

02/24/2004

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

RIGHT NUMBER: 23-11258
NAME AND ADDRESS: THOMAS M WALSH
PO BOX 112
SWAN VALLEY ID 83449

SOURCE: RAINEY CREEK TRIBUTARY: SOUTH FORK SNAKE RIVER

QUANTITY: 0.150 CFS
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.33 CFS. COMBINED RIGHT NOS.:
23-11258, 23-11260, 23-11262.
THIS RIGHT WHEN COMBINED WITH RIGHT NO. 23-11258, 23-11260,
23-11262 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 04/15/1889

POINT OF DIVERSION:
T01N R44E S5 SENESW Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.150 CFS

PLACE OF USE: IRRIGATION Within BONNEVILLE County

T01N R44E S05	SWSW	6.4	T01N R44E S05	SESW	6.7
T01N R44E S08	NENW	1.1	T01N R44E S08	NWNW	0.8

15 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 15.0 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 23-11258, 23-11260,
23-11262, 23-11264.

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

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 23-11258, 23-11260, 23-11262, 23-11264.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 23-00019C.

02/24/2004

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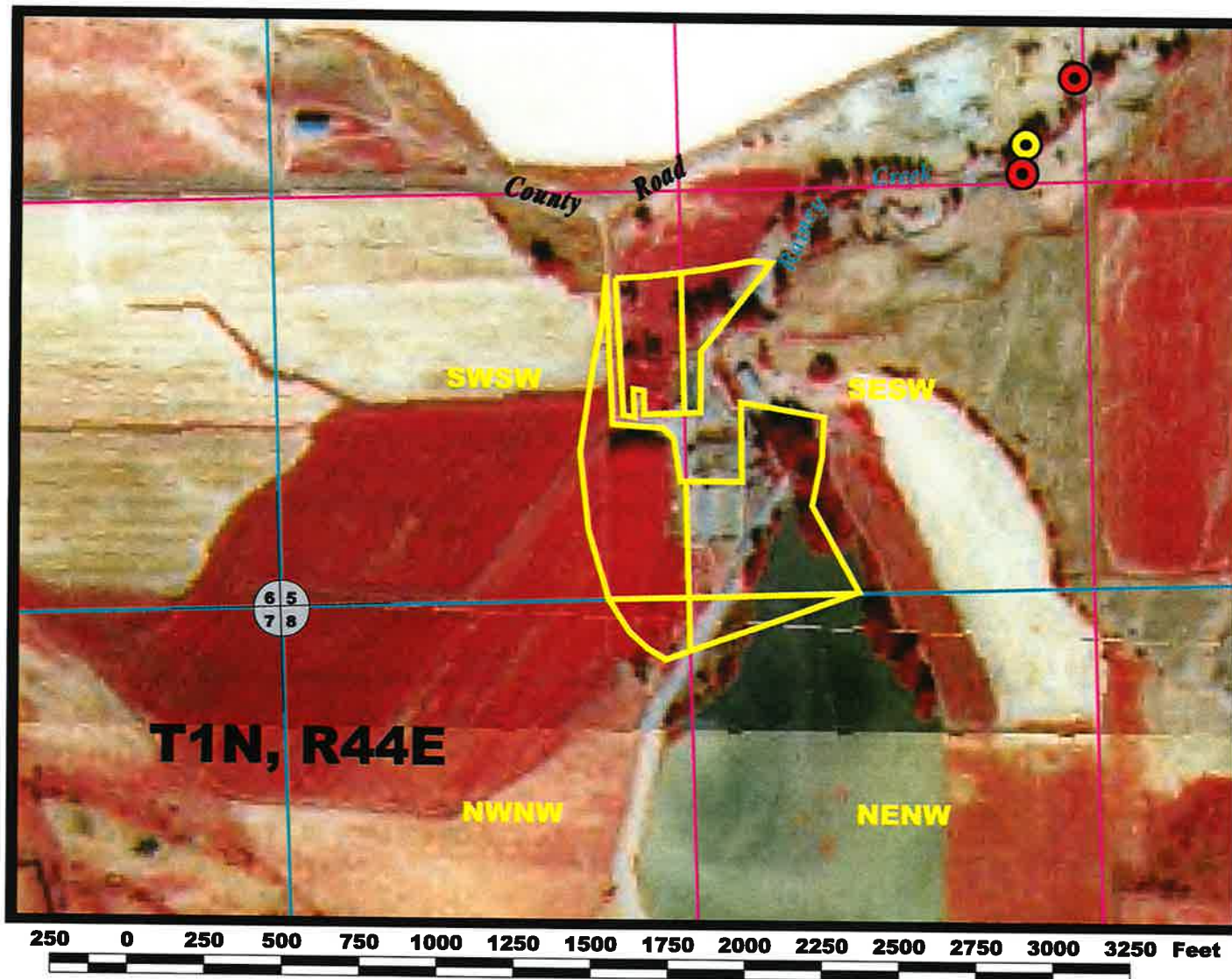


