

COPY

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: A41-00008B
Date Received: 11/28/1989
Receipt No: S010543
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JAMES JUAN SPILLETT 208-548-2468
Address: P.O. BOX 278
ROCKLAND, ID 83271

2. Date of Priority: OCT 01, 1879

3. Source: ROCK CREEK, SOUTH FORK Trib. to: ROCK CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
10S	31E	20	NE	NW	SW		POWER

5. Description of diverting works:
DAMS AND PUMPS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or	A.F.A.
IRRIGATION	03/15	11/15	0.800		

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

8. Total consumptive use is 360.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
10S	31E	20	NW	NW		IRR	38.0
			SW	NW		IRR	40.0
			SE	NW		IRR	2.0
			NE	SW		IRR	10.0

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Date: 11/28/89

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10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	31E	20	NW	SW		IRR	90.0
Section Acres							120.0
Total Acres							120.0

11. Place of use in counties: POWER

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

13. Other Water Rights Used:
A41-00013B

14. Remarks:

P/D IS IN THE PROCESS OF TRANSFER AT THE TIME OF THIS FILING.
THE P/D LISTED IS THE RESULT OF THE TRANS.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 6/06/1903

HOUTZ

Decree Plaintiff

vs

ET AL.

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

Signature of Claimant(s):

James Juan Spillert

Date: 11/23/99

Date:

State of Idaho

County of Twin Falls

)
) SS.
)

Subscribed and sworn (or affirmed) before me this 23th day

of November 19 89

Steve C. [Signature]
Notary Public

Seal

Residing at Twin Falls

My Commission Expires Dec 7, 1994

31-
103

48-11

19-20

T-499

#253

Bob
Spillert

329.3

4-
149

746

19-20

30-29

A41-00008A

Bob
Spillert

ACTION REQUIRED

FROM: Helen H-T 11-12-92

TO: Jeanie, Southern Rgn

Please file a copy of this in the following files:

A41-00013B

A41-00008B

Thanks —

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~~SL~~ Don
S' Carter
HHT Helen

October 5, 1992

Attached are copies of the Proposed Memorandum Decision and Order and Final Order Adopting the Proposed Memorandum Decision and Order, Certificates of Mailing and Cover Letter recently sent in reference to Application for Transfer No. 3518/Water Right No. 41-00013 and Transfer No. 3519/Water Right No. 41-00008 in the name of James Juan Spillet

Copies forwarded to

IDWR - Northern Region - Bob Haynes
IDWR - Southern Region - Loren Holmes
IDWR - Eastern Region - Ron Carlson
IDWR - Western Region - Dave Tuthill
Adjudication Bureau - Dave Shaw
Water Allocation Bureau - Glen Saxton
Karen Gustafson
Tim Luke
JJ Seifert
Pam Skaggs
Erv Ballou
George Austiguy
Darla Block
Brenda Miller
Cindy Zimmerman
Carolyn Andregg
Sharla Curtis
Jim Johnson
Gary Spackman

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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

October 5, 1992

Re: In the Matter of Application for Transfer No. 3518/
Water Right No. 41-00013 and Transfer No. 3519/Water
Right No. 41-00008 in the name of James Juan Spillet

Dear Permit Holder:

Enclosed is a copy of the Final Memorandum Decision and
Order in reference to the above mentioned permit.

Any person who does not agree with the decision of the
department may request a rehearing before the Director
within 20 days, or may appeal directly to the district
court within 30 days of the date the decision is mailed.

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

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Final Order
Certificate of Mailing
Copy of the Approved Transfer

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	FINAL ORDER ADOPTING
TRANSFER NO. 3518/ WATER RIGHT NO.	)	PROPOSED MEMORANDUM
41-00013 & TRANSFER NO. 3519/WATER	)	DECISION AND ORDER
RIGHT NO. 41-00008 IN THE NAME OF	)	
JAMES JUAN SPILLETT	)	

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on September 15, 1992, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Transfer No.'s 3518 and 3519/Water Right No.'s 41-00013 and 41-0008 are APPROVED.

Dated this 15th day of OCTOBER, 1992.



R. KEITH HIGGINSON
Director

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MAR 01 1993

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 5th day of October, 1992, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following:

James Juan Spilleit
P.O. Box 278
Rockland, ID 83271

Kenneth E. Lyon
Attorney at Law
602 S Fifth Avenue
Pocatello, ID 83205

James Robinson
Bench Ditch Irrig.
Rockland, ID 83271

Ben Cavaness
P.O. Box 70
American Falls, ID 83211



Karen L. Gustafson
Secretary/Records Manager

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 3518/WATER RIGHT NO. 41-00013 &)
TRANSFER NO. 3519/WATER RIGHT NO. 41-00008)
IN THE NAME OF JAMES JUAN SPILLETT

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, Having reviewed the attached proposed decision prepared by this appointee, Gary Spackman, 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, Section 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Section 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.

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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, Section 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 15th day of September, 1992.


R. KEITH HIGGINSON
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR	)	
TRANSFER NO. 3518 (WATER RIGHT NO.	)	SECOND PROPOSED
41-00013) AND TRANSFER NO. 3519 (WATER	)	MEMORANDUM
RIGHT NO. 41-00008) IN THE NAME OF	)	DECISION AND ORDER
JAMES JUAN SPILLETT	)	
	)	

FINDINGS OF FACT

1. James Juan Spillett (Spillett) filed two applications for transfer of water right, numbered 3518 and 3519, with the Department on December 5, 1988. The applications proposed a change in the point of diversion for portions of water rights no.'s 41-00008 and 41-00013.

2. The applications for transfer were advertised in the Power County Press on March 15 and 22, 1989.

3. Timely protests against a change in point of diversion of water right no. 41-00008 were received from Farold Nelson and 7 UD Ranches (Nelson), and from Bench Ditch Irrigation Company (Bench).

4. Protests against a change in point of diversion for water right no. 41-00013 were timely received from the Bench Ditch Irrigation Company and the U.S. Ditch Company.

5. A pre-hearing conference was conducted on September 19, 1989, and a hearing was conducted on November 16, 1989, in American Falls, Idaho. Spillett represented himself. James Robinson represented Bench. Nelson was represented by Ben Cavaness, attorney at law. U.S. Ditch Company failed to appear at the hearing.

6. A proposed memorandum decision and order was issued January 23, 1990. Both parties filed exceptions to the decision. A final memorandum decision and order was issued on August 30, 1990. Both parties requested a rehearing, and a rehearing was granted. The rehearing was conducted on January 10, 1991.

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Spillett was represented by Kenneth Lyon, attorney at law. The rehearing was held to augment the prior record, and did not replace it.

7. After the hearing, the parties requested a delay in issuance of the decision because of negotiations between the parties which might resolve the conflict. On approximately January 1, 1992, the parties informed the Department that the matter had not been resolved, and resubmitted it for decision.

8. Spillett stated that he wants to move the point of diversion for his portion of water right no. 41-00008 downstream on Rock Creek so he could more efficiently use his water. Nelson objected to the transfer of water right no. 41-00008 because the use of water under the water right has historically been rotated among the users, and Nelson alleged that he would be injured by the withdrawal of a portion of the rotated right. Bench protested the transfer of both water rights because of possible enlargement and loss of downstream flows that would satisfy Bench water rights.

9. Water rights 41-00008 and 41-00013 were established by beneficial use, and confirmed by a decision of arbitration executed on or about April 1, 1890. The decision of arbitration was recorded in the Oneida County book of judgments, but was never endorsed by the district court as a judicial decree.

10. For purposes of administering the water rights on Rock Creek, the Department, and the parties diverting water from Rock Creek, recognized the decision of arbitration as a judgment decreeing the water rights in Rock Creek. The waters from Rock Creek were administered according to the decision of arbitration after the decision was rendered. A water district was created by the Department, and a watermaster distributed water from Rock Creek to the respective users.

11. The decision of arbitration which established water right no. 41-00008 authorized diversion of 160 miner's inches (3.2 cfs) of flow by three individuals in the following proportions: one-half to Charles Taysom, Sr., one-fourth to David Taysom, and one-fourth to William Adshead, all with a priority date of October 1,

1879.

12. The location of and number of acres in the place of use for right no. 41-00008 is not described in the arbitration decision. When a place of use is described in the arbitration decision, however, the decision usually awards one miner's inch of water (0.02 cfs) per acre of land irrigated.

13. Right no. 41-00013 authorizes diversion of 30 miner's inches (0.60 cfs) of water to 30 acres of land, although the location of the place of use is not described. The right was given a priority of May 1, 1881.

14. Each application for transfer states that water is not available for diversion during the latter part of the irrigation season.

15. The locations of the points of diversion for both rights were not described in the arbitration decision. Application for transfer no. 3519 for water right no. 41-00008 alleges that the point of diversion was originally located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, Township 10S, Range 31E, and is the point of diversion for what is commonly known as the Adshead Ditch.

16. Application for transfer no. 3518 for water right no. 41-00013 alleges that the point of diversion is the head of the Jackson Ditch, located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 13E.

17. The applications for transfer allege that Spillettt owns 0.60 cfs (30 miner's inches) of right no. 41-00008 and 0.20 cfs (10 miner's inches) of water right no. 41-00013.

18. Application for transfer no. 3518 lists 70 irrigated acres as the total place of use for right no. 41-00013 rather than the 30 acres to which the right is decreed. Spillettt proposes to irrigate 29 of the 70 acres with 0.20 cfs (10 miner's inches), his portion of the right.

19. Application for transfer no. 3519 lists 290 irrigated acres as the total place of use for right no. 41-00008 with 3.2 cfs (160 inches) of water. Spillettt proposes to irrigate 75 of the 290 acres with 0.60 cfs (30 miner's inches), his portion of the right.

20. Although the number of acres in the place of use is not decreed for right no. 41-00008, irrigation of 290 acres with 3.2 cfs (160 inches) of water greatly exceeds the 160 acres that would normally have been irrigated at a rate of 0.02 cfs (one inch) per acre. Both Spillett applications propose irrigation of more acres than could be fully irrigated if the acreage was limited to one acre irrigated for each miner's inch (0.02 cfs) diverted.

21. Water right no. 41-00008 has been delivered to five water users through the Adshead Ditch. The five water users are Nelson (7 UD Ranches), Grace Spillett, Taysom, Weston and Spillett. The water users have historically rotated the water on a twelve day rotation schedule, with each water user diverting the entire decreed flow for his proportionate share of the time. Spillett is entitled to divert water for two days out of every twelve days.

22. When the water right was first diverted, all of the water was delivered through the Adshead Ditch, located on the east side of Rock Creek. The Spillett property irrigated by right no. 41-00008, was at the end of the ditch, and was all located on the east side of Rock Creek within the NW $\frac{1}{4}$ of Section 20, Township 10S, Range 31E, B.M.

23. The delivery ditch to the Spillett property was difficult to maintain. Spillett and his predecessors also suffered the greatest delivery loss of water because their land was located at the end of the ditch.

24. The Adshead Ditch washed out near the upstream end of the Spillett property in the late 1920's, and has not been rebuilt.

25. An eight acre parcel on the east side of Rock Creek located above the break in the canal was irrigated by Spillett in the 1950's, but has not been irrigated since.

26. For many years, Spillett diverted his portion of water right no. 41-00008 through the Jackson Ditch instead of the Adshead Ditch when it was his turn to divert water in rotation. The Jackson Ditch diversion is located on the west side of Rock Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 31E, downstream from the Adshead diversion.

27. Approximately 40 acres of land west of Rock Creek was irrigated with Spilletts's portion of water rights no.'s 41-00008 and 41-00013. The irrigated land is located in the west half of Section 20, Township 10S, Range 31E, B.M. Irrigation of land on the west side of Rock Creek with water right no. 41-00008 resulted in an unrecorded transfer. Water diverted under right no. 41-00013 presumably irrigated the same lands to which it was originally appurtenant.

28. Applicant's exhibit #3 was submitted by the applicant to illustrate lands currently irrigated with Rock Creek water, and also to illustrate the land located on the east side of Rock Creek which was irrigated in the 1950's.

29. The current place of use, approximated from applicant's exhibit #3, is located in the following described survey tracts:

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

30. Spilletts owns permit to appropriate water no. 41-07053 which proposes diversion of groundwater to irrigate 92 acres, some of which overlaps the land listed in paragraph 29. Proof of beneficial use has been filed for permit no. 41-07053. The record does not show, however, how much of the 92 acres has been irrigated with groundwater.

31. Spilletts stated that he plans to commingle surface water and groundwater into one system, and irrigate approximately 100 acres if this transfer is approved.

32. Spilletts desires to change the points of diversion to more efficiently use his water. The new point of diversion for both rights is located approximately two to three miles downstream from the Adshead Ditch point of diversion and one-half mile downstream from the Jackson Ditch point of diversion.

33. Spilletts also proposes to divert his water continuously, rather than diverting the water in rotation, which was customary in the past. Proper operation of a well planned sprinkler system

requires more frequent use than permitted by rotation.

34. Nelson testified that he is entitled to 1.4 cfs (70 inches) of water right no. 41-00008 with which he irrigates 107 acres.

35. Spillett's withdrawal from the traditional rotation scheme for right no. 41-00008 will reduce the total amount of water delivered in the Adshead Ditch, but will also increase the length of time over which the remaining users from the Adshead Ditch can divert water. Spillett's withdrawal from rotation will not prevent delivery of the remaining users' respective shares.

36. Nelson testified that if the amount of water diverted in the Adshead Ditch is reduced, the use of water by others will be less efficient. He testified that it will take longer to irrigate with a smaller stream, and that the delivery ditch will lose the same amount of water even if Spillett's water is not diverted through it. Losses which were once born by Spillett may be born by the remaining users.

37. Nelson's land is located near the diversion for the Adshead Ditch, and delivery of his water would result in less ditch loss than delivery of other water in the downstream part of the Adshead Ditch.

38. Nelson flood irrigates a portion of his land and sprinkles the remainder. He stated he would have to change his existing system to irrigate with a smaller flow rate by reducing his pump size or rearranging his method of irrigation.

39. At the rehearing, Galen McMasters, a professional engineer, testified on behalf of Nelson. McMasters analyzed Nelson's system, and calculated additional losses in Nelson's ditches and delivery system that would occur because of a lesser amount of water running in the ditches for a greater period of time. He estimated that the additional losses in the system would require reduction in irrigated acres of between approximately 1/2 and 3 acres.

40. The information submitted shows that Nelson irrigates approximately 107 acres. A loss of three acres of irrigation is

not large, but significant. There are other factors such as how well the water is tended or how well the delivery system is maintained that probably would dwarf the effects of Spillett's withdrawal found by the McMaster calculations.

41. Gene Nelson, a relative of Farold Nelson, has operated the ranch for 30 years. He discussed the present system and its operation. He stated that if Spillett were allowed to withdraw from rotation, Nelson would be required to change their delivery system dramatically. He stated that he would not be able to irrigate in the present manner, and would either have to convert fully to sprinklers or change the sizes of main lines. He stated that the cost would be substantial.

42. Kelvin Taysom, a downstream user from the Adshead Ditch, hesitantly testified at the first hearing that the decrease in the amount of water and the increase in time of water availability would adversely impact him. After the initial decisions were issued, Taysom again testified at the rehearing that his hesitancy was a result of his not wanting to get involved, and he was certain Spillet's withdrawal from rotation would injure him.

43. Groundwater return flows contribute to surface flows of Rock Creek. Water Resources of Rockland Basin, Southeastern Idaho, U.S. Geological Survey Open File Report 82-755 (1982). Return flows from irrigation enhance these groundwater contributions to surface water flow.

44. Rock Creek gains water from groundwater inflow between the Adshead diversion and the proposed points of diversion. Spillett's water can be transported in the stream without substantial loss.

45. Spillett's proposed conversion to sprinkler irrigation will result in more efficient use of water by preventing delivery and application losses.

46. Bench Ditch Irrigation Company owns irrigation rights diverted from the East Fork of Rock Creek. Although flows from Rock Creek are not tributary to the East Fork, depletions in the flow of upper Rock Creek reduce the amount of water available to

appropriators below the confluence of Rock Creek and East Fork of Rock Creek. The rights owned by Bench are some of the latest rights on the East Fork of Rock Creek, and are curtailed or not delivered when water from the East Fork and Rock Creek cannot provide water to downstream users and Bench at the same time.

47. A reduction in the flow of Rock Creek will result in an earlier curtailment of delivery of the Bench water rights.

48. Spillett's efficient use of water could reduce return flows to Rock Creek. If Spillett's total annual volumetric use and the place of use is properly limited, however, Spillett's use will not consume more water than has been traditionally consumed.

49. The Department has determined that the maximum annual consumptive irrigation requirement in the geographical area of the Spillett property is 3.0 acre feet per acre. An additional 1.0 acre foot per acre may also be delivered to the field headgate to compensate for delivery and application losses. A total annual field headgate volume of 4.0 acre feet per acre can be delivered to the Spillett field headgates.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, as enacted at the time of the rehearing, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

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 within the state of Idaho, and the change is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. Hidden Springs Trout Ranch, Inc. v. Allred, 101 Idaho 677, 619 P.2d 1130 (1981) held that an amendment to the statutes governing the appropriation of water must be applied to applications pending before the Department.

3. The applicant carries the burden of coming forward with evidence that his proposed change will not injure other water right holders, that it will not constitute an enlargement of the use, and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222.

6. When the Adshead Ditch delivered water to Spilletts property, Spilletts and his predecessors suffered a major portion of the losses in the Adshead Ditch because of the location of the Spilletts property at the end of the Adshead Ditch.

7. Idaho law requires that water be used in a reasonable and efficient manner. The Department also recognizes its responsibility to encourage efficient use of water. Rotation is one method by which water can be used more efficiently.

8. Helphery v. Perault, 12 Idaho 451, 86 P. 417 (1906), states that rotation and irrigation tend to conserve the waters of the state. "Experience seems to indicate that the use of the rotation system not only tends to conserve the already inadequate water supply, but also tends to contribute to larger and better crops and retention of soil fertility." Muir v. Allison, 33 Idaho 146, 191 P.206 (1920).

9. None of the cases cited, however, hold that rotation is a matter of right. Instead, the cases recognize rotation as a permissible method of conserving water.

10. Helphery stated that users have a right to rotate if they choose. The Muir court was asked to declare that all water rights are subject to rotation, but the court declined to establish rotation as a general rule, holding that most rights are based on a continuous flow. Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1, 154 P.2d 507 (1944) raised an issue about whether a proposed rotation pursuant to a transfer would injure other water

users. The case does not describe why rotation was injuring the other water rights. The court allowed some rotation within the irrigation company, but otherwise granted a continuous flow right to other users.

11. Finally, Simonson v. Moon, 72 Idaho 39, 237 P.2d 93 (1951) reversed a district court mandate that the defendants rotate their individual water rights in a ditch constructed by a plaintiff which was too small to carry the full rights of both defendants. The case focused on the fact that neither parties' rights could be fully delivered at the same time. It was not a case which determined rotation issues, but held that the plaintiff was required to reconstruct another ditch so that both defendants could irrigate with the amount of water to which they were entitled.

12. The best discussion about rotation is contained in Muir:

. . . [I]t may be added in passing that it is far from the purpose or intention of the court to close the door against the adoption of the rotation system in the state. Undoubtedly the courts would enforce contracts between the parties involving the use of the rotation system as has already been done by this court in the case of the State v. Twin Falls etc. Co., 21 Ida. 410, 121 Pac. 1039, L. R. A. 1916F, 236, and perhaps when property rights have grown up, or common practice and usage have made it a settled and fixed practice in a particular community, it might be the duty of the courts to enforce it.

33 Idaho at 163.

13. The court alluded that more experience may be necessary prior to imposing a requirement that water be rotated. It also alluded that the imposition of rotation may depend on the individual facts confronting the decision maker:

But when and in what cases the rules for the distribution of water should be changed must be left entirely to future investigation and determination, and this opinion should not be understood as laying down rules for any prospective modification of the law.

33 Idaho at 163.

14. In other words, rotation is a permissible and laudable method of beneficially using water, but will only be enforced when, viewing all of the facts, rotation is necessary to provide the most

efficient and best use of the water. In addition, contractual obligations of the parties are important.

15. Most of the cases cited predate the development of mechanized irrigation systems that have greatly improved irrigation efficiency. Rotation of water delivery for flood irrigation was one of the few methods of conserving and more efficiently using water. Today, however, there are other ways to increase efficiency that perhaps may surpass the efficiency of rotation. Efficiency is a matter of public interest and will be discussed later.

16. Idaho Code § 42-222 requires a finding that "no other water rights are injured" prior to approval of an application for transfer. The terms "water right" and "injury" must be defined for purposes of this decision. A water right is an entitlement to use the waters of the state for a beneficial purpose. The right authorizes diversion of enough water for the beneficial use and enough additional water for reasonable losses.

17. For purposes of this decision, injury is defined as a detrimental effect on any component of the water right which would be substantially (or unreasonably) diminished or reduced as a result of the transfer.

18. Where an individual water user desires to withdraw from rotation, he must show that the water entitlements of the remaining users can be delivered through the existing delivery system without substantial reduction.

19. "Existing delivery system" is defined as the delivery works from the point of diversion to the wateruser's property. It does not include internal ditch or pipe networks which conduct water within an individual wateruser's property.

20. If a change is necessary to the existing delivery system (excluding internal conveyance) it must be shown that the change will not cause unreasonable inconvenience to other users or will not cause a substantial reduction of the availability of water to the other users. The applicant must bear the cost of any reasonable change in the system which delivers water to the property of the other users.

21. Once a hearing officer is convinced that this test has been satisfied, the burden shifts to the protestants to show that injury will occur, or that there are matters of public interest, including the existence of a contract, that should force continued participation in rotation.

22. The following is a list of factors which the Director will consider to determine whether the transfer proposing withdrawal from rotation would be in the local public interest:

a. The efficiency of the proposed continuous use by the person withdrawing versus the loss of rotation efficiency resulting from withdrawal.

b. The monetary cost to the remaining parties of modifying their internal systems.

c. Evidence of any existing contracts between the parties to rotate water.

d. The customs or traditions of water use in the area.

23. The continuous diversion of water through a sprinkler system by Spillettt will increase his efficiency of use.

24. The withdrawal of Spillettt from the scheme of rotation will result in a reduction in irrigated acres by Nelson, and will cost him money to modify his system to prevent the loss.

25. The withdrawal from rotation will also cause injury to other users on the Adshead Ditch.

26. The monetary cost of modifying the Nelson system is substantial.

27. Although there are no existing contracts between the parties to rotate water, the custom and tradition of water use from the Adshead Ditch and within the entire Rockland Basin is to rotate water.

28. Spillettt must continue rotating water with the other users of the Adshead Ditch.

29. The Department should encourage more efficient methods of irrigation, but still protect other water rights. Other water rights could be injured if efficiency of delivery substantially reduces return flows to the creek.

30. If Spillett is required to compensate Rock Creek for the entire amount of water he saves, the incentive to be more efficient will be frustrated. If he is allowed to divert and use all the water he saves, downstream water rights will be injured.

31. The amount of water originally lost from delivery of Spillett's water through the Adshead Ditch that would reach downstream surface water right holders cannot be determined from the information now before the Department. Nevertheless, only a portion of the losses would resurface for downstream use.

32. If Spillett's use of water is limited to irrigation of the same number of acres as irrigated previously, the delivery losses saved will remain in the Rock Creek hydrologic system. Consumptive use, flow rate, total volume diverted, and acres irrigated must all be limited to ensure that Spillett's use is not enlarged.

33. The interconnection of Spillett's surface water and groundwater systems could result in an enlargement of his use of surface water. If the groundwater and surface water systems are interconnected, a totalizing meter must be installed on Spillett's diversion works from Rock Creek. Diversion from Rock Creek must cease when 160 acre-feet has been diverted, or when water is no longer available for diversion.

34. Spillett is entitled to divert 0.20 cfs under right 41-00013B and 0.60 cfs under right 41-00008B to irrigate 40 acres. Total consumptive irrigation use should not exceed 120 acre-feet annually.

35. The 40 acres currently irrigated by Spillett will be irrigated by 0.80 cfs, or an application rate of 0.02 cfs (one miner's inch) per acre, when the flow rates of the partial rights owned by Spillett are added together.

36. Spillett should specifically designate thirty (30) acres as the place of use for his portion of right no. 41-00008 and ten (10) acres as the place of use for his portion of water right no. 41-00013 prior to final approval of these transfers.

37. Water is not available to fully satisfy the rights during

the latter part of the irrigation season. Rock Creek is a gaining stream, and a change in the point of diversion to a downstream location could result in diversion of more water than was available at either the Adshead Ditch diversion or the Jackson Ditch diversion. Spillettt should be entitled to divert only his pro rata share of water available for diversion at the Adshead Ditch diversion for right no. 41-00008 and at the Jackson Ditch diversion for right no. 41-00013.

38. The applications for transfer attempt to identify the location and number of acres irrigated by other parties with the residual portion of the rights not owned by Spillettt.

39. The place of use identified for the residual portions of right no.'s 41-00008 and 41-00013 will not be recognized as represented on the application for transfer. If the land alleged as the place of use is being irrigated, the water right has been enlarged and cannot be recognized as part of the administrative transfer process.

ORDER

IT IS HEREBY ORDERED that the portions of applications for transfer no.'s 3518 and 3519 proposing to change the point of diversion are APPROVED, but the water must be diverted in rotation with the other users of the Adshead Ditch.

IT IS FURTHER ORDERED that, because the applications for transfer also sought a change in the place of use, the change in the place of use can be approved if Spillettt identifies 30 acres as a place of use for right no. 41-00008B and 10 acres as a place of use for right no. 41-00013B within the acres irrigated as identified in the findings of fact. The information must be submitted within 42 days of service of this order.

IT IS FURTHER ORDERED that failure to identify irrigated acreage for each of the rights will result in a full denial of the applications for transfer.

IT IS FURTHER ORDERED that the following conditions shall govern the water rights if the transfers are partially approved:

1. This transfer approves a total diversion of 0.80 cfs for irrigation purposes authorizing diversion of 0.60 cfs under water right no. 41-00008B and 0.20 cfs under right no. 41-00013B.

2. Total consumptive irrigation use shall not exceed 120 acre-feet annually.

3. The place of use shall be limited to the following (with a future designation of 30 acres to right no. 41-00008B and 10 acres to right no. 41-00013B):

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

4. If the surface water and groundwater systems are interconnected, a measuring device and totalizing meter approved by the Department must be installed and maintained as part of the surface water diversion works. Diversion must cease when 160 acre-feet has been diverted from Rock Creek.

5. This approved transfer does not address or recognize apparent expanded acreage listed as a place of use for the residual portions of water rights no.'s 41-00008 and 41-00013 not owned by Spillet.

6. Diversion of water under the rights as approved by this transfer is subject to the control of the watermaster of Water District No. 41, Rock Creek.

Dated this 15th day of September, 1992.



Gary Spackman
Hearing Officer

III

OUT

RESPONSIBLE

NUMBER

23

MICROFILMED
MAR 01 1993

09/26/2002

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

RIGHT NUMBER: 41-8B

NAME AND ADDRESS: JAMES JUAN SPILLETT
PO BOX 278
ROCKLAND ID 83271

SOURCE: SOUTH FORK ROCK CREEK

TRIBUTARY: ROCK CREEK

QUANTITY: 0.53 CFS

THE QUANTITY LISTED ABOVE SHALL BE MEASURED AT THE POINT OF DIVERSION LISTED FOR THIS RIGHT BY MEANS OF A MEASURING BOX OF THE TYPE AND DIMENSIONS DECREED BY IN RE HOUTZ ET AL (ONEIDA COUNTY, SIXTH JUDICIAL DISTRICT COURT, JUNE 6, 1903). ANY CHANGE IN THE METHOD OF MEASUREMENT SHALL CONSTITUTE A CHANGE IN THE POINT OF DIVERSION REQUIRING APPROVAL BY THE IDAHO DEPARTMENT OF WATER RESOURCES AS A TRANSFER PURSUANT TO I.C. SECTION 42-222.

PRIORITY DATE: 10/01/1879

POINT OF DIVERSION:

T10S R31E S20 NENWSW Within POWER County
T10S R31E S29 SWNENW Within POWER County
T10S R31E S33 NENENW Within POWER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 10/31	0.533 CFS

PLACE OF USE:	T10S R31E S20	NWNW	2.0	T10S R31E S20	SWNW	24.0
	T10S R31E S20	NWSW	24.0			

50 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 30 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NOS. 41-00013B, 41-10258 & 41-10259 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 50 ACRES IN A SINGLE IRRIGATION SEASON.

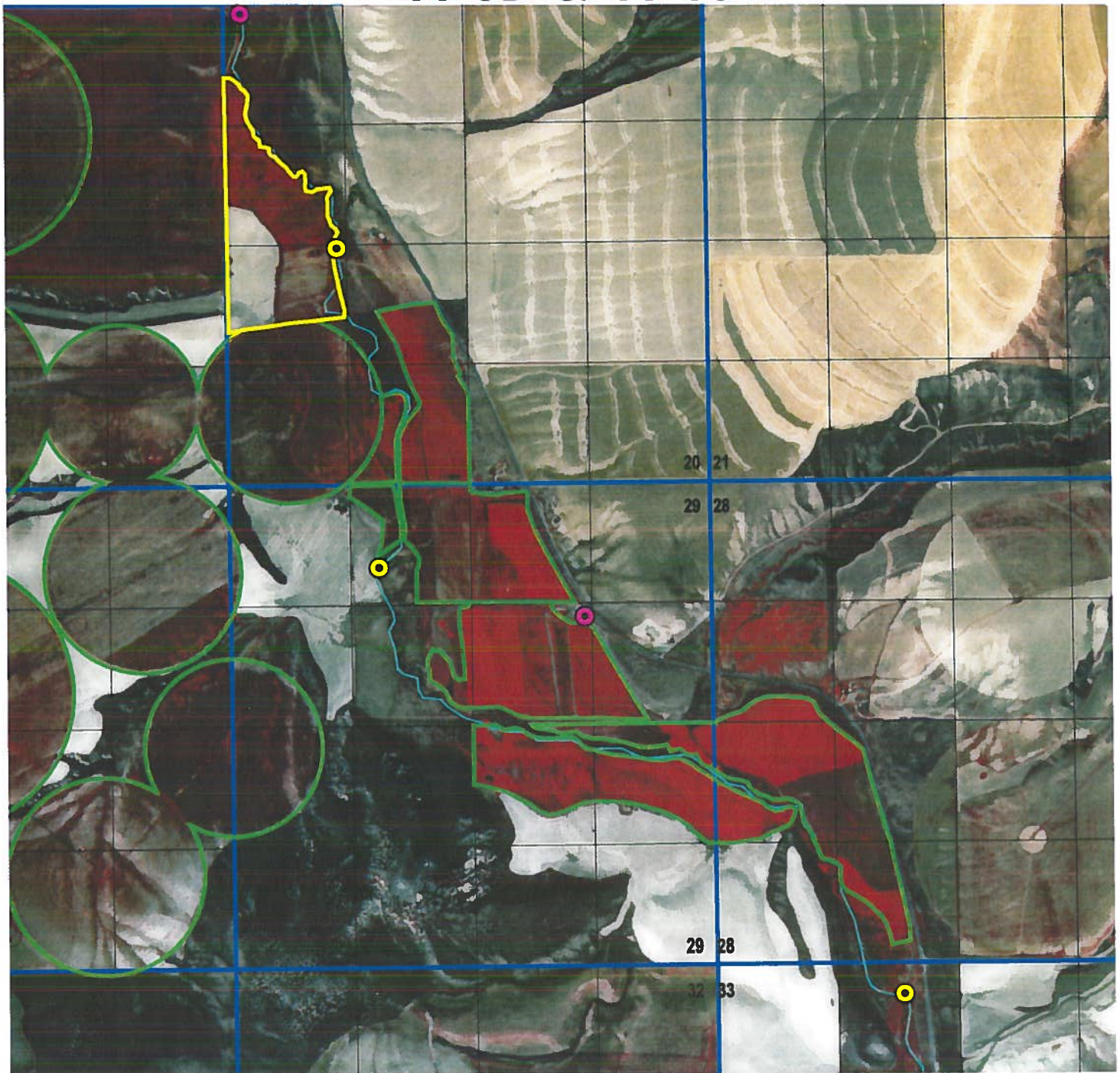
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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: Decreed

IDAHO DEPT OF WATER RESOURCES

41-8B & 41-13B



660 0 660 1320 Feet

T10S, R31E
SEC 20



- RECOMMENDED PLACE OF USE
- POINT OF DIVERSION
- SECTION LINES
- 1/4 - 1/4 LINES

GIS PLACE OF USE PRESENTATION
1987 &/OR 1988 NAPP PHOTOGRAPHY
DATA ENTRY BY: STEVE CLELLAND
DATE: SEPTEMBER 27, 2002

*** REVISED ***



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 11, 2003

James Robinson
Bench Ditch Irrigation
P.O. Box 157
Rockland, ID 83271

Robert Spillett
James Spillett
P.O. Box 144
Rockland, ID 83271

Scott Weston
4448 State Highway 37
Rockland, ID 83271

Jason Walker (Via Fax)
P.O. Box 396
Rupert, ID 83350

Re: Draft Settlement Letter

Gentlemen:

Enclosed for your consideration is a copy of the draft settlement letter prepared by Deputy Attorney General Nicholas B. Spencer. As agreed at our last meeting in Rockland concerning the Spillett/Westin water rights, a final version of the enclosed document will be sent to Kelvin Taysom and Gene Nelson of 7UD Ranches in hopes of reaching settlement on this challenging group of water rights.

Please review the draft settlement letter carefully and let us know what changes or additions you would like us to consider. Please return your comments to us on or before September 19, 2003. Mr. Spencer or myself can be reached by telephone at 208-327-7900 or you can leave a message at 1-800-451-4129 (toll-free) and we will call you back. Your prompt attention to this matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vicki B. Kelly".

Vicki B. Kelly
Paralegal

Enc.

DRAFT

7UD Ranches
C/O Mr. Gene Nelson
4846 State Highway 37
Rockland, Idaho 83271

Mr. Kelvin Taysom
2809 Sand Hollow Rd.
Rockland, Idaho 83271

RE: Water Right Nos. 41-8C and 41-8F

Gentlemen:

In August, 2001, the Idaho Department of Water Resources (IDWR) held a meeting in Rockland of all users of the Adshead Ditch. The purpose of the meeting was to inform those users of the nature of the objections filed by Juan Spillett to two of his rights as recommended by IDWR in the Snake River Basin Adjudication (SRBA), because resolution of those objections had the potential to negatively impact other users on the ditch. A number of settlement meetings have been held since that initial meeting; and while it is my recollection that you were in attendance at the initial meeting, you have not been involved in the settlement discussions since then. I am writing you now to inform you that a proposed settlement of Juan Spillett's objections has been reached. In this letter I spell out the details of that proposal, because it would affect your use of water from the Adshead Ditch.

