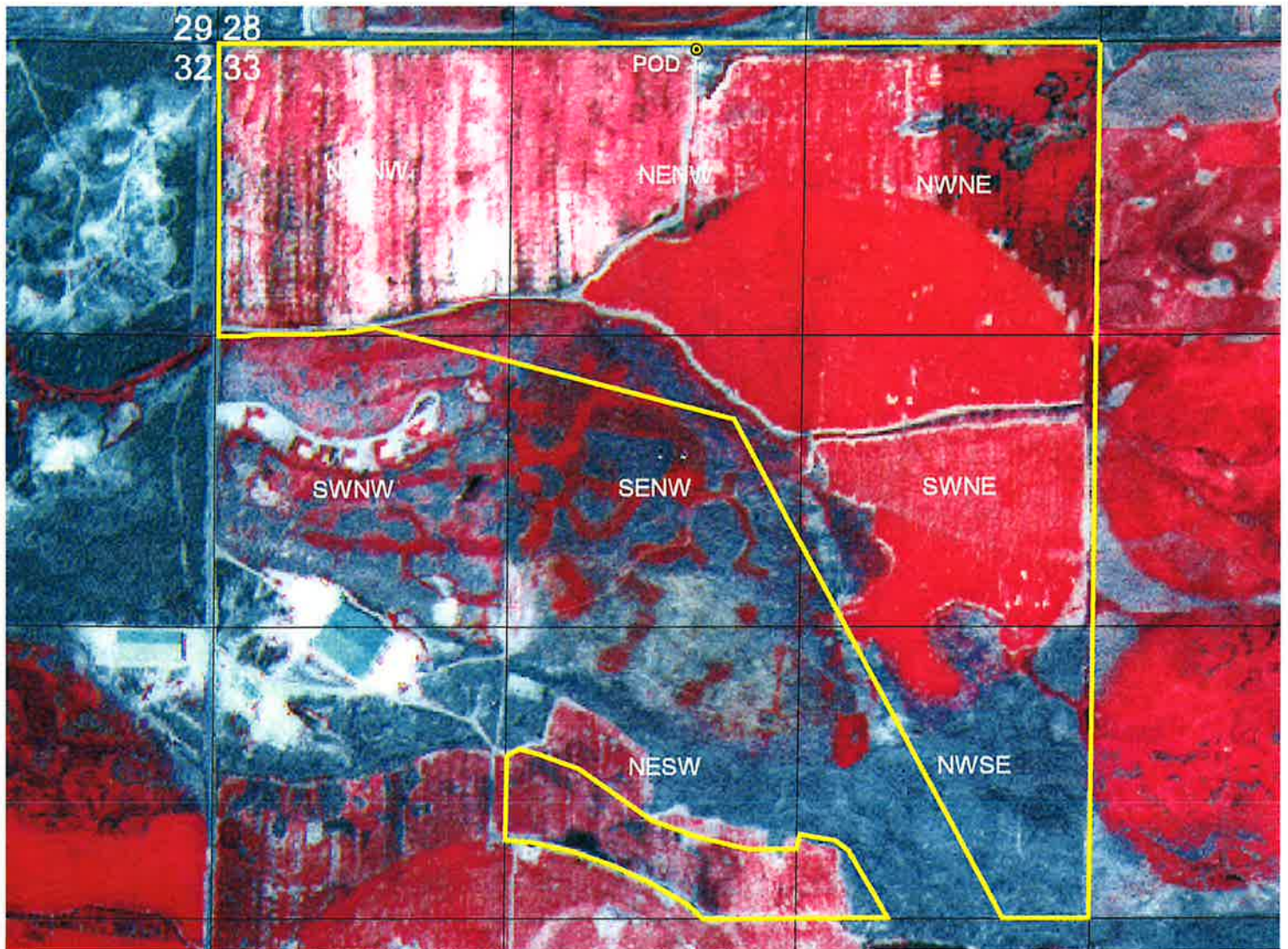


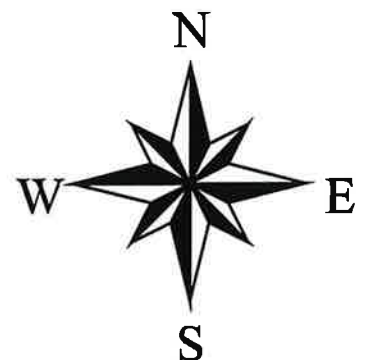
37-20725



600 0 600 1200 1800 2400 3000 Feet

T06S R14E S33

Map prepared by: Carter Fritschle
Date prepared: 06/13/02
1987-1988 NAPP photography
Idaho Department of Water Resources



06/19/2002

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

RIGHT NUMBER: 37-20725
NAME AND ADDRESS: BIG SKY DAIRY
1700 E 2428 S
GOODING ID 83330

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 2.81 CFS
832.5 AFY

PRIORITY DATE: 02/16/1971

POINT OF DIVERSION:

T06S R14E S33 NENENW Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	2.810 CFS 832.50 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: IRRIGATION Within GOODING County

T06S R14E S33	NWNE	40.0	T06S R14E S33	SWNE	38.3
T06S R14E S33	NENW	40.0	T06S R14E S33	NWNW	40.0
T06S R14E S33	SWNW	1.0	T06S R14E S33	SENW	10.5
T06S R14E S33	NESW	7.9	T06S R14E S33	NWSE	31.1

208.8 ACRES TOTAL

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: License

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 37-20722 WHICH WAS RENUMBERED FROM 36-7157C.
USE OF THIS RIGHT IS COMBINED WITH WATER FROM BIG WOOD CANAL CO.

37-20725
 of 6-13-02

40 NW NW	40 NE NW	40 NW NE Parcel 1	
37 SW NW Parcel 2	40 SE NW	40 SW NE	SE NE
Parcel 2 NW SW	33 NE SW Parcel 2	40 NW SE	NE SE
SW SW	SE SW	SW SE	SE SE

T. 6 S. R. 14 E S 33

* Licensed for 560 acres
 in Basin 36 in 1975

* 310 acres Transferred
 into Basin 37 in 1985

* Claim filed in 1988

* 53.1 acres converted
 to Dairy Use in 2000

by Transfer No. 5487

	Transferred	Ac.	Reduced by Transfer 5487	Remaining acres
NW NE	40	40	0	40
SW NE	40	40	1.7	38.3
NE NW	40	40	0	40
NW NW	40	40	0	40
SW NW	37	37	0	37
SE NW	40	40	29.5	10.5
NE SW	33	30	25.1	7.9
NW SE	40	15	8.9	31.1
	310	282	65.2	244.8
		+ 28 resumption		