SCANNED

State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):

23-11258,
23-11260,
23-11262,
23-11264

Place of Use: (parts of)

T1N, R44E

Sec. 5 S2SW, Sec. 8 N2NW

Point(s) of Diversion:

T1N, R44E

Sec. 5 SENESW



LEGEND

- Point of Diversion
- SESE Place of Use
- Section
- Quarter-Quarter

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: A. Ruberry
Date: January 2004

02/24/2004

**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:

Water right number: 23-11258

THOMAS M WALSH

PO BOX 112

SWAN VALLEY ID 83449

Telephone Number: (208) 483-2305

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

see enclosed documents

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:

Don't
I AGREE with this proposed recommendation: no changes need to be made.

DATE:

3-16-04

SIGNATURE:

Thomas M. Walsh

Please print your name:

Thomas M. Walsh

IDWR Regional Office,

3/18/04

Right Split Proportionally

No Action Taken

pm

SCANNED
JUL 21 2004

NOTICE OF ERROR REPLY

WATER RIGHT #s 23-11258; 23-11260; 23-11262; 23-11264

From: Thomas M. Walsh
Hansen Guest Ranch
956 Rainey Creek Road
P.O. Box 112
Swan Valley, ID 83449-0112

To: Idaho Department of Water Resources

Re: Snake River Basin Adjudication

With regard to the proposed recommendations regarding Water Right #s 23-11258; 23-11260; 23-11262 and 23-11264, I disagree with the quantity of water allocated.

Attached you will find supporting evidence in the form of a letter from Dennis Hadley, District Conservationist for the Natural Resources Conservation Service, who consulted with Mr. Bob Lehman, Civil Engineer for NRCS in Rexburg. Predicated on their discovery and analysis, I would like to have my quantity of water reflect the figures that they have indicated.

Furthermore, the additional water I would be allocated would not be depriving other water right holders on Rainey Creek of their fair shares because that additional water would be derived from the 10-acre section of previously irrigated land on this ranch that has been sold off without any water rights. Basically, that frees up 10 acre feet of water that already comes from these 4 water rights to be transferred to my allocation, but not so that it surpasses the recommendations of Mr. Hadley. I am not changing the sources nor the priority dates, but utilizing the water from the 4 rights that I own to bring up to par the quantity of water on the property that I still am flood irrigating.

Additionally, my diversion point on Rainey Creek is an extreme distance from the weir and the distance from the weir where the cfs previously has been measured to my property line is an additional distance thus resulting in a significantly reduced conveyance efficiency.

My earlier phone conversation with W. Roger Warner, Eastern Region Water Rights Supervisor, validated my points of dispute, and I was encouraged to file this notice of error. If there are any questions or more information is required, please contact me at 208-483-2305.

Thank you,



Thomas M. Walsh

03-04-04

RECEIVED

MAR 17 2004

Department of Water Resources
Eastern Region



Visited well 9/29/2003.

Well GPS Tag# AO012435

WELL DATA:

Motor: GE 25 Hp SN: NOECJ151034_?

Pump: BJ # 671 0327

Open discharge; 10" increased to 12"

Thomas M Walsh
PO Box 112
Sweet Valley CO
83449
483-2305

Well is from a
LAP500 Permit
Dated to 1967 -
No BCI possible.