The pace of the settlement negotiations has been slow, due in part to the complexity of the issues needing resolution, but also due to the fact that there were more water right claims than only those of Juan Spillett that needed to be addressed. Preliminary discussions revealed that two rights out of the Jackson Ditch, water right number 41-13C, held by Robert and James Spillett, and water right number 41-13A, held by Scott Weston had been wrongly disallowed by the SRBA Court. The decrees of these rights ultimately were set aside by the court, and they were reopened so that they could be corrected. This now has been done. However, in the course of correcting these rights, other possible errors in other rights held by Robert and James Spillett, and by the Westons, have been revealed. Correction of these apparent errors also could affect your rights out of the Adshead Ditch.

The genesis of Juan Spillett's objection is found in two transfer applications, Transfer Numbers 3518 and 3519, approved by IDWR in 1992. In his transfer applications Juan Spillett sought approval to change the points of diversion of water right number 41-8B, his Adshead Ditch water and water right number 13B, his Jackson Ditch water, to a point in Rock Creek where he could pump directly out of the creek. The IDWR hearing officer approved the transfers, but Mr. Spillett was permitted to change his points of diversion only on condition that he remain within the rotation agreement for the use of Adshead water. This condition was, frankly, impractical insofar as it would require Mr. Spillett to place in Rock Creek a pump large enough to pump the entire 160 inches of water available to him under the rotation agreement during his two-day turn on the rotation. To avoid this result Mr. Spillett asserts that at the conclusion of the transfer hearing he entered into an agreement with the parties protesting his transfer applications that would allow him to informally trade his Adshead Ditch water for Jackson Ditch

DRAFT

water, to enable him to pump a constant rate out of Rock Creek free of the rotation agreement. Mr. Spillett believed that this agreement would be incorporated into the transfer approval, but it was not.

Nonetheless Mr. Spillett went forward with the plan to trade Adshead Ditch water for Jackson Ditch water. He traded ten inches of his Adshead Ditch water to Scott Weston for his ten inches of Jackson Ditch water; and he traded an additional ten inches of his Adshead Ditch water to James and Robert Spillett for their ten inches of Jackson Ditch water. This twenty inches, coupled with ten inches of Jackson Ditch water already owned by Juan Spillett under water right number 41-13B, gave him a constant flow of thirty inches which he could pump from Rock Creek. The remainder of his Adshead Ditch water remained in Adshead Ditch, and as he has not been using it, it has apparently been used by other users on the ditch, even though none of those other users has a right to use it. It is Mr. Spillett's remaining Adshead ditch water that is at the heart of his objection.

The IDWR transfer hearing officer found that Juan Spillett's share of Adshead Ditch water, water right number 41-8B, was thirty inches. That, coupled with his ten inches of Jackson Ditch water under water right number 41-13B, gave him a total of forty inches,¹ only thirty of which is he able to pump from Rock Creek. However, IDWR did not recommend water right number 41-8B for thirty inches in the SRBA.

At the time the IDWR Senior Water Resource Agent in charge of investigating and recommending the SRBA claims for Basin 41 was preparing his recommendations of claims from the various ditches out of Rock Creek, he was working with the watermaster's records of the historic quantities apportioned to splits of water rights originally decreed in the Houtz Arbitration of 1903. Unbeknownst to him the quantities listed in the watermaster's records for the Adshead Ditch were not the historic apportioned quantities, but rather were quantities based on billing and delivery records prepared by the watermaster's father, the previous watermaster, in the 1960's. Thus, as the following table shows, the quantities recommended by IDWR for the Adshead Ditch rights are at variance with the apparent historic quantities recorded in the watermaster's records.

WATER RIGHT NUMBER.	NAME OF CLAIMANT	SRBA REC'D QUANTITY	HISTORIC QUANTITY
41-8B	Juan Spillett	26.67 inches	30 inches
41-8C	Taysom	18.33 inches	10 inches
41-8D	Weston	26.67 inches	30 inches
41-8E	James/Robert Spillett	17.77 inches	20 inches
41-8F	7UD (Nelson)	70.56 inches	70 inches

¹ In fact Mr. Spillett contends that historically the water rights associated with his property have totaled more than forty inches, but that over the years for various reasons they wrongfully have been reduced to forty inches. However, for purpose of the present settlement negotiations the parties have based their discussions on the figure of forty inches.

DRAFT

As can be seen from this table, there are significant differences between the quantities recommended by IDWR to the SRBA Court, and what are contended to be the correct historic quantities. Water right numbers 41-8B (Juan Spillett), 41-8D (Weston), and 41-8E (James and Robert Spillett) all were recommended less than the apparent historic quantity, while water right number 41-8F (7UD) was recommended somewhat more and water right number 41-8C (Taysom) was recommended substantially more. The Spilletts and Scott Weston contend that all five of these rights should be reopened and corrected to reflect the apparent historic quantities. Because your rights have gone forward to decree in the SRBA, they would need to be reopened in a court proceeding to accomplish this. If the efforts of the Spilletts and Scott Weston to reopen these decrees were to be opposed by you, the result could be potentially costly litigation between them and you.

To avoid this result, Juan Spillett has proposed a compromise: he will not seek to reopen your decreed rights, and will accept the 26.67 inches recommended to water right number 41-8B by IDWR, if he can take the water he has remaining in the Adshead Ditch out of the rotation. Because he has traded twenty inches of that water for water out of the Jackson Ditch, this would leave only 6.67 inches to be taken out of rotation and delivered to him directly out of Rock Creek.

The net effect of this would be that the total quantity that the watermaster turns down the Adshead Ditch would decrease from the present 160 inches to 153.33 inches. However, the lower diversion rate would be offset by the remaining users under the rotation agreement sharing pro rata in Juan Spillett's turn on the rotation. In other words, each of you would get a little smaller instantaneous quantity during your turn on the rotation, but your turn would be a little longer. Thus you would receive the same total volume of water as you do now.

The alternative to releasing Juan Spillett from the rotation could have negative consequences in addition to the Spilletts and Scott Weston likely seeking to reopen your decreed rights. Juan Spillett's attorney has pointed out that under the terms of Transfer Numbers 3518 and 3519 Mr. Spillett almost certainly has the right to insist that his share of water remaining in rotation be delivered down Rock Creek during his rotation turn, assuming he had installed pump capacity sufficient to take delivery of that quantity directly out of the creek. The effect of this is that the watermaster would have to shut off all water to the Adshead Ditch during Mr. Spillett's rotation turn. Dewatering the ditch, even for a short time, would not be beneficial to the remaining users. The user whose turn on the rotation follows Juan Spillett's would especially be inconvenienced because he would have to do without the water that inevitably would be lost to recharging the system each time the water was turned back down the ditch. That user is 7UD Ranches.

The watermaster, James Robinson, has been involved in the discussions surrounding Juan Spillett's proposal. He can provide you additional information about how he sees the Adshead Ditch system functioning if Mr. Spillett were allowed to take his remaining water out of rotation. I encourage you to discuss this matter further with him.

DRAFT

Scott Weston, and James and Robert Spillett, support Juan Spillett's proposal. For their part, and in the interest of promoting harmony among the users of the Adshead Ditch, they have agreed to accept the quantities recommended by IDWR rather than seeking to reopen all the presently decreed rights from the ditch if you will agree to release Juan Spillett's 6.67 inches of water from the rotation.

This is where the situation now stands. It seems there are three likely paths that could be taken from this point forward. First, if you find Juan Spillett's proposal acceptable the parties could draft and sign settlement documents that resolve the dispute. Second, if you need more information and would like to discuss things face to face with the Spilletts and Scott Weston, I can arrange for another meeting in Rockland at a mutually agreeable time. In addition to the Spilletts and Scott Weston, Juan Spillett's attorney, Mr. Jason Walker, would be in attendance. I would ask James Robinson to attend as well. Third, if you know at this point that Juan Spillett's settlement proposal is completely unacceptable, then the Spilletts and Scott Weston need to be informed of this in order that they can determine how they will proceed.

Because I am a Deputy Attorney General representing IDWR I am ethically prohibited from offering you legal advice. However, I can suggest that the matter is important enough that any decision you make should be an informed and well-considered one. To that end I would encourage you to talk things over with the watermaster and other knowledgeable people. You may also want to consider consulting a private attorney, for while the SRBA Court is very user friendly, and water claimants do not need to employ legal counsel to appear in proceedings before it, it is nonetheless a legal proceeding and matters implicating your legal rights are at issue here.

Please carefully consider your options and let either James Robinson or me know how you wish to proceed. You can reach me at my direct phone number in Boise, (208) 327-7930, or you can leave me a message on IDWR's toll-free number, (800) 451-4129.

Thank you very much for your attention to this matter.

Very truly yours,

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

Cc: James Robinson
James Spillett
Robert Spillett
Scott Weston
Jason Walker, Esq.

An aerial photograph of a landscape, likely a wetland or marsh area, with a grid overlay. A large, irregular area is shaded in red, indicating a specific region of interest. The grid consists of blue lines forming a coordinate system. Several points are marked on the map: a pink dot at the top left, a yellow dot on the left side of the red area, a pink dot on the right side of the red area, and a yellow dot at the bottom right. The map is divided into sections by the grid lines, with some sections labeled with numbers.

JACKSON & ADSHEAD
DITCH REVIEWS
9/17/02

20 21

29 28

29 28

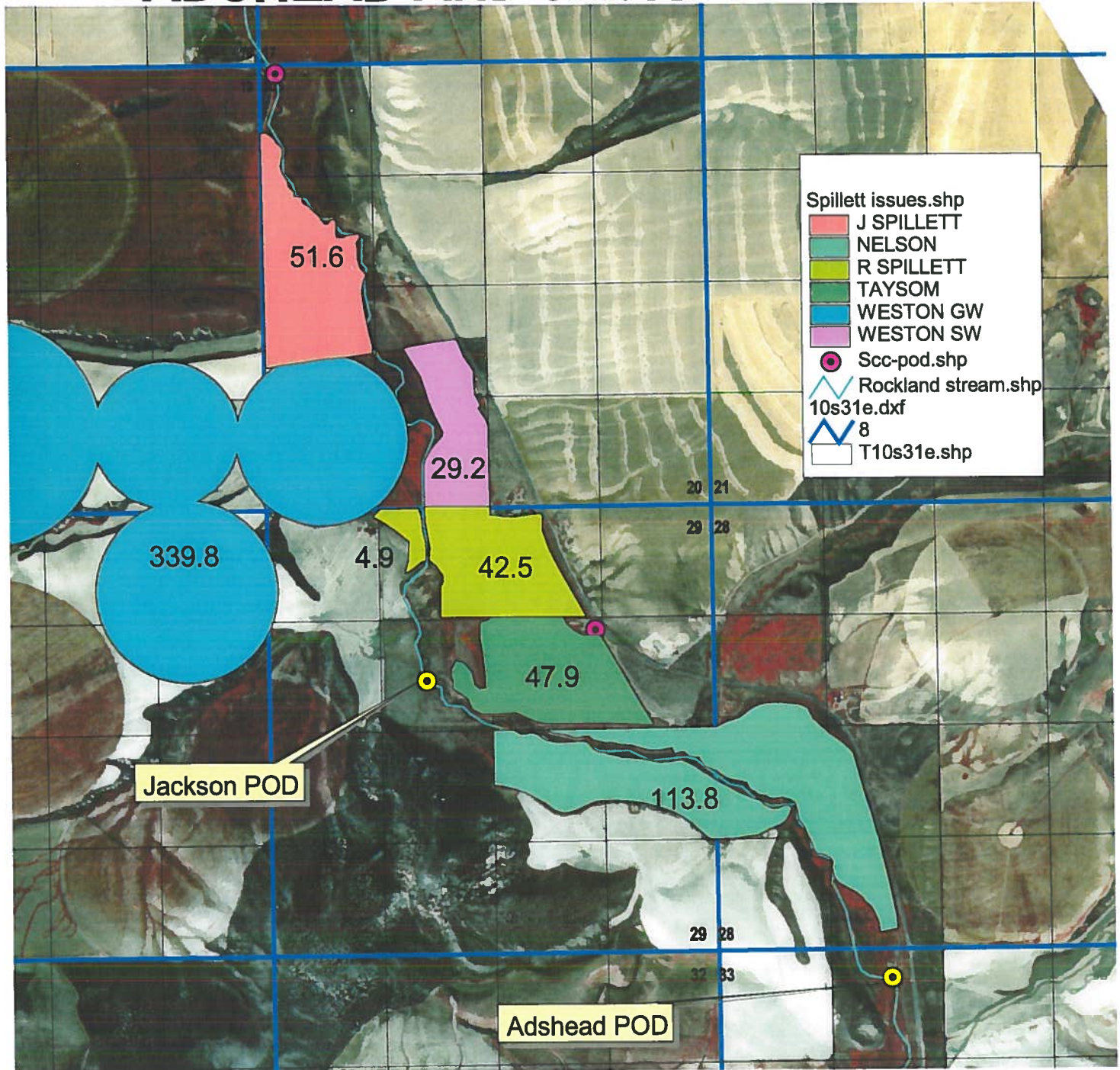
32 33

The image is an aerial photograph overlaid with a grid of blue lines. A light blue line traces a path from the top left towards the bottom right. There are three pink circles and two yellow circles marked on the map. One pink circle is at the top left near grid coordinates 18, 17 and 19, 20. Another pink circle is in the center near grid coordinates 20, 21 and 29, 28. A third pink circle is at the bottom right near grid coordinates 29, 28 and 32, 33. Two yellow circles are also present: one near the center-left and another near the bottom right. A yellow text box is located in the upper right quadrant.

**JACKSON & ADSHEAD
DITCH REVIEWS
9/17/02**

IDAHO DEPT OF WATER RESOURCES

ADSHEAD AND JACKSON DITCH



660 0 660 1320 Feet



T10S, R31E,

 RECOMMENDED PLACE OF USE

● POINT OF DIVERSION

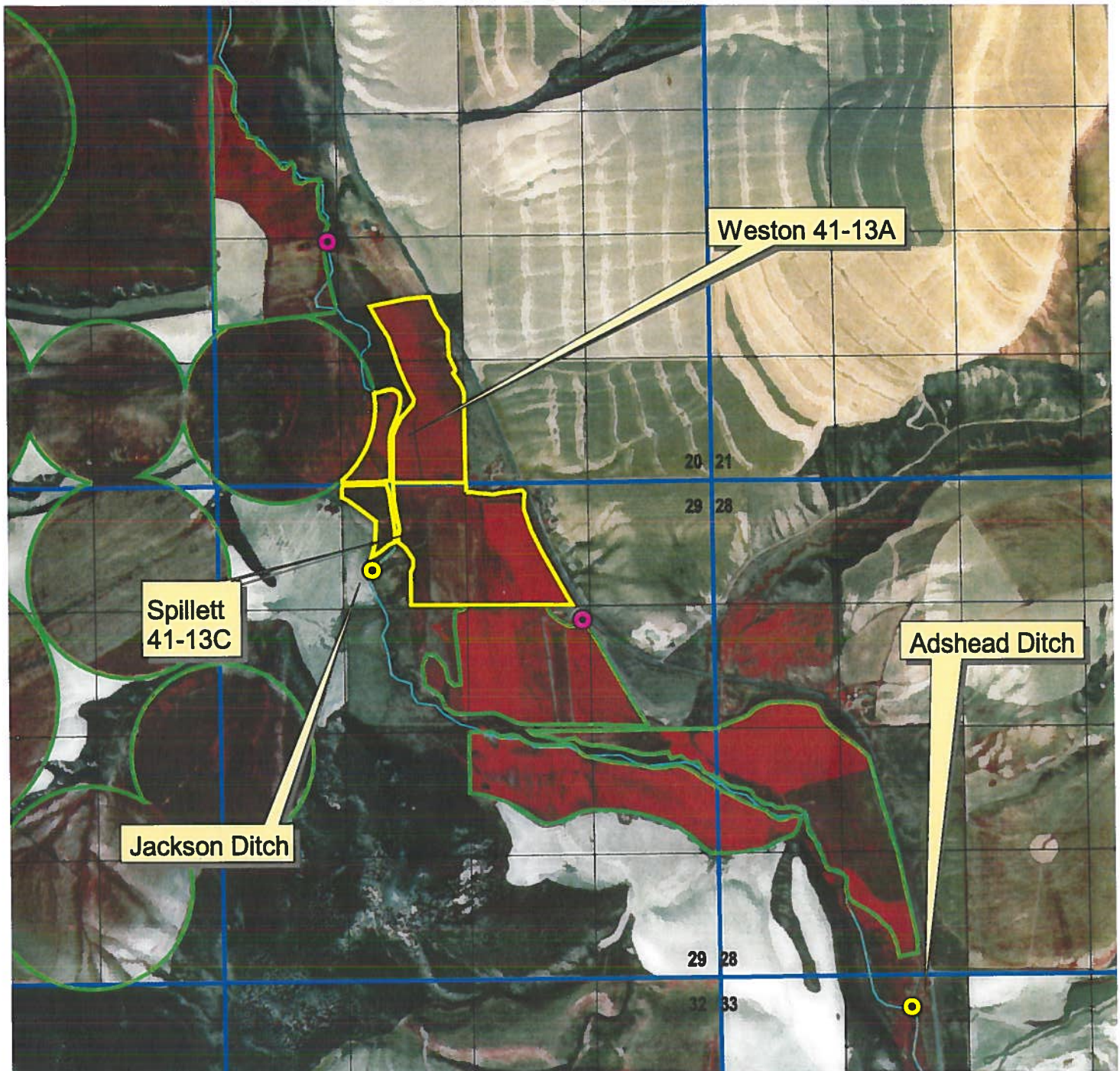
— SECTION LINES

 1/4 - 1/4 LINES

GIS PLACE OF USE PRESENTATION
1987 &/OR 1988 NAPP PHOTOGRAPHY
DATA ENTRY BY: STEVE CLELLAND
DATE: SEPTEMBER 17, 2002

IDAHO DEPT OF WATER RESOURCES

WESTON & SPILLETT POUs



660 0 660 1320 Feet



T10S, R31E
SEC 20 & 29



 RECOMMENDED PLACE OF USE

• POINT OF DIVERSION

▬ SECTION LINES

□ 1/4 - 1/4 LINES

GIS PLACE OF USE PRESENTATION
1987 &/OR 1988 NAPP PHOTOGRAPHY
DATA ENTRY BY: STEVE CLELLAND
DATE: SEPTEMBER 27, 2002

*** REVISED ***

A topographic map with a grid overlay. The map shows various terrain features, including a river or stream flowing from the top left towards the bottom right. A yellow title box is located in the upper right quadrant. The map is divided into sections by a grid of blue lines. Some sections are labeled with numbers: 19, 20, 21, 28, 29, 32, and 33. There are also colored dots on the map: two pink dots and two yellow dots. The terrain is depicted with various shades of green, brown, and red, indicating different elevations and land use.

JACKSON & ADSHEAD
DITCH REVIEWS

9/17/02

NAPP 1987

JACKSON & ADSHEAD
DITCH REVIEWS
9/17/02

IDAHO SPOT 1998 2000

18 17
19 20

20 21

29 28

29 28

32 33

MEMORANDUM

TO: Juan Spillett Transfer Files (41-00008E & 41-00013A parts)
SRBA Claims A41-00008B & A41-00013B

FROM: Steve Clelland

DATE: August 30, 2001

SUBJECT: Post-Settlement Review of System

Yesterday I met with ALL the owners of ALL the portions of the rights 41-00008 and 41-00013, the Adshead Ditch (160") and the Jackson Ditch (30") respectively. I specifically asked about the purpose and affect of the two pending transfers filed by Mr. Spillett, Trans. #5262 (41-00008) & #5263 (41-00013). James Robinson and Juan Spillett discussed the meeting they had with Corey Skinner on July 9, 1998 and they told me the transfers did not accurately describe the intentions of Mr. Spillett.

After reviewing the intermingled ditch uses and the water swapping that has been practiced by the water users, I am convinced these two pending transfers should be Withdrawn or Cancelled. They are not written to describe the uses as practiced by the current owners of the rights involved.

History:

Mr. Spillett has an approved transfer (#3519) that allows him to move his point of diversion for his rights (both -08 and -013) to a pump in the Rock Creek, which he accomplished in about 1995-96. The transfer required him to maintain his participation in the rotation on the Adshead Ditch and that made the system unworkable in a practical sense (i.e. he would need to have a large pump system to allow him to pump the full 190" in 3 days of every 12 days of the rotation.) In an effort to comply with the transfer and still use an economical pump system, the water users developed their own plan to work things out.

In order to maintain the rotation on the Adshead Ditch, Mr. Spillett would give 20" of his water to Robert Spillett and Scott Weston - 10" each. It is not clear where this water is used and no offer given at the meeting time. In return, they agreed to give to Mr. Spillett each of their respective 10" portions from the Jackson Ditch system. Mr. Spillett could now use the entire 30" of the Jackson Ditch delivery to run through his pump and irrigate the 40 acres (located on the west side of Rock Creek) described in the Trans. #3519 and reported in the SRBA Director's Report of his claims. He left the remaining 10" of his Adshead Ditch portion in the ditch system; no POU or use is identified for this 10" on the east

side (Adshead Ditch side) of the creek since the recorded POU is for the 40 acres on the west side or Jackson Ditch side.

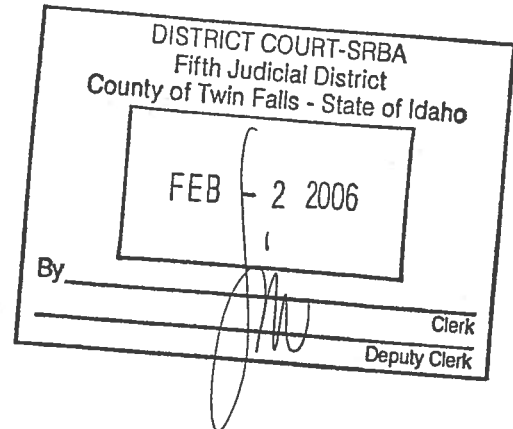
If this were the end of the story it might seem to be a workable and documented plan. However, if Mr. Spillett is taking all the 30" from the Jackson Ditch system there is a conflict with Robert Spillett who claimed and is Partially Decreed 5" on 5 acres irrigated from the Jackson Ditch on the west side of the Rock Creek. There is no use of POU location for any of the water held by Scott Weston and the 10" he claimed in the Jackson Ditch is Partially Decreed as being disallowed. Also, 5" of Robert Spillett's portion is disallowed. Since these rights are Partially Decreed by the SRBA Court, both men said they will petition the SRBA Court to set aside the Partial Decrees and then try to justify their rights in the Adjudication.

There is one other critical fact for EVERY transfer of Rock Creek water to consider; that is the difference between Houtz inches as decreed and delivered and the use of standard Miner's inches as used in the rest of the State of Idaho. Failure to account for the variations between these two very different delivery quantities will result in substantial injury to junior water right holders in the Rockland Valley area. Full details are available in most SRBA claim files and a remark is added to each of the Basin 41, Rock Creek Partial Decrees that addresses the problem. Basically the Houtz inch, as delivered through the 8' box at the 6-inch depth, is about 15-30% LESS than the standard Miner's inch as measured according to commonly acceptable devices.

Summary:

These two transfers as filed and advertised do not describe the swapping of rights that has been attempted by the users on this system. Even if R. Spillett and S. Weston are successful in getting their full rights justified and restored, THEY will need to file the transfers to record the changes and not Juan Spillett, as proposed in these transfers. If future transfers are submitted by these parties, the transfers will not be accurately evaluated until the Adjudication of the rights is complete and the legal use of the water is identified. Until then the self-regulation/appropriation will only serve to confuse the IDWR and the water users themselves.

RECEIVED
FEB 03 2006
DEPARTMENT OF
WATER RESOURCES



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

In Re SRBA

Case No. 39576

) Subcase Nos: 41-0008C (Taysom)
) 41-0008D (Weston) and
) 41-0008F (7UD Ranches)
)
) MEMORANDUM DECISION AND
) ORDER ON CHALLENGE
)
) ORDER OF FURTHER
) PROCEEDINGS IN RELATED
) SUBCASE 41-8B
)

Holding: Court denies motion to set aside partial decrees based on no errors in respective *Director's Reports* and failure to plead meritorious defense. Spillet still may pursue objection. 7UD, Taysom, Weston and R. Spillet permitted to file late responses within 30 days. Special Master ordered to conduct trial within 60 days thereafter. If Spillet prevails Court will determine remedy for reconciling inconsistent partial decrees with prior decree.

I.
APPEARANCES

Scott J. Smith, Racine Olson Nye Budge & Bailey Chartered, Pocatello, Idaho, appearing on Behalf of 7UD Ranches.

Jason D. Walker, Ling Robinson & Walker, Rupert Idaho, appearing on behalf of Juan James Spillet.

MEMORANDUM DECISION AND ORDER ON CHALLENGE; ORDER OF FURTHER
PROCEEDINGS IN RELATED SUBCASE 41-8B

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II. PROCEDURAL BACKGROUND

A. On November 2, 1999, the Idaho Department of Water Resources (IDWR or Director) filed the *Director's Report for Irrigation and Other, Reporting Area 7, IDWR Basin 41 (Director's Report)*. The *Director's Report* contained recommendations for subject water right claims 41-8C, 41-8D, and 41-8F. The *Director's Report* also contained recommendations for water right claims 41-8B and 41-8E, which are related to 41-8C, 41-8D, and 41-8F because all of the claims are derived from the same "parent" water right 41-8.

B. James Juan Spillett ("Spillett"), the party filing the *Motion to Set Aside partial Decrees* in this matter and claimant to 41-8B, timely filed an objection to the *Director's Report* for 41-8B. No other objections were filed. Relevant to these proceedings, Spillett objected to the recommendation for the quantity and place of use elements. Spillett claimed a quantity of 0.6 cfs. The *Director's Report* recommended a quantity of 0.533 cfs. Spillett claimed irrigated acreage of 120 acres. The *Director's Report* recommended irrigated acreage of 30 acres.

C. The *Director's Report* for water right claims 41-8C, 41-8D, 41-8E and 41-8F were uncontested and ultimately decreed by the SRBA Court as recommended. Spillett did not object to the *Director's Report* for these rights. Although each of the claims are potentially affected by Spillett's objection to 41-8B, the claims were not identified as uncontested overlaps or withheld from being decreed pursuant to I.C. § 42-1412(7). *Partial Decrees* were issued for 41-8C, 41-8D, 41-8E and 41-8F on July 28, 2000.

D. Spillett's objection to 41-8B was referred to a Special Master. For reasons unclear to this Court, Spillett's objection is still pending before the Special Master. On June 14, 2004, Spillett, through counsel, filed the subject *Motion to Set Aside the Partial Decrees* issued for water rights 41-8C, 41-8D and 41-8F. The *Motion* alleges that the cumulative quantities decreed for the three rights and 41-8E, in addition to the quantity claimed by Spillett exceeds the quantity previously decreed to parent water right 41-8

from which the “children” rights, 41-8B, 41-8C, 41-8D, 41-8E and 41-8F were all split. Spillett argues that the Court cannot decree a cumulative quantity for the children rights exceeding the quantity previously decreed for the parent right.

E. Spillett’s *Motion to Set Aside* was referred to the Special Master, together with special instructions to take into consideration when determining whether to grant the *Motion*. The *Order of Reference* to the Special Master provided, *inter alia*, not to consider setting aside the *Partial Decrees* unless there was an acknowledgment from IDWR that errors were made in allocating the water among the children rights split from the 41-8 parent right. The intent of the Court was to avoid a situation where the quantities decreed to the children rights exceeded the quantity previously decreed to the parent right.

F. The Special Master requested an I.R.E. 706 Report/ Supplemental Director’s Report (*Supplemental Director’s Report*) from IDWR on the question of whether errors were made in the quantity recommendations for the children rights. The *Supplemental Director’s* report addressed the known history of the claims and explained that the recommendation for the quantities was based on current billings by the watermaster for delivery of their respective rights as opposed to “historic” numbers.

G. On May 2, 2005, the Special Master issued a *Special Master’s Report and Recommendation*, recommending that the *Partial Decrees* issued for 41-8C, 41-8D and 41-8F be set aside. The Special Master relied on I.R.C.P. 60(b)(5) and concluded that it was no longer equitable that the *Partial Decrees* have prospective application reasoning that if Spillett in litigating his objection in subcase 41-8B proved a quantity in excess of the recommendation the cumulative amount decreed to the children rights would exceed the quantity previously decreed to the parent right. The Court would be decreeing water that did not exist or “sunshine water.” 7UD Ranches, the claimant to water right 41-8F, opposed Spillett’s *Motion to Set Aside* and ultimately filed this challenge to the *Special Master’s Recommendation*.

III. MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument was held December 14, 2005. No party has requested additional briefing, nor does the Court require further briefing. Therefore, this matter is deemed fully submitted for decision the next business day, or December 15, 2005.

IV. STANDARDS OF REVIEW

A. Special Master's Recommendation

The district court is required to adopt a special master's findings of fact unless clearly erroneous. I.R.C.P. 53(e); *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 377 (1991), 816 P.2d 326, 333; *Higley v. Woodward*, 124 Idaho 531, 534, 861 P.2d 101, 104 (Ct.App. 1993). Although the conclusions of law of a special master are expected to be persuasive, they are not binding upon the district court. This permits the district court to adopt the special master's conclusions of law only to the extent they correctly state the law. *Rodriguez* at 378, 816 P.2d at 334; *Higley* at 534, 861 P.2d at 104. Accordingly, the district court's standard of review of a special master's conclusions of law is one of free review. *Higley*, 124 Idaho at 534, 861 P.2d. at 104.

B. Motion to Set Aside Partial Decrees

In the SRBA, a motion to set aside a partial decree is treated similar to a motion to set aside a default judgment and reviewed in accordance with the criteria set forth in I.R.C.P. 60(b). See *Administrative Order 1* § 14d (parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)). I.R.C.P. 60(b) permits a court to relieve a party from a final judgment, order, or proceeding for the following reasons: 1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; 3) fraud, misrepresentation or other misconduct of an adverse party; 4) the judgment is void; 5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the

judgment should have prospective application; and 6) any other reason justifying relief from the operation of the judgment. I.R.C.P. 60(b) (emphasis added). The decision to grant or deny relief under I.R.C.P. P. 60(b) is one of discretion. *See e.g. Schraufnagel v. Quinowski*, 113 Idaho 753, 747 P.2d 775 (Ct. App. 1987).

Under I.R.C.P. 60(b)(5), a court may provide for relief from a judgment if it is “no longer equitable” for the judgment to have prospective application. The Rule requires some material change in circumstances that make continued enforcement inequitable. The Rule is not a substitute for an appeal nor does it allow re-litigation of issues previously resolved by the judgment. *Gordon v. Gordon*, 118 Idaho 804, 806-807, 800 P.2d 1018 (1990) (citing 11 Wright and Miller, *Federal Practice and Procedure: Civil* § 2863, pp. 206-07 (1973)).¹

In addition to satisfying one of the criteria set forth in I.R.C.P. 60(b), the movant must also allege facts, which if established, would constitute a meritorious defense. The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate Courts. *See McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979); *Thomas v. Stevens*, 78 Idaho 266 (1956). The meritorious defense standard requires that a movant : 1) allege facts; 2) which if established; 3) would constitute a defense to the action, and 4) the facts supporting the defense must be detailed. The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious defense is founded on the doctrine that “it would be an idle exercise for a court to set aside a default judgment if there is in fact no justiciable controversy.” *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (quoting *Hearst Corp.*, 100 Idaho at 12, 592 P.2d at 68).

¹ The Special Master relied on I.R.C.P. 60(b)(5) as the basis for his recommendation. For reasons set forth elsewhere in this opinion the Court need not address the Special Master’s application of the rule at this time.

V.
DISCUSSION AND ANALYSIS

A. Water right claims 41-8B, 41-8C, 41-8D, 41-8E and 41-8F are all derived from the same prior decree.

The complete history of water right claims 41-8B, 41-8C, 41-8D, 41-8E and 41-8F is not entirely clear from the record. The parent right 41-8 was included in an 1890 arbitration of claims to the use of water of Rock Creek and its tributaries. A *Notice of Award* in the matter was filed with the District Court of the Fifth Judicial District of Idaho in and for Oneida County on June 6, 1903, and recorded in Oneida County's records of judgments. Although a formal judgment was never entered consistent with the arbitration decision or "*Houtz Decree*", the *Houtz Decree* was filed with the district court on April 1, 1890. Since that time the *Houtz Decree* has been treated as a water right decree and has served as the basis for administration of Rock Creek water rights, including the creation of a water district based on the *Houtz Decree*.

The *Houtz Decree* also provided for a method of measuring all flows awarded together with details on the construction and placement of a box ("Houtz box") used to measure water. The "box method" has been used for the delivery of water rights in the Rockland valley for over 100 years. In 1990, IDWR discovered the box method actually delivered 15-30 percent less than a normal miner's inch or .02 cfs. IDWR informed affected water users, in conjunction with its investigation and reporting of water right claims, that the recommendations would be "based on historical beneficial use and historical diversion rate represented by use of the box method." *Supplemental Director's Report* at 4.

The *Houtz Decree* confirmed 160 inches or 3.2 cfs to parent water right 41-8 diverted from Rock Creek via the Adshead ditch. The *Decree* originally apportioned ownership of the right among three individuals but did not refer to or define any place of use. At some point prior to the enactment of mandatory transfer requirements, the right was split among five different water users on the Adshead ditch. None of the instruments reflecting the splits or evidencing conveyed quantities are part of the record.

Historically, all five water users rotated the use of the entire 160 inches or 3.2 cfs on a twelve-day rotation schedule with each water user diverting the entire 3.2 cfs for

a portion of the twelve (12) days. According to Spillett's *Motion*, Spillett is entitled to, and has historically diverted, the entire flow for two (2) out of every twelve (12) days. Spillett has not alleged that his claimed right was ever used outside of the rotation. A copy of the rotation agreement between the parties is not part of the record and it is not clear as to whether or not one exists.

In 1988, Spillett filed for a transfer of his portion of the 41-8 water right to move the point of diversion downstream on Rock Creek. A protest was filed because of the potential for injury to the other water users on the Adshead ditch that would result from withdrawal of the rotated portion of the right. The *Second Proposed Memorandum Decision and Order* issued by IDWR in the transfer proceedings recited that Spillett was entitled to divert .60 cfs under the 41-8B right for the irrigation of 40 acres. (The right was used in conjunction with .20 cfs diverted under water right 41-13.) The *Second Proposed Memorandum Decision and Order* ultimately concluded that although Spillett could transfer the point of diversion he could not withdraw from the rotation arrangement.