244.8 acres - 36 acres (for 37-20724) = 208.8 acres

208.8 acres x 4 AF/acre = 835.2 AF

$\frac{3.30 \text{ cfs}}{244.8 \text{ acres}} = 0.0135 \text{ cfs/ac}$

208.8 acres x 0.0135 cfs/ac = 2.81

36 acres x 0.0135 cfs/ac = 0.49

3.30

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5487 IN THE)
NAME OF TONY VISSER C/O)
BIG SKY DAIRY)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On December 29, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree to Don McFarland and Carol McFarland as follows:

Identification. No: **36-02671D**
Source: Groundwater
Priority: January 9, 1967
Rate of diversion: 2.36 cubic feet per second ("cfs")
Volume: 683.6 AF per annum ("AFA")
Points of diversion: Lot 4, Section 1, Lots 1 and 3, Section 2 and Lot 1, Section 3, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 992 acres in parts of Section 33, T6S, R14E, B.M. and Sections 1, 2 and 3, T7S, R14E, B.M., Gooding County
Conditions of approval: Use of the rights listed below is limited to the irrigation of a combined total of 992 acres in a single irrigation season. Combined right nos. 36-02671D, 36-07367D, 36-07381D, 36-07445D and 36-07480E.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On August 1, 1985, the Department issued Approved Transfer No. 3064 in the name of Don and Carol McFarland as follows:

Identification. No: **36-07157** (part)
Source: Groundwater
Priority: February 16, 1971

MICROFILMED

MAR 17 2000

Rate of diversion: 4.13 cfs
Volume: 1,240 AFA
Point of diversion: Lot 1, Section 3, T7S, R14E, B.M., NENW Section 33, T6S, R14E, B.M., Gooding County
Use: Irrigation
Season of use: April 1 to November 1
Place of use: 310 acres in parts of Section 33, T6S, R14E, B.M., Gooding County

3. On December 29, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree to Don McFarland and Carol McFarland as follows:

Identification. No: **36-07367D**
Source: Groundwater
Priority: August 13, 1973
Rate of diversion: 8.29 cfs
Volume: 1896.8 AFA
Points of diversion: Lot 4, Section 1, Lots 1 and 3, Section 2 and Lot 1, Section 3, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 992 acres in parts of Section 33, T6S, R14E, B.M. and Sections 1, 2 and 3, T7S, R14E, B.M., Gooding County
Conditions of approval: Use of the rights listed below is limited to the irrigation of a combined total of 992 acres in a single irrigation season. Combined right nos. 36-02671D, 36-07367D, 36-07381D, 36-07445D and 36-07480E.

4. On December 29, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree to Don McFarland and Carol McFarland as follows:

Identification. No: **36-07381D**
Source: Groundwater
Priority: September 19, 1973
Rate of diversion: 1.38 cfs
Volume: 274.8 AFA
Points of diversion: Lot 4, Section 1, Lots 1 and 3, Section 2 and Lot 1, Section 3, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 992 acres in parts of Section 33, T6S, R14E, B.M., Sections 1, 2 and 3, T7S, R14E, B.M., Gooding County
Conditions of approval: Use of the rights listed below is limited to the irrigation of a combined total of 992 acres in a single irrigation season. Combined right nos. 36-02671D, 36-07367D, 36-07381D, 36-07445D and 36-07480E.

5. On January 8, 1998, the Snake River Basin Adjudication ("SRBA") court issued a partial decree to Don McFarland and Carol McFarland as follows:

Identification. No: **36-07445D**
Source: Groundwater
Priority: February 21, 1974
Rate of diversion: 2.42 cfs
Volume: 487.6 AFA
Points of diversion: Lot 4, Section 1, Lots 1 and 3, Section 2 and Lot 1, Section 3, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 992 acres in parts of Section 33, T6S, R14E, B.M., Sections 1, 2 and 3, T7S, R14E, B.M., Gooding County
Conditions of approval: Use of the rights listed below is limited to the irrigation of a combined total of 992 acres in a single irrigation season. Combined right nos. 36-02671D, 36-07367D, 36-07381D, 36-07445D and 36-07480E.

6. On December 29, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree to Don McFarland and Carol McFarland as follows:

Identification. No: **36-07480E**
Source: Groundwater
Priority: May 31, 1974
Rate of diversion: 5.46 cfs
Volume: 1308.8 AFA
Points of diversion: Lot 4, Section 1, Lots 1 and 3, Section 2 and Lot 1, Section 3, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 992 acres in parts of Section 33, T6S, R14E, B.M., Sections 1, 2 and 3, T7S, R14E, B.M., Gooding County
Conditions of approval: Use of the rights listed below is limited to the irrigation of a combined total of 992 acres in a single irrigation season. Combined right nos. 36-02671D, 36-07367D, 36-07381D, 36-07445D and 36-07480E.

7. On March 2, 1999, Tony Visser c/o Big Sky Dairy ("applicant") filed Application for Transfer No. 5464 ("application") with the Department seeking to change parts of the above listed water rights used for irrigation to stockwater and commercial uses in a dairy. The proposed rate of diversion is 2.33 cfs and the volume is 395.1 AF. Two new wells are proposed within the SENE Section 3, T7S, R14E, B.M. The place of use is within parts of Sections 33 and 34, T6S, R14E, B.M. and parts of Section 3, T7S, R14E, B.M. The applicant proposes 5,000 milking cows and 1,810 dry cows at the dairy site in Gooding County.

MICROFILMED

8. The water for the dairy is represented by the following water rights:

<u>Water right</u>	<u>Priority</u>	<u>CFS</u>	<u>AF</u>
36-02671 (part)	01-09-1967	0.19	40.8
36-07157 (part)	02-16-1971	0.83	172.8
36-07367 (part)	08-13-1973	0.66	112.8
36-07381 (part)	09-19-1973	0.11	16.2
36-07445 (part)	02-21-1974	0.19	29.1
36-07480 (part)	05-31-1974	0.43	77.7
TOTAL		2.33	395.1

To make this water available, the applicant proposes to dry up 131.7 acres as follows:

T6S, R14E, B.M.

Section 33 - SWNE - 1.7 ac, SENW - 29.5 ac, NESW - 25.1 ac, NWSE - 8.9 ac, SWSE - 19.8 ac, SESE - 28.7 ac

T7S, R14E, B.M.

Section 3 - Lot 1 - 13.9 ac, Lot 2 - 4.1 ac, all in Gooding County

9. The Department published notice of the application which was subsequently protested by Luke and Rose Phillips, Vonnie L. Peterson, Harvey and Jean Maxwell, Michael and Dianna Miketa ("protestants"). Harvey and Jean Maxwell subsequently withdrew their protest.

10. On November 23, 1999, the Department conducted a hearing in the matter. The applicant was present and was represented by Robert E. Williams. Protestants Michael Miketa, Luke Phillips and Vonnie L. Peterson were present and represented themselves.