Natural Resources Conservation Service
1120 Lincoln Road, Suite A
Idaho Falls, Idaho 83401
Phone: (208)522-6250

September 30, 2003

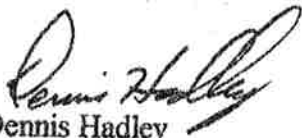
Tom Walsh
Hansen Silver Creek Ranch
P.O. Box 112
Swan Valley, Idaho 83449

I consulted with Bob Lehman, Civil Engineer, NRCS in Rexburg. We used the *Farm Irrigation Rating Index (FIRI)* program to evaluate gross irrigation for a typical situation in the Irwin, Idaho area. It is a relative rating that is the product of management, irrigation system, and potential efficiency factors. For example: the conveyance efficiency uses the length of canal and/or ditch used on fields and the type of soil (Bagerton Variant Sandy Loam) for a conveyance efficiency of 50%.

The flood method of irrigation used on many fields has a potential application efficiency of 50%.

Net crop needed for alfalfa/grass in your climatic area is 21.3 inches (divided by 12 inches/foot = 1.8 acre feet). The attached evaluation resulted in a gross irrigation requirement of 104.33 acre inches per acre, divided by 12 inches = 8.7 acres feet of water per acre of crop. $1.8 \text{ acre feet} / 8.7 \text{ acre feet} = 21\%$ overall efficiency.