All five claims are derived from portions of the 41-8 water right. The *Director's Report* recommended the quantities as follows:

41-8B (Spillett)	.533 cfs	30 acres
41-8C (Taysom)	.367 cfs	47.6 acres
41-8D (Weston)	.533 cfs	26 acres
41-8E (R. Spillett)	.355 cfs	43 acres
41-8F (7UD Ranches)	<u>1.41 cfs</u>	<u>112 acres</u>
TOTAL:	3.198 cfs	258.6 acres*

* All of the recommendations contain combined acreage limitations when used in conjunction with other rights.

In conjunction with seeking the 0.6 cfs instead of the recommended 0.533 cfs in subcase 41-8B, Spillett has moved the Court to set aside the *Partial Decrees* for 41-8C, 8D and 8F. The *Partial Decree* for 8E was previously set aside without objection.

In conjunction with seeking the 0.6 cfs instead of the recommended 0.533 cfs in subcase 41-8B, Spillett has moved the Court to set aside the *Partial Decrees* for 41-8C, 8D and 8F. The *Partial Decree* for 8E was previously set aside without objection.

B. The Court cannot collectively decree more water to the children rights than was previously decreed to the parent right by the prior decree.

This case illustrates a problem that occasionally arises in the SRBA when multiple claims are based on a prior decree and the cumulative of the quantities claimed exceeds the quantity of the prior decree. Ideally, the issue is identified from the outset through objections filed by the various claimants. If less than all of the claims are contested IDWR or the Court attempts to identify whether any of uncontested claims are potentially affected by the objections to the contested claims. Any identified uncontested claims are then withheld from being decreed until the contested claims have been litigated. See I.C. § 42-1412 (7) (court may exclude uncontested claims from being decreed if uncontested claim may be affected by the outcome of a contested matter). This prevents the problem of the Court unintentionally decreeing more water than was decreed under the prior decree. Unfortunately, it is not always possible for the Court to identify uncontested overlaps.

In this case, despite Spillett's objection to the quantity recommendation for 41-8B, the other claims were not identified as potentially being affected by the outcome and therefore were not withheld from being decreed with the rest of the uncontested claims. The parties share some of the responsibility for the problem. Spillett failed to file timely objections to the *Director's Reports* he is now seeking to set aside. 7UD and the other claimants to portions of the 41-8 parent right, failed to file responses to Spillett's objection and become parties to the 41-8B subcase.² Had either of these occurred, the Court, the Special Master or IDWR could have more readily identified the uncontested

² The Court acknowledges that in certain circumstances it can be difficult for claimants to identify which other claimants are claiming under the same prior decree for purposes of reconciling the recommendations in the *Director's Reports* with the prior decree. Subsequent conveyances of portions of water right can make tracing the chain of title for the right difficult. However, this is not one of those situations. There are only five claims based on the 41-8 right. An objection to any one of the recommendations should have put the remaining claimants on notice that their rights could be affected by the outcome of the proceedings.

the water rights—whether proven up through litigation or decreed based upon the *prima facie* nature of the *Director's Report*—exceeds the amount in the prior decree.

This Court cannot decree collectively more water than was previously decreed to the 41-8 water right under the *Houtz Decree*. A similar issue previously arose in the SRBA before then Presiding Judge, the Hon. R. Barry Wood, involving multiple claims all based on water right previously decree under the *New International Decree*. At issue in *Memorandum Decision and Order; Order Granting State of Idaho's Motion for the Court to take Judicial Notice of Adjudicative Facts, Order of Recommitment with Instructions to Special Master*, subcase nos 36-00003A *et al.* (Nov. 23, 1999), were multiple claims collectively claiming a quantity exceeding the quantity of the previously decreed right on which the claims were based. Two of the claims, which claimed the majority of the available water, were uncontested and partial decrees issued.³ Although the rest of the claims were contested there remained substantially insufficient water available under the prior decree to satisfy the various quantities claimed. One of the issues presented was whether the Court could decree a quantity in excess of the prior decree. Judge Wood held that because all of the claimant's were bound by the prior decree, the cumulative total of their respective claims could not exceed the previously decreed quantity. He reasoned:

The Claimants to the 03 right are bound by the New Int'l Decree to a cumulative total of 20 cfs between them. The water right elements decreed in the New Int'l Decree are *res judicata* as between the parties and privies to that Decree, and the Claimants are bound thereby as to any water right elements **definitively** adjudged by the New Int'l Court. The New Int'l Decree is the progenitor of the water right claims at issue in this Challenge. Because these claims arise from a prior decree, this Court cannot allocate more water to them than is available from their origin. In other words, each Claimant is purportedly tracing the title to their water right back to the third right listed in the New Int'l Decree with an 1884 priority date, and the sum of the claims cannot exceed the 20 cfs on which they are based. To hold otherwise would be to allow the Claimants of the 03 right to unilaterally expand the quantity element previously decreed, while maintaining the ancient priority date, or place an additional burden on the water master to administer the rights collectively, not to exceed the 20 cfs total.

...

³ In that case the remaining claimants did not seek to have the partial decrees set aside.

Hence, in claiming a portion of a previously decreed – and then subdivided – water right, each of the Claimants are required to produce evidence which demonstrates their ownership of a share of such right. Each Claimant has the burden to show privity of estate with the party to whom the water right was originally decreed (i.e. New International Mortgage Bank). This may be done by showing express conveyances of the water right in each deed or other conveying instrument in the chain of title. If all of the prior conveyances are silent regarding the portion of any water right that is appurtenant to a particular Claimant's land, then by operation of law that Claimant would receive a percentage share that correlates to the amount of land received. *Crow v. Carlson*, 107 Idaho 461, 467, 690 P.2d 916 (1984); *Hunt v. Bremer*, 47 Idaho 490, 493, (1929) (“A division of a tract of land to which water is appurtenant, without segregating or reserving the water right, works a division of such water right in proportion as the land is divided.”). On the other hand, some of the conveyances may have expressly included all or most of the water rights, and the others being silent would be construed as conveying less water. In any event, the Claimants are not entitled to a “fresh start” in showing the quantity of water necessary to irrigate their land, where the water rights they claim stem from a prior decree.

Memorandum Decision and Order at 31-33. In a footnote to the text, the Court also clarified that the “[t]he Claimants are not bound by the [prior decree] as to any water right elements which were undefined by that Decree. Likewise, the Claimants are not bound by the [prior decree] as to water right claims which do not purport to rely on that Decree, if any.” *Id.* at 31, fn.10.

This legal reasoning is sound, supported by the law, has been consistently applied in the SRBA, and remains law-of-the-case. Therefore the total cumulative quantity of water that this Court can ultimately decree to the five claims relying on the 41-8 right is limited to the 3.2 cfs.

C. Spillet has not pled a meritorious defense for purposes of setting aside the other decrees.

One of the prerequisites for setting aside a judgment or in this case a partial decree, pursuant to I.R.C.P. 60(b) is that the movant demonstrate a meritorious defense. This requirement is based on the policy that it would be an idle exercise for a court to set aside a judgment or partial decree if the movant is unable to present facts which if

established would result in a justiciable controversy. *McFarland*, 123 Idaho at 934, 854 P.2d at 277.

In this case, Spillett has failed to plead facts explaining why his water claim should be more than 0.533 cfs. Spillett also has not pled facts which, if proved, would show why the quantities decreed to 41-8C, D, and F are in error and should be reduced, which of these rights should be reduced, and by what quantities they should be reduced. Spillett's claim is solely based on the prior decree for 41-8. Nonetheless, Spillett has failed to explain how specifically he acquired his portion of the 41-8 right. As explained in the case involving the *New International Decree*, the rationale supporting the prohibition against the Court decreeing a quantity greater than was previously decreed is that each user is purportedly tracing the title to the water right claim back to the prior decree. Specifically, if Spillett is claiming 0.6 cfs of the 41-8 right then he must trace his chain of title back to the *Houtz Decree* evidencing that portion of the right he was conveyed. Spillett has never pled or otherwise shown that he was specifically conveyed 0.6 cfs of the 41-8 right or alternatively was conveyed land with an appurtenant right equal to 0.6 cfs. Spillett has not pled what portions of the 41-8 right 7UD Ranches, Taysom, Weston and R. Spillett were conveyed or legally apportioned.⁴ Instead Spillett relies solely on a 1965 watermaster's record which is purported to reflect the quantities of water historically delivered among the five users on the Adshead ditch. However, as discussed below, the subject watermaster's record in no way reflects the realities of the historical use and administration of the five claims as Spillett has described in his pleadings, briefings and at oral argument. Spillett has provided no explanation as to what information the figures are based upon.

D. The Director's recommendation for Spillett's claim appears to be in line with Spillett's historical use.

Spillett argues that errors were made by IDWR in making the recommendations because the recommendations were based on the "billed" quantities (the quantities of

⁴ By legally apportioned the Court is referring to a legal apportionment of an interest in real property either through instrument, appurtenance, or other exception to the writing requirement.

water used to calculate billing by the watermaster) instead of the actual "historic" quantities used. Spillet argues that the "billed" amounts have no real basis in fact. However, this Court's review of the record reflects just the opposite. For purposes of deciding this *Motion* only, it appears based on information contained in the record that Spillet's historical use as well as the historical use of the other users is completely in line with the recommendation in the *Director's Report*. The *Houtz Decree* did not decree a place of use or acreage limitation. The children rights also have not been previously split into separate rights each with its own elements. More importantly, there are no instruments of conveyance in the record evidencing how the 41-8 right was split or otherwise apportioned. In almost all respects the 41-8 right has been treated and administered as a single right apportioned among five different users with each user being entitled to divert the entire flow of the right for a time certain.⁵

As far as can be determined from this Court's review of the record and what has been pled and argued by Spillet, the rotation has historically been integral to the use of the 41-8 right. The 41-8 right has never been formally apportioned other than through the length of time each user diverted under the rotation. Spillet has always used his portion of the 41-8 right in the rotation. Spillet's historical use of the right has always been limited to a diversion of the full 3.2 cfs for a period of two out of twelve days. Spillet does not allege that he has ever used more than two days of the twelve day rotation. Based on Spillet's historic use, Spillet's portion of the overall quantity would be one-sixth (1/6) or 0.1667 of the entire flow of the 3.2 cfs, which calculates to a rate of diversion of 0.533 cfs and which is consistent with the recommendation in the *Director's*

⁵ Presumably, this process has allowed the irrigation of more acreage than would otherwise be available for a 3.2 cfs or 160 inch water right under the statutory duty of water for irrigation of an inch per acre. *See* I.C. § 42-220. IDWR recommended a cumulative acreage of 258.6 acres for a 160 inch or 3.2 cfs right (in combination with other rights). Spillet also filed an objection to the acreage recommendation of 30 acres and claiming a place of use of 120 acres. To satisfy all users in accordance with the rotation, the entire right must be diverted continuously during the irrigation season. While such an expansion of a water right would not be permitted today, the *Houtz Decree* preceded the enactment of the duty of water statute. In addition, Idaho Code § 42-1427 recognizes that many prior decrees did not uniformly contain all the elements describing a water right that are now required. Where a prior decree does not define all of the statutorily required elements, Idaho Code § 42-1427 provides that the rights be recommended "based on the conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the decreed or licensed water right." I.C. § 42-1427 (1)(b).

Report for the 41-8B claim. IDWR, in its *Supplemental Director's Report* correctly notes that based on the rotation practice **“the only way a change in the quantity allotted to each user would be evidenced is through a change in the length of the rotation.”** *Supplemental Director's Report* at 15. (emphasis added). As a result, for purposes of apportioning the right in order to recommend the statutorily required elements for each of the five claims, IDWR could appropriately look to a mathematical formula to determine the quantity each user historically received based on the length of the respective diversions. In fact, the only way the respective quantities received under the rotation could be calculated is through mathematical formula.⁶

In the *Supplemental Director's Report* IDWR concludes that it cannot determine for certain whether or not errors were made in the recommending the five claims delivered through the Adshead ditch. The *Supplemental Director's Report* simply offers the explanation that all of the claims recommended based on the *Houtz Decree* were based on “historic” quantities, except for the claims on the Adshead ditch, which were based on “billed” quantities. Apparently the labels “historic” and “billed” are labels that were used by the parties during settlement negotiations to describe delivery records kept by two different watermasters.

Attachment 2 to the *Supplemental Director's Report* is a page from a watermaster's delivery record which divides the right among the five users or their predecessors into miner's inches. See table below. These figures were compiled by a watermaster in 1965 and have been referred to as the “historic” quantities. The notation next to Spillett's claimed right indicates 30 of the 160 miner's inches. However, because the rights have always been historically used in rotation, the basis or justification regarding how the watermaster arrived at these “historic” quantities is not apparent from the record. There are no instruments of conveyance in the record evidencing that the 41-8 right was previously apportioned in any manner other than according to the rotation. This is the “historic” quantity on which Spillett relies in support of his *Motion*.

⁶ Another method for apportioning the right would be to take the percentage of total historical irrigated acreage used by each user and multiply the percentages by the total rate of diversion. This method would be problematic in this case because the five rights are used in conjunction with other rights on the same acreage. Presumably the length of the historical rotation for each user corresponds with the relative acreage irrigated by each.

Attachment 3 to the *Supplemental Director's Report* is a copy of Attachment 2 with penciled in modifications. Attachment 3 was prepared by a subsequent watermaster. In Attachment 3 the prior figures are crossed out and the number of hours each user is allocated within the twelve (12) day rotation is interlineated. The inches of water allocated to each of the five users are also modified from the original. The modification to the inches was based on number of hours of rotation allocated to each user. See table below. These are the "billed" quantities on which the *Director's Reports* were based. As demonstrated in the following table, the percentage of the total rotation hours of 288 multiplied by the 3.2 cfs is consistent with the recommendation.

	Attach. 2 "historic"	Attach 3 "billed"	compute cfs and inches	cfs	inches
41-8F (7 UD)	70"	70.56"-127 hrs	127/288 x 3.2 cfs = or 127/288 x 160"=	1.41	70.56"
41-8C (Taysom)	20"	18.33"- 33 hrs	33/288 x 3.2 cfs = or 33/288 x 160" =	.367	18.33"
41-8D (Weston)	30"	26.67"- 48 hrs	48/288 x 3.2 cfs = or 48/288 x 160"=	.533	26.67"
41-8B (Spillett)	30"	26.67"- 48 hrs	48/288 x 3.2 cfs = or 48 /288 x 160"=	.533	26.67"
41-8E (R. Spillett)	10"	17.77"- 32 hours	32/288 x 3.2 cfs = or 32/288 x 160"=	.355	17.77"
Totals	160"	160" 288 hours		3.198	160"

Spillett has not disputed the lengths of the respective turns in the rotation. Absent any instruments of conveyance apportioning the 41-8 water right differently, Attachment 3 more accurately reflects the historical use and allocation of the 41-8 water right than

does Attachment 2. Spillett has not explained how the watermaster in 1965 arrived at the figures in Attachment 2 nor has Spillett explained the basis for his reliance on Attachment 2. What is clear is that the figures in Attachment 2 do not support historic use as explained by Spillett, despite being referred to as “historic.” Since the water rights were never formally split and had always been used in rotation, the watermaster in 1965 could have simply been rounding off the figures as there was no need for a specific allocation. Simply put, without an explanation as to how the watermaster arrived at the “historic” quantities, the “billed” quantities more accurately reflect how the right has historically been apportioned.

In the *Supplemental Director’s Report* IDWR explained that the rights on the Adshead ditch were the only ones based on the “billed” figures in Attachment 3 as opposed to the “historic” figures in Attachment 2. *Supplemental Director’s Report* at 15. However, this does not mean the methodology used was in error. It not clear whether a rotation practice was integral to the other rights decreed under the *Houtz Decree*. To the extent the other rights were previously split as reflected in instruments of conveyance or a rotation was not utilized, the methodology used for apportioning the 41-8 right would be unique to that right.

Spillett also cites to the *Second Proposed Memorandum Decision and Order* where it is recited that Spillett was entitled to divert 0.6 cfs of the 41-8 water right, however, the quantity was not at issue. The opinion doesn’t even address or discuss the basis for the recitation that Spillett was entitled to divert .06 cfs. The *Order* therefore does not quantify Spillett’s right.

Finally, the five rights are all being administered according to the rotation. No party has contested the application of the rotation. Under the rotation, no matter whether 0.60 or 0.533 cfs is ultimately decreed for Spillett’s right, so long as the rights are subject to the rotation, the quantity is always going to be the diversion of the full 3.2 cfs for two out of every twelve days and no more.

In sum, the *Director’s Reports* for each of the five rights appear to be entirely consistent with the historical use of those rights. To the extent Spillett’s reliance is based on the Attachment 2 without any explanation regarding the basis for those figures, such as instruments of conveyance etc., the Court is unwilling to set aside the other *Partial*

Decrees on that basis as it appears there would be nothing to litigate. The figures contained in Attachment 2 simply do not reflect the realities of how the rights have historically been apportioned and administered. In addition, as discussed below, Spillett need not set aside the other partial decrees in order to proceed with his objection in subcase 41-8B.

E. The Court's purpose in issuing special instructions to the Special Master was to determine whether apportionment of children rights reconciled with prior decree.

In issuing the *Order of Reference Appointing Special Master* with the special instructions, this Court was concerned that IDWR may have made errors in converting the Houtz standard to cubic feet per second. A potential problem became evident based on a perceived inconsistency between the quantity and acreage recommended for Spillett's water right. The recommendation for water right 41-8B was 0.533 cfs for 30 acres. Under an inch per acre standard, 0.533 cfs calculates to only 26.65 acres while 0.6 cfs is required to irrigate 30 acres. Because all of the rights were split from the 41-8 water right this Court was concerned that the respective quantities recommended for the individual children rights may be inconsistent with the quantity previously decreed for the 41-8 water right. The Court, however, was unaware of the specifics regarding the rotation practice. The practice of rotation historically allowed water users to irrigate more acreage than if the water rights were used independently. Because four of the five claims were uncontested without further inquiry the Court had no way of knowing whether the claims were uncontested for failure of the claimant's to review their recommendations and hence the decrees contained errors or whether the claimant's reviewed their recommendations and were in agreement. The Court wanted to ensure that the individual partial decrees reconciled with the prior decree irrespective of whether the rights were uncontested. At his juncture it appears that the claimants to 41-8C, D and F reviewed and were in agreement with the recommendations. The *Special Master's Recommendation* recommended that the *Partial Decrees* be set aside based on IDWR's assertion in the *Supplemental Director's Report* that there may have been errors in the recommendations because the recommendations were based on "billed" versus "historic"

quantities. Upon further scrutiny, the discrepancy between the “billed” and “historic” quantities accurately reflects the realities of the actual historic use of the 41-8 water right.

It is clear to this Court that based on the available information IDWR did not make errors in its methodology for recommending the five rights.

For these reasons, Spillett’s *Motion to Set Aside Partial Decrees* is **Denied**.

Therefore at this time the Court need not address the Special Master’s application of I.R.C.P. 60(b)(5).

F. Spillett may continue pursuing his objection in 41-8B without the other *Partial Decrees* being set aside.

The next issue is whether Spillet can continue to pursue his objection in light of the Court declining to set aside the other *Partial Decrees* given insufficient water remains under the 41-8 right to satisfy Spillet’s claim. Stated another way, are the other *Partial Decrees res judicata* as to the portion of Spillett’s claim which exceeds the 3.2 cfs decreed to the 41-8 right when considered with the other decreed rights? Under the facts and circumstances of this case, the Court holds that it is not. Spillett timely objected to the recommendation for his claim but failed to object to the recommendations for the other claims derived from the 41-8 right. The other claimants did not object to the recommendations for their claims but failed to file responses to Spillett’s objection. The result is that the claims proceeded through the SRBA process on different tracks despite being integrally related. Because 41-8C, D, and F were uncontested they went through the process faster than Spillett’s objection which is still pending. Unfortunately, the uncontested rights were not identified as being related and consolidated with the contested subcase. This appears to be an anomaly uniquely inherent in general stream adjudications. To now hold that the *Partial Decrees* issued for the uncontested rights are *res judicata* would result in a “race to the partial decree” with the advantage going to the first parties which had their rights decreed in parallel proceedings. Alternatively, if instead of filing motions to set aside the partial decrees Spillet pursued and prevailed on his objection and his right was ultimately decreed the Court would be faced with the problem of having decreed more water than was available. Should the Court then give precedence to those rights first decreed? Another example would be if none of the rights

were contested and the cumulative of the quantity recommendations exceeded the prior decree, would the Court give precedence to those rights that were actually file stamped first? Again these issues appear to be unique to the context of a general adjudication.

In the case involving the *New International Decree* Judge Wood held that the failure of a claimant to object to competing claims to a prior decree did not constitute a waiver of the right to contest the recommendation for the claimant's own claim.

Specifically,

Issue No. 2: Does the failure of each Claimant to the 03 right to object to competing claims to the 03 right constitute a waiver of the right to contest IDWR's quantity recommendation for that Claimant's own claim?

Although it clearly would have been helpful in adjudicating the water rights at issue, the Claimants are not required to object to competing claims to the 03 right, and failure to do so does not constitute a waiver of the right of each Claimant to object to IDWR's quantity recommendation for their own claim. The State has not directed the Court to any authority that dictates otherwise. To the contrary, competing claimants to a property right in Idaho are required to demonstrate their ownership of the property right on the strength of their own title, and not on the weakness of the competitor's title. *Rice v. Hill City Stock Yards Co.*, 121 Idaho 576, 582, 826 P.2d 1288 (1991), *rehearing denied* March 27, 1992, *citing Owen v. Boydston*, 102 Idaho 31, 624 P.2d 413 (1981); *Pincock v. Pocatello Gold and Copper Min. Co., Inc.*, 100 Idaho 325, 597 P.2d 211(1979); *Nelson v. Enders*, 82 Idaho 285, 353 P.2d 401 (1960). Thus, while not technically required to object, the end result may essentially be the same, i.e., by not objecting, and given the cap, these Claimants may well have prejudiced themselves. With a "cap" of 20 cfs with claims totaling 26 cfs, and with nobody objecting, the desired result is like a "sweet heart decree" (commonly seen in private adjudications) in the SRBA; a result which is repugnant to this Court's statutory duties. To be clear, and by way of example, assume 10 claimants are on a common ditch with a 100 inches of water maximum. Each claimant claims 15 inches of water. Nobody on the ditch objects. Out of "thin air", is this Court to decree 150 inches of water where the "Creator" only put 100?

***Memorandum Decision and Order* at 35-36.**

The case involving the *New International Decree* is also different in a couple respects. In that case the issue arose in context of a challenge to a *Special Master's Recommendation* which recommended more water than was available under the prior decree. The issue of setting aside the other decrees was never even addressed. Lastly,

the Court was able to find available water under other rights decreed under the same decree but for which no claims had been filed. The parties were then permitted to file late claims for the available water.

For these reasons the Court holds that Spillett may continue to pursue his objection despite the Court's refusal to set aside the other *Partial Decrees*. However, given this Court's review of the basis supporting Spillett's motion, the support for his objection to the recommendation for the 41-8B and the basis for the Director's recommendation, any further prosecution of the objection must be pursued in good faith and with proper foundation. Spillett's objection has been pending since 1999. The other related claims were decreed in 2000. Without tracing which portions of the 41-8 right were specifically taken by conveyance, any allocation of the right based on historic use must factor into account the historical rotation practice in determining quantity. In taking the historic practices into account the *Director's Report* recommended a quantity of 0.533 cfs, and this recommendation carries *prima facie* weight under I.C. § 42-1411(4), and Spillett carries the burden of overcoming the presumption of the *Director's Report*. From the outset, proceeding to trial solely to argue the significance of the 1965 watermaster's delivery chart without any underlying support for those figures is entirely insufficient. No instruments of conveyance or other explanation supporting the basis for the figures has yet been offered and the figures do not accurately reflect the historic use of the right as that use has been represented throughout the course of these proceedings.

G. Conclusion

Based on what has been represented in support of Spillett's Motion, if the Court were to set aside the three partial decrees the Court cannot envision any other manner of resolving the matter other than the method that has been used for making the recommendations in the *Director's Report*. For this reason, Spillett has failed to plead a meritorious defense. The Court is only faced with the problem of decreeing "sunshine water" should Spillett prevail on his objection in 41-8B. For these reasons, Spillett's *Motion to Set Aside Partial Decrees* is **Denied**.

VI.
ORDER OF FURTHER PROCEEDINGS IN RELATED SUBCASE 41-8B

IT IS ORDERED that the Special Master is to allow the filing of late responses by the claimants of 41-8C, D, E, and F (7UD Ranches, Taysom, Weston and R. Spillet) to Spillet's objection to 41-8B within 30 days of the date this order is file stamped. The Special Master is then ordered to conduct a trial on the matter within 60 days thereafter. If Spillet prevails on his objection the Court will determine at that time how to proceed with input from the parties so that the *Partial Decrees* can be reconciled with 41-8 water right. The other claimants are not required to file responses. However, if the other claimants decline to file responses and Spillet prevails on his objection as a single party subcase, the Court will approach the remedy *sua sponte* in the same manner as if all the rights were uncontested and partial decrees issued for a quantity exceeding the prior decree -- whatever remedy that may be. The problem that occurred here is unique to general stream adjudications. The Idaho Supreme Court has already recognized that "water right adjudications present unique circumstances, often requiring a departure from established rules of procedure." *State v. Higginson*, 128 Idaho 246, 254, 912 P.2d 614, 622 (1995). Consequently, such remedies could include amending partial decrees to reflect a *pro rata* adjustment or including a remark necessary for administration of the rights. The Court need not address that issue at this time.

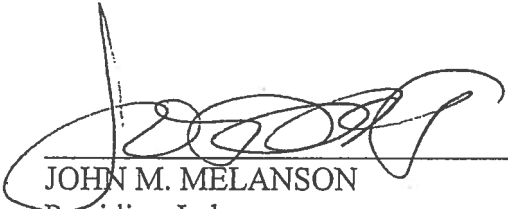
VII.
SERVICE OF THIS ORDER

The SRBA Clerk of the Court is instructed to include claimants Kevin and Suzane Taysom, water right 41-8C; R. Scott and Herbert Weston, water right 41-8D; and Robert R. and James V. Spillet, water right 41-8E in the certificate of mailing for this **MEMORANDUM DECISION AND ORDER ON CHALLENGE AND ORDER OF FURTHER PROCEEDINGS IN RELATED SUBCASE 41-8B**. The SRBA Clerk of the Court is further instructed to docket and file a copy of this Order in subcase 41-8B.

VII.
RULE 54(b) CERTIFICATE

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

IT IS SO ORDERED



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON CHALLENGE & ORDER OF FURTHER PROCEEDINGS IN RELATED SUBCASE 41-8B was mailed on February 02, 2006, with sufficient first-class postage to the following:

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ORDER

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Department of Water Resources

APR 29 PM 4: 2

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

In Re SRBA) Subcases 41-00013A (Weston) and
Case No. 39576) 41-00008E, 41-00013C and 41-10230
(Spillet))
) SPECIAL MASTER REPORT AND
) RECOMMENDATION ON MOTIONS
) TO SET ASIDE PARTIAL DECREES

FINDINGS OF FACT

Partial Decrees

41-00013A (Weston)

On July 31, 2000, the Presiding Judge entered a *Partial Decree* in subcase 41-00013A disallowing a claim filed by Herbert and R. Scott Weston, 4448 State Hwy 37, Rockland, Idaho 83271, for .2 cfs from the South Fork of Rock Creek (via Jackson Ditch) to irrigate 70 acres from April 1 to November 1 with a priority date of May 1, 1881, based on a decree. The Director of IDWR recommended the claim be disallowed: "Forfeited / abandoned due to non-use from 1979 to 1998." No one filed a timely objection to his recommendation.

41-00008E, 41-00013C and 41-10230 (Spillet)

On March 12, 2001, the Presiding Judge entered *Amended Partial Decrees* for three uncontested claims filed by James and Robert Spillet, P.O. Box 144, Rockland, Idaho 83271 for the following water rights from the South Fork of Rock Creek:

41-00008E (Adzhead Ditch¹) - .355 cfs (.72 cfs claimed) to irrigate 43 acres (59.4 acres claimed) with a priority date of October 1, 1879, based on a decree²;

¹ The parties and IDWR could not agree on the spelling of Adshead, Adzehead or Adze Head.

² The *Notice of Claim* forms in 41-00008E and 41-00013C state: "The supporting document is not a decree but is merely an arbitrator's findings and conclusions. The only party listed in the pleadings is H.P. Houtz." In his *Final Memorandum Decision and Order*, dated August 30, 1990, p. 10, *In the Matter of Application for Transfer No. 3518/ Water Right No. 41-00013 & Transfer No. 3519/ Water Right No. 41-00008 in the Name of James Juan Spillet*, former IDWR Director R. Keith Higginson explained the importance of the 1890 Houtz arbitration decision:

41-00013C (Jackson Ditch) - .1 cfs (.2 cfs claimed) to irrigate 5 acres (59.4 acres claimed) with a priority date of May 1, 1881, based on a decree; and

41-10230 (Adshead Ditch) – 1 cfs to irrigate 43 acres with a priority date of April 1, 1909 (April 1, 1908 claimed), based on beneficial use.

Motions to Set Aside Partial Decrees

41-00013A (Weston)

Claimant R. Scott Weston first wrote to the SRBA Court by letter dated October 1, 2001, stating: "I would like to be included in the review of the jackson ditch in Rockland Idaho. To reestablish the water rights that were disallowed." That letter was received by the Court more than 14 months after the *Partial Decree* was entered (July 31, 2000). Then, Mr. Weston wrote another letter, dated October 29, 2001, to the SRBA Court concerning the *Partial Decree* disallowing his claim (41-00013A) because of non-use:

I have been renting my water shares, by the year, to my neighbor Bob Spillett and also watermaster James Robinson was delivering the water to the Spilletts. I thought things were in order.

The confusing has been in my misunderstanding that I need to file a transfer with the water department. This oversight has cost me this permit. Therefore, I request that this water right be restored. Sorry for the oversight on my part.

41-00008E, 41-00013C and 41-10230 (Spillett)

Claimants James and Robert Spillett, along with Eva and Rae Spillett, wrote a letter to the Presiding Judge on September 5, 2001:

We would like to have the adjudication ["Case # 39576"] reopened. We would also like the water rights in the Jackson Ditch restored.

...

When we came to Twin Falls and met with a representative about our water rights in 1999, we didn't understand that the usage was based on irrigated acres as of 1987. In 1987, we were irrigating more ground than was reported. This difference was mainly due to the natural movement of stream beds and inability to get water out of the diversion. Juan Spillett wanted to sprinkle irrigate and in

For purposes of administering the water rights on Rock Creek, the Department, and the parties diverting water from Rock Creek, have recognized the decision of arbitration as a judgment decreeing the water rights in Rock Creek. The waters from Rock Creek have been administered according to the decision of arbitration since the decision was rendered. A water district has been created by the Department, and a watermaster has distributed water from Rock Creek to the respective users.

order to get the required amount of water, he had to change the point of diversion. We let him use 10 of our inches and Scott Weston let him use 10 of his inches to go with the 10 inches that Juan Spillett all ready had The legal paper we received not long ago says that we are only allowed enough water for the 5.5 acres in that area. In actual fact in 1987, we were irrigating 10 acres or more. When we received the court papers at that time we did not realize the consequences. We only found out from the water master.

That letter was received by the Court less than 6 months after entry of the *Amended Partial Decrees* (March 12, 2001). The Court responded to the Spilletts' letter by suggesting they contact IDWR and then file appropriate motions or pleadings with reference to the particular water right number(s). The Spilletts then wrote to IDWR asking it to bring their "appeal" to the attention of the Special Master and referenced two of their claims: 41-00013C and 41-10230. They mistakenly referred to 41-00008C as their third claim which is actually 41-00008E.

Nicholas B. Spencer, attorney for IDWR, forwarded the Spilletts' letters to the Court on November 30, 2001, requesting the letters be treated as motions to set aside the *Amended Partial Decrees*. Mr. Spencer wrote:

[The Spilletts'] request to set the partial decrees aside arises from a meeting that IDWR had last August [2001] with all the parties using water from the Adze Head ditch. During that meeting it became apparent that the Messrs. Spillett believe that the partial decrees of their rights contain errors that need correcting. That is the basis of their request to set the partial decrees aside.

Orders of Reference

41-00013A (Weston)

On October 31, 2001, the Presiding Judge entered an *Order of Reference to Special Master Dolan* concerning Mr. Weston's letters. The purposes of the appointment included:

- a. To determine the intended purpose of the correspondence and the legal significance of the correspondence, if any . . . ;
- b. To determine whether the correspondence complies with *SRBA Administrative Order 1 (AO1)* and the Idaho Rules of Civil Procedure or whether additional time should be granted to allow the party to file an appropriate motion with the Special Master and/or to obtain counsel in the matter; whether the matter should be dismissed on its face; or to determine whether the matter would be more appropriately processed administratively through the Idaho Department of Water Resources;
- c. If the correspondence is ultimately deemed a sufficient motion, or in the event a new motion is filed in compliance with the applicable rule(s), the Special

Master shall conduct all proceedings necessary to issue a recommendation as to the underlying merits.

41-00008E, 41-00013C and 41-10230 (Spillett)

On November 26, 2001, the Presiding Judge entered an *Order of Reference to Special Master Dolan* concerning the Spilletts' letters. The purposes of this second appointment were the same as the previous *Order of Reference* concerning Mr. Weston's letters.

Initial Hearing

An initial hearing on Mr. Weston's and the Spilletts' correspondence was held on January 11, 2002, in Rockland, Idaho. R. Scott Weston appeared *pro se*; Robert and James Spillett appeared *pro se*; and Nicholas B. Spencer appeared for IDWR, along with Steve Clelland, senior water resource agent for IDWR. James Robinson, Watermaster for Water District 41, attended along with James Juan Spillett and his attorney, Timothy J. Schneider, because James Juan Spillett also claims water from the South Fork of Rock Creek (41-00008B and 41-00013B).

DISCUSSION

AO-1 and I.R.C.P. Rule 60(b)

SRBA Administrative Order 1, Rules of Procedure (AO-1) states in relevant part: "Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)." *AO-1*, 14, d, at 22. Since the Westons and the Spilletts have not alleged there were clerical mistakes in the *Partial Decrees*, Rule 60(b) is the standard for reviewing their letters which may fairly be considered as motions to modify or set aside the *Partial Decrees*.

Under Rule 60(b), a party seeking to set aside a final judgment by default must show:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or *it is no longer equitable that the judgment should have prospective application*; or (6) any other reason justifying relief from operation of the judgment [emphasis added].

Motions alleging mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or any other reason justifying relief from operation of the judgment must be filed

not more than 6 months after the judgment was entered. There is no similar time limit when a court finds "it is no longer equitable that the judgment should have prospective application."

