

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: A41-00013B
Date Received: 11/28/1989
Receipt No: S010543
Received By: see

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: MAY 01, 1881

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	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	0.200		

7. Total Quantity Appropriated is:
0.200 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	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	30.0

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:
A41-00008B

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.

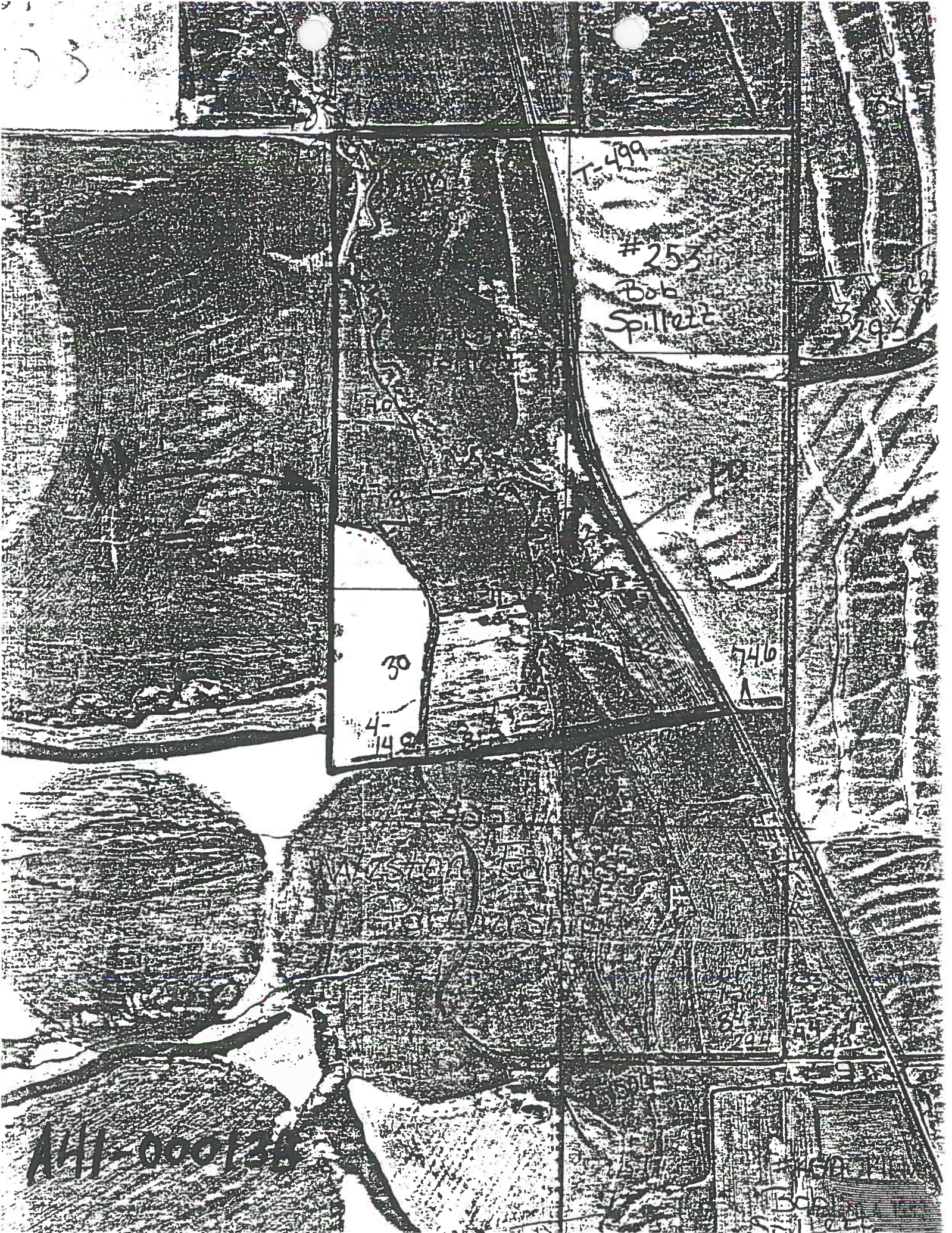
Signature of Claimant(s): James Jean Spill Date: 11/27/89
_____ Date: _____

State of Idaho)
County of Turn Falls) SS.

Subscribed and sworn (or affirmed) before me this 28th day
of November 19 89 Steve C. [Signature]
Notary Public

Seal

Residing at Turn Falls
My Commission Expires Dec 7, 1994



T-499

#253

Bob
Spillert

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WATER
PORTLAND

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441-000138

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Bob
Spillert

ACTION REQUIRED

FROM: Helene H-T 11-12-92

TO: Teanne, Southern Pym

Please file a copy of this in the following files:

A41-00013B

A41-00008B

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Check —

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 SPILLET

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

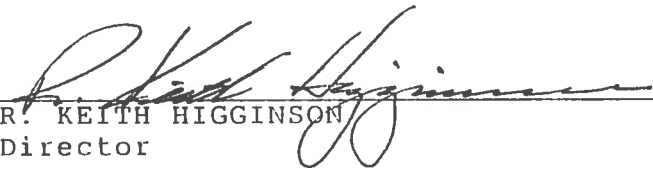
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

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 Spilletts 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 Spilletts, Taysom, Weston and Spilletts. 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. Spilletts 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 Spilletts 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 Spilletts property was difficult to maintain. Spilletts 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 Spilletts 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 Spilletts in the 1950's, but has not been irrigated since.

26. For many years, Spilletts 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 Spillett'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

~~Don~~
Carter
HHS 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 Spillett

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

MICROFILM

MAR 04 1993



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

MICROFILM

MAR 04 1993

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	)	

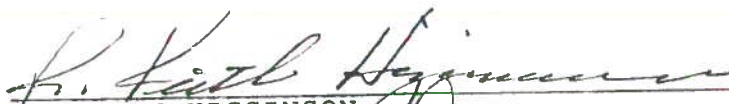
WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on September 15, 1992, pursuant to Section 67-5211, Idaho Code; and,

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 1ST day of OCTOBER, 1992.


R. KEITH HIGGINSON
Director

MICROFILME
MAR 04 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 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

MICROFILM

MAR 04 1993

09/26/2002

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

RIGHT NUMBER: 41-13B

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

SOURCE: SOUTH FORK ROCK CREEK

TRIBUTARY: ROCK CREEK

QUANTITY: 0.20 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: 05/01/1881

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	0.200 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 10 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NOS. 41-8B, 41-10258 & 41-10259 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 50 ACRES IN A SINGLE IRRIGATION SEASON.