11. Issues identified by the protestants are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

12. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit A - Site Vicinity Map - Big Sky North #2 Dairy
- b. Applicant's Exhibit B - Location Map - Big Sky West
- c. Applicant's Exhibit C - Nutrient Management Plan for Big Sky North #2 Dairy
- d. Applicant's Exhibit D - Dairy Waste System Calculations
- e. Applicant's Exhibit E - Letter dated March 1, 1999 to Big Sky North #2 Dairy from Stephen N. Thompson together with soils data information and soils data map
- f. Applicant's Exhibit F - Well Driller Reports and pump test data
- g. Applicant's Exhibit G - Analysis of Water Right Transfer to Dairy by Brockway Engineering dated October 29, 1999
- h. Applicant's Exhibit H - Well Interference Analysis - Big Sky North #2 Dairy
- i. Applicant's Exhibit I - Well Interference Analysis - Big Sky North #2 Dairy
- j. Applicant's Exhibit J - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheet
- k. Applicant's Exhibit K - Gooding County - New CAFO Siting Permit
- l. Applicant's Exhibit - L - Letter Dated November 3, 1999 to Russell Visser from Philip J. DeRenzi
- m. Applicant's Exhibit M - Barn Water Chart
- n. Applicant's Exhibit N - Letter dated November 5, 1999 from Del Holyoak
- o. Applicant's Exhibit O - Letter dated November 5, 1999 from John Faulkner
- p. Applicant's Exhibit P - Letter dated November 5, 1999 from L.R. "Rusty" Gillette
- q. Applicant's Exhibit Q - An Evaluation of the Idaho Dairy Pollution

Prevention Initiative 1996 - 1998

- r. Applicant's Exhibit R - USDOI-BLM Gooding County Landfill - Tuttle Preliminary Assessment
- s. Applicant's Exhibit S - Letter dated March 11, 1999 to Judy Daubner from Marv Patten
- t. Applicant's Exhibit T - Snake Plain Aquifer
- u. Applicant's Exhibit U - Gooding County 1995 Annual Groundwater Monitoring Report
- v. Applicant's Exhibit V - Gooding County 1996 Annual Groundwater Monitoring Report
- w. Applicant's Exhibit W - Gooding County 1997 Annual Groundwater Monitoring Report
- x. Applicant's Exhibit X - Gooding County Landfill - 1998 - Annual Groundwater Monitoring Report

13. Gooding County has issued a New CAFO Siting Permit to the applicant for 4,767 animal units. The applicant intends to apply to the county for additional animals at the dairy. (See Applicant's Exhibit K).

14. The applicant intends to buy hay, grain and other feed for the dairy cattle from local producers.

15. The design of the dairy provides for three separation systems to separate solid waste from liquid waste before liquid waste reaches the main lagoon. Corrals are maintained by scraping rather than by washing. Water is recycled 3 or 4 times before it is no longer used in the dairy.

16. The rate of diversion, consumptive use and total volume of water diverted will not be larger after the transfer than before the transfer. (See Applicant's Exhibit G).

17. Using an average annual pumping rate of 0.55 cfs, which is the continuous diversion rate to provide the required volume of water and a pumping period of 80 days, the estimated drawdown on a well 1/4 mile distant from the dairy wells is 0.5 feet. Using a maximum pumping rate of 2.33 cfs for 12 days, the estimated drawdown on a well 1/4 mile distant from the dairy wells is about 0.9 feet. (See Applicant's Exhibit H).

18. Protestant Miketa lives within a mile of the dairy cow confinement area. He and the other protestants are concerned that the concentration of dairies in the vicinity of the applicant's proposed dairy will degrade water quality by increasing nitrates in the groundwater. Protestant Miketa questioned the adequacy of the nutrient management plan of the applicant and was concerned about pollution of ground water and reduced ground water levels.

19. The protestants did not introduce technical evidence to show that the proposal of the applicant will injure other water rights, will enlarge the use of water under the right being transferred, is not in the public interest or is not consistent with the conservation of water resources within the state of Idaho.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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 is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. The applicant carries the burden of coming forward with evidence that the 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.

3. 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.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The proposed changes will not injure other water rights.

6. The proposed changes do not constitute an enlargement in use of the original right.

7. The proposed changes are in the local public interest.

8. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

9. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5487 in the name of Tony Visser c/o Big Sky Dairy is **APPROVED** subject to the following conditions:

1. The right holder shall design and construct the dairy facility to assure that it is capable of complying with the resource protection requirements of the Division of Environmental Quality of the Idaho Department of Health and Welfare and of the Idaho Department of Agriculture. Within one year of this approval, the right holder shall provide evidence to the Department that the facility has been constructed to meet these compliance requirements. The Director can extend the time for demonstrating compliance upon written request of the applicant and a showing of good cause therefor.
2. Prior to diversion of water under this approval, the right holder shall install measuring devices acceptable to the Department and shall measure and annually report to the Department the amount (cfs and AF) of water diverted under this transfer. Reporting through a measuring district or a ground water district will suffice although the Director may require more frequent measuring and reporting.
3. The place of commercial use authorized by this transfer includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first beneficially used in the dairy as authorized by this transfer.
4. The acres which are no longer authorized for irrigation under this transfer total 131.7 as shown below:

T6S, R14E, B.M.

Section 33 - SWNE - 1.7 ac, SENW - 29.5 ac, NESW - 25.1 ac,
NWSE - 8.9 ac, SWSE - 19.8 ac, SESE - 28.7 ac

T7S, R14E, B.M.

Section 3 - Lot 1 - 13.9 ac, Lot 2 - 4.1 ac

5. Rights 36-02671G, 36-07367G, 36-07381G, 36-07445G and 36-07480H when combined shall not exceed a total diversion rate of 1.5 cfs.
6. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
7. The right holder is not authorized to divert water under this transfer for more dairy cattle than authorized by the county.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval, unless extended for cause by the Director.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Signed this 29th day of December, 1999.



L. GLEN SAXTON
Hearing Officer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHANGE OF WATER RIGHT OWNERSHIP

pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

36-07157B

on must be submitted with this form:

A. A copy of the most recent TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water rights or claims in question. **WITH ATTACHED LEGAL DESCRIPTION.**

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually attached to your deed or on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant Magic Acres, L.L.C.

P.O. Box 850 Wendell, ID 83355

4. New Owner/Claimant(s) Big Sky Dairy, a Partnership

Name Connector (Check one): ☐ and ☐ or ☐ and/or

New Mailing Address 1660 East 2400 South

City, State and ZIP Code Gooding, ID 83330

New Telephone Number ()

5. Date you acquired the property 3-1-00

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres you irrigate Number and type of stock

Diversion rate in CFS Number of homes Other uses

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner or Claimant(s) Mike Bosma, partner Date 3-2-00

Date

(Corporations or other organizations must submit a list of directors and/or officers demonstrating authority to sign form.)

