

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 37-737B
Date Received: 1/17/1991
Receipt No: S012959
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

C E MOLYNEUX Phone: (208)823-4573
080 LAIDLAW PK RD
CAREY ID 83320

2. Date of Priority: 03/30/1883

3. Source: FISH CREEK Trib. to: LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
01N	22E	33	NE SE	BLAINE	

5. Description of diverting works:

Existing headgate and buried pipeline to gravity sprinkler (pivot).

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	0.7	

7. Total Quantity Appropriated is:
0.7 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
01S	22E	15	SW	SW	IRRIGATION	35
					Section Acres	35
01S	22E	16	SE	SE	IRRIGATION	35
					Section Acres	35
					Total Acres	70

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS FOR THE ENTIRE PORTION OF WR 37-00737.

1/12/01 tf; ownership changed John and Kristy Molyneux to A.W., Maxine, C.E., and Ingeborg Molyneux per 1409(6) and deeds received 5/15/00. Claim also amended to conform to Second Amended Final Order of Transfer 3922.

Right nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 4/14/98) in the matter of the Application for Transfer 3922. (As follows.)

It is hereby ordered that application for transfer no 3922 is CONDITIONALLY APPROVED with the following conditions:

The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

No less than one-half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

The combined flow rate of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 1.0 cfs.

Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 140-acre feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

Use of water under the transferred water right nos. 37-00737B and 37-00780B will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

Any pro rate reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

Per Transfer 3922 approval document:

The diversion rate to Hot Springs Canal Conveyance under right 37-00780B shall be determined to be either 0.20 cfs or 0.30 cfs in the Snake River Basin Adjudication, as stipulated.

15. Basis of Claim: Decreed



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

March 15, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

C E MOLYNEUX
080 LAIDLAW PARK RD
CAREY ID 83320

Re: SRBA Claim(s) 37-737B, 37-780B, 37-15D, 37-263D, 37-1219
Decreed Water Rights 37-11888, 37-11889

Dear Mr. Molyneux:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer records of the claim(s) noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Trish Fawcett
Technical Records Specialist

Enc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

March 15, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

C E MOLYNEUX
080 LAIDLAW PARK RD
CAREY ID 83320

Re: SRBA Claim(s) 37-737B, 37-780B, 37-15D, 37-263D, 37-1219
Decreed Water Rights 37-11888, 37-11889

Dear Mr. Molyneux:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer records of the claim(s) noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Trish Fawcett
Technical Records Specialist

Enc.

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED
MAR 13 2002

Department of Water Resources
Southern Region

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right Number(s) 37-737B 37-780B
Adjudication Claim Number(s) _____

2. The following REQUIRED information must be submitted with this form.

A. A copy of the most recent DEED, 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 on file with the county.)

OR

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

3. Name and Address of Former Owner/Claimant(s)
AW Maxine Molyneux 1174 Gannett/Picabo Rd. Bellevue, ID 83313
C.E. Ingeberg Molyneux 880 Chaidlaw Pl. Rd. Carey, ID 83320

4. New Owner/Claimant(s) C.E. Molyneux
Name connector (Check one): ☒ AND, ☐ OR, ☐ AND/OR

New Mailing Address _____

City, State and ZIP Code _____

New Telephone Number (208) 823-4573

5. Date you acquired the property 3/5/02

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 actually irrigated 70 Number and type of stock irrigation decree

Diversion rate in CFS 7.8 cubic feet per second 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/Claimant(s) C.E. Molyneux Date 3/5/02

Date _____

8. (Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)
For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

(Space above this line for Recorder's use only)

QUITCLAIM DEED

FOR VALUE RECEIVED, INGEBORG A. MOLYNEUX does hereby convey, release, remise and forever quitclaim unto CLARENCE E. MOLYNEUX, a single man, as his sole and separate property, of 080 Laidlaw Park Rd., Carey, ID 83320, the following described premises situated in the County of Blaine, State of Idaho, to-wit:

Parcel I:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho

Section 15: S $\frac{1}{2}$ SW $\frac{1}{4}$

Section 16: N $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$

Section 17: E $\frac{1}{2}$ SE $\frac{1}{4}$

Section 21: Lots 1 and 2

Section 22: Lot 4

Parcel II:

A Parcel of land being all that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, Township 1 South, Range 22 East, B.M. Blaine County, Idaho, lying Southerly of the South boundary of the Carey-Kimama Road, more particularly described as follows:

Commencing at an aluminum cap marking the West One-Quarter of said Section 15, from which a brass cap and an original stone marking the Southwest Corner of said Section 15, bears South 0°14'38" East, 2676.85 feet;

thence South 0°14'38" East, 117.99 feet along the West Boundary of said Section 15 to the South boundary of the Carey-Kimama Road which point is the Real Point of Beginning:

thence South 61°21'52" East, 830.62 feet along the South boundary of said Carey-Kimama Road;

thence South 57°21'57" East, 427.39 feet along the South boundary of said Carey-Kimama Road;

QUITCLAIM DEED

For value received A.W. MOLYNEUX and MAXINE MOLYNEUX, husband and wife, herein after called the Grantor, do hereby convey, release, remise and forever quitclaim unto C. E.

Molyneux, an unmarried man, whose address is 080 Laidlaw Park Road, Carey, Idaho 83320, hereinafter called the Grantee,

All the Grantor's interest in the following described premises situated in Blaine County, Idaho, to-wit:

Exhibit "A" attached hereto.

Together with their appurtenances.

Dated ~~February~~ ^{March} 5, 2002.

A. W. Molyneux
A. W. Molyneux

Maxine Molyneux
Maxine Molyneux

STATE OF IDAHO

County of Blaine

ON ~~February~~ ^{March} 5, 2002, before me a Notary Public of said State, personally appeared A. W. Molyneux and Maxine Molyneux, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Aina M. Clark

Notary Public for Idaho

Residing at: Picabo, Idaho

Commission Expires: 2-21-2003



Exhibit "A"

Parcel I:

Township 1 South , Range 22 East, Boise Meridian, Blaine County, Idaho.

Section 15: S1/2SW1/4

Section 16: N1/2SW1/4, E1/2SE1/4, S1/2SW1/4

Section 17: E1/2SE1/4

Section 21: Lots 1 and 2

Section 22: Lot 4

Parcel II:

A parcel of land being all that portion of the NW1/4SW1/4, Section 15, Township 1 South, Range 22 East, B.M., Blaine County, Idaho, lying southerly of the South boundary of the Carey-Kimama Road, more particularly described as follows:

Commencing at an aluminum cap marking the West One-Quarter Corner of said Section 15, from which a brass cap and an original stone marking the Southwest Corner of said Section 15, bears South 0 14'38" East, 2676.85 feet;

thence South 0 14'38" East, 117.99 feet along the West Boundary of said Section 15 to the South boundary of the Carey-Kimama Road which point is the Real Point of Beginning;

thence South 61 21'52" East, 830.62 feet along the South boundary of said Carey-Kimama Road;

thence South 57 21'57" East, 427.39 feet along the South boundary of said Carey-Kimama Road;

thence South 54 42'48" East, 288.29 feet, more or less, along the South boundary of said Carey-Kimama Road, to the East Boundary of said NW1/4SW1/4, Section 15;

thence South 0 13'14" East, 427.44 feet along said East boundary of NW1/4SW1/4, Section 15, to the Southeast Corner of said NW1/4SW1/4, Section 15;

thence North 89 54'33" West, 1320.71 feet along the South boundary of said NW1/4SW1/4, Section 15 to the West boundary of said NW1/4SW1/4;

thence North 0 14'38" West, 1220.44 feet along the West boundary of said Section 15 to the point of beginning.

well

NHEL NW

NHEL NW

NHE

T 276 C. Moly. & Bros.

531

PC

N 9.5

2 6.6

5 57.3

3 54.4

T 289 Moly

531

Bro.

NHEL

4 71.7

NHEL

NHEL

NHEL

N

NHE

17/16
20/21

4 12.2 PC

8 10.2

NH

17/6
531
140/14
Co

HUFF
LAYER

58

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 37-737B
Date Received: 1/17/91
Receipt No:
Received By:

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

1. Name of Claimant(s)

C E MOLYNEUX Phone: (208)823-4573
080 LAIDLAW PK RD
CAREY ID 83320

INGEBORG MOLYNEUX Phone: (208)823-4573
080 LAIDLAW PK RD
CAREY ID 83320

A W MOLYNEUX Phone: (208)788-2552
1174 GANNETT PICABO RD
BELLEVUE ID 83313

MAXINE MOLYNEUX Phone: (208)788-2552
1174 GANNETT PICABO RD
BELLEVUE ID 83313

2. Date of Priority: 03/30/1883

3. Source: FISH CREEK Trib. to: LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County
01N	22E	33	NE SE	BLAINE

5. Description of diverting works:

Existing headgate and buried pipeline to gravity sprinkler (pivot).

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	0.7	

7. Total Quantity Appropriated is:
0.7 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
01S	22E	15	SW	SW	IRRIGATION	35
					Section Acres	35
01S	22E	16	SE	SE	IRRIGATION	35
					Section Acres	35
					Total Acres	70

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS FOR THE ENTIRE PORTION OF WR 37-00737

1/12/01 tf; ownership changed John and Kristy Molyneux to A.W., Maxine, C.E., and Ingeborg Molyneux per 1409(6) and deeds received 5/15/00. Claim also amended to conform to Second Amended Final Order of Transfer 3922.

Right nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 4/14/98) in the matter of the Application for Transfer 3922. (As follows.)

It is hereby ordered that application for transfer no 3922 is CONDITIONALLY APPROVED with the following conditions:

The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

No less than one-half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

The combined flow rate of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 1.0 cfs.

Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 140-acre feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

Use of water under the transferred water right nos. 37-00737B and 37-00780B will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

Any pro rate reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

Per Transfer 3922 approval document:

The diversion rate to Hot Springs Canal Conveyance under right 37-00780B shall be determined to be either 0.20 cfs or 0.30 cfs in the Snake River Basin Adjudication, as stipulated.

15. Basis of Claim: Decreed



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

January 18, 2001

KARL J. DREHER
DIRECTOR

C E MOLYNEUX
INGEBORG MOLYNEUX
080 LAIDLAW PK RD
CAREY ID 83320

RE: SRBA Claim(s) A37-00737B, A37-00790B

Dear Mr. and Mrs. Molyneux:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer record of the claim(s) noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Trish Fawcett
Technical Records Specialist

enc.

cc: A.W. and Maxine Molyneux

MAY 15 2000

Department of Water Resources
Southem RegionSTATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIPPlease print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.1. Water Right No(s): (A37-11889)(A37-11888)(37-00737B 37-00780B Transfer #3922)

Adjudication Claim No(s): _____

2. The following **REQUIRED** information must be submitted with this form:A. A copy of the most recent **DEED, 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** showing the location of the place of use of the water right(s) or claims(s). (These are usually attached to your deed or on file with the county.)