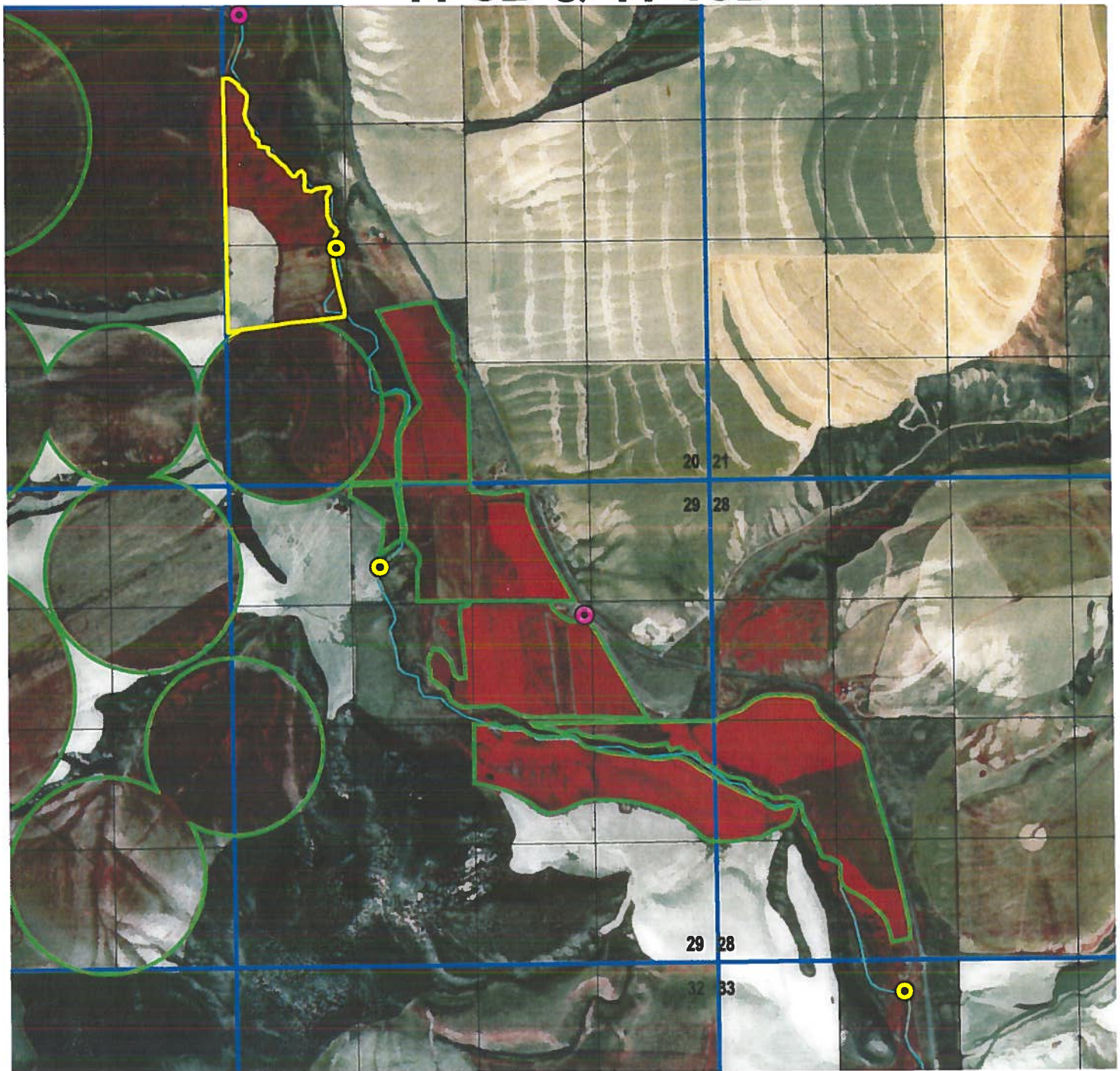
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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 ***

JACKSON

- 13A WESTON
- 13B JUAN S.
- 13C JAMES S.

10"

10"

10"

30"

9/26/02
ECC

SPLIT
REVIEW

ADSHED

- 8B JUAN S.
- 8C TAYSON
- 8D WESTON
- 8E JAMES S.
- 8F TUD NELSON

Rec'd

26.67"

18.33"

26.67"

17.77"

70.56"

160"

ALTERNATE
FLOW

30"

20

30

10

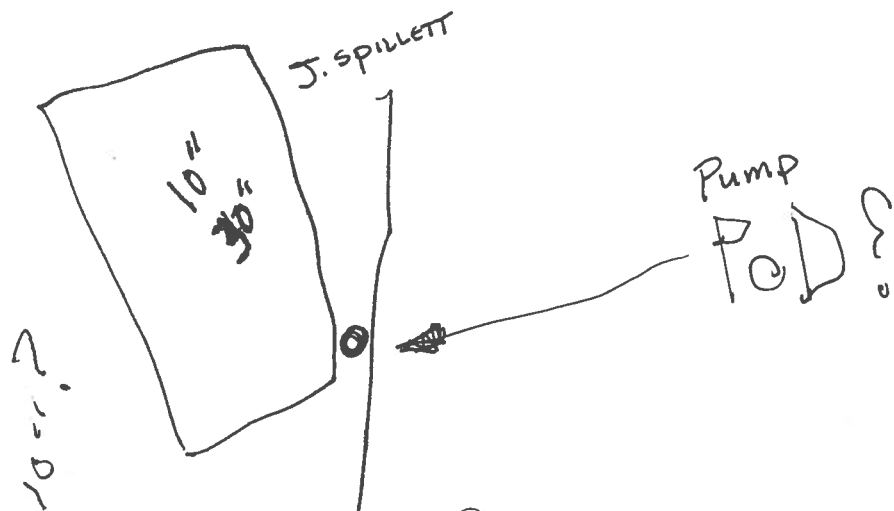
70

160 *

(* CLAIMS DO NOT
MATCH THESE
NUMBERS)

190" both ditches till '92

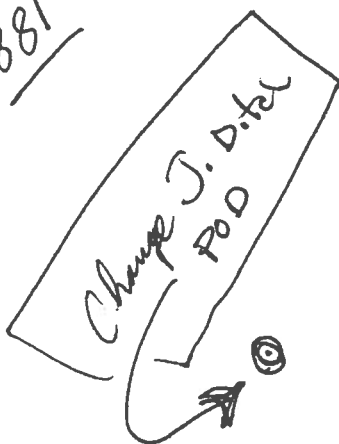
9/17/02 scc
Rockland
SETTLEMENT



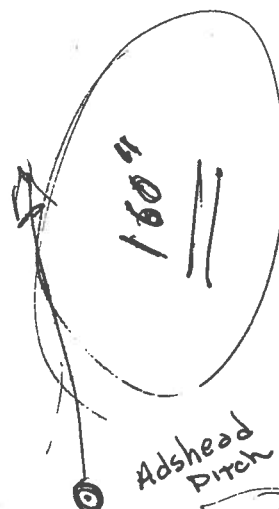
1879
PRIORITY
Date
08

41-0013
808

1881



13



08

09/26/2002

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

RIGHT NUMBER: 41-13B

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

SOURCE: SOUTH FORK ROCK CREEK

TRIBUTARY: ROCK CREEK

QUANTITY: 0.20 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: 05/01/1881

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:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

4/01 10/31

0.200 CFS

PLACE OF USE:

T10S R31E S20

NWNW

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T10S R31E S20

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24.0

T10S R31E S20

NWSW

24.0

50 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NOS. 41-8B, 41-10258 & 41-10259 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 50 ACRES IN A SINGLE IRRIGATION SEASON.

