Right Nos. 43-2387 and
43-2509

Dear Mr. and Mrs. Stewart:

Enclosed is a hearing notice in connection with the above
referenced application.

If you have any questions concerning this matter, please feel free
to contact this office.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: Melborne B. and/or Nadine B. Grow
FmHA - Rupert
Barnett Intermountain Water Consulting
S. Region

43. 3583

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

JUL 16 1990

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3583 OF WATER)
RIGHT NOS. 43-2387 AND 43-2509)

NOTICE OF HEARING
Department of Water Resources
Southern Region Office

On July 18, 1989, Reid S. and/or Ruth O. Stewart (applicants) filed application for transfer no. 3583 with the department. The department advised the FmHA of the proposed transfer since the FmHA holds a mortgage on some of the land involved in the proposed transfer. FmHA did not agree with the filing of the transfer which would remove water rights from land on which it hold a lien.

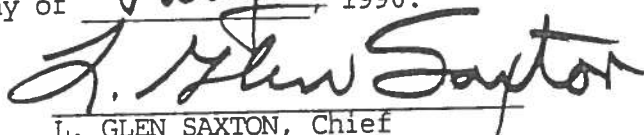
On June 22, 1990, the department issued a Memorandum Decision and Order dismissing the application for transfer.

On June 27, 1990, the applicants requested a hearing before the department in connection with the dismissal.

The department has set this matter for hearing at 1:00 p.m. on Thursday, August 2, 1990 at the Pocatello Airport Conference Room in Pocatello, Idaho.

The hearing will be held in accordance with Chapter 2, Title 42, section 42-1701A, Idaho Code, and the adopted rules of Practice and Procedure of the department. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 12th day of July 1990.


L. GLEN SAXTON, Chief
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

JUN 26 1990

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3583 OF WATER)
RIGHT NOS. 43-2387 AND 43-2509)

Department of Water Resources
Southern Region Office

Reid S. and/or Ruth O. Stewart,)
Applicants.)

MEMORANDUM DECISION

AND ORDER

This matter having come before the Department of Water Resources (department), the department makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On November 10, 1958, the department issued license G-23670/43-2387 authorizing the diversion of 2.44 cfs from a well located in the NW1/4SW1/4, Sec. 20, Twp. 15S, Rge. 27E, B.M. for the irrigation of 125 acres located in parts of Sections 17, 19 and 20, Twp. 15S, Rge. 27E, B.M.
2. On September 8, 1967, the department issued license G-29353/43-2509 authorizing the diversion of 5.55 cfs from a well located in SW1/4NW1/4, Sec. 29, Twp. 15S, Rge. 27E, B.M. for the irrigation of 320 acres located in parts of Sec. 19, 29 and 30, Twp. 15S, Rge. 27E, B.M.
3. On March 2, 1978, Reid S. and/or Ruth O. Stewart (applicants) filed application for transfer No. 2219 in connection with licensed right 43-2509 and application for transfer No. 2221 in connection with licensed right 43-2387. The applications proposed a change in the place of use associated with each licensed right. The applications were advertised as required by law and were approved by the department on May 24, 1978.
4. On July 18, 1989, the applicants filed application for transfer No. 3583 which involved the same two licensed water rights described above. The application proposed to change the place of use authorized under transfer Nos. 2219 and 2221 back to the original place of use licensed under rights 43-2387 and 43-2509.
5. In 1980, the land associated with the authorized place of use of right No. 43-2509 was mortgaged to the Farmers Home Administration (FmHA) which still holds a lien on the property.
6. The FmHA has been contacted in connection with the application for transfer No. 3583. FmHA has advised the department that FmHA does not concur with the filing of the application for transfer.

MEMORANDUM DECISION AND ORDER

Page 1

43-2387, 43-2509, T# 3583

CONCLUSIONS OF LAW

1. Perfected water rights are real property rights which can be bought, sold, mortgaged and otherwise treated as any other real property. A water right is often held as collateral by the mortgagee to insure repayment of loans by the mortgagor.
2. The department should not process an application for transfer involving a water right held for collateral if the mortgagee does not agree with the filing of the application to transfer the water right from the land on which it holds a lien.
3. Those holding a valid security interest in a water right must be in agreement with the filing of an application to change the water right for the application to be complete and valid.
4. FmHA holds a valid security interest in the water rights sought to be transferred and is not in agreement with the filing of the application for transfer.
5. Application for transfer No. 3626 of water rights 43-2387 and 43-2509 should be DISMISSED.

ANALYSIS

The stated purpose for the filing of the above captioned applications for transfer is to correct previously APPROVED transfer Nos. 2219 and 2221 (prior transfers) which are alleged to be "erroneous". This reason appears unusual since the prior transfers were also filed by Reid S. and/or Ruth O. Stewart and the records of the department include statements of reasons for making the change.

The applicant suggests that the department take an action which would disregard the security interests of the FmHA, the mortgagee of a portion of the rights sought to be transferred. This the department declines to do.

The applicant also asserts that since the changes authorized by the prior transfers have not been made, the prior transfers are "faulty" and should be declared "null and void" by the department. Section 42-222, Idaho Code, provides in part that:

... the original water right shall be presumed to have been amended by reason of such authorized change.

The FmHA relied upon the presumed change in making a loan and accepting a lien on the property. FmHA should be entitled to rely on the administratively approved change.

The applicant alleges that the prior transfers were inequitable since more water was removed from certain land under one water right than was transferred back to the land under another water right. If this is in fact true, this may have been the intended and desired end result among the parties depending on what the associated agreements and/or contracts provided for.

Applicant alleges that FmHA would benefit from the approval of application for transfer No. 3583. Whether this is true or not, there does not appear to be any justification for the applicant or the department to substitute his or its judgment for that of the FmHA.

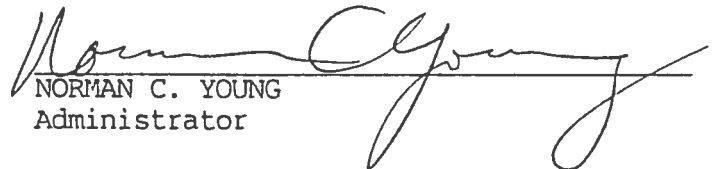
There are several alternatives which the applicant can pursue in connection with the proposed transfers. These alternatives include the following:

- a) Refile the application for transfer once FmHA no longer holds a mortgage on the land.
- b) Negotiate with FmHA to reach an agreement allowing for approval of the transfer. A new application for transfer then would need to be filed.
- c) Seek recognition of the change as an accomplished transfer pursuant to Sec. 42-1416a, Idaho Code in the ongoing Snake River Adjudication proceeding.
- d) Pursue the administrative hearing process before the department in the present proceeding.

ORDER

IT IS THEREFORE, hereby ORDERED that application for transfer No. 3583 of water rights 43-2387 and 43-2509 is DISMISSED.

Dated this 22ND day of JUNE, 1990.


NORMAN C. YOUNG
Administrator

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 22nd day of June, 1990 a true and correct copy of the MEMORANDUM DECISION AND ORDER, was mailed postage prepaid to:

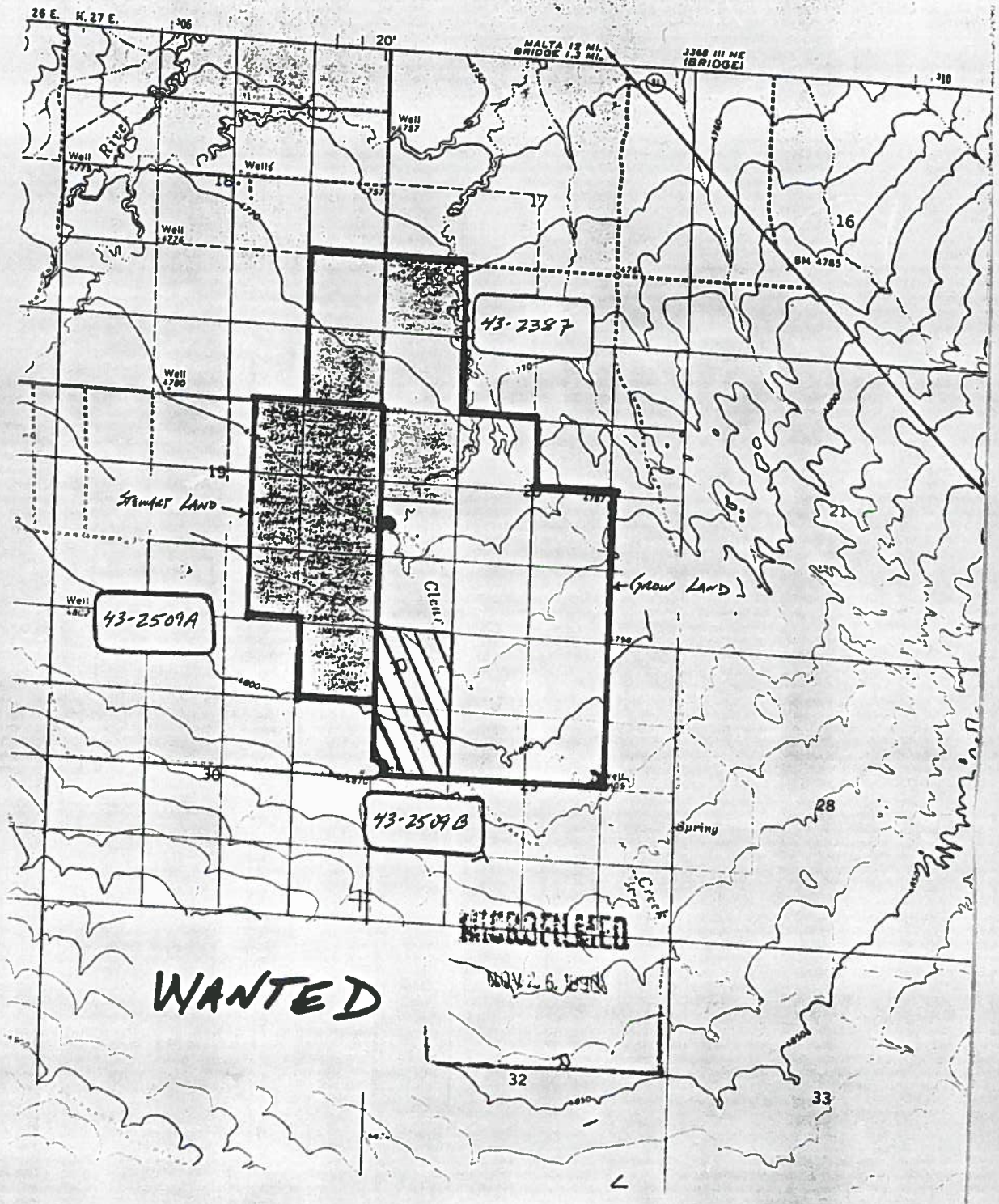
Reid S. and/or Ruth O. Stewart
1655 Sunset Drive
Logan, UT 84321

Melbourne B. &/or Nadine B. Grow
Bridge, ID 83315

FmHA
Rt. 2, Box 388
Rupert, ID 83350


RITA I. FLECK
Secretary/Records Manager

R10R

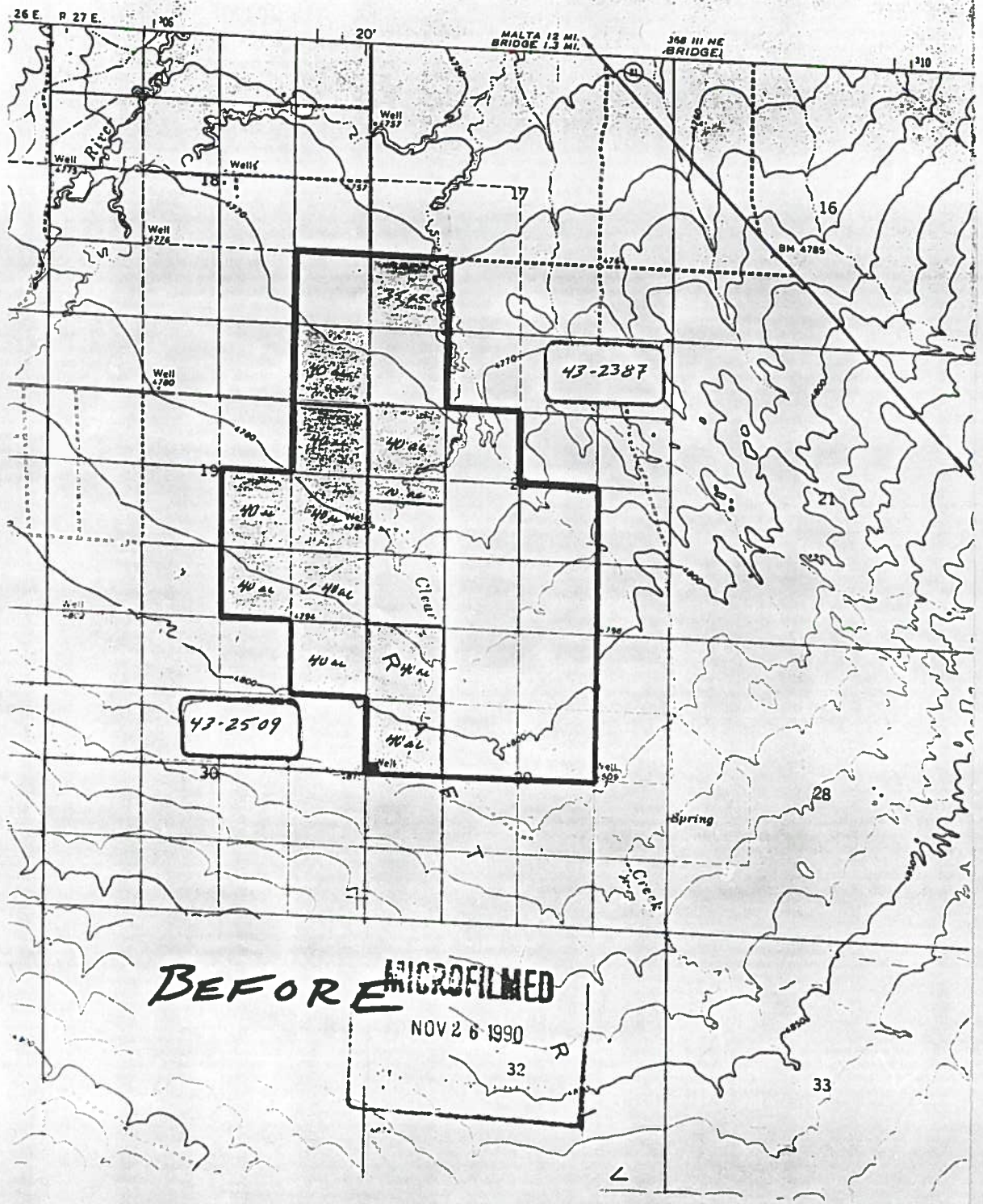


T 3697
43-2509

32

AFTER T2219
43-2509

R10R



AS LICENSED
43-2509

STATE OF IDAHO

License and Certificate of Water Right

Water License No. G-29353

Amount 5.55 c.f.s.

Water District No.

Priority January 26, 1961
(late proof)

THIS IS TO CERTIFY that

FRANK OLSON - Assignee - CLARENCE D. BISHOP

of Burley, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated January 25, 1961; that Permit No. G-29353 was issued under said application; that Certificate of Completion of Works, with a carrying capacity of 5.55 second feet, was issued thereunder on September 8, 1967, showing that said works were completed on the 31st day of January, 1966; and that on the 31st day of January, 1966,

CLARENCE D. BISHOP

of Burley, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of a well

a tributary of subterranean flow, for the purpose of irrigation and domestic, under Use Permit No. G-29353 of the Department of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 14 of Licenses at Page 8887, on the 8th day of September, 1967.

The right hereby confirmed dates from January 26, 1961.

The Point of Diversion is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 29, Twp. 15S, Rge. 27E, B.M., County of Cassia. That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 5.55 cubic feet per second.

Description and location of use:

| Twp. | Range | Section | Forty-Acre Tract | No. Acres Described in Permit | No. Acres Actually Irrigated |
|------|-------|---------|--|-------------------------------|------------------------------|
| 15 S | 27 E | 19 | SE $\frac{1}{4}$ NE $\frac{1}{4}$ | 40 | 40 |
| | | | SE $\frac{1}{4}$ | 160 | 160 |
| | | | W $\frac{1}{2}$ NW $\frac{1}{4}$ | 30 | 80 |
| | | | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 40 | 40 |
| | | | Total number of acres to be irrigated: | | 320 |

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 8th day of September, 1967.

(SEAL)

s/ R. KEITH HIGGINSON

State Reclamation Engineer.

43 2569