OR

C. If your water right or adjudication claim is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with irrigated acres outlined and point(s) of diversion clearly marked. The AERIAL PHOTO should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant

A.W. and/or Maxine Molyneux and/or Molyneux Brothers
RR 1 Box 400 c/o C.E. Molyneux
Bellevue Idaho 83313 080 Laidlaw Pk. Rd.
Carey, Idaho 83320

4. New Owner/Claimant(s)

A.W. and/or Maxine Molyneux and/or C.E. and/or Ingeborg Molyneux

New Mailing Address

1174 Gannett/Picabo Rd. Name Connector (Check one): [] and, [] or, ☒ and/or
080 Laidlaw Park Road

City, State and ZIP Code

Bellevue, Idaho 83313 Carey, Idaho 83320

New Telephone Number

(208) 823-4573

5. Date you acquired the property

12/13/996. **Did you acquire all of the former owner's property? If you did, skip this item and go to item 7. If you acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). Describe in detail your portion of each water right or adjudication claim in the spaces in the box below only if the water right(s) or claim(s) need to be split between owners. If necessary, attach additional pages. 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.**

Number of acres you irrigate with this water right _____ Number and type of stock _____

Diversion rate in CFS _____ Number of homes you acquired _____ Other uses _____

7. Signature of New Owner(s) or Claimant(s)

A.W. Molyneux Maxine Molyneux
C.E. Molyneux Ingeborg Molyneux

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.

C.E. & Ingeborg Molyneux
080 Laidlaw Park Road
Carey, Idaho 83320
May, 8 2000

RECEIVED

MAY 15 2000

Department of Water Resources
Southern Region

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Re: Change of water right ownership
To Whom It May Concern:

Enclosed please find a "Notice of Change of Water Right Ownership" form. I will try to clarify the chain of ownership for this change. Water rights A37-11889 and A37-11888 were formerly jointly owned by A.W. Molyneux and Maxine Molyneux (husband and wife and 50% owners in the property), and the other 50% of the property was owned by Molyneux Brothers. A.W. and Maxine Molyneux are still 50% owners, the other 50% is now owned by C.E. and Ingeborg Molyneux. It took a series of deeds in order for C.E. and Ingeborg to acquire the Molyneux Brothers interest.

Attached, please find the following deeds: 1. Quitclaim Deed (marked "1") Showing the change of ownership from Molyneux Brothers to each individual Brother. 2. Quitclaim Deed (marked "2") Showing more of the property being transferred out of Molyneux Brothers ownership. 3. Quitclaim Deed (marked "3") Showing more of the Molyneux Brothers share transferred to C. E. Molyneux.

It was at this point, that C.E. and Ingeborg were able to acquire the individual Brother's interests, shown by the Warranty Deed (marked "4"), also attached.

Since some confusion still existed, as to the correct establishment of ownership for community property purposes, the final Quitclaim Deeds (marked "5 & 6"), show that all the original Molyneux Brothers property is now jointly owned by C.E. and Ingeborg Molyneux, husband and wife.

It is therefore established that the current owners of this property, and Water rights A37-11889 and A37-11888, are A.W. and Maxine Molyneux (an undivided 50%), and C.E. and Ingeborg Molyneux (an undivided 50%).

Furthermore, Water rights 37-00737B and 37-00780B were transferred to this same property, and conditionally approved by the Second Amended Final Order (dated 4-14-1998) in the matter of the application for transfer No. 3922. Ownership, as previously established on this property, is A.W and Maxine Molyneux (an undivided 50%), and C.E. and Ingeborg Molyneux (an undivided 50%).

I hope I have successfully explained the chain of ownership. Please call me at 208-823-4573 if there are further questions or if further documentation is needed. I would be happy to assist.

Sincerely,


Ingeborg Molyneux

C.E. and Ingeborg Molyneux
080 Laidlaw Pk. Rd.
Carey, Idaho 83320
(208)823-4573
January 9, 2001

RECEIVED
JAN 11 2001
Department of Water Resources
Southern Region

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Dear Trish:

Enclosed please find a copy of the Warranty Deed we spoke about on the phone. It shows the property in question being purchased in 1990 by A.W. and Maxine Molyneux (an undivided 50%), and Molyneux Brothers (an undivided 50%). It also shows that the property was purchased from Elwin and Robert Coates. While the Second Amended Final Order does not specifically state that the proposed place of use is owned by A.W. and Maxine Molyneux and Molyneux Brothers, it does refer to the property "commonly known as the Coates place" when stating the legal description on Page 6, (#10) of the order. It also shows on Page 5, (#5), the original place of use owned by John and Kristy Molyneux. The Second Amended Final Order refers only to the applicants, John and Kristy Molyneux as "Molyneuxs".

Perhaps this clears up any confusion in this matter. If I can be of any further help, please don't hesitate to call me at the above number, anytime. I would like to thank-you for all your help regarding this matter.

Sincerely,



Ingeborg Molyneux

Order No. 16866

WARRANTY DEED

RECEIVED

JAN 11 2001

Department of Water Resources
Cuthbertson Building

FOR VALUE RECEIVED

Elwin L. Coates, as to Parcels I, II and III, a widower AND Robert A. Coates, as to Parcels II & III, a married man, as his sole and separate property,

Hereinafter called grantor, hereby grants, bargains, sells and conveys unto

A. W. Molyneux and Maxine Molyneux, husband and wife, as to an undivided 50% interest, AND Molyneux Brothers, a partnership consisting of Clyde L. Molyneux, William L. Molyneux, John I. Molyneux and Clarence E. Molyneux, as to undivided 50% interest,

whose address is: Route 1, Box 400, Bellevue, ID 83313

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho, to wit:

PARCEL I:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho.

Section 16: S1/2 SW1/4 N1/2 SW1/4

Section 17: E1/2 SE1/4

PARCEL II:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho.

Section 15: S1/2 SW1/4

Section 21: Lots 1 and 2

Section 22: Lot 4

PARCEL III:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho.

Section 16: E1/2 SE1/4

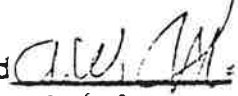
SUBJECT TO: A Mortgage in favor of The Federal Land Bank of Spokane, in the original amount of \$104,000.00, recorded February 3, 1986, as Instrument No. 270229, records of Blaine County, Idaho, which the Grantee(s) herein agree to assume and pay according to its terms and conditions.

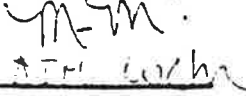
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances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

Dated: October 17, 1990


Elwin L. Coates


Robert A. Coates

Accepted and Approved 

Accepted and Approved 

Accepted and Approved 

2

QUITCLAIM DEED

For Value Received

MOLYNEUX BROTHERS, Partnership

do hereby convey, release, remise and forever quitclaim unto

A.W. MOLYNEUX and MAXINE MOLYNEUX, husband and wife, an undivided 50% interest, CLYDE L. MOLYNEUX, a married man, an undivided 9.99% interest, WILLIAM L. MOLYNEUX, a single man, an undivided 11.75% interest, JOHN I. MOLYNEUX, a married man, an undivided 11.99% interest, AND C. E. MOLYNEUX, a married man, an undivided 16.27% interest, as tenants in common

the following described premises situated in Blaine County, to-wit:

EXHIBIT "A"

BLAINE CO. REQUEST
OF *Kristy Molyneux*
1999 DEC 13 P 1:30
43436
CLERK *and*
per 5 6

Grantees' Address: c/o C. E. Molyneux
080 Laidlaw Park Road
Carey, ID 83320

together with their appurtenances.

3

QUITCLAIM DEED

For Value Received

MOLYNEUX BROTHERS, Partnership

do hereby convey, release, remise and forever quitclaim unto

C. E. MOLYNEUX, a married man, an undivided 50% interest, being all of the Grantor's interest

the following described premises situated in Blaine County, to-wit:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho

Section 16: S1/2SW1/4
Section 17: E1/2SE1/4

Grantees' Address: c/o C. E. Molyneux
080 Laidlaw Park Road
Carey, ID 83320

BLAINE CO. REQUEST

OF *County Molyneux*

1999 DEC 13 P 1:28

431

MAKING... DEER...
for 3 =

EXHIBIT "A"

ATTACHED HERETO AND MADE A PART THEREOF

A parcel of land being all that portion of the NW1/4 SW1/4, Section 15, T. 1S., R. 22E., B. M., Blaine County, Idaho, lying Southerly of the South boundary of the Carey-Kimama Road, more particularly described as follows:

Commencing at an aluminum cap marking the West One-Quarter Corner of said Section 15, from which a brass cap and an original stone marking the Southwest Corner of said Section 15, bears South $0^{\circ}14'38''$ East, 2676.85 feet;

thence South $0^{\circ}14'38''$ East, 117.99 feet along the West Boundary of said Section 15 to the South boundary of the Carey-Kimama Road, which point is the REAL POINT OF BEGINNING;

thence South $61^{\circ}21'52''$ East, 830.62 feet along the South boundary of said Carey-Kimama Road;

thence South $57^{\circ}21'57''$ East, 427.39 feet along the South boundary of said Carey-Kimama Road;

thence South $54^{\circ}42'48''$ East, 288.29 feet, more or less, along the South boundary of said Carey-Kimama Road, to the East boundary of said NW1/4 SW1/4, Section 15;

thence South $0^{\circ}13'14''$ East, 427.44 feet along said East boundary of the NW1/4 SW1/4, Section 15, to the Southeast Corner of said NW1/4 SW1/4, Section 15;

thence North $89^{\circ}54'33''$ West, 1320.71 feet along the South boundary of said NW1/4 SW1/4, Section 15 to the West boundary of said NW1/4 SW1/4;

thence North $0^{\circ}14'38''$ East, 2676.85 feet;

1

BLAINE CO. REQUEST

OF *Kristy Molyneux*

QUITCLAIM DEED

1999 DEC 13 P 1:30

Dec
434368

MAKER..