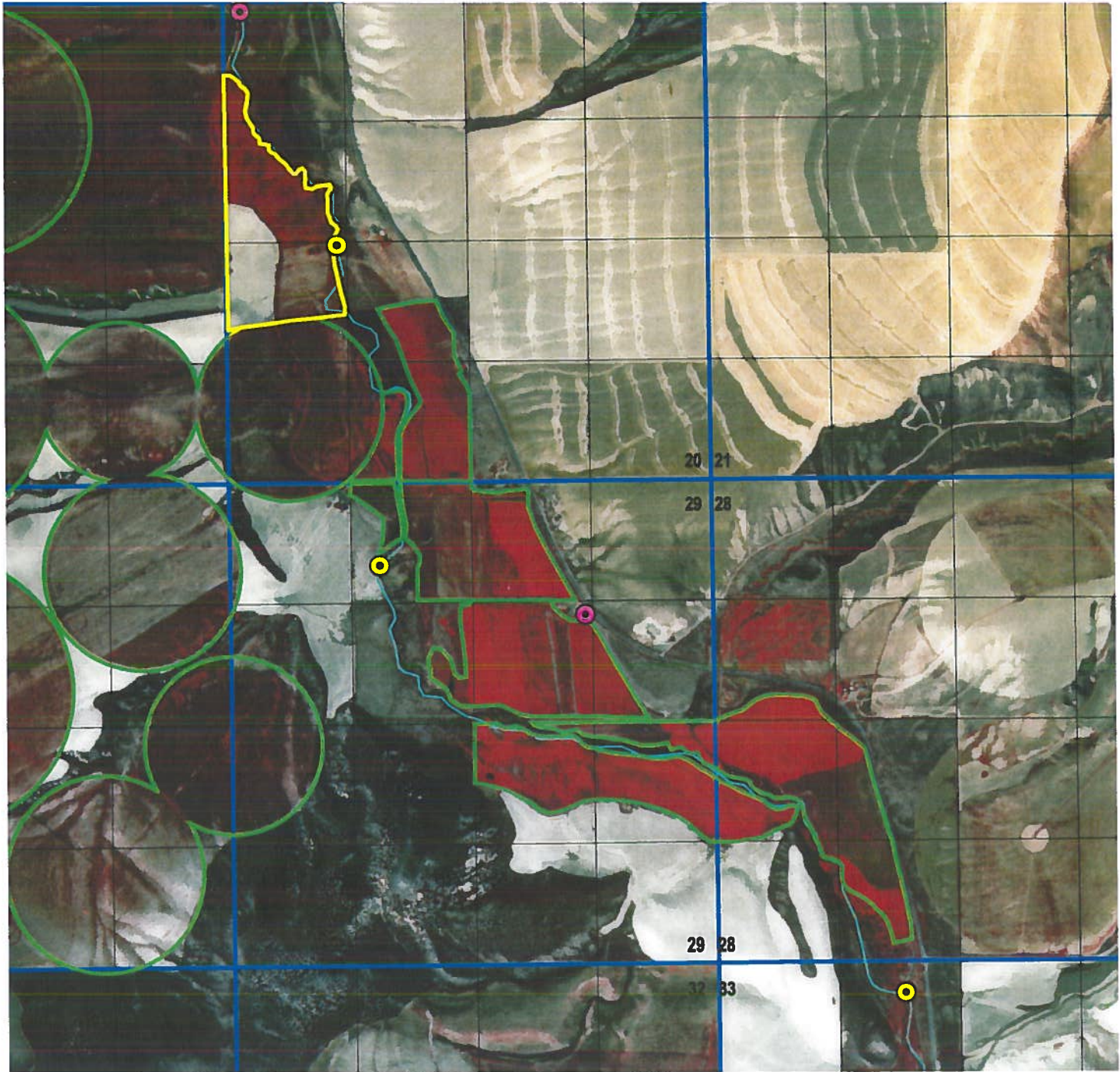
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EXPLANATORY MATERIAL: Decreed

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

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- 13B JUAN S.
- 13C JAMES S.

10"

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9/26/02
SCC

SPLIT
REVIEW

ADSHED

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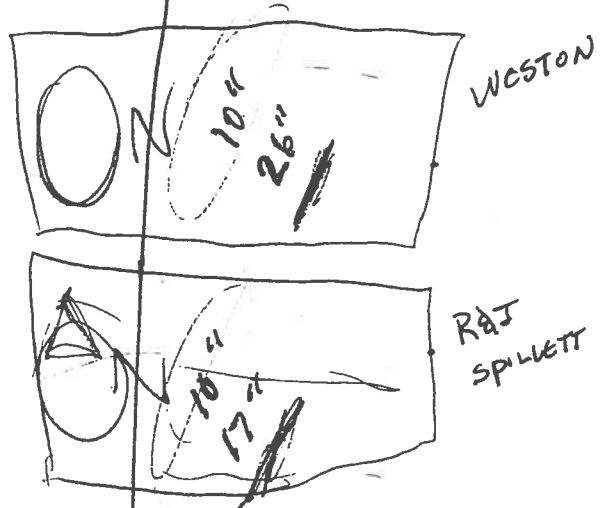
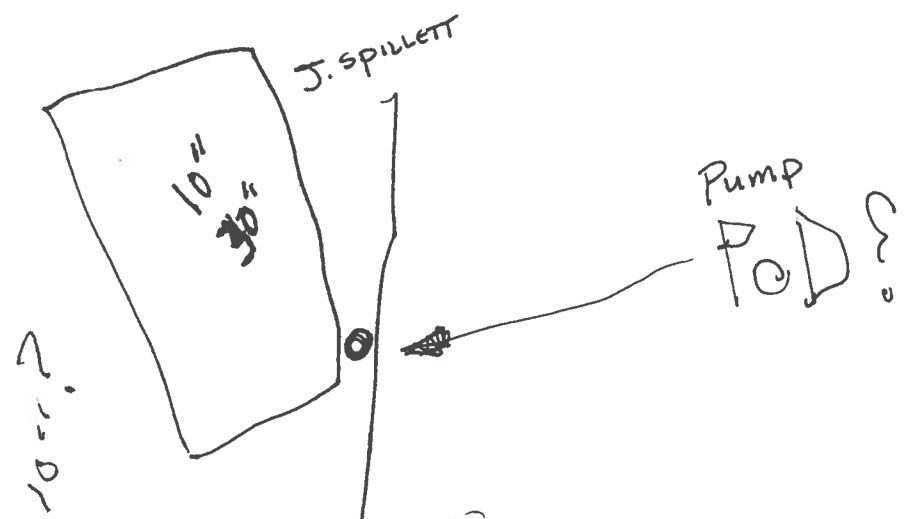
70