Standards for Review

A motion to set aside a default judgment presents the trial court with a factual determination. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). In determining whether to set aside a default judgment, a standard of liberality must be applied rather than one of strictness and the party moving to vacate default judgment must be given the benefit of any genuine doubt. *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 662 P.2d 1171 (App. 1983). A motion to set aside a default judgment is addressed to the sound discretion of the trial court whose discretion will not be reversed in the absence of abuse of that discretion; however, it would be an abuse of discretion for the trial court to grant such a motion without an adequate legal basis for doing so. *Newbold v. Arvidson*, 105 Idaho 663, 672 P.2d 231 (1983).

In addition to requiring a party to state a reason justifying relief from operation of the judgment, Idaho courts require more. First, a party must show that he or she has acted in good faith and exercised due diligence in the prosecution and protection of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co. v. Draper*, 16 Idaho 541, 102 P. 7 (1909) and *Kovachy v. DeLeusomme*, 122 Idaho 973, 842 P.2d 309 (App. 1992).

Second, a party must show a meritorious defense to set aside a default:

Mere mistake, inadvertence, surprise or excusable neglect without disclosure of meritorious defense or meritorious defense without disclosure of mistake, inadvertence, surprise or excusable neglect will not suffice The facts constituting the defense, whether disclosed by answer, affidavit or both, must also be detailed and must be sufficient, when established, to constitute a defense to the action on the merits. The conclusion of the party or his attorney . . . is not sufficient. Whether the pleaded facts are sufficient to constitute a defense is also one for the trial court.

Thomas v. Stevens, 78 Idaho 266, 271, 300 P.2d 811, 813 (1956).

The policy of requiring a showing of a meritorious defense is founded on the doctrine that it would be an idle exercise for a court to set aside a default if, in fact, there is no justiciable controversy. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). A party who seeks to set aside a default has the burden of supplying detailed facts of the proposed defense. *Smith Electric, Inc. v. Crandlemire*, 100 Idaho 172, 595 P.2d 321 (1979).

Good Cause and Meritorious Defense

There was remarkable unanimity at the January 11, 2002 initial hearing in Rockland on how water from the South Fork of Rock Creek has been historically used. Unrecorded transfers, informal water exchanges, unwritten rotation agreements and unreported changes in points of diversion have been routine in the Rockland area for as long as anyone could recall. On any given day during the irrigation season, an irrigator who needs more water might "borrow" another user's water by diverting through the same ditch, another ditch or maybe even directly from the Creek. The water is beneficially used, but not by the owner of record on his or her land, and this transfer might go on for hours (rotation agreements) or years.

Those at the initial hearing said all the water users in the area know about the transfers, including the Watermaster for Water District 41, and the record-owner of the water routinely pays his or her assessment for the water. The water users also know many of the transfers are not recorded with IDWR, but they agree the practices promote water efficiency and good husbandry of the resource.

In these subcases, James Juan Spillett "borrowed" 10 inches of water from the Westons and 10 inches from Robert and James Spillett to get enough water to sprinkle irrigate James Juan Spillett's land. Again, the water was used, but when IDWR inspected and reported the claims, the water was not being used as claimed by the record-owner.

At the initial hearing, Watermaster Robinson wondered in cases like these, who should claim the water - the record-owner or the current user - and who should be decreed the water right? On top of these concerns, there is the problem of measurement of water because the "Houtz Box" has been used in the Rockland area for nearly 112 years. The devise does not yield the same measurement standard used elsewhere in Idaho. Mr. Robinson even wondered whether IDWR used Houtz Box inches or Idaho inches for its recommendations.

Everyone at the initial hearing agreed the *Partial Decrees* entered in 41-00013A (Weston) and 41-00008E, 41-00013C and 41-10230 (Spillett) do not accurately reflect the actual historical use of water from the South Fork of Rock Creek. Mr. Robinson said the total water currently decreed by the SRBA Court for the Adshead and Jackson Ditches comes up 15 inches short of actual historical use. As the one who administers the water in Water District 41, Mr. Robinson suggested the only viable solution to this dilemma is for the Court to set aside the *Partial Decrees* so the claims can be re-examined and re-recommended by IDWR.

IDWR Agent Steve Clelland said the Weston / Spillett claims, as well as other claims for water from the South Fork of Rock Creek, are complex because of informal transfers. He did not understand or begin to piece together the whole situation until he met with the parties in Rockland in August, 2001 – well after the *Partial Decrees* were entered (July 31, 2000, and March 12, 2001). He said if the *Partial Decrees* are set aside, the first step would be for IDWR to record all transfers before the claims could be re-recommended to the Court.

CONCLUSIONS OF LAW

IDWR recommended 41-00013A (Weston) be disallowed because of forfeiture or abandonment from non-use from 1979 to 1998. However, the law of the SRBA case is that “once a claimant files a claim in the SRBA, for a particular right, the forfeiture provisions of I.C. § 42-222(2) are also tolled for purposes of establishing forfeiture, so long as the claimant continues to prosecute the claim to partial decree.” *Order on Challenge (Consolidated Issues) of “Facility Volume” Issue and “Additional Evidence” Issue*, subcases 36-02708, *et al.*, December 29, 1999, at 27. Since the Westons filed claim 41-00013A on March 13, 1990, IDWR could only include the period from 1979 to 1990 to determine there was forfeiture “by a failure for the term of five (5) years to apply [water] to the beneficial use for which it was appropriated . . .” I.C. § 42-222(2).

Aside from the issue of forfeiture in the Westons’ claim which was decreed as disallowed, the Special Master finds the Westons and the Spilletts have shown good cause to have the *Partial Decrees* set aside. Their letters to the SRBA Court, while less than artful, were clearly motions to set aside the *Partial Decrees*. They acted in good faith and exercised due diligence in the prosecution and protection of their rights once they, like IDWR, began to unravel the complex web of unrecorded transfers, informal water exchanges, unwritten rotation agreements and unreported changes in points of diversion

The Westons and the Spilletts also showed meritorious defenses to set aside the *Partial Decrees*. Simply put, as all the parties agreed, the *Partial Decrees* do not accurately reflect the actual historical use of water from the South Fork of Rock Creek. The *Partial Decrees* leave the amounts of water historically used in two ditches 15 inches short. Under these circumstances, the Westons and the Spilletts have shown “it is no longer equitable that the [*Partial Decrees*] should have prospective application.” I.R.C.P. Rule 60(b).

By setting aside the *Partial Decrees*, the Court will provide the Director of IDWR a second opportunity to fulfill his statutory duty "to assure that claims to water rights acquired under state law are accurately reported" I.C. § 42-1401B. It will also enable the Court to help restore the integrity of water rights administration in the Rockland area.

RECOMMENDATION

THEREFORE, IT IS RECOMMENDED that the *Partial Decrees* entered in subcases 41-00013A (Weston) and 41-00008E, 41-00013C and 41-10230 (Spillet) be **set aside** and that IDWR further investigate the claims, record all transfers and re-recommend the claims to the Court.

DATED April 29, 2002.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION ON MOTIONS TO SET ASIDE PARTIAL DECREES was mailed on April 29, 2002, with sufficient first-class postage to the following:

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DIRECTOR OF IDWR
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HERBERT R WESTON
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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Water Right Claim 41-00013A	WESTON
	)		
Case No. 39576	)	ORDER OF REFERENCE TO SPECIAL	
	)	MASTER TERENCE A. DOLAN	
	)		
	)		

On October 30, 2001, this Court received correspondence regarding the above-captioned water right claim(s). A copy of the correspondence is attached to this *Order*. The original of the correspondence was file stamped, docketed as received, and lodged in the subcase file(s). Where the water right claim(s) was/were previously uncontested, a subcase file was created for the correspondence. Where a partial decree(s) was/were previously entered for the water right claim(s), the partial decree(s) was/were also included in the subcase file.

THE FOLLOWING ARE HEREBY ORDERED:

1. That Terrence A. Dolan is appointed Special Master to preside over the above-captioned water right claim(s) for the following purposes:
 - a. To determine the intended purpose of the correspondence and the legal significance of the correspondence, if any. For example, the Special Master may determine whether the correspondence constitutes a motion to correct a clerical error pursuant to I.R.C.P. 60(a), or a motion to set aside a partial decree pursuant to I.R.C.P. 60(b), etc.;
 - b. To determine whether the correspondence complies with *SRBA Administrative Order 1 (AO1)* and the Idaho Rules of Civil Procedure or whether additional time should be granted to allow the party to file an appropriate motion with the Special Master and/or to obtain counsel in the matter; whether the matter should be dismissed on its face; or to

determine whether the matter would be more appropriately processed administratively through the Idaho Department of Water Resources;

c. If the correspondence is ultimately deemed a sufficient motion, or in the event a new motion is filed in compliance with the applicable rule(s), the Special Master shall conduct all proceedings necessary to issue a recommendation as to the underlying merits. For example, if the Special Master concludes a partial decree should be set aside or amended, the recommendation should not only include that the partial decree be amended or set aside, but should also include how the elements of the water right should be partially decreed.

2. The original of this *Order* shall be placed in the subcase file and the file transferred to the Special Master for proceedings consistent with this *Order*.

3. The Special Master shall issue a *Special Master's Report and Recommendation* on the matter consistent with *AO1*.

IT IS SO ORDERED.

DATED 10-31-01.



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE TO SPECIAL MASTER TERRENCE A. DOLAN was mailed on 10-31-01 with sufficient first-class postage to the following:

Scott R Weston
Herbert R Weston
4448 St Hwy 37
Rockland, ID 83271

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449


Deputy Clerk

Scott Weston
4448 St Hwy 37
Rockland, Id. 83271
(208) 548 2379

2001 OCT 30 AM 11:19
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 70

October 29, 2001

Roger Burdick, Presiding Judge

Re: water right number 41-00013A

Dear Honorable Burdick:

I'm writing this letter, to request that my interest in the water rights of the Jackson Ditch of the Rockland Valley be reconsidered.

This water right was disallowed, because of non-use.

I have been renting my water shares, by the year, to my neighbor Bob Spillett. and also watermaster James Robinson was delivering the water to the Spilletts. I thought things were in order.

The confusing has been in my misunderstanding that I needed to file a transfer with the water department. This oversight has cost me this permit. Therefore, I request that this water right be restored. Sorry for the oversight on my part.

Thank You

Sincerely



Scott Weston

RECEIVED

FEB 28 2000

Department of Water Resources

RECEIVED

FEB 28 2000

Department of Water Resources

RECEIVED

APR 12 2000

Department of Water Resources
Southern Region

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

In Re SRBA

Case No. 39576

A Subcase 41-00008B

(Insert water right number
From the Objection Form)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B NAME AND ADDRESS OF PERSON RESPONDING

Name: James Robinson for Beuch Ditch Irrigation Co.
Address: P.O. Box 157
Rockland, Id. 83271
Daytime Phone: 208-548-2255

Name & Address of Attorney, if any:

C NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: James Juan Spillett
Address: P.O. Box 278
Rockland, Id. 83271

1. ☐ Name and Address
2. ☐ Source
3. ☒ Quantity
4. ☐ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☐ Purpose(s) of Use
8. ☐ Period of Year
9. ☒ Place of Use

☐ This water right was not recommended, but should be recommended with the elements described above.

State of Idaho)
) ss.
County of Power)

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)

Subscribed and sworn to before me on: 25/02/00
[Signature]
 Notary Public for Edwards
 Residing at: Edwards
 My Commission Expires 1/12/02

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F

CERTIFICATE OF MAILING

I certify that on 25 Feb, ~~199~~²⁰⁰⁰, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: James Juan Spillett
Address: P.O. Box 278
Rockland, Id. 83271

3. One copy to the party who filed the objection at the following address:

Name: Timothy J. Schneider
615 H. Street, P.O. Box 396
Address: Rupert, Idaho 83350

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

James L. Blum
Your signature or signature of attorney
mailing on your behalf

RECEIVED

FEB 28 2000

Department of Water Resources

RECEIVED

APR 12 2000

Department of Water Resources
Southern Region

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

In Re SRBA



Subcase

41-00013 B

(Insert water right number
From the Objection Form)

Case No. 39576

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

NAME AND ADDRESS OF PERSON RESPONDING

Name:

James Robinson for Beach Ditch Irrigation Co.

Address:

P.O. Box 157

Rockland, Id. 83271

Daytime Phone:

208-548-2255

Name & Address of Attorney, if any:

NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH YOU ARE RESPONDING

Name:

James Juan Spillett

Address:

P.O. Box 278

Rockland, Id. 83271

D I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. ☐ Name and Address
2. ☐ Source
3. ☒ Quantity
4. ☐ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☐ Purpose(s) of Use
8. ☐ Period of Year
9. ☒ Place of Use

11. Recommendation

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

VERIFICATION (Must be Completed)

State of Idaho)
County of Bower)ss.

RESPONSE TO OBJECTION
FILED FOR RECORD

James Robinson for Bank Ditch Irrigation, duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing response)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

25/2/00
[Signature]
Notary Public for Idaho
Residing at: Rockland
My Commission Expi: 1/12/02

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.



CERTIFICATE OF MAILING

I certify that on 25 Feb, ²⁰⁰⁰~~199~~, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
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Rockland, Id. 83271

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Name: Timothy J. Schneider
615 H. St. P.O. Box 396
Address: Rupert, Idaho 83350

4. Copies to:

IDWR Document Depository
PO Box 83720
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Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Your signature or signature of attorney
mailing on your behalf

MEMORANDUM

TO: SRBA Claims A41-00008B & A41-00013B (Juan Spillett)

FROM: Steve Clelland

DATE: September 26, 2002

SUBJECT: POD review

Today I am reviewing the above files as a result of the settlement meeting held last week (9-17-02) in Rockland. The POU does not appear to be changing however the POD was not complete as recommended. After reading the final order and the transfer application it was not clear what the final POD should have been for the rights above. I consulted with our attorney, Nick Spencer, and offered this solution.

The transfer granted the change in POD to use a pump located at T10S, R31E, S20, NENWSW. It also required Spillett to use his water in rotation according to historical custom, therefore it seems necessary for him to have a diversion point in each of the ditches to implement the conditions of the transfer. This may also offer some flexibility in the delivery of his rights if other solutions can be developed to meet the paradoxical conditions set forth in the transfer.

P.O. Box 278
Rockland, ID 83271
November 12, 2001
Phone: (208) 548-2468

Idaho Department of Water Resources
1341 Fillmore Street - Suite 200
Twin Falls, ID 83301-3380
Phone: (208) 736-3033

RECEIVED**NOV 16 2001**

RE: Department of Water Resources letter of 11-8-01
Application for Transfer No. 5262 and 5263

Department of Water Resources
Southern Region

I DO NOT desire to withdraw my application to transfer the point of diversion for my portions of water rights 41-00008 (Adshead Ditch) and 41-00013 (Jackson Ditch) and to divert the water through a pump at the place of use along the South Fork of Rock Creek.

Would the Department of Water Resources please notify me as to when they will set a conference between the protestant, the SRBA staff, and myself to discuss the setting of a formal hearing?

Sincerely,

J. Juan Spillet
J. Juan Spillet

CC: Timothy J. Schneider
615 H Street
P.O. Box 396
Rupert, ID 83350
Phone: 208-436-4717

Post-It® Fax Note 7671		Date	# of pages 1
To	Steve Clelland	From	Allen Hewitt
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

RECEIVED**NOV 16 2001**

Jh
Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

RECEIVED

NOV - 9 2001

Department of Water Resources

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 8, 2001

James Juan Spillet
PO Box 278
Rockland, ID 83271

RE: Applications for Transfer No. 5262 and 5263

Dear Mr. Spillet:

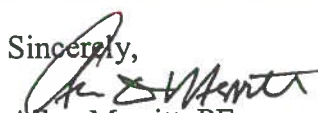
As you may recall in 1995 you filed two transfers as numbered above to modify two decreed water rights (portion of 41-00008 and portion of 41-00013) to allow their use on 52 acres in Section 20, T10S, R31E located on the west side of the South Fork of Rock Creek. You proposed to divert the water from a pump at the place of use. These transfers were advertised and transfer No. 5262 was protested by the Bench Ditch. Since that time both transfers have been held without further action mainly to allow the Snake River Basin Adjudication process to evaluate the rights in the Rock Creek basin and potentially evaluate the transfer proposals.

As you know the SRBA recommendations have been made for the Rock Creek basin and I understand that you have met with Corey Skinner from this office a couple of years ago and also recently met with Steve Clelland who has been working on the SRBA recommendations. I understand from them that these transfers do not accurately describe your intentions for continued use of the water at the site and do not conform to the SRBA recommendations. They indicate that these transfers should be withdrawn or cancelled.

This letter is to inquire of your intentions. If it is your desire to withdraw these transfers please send me a letter indicating that you wish to withdraw the applications. If you wish to continue these transfers please also notify me, we will need to set a conference between the protestant, SRBA staff and yourself to discuss the setting of a formal hearing if you wish to proceed. Please let me know how you wish to proceed within 14 days of the date of this letter. If you fail to respond I intend to issue a "Notice of Proposed Default" pursuant to IDAPA 37.01.01.700 (IDWR Rules of Procedure, Rule 700).

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

Sincerely,


Allen Merritt, PE
Southern Region Manager

CC: Steve Clelland, James Robinson, Corey Skinner

Box 278
Rockland, ID 83271
September 1, 2001

To
STEVE _____
Box R _____
VICKI _____
FILE _____

TO: Timothy Schneider, Attorney at Law

L
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9/1/01

SUBJECT

I. Water

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Nick,
I DRAFTED the attached
to clarify the water
situation in the Rockland
Valley for Tim Schneider.

It might be of interest to
you and others in the
DWR.

Juan S. [Signature]

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III. Erroneous Data Recorded by the DWR for Some Rockland Water Rights:

The Watermaster for the Rockland Water District (James Robinson) admitted that he submitted figures to the DWR or provided such figures to some Rockland water users for their submission to the DWR - based upon billing records or numbers of hours water users on given ditches were allowed to use the water in that ditch, rather than providing the ACTUAL number of miners inches which were deeded or lawfully belong to each user. In turn, the DWR admitted that they accepted the numbers submitted by the Watermaster - "because they appeared to be SO accurate", i.e. 26.35 inches of water instead of an actually deeded 30 inches! The deeded number of inches per water user appear on the same paper from which James provided the erroneous data. Why didn't he submit them? These figures should be corrected!

41-0008B
-00013B

Box 278
Rockland, ID 83271
September 1, 2001

To
STEVE _____
Box R-
VICKI _____
FILE _____

TO: Timothy Schneider, Attorney at Law
Ling & Robinson
615 N Street
P.O. Box 396
Rupert, ID 83350

SUBJECT: Irrigation Water Rights in the Rockland Valley
RE: Water Resources Meeting in Rockland on 8-29-01
Our telephone conversation of 8-31-01

I. Water Measurement:

The Idaho Department of Water Resources (DWR) readily admits that the "Houtz Measuring Box", which has commonly been used to measure water in the Rockland Valley, is NOT an accepted nor a lawful measuring device in the State of Idaho. The DWR further admits that the "Houtz Measuring Box" is NOT a consistent measuring device, i.e. measured amounts of water through this box vary - depending upon water heads or flows, whether the box is constructed of wood, concrete, or even if moss is present, etc. The only thing this box does is consistently measure between 15 and 30% fewer miners inches of water than is a true measure. However, the DWR still contends that the "Houtz Measuring Box" is an equitable(?) means for dividing water between water users in the Rockland Valley. How can this be - when it is neither a lawful nor accepted device in Idaho and it provides variable results - NOT reliable nor accurate measurements?

II. Priority of Use:

The DWR recognizes that in the State of Idaho the oldest water rights have priority with regards to the use of irrigation water. Therefore, should not the older or prior water right holders in the Rockland Valley have precedence or the right to first receive full amounts of their deeded or lawful water - through an acceptable or lawful water measuring device - prior to irrigation water being provided to holders of younger water rights?

III. Erroneous Data Recorded by the DWR for Some Rockland Water Rights:

The Watermaster for the Rockland Water District (James Robinson) admitted that he submitted figures to the DWR or provided such figures to some Rockland water users for their submission to the DWR - based upon billing records or numbers of hours water users on given ditches were allowed to use the water in that ditch, rather than providing the ACTUAL number of miners inches which were deeded or lawfully belong to each user. In turn, the DWR admitted that they accepted the numbers submitted by the Watermaster - "because they appeared to be SO accurate", i.e. 26.35 inches of water instead of an actually deeded 30 inches! The deeded number of inches per water user appear on the same paper from which James provided the erroneous data. Why didn't he submit them? These figures should be corrected!

IV. Beneficial Use of Water (Inches per Acre):

When Farold Nelson took me to court to contest my application to change the point of diversion for my Adshead and Jackson water rights, James Robinson tried to tell me - "The law states you can irrigate ONLY 1 acre per a miner's inch of water". In turn, I told him the law did not state this. But, his reply was - "It insinuates it". To which I replied - "It does not! Besides Nelsons irrigate in excess of 2.25 acres with their Adshead water and you and others in the Rockland Valley also irrigate more than 1 acre per inch with your water". Jame's reply then was - "Yes, everybody in the Valley waters more than 1 acre per inch of water. But, you shouldn't be allowed to!" Anyway, it appears James convinced the DWR representative (Gary Spackman) at the court hearing that 1 acre per inch of water was in fact the law, Spackman tried to decree that I could ONLY irrigate 40 acres with my newly diverted 40 inches of water, which I would pump from the creek and sprinkle irrigate even though I previously had irrigated in excess of 45 acres with my water through a less efficient ditch system. This is one of the reasons I protested Gary Spackmen's written decree. In fact, the law is - you can NOT irrigate less than 1 acre per miner's inch of water. I think some Rockland Valley water users were wrongfully informed that they could not irrigate more than 1 acre per inch for their deeded water. Thus, they may have submitted to the DWR that they were irrigating a similar number of acres - rather than the actual number of acres they were irrigating, let alone how many acres they could irrigate if they went to a more efficient irrigating system, i.e. sprinkler. For example, Robert Spillet, who has 30 inches of deeded water plus leases Weston's 30 inches of Adshead water, submitted that he irrigated only 42 acres; whereas Kelvin Taysom, his neighbor, has only 10 inches of deeded water, but claimed he irrigates 50 acres(?).

V. Injury (?) to Othe Water Users:

Farold Nelson claimed if I changed my point of diversion and took my deeded water out of the Adshead Ditch, it would injure theirs and other Adshead water users rights, i.e. they would have a smaller head of water and would not be able to move water as efficiently nor as far across their land - even though Nelsons (7UD Ranches) pumps and sprinkle irrigates with almost all of their Adshead water. DWR apparently agreed with this, as they tried to decree that - with a change of a point of diversion - I'd have to continue to use my Adshead water in rotation with other users. This, however, is untenable - because I would have to pump and sprinkle 190 inches for 3 out of every 12 days, which would require an enormous pump and an excessive amount of sprinkler lines, etc. However, in the end of the court proceedings, I was told "If you will use only Jackson Ditch water and leave your Adshead water in the ditch, we won't bother you."

I accepted this alternative. I then put in a pump, installed a main line, and have since been sprinkling with 30 inches of water (exchanging 10 inches of my Adshead water to both Robert Spillet and Westons - for their 10 inches each of Jackson water). However, the DWR now claims Weston's 10 inches of Jackson water and 5 inches of Robert Spillet's Jackson water have been negated - BECAUSE they were NOT making beneficial use of it(?). Is not this action an injury by the DWR to my use of Jackson

Ditch water?

VI. Irrigation Water Problems in the Rockland Valley:

The Bench Ditch, which is diverted from the East Fork of Rock Creek, is both the youngest and largest water right in the Rockland Valley. The U.S. Ditch, which is diverted below the confluence of the East and South Forks of Rock Creek, is the oldest recorded water right in the Valley - although the Adshead Ditch actually was diverted prior to it. Thus, water rights for the U.S. Ditch hold precedence over all other rights in the Valley. This means, whenever there is an inadequate amount of water to meet the needs of all users, water users - beginning with the Bench Ditch - must surrender some of their water and ensure that the U.S. Ditch ALWAYS receives its FULL decreed amount. Because there are more water users on the Bench Ditch than on any other ditch in the Valley, they apparently feel the "Majority should rule". They often try to override prior rights or use any means possible to ensure that they get as much as possible of their deeded - although junior - water rights.

The Water Master for the Rockland Valley (James Robinson) uses water strictly from the Bench Ditch. Thus, he also ALWAYS ensures that Bench Ditch water users get the maximum amounts of water possible. The reason James Robinson is the Water Master is - because he is appointed by Nelsons (7UD Ranches). The 7UD Ranches has water rights in virtually every ditch in the Rockland Valley. And, because they have so many water rights, 7UD Ranches essentially dictates everything with respect to what goes on regarding the use of irrigation water in the Valley. Most water users in the Rockland Valley do not even attend - let alone participate in - the annual Rockland Valley Water District meetings. They have learned that their attendance is a waste of time, because - no matter how they vote regarding a Water Master or other water matters in the Valley - their vote will be overrode by the superior number of 7UD Ranches' votes.

Note: Some years ago the Soil Conservation Service (SCS) developed plans and was ready to construct a piped, gravity-flow, sprinkler irrigation system for the Bench Ditch water users - on a cost-share basis. Bench Ditch water users would pay 20% of the cost for this system and government funds would pay 80%. Farold Nelson, however, convinced other water users that such a system would not be cost efficient. Thus, the project was negated. A short time later, according to the former Director of the SCS, one of the siphons in the Bench Ditch washed out. And, it cost the Bench Ditch water users more to repair it than would have been their 20% share of the irrigation system proposed by the SCS. Installation of this proposed system essentially would have eliminated irrigation water problems in the Rockland Valley, as well as have permitted Bench Ditch water uses to more effectively and efficiently water much more land. However, because of penny-pinching foolishness, it came to naught!

VII. Solution to Water Problem in the Rockland Valley:

Basically, the DWR should adhere to Idaho State laws pertaining to irrigation water.

1. The DWR should require that legally acceptable water-measuring devices are used to measure water for ALL water users in the Rockland Valley. Although early users meant well, the "Houtz Measuring Box" is NOT an acceptable, legal, consistent nor accurate water measuring device. Its use should be abandoned.

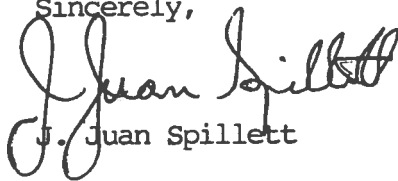
2. The DWR should ensure that individual water rights which they have recorded for each water user in the Rockland Valley are accurate, i.e. are based upon deeds or other legal documents and NOT upon Water Master billing records nor numbers of hours of use by a water user on a given ditch.

3. The DWR should respect priority rights with respect to the use of irrigation water in the Rockland Valley, i.e. senior water right holders should receive their FULL amounts of deeded water - in true and accurately-measured miners' inches (NOT "Houtz Box inches!"). If there is NOT sufficient water to fully meet the needs of junior water right holders, the DWR still should adhere to Idaho State law with regards to priority rights.

4. The DWR (NOT the Water Master) should inform water users in the Rockland Valley about their rights, i.e. not being able to water more than 1 acre per inch of water (untrue!) VERSUS not being able to water less than 1 acre with an inch of water. A means also should be provided whereby ALL water users in the Rockland Valley can have a voice in the selection of a Water Master and matters pertaining to the use of irrigation water. The Valley's water resources should not be mandated by a single entity (i.e. 7UD Ranches), as is the case at present. Ideally, the Water Master also should not have a vested interest in the water resources he administers.

I trust the items herein presented will be given due consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Juan Spillet". The signature is stylized with a large, looping initial "J" and a trailing flourish.

J. Juan Spillet

MEMORANDUM

TO: Juan Spillett Transfer Files (41-00008E & 41-00013A parts)
SRBA Claims A41-00008B & A41-00013B

FROM: Steve Clelland *scw*

DATE: August 30, 2001

SUBJECT: Post-Settlement Review of System

Yesterday I met with ALL the owners of ALL the portions of the rights 41-00008 and 41-00013, the Adshead Ditch (160") and the Jackson Ditch (30") respectively. I specifically asked about the purpose and affect of the two pending transfers filed by Mr. Spillett, Trans. #5262 (41-00008) & #5263 (41-00013). James Robinson and Juan Spillett discussed the meeting they had with Corey Skinner on July 9, 1998 and they told me the transfers did not accurately describe the intentions of Mr. Spillett.

After reviewing the intermingled ditch uses and the water swapping that has been practiced by the water users, I am convinced these two pending transfers should be Withdrawn or Cancelled. They are not written to describe the uses as practiced by the current owners of the rights involved.

History:

Mr. Spillett has an approved transfer (#3519) that allows him to move his point of diversion for his rights (both -08 and -013) to a pump in the Rock Creek, which he accomplished in about 1995-96. The transfer required him to maintain his participation in the rotation on the Adshead Ditch and that made the system unworkable in a practical sense (i.e. he would need to have a large pump system to allow him to pump the full 190" in 3 days of every 12 days of the rotation.) In an effort to comply with the transfer and still use an economical pump system, the water users developed their own plan to work things out.

In order to maintain the rotation on the Adshead Ditch, Mr. Spillett would give 20" of his water to Robert Spillett and Scott Weston - 10" each. It is not clear where this water is used and no offer given at the meeting time. In return, they agreed to give to Mr. Spillett each of their respective 10" portions from the Jackson Ditch system. Mr. Spillett could now use the entire 30" of the Jackson Ditch delivery to run through his pump and irrigate the 40 acres (located on the west side of Rock Creek) described in the Trans. #3519 and reported in the SRBA Director's Report of his claims. He left the remaining 10" of his Adshead Ditch portion in the ditch system; no POU or use is identified for this 10" on the east

side (Adshead Ditch side) of the creek since the recorded POU is for the 40 acres on the west side or Jackson Ditch side.

If this were the end of the story it might seem to be a workable and documented plan. However, if Mr. Spillett is taking all the 30" from the Jackson Ditch system there is a conflict with Robert Spillett who claimed and is Partially Decreed 5" on 5 acres irrigated from the Jackson Ditch on the west side of the Rock Creek. There is no use of POU location for any of the water held by Scott Weston and the 10" he claimed in the Jackson Ditch is Partially Decreed as being disallowed. Also, 5" of Robert Spillett's portion is disallowed. Since these rights are Partially Decreed by the SRBA Court, both men said they will petition the SRBA Court to set aside the Partial Decrees and then try to justify their rights in the Adjudication.

There is one other critical fact for EVERY transfer of Rock Creek water to consider; that is the difference between Houtz inches as decreed and delivered and the use of standard Miner's inches as used in the rest of the State of Idaho. Failure to account for the variations between these two very different delivery quantities will result in substantial injury to junior water right holders in the Rockland Valley area. Full details are available in most SRBA claim files and a remark is added to each of the Basin 41, Rock Creek Partial Decrees that addresses the problem. Basically the Houtz inch, as delivered through the 8' box at the 6-inch depth, is about 15-30% LESS than the standard Miner's inch as measured according to commonly acceptable devices.

Summary:

These two transfers as filed and advertised do not describe the swapping of rights that has been attempted by the users on this system. Even if R. Spillett and S. Weston are successful in getting their full rights justified and restored, THEY will need to file the transfers to record the changes and not Juan Spillett, as proposed in these transfers. If future transfers are submitted by these parties, the transfers will not be accurately evaluated until the Adjudication of the rights is complete and the legal use of the water is identified. Until then the self-regulation/appropriation will only serve to confuse the IDWR and the water users themselves.

Spillet:

- 08 B - 013 B

Pump:

c. 1995

270 gpm metered flow (.6 cfs)

4/2/01
scc

(meeting @
Rupert)

- 08 B	- 013 B	} per trans.
30" 40"	10"	
40 AC	10 AC	
30 AC (per transfer)		

- 08 split by WM sheet,
was for Billing purposes

final order: TRANS # 3518 (-13 B)
10/1/92 # 3519 (-08 B)

RECEIVED

DEC 17 1999

Department of Water Resources
Southern Region

Box 278
Rockland, Idaho 83271
February 3, 1990

Director
State of Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Applications for Transfer of Water Right Nos. 41-00008 and 41-00013.

I hereby protest the judgment by the State of Idaho Department of Water Resources regarding my application to change the point of diversion for my portions of water rights nos. 41-00008 and 41-00013. This judgment is arbitrary and capricious, as I will demonstrate herein.

Prior to the hearing conducted on November 16, 1989, in American Falls, Idaho, I assumed any judgment rendered by the Department of Water Resources would be just and impartial. I was wrong! If I had realized that the Department would be so unduly influenced by those having legal counsel present, I also would have had legal counsel present at the hearing. This would have been despite the fact that the hearing was merely with regards to my application to change the point of diversion for a relatively small amount of water (40 inches), and that prior legal counsel (Mr. Foster in Idaho Falls) had advised me that there was no justifiable reason why this should not be granted.

As directed in the Department of Water Resources communication of January 23, 1990: First, I will specifically identify portions of the proposed decision to which I take exception, as well as specifically state the grounds for those exceptions. In conjunction with this and thereafter I also will reference testimony given at the hearing which I feel to be pertinent, but which was not presented in the Department's PROPOSED MEMORANDUM DECISION AND ORDER. I also will send copies of my protest to the parties or their attorneys who appeared at the hearing - prior to the February 6, 1990, deadline imposed by the Department of Water Resources.

Page 3, Item 10. - As stated here, the arbitration decision for right no. 41-00008 DOES NOT describe the exact location nor the number of acres upon which the decreed water is to be used. It does not even insinuate such, but decrees given amounts of water to entire parcels of land. And, as stated in Item 7 on this same page, "The waters from Rock Creek have been administered according to the decision of arbitration since the decision was rendered." It was James Robinson who tried to claim at the hearing that each 1 inch of decreed water should be allocated to only 1 acre of land. However, he also testified that he and "everyone else in the Valley" watered more than 1 acre with each 1 inch of their decreed water. Nevertheless, he felt that I should be the exception and that I should be allowed to use each of my decreed inches of water on ONLY 1 acre of land. This issue was discussed at some length during the hearing, and my father (James Oren Spillett) testified that the decrees for both the Adshead and Jackson Ditches (Water Right Nos. 41-00008 and 4100013, respectively) always have been understood to be decreed to given properties or parcels of

land, and not to given acres within those properties or land parcels. Thus, the Department has herein presented conjecture, rather than the facts or details concerning testimony presented at the November 16, 1989, hearing in American Falls.

Page 3, Item 11 - I have been unable to find in water right no. 41-00013 (Jackson Ditch decree) where it specifies that this right or my portion of this right is decreed to specific acres of land.

