

those licenses never held title to the Patterson land. Therefore, he argues, his right to irrigate the entire 40 acres cannot be circumscribed under those improvidently issued licenses.

Patterson's argument in this regard would only result in his being denied any water right under the licenses contrary to the finding of the Special Master. If it was concluded that the licenses could not confer any water right whatsoever on the Patterson land, then it would follow that the Special Master's finding of partial validity of the licenses would similarly have to fail, resulting in Patterson's having no water right on his lands.

The Special Master found that in 1982 Patterson applied to IDWR for a transfer under the two licenses to add a well to supply water to property separated from the original place of use occasioned by a sale. The transfer was granted. However, Patterson admits that from 1983, the time the transfer was approved, to the present the only water use on his 40 acres was the irrigation of 1.6 acres from his domestic well. He further admits that at no time since the original permits were issued was the remaining 38 acres of his property irrigated or even irrigable. The Special Master found, and the record fully supports, that the 38 acres in question were completely cleared of topsoil by a prior owner and were, therefore, rendered nonirrigable. The Special Master's findings of partial validity of the licenses (36-07409 and 36-07631) is well supported in the record and is not clearly erroneous.

Secondly, Patterson challenges the Special Master's finding that the 1992 application to IDWR was for a transfer of a water right rather than application for a new water right. He claims that the application was for an entirely new water right. Here the record is clear that, whatever Patterson's intention, he filed an "Application for Transfer of Water Right" dated October 8, 1982. As part of that application, Patterson confirmed that no portion of the water right had undergone a period of five or more consecutive years of nonuse. This statement clearly implies the intention to transfer an existing water use rather than to apply for an entirely new water right. The record fully supports the Special Master's finding and is not clearly erroneous.

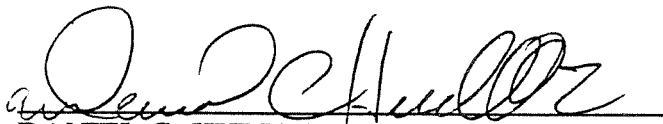
Ultimately, Patterson's challenge must fail because the fact remains that only 1.6 acres of his land is even irrigable. Patterson acknowledges that only 1.6 acres has ever been irrigated. Therefore, whatever the basis for decreeing his right, Patterson has only beneficially used water for the irrigation of 1.6 acres.

The challenge to the *Special Master's Report and Recommendation* is denied. The Report and Recommendation of the Special Master in subcase 36-10664 is adopted by this court and water right 36-10664 shall be decreed consistent with the Special Master's recommendation.

This court adopts the findings of fact and conclusions of law in the *Special Master's Report and Recommendation* as its own and they are incorporated herein by reference. This Memorandum Decision constitutes the court's findings of fact and conclusions of law.

IT IS SO ORDERED.

DATED September 10, 1996.

A handwritten signature in black ink, appearing to read "Daniel C. Hurlbutt, Jr.", written over a horizontal line.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION ON CHALLENGE TO SUBCASE 36-10664 was mailed on September 10, 1996, with sufficient first-class postage to the following:

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