160 *

(* CLAIMS DO NOT
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190" both ditches till '92

9/17/02 SCC
Rockland
SETTLEMENT



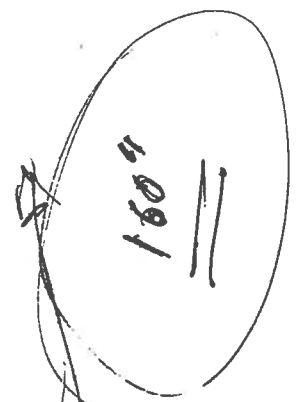
1879
PRIORITY
Date
08

41-0213
808

1881



13



Adshead
Ditch

08

MEMORANDUM

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

FROM: Steve Clelland *sw*

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.

Water Right Number - R41-00013B

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - +

+ - - - - First Name - - +

+ - - - - Address - - - - - +

*** C - CURRENT OWNER ***

JAMES JUAN

1 - PO BOX 278

2 -

3 -

City- ROCKLAND

Phone - 208-548-2468

State- ID Zip- 83271

SPILLETT

+ - - Priority Date - - +

05/01/1881

+ - - Region - - - +

17 SOUTHERN

+ - - Stage - - - +

D - DECREED

+ - - Status - - - +

+ - - Source - - - - +

ROCK CREEK, SOUTH FORK

+ - - Tributary - - - - +

ROCK CREEK

+ - - Point of Diversion - - - - +

County

TwN Rng Sec Tract Lot RFlg County

10S 31E 29 SW SE NW (77) POWER JACKSON DITCH

+ - - Description - - - - -

Period From Period To

Water Use

Diversion Rate

Diversion Volume

01 - IRRIGATION

04/01 10/31

0.200

+ - - Total Div. Rate - +

0.200

+ - - Total Consumptive Use - +

0.0

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

Total Acres: 50.0

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

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - 41-000088, 41-10258, 41-10259

+ - - Remarks - - - - - +

POU1 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NOS. 41-000088, 41-10258 & 41-10259 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 50 ACRES IN A SINGLE IRRIGATION SEASON.

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

AJ0743NP
(00-124)

Prefix Translation: RESEARCH

Water right number - R41-00013B

+ - - - - - Old Water Right Numbers - - - - - +
+ - - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers Found

+ - - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - - Decree Plaintiff - - - +
HOUTZ ET AL. + - - - - - Decree Defendant - - - +
+ - - - - - Decree Date - - - 06/06/1903

+ - - - - - Comments- - - - - +
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. THE P/D LISTED IS THE RESULT OF THE TRANS.
Date: 10/20/1999 User Id: DJONES Subject: RECOMMENDATION
SEE COMMENT FOR 41-000088, ADJUSTMENTS FOR SPECIFICS OF THIS RIGHT NEED TO BE APPLIED.

+ - - - - - 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 - Old Case Number -
Response Filed Date - 00/00/0000 Verified Date - 00/00/0000 Old Judicial District -
Claim Received Date - 11/28/1989 Last Amended Date - 00/00/0000 Temporary Right - P
Receipt Number - S010543 Water District - 41
POJ Ownership Flag - Y Federal/State Indicator - S
Name Connector - Presumption Flag - D
Notice of Error Flag -

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: 41-00013B

JAMES JUAN SPILLET
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):

SEE - Reply for water right number: 41-00008B

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

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

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

DATE: 7/7/99

SIGNATURE:

Please print your name:

James Juan Spillet
James Juan Spillet

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:

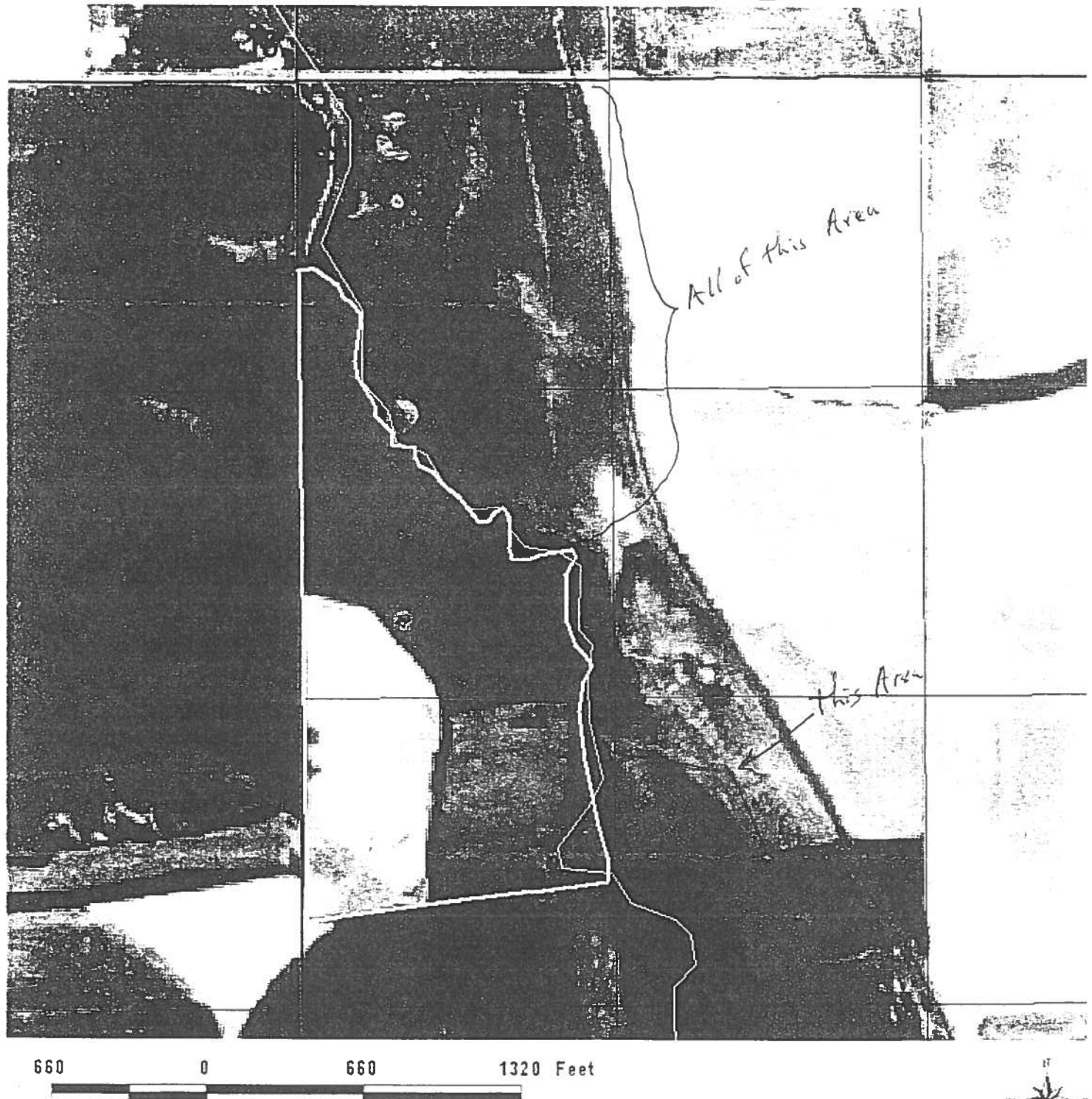
Please print your name:

James Juan Spillett
James Juan Spillett

Historically, my Adshead Ditch water (Water right number 41-00008B) was used to irrigate land on both the West and East sides of the South Fork of Rock Creek (SEE inclosed map, which illustrates areas historically irrigated on the East side of the South Fork of Rock Creek). Furthermore, when I first met with Mr. James Stanton in the Twin Falls office of the Idaho Department of Water Resources regarding the Snake River Water Adjudication, Mr. Stanton informed me that my Adjudication fees would be \$220.00. When I asked, "Why so much?" He told me, you have two water rights for which the fee is \$50 each, and your water rights are decreed to 120 acres for which the fee is \$1.00 per acre. I asked, "Are you sure?" He again checked the records and said, yes, that is correct. And, I paid the \$220.00 fee. On that basis I developed a delivery system whereby I can use Adshead Ditch water to irrigate on both the East and West sides of the South Fork of Rock Creek. Limiting the use of my decreed water rights ONLY to the West side of the South Fork of Rock Creek would be injurious and would not permit me to make "the most-beneficial-use" of my decreed water.

IDAHO DEPT OF WATER RESOURCES

41-00008B & 41-00013B



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

T10S R31E SEC. 20

GIS PLACE OF USE PRESENTATION
1937 & OR 1933 NAPP PHOTOGRAPHY

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

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. see below

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

7/6/99 11:35 AM

NAME: _____

RE:

JUAN SPILLETT · **CALLIN**
RECOMMENDATION

ERRORS IN

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

AJ0749NP
No. R41-00013B

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

DATE: 06/14/99
PAGE: 1

VERIFIED BY

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	JAMES JUAN SPILLETT PO BOX 278 ROCKLAND ID 83271 (208) 548-2468	05/01/1981	IRRIGATION	04-01 10-31	0.20 CFS	
TOTAL DIVERSION:					0.20 CFS	

Water Source: ROCK CREEK, SOUTH FORK

Stage: DECREED

Point(s) of Diversion: T10S R31E S29

S4SEW4

POWER County

Place of use Legal Description for: IRRIGATION

	NE	NW	SW	SE	SUM
T R S	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac	: Lt Ac
10S 31E 20	: 02	: 24	: 24	: 24	: 50.0
TOTAL ACRES					50.0

POU County: POWER

Other Rights: 41-00008B

Remarks: POU1 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 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: 0
Presumption Flag: 0

GIS ACRE TOTAL 51.6

[illegible]

341-POU.SHP

100% overlap between the 2 rights as claimed.

SHAPE NOS.

TRANSFERS IN PROCESS —

83

OVERLAP: 41-7053

dry rate of 1"/acre is Secord & Trans.