CLERK *wp*

for \$300

For Value Received

MOLYNEUX BROTHERS, Partnership

do hereby convey, release, remise and forever quitclaim unto

CLYDE L. MOLYNEUX, a married man, an undivided 9.99% interest, WILLIAM L. MOLYNEUX, a single man, an undivided 11.75% interest, JOHN I. MOLYNEUX, a married man, an undivided 11.99% interest, AND C. E. MOLYNEUX, a married man, an undivided 16.27% interest, as tenants in common

the following described premises situated in Blaine County, to-wit:

Parcel I:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho
Section 16: N1/2SW1/4

Parcel II:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho
Section 15: S1/2SW1/4
Section 21: Lots 1 and 2
Section 22: Lot 4

Parcel III:

Township 1 South, Range ²²~~11~~ East, Boise Meridian, Blaine County, Idaho
Section 16: E1/2SE1/4

Grantees' Address: c/o C. E. Molyneux
080 Laidlaw Park Road
Carey, ID 83320

WARRANTY DEED

For Value Received Clyde L. Molyneux, a married man, an undivided 9.99% interest, subject to the community interest of his wife; William L. Molyneux, a single man, an undivided 11.75% interest; John I. Molyneux, a married man, an undivided 11.99% interest, as to the community interest of his wife;

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

C. E. Molyneux and Ingeborg Molyneux, husband and wife

whose address is: 080 Laidlaw park Road, Carey, ID 83320

Hereinafter called the Grantee, the following described premises situated in Blaine County, ID, to-wit:

SEE ATTACHED EXHIBIT "A"

Subject to Mortgage to secure an indebtedness of \$104,000.00 recorded February 3, 1986, as Instrument No. 270229, Mortgagor Elwin L. Coates and Arlene R. Coates, husband and wife, Mortgagee Federal Land Bank of Spokane, a corporation of Spokane, Washington.

Memorandum of adjustable rate conversion agreement by and between A. W. Molyneux and Maxine Molyneux and Molyneux Brothers and Farm Credit Bank of Spokane recorded February 19, 1991, as Instrument No. 327820, records of Blaine County, Idaho.

Assigned to Northwest Farm Credit Services, ACA, by Instrument recorded March 19, 1999, as Instrument No. 425348.

Financing Statement covering UCC-1 recorded February 3, 1986, as Instrument No. 270230, Debtor Elwin L. Coates and Arlene R. Coates, Secured party Federal Land Bank of Spokane. Amendment recorded as Instrument No. 327425, and amendment recorded as Instrument No. 425345.

Subject to Mortgage to secure an indebtedness of \$123,400.00 recorded May 24, 1996, as Instrument No. 390568 Mortgagor A. W. Molyneux and Maxine Molyneux, husband and wife, Molyneux Brothers Partnership, a partnership consisting of C. E. Molyneux, same as Clarence E. Molyneux, Clyde L. Molyneux, John Molyneux, William L. Molyneux Mortgagee Northwest Farm Credit Services, ACA.

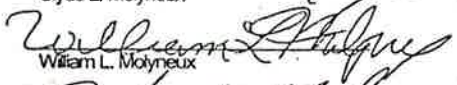
Financing Statement covering UCC-1 recorded November 22, 1999, as Instrument No. 433705 Debtor C. E. Molyneux and Ingeborg Molyneux Secured party Farm Credit Leasing Services Corporation.

Together with 500 shares Carey Valley Irrigation Reservoir Company, Inc.

Subject to all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: December 20, 1999


Clyde L. Molyneux

William L. Molyneux

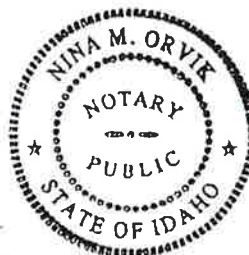
John I. Molyneux

STATE OF Idaho

COUNTY OF Blaine

On this 23rd day of December, 1999, before me, a Notary Public in and for said State, personally appeared Clyde L. Molyneux, William L. Molyneux, John I. Molyneux, known or identified to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.


Notary Public of Idaho
Residing at: Pocatello, ID
Commission Expires: 02/21/03



K23064
Legal Description

Exhibit "A"

Parcel I:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho

Section 15: S $\frac{1}{4}$ SW $\frac{1}{4}$
Section 16: N $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$
Section 21: Lots 1 and 2
Section 22: Lot 4

Parcel II:

A Parcel of land being all that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, Township 1 South, Range 22 East, B.M. Blaine County, Idaho, lying Southerly of the South boundary of the Carey-Kimama Road, more particularly described as follows:

Commencing at an aluminum cap marking the West One-Quarter Corner of said Section 15, from which a brass cap and an original stone marking the Southwest Corner of said Section 15, bears South 0°14'38" East, 2676.85 feet;

thence South 0°14'38" East, 117.99 feet along the West Boundary of said Section 15 to the South boundary of the Carey-Kimama Road which point is the Real Point of Beginning;

thence South 61°21'52" East, 830.62 feet along the South boundary of said Carey-Kimama Road;

thence South 57°21'57" East, 427.39 feet along the South boundary of said Carey-Kimama Road;

thence South 54°42'48" East, 288.29 feet, more or less, along the South boundary of said Carey-Kimama Road, to the East Boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15;

thence South 0°13'14" East, 427.44 feet along said East boundary of NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, to the Southeast Corner of said NW $\frac{1}{4}$ SW $\frac{1}{4}$; Section 15;

thence North 89°54'33" West, 1320.71 feet along the South boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15 to the West boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$;

thence North 0°14'38" West, 1220.44 feet along the West boundary of said Section 15 to the point of beginning

ORIGINAL

(5)

437417

Deed

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

TERRY G. HOGUE, ESQ.
HOGUE & DUNLAP, L.L.P.
POST OFFICE BOX 460
HAILEY, IDAHO 83333

BLAINE CO. REQUEST

OF: Hogue & Dunlap

'00 MAR 21 AM 11 06

MARSHA RIEMANN, CLERK *ms*

FEES \$ 6.00

(space above line for Recorder's use)

QUITCLAIM DEED

FOR VALUE RECEIVED, I, C.E. Molyneux, of 080 Laidlaw Park Road, Carey, Idaho, (83320), hereinafter referred to as "Grantor," do hereby convey, release, remise, and forever quitclaim unto C.E. and Ingeborg A. Molyneux, husband and wife, as community property, of 080 Laidlaw Park Road, Carey, Idaho (83320), hereinafter referred to as "Grantees," any and all interest I may have in the following described premises, situated in Blaine County, Idaho, to wit:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho

Section 16: S1/2SW1/4

Section 17: E1/2SE1/4

TOGETHER WITH all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto Grantees, and to Grantees' heirs and assigns forever.

DATED this 15th day of March, 2000.

GRANTOR:

C.E. Molyneux
C.E. Molyneux

STATE OF IDAHO)
)ss.
County of Blaine)

On this 15th day of March, 2000, before me, the undersigned, a notary public in and for said State, personally appeared C. E. MOLYNEUX, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



[Signature]
Notary Public for Idaho
Residing at: *Idaho*
Commission Expires: 2-21-2003

ORIGINAL

(6)

437418

Deed

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

TERRY G. HOGUE, ESQ.
HOGUE & DUNLAP, L.L.P.
POST OFFICE BOX 460
HAILEY, IDAHO 83333

BLAINE CO. REQUEST

OF: Hogue & Dunlap

'00 MAR 21 AM 11 07

MARSHA RIEMANN, CLERK

FEES \$ 9.00

(space above line for Recorder's use)

QUITCLAIM DEED

FOR VALUE RECEIVED, I, C.E. Molyneux, of 080 Laidlaw Park Road, Carey, Idaho, (83320), hereinafter referred to as "Grantor," do hereby convey, release, remise, and forever quitclaim unto C.E. and Ingeborg A. Molyneux, husband and wife, as community property, of 080 Laidlaw Park Road, Carey, Idaho (83320), hereinafter referred to as "Grantees," any and all interest I may have in the following described premises, situated in Blaine County, Idaho, to wit:

SEE ATTACHED EXHIBIT A

TOGETHER WITH all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto Grantees, and to Grantees' heirs and assigns forever.

DATED this 15th day of March, 2000.

GRANTOR:

C. E. Molyneux
C.E. Molyneux

Exhibit "A"

Parcel I:

Township 1 South, Range 22 East, Boise Meridian, Blaine County, Idaho

- Section 15: S $\frac{1}{4}$ SW $\frac{1}{4}$
- Section 16: N $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$
- Section 21: Lots 1 and 2
- Section 22: Lot 4

Parcel II:

A Parcel of land being all that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, Township 1 South, Range 22 East, B.M. Blaine County, Idaho, lying Southerly of the South boundary of the Carey-Kimama Road, more particularly described as follows:

Commencing at an aluminum cap marking the West One-Quarter Corner of said Section 15, from which a brass cap and an original stone marking the Southwest Corner of said Section 15, bears South 0°14'38" East, 2676.85 feet;

thence South 0°14'38" East, 117.99 feet along the West Boundary of said Section 15 to the South boundary of the Carey-Kimama Road which point is the Real Point of Beginning;

thence South 61°21'52" East, 830.62 feet along the South boundary of said Carey-Kimama Road;

thence South 57°21'57" East, 427.39 feet along the South boundary of said Carey-Kimama Road;

thence South 54°42'48" East, 288.29 feet, more or less, along the South boundary of said Carey-Kimama Road, to the East Boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15;

thence South 0°13'14" East, 427.44 feet along said East boundary of NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, to the Southeast Corner of said NW $\frac{1}{4}$ SW $\frac{1}{4}$; Section 15;

thence North 89°54'33" West, 1320.71 feet along the South boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15 to the West boundary of said NW $\frac{1}{4}$ SW $\frac{1}{4}$;

thence North 0°14'38" West, 1220.44 feet along the West boundary of said Section 15 to the point of beginning

STATE OF IDAHO)
)ss.
County of Blaine)

On this 15th day of March, 2000, before me, the undersigned, a notary public in and for said State, personally appeared C. E. MOLYNEUX, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Nina M. Clark
Notary Public for Idaho
Residing at: *Idaho*
Commission Expires: *2-21-2003*

C.E. and Ingeborg Molyneux
080 Laidlaw Park Road
Carey, Idaho 83320

October 18, 2000

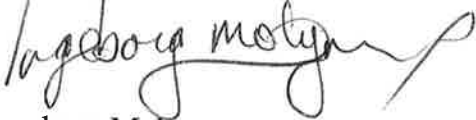
RECEIVED
OCT 19 2000
Department of Water Resources
Southern Region

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Re: Change of water right ownership
To Whom It May Concern:

On May 8, 2000, I completed, and then sent to your office a "Notice of Change of Water Right Ownership" form for water rights A37-11889, A37-11888, 37-00737B, and 37-00780B, along with an explanation letter, copies of deeds, and an aerial map of the property. I have not heard any reply from your office after five months and just wanted to check and make sure that you don't need any more information to finish the change. If I can supply you with any more information, please write to me at the above address, or call me at (208) 823-4573.