Obviously the gravelly soils in the Swan Valley/Irwin area would require much more water to irrigate than the silt loam soils around Idaho Falls.


Dennis Hadley
District Conservationist
Natural Resources Conservation Service

attachments

RECEIVED

MAR 17 2004

Department of Water Resources
Eastern Region

Farm Irrigation Rating Index (FIRI)

Job: Anybody

09/08/03

Location: Irwin

Job Planner: Dennis Hadley

Farm ID/OPID:

Farm name/number: 1

Acres This Field: 100

Crop Grown: Alfalfa/grass

Annual Net Irrigation Requirement (inches): 21.2

Soil Name or Description: Badgerton Variant Sandy L

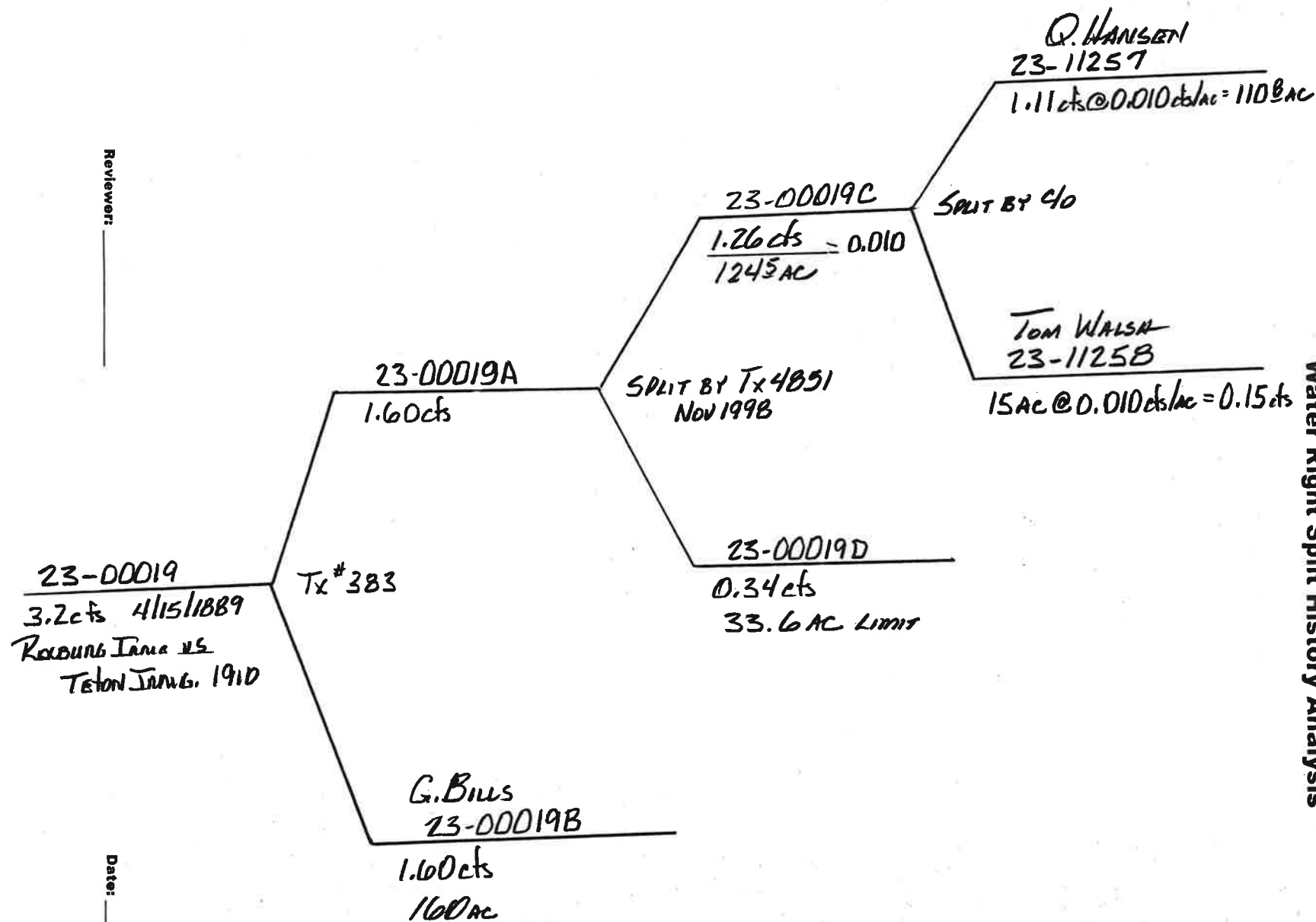
Item	Year (1)	Year (2)	Year (3)	Year (4)
Year:	2003			
SystemType:	Flood			
SystemDescription:	Uncontrolled			
Total required acre feet:	869.42			
Potential efficiency (%):	50			
Seasonal efficiency (%):	20.32			
Runoff (in):	41.57			
Deep Percolation(in):	41.57			