= NONE By ORDER of

TRANS #3518

341-POD.SHP

- 0013 : 10" (Jackson ditch) 10AC

NOS.	DESCRIPTION
------	-------------

50" on 50 AC

$$= \text{POU1} - \text{KOG SOAC PPH}$$

46

ADSHED DITCH: T10S, R31E, S23, NENE, NW

54

JACKSON DITCH: " " S29 S45E NW

Transfer does not appear to be fully approved per Data base Records
6/14/99
see

DBF TABLES UPDATED

B41-DBPOU.DBF

sw 3/9/00 ✓

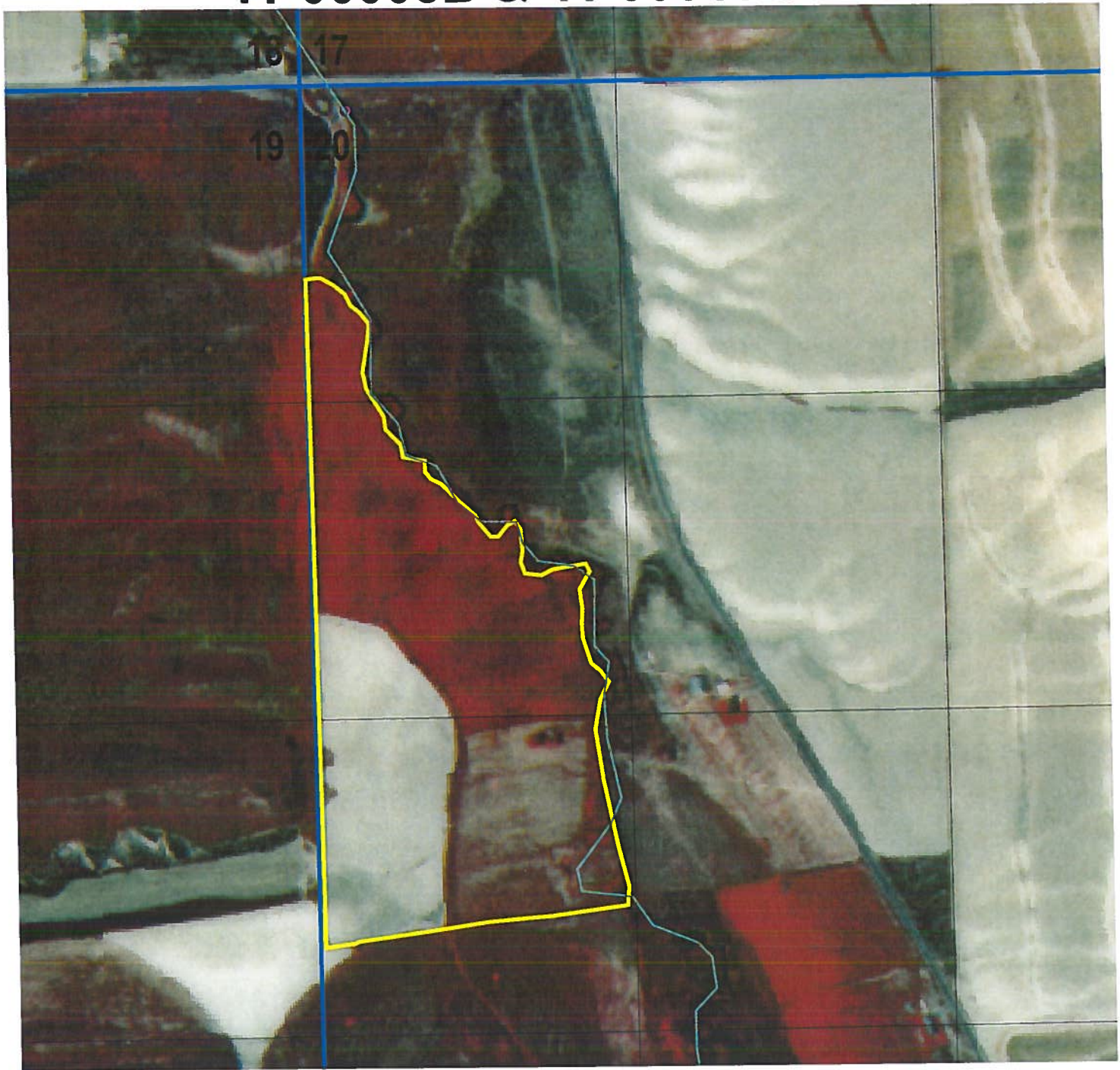
B41-DBPOD.DBF

JPEG LAYOUT

✓ 41-00008B.jpg

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 &/OR 1988 NAPP PHOTOGRAPHY

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

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

1. ☒ Change point of diversion☐ Change nature of use☐ Change period of use☒ Change place 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>41-00008F</u>	<u>10-1-1879</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	3/E	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 effect. 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	10S	3/E	POWELL	Headgate & Jackson Ditch

NOTE:
POD IS
IN SECTION 10
20 DUE TO
APPROVED
TRANSFER
#351

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	
10S	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 41-000/3A

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

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

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.

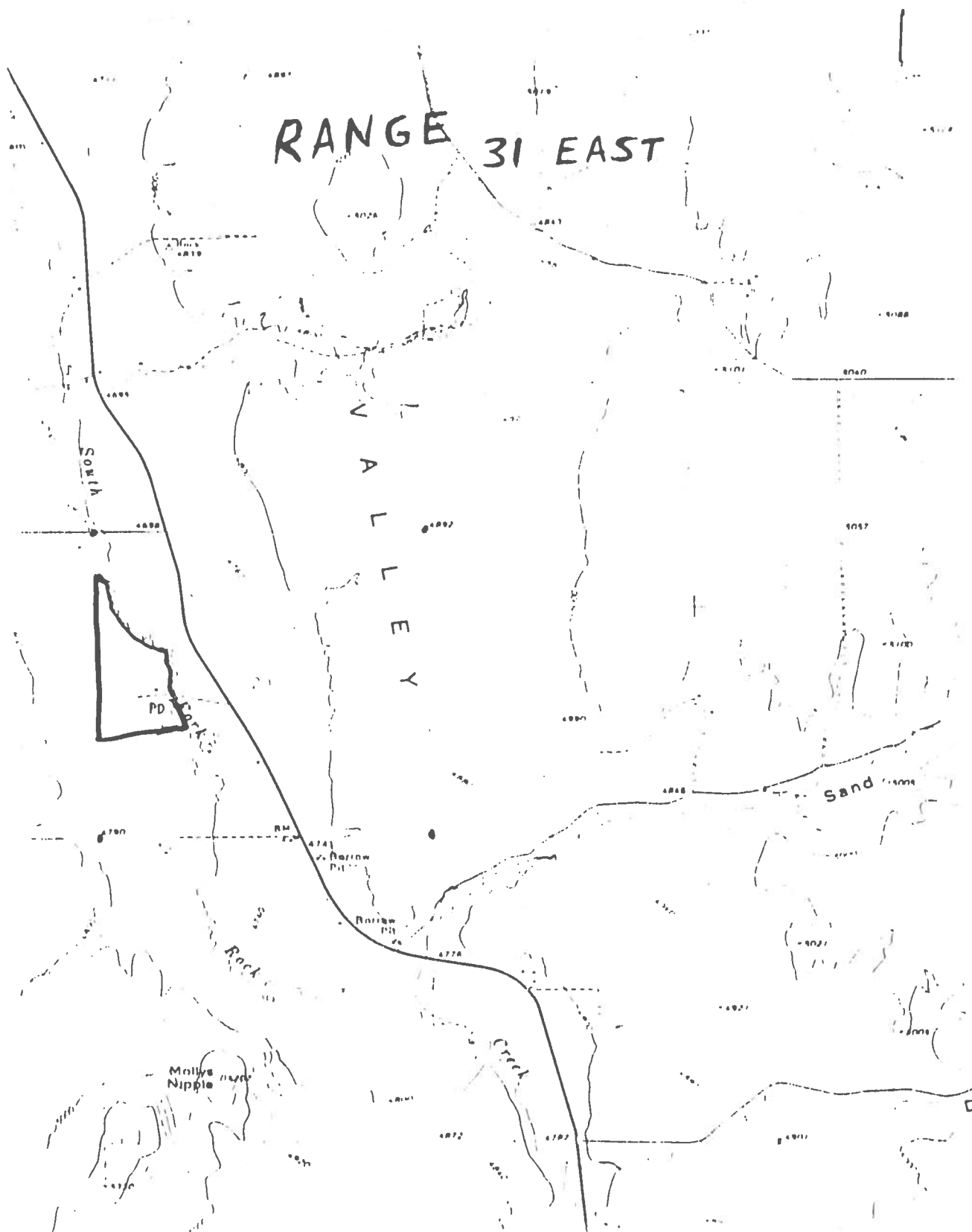
Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4		SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