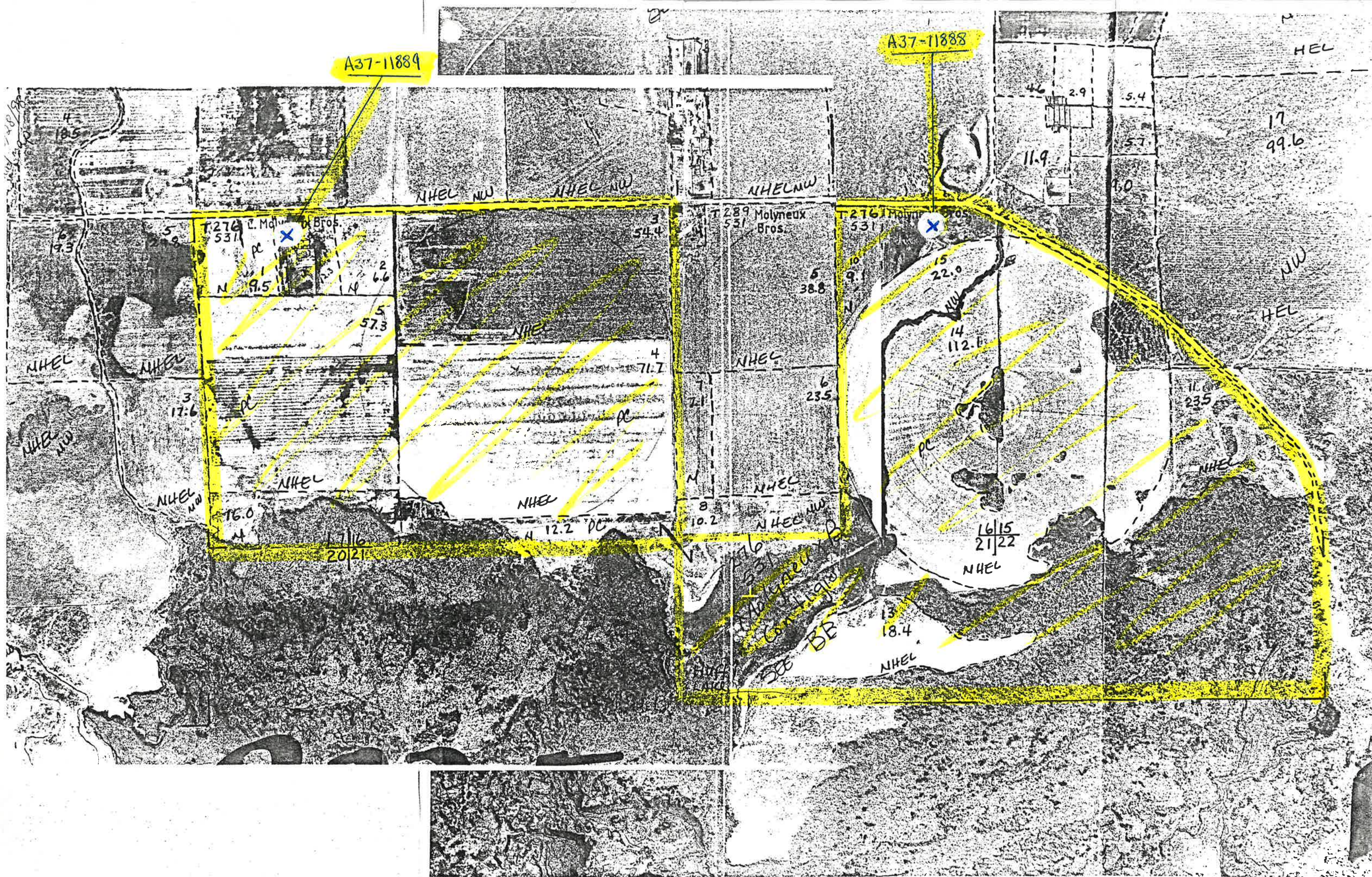
Sincerely,



Ingeborg Molyneux

A37-11889

A37-11888



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

TRANSFER OF WATER RIGHT

APR 22 1998

TRANSFER NO. 3922
WATER RIGHT NO(S). 37-00737B/37-00780B
Department of Water Resources
Southern Region

This is to certify that: JOHN MOLYNEUX
KRISTY MOLYNEUX
RT 1 BOX 190
BELLEVUE ID 83313

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 TO FISH CREEK MUTUAL PIPELINE</u>	<u>DIVERSION RATE TO HOT SPRINGS CANAL CONVEYANCE</u>
Right No. 37-00737B : IRRIGATION & CONVEYANCE Priority: 03/30/1883	04/15 to 10/15	0.50 CFS	0.20 CFS
Right No. 37-00780B : IRRIGATION & CONVEYANCE Priority: 03/30/1883	04/15 to 10/15	0.50 CFS	0.20 CFS OR 0.30 CFS*
TOTAL:		1.00 CFS	0.40 CFS OR 0.50 CFS*

*To be determined in the Snake River
Basin Adjudication, as stipulated.

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
FISH CREEK	LITTLE WOOD RIVER

LOCATION OF POINT(S) OF DIVERSION: NESE , Sec. 33, Township 01N, Range 22E
BLAINE County

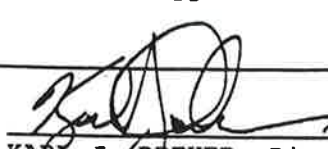
PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
01S	22E	15	SWSW	35		35
		16	SESE	35		35
Total number of acres irrigated:						70

CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the
Second Amended Final Order in the matter of Application for Transfer No. 3922.

Dated this 15th day of April, 1998.


KARL J. DREHER, Director

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 3922 (PORTIONS OF WATER)
RIGHT NOS. 37-00737 & 37-00780) IN THE NAME)
OF JOHN AND/OR KRISTY MOLYNEUX)
_____)

**SECOND AMENDED
FINAL ORDER**

A final memorandum decision and order was issued by the Director of the Department of Water Resources (the "Department") denying application for transfer no. 3922 on February 22, 1993. The final memorandum decision and order was appealed to the District Court of the 5th Judicial District of the State of Idaho (the "Court").

The applicants, John and Kristy Molyneux ("Molyneuxs"), moved the Court for leave to present additional evidence. The Court granted the motion and ordered the following be considered by the Department:

- a. Those portions of the soil survey which describe characteristics of the soils at the existing place of use and the proposed place of use;
- b. The watermaster records and any supporting testimony necessary to determine the dates of delivery of the 1883 and 1905 water rights to users on the Hot Springs Canal during the years of above-normal, normal, and below-normal water supply in the Fish Creek system, including but not limited to the 1993 irrigation season;
- c. The Minutes of the March 1, 1993, Water District No. 37-U meeting and other evidence concerning the method of delivery of the water rights to users along the Hot Springs Canal proposed for the 1993 irrigation season.

The Court also ordered the Department to consider such other evidence as it finds material and admissible for the purpose of determining the weight to be given the soil characteristics set forth in the soil survey.

Additional evidence was presented to the Department at a hearing on February 3, 1994. The U. S. Soil Conservation Service Soil Survey of Blaine County was received into evidence. Expert witnesses also testified regarding the soil survey, and summaries of the soil survey results were also received into evidence. Minutes of the March 1, 1993, meeting of Water District

No. 37-U were received as an exhibit. Finally, the parties called witnesses who further testified about conditions of the soils and compared soil characteristics at the existing and proposed places of use.

In its initial decision the Department considered watermaster records, but at the time determined the records were incomplete and could not be used to compare the timing of water deliveries. At the supplemental hearing, the parties were not prepared to present information regarding the watermaster records. The parties stipulated they would compile a list of water users from the watermaster records for the years 1980 through 1993 and jointly identify the water rights diverted by each of the individuals listed during each respective year. The summary of the water right users and water rights diverted was submitted to the Department on or about April 24, 1994, and was incorporated into the record.

The hearing officer issued an amended recommended order on August 8, 1994 denying the application for transfer. The attorney for the applicants stated he would not file a petition for reconsideration or exceptions to the recommended order. He requested that the Department "make appropriate arrangements to have the agency records supplemented to include the transcript of the hearing conducted to take additional evidence"

On September 13, 1994, the Director issued an order for submittal of proposals seeking suggestions from the parties about conditions that could be imposed to satisfy concerns about enlargement of use and injury to other water users. Suggestions were submitted by the attorney for the applicants (James P. Speck), and the attorney for the protestants (Thomas M. Robertson) opposed the proposed conditions. The Director issued an Amended Final Order conditionally approving application for transfer no. 3922 on May 24, 1996. The applicants and the protestants each filed timely petitions for reconsideration of the amended order through their attorneys. On June 26, 1996, the Director issued an order granting the petitions for reconsideration.

In their petition for reconsideration, the applicants object to any assumption that the soils at the new place of use proposed in the application for transfer may be similar to soils at the place of use under water rights owned and used by Ellsworth Enterprises. Consequently, the applicants reason that: "There is absolutely no basis in the record to conclude that reducing the annual volume of water diverted under the Petitioners' decreed water rights to 50% of the Department's standard for entitlement is necessary or appropriate to prevent an expansion of such water rights." The applicants are correct that the record does not establish that the soils at the place of use proposed in the application for transfer are similar to soils at the place of use under water rights owned and used by Ellsworth Enterprises. Consequently, finding of fact no. 59 in the Amended Final Order (no. 56 in this Second Amended Final Order) has been revised, and finding of fact no. 60 in the Amended Final Order has been deleted. Conclusion of law no. 10 has also been revised. However the applicants are incorrect in concluding that the record does not establish a basis for limiting the annual volume of water diverted under the transfer to 140 acre-feet, or 50 percent of the maximum volume needed to irrigate 70 acres of land in the climatic area for the original place of use under the applicants decreed water rights. The

watermaster records establish that the applicants and their predecessors only diverted water for beneficial use 50 percent of the time that water was available to be diverted, and that the average annual volume of water diverted at 1.4 cfs or less was approximately 140 acre-feet during the appropriate time period for consideration. To allow a higher volume of water to be diverted and used after the transfer than what the applicants had historically used under their decreed water rights during the appropriate time period for consideration would constitute an enlargement in use of the original rights in violation of § 42-222 (1), Idaho Code.

In their petition for reconsideration, the protestants note that ordering condition no. 6 of the order in the Amended Final Order does not explicitly impose the volume limitation of 140 acre-feet. Condition no. 6 of the order has been revised to explicitly include this limitation.