FIRI Factors

Md Water measurement:	0.96
S Soil moist mon & scheduling:	0.94
I Irrigation skill and action:	0.92
M Maintenance:	0.94
D Water delivery:	0.83
Sc Soil condition:	0.96
Wc Water distribution control:	0.94
Ce Conveyance efficiency:	0.88
L Land leveling:	0.79
R Tailwater reuse:	1
C Climatic:	NA
Sd Sprinkler design:	NA
W Wind:	NA
E Emitter Clogging:	NA
T Trickle design:	NA

SEE PARENT 23 - 00019C
FOR EXAM NOTES AND PHOTOS

Water Right Split History Analysis

CLAIMED IN-FULL

Reviewer: _____

Date: _____

**Bonneville County Assessor
Ownership Theme**

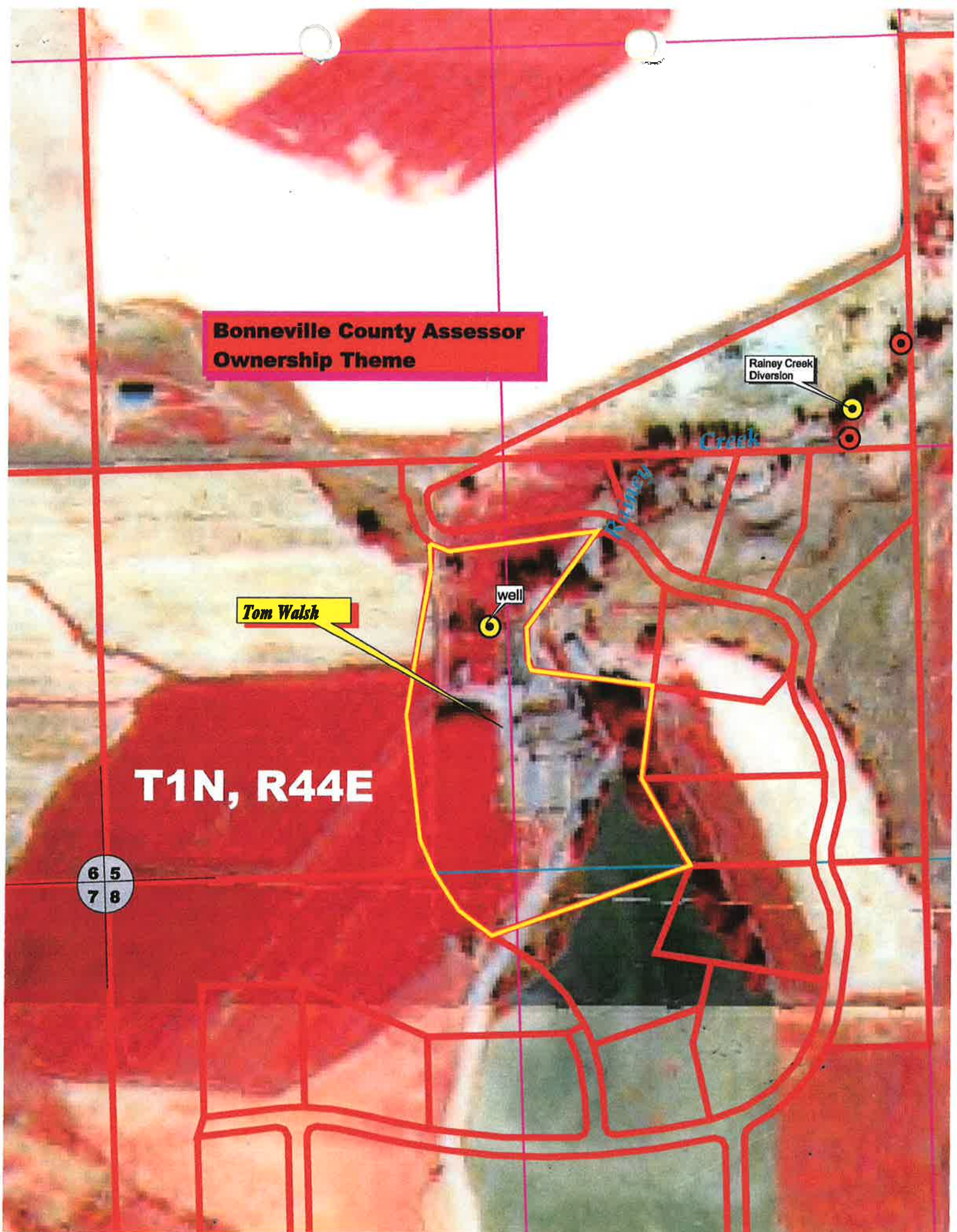
Rainey Creek
Diversion

Tom Walsh

well

T1N, R44E

6 5
7 8





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 1, 2004

Hansen Guest Ranch
C/o Mr. Tom Walsh
P.O. Box 112
Swan Valley, ID 83449

Re: Lapsed Permit No. 23-2080.

Dear Mr. Walsh,

Thank-you for contacting me in regards to the above referenced permit. As of this letter, I am aware of the following:

1. Hansen Guest Ranch was recently purchased (a few years past) by Mr. Walsh. Prior to that time, the property had changed hands a couple of times.
2. The original owner who filed the application for permit was Archie McKay. Mr. McKay received an approved permit on February 23, 1967. In the approval, a date to prove beneficial use was set at February 23, 1972.
3. On May 17, 1977, the department received proof of beneficial use from Mr. McKay.
4. On June 3, 1977, the department responded to Mr. McKay that the proof of beneficial use deadline had long since passed and the permit had therefore lapsed.
5. Adjudication agent, Allen Ruberry, found the lapsed well in his review of water rights for basin 23 and photographed the well on September 29, 2003.

According to our telephone conversation, this well has been used for some time as a supplemental water right and you wish to establish and preserve this water right. In order to do so, it is required to follow the rules that have been established by the Idaho Legislature, particularly statutes 42-218a and 42-219.

Idaho Statute 42-218a (2) indicates that, "...the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit..." Later in the statute, it explains that "upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with priority date advanced to the day that proof of beneficial use was received." For your convenience, I have included a copy of this statute and 42-219. I am also including copies of the pertinent information that has been gathered from our files.