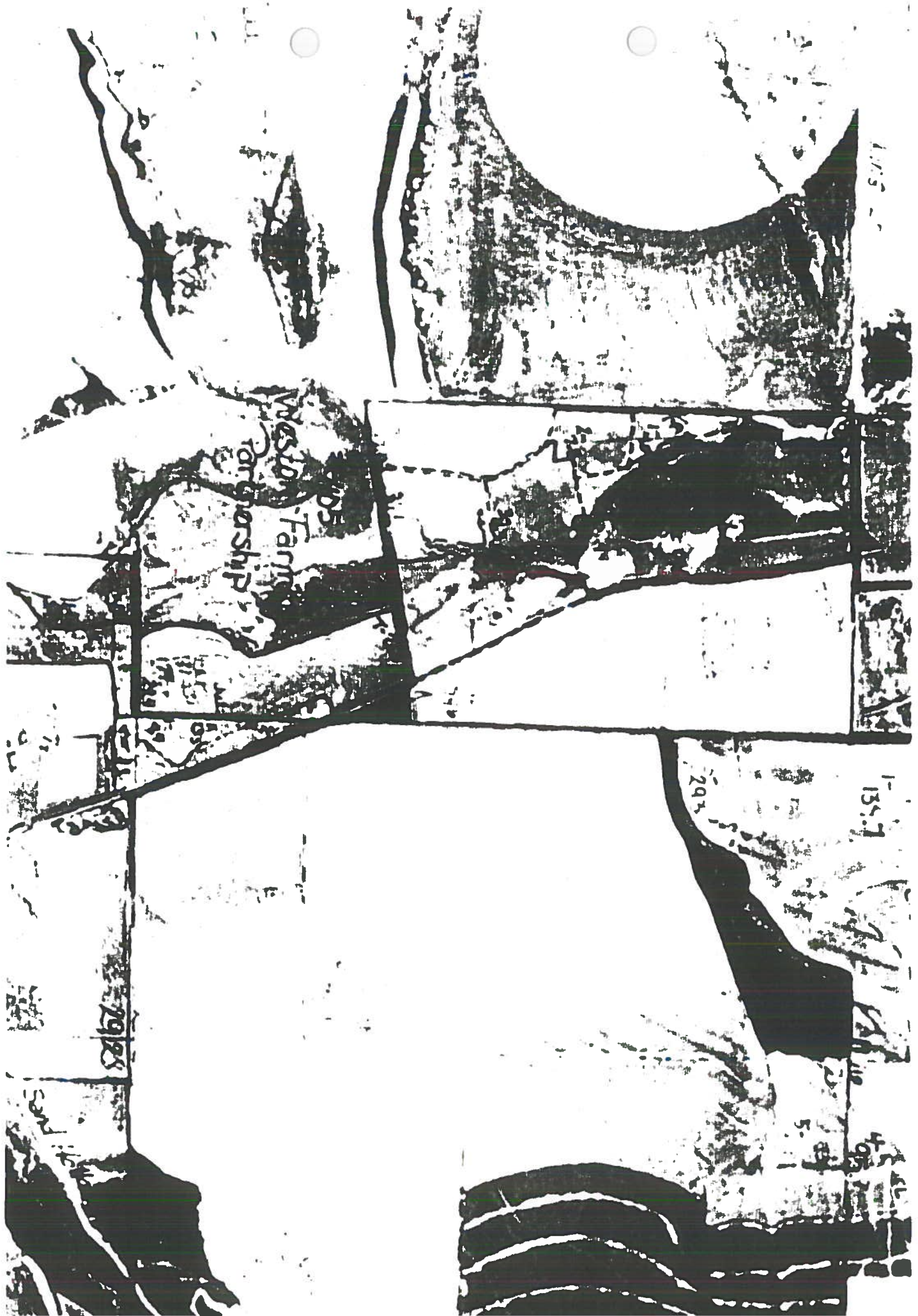
NOTE THAT NO
ACRES HAVE
BEEN REMOVED.

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.





Western Farm
Organization

13.1

29x

29x

4.9

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

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

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

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

James Juan Spill
(Signature of Applicant)
Subscribed and sworn to before me this 30th day of November, 19 95.

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 Protest filed by _____

Prelim. check by _____ Fee \$100.50/8701

Received by JA Date 11-30-95

Published in Power Co. Press Copies of protest forwarded by _____

Pub. dates 5/27 & 6/3/98 Hearing held by _____ Date _____

Watermaster recommendation requested on 5/15/98 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". Apparently, 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.

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

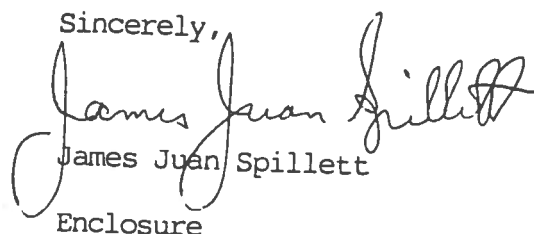
ATTN: Corey Skinner, EIT, Dam Safety Section

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

MEMORANDUM

TO: James Spillett 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 Spillett, 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. Spillett) 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 Spillett 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. Spillett's portion(s) of these two rights and ended up approving Mr. Spillett's proposed transfers. The approval of these two transfers granted Mr. Spillett 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. Spillett'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. Spillett's portion(s) of right 41-00008 and 41-00013 into a single 40 acre place of use. Mr. Spillett 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.

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 Spillettt). 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 Spillettt 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 Spillettt. 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. Spillettt and the Westons), the Westons should file a transfer application to move the water right they are obtaining from Mr. Spillettt. However, as of this date, the Westons have not filed a transfer application to move any of the water associated with the Spillettt property.

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

However, as it currently stands Mr. Spillettt 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. Spillettt 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. Spillettt and no proof of ownership, or statement from the owner, of this particular right was submitted by Mr. Spillettt. 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.

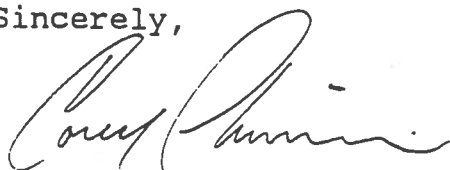
T H 5 2 1 2

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

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 41-0008 are APPROVED.

Dated this 15th day of OCTOBER, 1992.


R. KEITH HIGGINSON
Director

MICROFILMED

OCT 26 1992

A41-00013B

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 Spilletts 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. Spilletts 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. Spilletts proposes to irrigate 75 of the 290 acres with 0.60 cfs (30 miner's inches), his portion of the right.

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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 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

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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. 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.

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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 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.

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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

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CERTIFICATE OF MAILING

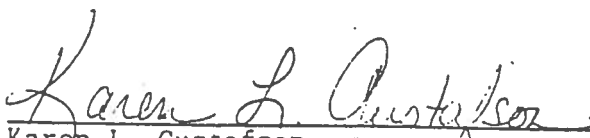
I HEREBY CERTIFY THAT on this 15th day of September, 1992, I mailed a true and correct copy of the foregoing Proposed Memorandum Decision and Order and Order Issuing the Proposed Memorandum Decision and Order, postage prepaid, to the following:

James Juan Spillet
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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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.