The protestants also continue to allege that even with the limitation on the annual volume that can be diverted, the transfer will result in earlier and more consistent diversions during the early part of the irrigation season. The watermaster records establish that under water right no. 37-00737, water has historically been diverted beginning in early to mid May, and subsequent diversions during the irrigation season were historically sporadic. Furthermore, the record establishes that the applicants have rights to use water from Fish Creek Reservoir. As a result, the applicants can manage the use of their reservoir storage water so that when water can be put to beneficial use, the applicants can presently divert their decreed rights as early and as consistently as the applicants choose, subject of course to water availability and the limitations defined under the water rights. Therefore, the transfer will be approved without imposing any additional limitation on the timing of diversions, even though the soils at the proposed place of use have a permeability which is approximately 30 percent greater than the soils at the present place of use.

The protestants also allege that the Department has not considered the "annual volume of water which is typically delivered under a 1883 right" and that limiting diversions under the transferred water rights to an annual volume of 140 acre-feet (2 acre-feet per acre) may not be "a meaningful limitation." However, the Department specifically analyzed the watermaster records to determine the amount of water historically delivered to the applicants' 1883 decreed water rights. The Department's analysis is reflected in finding of fact no. 61 and Attachment A.

The protestants also claim that the 1.0 cfs diversion rate under the transferred water rights should be subject to reduction by the "shrink factor" which is determined by the watermaster. Finding of fact no. 14 describes how the watermaster measures and delivers water. Because the watermaster measures the water delivered at field headgates rather than at the head works which diverts water from Fish Creek into the Hot Springs Canal, the Highline Canal, and the Fish Creek Mutual Pipeline, the shrink factor is proportionately applied to all of the water delivered regardless of whether individual water users receive water from one of the canals or the pipeline. Therefore, additional reductions will only be made during periods of water shortage as provided in condition no. 6 of the order.

Conclusion of law no. 14 has also been revised to allow the protestants as well as the applicants a period of five (5) years to seek modification of the approval conditions of this transfer relating to enlargement or injury based upon factual evidence resulting from the transfer.

During the Department's reconsideration of the Amended Final Order, the Department took official notice of watermaster records for the years 1994 through 1996, in addition to the watermaster records for the years 1980 through 1993 that were previously considered. With the consent of the attorneys representing the applicants and the protestants, notice that the Department intended to rely in part on these additional watermaster records was not provided prior to issuing this Second Amended Final Order. However, the applicants or protestants can object to the use of the watermaster records for the years 1994 through 1996 by filing such objection as part of or separate from a petition for reconsideration during the fourteen-day (14-day) time period allowed for filing petitions for reconsideration.

FINDINGS OF FACT

Description of the Application

1. Application for transfer no. 3922 was filed by John and/or Kristy Molyneux ("Molyneuxs"). The application for transfer proposes both a change in the point of diversion and a change in the place of use for portions of water right nos. 37-00737 and 37-00780 (the "decreed rights").

2. The decreed rights were decreed in the Blaine County case of *Potter v. Patterson*, (4th Jud. Dist. Idaho 1914). Water right no. 37-00737 authorizes the diversion of 70 inches (1.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is described as follows:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	NWSE	30
1S	22E	19	Lot 1 (NWNW)	<u>40</u>
			Total	70

3. Water right no. 37-00780 authorizes the diversion of 120 inches (2.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is generally described as follows:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	SESE	-
		24	NENE	-
1S	22E	18	Lot 4 (SWSW)	<u> </u>
Total				120

4. The rights sought to be transferred were also claimed in the Snake River Basin Adjudication as claim nos. A37-00737B and A37-00780B. The point of diversion for both claims, as described in the claims, is the NW1/4, NW1/4, Section 9, Township 1S, Range 22E, B.M.

5. Claim no. A37-00737B asserts a right to divert 0.7 cfs. Claim no. A37-00780B asserts a right to divert 0.8 cfs. Both claims describe the following place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	19	Lot 1 (NWNW)	35
		18	Lot 4 (SWSW)	<u>35</u>
Total				70

6. The current place of use for water right nos. 37-00737 (part) and 37-00780 (part) is commonly known as the "Briggs place." The application for transfer and the resulting notice of publication contained an error. The front page of the transfer and each succeeding page described the individual flow rates of 0.7 cfs for right no. 37-00737 (part) and 0.8 cfs for right no. 37-00780 (part). However, the total flow listed in the published notice was 1.4 cfs, 0.1 cfs less than the sum of the two parts described. This discrepancy is not a fatal flaw in the application for transfer.

7. Molyneuxs expressed uncertainty about their entitlement. The watermaster stated that only 1.4 cfs (70 miners inches) has been delivered to Molyneuxs in the past. The parties stipulated that a full determination of the flow rates authorized by the water rights would be deferred until considered in the Snake River Basin Adjudication, and in the interim, 1.4 cfs (70 miners inches) would continue to be delivered to Molyneuxs by the watermaster.

8. The application for transfer proposes moving the point of diversion upstream approximately 1 ½ miles from the point of diversion described in the adjudication claims, which is on the portion of Fish Creek referred to as the Hot Springs Canal (the old channel of Fish Creek). The proposed new point of diversion is the large head works located in Fish Creek which splits the flows of Fish Creek into three water delivery systems: the Hot Springs Canal; the Highline Canal; and the Fish Creek Mutual Pipeline. The head works is located in the NE1/4, SE1/4, Section 33, Township 1N, Range 22E, B.M., and will be referred to herein as the "trifurcation."

9. The application for transfer seeks to divert the Molyneuxs portion of the water authorized by the decreed rights through the Fish Creek Mutual Pipeline rather than through the Hot Springs Canal.

10. The application for transfer also proposes to change the place of use from the Briggs place to the following, which is commonly known as the "Coates place":

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	15	SWSW	35
		16	SESE	<u>35</u>
			Total	70

11. The application for transfer was protested by nine owners of decreed Fish Creek water rights: Walter Peck; Edric L. Wilde; June D. Farnworth; Maurice C. Ellsworth; Lawrence Kimball; Gilbert Cross; Jerry Cenarrusa; Catherine Sweat; and Robert Whitby.

12. The protestants object to approval of the application for transfer on the following grounds:

- a. The place of use will be expanded from 70 acres to a pivot irrigating 140 acres;
- b. A larger annual volume of water will be diverted because the new place of use is a porous, gravelly soil while the old place of use is a finer-textured soil which is often saturated; and
- c. Removing the water proposed to be transferred from its present delivery system will increase losses borne by the remaining water users and will impede the ability of the remaining users to rotate water supplies.

13. The applicants argue in response:

- a. The Department can approve a permissible place of use, allowing the entire 140 acres to be irrigated with a combination of other rights;
- b. The Department can limit the annual volume diverted to the historical average annual volume to prevent greater water use on the place of use;
- c. The transfer of 1.4 cfs out of the Hot Springs Canal will not injure other users because although the Hot Springs Canal is a losing channel, the water which was lost in conveying the 1.4 cfs to the existing place of use will continue to be diverted and lost in the canal -- consequently, the

applicants allege the transfer will not increase the loss borne by the remaining users;

d. There has been no traditional practice of rotation among the users of water from the Hot Springs Canal; and

e. The characteristics of the soils at the current and proposed places of use do not differ significantly enough to warrant denial of the application on the basis that more water will be diverted to the new place of use.

General Description of Water Delivery from Fish Creek

14. The Department established Water District No. 37-U for the administration of water diverted from Fish Creek. The watermaster for Water District No. 37-U measures the natural flow of Fish Creek above the reservoir and adds 200 inches to the natural flow for springs which discharge into the reservoir. Flow out of the reservoir is measured, and the natural flow (including the allowance for spring discharge into the reservoir) is subtracted from the total flow to determine the flow released from storage. The watermaster delivers water to the Fish Creek water users at their field headgates rather than measuring water at the heads of the two canals and the pipeline. Water flow into the two canals is not measured nor is water flow measured into the pipeline at the trifurcation. The watermaster adjusts releases from the reservoir to satisfy the demands of the water users within the limits of their natural flow water rights and their rights to use portions of the storage water right. The watermaster determines how much water is discharging from the reservoir and how much is ultimately diverted by the individual water users. The difference between the reservoir release and the cumulative flow rate measured at the field headgates is the water lost (shrink) which is allocated to both the storage and the natural flow for all water users regardless of whether individual water users receive water deliveries from one of the canals or the pipeline.

15. Storage water is delivered to all of the lands within the Fish Creek drainage included in the place of use for the storage water right.

16. As the flow in Fish Creek declines, only storage water and early priority water rights are deliverable. Some of the earliest water rights on the system are water right nos. 37-00737 and 37-00780, which have a priority date of March 30, 1883.

17. The cumulative flow rate authorized for March 30, 1883 priority water rights (herein referred to as the 1883 rights) is 22.0 cfs (1100 miners inches). When all the 1883 rights are deliverable, the watermaster delivers 11.4 cfs (570 miners inches) to the water users on the Hot Springs Canal.

18. As the natural flow declines, the 1883 rights cannot be satisfied fully, and the delivery of natural flow at the field headgates for each of the 1883 rights is proportionally reduced. When storage water is no longer available, water deliveries to the 1883 priority rights are further reduced 25 percent by the watermaster to account for the proportionately higher losses that occur with lower flows in the water delivery system.

19. Water right no. 37-07581 authorizes diversion and use of water from a well owned by Robert Whitby and located in Section 4, Township 1S, Range 22E, B.M. The water right authorizes diversion of ground water from the well into the Fish Creek Mutual Pipeline. Prior to 1993, Whitby's practice was to divert approximately 3.2 cfs (160 miners inches) of ground water into the Hot Springs Canal, rather than pump ground water into the pipeline, in exchange for water he diverted out of the pipeline. The exchange saved Whitby the cost of operating a booster pump. Because a portion of the water delivered into the Hot Springs Canal is lost during conveyance, the exchange by Whitby also offset some conveyance losses in the first two miles of the Hot Springs Canal.

20. At the annual water district meeting of Water District No. 37-U held on March 1, 1993, the water district members passed a resolution stating "that if an individual pumps water, that he pump it into his own system and not into the canal to be used some other place." Whitby was thus prohibited in 1993 from pumping water into the Hot Springs Canal and exchanging the pumped water for water delivered to the Fish Creek Mutual Pipeline.

21. Prior to 1993, no water was delivered to the Hot Springs Canal at the trifurcation when the natural flow of Fish Creek was low and storage was fully depleted. During such periods of time, the Whitby well exchange resulted in some water being supplied to the 1883 rights held by users along the Hot Springs Canal.

22. No testimony regarding use of water pumped from the Whitby well was offered at the supplemental hearing. Without any evidence of change to the 1993 prohibition against discharge from Whitby's well into the Hot Springs Canal, it is presumed that all the water for the 1883 rights was delivered at the trifurcation in 1993 and subsequent years.

Description of Molyneux Proposal

23. Molyneuxs propose to have their portion of the 1883 rights delivered through the Fish Creek Mutual Pipeline to lands irrigated by a circular pivot. The pivot irrigates approximately 140 acres. Molyneuxs propose to make their portion of the 1883 rights appurtenant to 70 acres, or approximately one-half of the area covered by the pivot on the Coates place.