8. For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him or her for all matters related to your claims.

WARRANTY DEED

#G-29104

For Value Received

Magic Acres, L.L.C.

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Big Sky Dairy, a Partnership

Address: 1660 East 2400 South, Gooding, ID 83330

Hereinafter called the Grantee, the following described premises situated in GOODING County, Idaho, to-wit:

SEE EXHIBIT "A" attached hereto:

****TOGETHER WITH all water and water rights, ditches and ditch rights used thereon or appurtenant thereto, including but not limited to Idaho Department of Water Resources water right No. 36-01157B.**

SUBJECT TO:

All reservations in patents or deeds in the chain of title.

Taxes for 2000 and subsequent years, which are a lien, but not yet due and payable.

Right of way for canals, laterals and waste ditches of the North Side Canal Company, Ltd.

Power Line Easement given by Mac Martin, a single person, to Idaho Power Company, a corporation, dated September 30, 1975, recorded May 26, 1976 as Instrument Number 59737, Gooding County records, affecting the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 6 South, Range 14 East Boise Meridian.

Power Line Easement given by Mac Martin, sole owner, to Idaho Power Company, a corporation, dated November 6, 1975, recorded September 15, 1976 as Instrument Number 61190, Gooding County records, affecting the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 6 South, Range 14, East Boise Meridian.

Well Use Agreement by and between San Tan Ranches, a partnership composed of Max Martin, a single man, and others, and A.N.S.T., a partnership composed of Mac Martin, a single man, and others, dated December 14, 1976, recorded January 26, 1977 as Instrument Number 62982, Gooding County records, wherein San Tan hereby grants to A.N.S.T. the right to use water from the well located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 6 South, Range 14 East Boise Meridian, and desires to receive water from San Tan for use on a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, Township 6 South, Range 14, East Boise Meridian, and San Tan grants to A.N.S.T. right of ingress and egress to the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 6 South, Range 14, East Boise Meridian, for the purpose of making repairs to the pump and motor. Supplemental Well Use Agreement by and between San Tan Ranches, a general partnership, and First Security Bank of Idaho, N.A., dated May 17, 1983, recorded May 19, 1983 as Instrument Number 101156, Gooding County records.

Power Line Easement given by Mac Martin, a single person, to Idaho Power Company, a corporation, dated November 12, 1975, recorded October 11, 1977, as Instrument Number 66882, Gooding County records, affecting the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 6 South, Range 14 East Boise Meridian.

Easement for Encroachment and Overspray disclosed in Warranty Deed recorded June 8, 1998 as Instrument Number 175866, Gooding County records.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: March 1, 2000

MAGIC ACRES, L.L.C.

Robert C. Rietveld

184638

STATE OF IDAHO COUNTY OF GOODING

LAND TITLE & ESCROW

Filed for record at the request of

35

11

0

15

EXHIBIT "A"

Order Number: G-29104

PARCEL NO. 1

TOWNSHIP 6 SOUTH, RANGE 14 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 33: A parcel of land located in the N $\frac{1}{2}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$, more particularly described as follows:

Commencing at the Northwest corner of said Section 33, from which the North One Quarter (N $\frac{1}{4}$) corner of said Section 33 bears South 89°55'00" East, 2674.75 feet, said Northwest corner of Section 33 being the TRUE POINT OF BEGINNING;

Thence South 89°55'00" East along the North boundary of the NW $\frac{1}{4}$ of Section 33 for a distance of 2674.75 feet to the North One Quarter(N $\frac{1}{4}$) corner of Section 33;

Thence North 89°56'24" East along the North boundary of the NE $\frac{1}{4}$ of Section 33 for a distance of 1323.87 feet to the Northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33;

Thence South 00°50'15" West along the East boundary of the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 33 for a distance of 3108.12 feet;

Thence North 89°47'52" West for a distance of 847.98 feet;

Thence North 28°13'54" West for a distance of 1597.28 feet;

Thence North 75°49'16" West for a distance of 1681.06 feet to a point in the center of an irrigation waste drain;

Thence along the center of the irrigation waste drain on the following courses:

South 81°05'32" West for a distance of 144.65 feet;

South 87°17'42" West for a distance of 128.57 feet;

South 89°51'53" West for a distance of 265.47 feet;

South 79°26'13" West for a distance of 199.57 feet to a point on the west boundary of the NW $\frac{1}{4}$ of Section 33;

Thence leaving the center of the irrigation waste drain and along the West boundary of the NW $\frac{1}{4}$ of Section 33 on a bearing of North 00°33'30" East for a distance of 1354.00 feet to the TRUE POINT OF BEGINNING.

CONTINUATION

EXHIBIT "A"

Order Number: G-29104

PARCEL NO. 2

TOWNSHIP 6 SOUTH, RANGE 14 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 33: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$; NW $\frac{1}{4}$; S $\frac{1}{2}$

EXCEPTING THEREFROM the following described parcel of land:

Albert Anderson - Sons

Beginning at the West quarter section corner of said Section 33, said point marked by a 5/8 inch rebar and shall be the POINT OF BEGINNING;
Thence North 0°01'48" East along section line for 343.32 feet to a P.K. nail;
Thence South 75°29'15" East for 612.31 feet to a 1/2 inch rebar;
Thence South 67°21'00" East for 782.75 feet to a 1/2 inch rebar;
Thence South 1°19'23" West for 345.98 feet to a 1/2 inch rebar;
Thence South 71°59'00" West for 644.29 feet to a 1/2 inch rebar;
Thence South 83°18'04" West for 298.53 feet to a 1/2 inch rebar;
Thence North 83°44'14" West for 400.55 feet to a P.K. nail on section line;
Thence North 0°00'00" East (Basis of Bearing) along said section line for 647.85 feet to the POINT OF BEGINNING;

AND EXCEPTING THEREFROM A parcel of land located in the W $\frac{1}{2}$, more particularly described as follows:

Robert Meyers

Commencing at the Northwest corner of said Section 33, from which the West One Quarter corner of said Section 33 bears South 00°33'30" West, 2651.39 feet;
Thence South 00°33'30" West along the West boundary of the NW $\frac{1}{4}$ of said Section 33 for a distance of 1354.00 feet to the center of an irrigation drain ditch and being THE TRUE POINT OF BEGINNING;
Thence North 79°26'13" East for a distance of 199.57 feet;
Thence North 89°51'53" East for a distance of 265.47 feet;
Thence North 87°17'42" East for a distance of 128.57 feet;
Thence North 81°05'32" East for a distance of 144.65 feet;
Thence South 75°49'16" East for a distance of 621.72 feet;
Thence South 02°12'34" West for a distance of 448.66 feet;
Thence South 01°05'27" West for a distance of 886.16 feet;
Thence North 66°49'18" West for a distance of 782.75 feet;
Thence North 74°57'33" West for a distance of 612.31 feet to a point on the West boundary of the NW $\frac{1}{4}$ of said Section 33;
Thence North 00°33'30" East along the West boundary of the NW $\frac{1}{4}$ of said Section 33 for a distance of 954.00 feet to THE TRUE POINT OF BEGINNING.