Page 3, Item 12 - It should be noted that the original right nos. 41-00008 and 41-00013 decreed or specified 160 inches MORE OR LESS and 30 inches MORE OR LESS, for these respective rights. Diversions on the South Fork of Rock Creek for both rights consisted of DRY DAMS until the mid-1950's, when it was ordered that measuring boxes be installed at both of these locations and that the rights were restricted to no more than 160 and 30 inches, respectively. The reason why applications for transfer perhaps may have stated at times "that water was not available for diversion during the latter part of the irrigation season" was because - during dry years the full 160 or 30 inches for these rights sometimes was not available in the South Fork of Rock Creek. However, this was compensated by the original rights providing MORE than the 160 and/or 30 inches of water during the early part of the irrigating season. The common practice then was to "water-up" your hay ground, etc. during the early part of the season so that - if a shortage of water occurred during the latter part of the season - your crops (particularly hay) would not suffer unduly. Thus, in the 1950's the Department of Water Resources reduced the amount of water originally provided by water rights nos. 41-00008 and 41-00013 or the decreed water rights on the Adshead and Jackson Ditches. Now the Department of Water Resources is attempting to even further reduce the relatively small amount of water decreed for my portions of these two water rights.

Page 4, Items 16 and 17. - Based on records pertaining to water rights nos. 41-00008 and 41-00013 on file in the Twin Falls, Idaho, office of the Department of Water Resources and with the assistance of Department of Water Resources personnel stationed there, my application to change the point of diversion for my portions of water rights nos. 41-00008 and 41-00013 was prepared. I relied primarily upon their expertise, as I felt they should understand the decrees pertaining to my water rights better than I. When I then was asked how many acres on my 120 acres had ever been irrigated with water from these two water rights, I estimated it probably was about 75 acres. However, upon measuring SCS aerial photos of my property it later became evident that more than 80 of my 120 acres has been watered at one time or another with water from these two rights. Also, those who assisted me indicated my water was decreed to ALL of my land, but - even with installation of a sprinkling system - my water probably would adequately water only about 75 acres. Thus, this was the number of acres specified in my application regarding my 30 inches in the Adshead Ditch (Water right no. 41-00008) and my 10 inches in the Jackson Ditch (Water right no. 41-00013). I do not know why those who assisted me specified my 10 inches in the Jackson Ditch (right no 41-00013) would be used to irrigate only 29 acres. The water from these two rights have been commingled for use on my property since at least the early 1900's. And, I assumed this would continue to be the case when the point of diversion was

changed and I had developed a more efficient or sprinkler irrigation system for my property. I further thought it would be reasonable, if I could irrigate 75 acres of my property with my surface water rights, that I could water the remaining 25 acres of the 100 acres I proposed to irrigate with my subsurface or well water right.

The stated 290 acres irrigated with the 160 inches of water right no. 41-0008 (Adshead Ditch) was computed from SCS aerial photo by Department of Water Resources personnel in the Twin Falls office, specifically Mr. James Stanton. During the November 16, 1989, hearing in American Falls, Farold Nelson testified that he irrigated at least 107 acres with his 70 inches of decreed water from the Adshead Ditch. Nelson began to irrigate approximately 40 acres of this after the date when the SCS aerial photos were taken. Please note that Nelson presently irrigates an average of 1.53 acres/inch of water, and that Mr. Nelson sprinkles only a little over half of this 107 acres and the rest is flood irrigated. If Nelson used only a sprinkling irrigation system, as I propose to do, he undoubtedly could make even more efficient use of his water and effectively water even more acres with his decreed right of 70 inches. Kelvin Taysom also testified that he irrigated approximately 45 acres with his water right, which totals only 20 inches. Thus, he irrigates approximately 2.25 acres/inch of water. This is even a higher average than I propose to irrigate with my 40 inches of decreed water! Robert Spillett irrigates approximately 40 acres with the 10 inches of water decreed to his mother's (Grace Spillett) place, And, between 60 and 80 acres previously were irrigated on the Weston property with the 40 inches of water decreed to this property from both the Adshead and Jackson Ditches. I presently flood irrigate approximately 40 acres with my 40 inches of water decreed to my property from both the Adshead and Jackson Ditches. Only 40 acres have been irrigated on my place during recent years primarily because of losses incurred and the inadequacy of my ditch delivery system. However, as I testified and presented evidence at the hearing, I previously irrigated approximately 48 acres at one time with my decreed water rights. And, at one time or another, in excess of 80 acres of my total 120 acres has been irrigated with the decreed water from the Adshead and Jackson Ditches. In short, even during recent years in excess of 300 acres have been under irrigation with the combined water rights of the Adshead and Jackson Ditches. Because of the fact that my property is at the bottom of both ditch systems and because of the inadequacy of my ditch delivery system, I have been unable to make as efficient use of my water as the other water users. This is why I made application to change the points of diversion for my portions of these two rights and proposed to install a sprinkling irrigation system to more effectively and efficiently irrigate approximately 100 of my total 120 acres - using both my surface and subsurface water rights. I felt that I could reasonably irrigate at least 75 acres from my surface rights, and that I then could irrigate the remainder with my subsurface or well right. When the SCS surveyed my property and helped design an efficient sprinkling irrigation system for it several years ago - based on elevation, types of soil present (heavy clay loams) and other factors - they determined that to produce 3 cuttings of alfalfa hay on my property would require 23.5 A inches of water with the sprinkling system they designed, and which I already have partially installed and used with my subsurface water right.

Page 4, Item 18. - The Department of Water Resources here admits that "the

number of acres and the place of use is not decreed for right no. 41-0008". But, the Department of Water Resources here attempts to insinuate that no more than 1 acre should be or "normally" can be irrigated with 1 inch of water. However, as presented above for Items 16 and 17, other water users on this right presently irrigate much more than 1 acre for each 1 inch of their decreed water. If I should attempt to irrigate my entire 120 acres with my decreed water from this right - it would NOT constitute an "enlargement of use" of my right - BECAUSE my portion of this right is decreed to my entire property. Further, if the Department of Water Resources should attempt to limit my use of my portion of this right to 1 inch/1 acre - this would be ARBITRARY judgment! Why should other water uses within the same water right be able to water up to 2.25 acres/inch of decreed water, AND I should be limited to only 1 acre/inch? Further, when the SCS helped me to develop a plan for a efficient sprinkler irrigation system for my property, the SCS calculated that it would take 23.5 acre inches to adequately grow alfalfa on my property with sprinkler irrigation. Alfalfa would use the most water of any crop which I would grow. Grain would require less water, and the SCS felt that overall 21 acre inches would adequately provide for whatever crops I might grow with the irrigation system which they helped me design. Now the Department of Water Resources claims that 48 acre inches "normally" (?) is required, as well as tries to limit me to irrigating an average of only 1 acre with 4 acre feet of water. I can not grow rice on my property! Thus, the Department of Water Resources says I need more than twice the water actually needed per acre to grow crops on my property. This is an unjust judgment. It appears the Department simply is trying to force me to make inefficient use of my decreed water - or to return it to the South Fork of Rock Creek for downstream water users.

Page 5, Item 19. - This statement is NOT true! Water right no. 41-00008 has been delivered to FIVE (not four) water users through the Adshead Ditch. As I testified at the hearing, I used my water from this right in both the Adshead and Jackson Ditches up until the time I was drafted into the military service in the early 1950's. Ben Cavaness tried to claim that because the Adshead Ditch on the east side of my property had not been used during "recent" years to irrigate any of my property on the east side of the South Fork of Rock Creek, that this constituted "an abandonment of use" on this side of the Creek on my property. I claimed to the contrary, and cited where his client (Farold Nelson) just 2 years ago again began to irrigate some of his property on the west side of Rock Creek which had not been irrigated since even before my birth. Farold Nelson felt that in his case that non-irrigation of this area for so many years did not constitute abandonment! It might be further noted that in conjunction with Mr. Nelson's EXPANDED USE of his water right 2 years ago - he now is irrigating some lands on the west side of Rock Creek which were not even within his land parcel to which his water is decreed - but instead constitute a portion of homesteaded dry-farm lands outside. My father also testified that during his youth a small flume crossed the creek to the west on Farold Nelson's property, but water delivered through this flume was never used to irrigate more than a small garden plot. Mr. Nelson presently irrigates in the neighborhood of 40 acres with a sprinkling system on the west side of the Creek!

Page 6, Item 27. - My "exhibit #3" was essentially a schematic map of the

area in which the Adshead and Jackson Ditches occur. The place of use for my portions of these two water rights could not be determined from this "exhibit", let alone to the detail presented here. This described "place of use" or breakdown of where my deeded water presently is used, is both inaccurate and misleading.

Page 7, Item 29. - This statement is NOT true! I stated that I planned to use the same delivery system for both my surface and subsurface or well water rights, but I do not plan to "commingle" the water from these two systems! There is a marked difference between what I propose to do and what is stated here!

Page 7, Item 34. - As stated by Nelson "it will take longer to irrigate with a smaller stream," but in that other water users will have longer watering periods AFTER my portion of water right no. 41-00008 is withdrawn from the Adshead Ditch, the use of the water does not need to be less efficient. In fact, through having a longer watering period, Nelson then could make more efficient use of his sprinkling irrigation system! I have always had to bear the losses incurred by transferring my water through a system in excess of 2.5 miles long. Why should not other users also bear losses incurred in their ditch irrigation systems - without having my water to help mitigate such losses? The primary purpose of my application is to more effectively and efficiently use my decreed water for a beneficial purpose!

Page 8, Item 35. - Although Farold Nelson claimed he would have to change his existing irrigation system and perhaps reduce the size of his pump IF I withdrew my water from the Adshead Ditch. When I questioned him during the hearing - he testified that he had never operated his irrigation system. His sons or others had always done the irrigating on the property irrigated from the Adshead Ditch. However, he admitted that they used fewer than 100 standard sprinkler heads in this system. According to information from the SCS - which I presented during the hearing, 1 miner's inch of water is equivalent to 9 gallons/minute and a standard sprinkler head uses about 5 gpm. Therefore, if Nelson had only his 70 inches of decreed water, he still could easily operate and would NOT have to change his existing sprinkling system (i.e., $70 \times 9 = 630$ divided by 5 = 122 sprinkler heads). In fact, because of a longer watering period following withdrawal of my water from the Adshead Ditch system, Nelson then would be able to sprinkle irrigate more acres on his property; thereby, making MORE efficient use of his sprinkle irrigation system.. NONE of those who testified at the November 16, 1989, hearing provided proof that my requested change in point of diversion for my portions of water right nos. 41-00008 and 41-00013 would injure their rights!

Page 8, Item 36. - I think the reason the Department of Water Resources reported that Kelvin Taysom "hesitantly" testified that a decrease in the amount of water in the Adshead Ditch would adversely impact him, was because at the November 16 hearing Nelson's legal counsel (Ben Cavaness) virtually forced him to state such!

Page 8, Item 39. - "A reduction in the flow of" the South Fork of Rock Creek would NOT necessarily "result in an earlier cut-off of the Bench water rights." Only if reduced flows resulted in there being insufficient

water in Rock Creek below the confluence of the South Fork and the East Fork to meet the decreed water rights of downstream water users with prior decree dates than the Bench Ditch would the Bench Ditch be adversely affected. The Bench Ditch then would have to release sufficient water to such users to meet their legal rights. Generally, this would not result in a "cut-off", but only a REDUCTION in water that could then be used by Bench Ditch water users.

James Robinson repeatedly claimed during the November 16 hearing that I should not be entitled to those portions of my water rights, whatever they might be, which presently are lost to seepage and presumably return to Rock Creek through my present lengthy ditch irrigation system. As I then stated, Robinson essentially advocates that I do not have the right to make efficient use of my decreed water. This is despite the fact that he has installed a sprinkling irrigation system on his property to make more efficient use of his water. But, as he claimed, his property is not near a creek, as mine, is - therefore, he claimed his "waste water would not seep back to the creek, anyway"? I cited the court case regarding the Egan Bench in Fremont County, Idaho which Robinson claimed he was acquainted with - wherein ditch irrigation systems passing through upstream properties essentially sub-irrigated such properties. When downstream users put their decreed water into closed or pipe systems the upstream property owners claimed that because they eliminated seepage on their property they had caused them injury. The court decreed otherwise. A water right holder has the right to ALL of his decreed water. I can not understand why Nelson and Robinson feel that it is alright for them to do what I have requested permission to do, but I should not have a right to do as they - namely make more efficient use of my decreed water or use a sprinkler irrigation system! Further, I can not understand why the Department of Water Resources essentially backs the claims made by Nelson and Robinson and makes arbitrary judgment against me!

Page 9, Item 40. - As repeatedly stated during the November 16 hearing and previously herein, my portions of the Adshead and Jackson Ditches is decreed to my entire 120 acres and whatever use I might make of this water on any or all of this property would NOT constitute an "expanded use" of my water rights! In fact, my application to use my portion of the water from these rights to water ONLY 75 of my 120 acres essentially represents a reduction in use! The Department of Water Resources also has acknowledged that my portions of water rights 41-00008 and 41-00013 is decreed to ALL of my 120 acres. For example, I went to the Twin Falls office of the Department of Water Resources on November 28, 1989, regarding the Snake River Adjudication process. Department of Water Resources personnel used records on file in their office to fill out the required adjudication forms pertaining to my portions of the two aforementioned water rights. I then was informed that my adjudication fee totaled \$220. When I inquired, "Why so much?", I was told it was \$50 for each of my two water rights or \$100 + \$1 for each acre to which my water rights were decreed. I explained that I did not irrigate nor plan to irrigate ALL of my 120 acres. Thus, I asked if I had to pay for the entire 120 acres. The Department of Water Resources person assisting me then again checked the files pertaining to my water rights and informed that my water rights were indeed decreed to my full 120 acres. I paid the \$120 fee! (SEE attached Exhibit #1).

CONCLUSIONS OF LAW

Page 9, Item 1 and 2. - I presented evidence at the November 16 hearing in American Falls that "no other water rights" would be injured by my requested change in point of diversion. Neither Nelson nor Robinson presented evidence to the contrary. I also presented evidence that my proposed change did NOT constitute "an enlargement in use" of my original right. Further, I testified, that by making more efficient use of my water and, thereby, making my land more productive, would result in greater revenues being generated, which, in turn, would result in my paying more county, state and federal taxes; thereby, benefiting the public. The extent to which I have thus far developed my subsurface water irrigation system (well) has benefited the public in this manner. Development of my well irrigation system - particularly my having planted an orchard - also has made my place more aesthetically pleasing to those who pass by on State Highway #37.

Page 10, Item 10. - My withdrawing from the Adshead Ditch rotation "scheme" will NOT cause remaining users in this ditch to "suffer additional ditch losses". "Losses" in this ditch should remain the same as at present. Why should they increase, just because my water is withdrawn?

Page 10, Item 11. - The Department states it "should encourage more efficient methods of irrigation". But, when I propose to develop a more efficient irrigation system for my property, the Department attempts to penalize me, and claims - because a more efficient irrigation system might reduce flows returning to Rock Creek - I should not be allowed to make efficient use of all my decreed water. In other words, I should continue to make inefficient use of my decreed water so as to possibly benefit downstream users or users with later decree dates, such as on the Bench Ditch, which receives water from the East Fork, not the South Fork, of Rock Creek. What about the Egan Bench court decision? Does it not apply here? Further, as I testified during the November 16, 1989, hearing, development of my subsurface or well water right should result in additional water entering the South Fork of Rock Creek. Should I not be given credit for this?

My making the most efficient use possible of my decreed water rights does NOT constitute injury to downstream water rights, nor to those on the Bench Ditch Irrigation System, which derives its water from the East Fork of Rock Creek. Please note my previous reference as to the Court decision regarding the Egan Bench controversy in Fremont County.

Page 11, Item 14. - Limiting me to irrigating only 40 acres or the acreage I presently irrigate - even though I go to the trouble and expense of installing a more efficient irrigation system, essentially is an attempt to negate the original decrees for my water rights. This also essentially is an attempt to force me to return even more water into the South Fork of Rock Creek - because, if I used an efficient sprinkling irrigation system to water only 40 acres, I would have to use only about half of my decreed water! Limiting me to irrigating only 40 acres with my surface water rights also is arbitrary judgment! Why should other water users under the same decrees as I or under other decrees in the Rockland Valley be allowed to irrigate more than 1 acre/inch of decreed water ;whereas, the Department of

Resources would limit me to watering only 1 acre/each inch with my decreed water? It also is a capricious judgment, in that one can not justify spending the amount a pump and sprinkling system would cost to irrigate ONLY the same amount of land as I presently irrigate with an inefficient ditch system. Basically, it appears the Department of Water Resources realizes that it can not deny my request to change the point of diversion for my rights, but the Department apparently is attempting to placate the protestants by placing such unreasonable restrictions upon my use of my decreed water that it would be too expensive and unreasonable for me to attempt to develop or operate a more efficient irrigation system under these limitations or restrictions. Pumping surface water from the South Fork of Rock Creek at my requested new point of diversion would be much more efficient than using a ditch or flood irrigation system, as at present. Pumping surface water into a sprinkling irrigation system also would be much less expensive than my having to pump water from my deep well system. Therefore, primarily for economic reasons, I would first like to make as efficient use as possible from my surface water rights, before having to rely upon my subsurface water rights. Does this not make sense to the Department of Water Resources?

Page 11, Item 15. - "The interconnection" of my surface and ground water irrigation systems would NOT result in an enlargement of use of my surface water rights! As repeatedly presented herein, my surface rights are decreed for my entire 120 acres! As I stated at the hearing, I agreed to installing a measuring device, as directed by the Department of Water Resources, to my intake system at my new point of diversion AND not to use more than my decreed amount of water pertaining to my portions of water rights nos. 41-00008 and 4100013. I assume the calculation that 40 miners inches of water for a decreed irrigation period of 03/15 to 11/15 each year = 160 acre-feet, as stated by the Department of Water Resources. However, I would like to have this checked or verified before accepting it to be correct.

Page 11, Item 16. - This statement is NOT true - based on my decrees, as well as statements and interpretations made by the Department of Water Resources regarding my water rights. My water rights rightfully could be used to water ALL of my 120 acres, NOT just 40 acres! I do not understand why my "total consumptive use should not exceed 110 acre-feet annually"; whereas, in Item 15, it states my "Diversion from Rock Creek must cease when 160 acre-feet has been diverted,..." This needs to be clarified! (?)

Page 12, Item 17. - Why can I irrigate ONLY the 40 acres which I currently irrigate with the "flow rates" of my partial rights? Why can I not irrigate any or all of my land to which my water is decreed? Or, why can I not irrigate at least those acres on my property which formerly were irrigated with my decreed water?

Page 12, Item 18. - In Item 17 the Department of Water Resources states I can only irrigate the 40 acres which I currently irrigate. But here the Department states that I must "specifically designate thirty (30) acres as the place of use.." for my portion of right no. 41-00008, as well as "ten (10) acres as the place of use..." for my portion of right no. 41-00013. First, the Department tells me the exact acres I can irrigate with my water rights. Then the Department tells me I must "specifically designate" these acres. This appears to be an attempt on the part of the Department to force

me to negate my rights as to my water decrees. This I will not do. Further, when the water from my two rights are commingled, what is the purpose of designating which acres will be irrigated with waters from each right? If specific acres are designated for each right, will the Department then try to place further restrictions or limitations upon how waters pertaining to each right can be used? Will the Department eventually stipulate that I will need to maintain and operate THREE irrigation systems - one for each of my surface water rights and another for my subsurface or well right?

Page 12, Item 19. - I agree to divert only my pro rata share of water available for diversion at the Adshead and Jackson Ditch diversions. This would mean that water would have to be measured at both diversions on the basis of the original decrees or 160 and 30 inches, respectively, - whenever there might be a shortage of water at the present points of diversion for the Adshead and/or Jackson Ditches. It would mean that if there was less than 160 inches at the Adshead diversion, other users of Adshead water would be reduced in their use of water on the same percentage basis as I, and not allowed to divert 130 inches. Water at the Jackson Ditch diversion should be measured in a similar manner, and my allotted 10 inches from this water right reduced on the same percentage basis as the other two water users in this right.

Page 12, Item 20. - I do not understand the purpose of "The transfer attempts to identify the location and number of acres irrigated by other parties..." As previously stated, water users under the Adshead and Jackson Ditch water decrees have always interpreted, as has, generally, the Department of Water Resources, that these water rights are decreed to given parcels of land and not to specific acres or numbers of acres within those parcels. Generally, we water users have been concerned that other users do not use more inches of water than they are decreed or that they not use their water on land other than that to which it is decreed.

Page 12, Item 21. - I do not understand what is stated here. Does it mean that the Department does not care or does not feel that it is pertinent how many acres are irrigated by other water users under rights nos. 41-00008 and 41-00013? Or does it mean that they feel I am a separate entity and can be mandated to use my portions of these water rights in a different or more restricted manner than other users - as mandated by the Department of Water Resources? In other words, is the Department of Water Resources attempting to establish a premise whereby it can not be accused of arbitrary judgment when it attempts to dictate or say I can not use my water rights in the same or a similar manner as other users?

ORDER

Page 13 - The Department of Water Resources herein orders me to "designate" 30 acres as my place of use for water right no. 41-00008B and 10 acres for use for water right no. 41-00013 - even though the Department has previously designated the 40 acres which they will allow me to irrigate with my portions of these rights (See Page 6, Item 27). The Department then designates these same acres again on this same page (See Item 3). In that the water from these two rights will continue to be commingled, as it has been since the early 1900's, why must I designate specifically which 30 and 10 acres within the Department's already designated 40 acres pertains to

each water right specifically? It appears the Department thinks by my so designating specific acres for each water right that I will negate or forfeit the right to use my decreed water on any or all of my 120 acres as per the original decrees for these rights or by the decision of arbitration executed in 1890 for these rights. I deem this an unjust order!

Page 13, Item 2. - The relationship between my diverting 160 acre-feet (See Page 11, Item 15) and a total consumptive use of 110 acre-feet annually needs to be clarified. I do not fully understand the relationship, nor the basis for the calculation of the latter. Also, based on calculations made by the SCS, while helping me to design an efficient sprinkler irrigation system for my property, an average of only about 21 acre inches, rather than 48 acre inches as stated or assigned by the Department of Water Resources is needed to effectively produce irrigated crops (hay and grain) with a sprinkler irrigation system on my property!

Page 13, Item 3. - As I have repeatedly demonstrated herein, limiting the use of my portions of water rights nos. 41-00008 and 41-00013 to a designated 40 acres of my 120 acres is an arbitrary and capricious order. It would be too costly and unjustifiable for me to develop, as well as to operate, a much more efficient sprinkler irrigation system if I would be limited to watering the exact same acres that I now irrigate with an inefficient ditch system.

Page 14, Item 4. - As I stated at the November 16, 1989, hearing, I agree to install a measuring device at my new point of diversion and to not use more than my decreed amount of water under my portions of water rights nos. 41-00008 and 41-00013.

Page 14, Item 5. - I again reiterate that it is arbitrary and unjust judgment on the part of the Department of Water Resources to limit me to irrigating only 1 acre for each 1 inch of my permitted water, and moreso when other users under these water rights water more than 1 acre per 1 inch permitted water.

Page 14, Item 7. - It appears that the Department of Water Resources here recognizes that my water rights are "appurtenant" to my entire 120 acres. And, that my accepting the Department's judgment or order or by my selecting a specific 30 and 10 acres to be irrigated under my portions of water rights 41-00008 and 41-00013, respectively, I will "forfeiture" my prior right to use my decreed water on any or all of my 120 acres. I refuse to do so. Further, where is "B.5" - under which the new land is identified? In my judgment, the Department of Water Resources here attempts, essentially by trickery, to get me to submit to its unjustifiable demands!

STATEMENT

Although I have an earned doctorate from a prestigious university, namely The Johns Hopkins University, and although I have lived and worked in 11 states and 7 foreign countries, as well as visited approximately 60 countries throughout the world, I still consider as home the 120 acres located 2 and 1/2 miles south of Rockland, Idaho, and which locally is known as "the Spillet property". I am a third generation Spillet to be raised on this property. And, I returned to this 120 acres, which I

purchased from my father, in order to raise my family - the forth generation - here. I hoped to instill in my children a love for the land and respect for law and order, such as was instilled in me as I grew up on "the Spillett property". However, it is difficult for my children to have much respect for law - when they see how the Department of Water Resources is attempting to mandate an arbitrary and capricious judgment which will adversely affect "the Spillett property" and their heritage.

I am a federal employee, with in excess of 22 years of government service. Thus, I am well acquainted with government bureaucracy. However, in my opinion, the judgment rendered by the Department of Water Resources with respect to my application to change the point of diversion for my portions of water rights nos. 41-00008 and 41-00013 epitomizes the height of bureaucracy.

Virtually all of the testimony presented by me and my father at the November 16, 1989, hearing conducted in American Falls, Idaho, by the Department of Water Resources is ignored in the Department's judgment. Farold Nelson's and James Robinson's answers to my questions, which I asked during the course of this hearing, likewise are ignored in this judgment. I trust the Department of Water Resources has retained the tape recordings made during the hearing - because these can be used to demonstrate just how biased the Department's judgment is.

I also trust that my lengthy discourse regarding the Department of Water Resources judgment makes more sense and is easier to understand than is the Department's lengthy dicourse!

SUMMARY

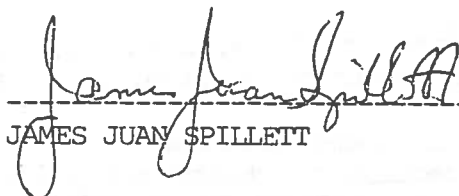
As I presented in my concluding statements at the November 16, 1989, hearing conducted by the Department of Water Resources in American Falls:

1. The protestants, namely Farold Nelson and James Robinson, have failed to present evidence that granting of my request to change the point of diversion for my portions of water rights nos. 41-00008 and 41-00013 would injure their water rights.
2. It was claimed that my request to change the point of diversion for my portions of aforementioned water rights - to water 75 of my 120 acres through use of a more efficient irrigation system - would be an "expansion of use". The opposite is true! My deeded or arbitrated water rights are decreed to my entire 120 acres - NOT to specific or a given number of acres within this 120 acres! Even the Department of Water Resources acknowledges in its PROPOSED MEMORANDUM DECISION AND ORDER that the arbitration decision for these water rights does NOT designate specific acres or numbers of acres to which these waters will be allocated. The Department of Water Resources - while assisting me in the Snake River Adjudication process on November 28, 1989 (See attached Exhibit #1) - again verified that my portions of water rights 41-00008 and 41-00013 may be used on any or ALL of my 120 acres, and are NOT decreed to specific acres or a given number of acres within my 120-acre property. Thus, in attempting to limit my use of my portions of these water rights to 40 acres - which I am further ordered to specifically identify - constitutes arbitrary and capricious judgment on

the part of the Department of Water Resources. In reality, in making application to change the point of diversion for my decreed water, I should not have limited my proposed use of my water rights to only 75 acres. As per the arbitration decision of 1903, I should simply have proposed that I would use my water on my 120 acres in any manner which I deemed appropriate. Even this would NOT constitute "an enlargement in use of the original right".

3. As I stated at the November 16, 1989, hearing in American Falls - but which was ignored by the Department of Water Resources in its judgment of January 23, 1990 - increased productivity from my property through the more efficient use of my portions of water rights nos. 41-00008 and 41-00013 will result in my paying more county, state and federal taxes; thereby, benefiting the public. No evidence that the granting of my request would not benefit the public interest - local or otherwise - was presented.

Thus, I believe, I have fully met the criteria set forth by Idaho Code, Section 42-222, that must be considered by the Department of Water Resources in considering my application for "A Partial Transfer of Water Rights Nos. 41-00008 and 41-00013 in the name of James Juan Spillettt". I further believe that my application request should be granted and that I should be able to use my decreed water under these rights on my property in any manner which I deem to be most beneficial or efficient. The State of Idaho Department of Water Resources is not justified in ordering me to specifically designate 30 acres to be irrigated under water right no. 41-00008 and 10 acres to be irrigated under water right no. 41-00013, nor to limit me to irrigating ONLY 40 acres under these two water rights. Such judgment would be arbitrary and capricious!

 2/3/90

JAMES JUAN SPILLETT DATE

RECEIVED

DEC 16 1999

Department of Water Resources

RECEIVED

DEC 30 1999

Department of Water Resources
Southern Region

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

In Re SRBA

Case No. 39576

A. Subcase 41-00008B

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: James Juan Spillet

Address: P.O. Box 278

Rockland, ID 83271

Daytime Phone: (208) 548-2468

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT.

Name: James Juan Spillet

Address: P.O. Box 278

Rockland, ID 83271

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☒ Quantity (a) Should be 0.60 cfs NOT 0.533 cfs
Should be: (b) Method of Measurement should NOT be limited
to the stated type of "Measuring Box"
4. ☐ Priority Date
Should be: _____
5. ☒ Point(s) of Diversion
Should be: T10S - R31E - S20 - NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: The 120 acres to which the water is adjudicated

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

- 3(a) I am allotted 30 miner. inches = 0.60 cfs under Right #41-00008E
(SEE p. 13 of DWR's 23 Jan. 1990 Proposed Memorandum Decision & Order)
- 3(b) Water is pumped directly out of the S. Fork of Rock Creek.
Installation of the stated type of "measuring box" within the creek
is NOT feasible. Also, SEE p. 14 of DWR's 23 Jan. 1990
Proposed Memorandum Decision & Order regarding "a measuring device"

F. **VERIFICATION** (Must be Completed)

State of Idaho)
County of Power) ss.

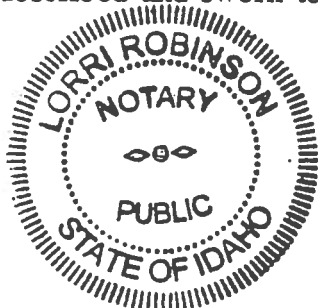
James Juan Spillet , duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

James Juan Spillet
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: _____



Lorri Robinson

Notary Public for Power

Residing at: Rockland

My Commission Expires: 7-23-2004

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on December 13, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: James Juan Spillett
Address: P.O. Box 278
Kockland, ID 83271

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

James Juan Spillett

Signature of Objector or attorney mailing on Objector's behalf

Tract	Sec	Rge	Twp	Lot
NW SW	20	31E	10S	

PAGE: 3

[illegible]

CONDITIONS: R04 - Use of water under this water right will be regulated by the watermaster of State Water District No. 41.

REMARKS: Total consumptive irrigation use shall not exceed 120 acre feet annually.

If the surface water and groundwater systems are interconnected, a measuring device and totalizing meter approved by the department must be installed and maintained as part of the surface water diversion works. Diversion must cease when 160 acre feet has been diverted from Rock Creek.

END OF REPORT

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5262

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant James Juan Spillett Phone 548-2468
Post Office address PO Box 278, Rockland, ID 83271

A. PURPOSE OF TRANSFER

ALREADY ACCOMPLISHED THROUGH TRANSFER #3519 (SEE 41-00008E PROOF REPORT) 02/26/98 (15.)

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☒ Other Split right
2. Describe the reason for the proposed changes I want to install a pump & sprinklers to save ditch loss & make better use of my water. Change recorded P/U to show land that is presently irrigated.

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>41-00008E</u> | <u>10-1-1877</u> | <u>0.40 cfs</u> | <u>Irrig.</u> | <u>4-1</u> to <u>10-31</u> |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 0.40 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Rock Creek, South Fork tributary to Rock Creek
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NE	NW	SW	20	10S	3E	Power	Pump, pipeline

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	
10S	3E	20						2	23			27							52

Total acres 52

PART 1

6. General Information:

a. Description of diversion system Pump in South Fork, Pipeline to sprinklers.

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:

No affect. Land is already irrigated under gravity ditches.

d. Remarks:

We will be gone for the winter, not returning until April. Our mail will be forwarded.

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. 41-00008E Decreed to James Hugh Spillett
in case of Arbitration of Houtz ET AL vs. _____
dated 6-6-1903 in 3rd District county of Oneida
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Rock Creek, South Fork tributary to Rock Creek

4. Date or priority 10-1-1879

5. Water is used for the following purpose:

amount 0.60 cfs for Irrig. purposes from 4-1 to 10-31
(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 0.60 cubic feet per second and/or _____ acre-feet per

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	NE	NW	29	105	3/E	POWELL	Hedgate & Jackson Ditch

NOTE:
POD IS
IN SECTION
20 DUE T
APPROVED
TRANSFER
#35

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	
105	3/E	20					2	2	21		2	15							40

Total acres 40

9. Describe any other water rights used for the same purpose as described above 41-00013A

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 0.40 cfs for Irrig. purposes from 4-1 to 10-31
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
2. Point(s) of Diversion: Same as 2.A.7.

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use: Same as 2.A.8

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 0.20 cfs for Irrig. purposes from 4-1 to 10-31
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
2. Point(s) of Diversion: Same as 2.A.7

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use: Same as 2.A.8.