24. Operation of the pivot requires delivery of 2.0 cfs (100 miners inches). The 1.4 cfs (70 miners inches) sought to be transferred is not enough water to operate the pivot.

25. Molyneuxs operated the pivot without natural flow rights in the past, except in 1991 when water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) was illegally delivered to the pivot through the Fish Creek Mutual Pipeline. During other years, Molyneuxs operated the pivot using a combination of storage water delivered from Fish Creek Reservoir and ground water pumped from a well authorized by water right no. 37-02740, located in Section 4, Township 1S, Range 22E, B.M., and owned by P & C Irrigation Association (the "P & C well").

26. The P & C well, which pumps into the Fish Creek Mutual Pipeline, discharges approximately 1.2 cfs (60 miners inches) of water. Molyneuxs own a one-third interest in P & C Irrigation Association and have been the exclusive users of the P & C well in recent years.

27. Molyneuxs propose to transfer their portion of the 1883 rights into the Fish Creek Mutual Pipeline to improve the reliability of the water supply to the pivot. Chip Molyneux, John Molyneux's brother, testified that reservoir storage water would be moved to the existing place of use (the Briggs place) to replace the portions of the 1883 rights sought to be transferred. He also testified that in low water years, the portions of the 1883 rights sought to be transferred are more reliable than storage water.

28. Although Molyneuxs sought to transfer the entire 1.4 cfs (70 miners inches) to the Fish Creek Mutual Pipeline, they offered to limit diversion to no more than 1.0 cfs (50 miners inches) of the 1883 rights and leave 0.40 cfs (20 miners inches) of the 1883 rights in the Hot Springs Canal for conveyance losses until the 1883 water rights are reduced. When stream flows are low, Molyneuxs have not been able to divert the entire 1.4 cfs (70 miners inches) because of the proportionate reductions in the 1883 rights. John Molyneux asked that if the application is approved to transfer diversion of 1.0 cfs to the Fish Creek Mutual Pipeline, the Molyneuxs pro rata portion of losses during low flows be based on a diversion rate of 1.4 cfs (70 miners inches) rather than a diversion rate of 1.0 cfs (50 miners inches). Molyneuxs proposal to limit diversion of the 1883 rights to a rate of 1.0 cfs will be treated as an amendment to the application for transfer.

Analysis

29. Witnesses for the protestants stated that transfer of 1.4 cfs (70 miners inches) out of the Hot Springs Canal will result in greater losses borne by the remaining users. Because the watermaster delivers and measures water at the field headgates and losses are not allocated based on whether individual water users receive water deliveries from one of the canals or the pipeline, the remaining water users do not bear a greater loss if the natural flow water rights are transferred from the Briggs place. The transfer will not increase the total loss to the overall delivery system.

30. From time to time, water users at the end of the Hot Springs Canal combined the water diverted to the canal and rotated the larger quantity of water among them. However,

rotation was not established formally nor was the continuation of rotation binding on the water right holders.

31. The Briggs place is located in an area with fine-grained soil that retains moisture. The location can be appropriately characterized as "low lands" where water typically remains close to the ground surface during the spring, and the land "subs out" (retained water is depleted by growing vegetation) during the irrigation season. At the second hearing, witnesses compared characteristics of the soils at the Briggs place and the Coates place. The applicant offered a soil survey for Blaine County prepared by the U. S. Soil Conservation Service and individual maps from the survey depicting the various soil types. The applicant also offered a summary analysis of the soils at the Coates place and the Briggs place.

32. The protestants submitted their own summary of information from the survey and also called Dr. Charles E. Brockway as an expert witness.

33. The original decision and order in this matter dated February 22, 1993, referred to the porous nature of the soil at the Coates place as being a factor affecting the amount of water required for irrigation. The summaries of soil characteristics submitted by the applicant and protestant do not show distinguishable differences in the porosity of the soils at the Briggs place as compared to the soils at the Coates place.

34. Porosity describes the volume of pore space in the soil. It does not describe the ability of the soil to accept water or to drain water rapidly. It is commonly assumed that a coarse soil is more porous than a fine-grained soil, such as a clay soil. But in fact, a clay soil with very small soil particles is more porous and has a greater porosity than a coarse soil. As a result, comparisons of porosity alone do not indicate whether a soil is well drained or how rapidly it will accept water.

35. A better indicator of whether a soil is well drained or how rapidly it will accept water is permeability. Although the porosity of a clay may be high, its permeability or the rate at which water moves through the soil is slow (low permeability value). Based on the testimony of Dr. Brockway, the soils at the Coates place have an average permeability which is approximately 30 percent higher than the permeability of the soils of the Briggs place.

36. The soil survey for Blaine County confirms that the soils on the Coates place are generally more permeable and contain less clay than the soils on the Briggs place.

37. More permeable soils generally require more water to adequately irrigate crops when the method of irrigation is inefficient or the operator does not carefully monitor and regulate the application of water.

38. At the original hearing, testimony by Chip Molyneux contradicts the applicants' assertions that the soils on the Briggs place and at the Coates place are similar. Chip Molyneux

testified that "the Briggs place has a heavier soil." When asked if the soils at the Briggs place would hold moisture longer, Chip Molyneux answered yes. When asked if the soils at the Coates place are more porous, he answered yes. When asked if the land at the Coates place must be irrigated more frequently, he answered yes. His answer about porosity is interpreted to mean he believes the Coates place is better drained, and that the soils at the Coates place are more permeable.

39. Testimony at the hearing established that there were gravel pits located near both the Coates place and the Briggs place. Testimony established that water stands in the gravel pit near the Briggs place at a much higher level relative to the surrounding land and for longer durations of time than in the gravel pit near the Coates place. Soils at the Briggs place are not as well drained as soils at the Coates place and retain moisture for a longer period of time than soils at the Coates place.

40. Walter Peck once owned the Briggs place. He now owns land proximate to the Briggs place and the Coates place. He owns a 1905 priority water right which is used to irrigate lands near the Briggs place.

41. Walter Peck testified that the water table underlying the Briggs place is often near the land surface. He testified that shallow swales, no deeper than three feet, occupy six to seven percent of the Briggs property. He testified that many times, even in September, grain cannot be harvested in these swales because of the high water table.

42. Walter Peck is familiar with the Briggs place and the Coates place. He testified the Coates place must be irrigated more frequently. He also testified the Coates place must be irrigated early in the year, sometimes as soon as water can be applied. He testified the Briggs place normally does not require irrigation until approximately June 1.

43. Walter Peck testified that his 1905 water right was deliverable early in past years because the 1883 water right users who irrigate land at the end of the Hot Springs Canal and near the Briggs place do not call for their water until later in the summer. He testified a transfer to the Coates place will result in an earlier call for delivery of water under the 1883 water right than if the water was used to irrigate the Briggs place.

44. At the second hearing, the parties had not sufficiently organized water district information to link the names of water users written in the daily record books with the actual water rights. The parties agreed to submit a summary, prepared by the local water users, which identified the water users written in the watermaster daily record books with water right numbers for the years 1980 through 1993. The summary, approved by the applicant and the protestants, was submitted to the Department in April 1994.

45. The summary shows Walter Peck owned water right no. 37-00737 through 1990. John Molyneux was first shown as an owner of water right no. 37-00737 in 1991. Gilbert Cross

("Cross") is shown as owning water right no. 37-00780 through 1993 which authorized the diversion of 1.6 cfs (80 miners inches). Molyneuxs claimed the right to divert 0.8 cfs (40 miners inches) under water right no. 37-00780 in the Snake River Basin Adjudication. The flow rate claimed by Molyneuxs and the authorized rate of diversion shown in the watermaster records for Cross totals the 2.4 cfs (120 miners inches) which was originally decreed under water right no. 37-00780. The part of water right no. 37-00780 claimed by Molyneuxs appears to be the residual portion of water right no. 37-00780 not owned by Cross.

46. Claim no. A37-00737A, filed by Ellsworth Enterprises in the Snake River Basin Adjudication and claim no. A37-00737B filed by Molyneuxs total 1.4 cfs (70 miners inches), which is the entire flow rate authorized by water right no. 37-00737.

47. The summary of water users and water rights submitted by the parties recognizes the right of Molyneuxs to divert 1.4 cfs (70 miners inches). Adding 0.8 cfs (40 miners inches) claimed under A37-00780B to the 0.7 cfs (35 miners inches) claimed under A37-00737B essentially equals the 1.4 cfs (70 miners inches) diversion rate listed in the watermaster's records as the authorized rate for Molyneuxs and their predecessors. (See discussion regarding deferred determination of flow rates in finding of fact nos. 6 and 7).

48. The summary of water users and water rights submitted by the parties does not corroborate the testimony of Walter Peck. Mr. Peck is not shown as having any interest in a 1905 priority water right until 1993, when the summary shows him owning an interest in water right no. 37-00776 which authorizes the diversion of 5.8 cfs (290 inches) of water from the Hot Springs Canal with a priority of August 18, 1905. There is no reference to water right no. 37-00776 in the watermaster records for the years 1987 through 1992. In 1986 and previous years, Leon Peck is shown as the owner of water right no. 37-00776.

49. Both water right nos. 37-00737 and 37-00780 were identified as water rights delivered either to the Briggs place or to lands proximate to the Briggs place. Periods of non-delivery under water right nos. 37-00737 and 37-00780 do not consistently correlate with periods of delivery of later-in-time rights in the watermaster records.

50. The summary of water users and water rights submitted by the parties shows that beginning in 1980 through 1990, Walter Peck owned or controlled water right no. 37-00737. The watermaster records establish that during most years, Walter Peck began diverting water under water right no. 37-00737 in early to mid May and then diverted water sporadically through the remainder of the irrigation season. Walter Peck's early diversion of water on the Briggs place conflicts with his testimony that the Briggs place normally does not require irrigation until approximately June 1.

51. The watermaster records establish that after 1990 John Molyneux, like Walter Peck, began diverting water under water right no. 37-00737 in early to mid May but did not consistently divert water under the water right after the initial diversion and use of water.

52. Attachment A to this Second Amended Final Order portrays the history of water diversions under the decreed rights for irrigation of the Briggs place. Attachment A was prepared from watermaster records for Water District No. 37-U for the years 1980 through 1996 and the list of water users and water rights for the years 1980 through 1993 compiled by the parties. The diversions recorded by the watermaster for Water District No. 37-U under water right no. 37-00737 are used as the diversions under the decreed rights sought to be transferred (see Findings of Fact nos 45 through 47).