-Continued-

CONTINUATION

EXHIBIT "A"

Order Number: G-29104

AND EXCEPTING THEREFROM A parcel of land located in the N½ and the NW¼SE¼, more particularly described as follows:

Commencing at the Northwest corner of said Section 33, from which the North One Quarter (N¼) corner of said Section 33 bears South 89°55'00" East, 2674.75 feet, said Northwest corner of Section 33 being the TRUE POINT OF BEGINNING;

Thence South 89°55'00" East along the North boundary of the NW¼ of Section 33 for a distance of 2674.75 feet to the North One Quarter(N¼) corner of Section 33;

Thence North 89°56'24" East along the North boundary of the NE¼ of Section 33 for a distance of 1323.87 feet to the Northeast corner of the NW¼NE¼ of Section 33;

Thence South 00°50'15" West along the East boundary of the W½E½ of Section 33 for a distance of 3108.12 feet;

Thence North 89°47'52" West for a distance of 847.98 feet;

Thence North 28°13'54" West for a distance of 1597.28 feet;

Thence North 75°49'16" West for a distance of 1681.06 feet to a point in the center of an irrigation waste drain;

Thence along the center of the irrigation waste drain on the following courses:

South 81°05'32" West for a distance of 144.65 feet;

South 87°17'42" West for a distance of 128.57 feet;

South 89°51'53" West for a distance of 265.47 feet;

South 79°26'13" West for a distance of 199.57 feet to a point on the west boundary of the NW¼ of Section 33;

Thence leaving the center of the irrigation waste drain and along the West boundary of the NW¼ of Section 33 on a bearing of North 00°33'30" East for a distance of 1354.00 feet to the TRUE POINT OF BEGINNING.

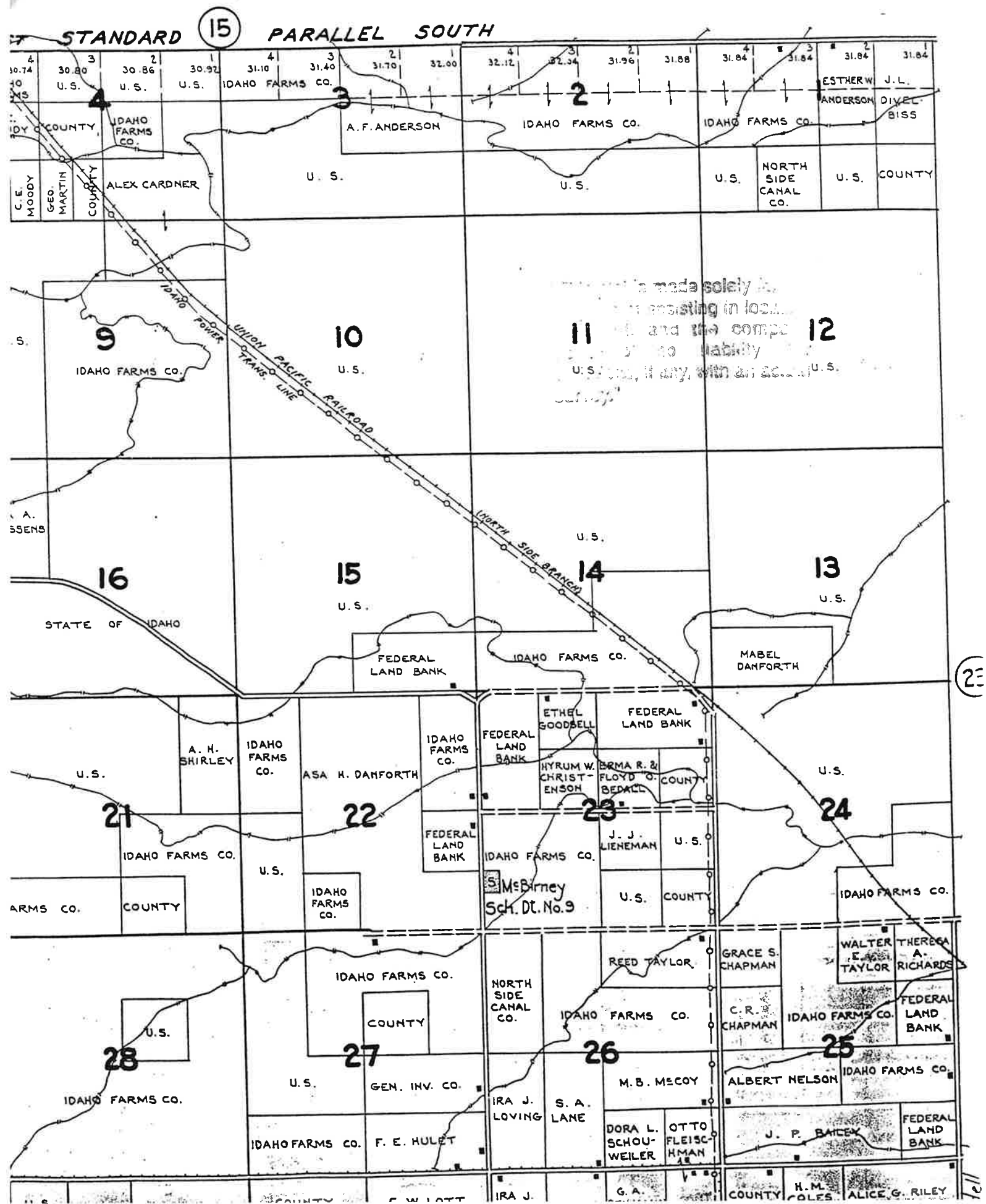
TOGETHER WITH the following described parcel:

TOWNSHIP 7 SOUTH, RANGE 14 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 3: Lots 1, 2, 3 and 4, N½SE¼

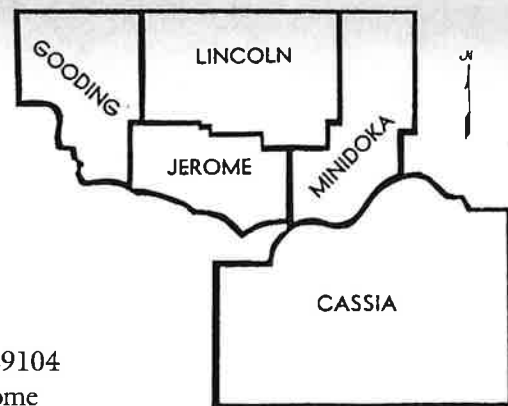
*conveyed as
parcel 1*

GOODING COUNTY, IDAHO



Land Title and Escrow, Inc.