The burden of providing sufficient information (evidence) that provides the department proof of use according to these two statutes is upon you and may take some time. In the

mean time, the Snake River Basin Adjudication (SRBA) is currently underway and it appears that this well was NOT CLAIMED in the SRBA. In order to preserve the opportunity to establish a water right for this well, you should file a claim for it in the SRBA. The claim will likely be disallowed based upon an invalid water right but it may provide you with an opportunity to claim it later if/when the water right is validated.

If you have any questions, please feel free to contact me at (208) 525 7161.

Sincerely,

W. Roger Warner
Water Rights Supervisor – Eastern Region

Cc: Jeff Peppersack, Water Right Permits Section Manager
Allen Ruberry, Senior Water Right Agent (adjudication) - Eastern Region

Enclosures:

- Application for Permit (poor copy)
- Notice of Existing Water Permit
- McKay proof of Beneficial use.
- IDWR letter responding to McKay beneficial use.
- Photograph and well data report for adjudication.
- Adjudication layout of the property.
- Copy of Idaho Statute 42-218a.
- Copy of Idaho Statute 42-219.

June 3, 1977

Re: Permit No. 23-2080

Archie McKay
Box 34
Swan Valley, Idaho 83449

Dear Mr. McKay:

We acknowledge receipt of the proof of beneficial use affidavit submitted in connection with the above referenced permit. However, we cannot accept this proof as the permit lapsed on March 3, 1972, and is of no further force or effect.

Therefore, if you wish to continue with the development of this project, it will be necessary for you to file a new application for permit. A form for this purpose is enclosed.

If you have any questions regarding this matter, please contact us or you may wish to contact our Regional office in Idaho Falls.

Sincerely,

BOBBY D. FLEENOR
Chief, Operations Bureau

BDF:JFR

Encl.

APPLICATION FOR PERMIT
To appropriate the Subterranean Waters of The State of Idaho

RECEIVED

APPROVED
JANUARY 10, 1918
DEPT. OF AGRICULTURE
BUREAU OF RECLAMATION

Name of Applicant: _____
Office address: _____
County: _____ State: _____

Quantity of water claimed: _____

(a) Rate of withdrawal in cubic feet per second _____

(b) Annual withdrawal in acre feet per annum _____

Source of water supply: _____

(a) Location of point of diversion or well in the _____

(b) _____

Water to be used for: _____

(a) If for municipal, industrial or recreational purposes, give: _____

(b) Point of use of water in the _____

(c) _____

(d) Rate water or sewer effluent to be returned to _____

(e) _____

(f) Kind of work: _____

(g) Estimated cost of work: \$ _____

(h) Is necessary to be used? _____

(i) Capacity of reservoir: _____

10. The time required for the completion of such work and complete application of the water to the proposed use is _____

11. If applicant is a corporation, give: _____

(a) State and place of incorporation _____

(b) Amount of capital stock: \$ _____

(c) Amount paid in: \$ _____

(d) _____

(e) _____

(f) _____

(g) _____

(h) _____

(i) _____

(j) _____

(k) _____

(l) _____

(m) _____

(n) _____

(o) _____

(p) _____

(q) _____

(r) _____

(s) _____

(t) _____

(u) _____

(v) _____

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that Archie McKay, (wan Valley, Idaho

has received an approved Permit No.

Q-33473/23-2080 issued by the Idaho Department of Water Administration authorizing the diversion ~~storage~~ of 6.4 cubic feet per second ~~At 6/1666~~
~~666/6666~~ of water from a ground water source

The priority to be established under this permit is February 20, 1967

and the permit was approved February 23, 1967

Water is to be diverted by wells

from a point within the SW1/4, Sec. 51 NE1/4, Sec. 8, T. 1 N., R. 44 E.,
H. M., Bonanza County

to be used for irrigation

in the SW1/4, Sec. 51 NE1/4, Sec. 9; NE1/4, Sec. 7; NW1/4, Sec. 8, T. 1 N.,
R. 44 E., H. M.

Proof of the application of the water to beneficial use is to be submitted to the Department on or before February 23, 1972. Any protests against the issuance of the license for the above referenced permit should be filed with the Idaho Department of Water Administration within ten (10) days of the last date of publication of this notice or prior to the licensing of the permit. Licensing may commence prior to the date beneficial use proof is due without further notice.

R. KEITH HIGGINSON, Director
Idaho Dept. of Water Administration
STATE HOUSE, Boise, Idaho

Published in the Idaho Falls Post Register, Idaho Falls, Idaho

on _____

Notary Public residing at

On this 17th day of May, 1922, W. Z. W. personally appeared before me the signor(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

State of Idaho)
County of Blaine) ss.

(សក្ខីស្នាម)

(Date)

May 17, 1927

The above information is a true statement of the extent to which the above numbered permit has been developed.

10. Remarks: only one well of the two applied for was drilled. The permit lapsed 3-3-72.

Total number of acres irrigated

03E

[illegible]

9. [Inverted on page 10] describe the lands involved by giving the acreages, listing the owners, and the names of the persons who have been or will be interested in the lands.

RECEIVED

MAY 17 1967

Identification No.

Permit No. 23-2080

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder Archie McKay
b) Post Office Address Box 34, Swan Valley, ID 83449
2. Permit Number 23-2080
3. Date of Priority that you are prepared to establish Feb. 20, 1967
4. a) Source from which water was appropriated ground water
b) Location of the point of diversion: SW 1/4 SW 1/4, Section 5
Township 1N, Range 44E, Boise Meridian, Other points of diversion: _____
5. a) The amount of water and use to which the water has been applied:
Amount 6.40 cfs and/or acre-feet per annum for irrigation purposes from Apr. 1 to Nov. 1 (Month-Day) (Month-Day) (Month-Day)
Amount _____ cfs and/or acre-feet per annum for _____ purposes from _____ to _____ (Month-Day) (Month-Day) (Month-Day)
Amount _____ cfs and/or acre-feet per annum for _____ purposes from _____ to _____ (Month-Day) (Month-Day) (Month-Day)
b) Total amount appropriated 6.40 cfs and/or acre-feet per annum
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____
b) Describe the agreement or understanding by which you take water from the works: _____
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) 25 hp electric pump, 16 inch well, 116 ft. deep
b) Describe the type and name of measuring device which you have installed at your point of diversion: _____
c) Give well driller's name and address and the date the well was completed: Cope Drilling & Pump Co., well was completed 6-16-67
8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use: _____

100



Idaho Statutes

TITLE 42 IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION CHAPTER 2

APPROPRIATION OF WATER -- PERMITS, CERTIFICATES, AND LICENSES -- SURVEY

42-218a. LAPSE OF APPLICATION FOR FAILURE TO REQUEST EXTENSION OR SUBMIT PROOF OF APPLICATION TO BENEFICIAL USE -- NOTICE OF LAPSING. A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided:

1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;

2. That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received;

3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

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Available Reference: [Search Instructions](#).

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Idaho Statutes

TITLE 42

IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 2

APPROPRIATION OF WATER -- PERMITS, CERTIFICATES, AND LICENSES -- SURVEY

42-219. ISSUANCE OF LICENSE -- PRIORITY. (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the department of water resources, and shall state the name and post-office address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section 42-202B, Idaho Code. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

(3) Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; the capacity of such works; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license.

(4) The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

(5) For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts

organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company, corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project and the diversion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

(6) For an irrigation project developed under a permit held by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres, the license issued shall be issued to the permit holder. For the place of use description in the license issued for the irrigation project, it shall be sufficient to provide a general description of the area within which the total number of acres developed under the permit are located and within which the location of the licensed acreage can be moved provided there is no injury to other water rights.

(7) Subject to other governing law, the location of the acreage irrigated within a generally described place of use, as defined in accordance with subsections (5) and (6) of this section and as filed with the department pursuant to section 43-323, Idaho Code, may be changed without approval under the provisions of section 42-222, Idaho Code. However, the change shall not result in an increase in either the rate of flow diverted or in the total number of acres irrigated under the water right and shall cause no injury to other water rights. If the holder of any water right seeks to challenge such a change, the challenge may only be brought as an action initiating a contested case before the department, pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. Nothing in this section shall be construed to grant, deny or otherwise affect an irrigation district's authority to deliver water to areas outside the boundaries of such district.

(8) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code.

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