53. Using the daily watermaster records, the number of days annually that Walter Peck or John Molyneux diverted water were counted for the years 1980 through 1986, 1988 through 1993, and 1996. The number of days annually that diversions exceeded the authorized flow rate of 1.4 cfs (as stipulated by the parties) were also counted. The years 1987 and 1994 were not considered because water was not diverted by Walter Peck or John Molyneux under water right nos. 37-00737 or 37-00780. Records of daily diversions during 1995 were unavailable.

54. Based on the daily watermaster records for the years 1980 through 1986, 1988 through 1993, and 1996, Walter Peck or John Molyneux diverted water under water right no. 37-00737 an average of 92 days annually.

55. One cfs (cubic foot per second) of water diverted for 24 hours accumulates a volume of 1.9835 acre-feet. If the authorized diversion rate of 1.4 cfs (as stipulated by the parties) was diverted continuously during 92 days annually, an annual volume of 255 acre-feet of water would be diverted. However, this is not a true representation of the quantity of water beneficially used by Walter Peck or John Molyneux because neither person diverted the full authorized rate continuously.

56. To estimate the volume of water which could be needed and beneficially used by Walter Peck or John Molyneux in a typical year under water right no. 37-00737, the regularity of diversions by Walter Peck and John Molyneux was compared with the regularity of diversions by other water users diverting from the Hot Springs Canal and the Highline Canal under 1883 rights for the years 1980 through 1993. Cross, who irrigated land located near the Briggs place by diverting an 1883 right from the Hot Springs Canal, historically irrigated for several days and then did not irrigate for several days. This pattern occurred during both dry years and wet years, although during dry years Cross diverted water more consistently. Maurice Ellsworth and Jack York, later succeeded by Austin Welch and then Jerry Cenarrusa, also owned 1883 rights delivered through the Hot Springs Canal. Like Peck and Molyneux, these water right holders consistently did not divert water under the 1883 rights during substantial periods of the irrigation seasons for 1980 through 1993. In contrast, Ellsworth Enterprises diverted water pursuant to the 1883 rights almost continuously through the Highline Canal from the beginning to the end of each irrigation season.

57. Based on the regularity water right no. 37-00737 was diverted by Walter Peck or John Molyneux for irrigating the Briggs place as compared with the regularity 1883 rights were diverted by Ellsworth Enterprises through the High Line Canal, Walter Peck diverted water on average 58 of every 100 days water was available at the trifurcation for the 1883 rights from 1980 through 1986. From 1988 through 1993, excluding 1991 when water right no. 37-00737 was illegally diverted through the Fish Creek Mutual Pipeline, Walter Peck or John Molyneux diverted water on average 43 of every 100 days water was available to the 1883 rights at the trifurcation.

58. The Department recognizes a maximum beneficial use of 4 acre-feet of water per acre of land irrigated in the climatic area where the 1883 rights are used. If diversions under water right no. 37-00737 provide the sole source of irrigation for the 70 acres irrigated at the Briggs place, a maximum of 280 acre-feet of water would be required annually. Based on the daily watermaster records, water right no. 37-00737 was used to irrigate the Briggs place approximately 50 percent of the time water was available in some quantity at the trifurcation to supply the 1883 rights. Consequently, the maximum volume of water beneficially used historically to irrigate the Briggs place on an average annual basis is estimated to be about 50 percent of 280 acre-feet, or 140 acre-feet.

59. During the years 1980 through 1986, the annual volume of water diverted under water right no. 37-00737, as reported by the watermaster, consistently and significantly exceeded the annual volume of 280 acre-feet recognized by the Department as the maximum amount that could beneficially be used to irrigate the 70 acres at the Briggs place (see Attachment A). During this same time period, water was diverted at a rate exceeding the authorized rate of 1.4 cfs on more than half the days diversions under water right no. 37-00737 were recorded by the watermaster. By comparison, the authorized diversion rate of 1.4 cfs was exceeded on substantially fewer days and by smaller amounts during the years 1988 through 1996.

60. The annual volume of water diverted under water right no. 37-00737 during the years 1980 through 1986, as reported by the watermaster, cannot be used as a measure of the historical beneficial use under water right no. 37-00737 because the recorded volumes included water delivered in accordance with informal rotation among water users, included water other than what was actually diverted under water right no. 37-00737, or were simply inaccurate.

61. Using the watermaster's daily records of diversions for water right no. 37-00737 during the years 1988 through 1996, excluding 1994 when no water was diverted, the annual volumes of water diverted at diversion rates equal to or less than the authorized rate of 1.4 cfs were computed as follows:

<u>Year</u>	<u>Annual Volume Diverted at 1.4 cfs or less</u>
1988	233 acre-feet
1989	131
1990	134
1991	186
1992	40
1993	67
1995	137
1996	144

The average annual volume diverted at 1.4 cfs or less equals 134 acre-feet which approximately equals 140 acre-feet, the maximum volume of water estimated to have been beneficially used historically on an average annual basis as described in finding of fact no. 58.

62. Without proper conditions and restrictions, a transfer to the proposed place of use of water right nos. 37-00737 (part) and 37-00780 (part) could result in the diversion of more water during the irrigation season than beneficially used historically at the existing place of use.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of 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, Idaho Code

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and is consistent with the conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than any public interests with which it conflicts.

4. Delivery of water to the circular pivot and commingling with storage or ground water delivered through the Fish Creek Mutual Pipeline would not result in an injury provided the circular system is shut down when water from the well or reservoir storage cannot be delivered to make up the difference between the deliverable decreed rights and the 100 inches required to operate the pivot.

5. Objections to a transfer on the grounds that it will cause greater difficulty in rotation are only valid if the protestants show either a traditional, local custom of rotation or a contractual obligation to rotate. Sporadic rotation, arranged year to year between various users, is not sufficient to obligate Molyneuxs to continue to informally participate in rotation arrangements with other water users or prevent Molyneuxs from transferring their 1883 water right out of the Hot Springs Canal.

6. Molyneuxs suggest the use of more water on the Coates place, because of its higher permeability, can be prevented by limiting the volume diverted to the Coates place to the average annual volume historically diverted to the Briggs place. Protestants rightly point out that if the application for transfer is approved and the applicants divert the average annual volume to the Coates place in a low water year, more water could be diverted than would have otherwise been diverted to the Briggs place.

7. Molyneuxs submitted innovative proposals, including one which would allow Molyneuxs to divert no more water than diverted under the Cross water right during a given irrigation season. Protestants rightly point out that this condition would be almost impossible to enforce because unless water usage is tracked on a daily basis, no enforcement mechanism can be implemented to ensure that injury does not occur. An analysis of the total volume withdrawn at the end of the year would not prevent injury.

8. Approval of the transfer as proposed would result in an enlargement because water could be diverted to more permeable soils on a more consistent basis through the irrigation season to the detriment of later-in-time water rights unless the approval is properly conditioned.

9. Molyneuxs are entitled by law to transfer their water rights provided the transfer satisfies the criteria of Idaho Code § 42-222. Conditions are difficult to impose where water requirements change annually. Molyneuxs did not propose a satisfactory method of delivering the water rights under the transfer as proposed to protect other water right holders who would be injured. As a result, the Department should only approve the transfer upon sufficient conditions to protect against reasonably anticipated injury to other water rights.

10. After careful review of the watermaster records, it is concluded that water diverted under water right nos. 37-00737 (part) and 37-00780 (part) was used to provide one-half of the irrigation requirement on the Briggs place, or 140 acre-feet annually. This is consistent with the annual volume of water historically diverted at a rate of 1.4 cfs or less during the years 1988 through 1996. Allowing the transfer of 140 acre-feet annually from diversion through the Hot

Springs Canal for use on the Briggs place to diversion through the Fish Creek Mutual Pipeline for use on the Coates place is not an enlargement.

11. The Department allows a total annual volume diverted of four acre feet per acre in the climatic area where the proposed place of use is located.

12. Because 2.0 cfs (100 miners inches) is necessary to operate the pivot and because water diverted under water right nos. 37-00737 (part) and 37-00780 (part) after transfer can only irrigate half the area covered by the pivot (70 acres), the maximum rate of diversion authorized under water right nos. 37-00737 (part) and 37-00780 (part) after transfer shall be limited to 1.0 cfs (50 miners inches). When water right nos. 37-00737 (part) and 37-00780 (part) are in priority, this diversion rate less any pro rata reduction during periods of water shortage is not an enlargement and there is no injury to other water rights that can reasonably be anticipated at any time during the irrigation season.

13. For the watermaster's use in regulating water rights numbered 37-00737 (part) and 37-00780 (part), a measuring device which measures instantaneous flow rate and accumulates total volume diverted must be installed and be operative at all times water is being diverted under these rights. The watermaster shall regulate the total volume of water diverted by Molyneuxs. When 140 acre-feet have been diverted, any surface water delivered to the new place of use (the Coates place) must be reservoir storage water, unless otherwise provided by order of the Department.

14. Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 3922 is **CONDITIONALLY APPROVED** with the following conditions:

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

2. A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

3. No less than one half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

4. The combined flow rate of water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) is limited to 1.0 cfs.

5. Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) is limited to 140 acre-feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

6. Use of water under the transferred water right nos. 37-00737 (part) and 37-00780 (part) will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

7. Any pro rata reduction of water right nos. 37-00737 and 37-00780 during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

8. Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

Dated this 14th day of April, 1998.