A FULL SERVICE TITLE COMPANY



REFER TO: G-29104
OFFICE: Jerome

March 7, 2000

IDWR - *Southern Region*
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

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MAR 08 2000

Department of Water Resources
Southern Region

RE: MAGIC ACRES/BIG SKY DAIRY

To Whom It May Concern:

In connection with the above referenced file, enclosed herewith you will find the following:

1. Notice of Change of Water Right Ownership.
2. Copy of Warranty Deed recorded March 1, 2000 as Instrument No. 184638 under Gooding County Records.
3. Plat Map.

Please process this transfer as indicated.

As always, thank you for your assistance! Should you have any questions regarding this matter, please do not hesitate to contact me at 208-324-3357.

Very truly yours,
LAND TITLE AND ESCROW, INC.

A handwritten signature in black ink, appearing to read "Jenni Stippich".

Jenni Stippich
Escrow Department

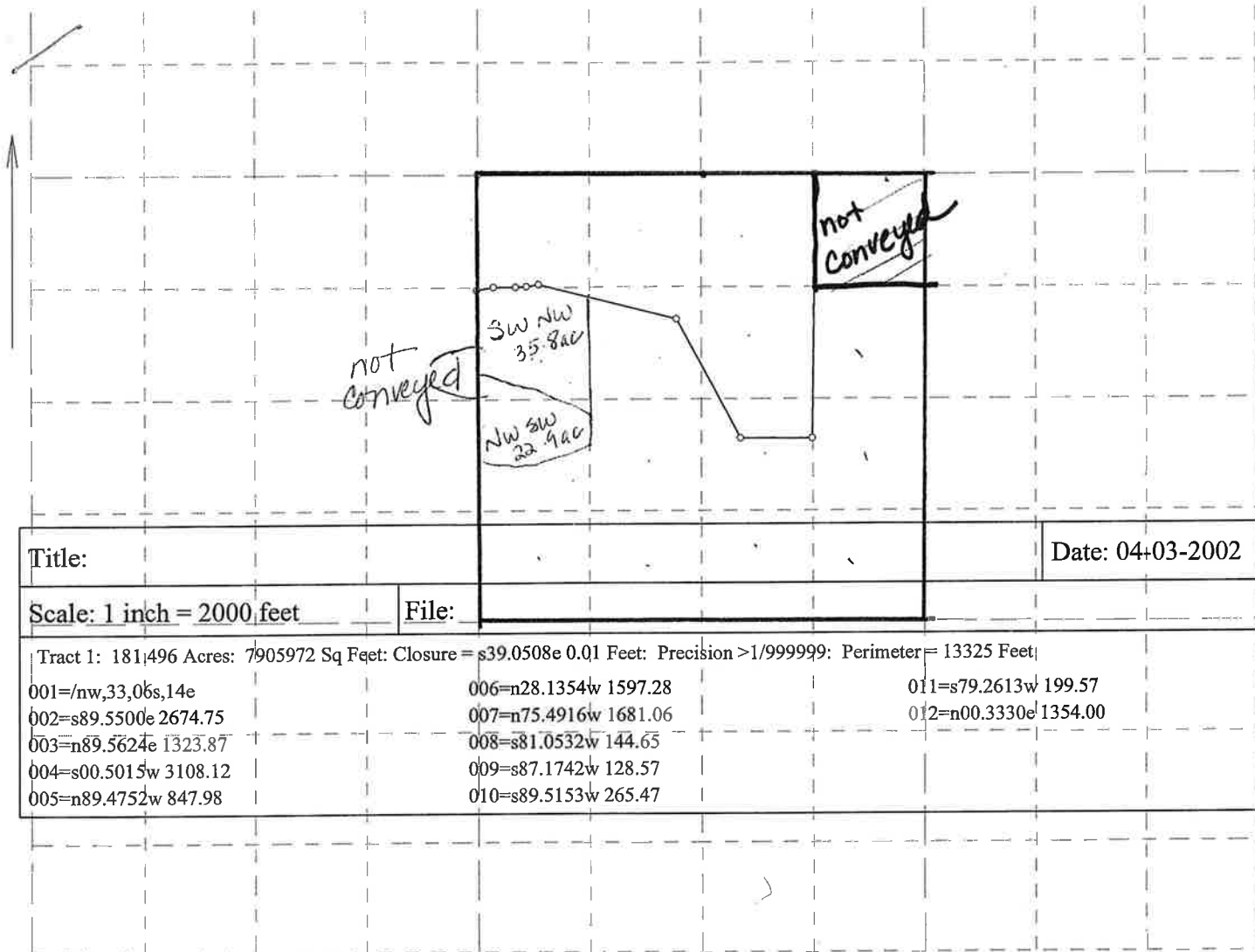
Enclosures

BOX 177, BURLEY, IDAHO 83318
PHONE 678-3524 - FAX 678-4435

BOX 349, JEROME, IDAHO 83338
PHONE 324-3357 - FAX 324-8961

BOX 473, GOODING, IDAHO 83330
PHONE 934-8477 - FAX 934-5890

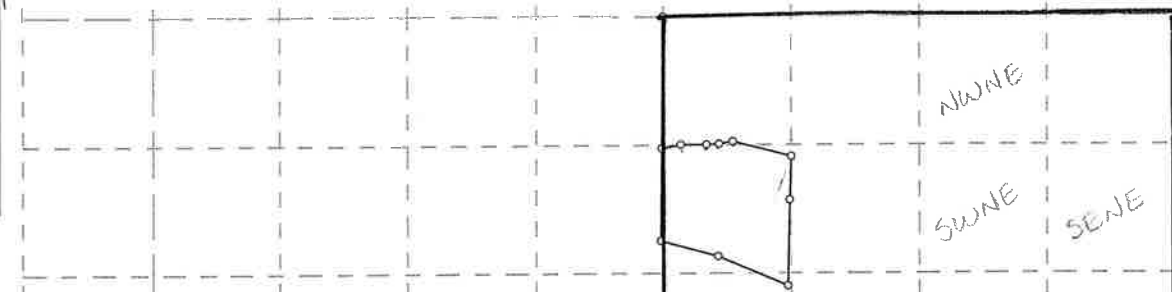
BOX 111, RUPERT, IDAHO 83350
PHONE 436-0606 - FAX 436-1199