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

A41-00013A

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.

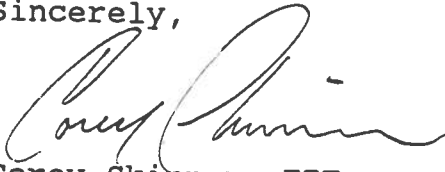
March 11, 1998

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
ADJUDICATION CLAIM VERIFICATION REPORT

14:47:31
04/19/91

PAGE: 12
QUICKLOOK INFORMATION

CLAIM NUMBER: A41-000138

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								
POINT OF DIV	Y							
SOURCE								
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME	Y							
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
MAPP 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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:47:31
04/19/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A41-000138

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?
VERIFICATION REQUIRED DUE TO REMARKS?
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: _____
DATE OF FIELD EXAM: ____/____/____
ACCOMPANIED BY: _____
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / REMARKS:

A. AJ CLAIM: # A41-000138 PRIORITY DATE: 05-01-1881 STAGE: D
B. WR RECORD: # 41-00013 PRIORITY DATE: 05-01-1881 STAGE: D

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N()
IF YES EXPLAIN.

REMARKS:

RECOMMENDED PRIORITY DATE:
05-01-1881

REVIEWED BY _____ DATE _____

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A41-000138	10S	31E	20	NE	NW	SW		POWER

OTHER AJ CLAIMS WITH SAME AJ POD

WR RECORDS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX
A41-000038 NONE

NONE

SOURCE: ROCK CREEK, SOUTH FORK

TRIB: ROCK CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
41-00013	10S	31E	29		NE	NW		POWER

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

NONE

NONE

NONE

SOURCE: ROCK CREEK, SOUTH FORK

TRIB: ROCK CREEK

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY?	(Y/N)	DATABASE	FIELD EXAMINER
	Y		
DUE TO SOURCE DISCREPANCY?	(Y/N)	N	

REMARKS:

A. ROOT WATER RIGHT NUMBERS:

A41-00013B
A41-00013C

A41-00013A

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	MR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
10S	31E	20	NW	NW		SPILETT, JAMES JUAN	A41-00013B /38.0	-	/		26.0
			NW	NW		SPILETT, JAMES JUAN	A41-00008B /38.0	-	/		
			NW	NW		JACKSON, BRADLEY		41-00013	/		
			NW	NW		SPILETT, JAMES JUAN		41-07053	/40.0		
10S	31E	20	SW	NW		SPILETT, JAMES JUAN	A41-00013B /40.0	-	/		34.0
			SW	NW		SPILETT, JAMES JUAN	A41-00008B /40.0	-	/		
			SW	NW		JACKSON, BRADLEY		41-00013	/		
			SW	NW		SPILETT, JAMES JUAN		41-07053	/40.0		
10S	31E	20	SE	NW		SPILETT, JAMES JUAN	A41-00013B / 2.0	-	/		
			SE	NW		SPILETT, JAMES JUAN	A41-00008B / 2.0	-	/		
10S	31E	20	NE	SW		SPILETT, JAMES JUAN	A41-00013B /10.0	-	/		13.0
			NE	SW		SPILETT, JAMES JUAN	A41-00008B /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		
10S	31E	20	NW	SW		SPILETT, JAMES JUAN	A41-00013B /30.0	-	/		30.0
			NW	SW		SPILETT, JAMES JUAN	A41-00008B /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		
TOTAL ACRES						A41-00013B	120.00				103.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N ()
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE FIELD
Y EXAMINER

PRESUMPTION FLAG: D

REMARKS:

RECOMMENDATIONS:

00	00
01	01
02	02
03	03
04	04
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92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99

TOTAL ACRES:

REVIEWED BY:

100

DATE:

[illegible]

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A41-000138 IRRIGATION	FROM 03-15 TO 11-15	.200 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.200 CFS

B. WR RECORDED USES:

PURPOSES	FROM	MONTH/DAY	DIVERSION QUANTITY
A41-00013 IRRIGATION		TO	.600 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.600 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)	Y
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: 0.200 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.600 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: A41-00008B

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A41-00013B	ROCK CREEK, SOUTH FORK	SPILETT, JAMES JUAN	0.200	0.001		
A41-00008B	ROCK CREEK, SOUTH FORK	SPILETT, JAMES JUAN	0.800	0.006		
A41-00008D	ROCK CREEK, SOUTH FORK	WESTON, R. SCOTT	0.535	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 0.200	DATABASE EXAMINER	DATABASE EXAMINER 360.0
TOTAL FOR THIS RIGHT		0.200		360.0

REVIEWED BY: _____

DATE: _____

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

ACCEPTED
AS CLAIMED
() ()
() ()
() ()

NEEDS
REVIEW
() ()
() ()
() ()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 41-00013

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
0.600

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
A41-00013	A41-00013B	0.200	-	-	41-00013	0.600
A41-00013	A41-00013C	0.200	-	-	41-00013	0.600
A41-00013	A41-00013A	0.200	-	-		
TOTAL CFS		0.600				0.600

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
If NO, is the written review sheet attached? (Y/N)

DATABASE
N
FIELD
EXAMINER

REMARKS:

AUTHENTICATION:
SIGNATURE: _____ DATE: _____
NAME OF FIELD EXAMINER: _____ TITLE: _____

Water Right Number - 41-000138

Prefix Translation:

WATER RIGHT

Old (D) Number -

Last Name - +

First Name - +

Address -

Priority Date - +
00/00/0000

Region - +
ERROR IN REGION

Stage - +

Status - +

Source - +

Tributary -

Twn Rng Sec Tract Lot Rflg County

Point of Diversion -

Stream Index (Blank if no Index Code)

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

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

Twn Rng Sec Tract Lot Acres Code Description County

Diversion Means -

Non-Irrigation Use -

Other Rights for Same Use -

Remarks -
No Remarks found.

Old Water Right Numbers -
No Old Water Right Numbers found.

Conditions of Approval -
No Conditions of Approval found.

Decree Plaintiff - + Decree Defendant - + Decree Date - +
00/00/0000

Comments -
No Comments Found

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 -
Exam to S.O. Date - 00/00/0000 Verified Date - 00/00/0000 DLE/Carney Act -
Order Show Cause - 00/00/0000 Receipt Number - Water District -
Licensed Date - 00/00/0000 Appl Received - 00/00/0000 Transfer/Amended -
Decree Date - 00/00/0000 Presumption Flag -

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: