

NAME AND ADDRESS: DEAN GRAHAM
4397 E 2000 N
SUGAR CITY ID 83448

TRIBUTARY: TETON RIVER

PRIORITY DATE: 03/15/1879

T06N R40E S13 SWNWNE Within MADISON County

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.360 CFS

T06N R40E S13 NENW 9.00

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

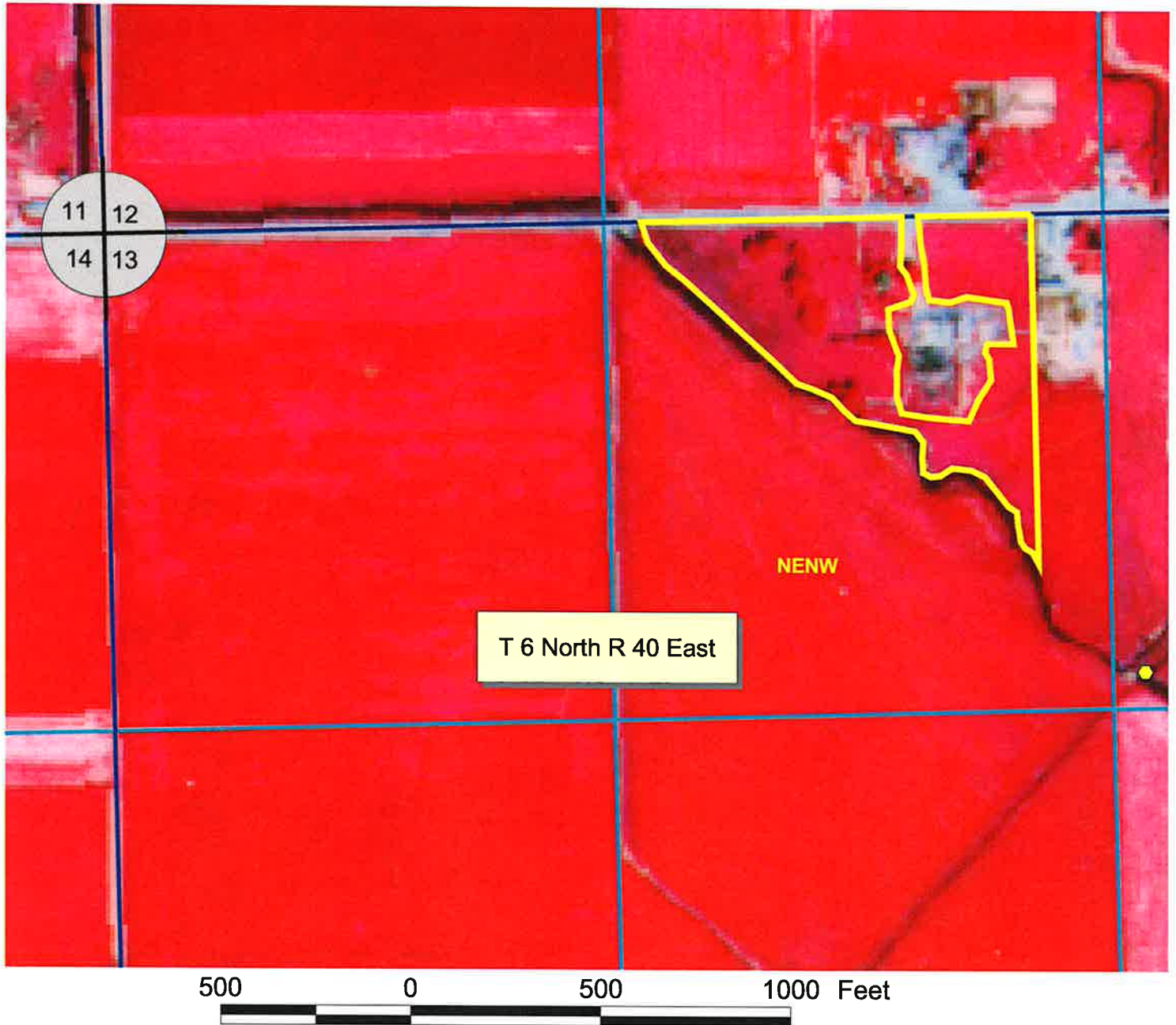
EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed



State of Idaho
Department of Water Resources
Eastern Region



Claim No.(s): 22-13477



- Place of Use
- Points Of Diversion
- Sections
- Quarter Quarter

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by T. Galbraith
Date: Feb. 2006



- claimant gets .36 cts
based on the 9 acres he
states is irrigated. This rate
will be decreased by half
after June 20th of each year.

JB 2-14-06

Fullmer, Almond L.

Lots 3 and 4, and E $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 19, T.
6 N., R., 45 E., B. M.

Fullmer, Buckley

SE $\frac{1}{4}$ of Sec. 19, T. 6 N., R., 45 E., B. M.,
containing 160 acres.

Fullmer, H. D.

S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 25, and S $\frac{1}{2}$ of NE $\frac{1}{4}$ of
Sec. 26, T. 6 N., R., 45 E., B. M.,
containing 160 acres.

G.

Gale, Joseph

NW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$, and lots 1 and
2, of Sec. 7, T. 5 N., R., 45 E., B.
M., containing 160 acres.

Garn, Martin

NW $\frac{1}{4}$ of Sec. 13, and E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 14,
T. 6 N., R., 40 E., B. M., containing
240 acres.

480 in 3-15-1879
Moody creek
22-26S

Garwood,
Charles E.

E $\frac{1}{2}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NE $\frac{1}{4}$, and NW $\frac{1}{4}$ of SE $\frac{1}{4}$
of Sec. 18, T. 15 N., R., 42 E., B. M.,
containing 200 acres.

Gibbs, S. W.

N $\frac{1}{2}$ of SW $\frac{1}{4}$, and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 24, T.
4 S., R., 32 E., B. M., NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of
Sec. 24, NE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NW $\frac{1}{4}$ of NE $\frac{1}{4}$
of Sec. 25, T. 4 S., R. 32 E., B. M.,
SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 24, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of
Sec. 25, T. 4 S., R., 32 E., B. M.,
containing 360 acres.

Trans # 186

Gibson, R. F.

SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, and N $\frac{1}{2}$ of SW $\frac{1}{4}$
of SW $\frac{1}{4}$ of Sec. 25, Lots 2, 3, 4, 5 and 7
of Sec. 27, S $\frac{1}{2}$ of NE $\frac{1}{4}$, and lots 1 and 2
of Sec. 26, and lots 5 and 6 of Sec. 22,
T. 5 N., R., 37 E., B. M.

Gibson, Wesley

Lots 3 and 4 of Sec. 26, and N $\frac{1}{2}$ of NE $\frac{1}{4}$ of
Sec. 35, T. 5 N., R. 37 E. B. M.,
E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 26, S $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of
~~SE $\frac{1}{4}$ of Sec. 26, S $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$,~~
and lot 1 of Sec. 35, T. 5 N., R.
37 E., B. M., containing 400 acres.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 25, 2006

FRIENDS OF MOODY CREEK
PO BOX 610
REXBURG ID 83440

RECEIVED

JAN 30 2006

Department of Water Resources
Eastern Region

Dear Friends of Moody Creek:

On March 31, 2005, George Brown an owner of land along Moody Creek in Madison County, Idaho, wrote a letter to the Idaho Department of Water Resources (IDWR). The letter alleged excessive diversion of water by Merle and Janice Jeppesen (Jeppesens) from Moody Creek. On September 7, 2005, several persons, identifying themselves as "Friends of Moody Creek," sent a letter to Dave Tuthill, Administrator for the Water Management Division of IDWR. George Brown was also one of the signatories of the letter. The September 7, 2005 letter also alleged excessive diversion of Moody Creek water by Jeppesens. This letter is a response to both letters.

Water right no. 22-265 was decreed in 1910 in the case of *Rexburg Irrigation Co. v. Teton Irrigation Co.* The right allowed diversion from Moody Creek of 9.6 cfs from April 1 to June 20, and 4.8 cfs from June 21 to November 1. Two transfers have been approved allowing diversion of water from Moody Creek by Jeppesens.

Transfer no. 2034

The records of IDWR show that a portion of water right no. 22-265 was transferred in 1977 to 85 acres of land owned by Jeppesens. At the time the application for transfer was filed, Jeppesens submitted a copy of an agreement between Merle & Keith Jeppesen and Dean Graham as authority to change the place of use of water right no. 22-265. In the agreement, Dean Graham, as owner of all or a part of water right no. 22-265, agreed to allow Merle & Keith Jeppesen to use 140 inches (2.8 cfs) of water right 22-265 in exchange for use of other water rights held by Merle & Keith Jeppesen. The application for transfer sought to transfer 4.0 cfs from April 1 to June 20 and 2.0 cfs from June 21 to November 1 to a new point of diversion and place of use.

The approved transfer authorized an upstream change in the point of diversion on Moody Creek and implicitly recognized the 4.0/2.0 cfs flow rates sought.

The approved transfer required installation of a measuring device approved by IDWR and limited the irrigation to 85 acres. The transfer did not impose a volume limitation. The transfer stated that the 85 irrigated acres would be rotated within a 320-acre place of use.

Unnumbered Application for Transfer

In 1980, Jeppesens filed another application for transfer, attempting to enlarge the place of use for portions of water right no. 22-265. The application was denied in 1983.

Application for Transfer no. 3002

In 1984, Jeppesens filed another application for transfer, numbered 3002. The application sought approval of the diversion of 4.0/2.0 cfs for the irrigation of an additional 115 acres. A deed from the Dean Graham Estate was submitted as proof of authority to file the application for transfer. The deed and the application for transfer cross-referenced the earlier agreement allowing use under the first transfer.

The application for transfer was approved. Irrigation with the portion of water right no. 22-265 transferred was limited to 115 acres. The 115 acres could be irrigated within a larger 515-acre place of use. The water right holder was required to install a totalizing meter and lockable controlling works.

The application stated that additional water was delivered to irrigate the larger 515-acre place of use through the East Teton Canal.

The file contains computations that were the basis for determining 2.5 acre-feet per acre as the annual diversion volume that should be allowed by the transfer. The calculations are attributed to Ronald Carlson, IDWR employee and Watermaster for Water District 01, although his name is not on the calculation sheet. The author of the computation sheet assumed the system could divert a maximum of 1,800 gallons per minute, and could only irrigate two of three fields, each ranging in size from 145 acres to 177 acres, during an irrigation season. He determined how much water would be delivered to a crop of potatoes in one field and a crop of grain in another field during a single irrigation season. The area of both fields totaled between approximately 320 and 350 acres. Because the grain was irrigated early and the potatoes were irrigated later, the water could be used on all the acres. With two of the three fields irrigated, the author determined an annual volume diverted of between 356 acre-feet (minimum) and 400 acre-feet (maximum) per year.

The results of the calculations were further analyzed by Jim Johnson in a memo dated July 10, 1985. Johnson divided the minimum and maximum volumes computed by each of the individual field acreages (145 acres, 172 acres, and 177 acres) to determine a range of volumes per acre. The approximate average of these computations was 2.5 acre-feet per acre. This computation was erroneous because the initial volume calculation was based on irrigation of two fields, and Johnson's computation was based on use of water on one field. Johnson

multiplied 115 acres by 2.5 acre-feet per acre. The resulting product of 288 acre-feet was included as the upper annual volume limit for the portion of water right no. 22-265 transferred.

Interpretation of the Transfers

In reviewing the file, there is some uncertainty about whether the second transfer was intended to include an additional 4.0/2.0 cfs, or whether the transfer sought to irrigate more lands with the previous flow rate transferred. In the past, IDWR interpreted each transfer as having moved fully independent portions of water right no. 22-265. Based on IDWR's past interpretations, Jeppesens have the authority to divert up to 8.0 cfs from April 1 to June 20 and 4.0 from June 21 to November 1 under the two transferred portions of water right no. 22-265.

Transfer no. 2034 did not determine an annual volume of water for irrigation of the 85-acre place of use. Transfer no. 3002 limited the annual volume to 288 acre-feet for irrigation of the 115-acre place of use. Both transfers identified a fixed number of acres that could be irrigated within a larger block of irrigated land. Both transfers required installation of a measuring device acceptable to IDWR.

Claim No. 22-4195

Claim no. 22-4195, filed by K. Merle Jeppesen, asserts the perfection of a water right by beneficial use of water diverted from Moody Creek. The claim asserts the right to divert 4.0 cfs of water from Moody Creek for the irrigation of 530 acres. Merle Jeppesen asserts that the water was beneficially used as claimed on July 15, 1965.

Merle Jeppesen has asserted the perfection of a water right by filing Snake River Basin Adjudication (SRBA) Claim no. 22-4195. SRBA Claim no. 22-4195 has not been decreed by the SRBA Court.

As long as Claim no. 22-4195 is a claimed beneficial use, it will be one of the first water rights shut off by the watermaster during regulation.

Claim No. 22-594

Claim no. 22-594 identifies Jeppesens points of diversion for a water right claimed by Woodmansee-Johnson Canal Company. Ryan Madsen, Deputy Watermaster for Water District 01, stated the Woodmansee-Johnson water has not been delivered to Jeppesens' diversion in recent years.

Subsequent Activities

Following the approval of the above discussed transfers and filing of a claim for an additional water right, controversy about Jeppesens' diversion has stirred for almost two decades. An Order to Show Cause was issued to Jeppesens on October 28, 2002 directing K. Merle and/or Janice Jeppesen to show cause why IDWR should not issue a notice of violation for illegal use of water. In the settlement of the violation, the requirement for installation of adequate measuring devices was reiterated.

An August 18, 2003 memo written by Ryan Madsen states that Jeppesens installed a Grainland meter and a data logger, but it was unreliable. The memo states that the flow meter would not read accurately, and that the Jeppesens attempted to recalibrate the meter several times. The memo also states that Water District 01 staff derived a power consumption coefficient for the pump(s). In the last paragraph of the memo, Madsen states:

Because the transfer conditions are so confusing, regulating more than the rate of diversion is difficult, even though there appears to be both a volume limit and an acreage limit on the transfer. Since the right Jeppesen has is the oldest water right in Water District 1, the right will never be cut, based strictly on priority. It appears that the authorized rate of diversion will never be exceeded by the Jeppesen pumps.

Both transfers approved for Jeppesens' diversion require measurement of the water diverted. Both transfers also limit acreage irrigated.

In 2005, Ryan Madsen regulated the Jeppesen diversion. Attached is a spreadsheet summarizing Jeppesens' diversions. The summary spreadsheet includes both the daily flow rate and total annual volume pumped. The highest flow rate diverted by Jeppesens was 4.0 cfs. The total volume of water diverted during the 2005 irrigation season was 346.9 acre-feet.

I asked Madsen how the flows were determined, recorded, and reported. Jeppesens are required to submit a pump card to Water District 01 every month of the irrigation season. The pump card must contain diversion information for the entire month. Jeppesens are responsible for the reading, recording, and reporting.

I asked Madsen how Jeppesens measure the flow rate pumped. Madsen told me there is a single mainline leading from Jeppesens' pumps. Originally, Jeppesens installed a Grainland meter. As stated before, information in the file indicates that measurements of flow with the Grainland meter have been unreliable. Madsen also told me that, at the end of the summer of 2005, Jeppesens installed a mechanical meter in the pipe, most probably a propeller meter. Madsen has not seen the meter operate, and does not know whether it is accurate. As a result, I believe the flow rates reported were not measured but were estimated based on system operation.

Madsen measured the flow in Jeppesens' mainline with an ultrasonic meter on July 19, 2005 as summarized at the bottom of the spreadsheet. Madsen's measurement was within a reasonable range of the flow rate Jeppesens reported for that day.

I also asked Madsen about the power consumption coefficient he derived. Madsen told me the inputs to the coefficients were based on pumping only the smaller of two pumps that lift water from Moody Creek into Jeppesens' pipeline. A power consumption coefficient can only accurately estimate water diverted if a coefficient is derived for the use of each pump and also for the two pumps both pumping together if they are used that way. If the pump is valved back at all to reduce pressure in the lines, additional coefficients must be derived. If more than one pumping configuration is employed, the time that the system operates under each configuration must be recorded and the power coefficient derived for that particular configuration must be applied to a pro rata share of the power used. Without further assurance, I cannot be confident that estimates of annual volume can be accurately determined using the single power consumption coefficient.

In a telephone conversation on January 19, 2006, James Wood told me he thought the spreadsheet provided by Ryan Madsen was accurate. James Wood told me he thought Jeppesens' adherence to flow rate limits were a result of monitoring done by outside persons, not by Water District 01.

Questions Asked

Brown Letter of March 31, 2005

Is there a remedy to cancel the transfer and return Jeppesens' water rights back to the lower end of Moody Creek?

Determining whether there is a remedy is a legal question I am not willing to answer.

What will the Department do about irrigation of more than 200 acres?

Prior to irrigating with Moody Creek water in 2006, Jeppesens should identify for IDWR the 200 acres that will be irrigated with Moody Creek water.

Can you send me a photograph of the totalizing meter and lockable controlling works?

The totalizing meter is discussed herein. I will ask Ryan Madsen to take a photograph during his next visit.

What is right no. 22-4195? How much water can Jeppesens remove from the creek and how many acres can they irrigate?

Answered herein.

Did anybody ever measure the amount of flow at the termination of Moody Creek in August and September when Jeppesens claimed their original rights?

I don't know of any measurement.

Friends of Moody Creek Letter of September 7, 2005

Who is responsible to monitor the number of acres irrigated?

It is the responsibility of IDWR with assistance from the watermaster.

Doesn't interconnection of water from all sources of water make it impossible to verify where water from Moody Creek is going?

I am uncertain whether Jeppesens are commingling Moody Creek water with water from other sources. Jeppesens cannot commingle Moody Creek water with water from other sources to irrigate more than 200 acres unless IDWR determines historical consumptive use and limits the Moody Creek diversion by the historical use volume.

Why isn't there a reliable and accurate measuring device?

Prior to irrigating in 2006, Jeppesens must install a reliable measuring device. The measuring device must accumulate volume diverted and read instantaneous flow rate.

Why aren't specific acreage restrictions enforced?

See explanation herein.

Conclusion

After reviewing all the information, I conclude the following: (1) Prior to irrigating with Moody Creek water in 2006, Jeppesens should either (i) identify for IDWR, the 200 acres that will be irrigated with Moody Creek water; or (ii) if Moody Creek water will be commingled with water from another source, submit historical crop use information spanning several recent years that will establish a historical consumptive use from which IDWR can determine an historical diversion volume; and (2) Jeppesens must install a reliable and in-field calibrated measuring

Friends of Moody Creek
January 25, 2006
Page 7 of 7

device that will accurately accumulate volume diverted and read instantaneous flow rate. By this letter, I am asking Ryan Madsen and Water District 01 to determine compliance by regularly visiting Jeppesens' diversion works unannounced and checking the flow meter to determine the flow rate diverted. The meter should also be calibrated at least once a year. By this letter, I am also asking Ryan Madsen and Water District 01 to discontinue use of the power consumption coefficient until IDWR is assured it can be used accurately.

I am sending this letter to Jeppesens and their attorney shown in IDWR records for comments and further input before implementing the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman". The signature is fluid and cursive, with a large loop at the end.

Gary Spackman

Enclosure

Cc: Merle Jeppesen
Bevan Jeppesen
Jerry Rigby
Lyle Swank
Ryan Madsen
George Brown

Jeppsen, Bevan and Dalan

Date	April	May	June	July	August	September	October
1				2.8	1.3	1.2	
2				2.8	1.9		
3				2.8	1.1	0.5	
4				2.8	1.9	0.5	
5				2.8	1.9	1.6	
6				2.8	0.7		
7				2.8	1.9		
8				2.8	1.6		
9				2.8	1.6		
10				2.8	0.8		
11				2.8	0.3		
12				2.8	1.3		
13				2.8	0.5		
14				2.8	0.9		
15			1.2	2.8	1.6		
16			2.6	2.8	1.0	0.8	
17			2.6	2.8		1.6	
18			3.3	2.8		1.6	
19			4.0	2.8		1.1	
20			4.0	2.8			
21			4.0	2.8			
22			3.5	2.8			
23			1.7	2.8	1.6		
24			4.0	2.8	1.6		
25			4.0	2.8	1.0		
26			2.6	1.5			
27			3.9	1.3	1.0		
28			4.0	2.0	1.6	1.6	
29			4.0	2.0	0.6	0.8	
30			4.0	2.0	0.8		
31				2.0	1.6		
Total			53.4	80.4	29.9	11.1	

Flow Rate

PCC

7/19/2005

2.72 cfs for single pump

1.65 KWH/ hr pumping

24 hr cfs

174.8

AF

346.8



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 16, 2003

JERRY RIGBY
RIGBY THATCHER ANDRUS et al
PO BOX 250
REXBURG ID 83440

**RE: WATER RIGHT NO. 22-0265 AND APPROVED TRANSFER NOS. 2034 AND
3002, JEPPESEN ORDER TO SHOW CAUSE**

Dear Mr. Rigby:

The Department has reviewed your letter dated April 11, 2003 together with an amended SRBA claim in the name of Woodmansee-Johnson Canal Company, Mr. Jeppesen's statement that he has installed a lockable device on each pump and will install measuring device(s) on his point(s) of diversion before May 1, 2003, together with affidavits of several parties in support of the "accomplished transfer" of the second point of diversion for the Woodmansee-Johnson Canal Company.

The affidavits submitted to support SRBA Claim 22-0594 will be subject to review by SRBA staff as a part of the ongoing adjudication. By copy of this letter to Ron Carlson, I am requesting that his office inspect the measuring device installation and lockable controlling works for adequacy and monitor water diversions and uses from Moody Creek during the 2003 irrigation season.

If you have questions, please feel free to contact Ron Carlson or me.

Sincerely,

L. GLEN SAXTON, P.E.
Acting Administrator
Water Management Division

c: IDWR - Ron Carlson
IDWR - Tim Luke
Billie G. Dupree, Jr.

RECEIVED
APR 21 2003
Department of Water Resources
Eastern Region

T# 2034



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 28, 2002

RECEIVED
OCT 31 2002
Department of Water Resources
Eastern Region

K. Merle and/or Janice Jeppesen
434 Morgan
Rexburg, Idaho 83440

Re: Water Right No. 22-265 and Approved Transfers No. 2034 & 3002

Dear Mr. and Mrs. Jeppesen:

Enclosed is an order to show cause issued in connection with the above referenced water right.

The order allows until December 2, 2002, in which to submit evidence why the Department should not issue a notice of violation and an order requiring installation and maintenance of controlling works and measuring devices.

If you have any questions, or if I can be of any assistance in explaining this matter, please feel free to contact me.

Sincerely,

Norman C. Young
Administrator
Water Management Division

:vw
Encl.
cc: Ron Carlson

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 31 2002
Department of Water Resources
Eastern Region

IN THE MATTER OF DIVERSION OF WATER)
WITHOUT A VALID WATER RIGHT OR NOT)
IN CONFORMANCE WITH A VALID WATER) **ORDER TO SHOW CAUSE**
RIGHT ON LANDS OWNED OR CONTROLLED)
BY K. MERLE AND/OR JANICE JEPPESEN)
_____)

The Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or apparent violations of the provisions of the law relating to the appropriation, distribution and use of water, has conducted an investigation of certain diversions of water being made by or under approved transfer nos. 2034 and 3002.

Based upon the department's investigation, the department sets forth the presently known facts and applicable law as follows:

FACTS

1. Water right no. 22-265 was decreed in the case Rexburg Irrigation Co. vs. Teton Irrigation Co., dated December 16, 1910, in the Sixth Judicial District Court, Fremont County. The water right was decreed to Garn Martin for irrigation and other purposes in the amount of 480 inches (9.6 cfs) to be reduced to 240 inches (4.8 cfs) after June 20th of each year, with a source of Moody Creek and a priority date of March 15, 1879.

2. Transfer application no. 2034 was filed by K. Merle and/or Janice Jeppesen in 1976 to change the point of diversion and place of use for a portion of the right to be designated as right no. 22-265B. In 1977, the Idaho Department of Water Resources (department) approved the transfer of 4 cfs (2 cfs after June 20) to a new point of diversion and place of use upstream on Moody Creek and limited irrigation to 85 acres. One of the conditions of approval of the transfer was the requirement of a measuring device to be permanently installed and maintained as part of the diverting works.

3. Transfer application no. 3002 was filed by K. Merle and/or Janice Jeppesen in 1984 to change the point of diversion and place of use for an additional portion of the original decreed right to be designated as right no. 22-265D. In 1985, the department approved the transfer of 4 cfs (2 cfs after June 20) to a point of diversion and place of use at the same general location as approved under transfer no. 2034 and limited irrigation to 115 acres and 288 acre-feet per annum under the transfer. The approval

required a totalizing meter and lockable controlling works to be permanently installed and maintained as part of the diverting works.

4. A statutory claim (no. 22-4195) was filed by K. Merle and/or Janice Jeppesen in 1985 for irrigation of 530 acres with point of diversion and place of use at the same general location as transfer nos. 2034 and 3002. The claim lists a quantity of 4 cfs from Moody Creek with a priority date of July 15, 1965.

5. The department has received complaints and information from interested parties asserting that the use of water from Moody Creek on lands owned or controlled by K. Merle and/or Janice Jeppesen is in excess of authorized water rights and is not in compliance with the conditions of approval for transfer nos. 2034 and 3002, including the measuring device requirements. Department review of 2002 satellite imagery indicates irrigation in excess of the 200-acre limit within the place of use authorized under transfer nos. 2034 and 3002. Water was not available to fill statutory claim no. 22-4195 during the 2002 irrigation season due to drought conditions.

APPLICABLE LAW

1. Section 42-351(1), *Idaho Code*, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, *Idaho Code*, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201(1), *Idaho Code*, provides in pertinent part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. Section 42-1701B(6), *Idaho Code*, provides in pertinent part as follows:

(a) Any person determined in a judicial civil enforcement action to have substantially violated any provision of title 42, *Idaho Code*, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to

exceed ten thousand dollars (\$10,000) per violation or one hundred fifty dollars (\$150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, *Idaho Code*, shall be liable for a civil penalty not to exceed:

- (ii) For irrigation uses, three hundred dollars (\$300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

4. Section 42-701(1), *Idaho Code*, requires appropriators or users of any public waters of the state of Idaho to maintain suitable headgates and controlling works at the point where the water is diverted. It also provides that each such appropriator shall construct and maintain an appropriate measuring device, when required by the director.

5. Diversion and use of the public waters of the state of Idaho in excess of that authorized under existing rights or not in compliance with existing water rights must be regulated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

6. The information available to the department indicates that the use of water on lands owned or controlled by K. Merle and/or Janice Jeppesen is in excess of existing water rights and is not in compliance with conditions of approval for transfer nos. 2034 and 3002.

ORDER

IT IS HEREBY ORDERED as follows:

1. K. Merle and/or Janice Jeppesen shall show cause why the department should not issue a written notice of violation in accordance with the provisions of section 42-1701B, *Idaho Code*, for the illegal diversion or use of water from Moody Creek. Such explanation shall include a reporting of acres irrigated and total volume of water diverted during the current 2002 irrigation season from Moody Creek under transfer nos. 2034 and 3002 and any other water rights.

2. K. Merle and/or Janice Jeppesen shall show cause why the department should not issue an order requiring installation and maintenance of controlling works and measuring device(s) with totalizing meter for diversion(s) authorized under approval of transfer nos. 2034 and 3002 as provided in section 42-701(1), *Idaho Code*, and as required as a condition of approval for the transfers. Such explanation shall include a description of current means of control to ensure that the diversion of water is within authorized limits.

3. The information required above shall be submitted to the department by

December 2, 2002.

DATED this 28TH day of OCTOBER 2002.


NORMAN C. YOUNG, Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of October, 2002 I mailed a true and correct copy, postage prepaid, of this Order to Show Cause, via U.S. Mail, postage prepaid, to the following:

K. Merle and/or Janice Jeppesen
434 Morgan
Rexburg, Idaho 83440


Victoria Wagle
Assistant to the Director

W.D. #01
RECEIVED

OCT 17 1977

Department of Water Resources
Eastern District Office

Transfer No. 2034

Application No. 22-0265

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant K. Merle &/or Janice Jeppesen Phone 356-3638

Post office address Rt. #2, Rexburg, Idaho 83440

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree to Martin Garn (Name)
in case of Rexburg Irrigation Co. et al vs Teton Irrigation Co. et al
dated 12/16/10 in 6th Judicial Dist. county of Fremont
(Name of court)
- b. License No. issued by the Idaho Department of Water Resources
- c. Claim No. on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
From Martin Garn to Frank Garn to applicant (copy of deed attached)

3. Source of water Moody Creek tributary to Snake River

4. Date of priority March 15, 1879

5. Water is used for the following purposes:
amount 9.60* for Irrigation purposes from Apr. 1 to Nov. 1
amount for purposes from to
amount for purposes from to
(month/day - both dates inclusive)

6. Total amount of water under right: a. 9.60* cubic feet per second
&/or
b. acre feet per annum

7. Location of original point of diversion is SE ¼ of NW ¼ of Section 13
Township 6N Range 40E, B.M., in Madison County
Additional points of diversion, if any

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	40E	13					X	X	X	X									160
		14	X			X													80
		(14)			40					10									
NOTE: The SW¼NE¼, (40 acres) and the SE¼NW¼, (10 acres) Sec. 14, T. 6N, R. 40E, was added to the above described lands in the late 30's or early 40's and has been considered a part of the original decree without benefit of filing a transfer. (see warranty deed, Instrument #78479)																			

Total number of acres to be irrigated 240

DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. 4.00* cubic feet per second &/or acre feet per annum *Reduced to 2.00 cf.s. after June 20

2. Point of diversion SE 1/4 NW 1/4, Section 21 Township 5N
Range 41E, B.M., Madison County
Additional points

3. Place of use:

TWP	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
6N	40E	13					5												5
		14	40			40													80

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE 85

1. Change in point of diversion

a. Amount of water to be diverted 4.00 c.f.s. &/or acre feet
Reduced to 2.00 after June 20
b. Point(s) of diversion SE 1/4 NW 1/4, Section 21 Township 5N
Range 41E, B.M., Madison County
Additional points

c. Description of diverting works water to be pumped from Moody Creek within the above description into a sprinkler system

d. Describe the reasons for applying for a change in the point(s) of diversion
Better utilization of water at a point where it can be put to a beneficial use through pipeline before it sinks and is lost in the creek channel

2. Change in place of use

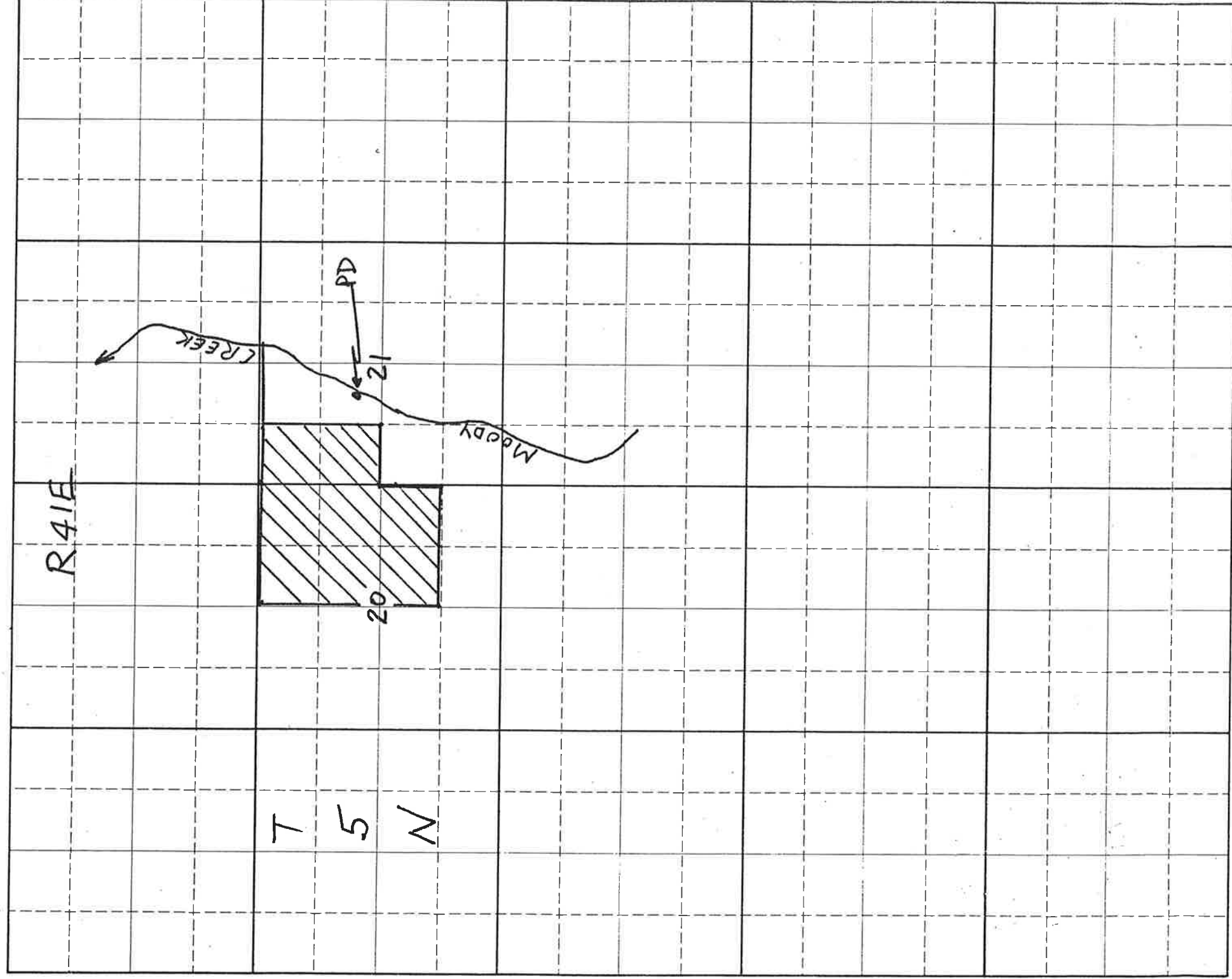
a. Describe the lands or place of use to which the right will be transferred:

TWP	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
5N	41E	20	40	40	40	40									40	40			240
		21						40	40										80

*However, no more than 85 acres of this total will be irrigated in any one year. The place of use will be rotated annually.

Total number of acres to be irrigated 320

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

3. Remarks _____

is

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

Kimberly J. Johnson
(Signature of applicant)

Subscribed and sworn to before me this 17th day of December, 1976

Loren O. Halmer
(Notary public)

My commission expires March 21, 1979

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 22-0265, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

A measuring devices of a type approved by this Department shall be permanently installed and maintained as part of the diverting works. Use of water under this permit is subject to control by the watermaster of State Water District No. 01, Snake River.

Witness my hand this 7 day of October, 1977

A. H. Johnson
Deputy Director

FOR DEPARTMENT USE ONLY

Received by OW Date 12-17-76
OW 3-15-76

Prelim. check by RTC Fee \$30.00

Receipted by OW Date 3-16-76

Published in Highway Journal #15682

Pub. dates Dec. 30 Jan. 6, 1977

Watermaster recommendation requested on 12-23-76

W.D. #01 rec'd. Notation

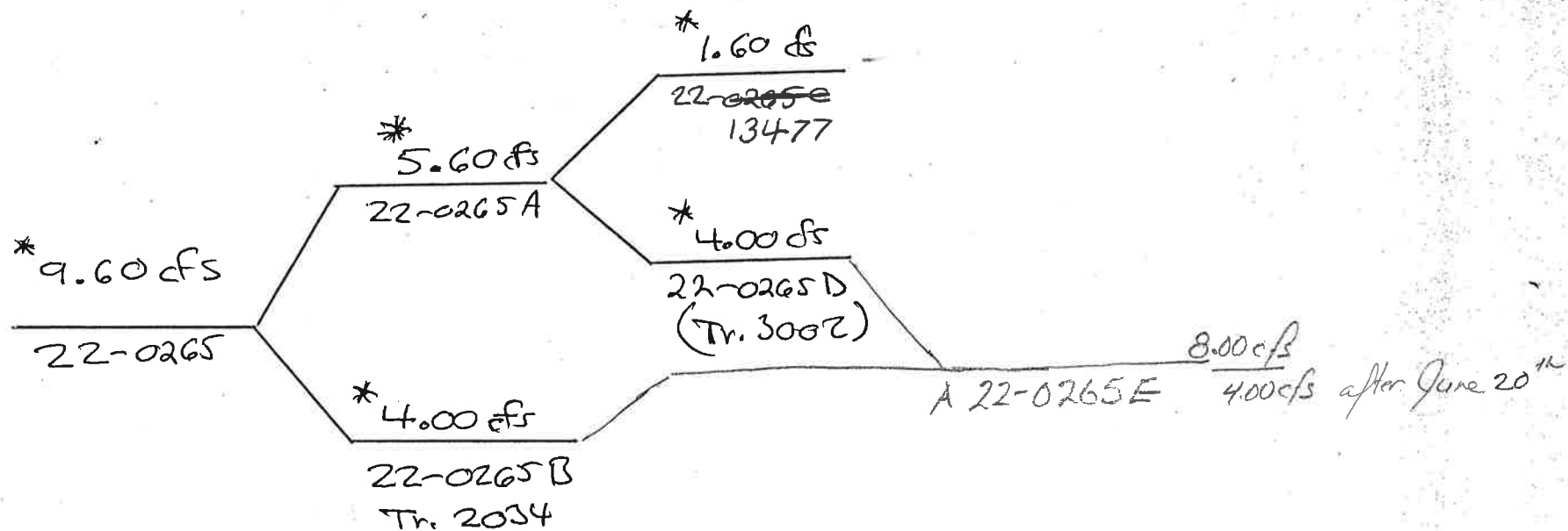
Protest filed by _____

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial
by Jim Johnson

* 50% reduction
in stream delivered
after June 20th



$$85 \text{ acre} \times 3 \text{ AF} = 255 \text{ AF}$$

- Annual -

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 22-13477
Date Received: 2/6/2006
Receipt No: E0031622
Received By: ABR 02/06/06

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

DEAN GRAHAM Phone: (208) 356-6240
4397 E 2000 N
SUGAR CITY ID USA 83448

2. Date of Priority: 03/15/1879

3. Source: MOODY CREEK Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06N	40E	13	SW NW NE	MADISON	

5. Description of diverting works:

Diversion off Moody Creek to ditches.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/31	1.6	

7. Total Quantity Appropriated is:

1.6 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
06N	40E	13	NW NE	IRRIGATION	30
				Section Acres	30
				Total Acres	30

11. Place of use in counties: MADISON

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

13. Other Water Rights Used:

14. Remarks:

This claim is a portion of 22-265.
To be reduced (by half) after JUNE 20 of each year.

15. Basis of Claim: Decreed

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:

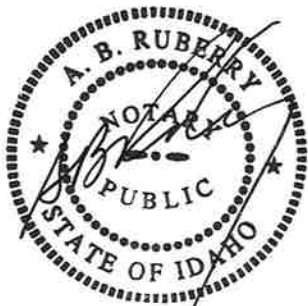
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): W. Dean Graham Date: 2-6-06

Date: _____

State of Idaho)
County of Bennett) SS.

Subscribed and sworn (or affirmed) before me this 6th
of February 2006



A. B. Ruberry
Notary Public

Residing at Donna Raus Idaho

My commission Expires 9/23/09