Parce 11 magic Acres to Big Sky Dairy

Boarding City
Assessor
934-5666

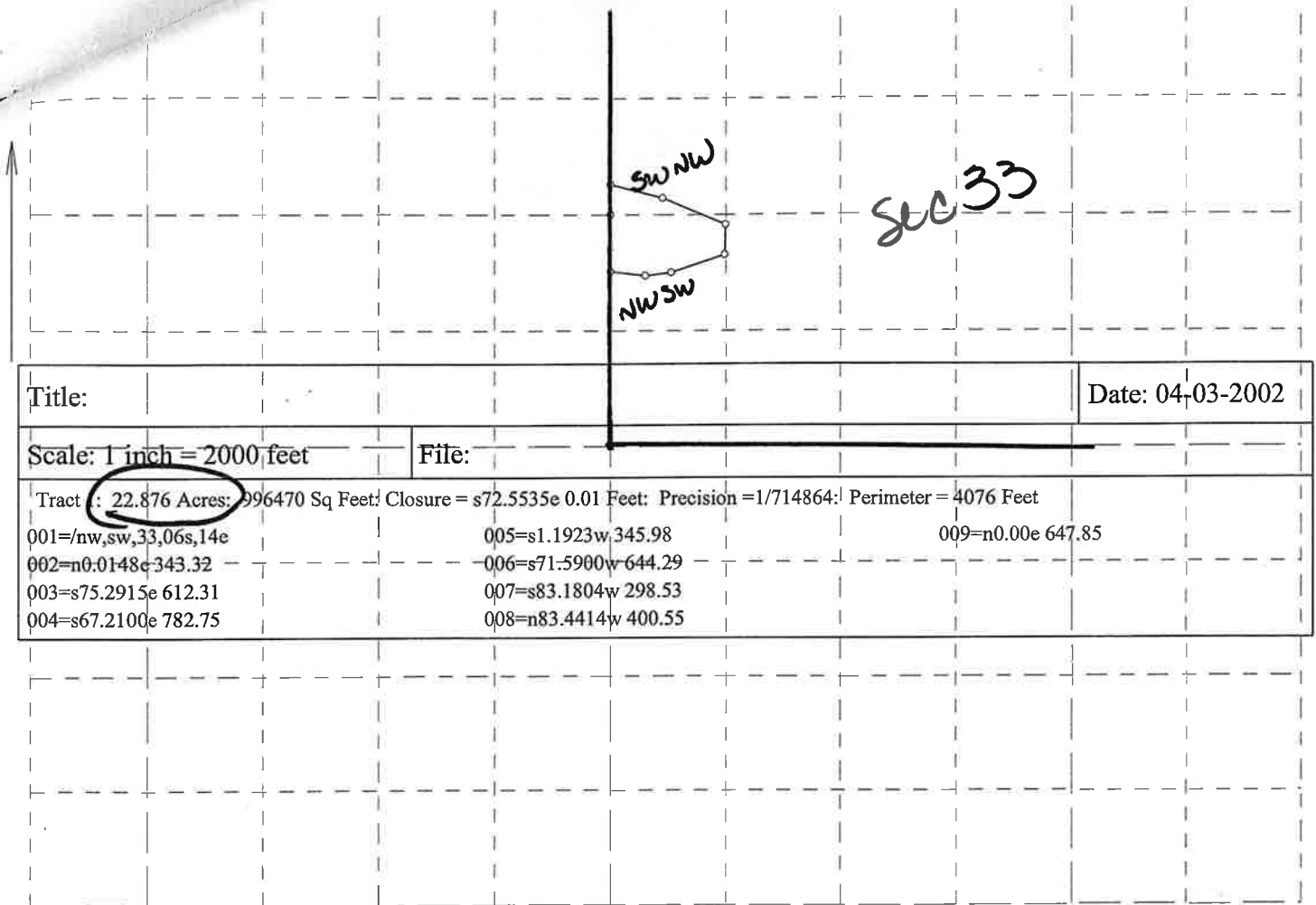
T6S R 14E Sec 33
SW NW Robert Magnus
about
NW SW Anderson & Sons



Title:		Date: 04-03-2002
Scale: 1 inch = 2000 feet	File:	
Tract 1: ~~43.8~~ Acres: 796715 Sq Feet: Closure = n00.3331e 1354.00 Feet. Precision = 1/5. Perimeter = 6398 Feet		
001=nw,33,06s,14e	006=n81.0532e 144.65✓	011=n74.5733w 612.31
002=s00.3330w 1354.0	007=s75.4916e 621.72	012=n00.3330e 954.00
003=n79.2613e 199.57	008=s02.1234w 448.66✓	
004=n89.5153e 265.47	009=s01.0527w 886.16✓	
005=n87.1742e 128.57	010=n66.4918w 782.75	

exception 35.8 acres

owned by Robert Meyers
 for Gouding County Assessor
 4/4/02.



per Gooding County Assessor
 4/4/02

owned by Albert Anderson & Sons
 Spud Cellar

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5487

WATER RIGHT NO(S) . 36-02671G/36-07367G/36-07381G/36-07445G
36-07480H/36-07157D

This is to certify that: TONY VISSER
C/O BIG SKY DAIRY
1700 E 2428 S
GOODING ID 83330

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 36-02671G :			
STOCKWATER	01/01 to 12/31	0.19 CFS	40.5 AF
COMMERCIAL	01/01 to 12/31	0.19 CFS	40.5 AF
Priority: 01/09/1967			
		0.19 CFS	40.5 AF
Right No. 36-07367G :			
STOCKWATER	01/01 to 12/31	0.66 CFS	112.8 AF
COMMERCIAL	01/01 to 12/31	0.66 CFS	112.8 AF
Priority: 08/13/1973			
		0.66 CFS	112.8 AF
Right No. 36-07381G :			
STOCKWATER	01/01 to 12/31	0.11 CFS	16.2 AF
COMMERCIAL	01/01 to 12/31	0.11 CFS	16.2 AF
Priority: 09/19/1973			
		0.11 CFS	16.2 AF
Right No. 36-07445G :			
STOCKWATER	01/01 to 12/31	0.19 CFS	29.1 AF
COMMERCIAL	01/01 to 12/31	0.19 CFS	29.1 AF
Priority: 02/21/1974			
		0.19 CFS	29.1 AF
Right No. 36-07480H :			
STOCKWATER	01/01 to 12/31	0.43 CFS	77.7 AF
COMMERCIAL	01/01 to 12/31	0.43 CFS	77.7 AF
Priority: 05/31/1974			
		0.43 CFS	77.7 AF
SUBTOTAL:		1.50 CFS	235.8 AF
Right No. 36-07157D :			
STOCKWATER	01/01 to 12/31	0.83 CFS	159.3 AF
COMMERCIAL	01/01 to 12/31	0.83 CFS	159.3 AF
Priority: 02/16/1971			
		0.83 CFS	159.3 AF
TRANSFER TOTAL:		2.33 CFS	395.1 AF

NOT
DE

AG Southern

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MAR 01 2000
Department of Water Resources
Southern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 327-7900 FAX: (208) 327-7866

DIKE KEMPTENBORN
GOVERNOR

KARL E. DRENNER
DIRECTOR

FAX Transmittal Cover Sheet

Number of pages including this one: 4

Date: 4/whatever

To: Irish

Fax No.: _____

From: VIBK

Fax. No.: _____

Phone No.: _____

Subject: File copy SF5 - (oh joy)

In Addition: There is now a way to research water rights over the Internet. The system is a graphical or text query system and can be accessed from the IDWR home page:

<http://www.idwr.state.id.us>

From that link, select "Snake River Basin Adjudication" toward the lower left hand of the screen. Then select "Map" or "Text" on the next page.

"TEXT" lets you search water rights via Name, Legal, Source, etc.

Enter in the information you know. Information can be entered under more than one tab. After you have completed entering your information, select "Search"

"MAP" allows you to search water rights graphically.

Use the tools on the Left side of the screen to Zoom in and out. To find out what each button does, hold the cursor over the button for a second. To the Right side of the screen are different layers that can be turned on or off. As you zoom in to your place in question, different layers will appear on the right side of the screen.

A HELP function is available within the application or you can call 1-800-451-4129 or (208) 327-7906 for help.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-7157B V1

WATER RIGHT NUMBER: 36-7157B V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DON MC FARLAND PO BOX 5178 TWIN FALLS, ID 833035178 (208)734-0004
Lienholder	THE MUTUAL LIFE INSURANCE CO OF NE ATTN DAVID M BROWN SR COUNSEL 5650 MEXICO RD #15 ST PETERS, MO 633761696 (636)447-5600
Attorney	J WALTER SINCLAIR PO BOX 366 TWIN FALLS, ID 833030366
Present Owner	BIG SKY DAIRY 2395 S 1500 E GOODING, ID 83330 (208)934-9072
Current Owner	CAROL MC FARLAND PO BOX 5178 TWIN FALLS, ID 833035178 (208)734-0004

Priority Date: 02/16/1971

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	4.130 CFS	1,128.00 AF
	<u>Total Diversion:</u>	4.130 CFS	1,128.00 AF

Location of Point(s) of Diversion

GROUND WATER	NE1/4NE1/4NW1/4	Sec. 33, Twp 06S, Rge 14E, B.M.
GOODING County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S	14E	33	40.0	40.0			40.0	40.0	37.0	40.0	30.0					15.0			282.0

Total Acres: 282

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 36-7157B V1

Conditions of Approval:

1. S17 USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD.
2. M01 A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE MAINTAINED AS A PART OF THE DIVERTING WORKS.

Remarks:

Comments:

1. WORSTELL 7/10/1991 COPIED FROM REMARKS
Comment: TRANS. 3064. REDUCTION OF P/U THE PLACE OF USE IS REDUCED 28 ACRES DUE TO 5 YEARS OF NON-USE.
2. SCHULTZ 9/28/1992 NOTICE OF ERROR (NOE)
Comment: NOE RECEIVED 9/25/92. CHANGED NOE FLAG FROM BLANK TO A.
3. MERRITT 10/13/1992 RESPONDED TO NOE
Comment: LETTER SENT 10/13. NO CHANGE.
4. SSHERMAN 7/29/1999 ADDRESS CHANGE
Comment: ADDRESS CHANGE FOR MISSOURI OFFICE OF MONY BY CLAIMANT LETTER.
5. SSHERMAN 8/30/1999 ADDRESS CHANGE
Comment: ADDRESS CHANGE BY CLAIMANT LETTER.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: RECEIVED - NO CHANGE TO RECOMMENDATION
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

RECEIVED

APR 24 1998

Department of Water Resources

1998 APR 20 11:10

DISTRICT COURT - SRBA

FIFTH JUDICIAL DISTRICT OF IDAHO

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

In Re SRBA

Subcase No.: 36-07157B

Case No. 39576

STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

Date: 11-26-97

John Butler, Atty for Carol and Don McFarland

IDWR Concurrence

Approved as to form:
Attorney for IDWR

5856NF

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

DATE: NOV-26-1997

PAGE: A-1

GHTS FROM: SOURCE: GROUNDWATER

GHT NUMBER: 36-071570

ME AND ADDRESS: CAROL MC FARLAND
DON MC FARLAND
PO BOX 268
EDEN ID 83325

LRCE: GROUNDWATER

ANTITY: 4.13 CFS
1128.0 AFY

IORITY DATE: 02/16/1971

INT OF DIVERSION: T06S R14E S33 NENENW Within GOODING County

PPOSE AND RIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION		<u>Irrigation Season</u>	4.13 CFS
		04/01 10/31	1128.0 AFY

ACE OF USE:	IRRIGATION	Within GOODING County			
T06S R14E S33	NWNE 40	SWNE 40	NENE 40	NWNW 40	
	SWNW 37	SENE 40	NESW 30	NWSE 15	
282 ACRES TOTAL					

NSUMPTIVE USE: 846.0 AFY

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

THE APPROPRIATOR IS ENTITLED TO RESUME THE USE OF THIS WATER
RIGHT ON THAT PORTION OF THE 310 ACRE LICENSED PLACE OF USE NOT
PRESENTLY BEING IRRIGATED, SO LONG AS SUCH RESUMPTION DOES NOT
CAUSE INJURY TO INTERVENING JUNIOR APPROPRIATORS.

PLAMATORY MATERIAL: BASIS OF CLAIM - LICENSE
USE OF THIS RIGHT IS COMBINED WITH WATER FROM
NORTH SIDE CANAL CO. LTD.

KAC

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on April 22, 1998, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

John Butler
Benoit Alexander
PO Box 366
Twin Falls, ID 83303-0366


Signature of person or attorney mailing the form

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 36-7157 Priority Feb. 16, 1971 Amount 7.43 cfs

THIS IS TO CERTIFY, that TWO PLUS RANCH
of Kimberly, Idaho, has complied with the terms and conditions of Permit
No. 36-7157 issued pursuant to Application for Permit dated February 16, 1971
and has submitted proof to the Department of Water Resources on July 31, 1974
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 7.43 cfs of water from a ground water source
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>April 1</u> to <u>Nov. 1</u>	at <u>7.43</u> cfs and	<u>2,240 acre feet or</u>
	from _____ to _____	at _____ cfs and	<u>4.0 af per acre</u>
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 7.43 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
2,240 acre feet per year, said waters to be diverted within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 4,
Twp. 8 S, Rge. 14 E, B. M. in the County of Gooding

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8 S	14 E	4					40	40	40	40	40	40	40	40					320
		5	40	40	40	40													160
		9					40	40											80

Total number of acres irrigated 560

A measuring device of a type approved by this Department shall be permanently
maintained as part of the diverting works.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 18 day of
December, 19 75.

Director