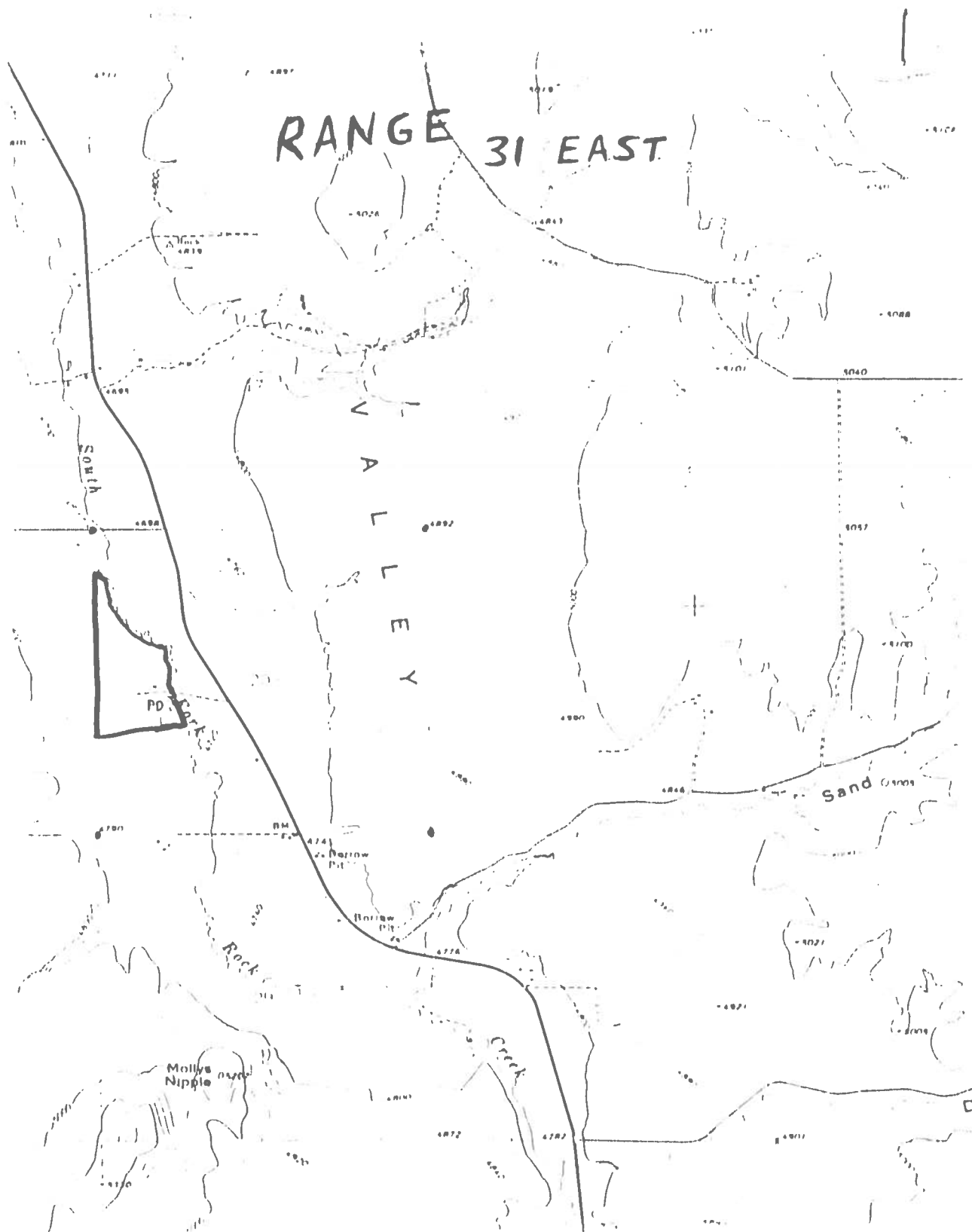
Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

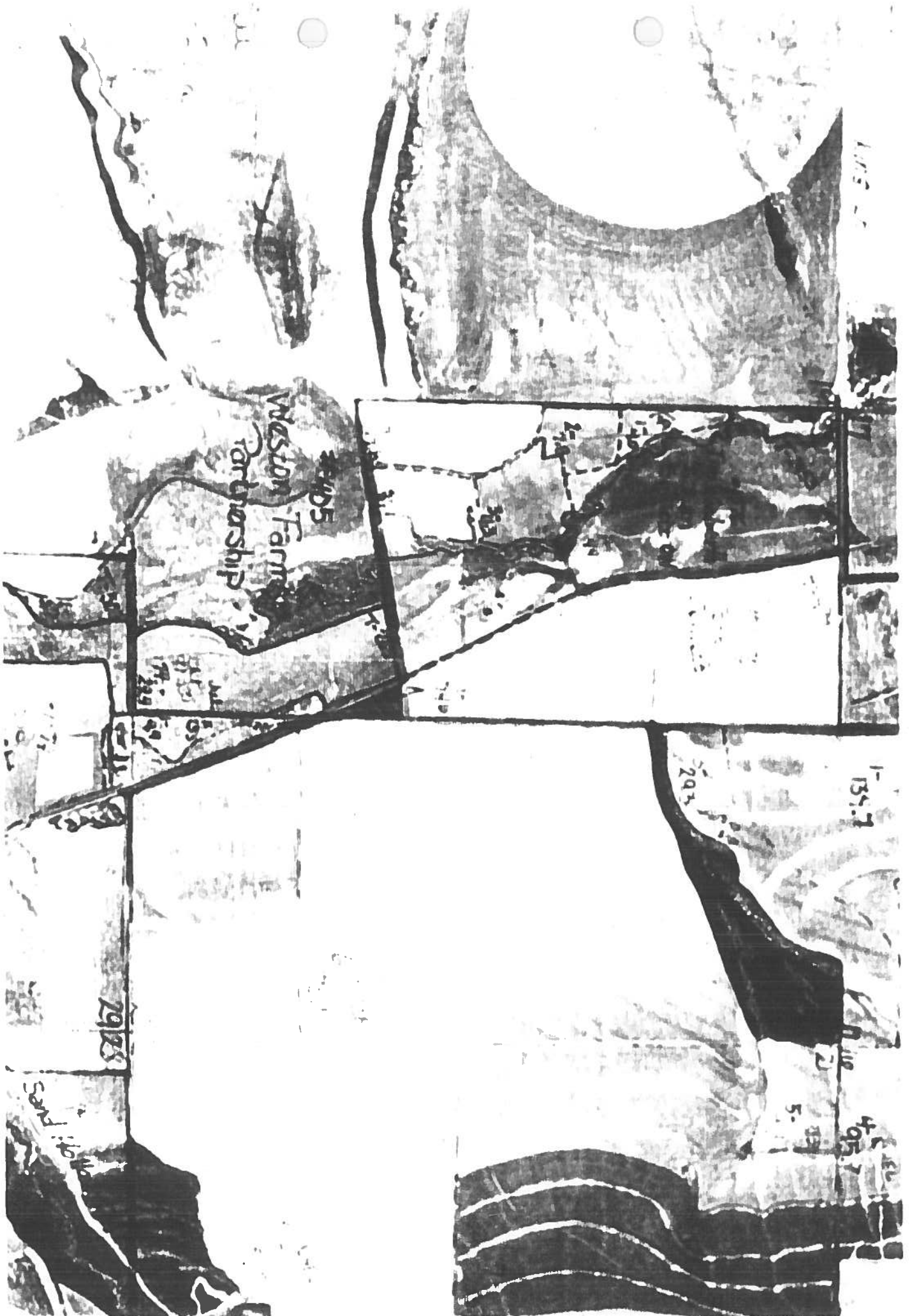
NOTE THAT NO
ACRES HAVE
BEEN REMOVED.

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

with 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.





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>
				_____ to _____
				_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 30th day of November, 19 95.

James Juan Spiller
(Signature of Applicant)

J. E. Stanton
(Notary Public)

My commission expires 10-25-2000

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 2 attachments

Received by J. E. Stanton Date 11-30-95

Prelim. check by JA Fee \$100. 5018701

Receipted by JA Date 11-30-95

Published in Power Co. Press

Pub. dates 5/27 & 6/3/98

Watermaster recommendation requested on 5/15/98

Protest filed by _____

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

RECEIVED**APR 29 1996****Department of Water Resources
Southern Region**

MEMORANDUM

TO: James Juan Spillettt Transfer Files
FROM: Corey Skinner *CS*
DATE: March 26, 1998
SUBJECT: Correspondence from Mr. Spillettt

On March 25th, I received a letter from James Juan Spillettt responding to the 03/10/98 letter I sent him regarding his two transfer applications. Mr. Spillettt also sent in a copy of an "assignment" signed by H. Roscoe Weston.

The assignment is supposed to serve as Mr. Spillettt's proof of ownership of the portion of H. Roscoe Weston's portion of water right 41-00013A (SRBA claim A41-00013A). However, the assignment lists a different water right (#41-7053) than 41-00013A (note someone has written "00013A" on the assignment). Mr. Spillettt's letter mentions that this assignment was submitted with the original application and that Mr. Weston was to submit a corrected assignment. The copy that was received by our office on 03/25/98 is the first such document that I have seen, and I have no knowledge of a corrected version ever being submitted by Mr. Weston.

Mr. Spillettt argues that his transfer applications will not be expansions in the amount of irrigated acres. He states that his "rights are assigned to the entire 120 acres which I own". Apparantly, his basis for this statement is that his South Fork of Rock Creek SRBA claims (A41-00008B and A41-00013B) that he filed on 11/28/1989 both claim a 120 acre place of use. However, approved transfer applications #3518 and #3519 (both filed on 12/05/1988 by Mr. Spillettt, and approved via Memorandum and Decision Order dated 09/15/1992) limit Mr. Spillettt's South Fork of Rock Creek Rights to the irrigation of a combined total of 40 acres. This 40 acre limit was established based on historical beneficial use information submitted as applicant's (Mr. Spillettt) exhibit #3 during the hearing(s) for transfer applications #3518 and #3519. Therefore, it appears that the possible expansion issue(s) mentioned in my 03/10/98 memo and letter to Mr. Spillettt still appear relevant.

T # 5262

MAR 25 1998

Department of Water Resources
Southern Region

Box 278
Rockland, ID 83271
phone: (208) 548-2468
March 22, 1998

State of Idaho
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380 (Phone: 736-3033)

Reference: Letter of 3/10/98 - Application to change point of diversion
on South Fork of Rock Creek

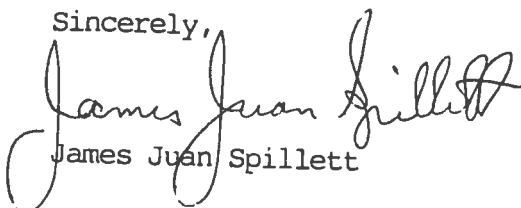
ATTN: Corey Skinner, EIT, Dam Safety Section

I met with Jim Stanton in your office and paid a \$200.00 (#1023) fee for two water transfers on the South Fork of Rock Creek, south of Rockland, Power County on 4/10/96. At that time I also submitted a copy of an "Assignment", wherein Roscoe Weston assigned to me 10 miners inches from his water right in the Jackson Ditch - Water Right #41-00013A (See Enclosed). However, we had made an error in the Water Right # and Mr. Weston thereafter was to submit a corrected copy of the assignment to the Department of Water Resources. I called Mr. Stanton on 5/8/96 and he then informed me that the Department of Water Resources would begin processing, i.e. place notices in local papers, within 24 days. I thought the matter was taken care of.

Basically, I propose to pump 30 miners inches of water out of the South Fork of Rock Creek and sprinkle irrigate lands which previously were flood irrigated through use of a dam and ditch system. This is not an expansion in the total amount of irrigated acres. In fact, my water rights are assigned to the entire 120 acres which I own along the South Fork of Rock Creek. And, during the Snake River Adjudication process, my adjudication fees - assessed by the Department of Water Resources - were on the basis of my entire 120 acres.

I trust that my application will be quickly processed and completed.
Please keep me informed.

Sincerely,


James Juan Spillet

Enclosure

T # 5212

MEMORANDUM

TO: James Spillettt Transfer Files (41-00008E & 41-00013A parts)
FROM: Corey Skinner 15
DATE: March 10, 1998
SUBJECT: Staff Review

The two enclosed transfer applications, filed by James Juan Spillettt, seek to modify water rights out of the South Fork of Rock Creek in the Rockland area. One transfer application involves a portion of water right 41-00008E (owned by Mr. Spillettt) and the other application involves a portion of water right 41-00013A (part of SRBA claim A41-00013A claimed by Herbert R and R Scott Weston).

Portions of water right 41-00008 and 41-00013 were involved with water right transfers #3518 and #3519 filed by James Juan Spillettt in December of 1988. Both of these transfer applications were protested, a hearing was conducted, an order was issued, a rehearing was conducted, and eventually a Final Memorandum Decision and Order was issued on 09/15/92 by Gary Spackman. This Final Memorandum Decision and Order outlines the history of Mr. Spillettt's portion(s) of these two rights and ended up approving Mr. Spillettt's proposed transfers. The approval of these two transfers granted Mr. Spillettt a 0.60 cfs portion & 30 acre portion of base right 41-00008 (part E) and a 0.20 cfs & 10 acre portion of base right 41-00013 (part B) that were to be used in a combined 40 acre place of use.

The first of the most recently filed transfer applications proposes taking 0.40 cfs of Mr. Spillettt's portion of water right 41-00008 (part E) and using it in a 52 acre place of use. The second of the most recently filed transfer applications proposes taking a 0.20 cfs portion of water right 41-00013A and using it in the same 52 acre place of use. It appears that there are potential problems with each of these proposals.

The transfer application involving water right 41-00008E appears that it may be an unstacking, and possible expansion, of water rights. The 09/15/92 Final Memorandum Decision and Order combined Mr. Spillettt's portion(s) of right 41-00008 and 41-00013 into a single 40 acre place of use. Mr. Spillettt has proposed taking part of one of these rights, 41-00008E, and moving it to a 52 acre place of use, without addressing the overlapping 41-00013B right. The untransferred portion of right 41-00008E is proposed to be used on the original 40 acre place of use.

T # 5262

The transfer application involving water right 41-00013A also appears that it may be an unstacking, and possible expansion of water rights. The current place of use for water right 41-00013A (SRBA claim A41-00013A) appears to overlap with groundwater rights L41-07018 and L41-07032, SRBA claim A41-00008D (in the name of Herbert R Weston and R Scott Weston), and possibly SRBA claims A41-00008E and A41-00013C (in the name of Grace Spillett). None of these overlapping water rights and/or claims were addressed in the enclosed transfer application.

The portions of rights 41-00008 and 41-00013 not owned by Juan Spillett or identified in the 09/15/92 Final Memorandum Decision and Order appear to be overclaimed in the SRBA in rate and/or acres. In addition, the portion of water right 41-00013 that is involved with the enclosed transfer application has been claimed in the SRBA by a party (Herbert R Weston and R Scott Weston) other than James Juan Spillett. No proof of ownership, or statement from the owner/claimant (the Westons) was included with the transfer application.

The application involving right 41-00013 mentions a water trade (Part 1, Section 6c) which might help explain the two applications. However, if a trade was made (I assume between Mr. Spillett and the Westons), the Westons should file a transfer application to move the water right they are obtaining from Mr. Spillett. However, as of this date, the Westons have not filed a transfer application to move any of the water associated with the Spillett property.

If the Westons did file a transfer application to help explain the two Spillett applications there would still be potential unstacking and expansion questions. This would be due to the Spillett applications not addressing existing overlapping rights and/or claims and proposing a 52 acre place of use.

However, as it currently stands Mr. Spillett has filed an application that proposes taking a 0.40 cfs portion of water right 41-00008E (0.60 cfs for 30 acres within a 40 acre place of use) and using it on a 52 acre place of use. The untransferred portion of 41-00008E (0.20 cfs) is proposed to be used on the original 40 acre place of use. In addition, the second transfer application filed by Mr. Spillett proposes taking a 0.20 cfs portion of water right 41-00013A without drying up any acres. The portion of water right 41-00013A that is involved with the proposed application has been claimed in the SRBA by a party other than Mr. Spillett and no proof of ownership, or statement from the owner, of this particular right was submitted by Mr. Spillett. Water right 41-00013A currently overlaps other rights and/or claims that are not addressed in the application. In addition, water right 41-00013A appears to be overclaimed in the SRBA.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

March 10, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

James Juan Spillettt
P.O. Box 278
Rockland, ID 83271

Dear Mr. Spillettt:

A recent examination of pending applications in our office revealed that two water right transfer applications, filed by you, are still pending. These two applications were filed in April of 1996 in an attempt to modify water rights out of the South Fork of Rock Creek. I have completed the preliminary review of these two applications, and would like to make the following comments for your consideration.

It appears that you have filed a transfer application to modify a portion of a water right that you own (41-00008E), and you have filed an application to modify a portion of a water right (41-00013A) that is owned by Herbert R. Weston and R. Scott Weston.

First of all, in order to transfer a water right, the applicant must provide proof of ownership of the right and/or land from which the water is being transferred. The application involving the portion of water right 41-00013A (apparently owned by the Westons) does not have any documents showing that you own the portion of the right that you are attempting to transfer, or that the Westons have conveyed this right to you, or approve of the proposed transfer. In order for this application to be approved, proof of your ownership of the right and/or land from which the right is being transferred must be included with your application.

In addition, as part of the transfer process, the department can not allow an expansion in the total amount of irrigated acres. Both of the applications that you have submitted propose changing the recorded place of use of the water rights that are involved with the applications. However, you have not proposed to change the existing current place of use for these rights in order to facilitate the proposed changes. For example, on the application involving water right 41-00008E you propose taking 0.40 cfs (of a 0.60 cfs and 30 acre water right) and irrigating a proposed place of use of 52 acres while leaving 0.20 cfs on the unchanged original place of use. A similar situation exists with the proposed transfer on the application involving water right 41-00013A.

T# 5262

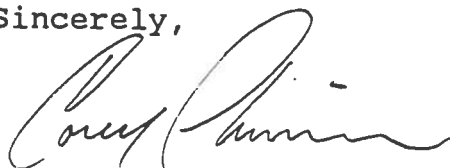
March 11, 1998

PAGE 2

Our office will continue with the processing of your two applications. The next step in the processing will consist of the preparation of the legal notice for the public notice and protest period. You will be notified when your two applications will be advertised in the local newspaper.

If you have any questions, feel free to contact this office at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Corey Skinner".

Corey Skinner, EIT
Dam Safety Section

cc: Herbert R. Weston and R. Scott Weston



State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

RECEIVED

JUN 30 1998

Department of Water Resources

June 16, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JAMES JUAN SPILLETT
PO BOX 278
ROCKLAND ID 83271

RE: APPLICATION FOR TRANSFER NO. 5262 (41-00008 Part)

Dear Mr. Spillett:

Enclosed is a copy of a protest filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

June 16, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN MERRILL WALKER PRESIDENT
BENCH DITCH IRRIGATION
PO BOX 157
ROCKLAND ID 83271

RE: APPLICATION FOR TRANSFER NO. 5262 (41-00008 Pt-James Spillettt)

Dear Protestants:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

3 June 1998
Bench Ditch Irrigation
P.O. Box 157
Rockland, Idaho 83271

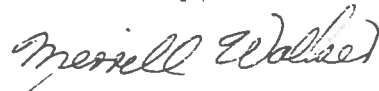
Department of Water Resources,
1341 Fillmore St.
Suite 200
Twin Falls, Idaho 83301

RE: Spilletts transfer # 5262

Dear Sirs,

We protest this transfer because we don't feel this is the water in the Jackson ditch, and after the transfer is completed it states the remaining 10 inches is left to continue irrigating the same 40 acres. This would be an expansion of use.

Sincerely,



Merrill Walker
President

RECEIVED

JUN 05 1998

Department of Water Resources
Southern Region

James Robinson
Secretary

Receipt # 5021211
MB
6/5/98



IDWR Employee/Agent: Steve Clelland

12/7/99 1:00 PM

NAME: _____

JUAN SPILLETT

APPT

RE:

OBJECTIONS ON B41

He will be contacting his lawyer and discussing this with him (Lyons) and I offered to contact our attorneys to get some clarification of the department's records; specifically on the transfer hearing.

Claims: 41-00008B, 41-00013B and High water claims 41-10258 & 259.

RECEIVED

DEC 17 1999

Department of Water Resources
Southern Region

Box 278
Rockland, ID 83271
December 13, 1999

Steven Clelland
Idaho Department of Water Resources
253 Third Ave. North
Twin Falls, ID 83303

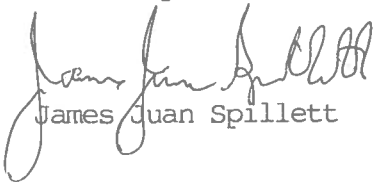
SUBJECT: Copy of my 2/3/90 protest to IDWR's judgment on my application
to change the point of diversion for my portions of Rights
Numbers 41-00008 and 41-00013

Dear Steve,

As per your request during our meeting in your office in Twin Falls on 12/7/99 - enclosed is a copy of my protest to the IDWR's judgment of 1/23/90 regarding my application to change the point of diversion for my portions of Rights #'s 41-00008 and 41-00013. However, I never received a reply from the IDWR regarding my protest (?).

As we also discussed on 12/7/99, I am today (12/13/99) submitting completed "Objection" forms regarding the IDWR's 10/29/99 recommendations for my water rights, i.e. water measurement being limited only to the Houtz decree measuring boxes, and my point of diversion - which the IDWR previously had changed from Sec. 29 - NE 1/4 of NW 1/4 to Sec. 20 - NW 1/4 of SW 1/4.

Sincerely,


James Juan Spillet

E. NARRATIVE/REMARKS/COMMENTS

FROM: Georgia Satterlee
DATE: 10 November 1999
RE: 41-07053

The Basin 41 recommendation for irrigation deadline was 05 November 1999. I obtained the file with instructions to verify point(s) of diversion and obtain a measurement of the irrigation well.

Using Corey's memo from March 1998, I tracked down Jenny Mickelson who then referred me to Quentin Nesbitt. Mr. Nesbitt, from Idaho Power, scheduled to measure Mr. Spillet's well in July 1999. Nesbitt said that Spillet said, "...the well was not working that great." Question: If Spillet knew he was going to get the well measured wouldn't he make sure it was running as he normally used it? Or perhaps what Quentin measured was normal?

It appears that the initial examiner, Brian Block, visited the Spillet property at least twice. The photo of the well on photo page 1/5 and on photo page 2/5 are the same well but the area surrounding the irrigation well looks more matured on photo page 2/5. Question: Why couldn't Block get at least one measurement on either of those visits? Mr. Spillet is concerned that he will not get his fair diversion rate. He feels he has been victimized by the department since the Final Order (Fall 1992) regarding the surface rights out of rock Creek.

I will recommend the most current measurement. I suspect when the preliminary order is issued Mr. Spillet will disagree with the recommendation. Prior to licensing the permit, Mr. Spillet will have an opportunity to present another measurement, hopefully to his satisfaction.

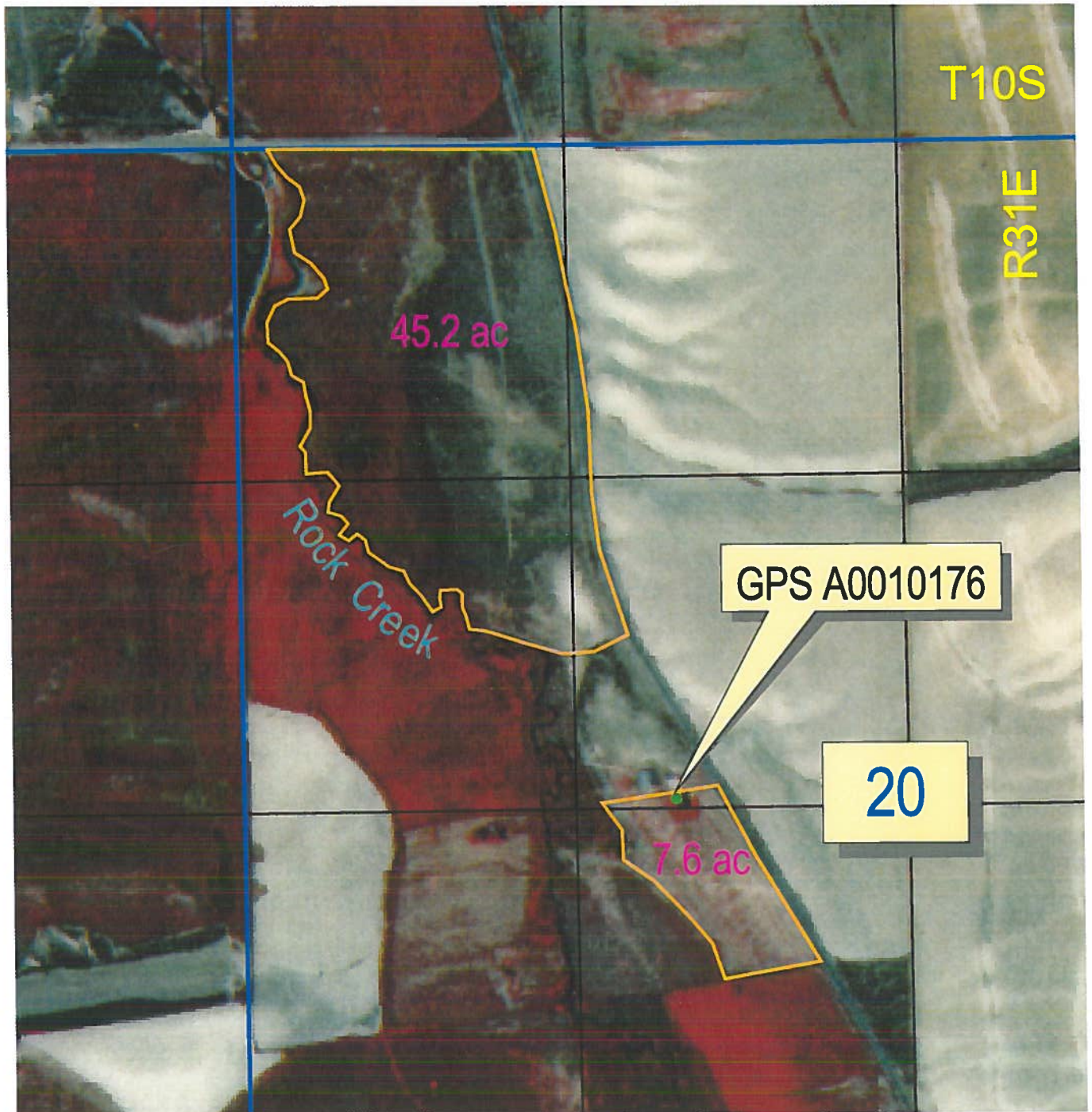
The irrigated acres are delineated on the 1987 aerial flight map and the GIS outlay. The ASCS office in Power County verified the acreage as the same in 1999 as what is shown on the 1987 aerial map. The GIS method slightly increases the acreage, which will be the recommended amount.

I asked for Spillet's permission via the phone conversation to come out on 28 October 1999. He expressed his dissatisfaction about the Final Decision from 1992 regarding the Transfer of #3518 and #3519. I told him I was not coming out for the surface rights but I wanted to verify the irrigation well, etc. I asked if the domestic and irrigation wells were valved together. He said that the wells were separate.

The irrigation well will have a recommended diversion rate of 0.31 cfs for the irrigation of 52.8 acres. The domestic well is used for the home with no irrigation.

IDAHO DEPARTMENT OF WATER RESOURCES

41-07053 Spillett, Juan



-  Point of Diversion
-  Section Lines
-  Quarter-Quarter Lines



P/D and P/U Presentation
1987/1988 NAPP Photography
November 1999 GLS

No
Eugene & Evan
Hess Partners
(P.M. Wheeler)

#253
Bob
Spillet

329.5

house
ward, PD
Orchard

74.6

4-142

QRP
88-
1751

Spillet 41-07052

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 41-07053

Phone No. 548-2468

1. Owner: J. Juan Spillet

Current Address: Box 278 Rockland, ID 83271

2. Accompanied by: _____

EXAM. DATE: 6/11/91

Re. Exam = 28 October 1999

Address: _____

Relationship to Permit Holder: _____

3. Source: groundwater tributary to _____

B. OVERLAP REVIEW

1. Other water rights with same place of use: None Rock Creek decrees

A41-00008B, 00013B

☐ Copies Attached

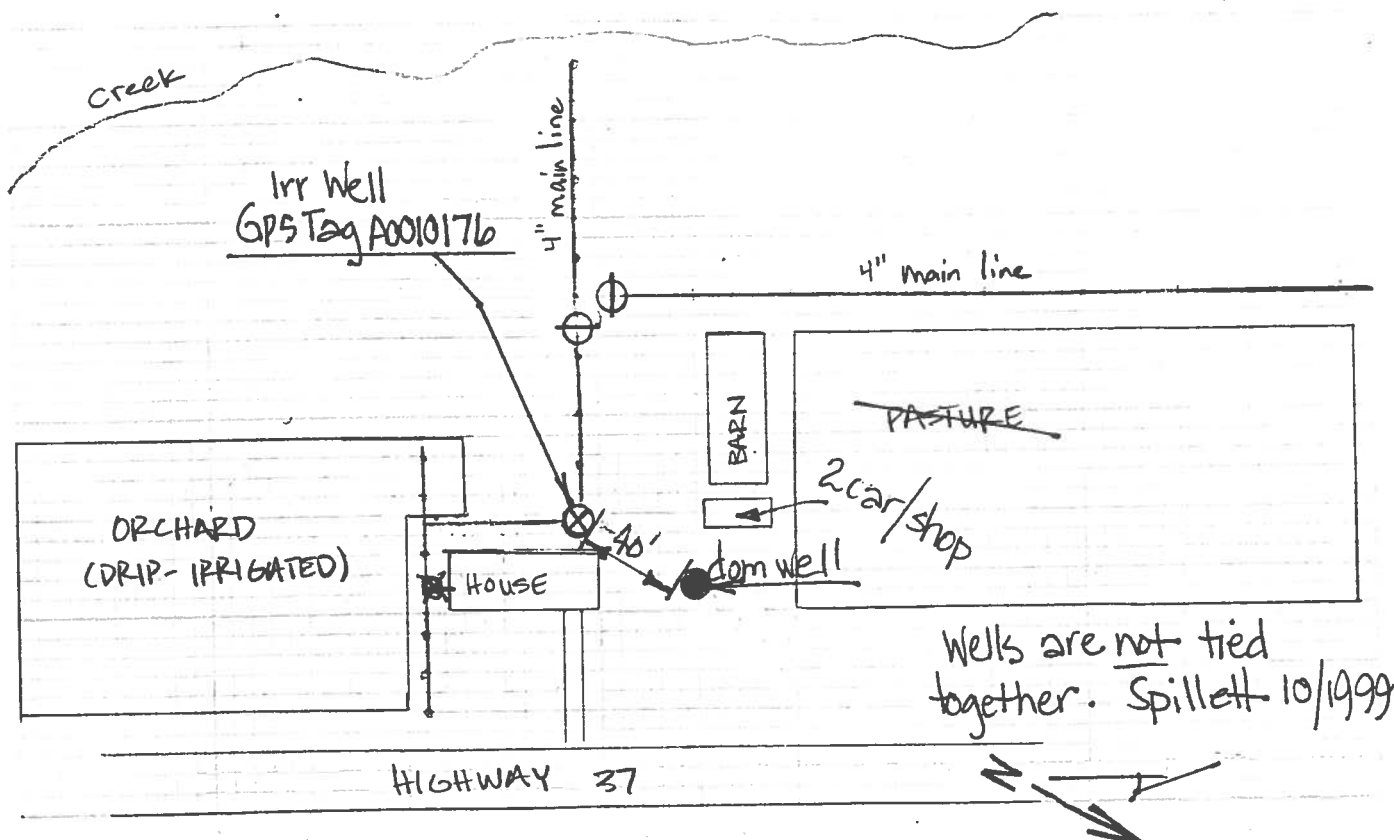
2. Other water rights with same point of diversion: none

☐ Copies Attached

☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" = approx 50'

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).

☒ Photo of Diversion and System Attached

(required for all but single household domestic groundwater, and stockwater.)

☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).

System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

Well contains 2 pumps. Pump #1 (5hp) services house and domestic use. Pump #2 (20 hp) services irrigation uses

note: the system was not in operation at our time of visit.

Note: Separate domestic well was drilled after exam.

1999 = Irr Well has 20hp. only

☐ See Remarks on page 4 for continuation

4. Dom " " smaller pump

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
#1		5		submersible	
#2		20		submersible	

*Code to correspond with No. on map and aerial photo

5. **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NE	NE	SW	20	10S	31E	Power	Aerial photo
		SW	SE	NW					irrigation well A0010176
		"	"	"	20	10S	31E	Power	domestic well 40ft. NE of irrigation well

6. **Place(s) of Use:**

Indicate Method of Determination aerial photo

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	
10S	31E	20						34	15	8	2	11							70
10S	31E	20								2	2								
10S	31E	20						1.0	3.5	10.6	3.1	6.6							52.8

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

~~Not measured.~~

1999 Idaho Power employee Quentin Nesbitt measured irrigation well July 1999

E. FLOW CALCULATIONS

☒ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes: horsepower

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ $53(4) = 212$ $70(25) = 1750$ 280 215 afa.

$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = (0.53)(215)(1.9835) = 225$

$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = 212$ afa.

2. Volume Calculations for Other Uses:

$(0.31) 214 (1.9835) = 133$

$V_{Domestic} =$ single family residence $\Rightarrow$ 120 gpd Domestic. Allow 1.2 AFA / home w/19wn
2 occupants
total = $120 \text{ gpd} \cdot 365 \text{ days} = 0.2$ afa.
325, 850

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Domestic well capacity is larger than permit rate.

Calculated irrigation pump capacity is significantly less than permit rate.

It appears to be undersized for its intended application. Well is the only water source for the orchard, but provides supplemental water for the rest of the farm.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use

Period of Use

From To

Rate of Diversion

Q (cfs)

Annual Volume

V (afa)

Irrigation

3/15

11/15

~~0.53~~ 0.31

~~245.2~~ 133

domestic

1/1

12/31

0.04

~~21.2~~ 0.6

separate well

Totals:

~~0.57~~

~~245.2~~

0.31 cfs

133 afa

2. Recommended Amendments

☐ Change P.D. as reflected above

☐ Add P.D. as reflected above

☒ None

☒ Change P.U. as reflected above

☐ Add P.U. as reflected above

☐ Other

J. AUTHENTICATION

Field Examiner's Name

BRIAN BLOCK

Signature

Brian Block

Certification Date

Field Report Preparation Date

6/19/91

G Satterlee 11/09/1999

CONSULTANT SEAL

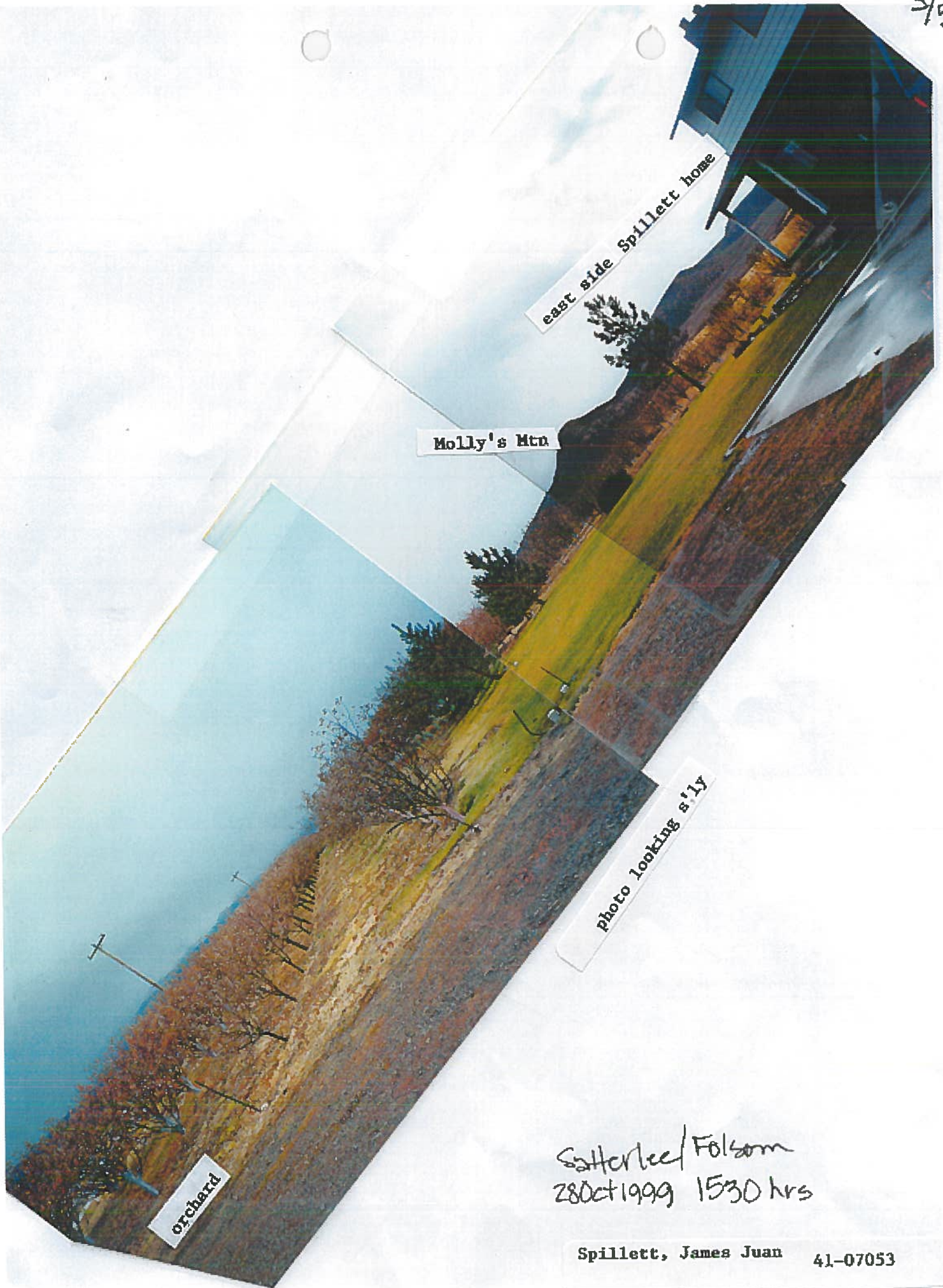
K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

1/5



unknown
date/time

3/5



Satterlee/Folsom
28 Oct 1999 1530 hrs

Spillett, James Juan 41-07053

2/5



photo
taken @ a different
time then photo pg 1/5

irrigation well

photo looking W'ly



photo looking east

green area watered
out of Rock Creek
41-00008B, -00013B



photo looking due south

unknown
date/time

45

service pole for
irrigation well

GPS Tag A0010176



domestic well

photo looking sw'ly

GPS Tag A0010176



photo looking sw'ly

Spillet home

irrigation
well

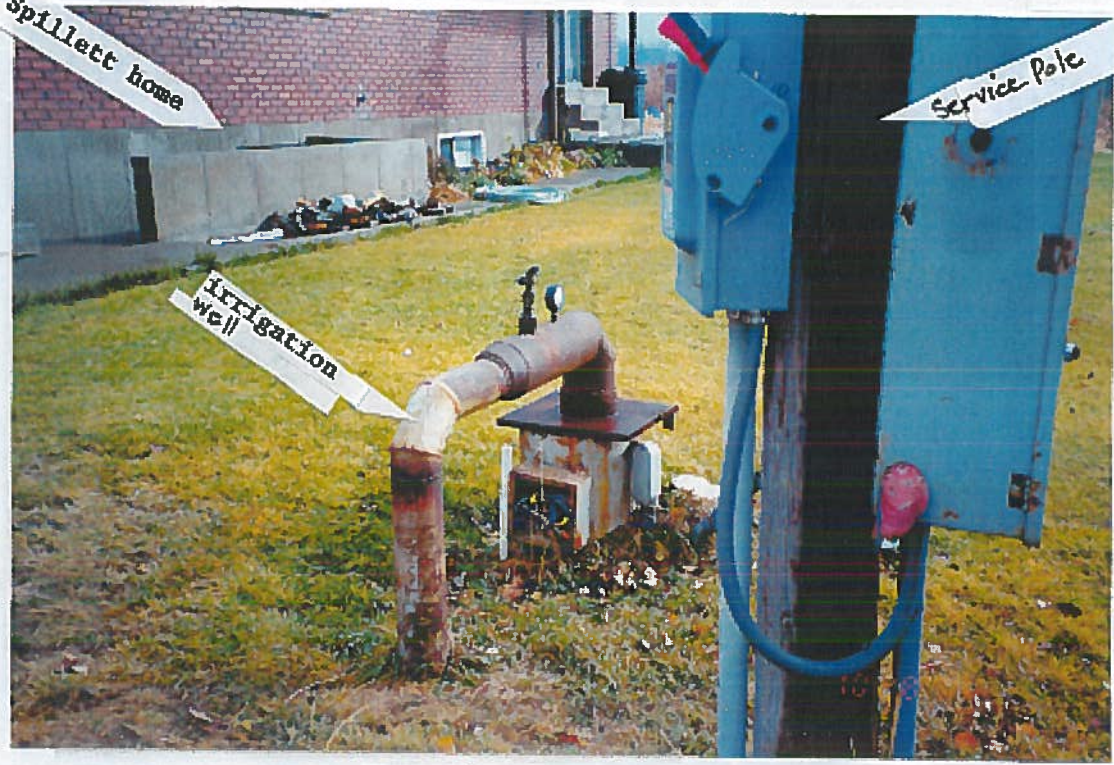


photo looking s'ly

Service Pole

Catterlee/Folsom
28 Oct 1999 1530hr

Spillet, James Juan 41-07053

5/5



ASCS does not
recognize area
south of line

photo looking

w'ly

5/5

Sutterlee/Folsom
28 Oct 1999 1530 hrs

Spillet, James Juan

41-07053



AGCS does not
recognize area
south of fence.

Irrigated Area

W 13

Satterlee, Georgia

Subject: 41-07053
Entry Type: Phone call
Start: Tue 11/2/99 8:00 AM
End: Tue 11/2/99 8:15 AM
Duration: 15 minutes

He measured and GPS'd (A0010176) Spillet's well; He is going to send the measurement information to the attention to me. We visited the site on 28 October and located the irrigation well using ID Tag Number, we also verified the location of the domestic well (which is drastically different from Block's schematic).

If the information from Nesbitt is not here by 5 November, I will call again and let him know about our deadline for 41 that was last Friday...

08 Nov 1550 hr called Quentin Nesbitt
@ Id. Pwr. 388-2519 —
He said he mailed the package, 05 Nov 99
Rcvd. 9 Nov 99

Name	IDWR Site Tag	WR #	Date	Flow(gpm)	psi	kW	PCC	IPCo Meter#	Lift(ft)	IPCo Loc
Jaun Spillet	A0010176	41-07053	7/12/99	141	20	47.9	1845	76590875G	169	AA-20-1

$$\frac{141}{450} = 0.31 \text{ cfs}$$

RECEIVED

NOV 09 1999

Department of Water Resources
Southern Region

California,

THIS IS THE INFORMATION
I MEASURED THIS SUMMER
ON JUAN SPILLET'S WELL.

Charles E. Miller



AA-20-1

Photo Looking W'ly

NOTE: IT APPEARS FROM
THE MAPS THAT 2 ACRES
ARE IRRIGATED IN THE
NWSW $\frac{1}{4}$ AND 11 ACRES
ARE IRRIGATED IN THE
NESW $\frac{1}{4}$ OF SECTION 20.

P. SKINNER

12 March 1948
See Memorandum

MEMORANDUM

TO: 41-07053 Field Exam File

FROM: Corey Skinner /s

DATE: March 12, 1998

SUBJECT: Relevant Information

The enclosed field exam file looks to have been completed back in 1991. However, apparently the field exam was not sent to Boise due to concerns about possible overlaps with decreed water rights out of the South Fork of Rock Creek. I have recently reviewed two transfer applications involving the decreed water rights that may have been potential overlaps. The decreed water rights that were possible overlaps were James Juan Spilletts's portions of rights 41-00008 and 41-00013. On 09/15/92, a Final Memorandum Decision and Order (copy enclosed) was issued by Gary Spackman of the Department addressing previously filed transfers involving Mr. Spilletts's portions of 41-00008 and 41-00013.

This Final Memorandum Decision and Order states that Mr. Spilletts's portions of rights 41-00008 and 41-00013 have been historically used on land west of the South Fork of Rock Creek (#26, #27, and #29 of Findings of Fact and #3 of the Order). Review of the field exam file for permit 41-07053 reveals that the field examiner determined that water right permit 41-07053 was used only on land east of the South Fork of Rock Creek. Therefore, it appears that there is no overlap between 41-07053 and rights 41-00008 and 41-00013.

Further examination of the 41-07053 field exam file reveals that the diversion rate was determined from a theoretical calculation, and that no actual measurements were obtained. The diversion for 41-07053 is within the boundaries of the Aberdeen-American Falls Ground Water District. I placed a call to Jenny Mickelson (226-5914) of the American Falls Ground Water District to see if they had measured this particular diversion yet. Ms. Mickelson said that they had not yet measured this diversion, but she would have it scheduled to be measured this summer (1998). If a representative from the department is unable to make it to Rockland to measure this diversion, perhaps the American Falls Ground Water District's measurement could be used to determine the diversion rate.

It should also be noted that there appears to be an error in the description of the place of use in the 41-07053 field exam file. Examination of the place of use maps in the file reveal that 2.0 acres are irrigated in the NWSW $\frac{1}{4}$ and 11.0 acres are irrigated in the NESW $\frac{1}{4}$ of Section 20 (T10S, R31E). It appears that these acreage amounts have been reversed on the place of use description on the field examination form.

FLOW CALCULATIONS

41-07053

KNOWN DATA:

PUMP #1 —

power = 5 hp
depth = 140 ft (dynamic level from well log)
pressure = 40 psi. (estimate)

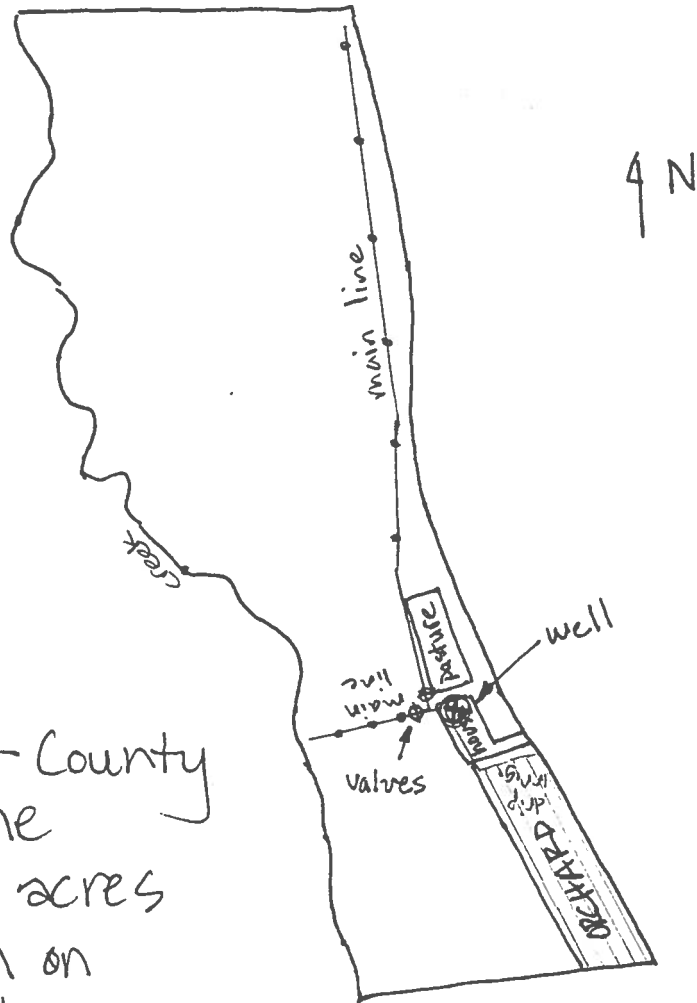
$$Q = \frac{8.8(0.7)(5)}{140 + 2.31(40)} = \boxed{0.13 \text{ cfs.}}$$

PUMP #2 —

power = 20 hp
depth = 140 ft. (from well log)
press. = 40 psi (estimate)

$$Q = \frac{8.8(0.7)(20)}{140 + 2.31(40)} = \boxed{0.53 \text{ cfs}}$$

ALTERNATE DIAGRAM



Nov. 19, 1999

ASCS Power County
verified the
irrigated acres
as shown on
1987 flight

I believe th diagram misrepresents the
actual irrigated acres.
See GIS map for clarification

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

AJ0743NP
(00-124)

Old (D) Number -

Prefix Translation: RESEARCH

Water Right Number - R41-000088

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

*** C - CURRENT OWNER ***
SPILLETT

JAMES JUAN

1 - PO BOX 278
2 -
3 -

City- ROCKLAND
Phone - 208-548-2468
State- ID Zip- 83271

+ - - - - Priority Date - - - + + - - - - Region - - - - + + - - - - Stage - - - - + + - - - - Status - - - - +
10/01/1879 17 SOUTHERN D - DECREED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
ROCK CREEK, SOUTH FORK ROCK CREEK

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

TwN	Rng	Sec	Tract	Lot	Rflg	County	Description	Diversion Rate	Diversion Volume
10S	31E	29	SW SE NW		(77)	POWER	JACKSON DITCH		

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

01 - IRRIGATION 04/01 10/31 0.533
+ - - - - Total Div. Rate - - - + + - - - - Total Div. Volume - - - + + - - - - Total Consumptive Use - - - + + - - - - KW Usage - - - +
0.533 0.0

TwN	Rng	Sec	Tract	Lot	Acres	Code	Description	County
10S	31E	20	NW NW		2.0	01	IRRIGATION	(77) POWER
10S	31E	20	SW NW		24.0	01	IRRIGATION	(77) POWER
10S	31E	20	NW SW		24.0	01	IRRIGATION	(77) POWER

Total Acres: 50.0

+ - - - - Diversion Means - DAMS AND PUMPS, ADSHEAD DITCH

+ - - - - Non-Irrigation Use -

+ - - - - Other Rights for Same Use - 41-000138

+ - - - - Remarks - - - - -

QNT IF SURFACE AND GROUNDWATER SYSTEMS ARE INTERCONNECTED, THEN
DIVERSION OF THIS RIGHT MUST CEASE WHEN 160 ACRE FEET HAS BEEN
DIVERTED FROM ROCK CREEK, SOUTH FORK.

POU1 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 30 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
USE OF THIS RIGHT WITH RIGHT NOS. 41-000138, 41-10258 &

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

10/20/99 14:06:54
Page 2

AJ0743NP
(00-124)

Water right number - R41-000088 Prefix Translation: RESEARCH

41-10259 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 50
ACRES IN A SINGLE IRRIGATION SEASON.

GEN THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 41.

No Old Water Right Numbers Found

Conditions of Approval
No Conditions of Approval found.

Decree Plaintiff
ET AL.

Decree Defendant
ET AL.

Date: 06/14/1999 User Id: SCLELLAN Subject: COPIED FROM REMARKS
P/D IS IN THE PROCESS OF TRANSFER AT THE TIME OF THIS FILING.
Date: 10/20/1999 User Id: DJONES Subject: RECOMMENDATION
RECOMMENDATION CONFORMED TO THE FINAL ORDER APPROVING T#3518 AND
THE 30" (0.6 CFS) IN TRANSFER APPROVAL BECAUSE THE RECOMMENDED
DECREED FLOW RATE UNDER BASE RIGHT. THE POU LIMIT IS KEPT
THE POU DESCRIPTION IS MODIFIED TO DESCRIBE WHAT WAS IRRIGATED IN 1987 WEST OF THE SOUTH FORK AS CONCLUDED IN THE TRANSFER RECORD.

Audit Fields
10/20/99 DJONES

Adjudication Rights Dates and Flags Area
Court Report Filing - 00/00/0000 Field Inspection Made - 07/15/1994 Civil Case Number - 39576
Objection Filed Date - 00/00/0000 Field Inspection Flag -
Response Filed Date - 00/00/0000 Verified Date - 00/00/0000 Old Case Number -
Claim Received Date - 11/28/1989 Last Amended Date - 00/00/0000 Old Judicial District -
Receipt Number - S010543 Temporary Right - P
POU Ownership Flag - Y Water District - 41
Name Connector - Federal/State Indicator - S
Notice of Error Flag - D

File: H2ORIGHTS SFORK

Report: DECREE NUMBER

DECREE NUMB	DECREED OWNER	PRESENT OWNER	DELIVERY DITCH	INCHES	PRIORITY	DAT	COMMENTS
41-001	H.P. HOUTZ	CHARLES, IVAN	PRIVATE PUMP	70	Apr	1 80	
41-001	H.P. HOUTZ	UDY BROS.	PRIVATE PUMP	20	Apr	1 80	
41-001	H.P. HOUTZ	CHARLES, IVAN	MEADOW PUMP	45	Apr	1 80	TILL JUNE 15
41-001	H.P. HOUTZ	NELSON, CLIFFORD		35	Apr	1 80	TILL JUNE 15
41-003	ANDREW ALLEN	7UD RANCHES	TAYSOM MEADOW	85	May	14 80	EXCEPT JULY AND AUG.
41-003	ANDREW ALLEN	7UD RANCHES	LANDING	15	May	14 80	EXCEPT JULY AND AUG.
41-004 A	S.N. MORRIS	BLAINE MITCHELL	LANDING	99 50"	May	17 80	EXCEPT JULY & AUG. TRANS.3059
41-004 C	S.N. MORRIS	STAN GROOM	LANDING DITCH	60 100"	May	17 80	TRANS.3509
41-005	JOSEPH BROWN	WESTON, ROSCOE	WESTON MEADOW	30	Apr	10 80	EXCEPT JULY AND AUG.
41-005-0000	JOSEPH BROWN	ROSCOE WESTON	BROWN-PARKER	47	May	6 83	
41-006	JOSEPH BROWN	ROSCOE WESTON		ALL			
41-007	WILLIAM FURGOSO	BOB SPILLET	BROWN-PARKER	30	May	6 83	
41-008 B	CHARLES TAYSON	SPILLET, JUAN	ADSHEAD	26.67	Oct	1 79	0.533
41-008 D	CHARLES TAYSON,	WESTON, ROSCOE	ADSHEAD	26.67	Oct	1 79	
41-008 E	CHARLES TAYSON	SPILETT, RAY	ADSHEAD	17.77	Oct	1 79	
41-008	CHARLES TAYSON	TAYSON, ORRIN	ADSHEAD	8.89	Oct	1 89	
41-008	DAVID TAYSON	TAYSON, ORRIN	ADSHEAD	9.44	Oct	1 89	
41-008	DAVID TAYSON	7UD RANCHES	ADSHEAD	30.56	Oct	1 79	
41-008	WILLIAM ADSHEAD	7UD RANCHES	ADSHEAD	40	Oct	1 79	
41-009 B	HYRUM FRODSHAM	MUIR, DANA	PRIVATE PUMP	25	May	17 80	
41-009	HYRUM FRODSHAM	7UD RANCHES	LANDING	15	May	17 80	
41-010	JAMES HARTLEY	JOHN HAYES		30	Apr	1 84	
41-011	JOHN HARTLEY	JOHN HAYES		22	Apr	1 84	
41-012	HYRUM HARTLEY	UDY BROS.		48	May	8 84	EXCEPT JULY & AUG
41-012	HYRUM HARTLEY	UDY BROS.		18	May	8 84	JULY & AUG
41-013 C	BRADLY JACKSON	RAY SPILLET	JACKSON	10	May	1 81	
41-013 A	BRADLY JACKSON	ROSCOE WESTON	JACKSON	10	May	1 81	
41-013 B	BRADLY JACKSON	ORRIN SPILLET	JACKSON	10	May	1 81	
41-014	E.T. OLNEY	RON KRESS	POND	20	Apr	1 89	
41-015	JAMES MONSON	UDY BROS.		ALL	May	1 83	
41-015	JOHN MANTIWITCH	JOHN HAYES		ALL	May	1 83	WEST OF HIGHWAY
41-015	V.I. STEWART	ROSCOE KRESS	POND	ALL	May	1 83	
41-016	JOSEPH FERKINS	UDY BROS.		15	Apr	1 86	BOOK 1 JUDGEMENTS P.64 FOWER CO.
41-017	I.L. STEWART	JOHN HAYES	RES.	ALL	Apr	1 86	
41-44-49	S.C. HATCH	MITCHELL, BLAINE	PRIVATE PUMP	40	May	17 80	TRANS 2953
41-045	GEORGE McDONALD			40	May	1 85	

All Dates 1800

why different dates
41-00050

MICROF

MAR 04

June 11, 1999

**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: July 9, 1999

Water right number: 41-00008B

JAMES JUAN SPILLETT
PO BOX 278
ROCKLAND ID 83271

Daytime Telephone Number: (208) 548-2468
Evening Telephone Number: same

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

PLACE OF USE: My Adshead Ditch water (Water right number 41-00008B) is decreed to my entire 120 acres. Thus, use of this water should not be limited to a designated area or number of acres within this 120 acres.

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

PLACE OF USE: My Adshead Ditch water (Water right number 41-00008B) should be limited only to use on my 120 acres.

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

OVER: (SEE reverse side of this page)

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

DATE: 7/7/99

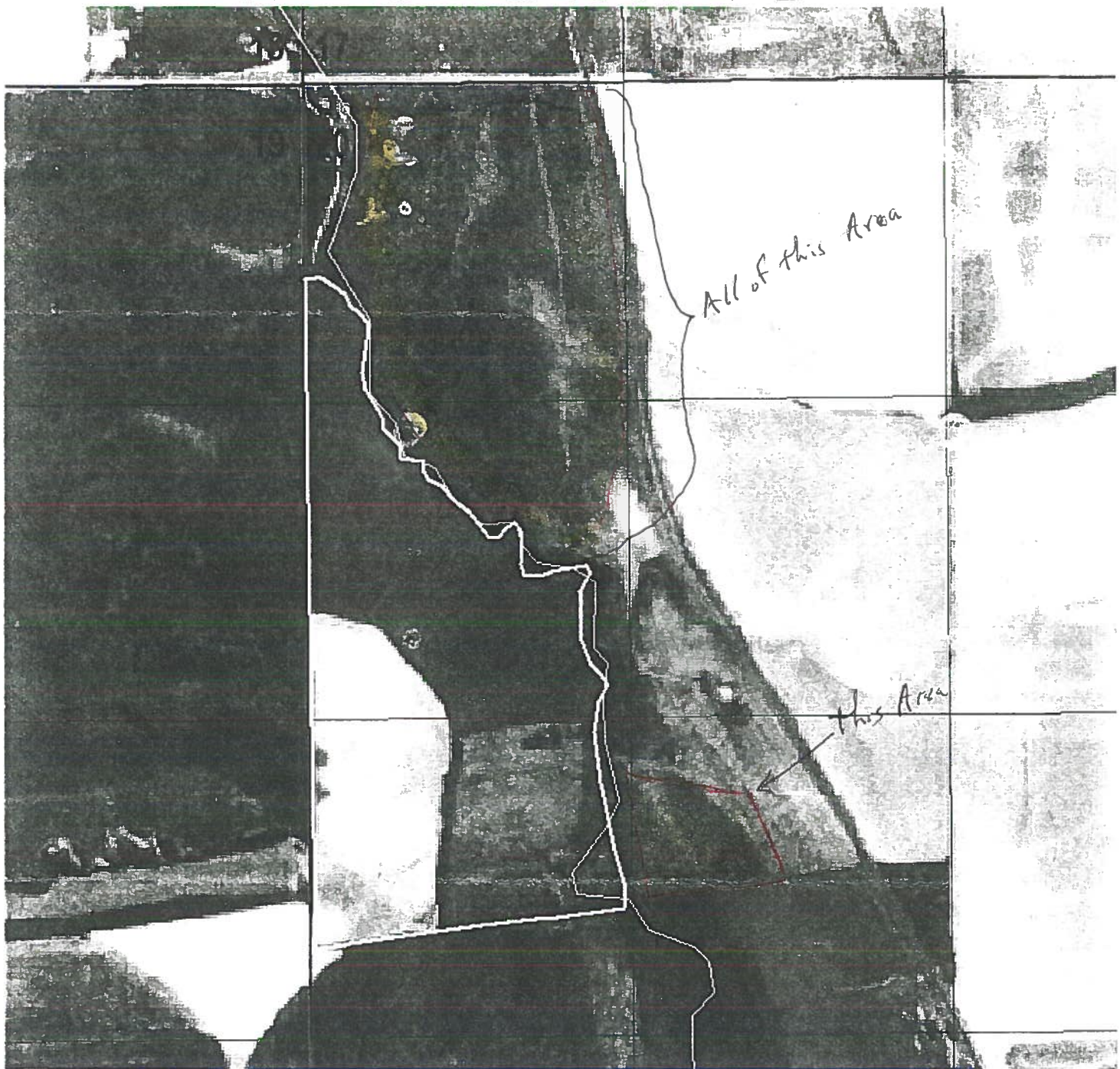
SIGNATURE:

Please print your name:

James Juan Spillett
James Juan Spillett

IDAHO DEPT OF WATER RESOURCES

41-00008B & 41-00013B



660 0 660 1320 Feet



RECOMMENDED PLACE OF USE
* POINT OF DIVERSION
SECTION LINES
1/4 - 1/4 LINES

T10S R31E SEC. 20

GIS PLACE OF USE PRESENTATION
1987 & FOR 1983 NAPP PHOTOGRAPHY

DATA ENTRY BY: STEVE CLELLAND
DATE: June 14, 1999

COMMUNICATION DOCUMENTATION



He disagreed with the acres recommended and says it should be the 120 acres owned. I explained the actual irrigated acres are what we describe for the decree. He explained the problems he has faced with the previous transfer that also erred in describing his POU acres. I told him I based this POU to a large point on the results of the transfer findings. He told me he has tried to correct the transfer results but has not been successful with the staff at IDWR. I suggested he send in the reply sheet on this anyway and I will review the files again to see if there is more than what I read the first time through. He is very disappointed in the whole administrative action of IDWR regarding his rights and just wants to be left alone to use his water on his lands. He is okay with the recommendation for the part based on 41-00013 but disagrees with the claim 41-00008B

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)**

DATE: 06/14/99
PAGE: 1

(REGIONAL)

----- DIVERSION RATE -----

0.80 CFS

0.80 CFS

Stage: DECREED

POWER County

ME

		NE				NW				SW				SE			
		NENE	NNNE	SWNE	SENE	NENW	NNNW	SWNW	SENW	NESW	NWSW	SSSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac
105	31E	20	:	:	:	:	02	24	:	:	24	:	:	:	:	:	:
TOTAL ACRES																	
50.0																	
50.0																	

Other Rights: 41-000138

REMARKS: POU1 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 40 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON..

Dates: Exam Made Date: 07/15/1994 Verified Date: 06/14/1999 Objection Filed Date:

Misc:	Water District Number: 41	Field Inspection Flag:
	Presumption Flag:	D

CLAIM NUMBER

A41-00008B
A41-00013B

DATE

5/17/99

AGENT

See

TRANSFER NUMBER

CLAIMED ACRE TOTAL

120

GIS ACRE TOTAL

51.6

	TWP	RNG	SEC	NE				NW				SW				SE				
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
CLAIM	10S	31E	20						38	40	2	10	30							120
GIS									2.6	25	Ø	Ø	24							51.6
RECOM									2	24			24							50
CLAIM																				
GIS																				
RECOM																				
CLAIM																				
GIS																				
RECOM																				

B41-POU.SHP

100% overlap between the 2 rights as claimed.

SHAPE NOS.

83

TRANSFERS IN PROCESS —

duty rate of 1"/ACRE is decreed & Trans.

OVERLAP: 41-7053

= NONE By ORDER of TRANS #351

- 008B : 40" (ADshead ditch) 40Ac

- 0013 : 10" (Jackson ditch) 10Ac

50" on 50 AC = POU1 - K06 50Ac APN

B41-POD.SHP

NOS. DESCRIPTION

46 ADsHEAD DITCH : T10S, R31E, S23, NENE NW

54 JACKSON DITCH : " " S29 SWSE NW

} Transfer does not appear to be fully approved per Dakota Recor 6/14/99

DBF TABLES UPDATED

B41-DBPOU.DBF

See 3/19/00

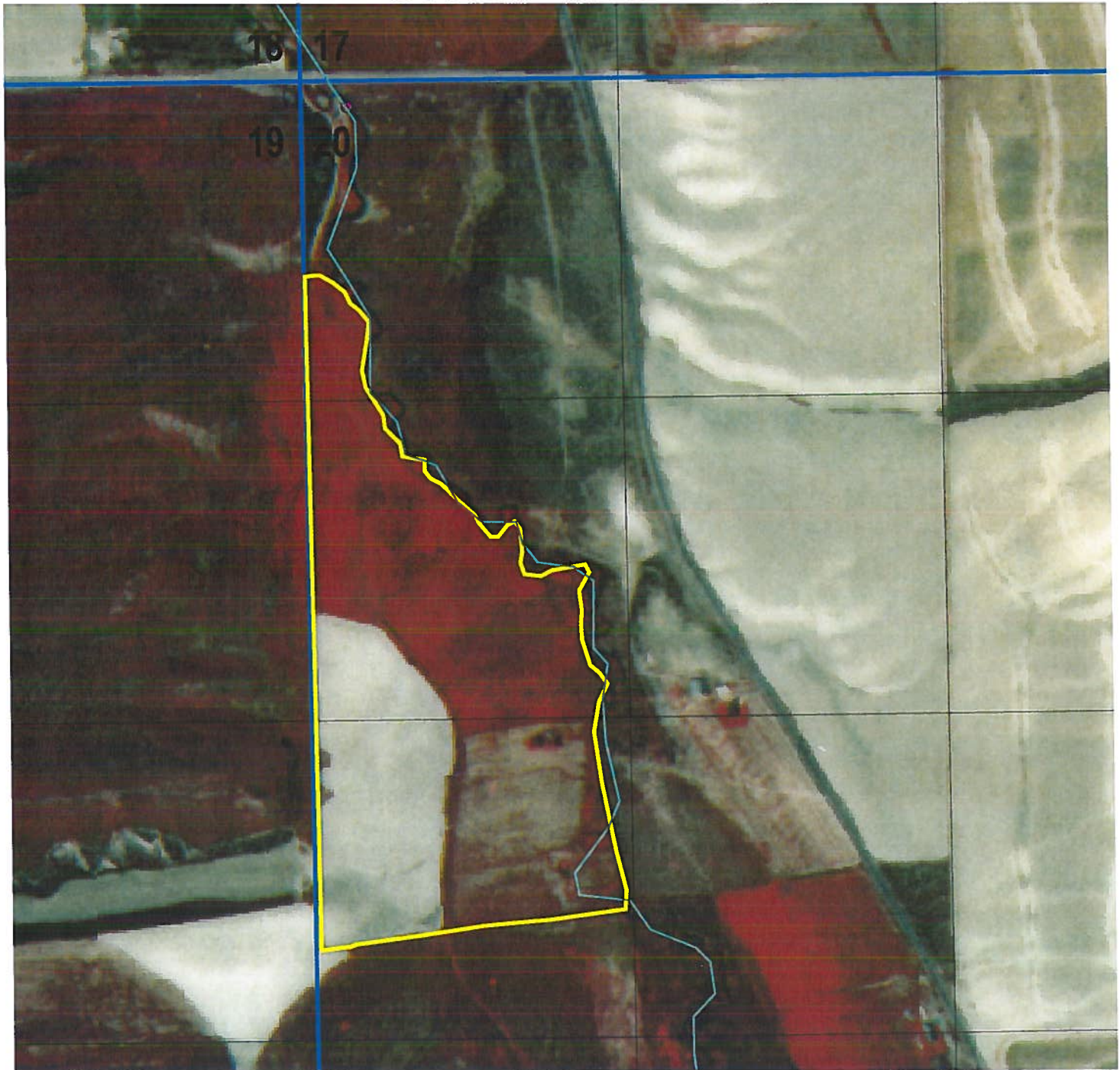
B41-DBPOD.DBF

JPEG LAYOUT

41-00008B.jpg

IDAHO DEPT OF WATER RESOURCES

41-00008B & 41-00013B



660 0 660 1320 Feet



T10S R31E SEC. 20

GIS PLACE OF USE PRESENTATION
1987 &/OR 1988 NAPP PHOTOGRAPHY

DATA ENTRY BY: STEVE CLELLAND
DATE: June 14, 1999

- RECOMMENDED PLACE OF USE
- POINT OF DIVERSION
- SECTION LINES
- 1/4 - 1/4 LINES

18 17

19 20

41-07053

41-00008B

41-00013B

DRAFT
5-17-99 sec

MEMORANDUM

TO: 41-07053 Field Exam File

FROM: Corey Skinner /CS

DATE: March 12, 1998

SUBJECT: Relevant Information

The enclosed field exam file looks to have been completed back in 1991. However, apparently the field exam was not sent to Boise due to concerns about possible overlaps with decreed water rights out of the South Fork of Rock Creek. I have recently reviewed two transfer applications involving the decreed water rights that may have been potential overlaps. The decreed water rights that were possible overlaps were James Juan Spilletts's portions of rights 41-00008 and 41-00013. On 09/15/92, a Final Memorandum Decision and Order (copy enclosed) was issued by Gary Spackman of the Department addressing previously filed transfers involving Mr. Spilletts's portions of 41-00008 and 41-00013.

This Final Memorandum Decision and Order states that Mr. Spilletts's portions of rights 41-00008 and 41-00013 have been historically used on land west of the South Fork of Rock Creek (#26, #27, and #29 of Findings of Fact and #3 of the Order). Review of the field exam file for permit 41-07053 reveals that the field examiner determined that water right permit 41-07053 was used only on land east of the South Fork of Rock Creek. Therefore, it appears that there is no overlap between 41-07053 and rights 41-00008 and 41-00013.

Further examination of the 41-07053 field exam file reveals that the diversion rate was determined from a theoretical calculation, and that no actual measurements were obtained. The diversion for 41-07053 is within the boundaries of the Aberdeen-American Falls Ground Water District. I placed a call to Jenny Mickelson (226-5914) of the American Falls Ground Water District to see if they had measured this particular diversion yet. Ms. Mickelson said that they had not yet measured this diversion, but she would have it scheduled to be measured this summer (1998). If a representative from the department is unable to make it to Rockland to measure this diversion, perhaps the American Falls Ground Water District's measurement could be used to determine the diversion rate.

It should also be noted that there appears to be an error in the description of the place of use in the 41-07053 field exam file. Examination of the place of use maps in the file reveal that 2.0 acres are irrigated in the NWSW $\frac{1}{4}$ and 11.0 acres are irrigated in the NESW $\frac{1}{4}$ of Section 20 (T10S, R31E). It appears that these acreage amounts have been reversed on the place of use description on the field examination form.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 3518/ WATER RIGHT NO.)
41-00013 & TRANSFER NO. 3519/WATER)
RIGHT NO. 41-00008 IN THE NAME OF)
JAMES JUAN SPILLETT)

FINAL ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on September 15, 1992, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Transfer No.'s 3518 and 3519/Water Right No.'s 41-00013 and 41-00008 are APPROVED.

Dated this 15th day of OCTOBER, 1992.


R. KEITH HIGGINSON
Director

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A41-00008B

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR	)	
TRANSFER NO. 3518 (WATER RIGHT NO.	)	SECOND PROPOSED
41-00013) AND TRANSFER NO. 3519 (WATER	)	MEMORANDUM
RIGHT NO. 41-00008) IN THE NAME OF	)	DECISION AND ORDER
JAMES JUAN SPILLETT	)	
	)	

FINDINGS OF FACT

1. James Juan Spillett (Spillett) filed two applications for transfer of water right, numbered 3518 and 3519, with the Department on December 5, 1988. The applications proposed a change in the point of diversion for portions of water rights no.'s 41-00008 and 41-00013.

2. The applications for transfer were advertised in the Power County Press on March 15 and 22, 1989.

3. Timely protests against a change in point of diversion of water right no. 41-00008 were received from Farold Nelson and 7 UD Ranches (Nelson), and from Bench Ditch Irrigation Company (Bench).

4. Protests against a change in point of diversion for water right no. 41-00013 were timely received from the Bench Ditch Irrigation Company and the U.S. Ditch Company.

5. A pre-hearing conference was conducted on September 19, 1989, and a hearing was conducted on November 16, 1989, in American Falls, Idaho. Spillett represented himself. James Robinson represented Bench. Nelson was represented by Ben Cavaness, attorney at law. U.S. Ditch Company failed to appear at the hearing.

6. A proposed memorandum decision and order was issued January 23, 1990. Both parties filed exceptions to the decision. A final memorandum decision and order was issued on August 30, 1990. Both parties requested a rehearing, and a rehearing was granted. The rehearing was conducted on January 10, 1991.

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Spillett was represented by Kenneth Lyon, attorney at law. The rehearing was held to augment the prior record, and did not replace it.

7. After the hearing, the parties requested a delay in issuance of the decision because of negotiations between the parties which might resolve the conflict. On approximately January 1, 1992, the parties informed the Department that the matter had not been resolved, and resubmitted it for decision.

8. Spillett stated that he wants to move the point of diversion for his portion of water right no. 41-00008 downstream on Rock Creek so he could more efficiently use his water. Nelson objected to the transfer of water right no. 41-00008 because the use of water under the water right has historically been rotated among the users, and Nelson alleged that he would be injured by the withdrawal of a portion of the rotated right. Bench protested the transfer of both water rights because of possible enlargement and loss of downstream flows that would satisfy Bench water rights.

9. Water rights 41-00008 and 41-00013 were established by beneficial use, and confirmed by a decision of arbitration executed on or about April 1, 1890. The decision of arbitration was recorded in the Oneida County book of judgments, but was never endorsed by the district court as a judicial decree.

10. For purposes of administering the water rights on Rock Creek, the Department, and the parties diverting water from Rock Creek, recognized the decision of arbitration as a judgment decreeing the water rights in Rock Creek. The waters from Rock Creek were administered according to the decision of arbitration after the decision was rendered. A water district was created by the Department, and a watermaster distributed water from Rock Creek to the respective users.

11. The decision of arbitration which established water right no. 41-00008 authorized diversion of 160 miner's inches (3.2 cfs) of flow by three individuals in the following proportions: one-half to Charles Taysom, Sr., one-fourth to David Taysom, and one-fourth to William Adshead, all with a priority date of October 1,

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1879.

12. The location of and number of acres in the place of use for right no. 41-00008 is not described in the arbitration decision. When a place of use is described in the arbitration decision, however, the decision usually awards one miner's inch of water (0.02 cfs) per acre of land irrigated.

13. Right no. 41-00013 authorizes diversion of 30 miner's inches (0.60 cfs) of water to 30 acres of land, although the location of the place of use is not described. The right was given a priority of May 1, 1881.

14. Each application for transfer states that water is not available for diversion during the latter part of the irrigation season.

15. The locations of the points of diversion for both rights were not described in the arbitration decision. Application for transfer no. 3519 for water right no. 41-00008 alleges that the point of diversion was originally located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, Township 10S, Range 31E, and is the point of diversion for what is commonly known as the Adshead Ditch.

16. Application for transfer no. 3518 for water right no. 41-00013 alleges that the point of diversion is the head of the Jackson Ditch, located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 13E.

17. The applications for transfer allege that Spillettt owns 0.60 cfs (30 miner's inches) of right no. 41-00008 and 0.20 cfs (10 miner's inches) of water right no. 41-00013.

18. Application for transfer no. 3518 lists 70 irrigated acres as the total place of use for right no. 41-00013 rather than the 30 acres to which the right is decreed. Spillettt proposes to irrigate 29 of the 70 acres with 0.20 cfs (10 miner's inches), his portion of the right.

19. Application for transfer no. 3519 lists 290 irrigated acres as the total place of use for right no. 41-00008 with 3.2 cfs (160 inches) of water. Spillettt proposes to irrigate 75 of the 290 acres with 0.60 cfs (30 miner's inches), his portion of the right.

Microfilm

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20. Although the number of acres in the place of use is not decreed for right no. 41-00008, irrigation of 290 acres with 3.2 cfs (160 inches) of water greatly exceeds the 160 acres that would normally have been irrigated at a rate of 0.02 cfs (one inch) per acre. Both Spillett applications propose irrigation of more acres than could be fully irrigated if the acreage was limited to one acre irrigated for each miner's inch (0.02 cfs) diverted.

21. Water right no. 41-00008 has been delivered to five water users through the Adshead Ditch. The five water users are Nelson (7 UD Ranches), Grace Spillett, Taysom, Weston and Spillett. The water users have historically rotated the water on a twelve day rotation schedule, with each water user diverting the entire decreed flow for his proportionate share of the time. Spillett is entitled to divert water for two days out of every twelve days.

22. When the water right was first diverted, all of the water was delivered through the Adshead Ditch, located on the east side of Rock Creek. The Spillett property irrigated by right no. 41-00008, was at the end of the ditch, and was all located on the east side of Rock Creek within the NW $\frac{1}{4}$ of Section 20, Township 10S, Range 31E, B.M.

23. The delivery ditch to the Spillett property was difficult to maintain. Spillett and his predecessors also suffered the greatest delivery loss of water because their land was located at the end of the ditch.

24. The Adshead Ditch washed out near the upstream end of the Spillett property in the late 1920's, and has not been rebuilt.

25. An eight acre parcel on the east side of Rock Creek located above the break in the canal was irrigated by Spillett in the 1950's, but has not been irrigated since.

26. For many years, Spillett diverted his portion of water right no. 41-00008 through the Jackson Ditch instead of the Adshead Ditch when it was his turn to divert water in rotation. The Jackson Ditch diversion is located on the west side of Rock Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, Township 10S, Range 31E, downstream from the Adshead diversion.

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★ 27. Approximately 40 acres of land west of Rock Creek was irrigated with Spilletts's portion of water rights no.'s 41-00008 and 41-00013. The irrigated land is located in the west half of Section 20, Township 10S, Range 31E, B.M. Irrigation of land on the west side of Rock Creek with water right no. 41-00008 resulted in an unrecorded transfer. Water diverted under right no. 41-00013 presumably irrigated the same lands to which it was originally appurtenant.

28. Applicant's exhibit #3 was submitted by the applicant to illustrate lands currently irrigated with Rock Creek water, and also to illustrate the land located on the east side of Rock Creek which was irrigated in the 1950's.

★ 29. The current place of use, approximated from applicant's exhibit #3, is located in the following described survey tracts:

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

30. Spilletts owns permit to appropriate water no. 41-07053 which proposes diversion of groundwater to irrigate 92 acres, some of which overlaps the land listed in paragraph 29. Proof of beneficial use has been filed for permit no. 41-07053. The record does not show, however, how much of the 92 acres has been irrigated with groundwater.

31. Spilletts stated that he plans to commingle surface water and groundwater into one system, and irrigate approximately 100 acres if this transfer is approved.

32. Spilletts desires to change the points of diversion to more efficiently use his water. The new point of diversion for both rights is located approximately two to three miles downstream from the Adshead Ditch point of diversion and one-half mile downstream from the Jackson Ditch point of diversion.

33. Spilletts also proposes to divert his water continuously, rather than diverting the water in rotation, which was customary in the past. Proper operation of a well planned sprinkler system

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requires more frequent use than permitted by rotation.

34. Nelson testified that he is entitled to 1.4 cfs (70 inches) of water right no. 41-00008 with which he irrigates 107 acres.

35. Spillett's withdrawal from the traditional rotation scheme for right no. 41-00008 will reduce the total amount of water delivered in the Adshead Ditch, but will also increase the length of time over which the remaining users from the Adshead Ditch can divert water. Spillett's withdrawal from rotation will not prevent delivery of the remaining users' respective shares.

36. Nelson testified that if the amount of water diverted in the Adshead Ditch is reduced, the use of water by others will be less efficient. He testified that it will take longer to irrigate with a smaller stream, and that the delivery ditch will lose the same amount of water even if Spillett's water is not diverted through it. Losses which were once born by Spillett may be born by the remaining users.

37. Nelson's land is located near the diversion for the Adshead Ditch, and delivery of his water would result in less ditch loss than delivery of other water in the downstream part of the Adshead Ditch.

38. Nelson flood irrigates a portion of his land and sprinkles the remainder. He stated he would have to change his existing system to irrigate with a smaller flow rate by reducing his pump size or rearranging his method of irrigation.

39. At the rehearing, Galen McMasters, a professional engineer, testified on behalf of Nelson. McMasters analyzed Nelson's system, and calculated additional losses in Nelson's ditches and delivery system that would occur because of a lesser amount of water running in the ditches for a greater period of time. He estimated that the additional losses in the system would require reduction in irrigated acres of between approximately 1/2 and 3 acres.

40. The information submitted shows that Nelson irrigates approximately 107 acres. A loss of three acres of irrigation is

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not large, but significant. There are other factors such as how well the water is tended or how well the delivery system is maintained that probably would dwarf the effects of Spillet's withdrawal found by the McMaster calculations.

41. Gene Nelson, a relative of Farold Nelson, has operated the ranch for 30 years. He discussed the present system and its operation. He stated that if Spillet were allowed to withdraw from rotation, Nelson would be required to change their delivery system dramatically. He stated that he would not be able to irrigate in the present manner, and would either have to convert fully to sprinklers or change the sizes of main lines. He stated that the cost would be substantial.

42. Kelvin Taysom, a downstream user from the Adshead Ditch, hesitantly testified at the first hearing that the decrease in the amount of water and the increase in time of water availability would adversely impact him. After the initial decisions were issued, Taysom again testified at the rehearing that his hesitancy was a result of his not wanting to get involved, and he was certain Spillet's withdrawal from rotation would injure him.

43. Groundwater return flows contribute to surface flows of Rock Creek. Water Resources of Rockland Basin, Southeastern Idaho, U.S. Geological Survey Open File Report 82-755 (1982). Return flows from irrigation enhance these groundwater contributions to surface water flow.

44. Rock Creek gains water from groundwater inflow between the Adshead diversion and the proposed points of diversion. Spillet's water can be transported in the stream without substantial loss.

45. Spillet's proposed conversion to sprinkler irrigation will result in more efficient use of water by preventing delivery and application losses.

46. Bench Ditch Irrigation Company owns irrigation rights diverted from the East Fork of Rock Creek. Although flows from Rock Creek are not tributary to the East Fork, depletions in the flow of upper Rock Creek reduce the amount of water available to

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appropriators below the confluence of Rock Creek and East Fork of Rock Creek. The rights owned by Bench are some of the latest rights on the East Fork of Rock Creek, and are curtailed or not delivered when water from the East Fork and Rock Creek cannot provide water to downstream users and Bench at the same time.

47. A reduction in the flow of Rock Creek will result in an earlier curtailment of delivery of the Bench water rights.

48. Spilletts's efficient use of water could reduce return flows to Rock Creek. If Spilletts's total annual volumetric use and the place of use is properly limited, however, Spilletts's use will not consume more water than has been traditionally consumed.

49. The Department has determined that the maximum annual consumptive irrigation requirement in the geographical area of the Spilletts property is 3.0 acre feet per acre. An additional 1.0 acre foot per acre may also be delivered to the field headgate to compensate for delivery and application losses. A total annual field headgate volume of 4.0 acre feet per acre can be delivered to the Spilletts field headgates.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, as enacted at the time of the rehearing, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

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 within the state of Idaho, and the change is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. Hidden Springs Trout Ranch, Inc. v. Allred, 101 Idaho 677, 619 P.2d 1130 (1981) held that an amendment to the statutes governing the appropriation of water must be applied to applications pending before the Department.

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3. The applicant carries the burden of coming forward with evidence that his proposed change will not injure other water right holders, that it will not constitute an enlargement of the use, and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222.

6. When the Adshead Ditch delivered water to Spilletts property, Spilletts and his predecessors suffered a major portion of the losses in the Adshead Ditch because of the location of the Spilletts property at the end of the Adshead Ditch.

7. Idaho law requires that water be used in a reasonable and efficient manner. The Department also recognizes its responsibility to encourage efficient use of water. Rotation is one method by which water can be used more efficiently.

8. Helphery v. Perault, 12 Idaho 451, 86 P. 417 (1906), states that rotation and irrigation tend to conserve the waters of the state. "Experience seems to indicate that the use of the rotation system not only tends to conserve the already inadequate water supply, but also tends to contribute to larger and better crops and retention of soil fertility." Muir v. Allison, 33 Idaho 146, 191 P.206 (1920).

9. None of the cases cited, however, hold that rotation is a matter of right. Instead, the cases recognize rotation as a permissible method of conserving water.

10. Helphery stated that users have a right to rotate if they choose. The Muir court was asked to declare that all water rights are subject to rotation, but the court declined to establish rotation as a general rule, holding that most rights are based on a continuous flow. Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1, 154 P.2d 507 (1944) raised an issue about whether a proposed rotation pursuant to a transfer would injure other water

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users. The case does not describe why rotation was injuring the other water rights. The court allowed some rotation within the irrigation company, but otherwise granted a continuous flow right to other users.

11. Finally, Simonson v. Moon, 72 Idaho 39, 237 P.2d 93 (1951) reversed a district court mandate that the defendants rotate their individual water rights in a ditch constructed by a plaintiff which was too small to carry the full rights of both defendants. The case focused on the fact that neither parties' rights could be fully delivered at the same time. It was not a case which determined rotation issues, but held that the plaintiff was required to reconstruct another ditch so that both defendants could irrigate with the amount of water to which they were entitled.

12. The best discussion about rotation is contained in Muir:

. . . [I]t may be added in passing that it is far from the purpose or intention of the court to close the door against the adoption of the rotation system in the state. Undoubtedly the courts would enforce contracts between the parties involving the use of the rotation system as has already been done by this court in the case of the State v. Twin Falls etc. Co., 21 Ida. 410, 121 Pac. 1039, L. R. A. 1916F, 236, and perhaps when property rights have grown up, or common practice and usage have made it a settled and fixed practice in a particular community, it might be the duty of the courts to enforce it.

33 Idaho at 163.

13. The court alluded that more experience may be necessary prior to imposing a requirement that water be rotated. It also alluded that the imposition of rotation may depend on the individual facts confronting the decision maker:

But when and in what cases the rules for the distribution of water should be changed must be left entirely to future investigation and determination, and this opinion should not be understood as laying down rules for any prospective modification of the law.

33 Idaho at 163.

14. In other words, rotation is a permissible and laudable method of beneficially using water, but will only be enforced when, viewing all of the facts, rotation is necessary to provide the most

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efficient and best use of the water. In addition, contractual obligations of the parties are important.

15. Most of the cases cited predate the development of mechanized irrigation systems that have greatly improved irrigation efficiency. Rotation of water delivery for flood irrigation was one of the few methods of conserving and more efficiently using water. Today, however, there are other ways to increase efficiency that perhaps may surpass the efficiency of rotation. Efficiency is a matter of public interest and will be discussed later.

16. Idaho Code § 42-222 requires a finding that "no other water rights are injured" prior to approval of an application for transfer. The terms "water right" and "injury" must be defined for purposes of this decision. A water right is an entitlement to use the waters of the state for a beneficial purpose. The right authorizes diversion of enough water for the beneficial use and enough additional water for reasonable losses.

17. For purposes of this decision, injury is defined as a detrimental effect on any component of the water right which would be substantially (or unreasonably) diminished or reduced as a result of the transfer.

18. Where an individual water user desires to withdraw from rotation, he must show that the water entitlements of the remaining users can be delivered through the existing delivery system without substantial reduction.

19. "Existing delivery system" is defined as the delivery works from the point of diversion to the wateruser's property. It does not include internal ditch or pipe networks which conduct water within an individual wateruser's property.

20. If a change is necessary to the existing delivery system (excluding internal conveyance) it must be shown that the change will not cause unreasonable inconvenience to other users or will not cause a substantial reduction of the availability of water to the other users. The applicant must bear the cost of any reasonable change in the system which delivers water to the property of the other users.

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21. Once a hearing officer is convinced that this test has been satisfied, the burden shifts to the protestants to show that injury will occur, or that there are matters of public interest, including the existence of a contract, that should force continued participation in rotation.

22. The following is a list of factors which the Director will consider to determine whether the transfer proposing withdrawal from rotation would be in the local public interest:

a. The efficiency of the proposed continuous use by the person withdrawing versus the loss of rotation efficiency resulting from withdrawal.

b. The monetary cost to the remaining parties of modifying their internal systems.

c. Evidence of any existing contracts between the parties to rotate water.

d. The customs or traditions of water use in the area.

23. The continuous diversion of water through a sprinkler system by Spillett will increase his efficiency of use.

24. The withdrawal of Spillett from the scheme of rotation will result in a reduction in irrigated acres by Nelson, and will cost him money to modify his system to prevent the loss.

25. The withdrawal from rotation will also cause injury to other users on the Adshead Ditch.

26. The monetary cost of modifying the Nelson system is substantial.

27. Although there are no existing contracts between the parties to rotate water, the custom and tradition of water use from the Adshead Ditch and within the entire Rockland Basin is to rotate water.

28. Spillett must continue rotating water with the other users of the Adshead Ditch.

29. The Department should encourage more efficient methods of irrigation, but still protect other water rights. Other water rights could be injured if efficiency of delivery substantially reduces return flows to the creek.

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30. If Spillett is required to compensate Rock Creek for the entire amount of water he saves, the incentive to be more efficient will be frustrated. If he is allowed to divert and use all the water he saves, downstream water rights will be injured.

31. The amount of water originally lost from delivery of Spillett's water through the Adshead Ditch that would reach downstream surface water right holders cannot be determined from the information now before the Department. Nevertheless, only a portion of the losses would resurface for downstream use.

32. If Spillett's use of water is limited to irrigation of the same number of acres as irrigated previously, the delivery losses saved will remain in the Rock Creek hydrologic system. Consumptive use, flow rate, total volume diverted, and acres irrigated must all be limited to ensure that Spillett's use is not enlarged.

33. The interconnection of Spillett's surface water and groundwater systems could result in an enlargement of his use of surface water. If the groundwater and surface water systems are interconnected, a totalizing meter must be installed on Spillett's diversion works from Rock Creek. Diversion from Rock Creek must cease when 160 acre-feet has been diverted, or when water is no longer available for diversion.

34. Spillett is entitled to divert 0.20 cfs under right 41-00013B and 0.60 cfs under right 41-00008B to irrigate 40 acres. Total consumptive irrigation use should not exceed 120 acre-feet annually.

35. The 40 acres currently irrigated by Spillett will be irrigated by 0.80 cfs, or an application rate of 0.02 cfs (one miner's inch) per acre, when the flow rates of the partial rights owned by Spillett are added together.

36. Spillett should specifically designate thirty (30) acres as the place of use for his portion of right no. 41-00008 and ten (10) acres as the place of use for his portion of water right no. 41-00013 prior to final approval of these transfers.

37. Water is not available to fully satisfy the rights during

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the latter part of the irrigation season. Rock Creek is a gaining stream, and a change in the point of diversion to a downstream location could result in diversion of more water than was available at either the Adshead Ditch diversion or the Jackson Ditch diversion. Spillett should be entitled to divert only his pro rata share of water available for diversion at the Adshead Ditch diversion for right no. 41-00008 and at the Jackson Ditch diversion for right no. 41-00013.

38. The applications for transfer attempt to identify the location and number of acres irrigated by other parties with the residual portion of the rights not owned by Spillett.

39. The place of use identified for the residual portions of right no.'s 41-00008 and 41-00013 will not be recognized as represented on the application for transfer. If the land alleged as the place of use is being irrigated, the water right has been enlarged and cannot be recognized as part of the administrative transfer process.

ORDER

IT IS HEREBY ORDERED that the portions of applications for transfer no.'s 3518 and 3519 proposing to change the point of diversion are APPROVED, but the water must be diverted in rotation with the other users of the Adshead Ditch.

IT IS FURTHER ORDERED that, because the applications for transfer also sought a change in the place of use, the change in the place of use can be approved if Spillett identifies 30 acres as a place of use for right no. 41-00008B and 10 acres as a place of use for right no. 41-00013B within the acres irrigated as identified in the findings of fact. The information must be submitted within 42 days of service of this order.

IT IS FURTHER ORDERED that failure to identify irrigated acreage for each of the rights will result in a full denial of the applications for transfer.

IT IS FURTHER ORDERED that the following conditions shall govern the water rights if the transfers are partially approved:

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1. This transfer approves a total diversion of 0.80 cfs for irrigation purposes authorizing diversion of 0.60 cfs under water right no. 41-00008B and 0.20 cfs under right no. 41-00013B.

2. Total consumptive irrigation use shall not exceed 120 acre-feet annually.

3. The place of use shall be limited to the following (with a future designation of 30 acres to right no. 41-00008B and 10 acres to right no. 41-00013B):

NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	2
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20	-	Acres:	21
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	15
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20	-	Acres:	2

4. If the surface water and groundwater systems are interconnected, a measuring device and totalizing meter approved by the Department must be installed and maintained as part of the surface water diversion works. Diversion must cease when 160 acre-feet has been diverted from Rock Creek.

5. This approved transfer does not address or recognize apparent expanded acreage listed as a place of use for the residual portions of water rights no.'s 41-00008 and 41-00013 not owned by Spillet.

6. Diversion of water under the rights as approved by this transfer is subject to the control of the watermaster of Water District No. 41, Rock Creek.

Dated this 15th day of September, 1992.

Gary Spackman
Gary Spackman
Hearing Officer

SEP 29 1992

CERTIFICATE OF MAILING

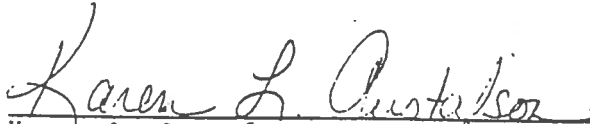
I HEREBY CERTIFY THAT on this 15th day of September, 1992, I mailed a true and correct copy of the foregoing Proposed Memorandum Decision and Order and Order issuing the Proposed Memorandum Decision and Order, postage prepaid, to the following:

James Juan Spillett
P.O. Box 278
Rockland, ID 83271

Kenneth E. Lyon
Attorney at Law
602 S Fifth Avenue
Pocatello, ID 83205

James Robinson
Bench Ditch Irrig.
Rockland, ID 83271

Ben Cavaness
P.O. Box 70
American Falls, ID 83211



Karen L. Gustafson
Secretary/Records Manager

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

March 10, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

James Juan Spillettt
P.O. Box 278
Rockland, ID 83271

41-00008 B

Dear Mr. Spillettt:

A recent examination of pending applications in our office revealed that two water right transfer applications, filed by you, are still pending. These two applications were filed in April of 1996 in an attempt to modify water rights out of the South Fork of Rock Creek. I have completed the preliminary review of these two applications, and would like to make the following comments for your consideration.

It appears that you have filed a transfer application to modify a portion of a water right that you own (41-00008E), and you have filed an application to modify a portion of a water right (41-00013A) that is owned by Herbert R. Weston and R. Scott Weston.

First of all, in order to transfer a water right, the applicant must provide proof of ownership of the right and/or land from which the water is being transferred. The application involving the portion of water right 41-00013A (apparently owned by the Westons) does not have any documents showing that you own the portion of the right that you are attempting to transfer, or that the Westons have conveyed this right to you, or approve of the proposed transfer. In order for this application to be approved, proof of your ownership of the right and/or land from which the right is being transferred must be included with your application.

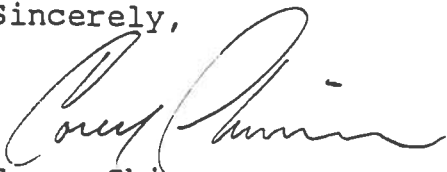
In addition, as part of the transfer process, the department can not allow an expansion in the total amount of irrigated acres. Both of the applications that you have submitted propose changing the recorded place of use of the water rights that are involved with the applications. However, you have not proposed to change the existing current place of use for these rights in order to facilitate the proposed changes. For example, on the application involving water right 41-00008E you propose taking 0.40 cfs (of a 0.60 cfs and 30 acre water right) and irrigating a proposed place of use of 52 acres while leaving 0.20 cfs on the unchanged original place of use. A similar situation exists with the proposed transfer on the application involving water right 41-00013A.

March 11, 1998
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Our office will continue with the processing of your two applications. The next step in the processing will consist of the preparation of the legal notice for the public notice and protest period. You will be notified when your two applications will be advertised in the local newspaper.

If you have any questions, feel free to contact this office at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Corey Skinner".

Corey Skinner, EIT
Dam Safety Section

cc: Herbert R. Weston and R. Scott Weston

MR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE			4-15-91 4-20-91					
POINT OF DIV	Y							
SOURCE								
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME								
CONSUMPTIVE USE	-							
PURPOSES								
PERIOD OF USE	Y							
BASIS OF CLAIM	Y							
REMARKS	Y							

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

LAST: SPILLETT
ADDRESS: P.O. BOX 278
CITY: ROCKLAND
PHONE NUMBER: 208-548-2468

FIRST: JAMES JUAN
STATE: ID ZIP: 83271

OWNER CODE: C

FIELD EXAM REQUIRED? DATABASE FIELD
VERIFICATION REQUIRED DUE TO REMARKS? Y EXAMINER

CLAIM REMARKS: P/D IS IN THE PROCESS OF TRANSFER AT THE TIME OF THIS FILING.
THE P/D LISTED IS THE RESULT OF THE TRANS.

FIELD EXAMINATION INFORMATION

CONTACT PERSON: _____ PHONE NUMBER: () - -
DATE OF FIELD EXAM: _/ _/ _ APPOINTMENT MADE: Y() N() TIME: : _ A() P()
ACCOMPANIED BY: _____ PHONE NUMBER: () - -
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / REMARKS:

A. AJ CLAIM: # A41-000088 PRIORITY DATE: 10-01-1879 STAGE: D

B. WR RECORD: # 41-000088 PRIORITY DATE: 10-01-1879 STAGE: D

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE FIELD EXAMINER
N N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N()
IF YES EXPLAIN.

REMARKS:

RECOMMENDED PRIORITY DATE:

10-01-1879

REVIEWED BY _____

DATE _____

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A41-000088	10S	31E	20	NE	NW	SW		POWER

OTHER AJ CLAIMS WITH SAME AJ POD

MR RECORDS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX
A41-00013B NONE

NONE

SOURCE: ROCK CREEK, SOUTH FORK

TRIB: ROCK CREEK

B. MR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
41-000088	10S	31E	33		NE	NW		POWER

OTHER MR RECORDS WITH SAME MR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX

41-00008A
41-00008C

A41-00008C NONE

SOURCE: ROCK CREEK, SOUTH FORK

TRIB: ROCK CREEK

C. FIELD EXAM REQUIRED?

	DUE TO POD DISCREPANCY? (Y/N)	DATABASE Y	FIELD EXAMINER
		N	

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:
TWP. RGE. SEC. 1/4 1/4 LOT COUNTY

SOURCE: ROCK CREEK, SOUTH FORK TRIB: ROCK CREEK

REVIEWED BY: _____ DATE: _____

A. ROOT WATER RIGHT NUMBERS:

A41-000088
A41-00008C

A41-00008E

A41-00008D

A41-00008F

B. POU LISTING

B. FOOD LISTING											
TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
TOS 31E 20	NW	NW				SPILETT , JAMES JUAN	A41-000088 /38.0	- /	26.0		
	NW	NW				SPILETT , JAMES JUAN	A41-00013B /38.0	- /			
	NW	NW				JACKSON , BRADLEY	41-00013 /				
	NW	NW				SPILETT , JAMES JUAN	41-07053 /40.0				
TOS 31E 20	SW	NW				SPILETT , JAMES JUAN	A41-000088 /40.0	- /	34.0		
	SW	NW				SPILETT , JAMES JUAN	A41-00013B /40.0	- /			
	SW	NW				JACKSON , BRADLEY	41-00013 /				
	SW	NW				SPILETT , JAMES JUAN	41-07053 /40.0				
TOS 31E 20	SE	NW				SPILETT , JAMES JUAN	A41-000088 / 2.0	- /			
	SE	NW				SPILETT , JAMES JUAN	A41-00013B / 2.0	- /			
TOS 31E 20	NE	SW				SPILETT , JAMES JUAN	A41-000088 /10.0	- /	13.0		
	NE	SW				SPILETT , JAMES JUAN	A41-00013B /10.0	- /			
	NE	SW				WESTON , R. SCOTT	A41-00008D /20.0	- /			
	NE	SW				WESTON , HERBERT R.	A41-00013A /20.0	- /			
	NE	SW				WESTON , H. R.	41-00008A /				
	NE	SW				JACKSON , BRADLEY	41-00013 /				
	NE	SW				WESTON , H. ROSCOE	41-07032 /40.0				
	NE	SW				SPILETT , JAMES JUAN	41-07053 /10.0				
TOS 31E 20	NW	SW				SPILETT , JAMES JUAN	A41-000088 /30.0	- /	30.0		
	NW	SW				SPILETT , JAMES JUAN	A41-00013B /30.0	- /			
	NW	SW				WESTON , R. SCOTT	A41-00008D /10.0	- /			
	NW	SW				WESTON , HERBERT R.	A41-00013A /10.0	- /			
	NW	SW				WESTON , H. R.	41-00008A /				
	NW	SW				JACKSON , BRADLEY	41-00013 /				
	NW	SW				WESTON , H. ROSCOE	41-07032 /40.0				
	NW	SW				SPILETT , JAMES JUAN	41-07053 / 2.0				

PRESUMPTION FLAG: D

REMARKS:

RECOMMENDATIONS:

TOTAL ACRES:

REVIEWED BY:

DATE:

A. A4 CLAIMED USES:

PURPOSES
A41-000088 IRRIGATIONMONTH/DAY
FROM 03-15 TO 11-15DIVERSION QUANTITY
.800 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.800 CFS

B. WR RECORDED USES:

PURPOSES
41-000088 IRRIGATIONMONTH/DAY
FROM TODIVERSION QUANTITY
.800 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.800 CFS

PRESUMPTION FLAG: D

C. FIELD EXAM REQUIRED?

		FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY?	(Y/N)	N
DUE TO DIVERSION RATE DISCREPANCY?	(Y/N)	N
DUE TO PERIOD FROM/TO DISCREPANCY?	(Y/N)	Y

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y() N()

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N() Explain in remarks, below.

REMARKS:

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N()

AJ TOTAL CLAIMED DIVERSION RATE: 0.800 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.800 CFS*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

FIELD
DATABASE EXAMINER
DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) Y

B.

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N() IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: A41-000138

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A41-000088	ROCK CREEK, SOUTH FORK	SPILETT, JAMES JUAN	0.800	0.006		
A41-000138	ROCK CREEK, SOUTH FORK	SPILETT, JAMES JUAN	0.200	0.001		
A41-000080	ROCK CREEK, SOUTH FORK	WESTON, R. SCOTT	0.533	0.007		
A41-00013A	ROCK CREEK, SOUTH FORK	WESTON, HERBERT R.	0.200	0.002		

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from p/u review)

1b. CALCULATIONS

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 360.0 AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = _____ AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	03-15 11-15	DATABASE EXAMINER 0.800	DATABASE EXAMINER	DATABASE EXAMINER 360.0
TOTAL FOR THIS RIGHT		0.800		360.0

REVIEWED BY: _____

DATE: _____

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP	ACCEPTED AS CLAIMED	NEEDS REVIEW
FORFEIT/ABANDON	()	()
ADDITIONAL DIV. AMOUNT	()	()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 41-00008

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE 4.800

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A41-00008B	0.800	-	-	41-00008B	0.800
-	A41-00008C	0.400	-	-	41-00008C	0.800
A41-00008	A41-00008E	0.720	-	-	-	-
A41-00008A	A41-00008D	0.533	-	-	41-00008A	1.600
A41-00008B	A41-00008F	1.410	-	-	41-00008B	0.800
A41-00008C	A41-00008F	1.410	-	-	41-00008C	0.800

TOTAL CFS

5.273

4.800

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)

DATABASE
NFIELD
EXAMINER

REMARKS:

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

NAME OF FIELD EXAMINER: _____

TITLE: _____

Old (N) Number -

Address - - - - - +

State- ID zip- 83271

```
+ - - - Status - - - +
```

- Tributary: ROCK CREEK

(77) POWER

0.800

0.800

(77) POWER

+ - - Other Rights for Same Use -

Case No.	Case Name	Remarks
1	P/U NOT GIVEN IN DECREE BUT VERIFIED BY WATERMASTER. RT. IS FOR 0.8 CFS AT ALL TIMES, BUT 3.2 CFS IS USED 1/4 THE TIME LAST NAME OF RT. HOLDER GIVEN INCORRECTLY AS TAYSON. THE SUPPORTING DOCUMENT IS NOT A DECREE BUT IS MERELY AN ARBITRATOR'S FINDINGS AND CONCLUSIONS. THE ONLY PARTY LISTED IN PLEADINGS IS H. P. HOUTZ.	

Water right number - 41-000088

Prefix Translation:

WATER RIGHT

Old Water Right Numbers

Old Water Right Numbers
No Old Water Right Numbers found.

Conditions of Approval
No Conditions of Approval found.

Decree Plaintiff

Decree Defendant

Decree Date

Comments

Audit Fields - 01/27/87 05/28/88 CONVERT 06/07/89 CURTIS

Water Rights Dates and Flags Area

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	- P
Exam to S.O. Date	- 00/00/0000	Verified Date	- 00/00/0000	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	- 41
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 06/06/1903	Presumption Flag	-		