KARL J. DREHER
Director

ATTACHMENT A

HISTORY OF DIVERSIONS UNDER WATER RIGHT NO. 37-00737					
Year	Owner ¹	Annual Volume ² (acre-feet)	Number of Days Water Diverted Under Right	Number of Days Diversion Exceeded 1.4 cfs ³	Typical Diversion Rate Exceeding 1.4 cfs ³
1980	Walter Peck	323	127	40	1.6 - 3.2 cfs
1981	Walter Peck	274	64	48	1.6 - 3.2 cfs
1982	Walter Peck	358	103	69	1.5 - 3.2 cfs
1983	Walter Peck	323	82	74	2.0 - 4.0 cfs
1984	Walter Peck	396	120	77	1.5 - 4.0 cfs
1985	Walter Peck	416	100	82	1.5 - 5.0 cfs
1986	Walter Peck	426	71	67	1.5 - 6.0 cfs
1987	Walter Peck	0	0	-	-
1988	Walter Peck	257	135	31	1.5 - 2.0 cfs
1989	Walter Peck	209	50	39	1.5 - 3.0 cfs
1990	Walter Peck	157	72	23	1.6 - 2.5 cfs
1991	John Molyneux	186	157	0	-
1992	John Molyneux	40	88	0	-
1993	John Molyneux	76	39	10	1.5 - 2.0 cfs
1994	John Molyneux	0	0	-	-
1995 ⁴	John Molyneux	144	unavailable	unavailable	-
1996 ⁴	John Molyneux	137	73	0	-

¹ From Watermaster's Daily Records and list of water users compiled by parties from watermaster records

² Computed from Watermaster's Report (annual) except for 1994 and 1996 which were computed from Watermaster's Daily Records

³ Determined from Watermaster's Daily Records

⁴ Diversions reported in Watermaster's Daily Records and Watermaster's Report (annual) include some diversions of water released from reservoir storage

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 17th day of April, 1998, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

James P Speck
HOUGE SPECK AANESTAD
PO Box 987
Ketchum ID 83340

John Coleman Esq
Thomas M Robertson Esq
COLEMAN RITCHIE ROBERTSON
PO Box 525
Twin Falls ID 83303-0525


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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: A37-00737B
Date Received: 1/17/1991
Receipt No: S012959
Received By: JCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313

OR

Name: KRISTY MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313

2. Date of Priority: MAR 30, 1883

3. Source: FISH CREEK Trib. to: LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01S	22E	9	NW	NW	NW		BLAINE

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.400		

7. Total Quantity Appropriated is:
1.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 175.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01S	22E	18	SW	SW	4	IRR	35.0

A37-00737B

Page 1

Date: 01/17/91

MICROFILMED
FEB 23 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	35.0
		19	NW	NW	4 IRR	35.0
					Section Acres	35.0
					Total Acres	70.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
FISH CREEK RESERVOIR SHARES, A37-00780B

14. Remarks:
THIS CLAIM IS FOR THE ENTIRE PORTION OF WR 37-00737.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

POTTER, ET. AL.

Decree Plaintiff

vs

PATTERSON, ET. AL.

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s):

John Malgus
Kristy Molyneux

Date:

1/17/91

Date:

1-17-91

State of Idaho

County of

Twin Falls

SS.

Subscribed and sworn (or affirmed) before me this 17th day

of

January 19 91

Steve Call
Notary Public

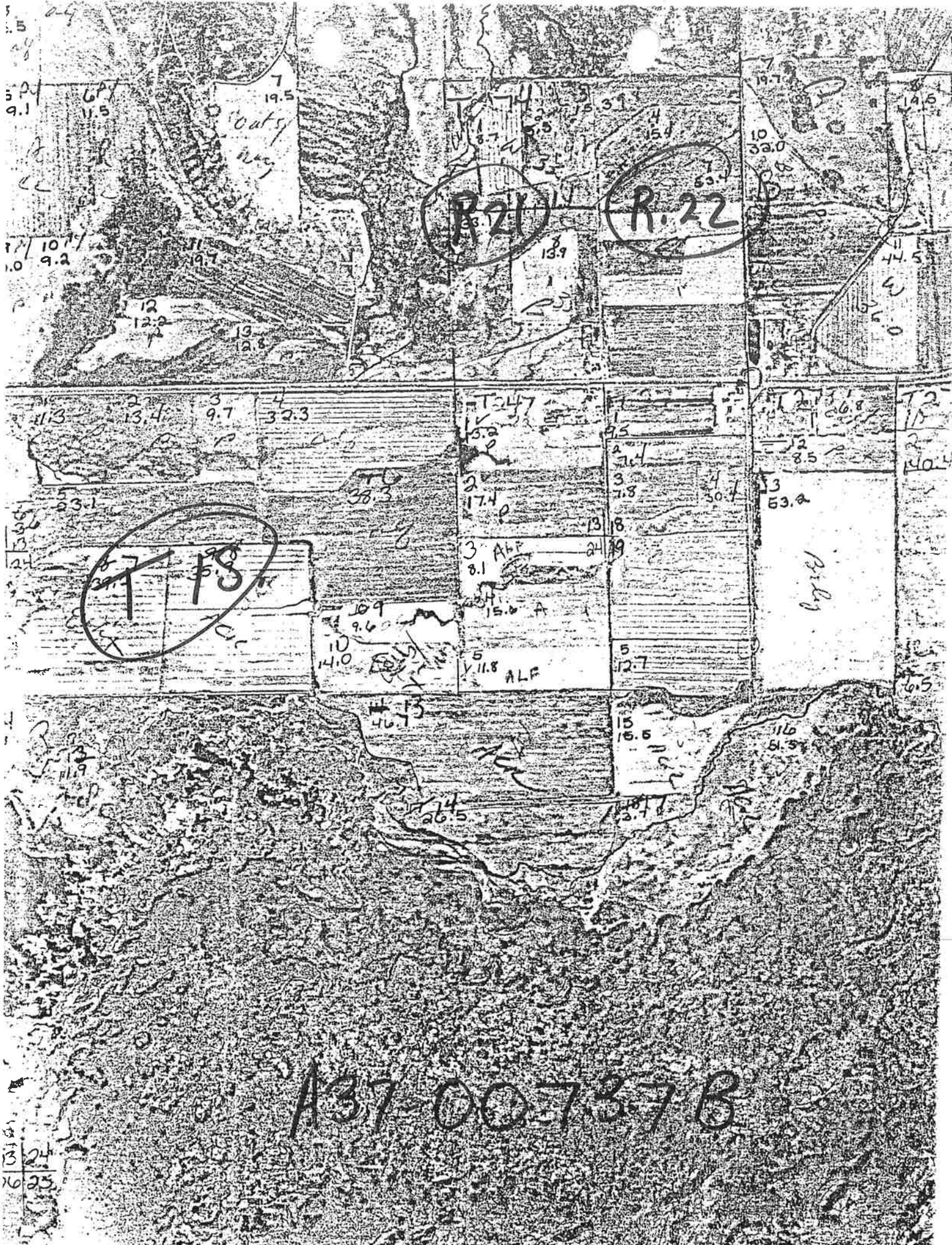
Seal

Residing at

Twin Falls

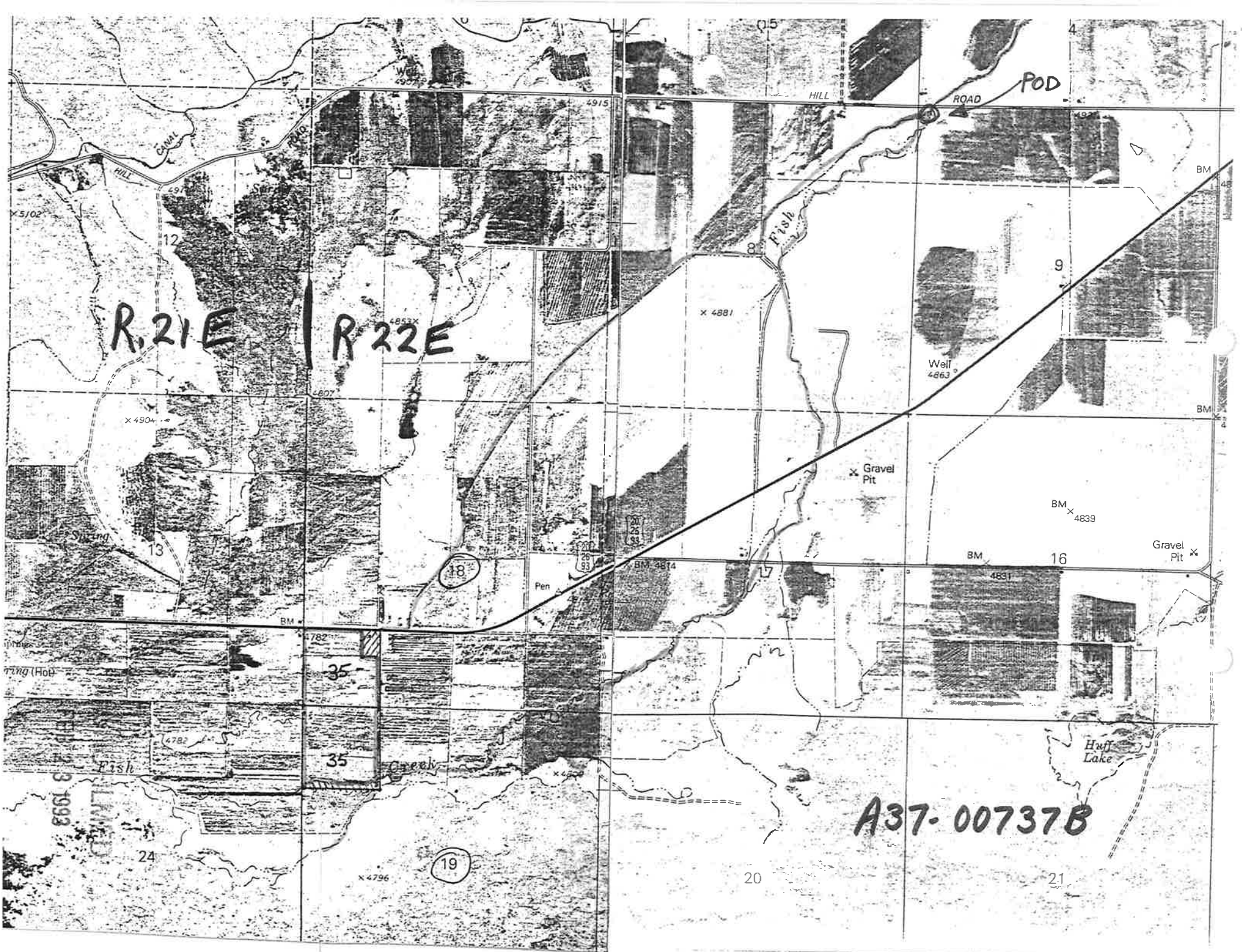
My Commission Expires

Dec 7, 1994



A37-00737B

13 24
16 25



IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)01/17/91 13:38:29
Page 1

Water Right Number - A37-00737

Adj. Flag Translation: ADJUDICATION CLAIM

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SPLIT RIGHT1 -
2 -
3 -
City- X State- ID Zip- 0
Phone - 208-000-0000*** O - ORIGINAL OWNER ***
BRIGGS

WILLIAM G.

1 -
2 -
3 -
City- X State- ID Zip- 0
Phone - 208-000-0000+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
03/30/1883 17 Error in Region Z - SEE REMARKS+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
FISH CREEK LITTLE WOOD RIVER
SPLIT RIGHT+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County (Blank if no Index Code)+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION

1.400

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
1.400+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
01S 21E 13 NW SE 01 IRRIGATION 13 BLAINE
01S 22E 19 NW NW 1 01 IRRIGATION 13 BLAINE

Total Acres:

+ - Diversion Means -
+ - Non-Irrigation Use -
+ - Other Rights for Same Use -+ - - - - Remarks - - - - - +
P/U INCOMPLETE. SEE FILE.
AC. IRRIG. NOT SPECIFIED. FARM = 70 AC.

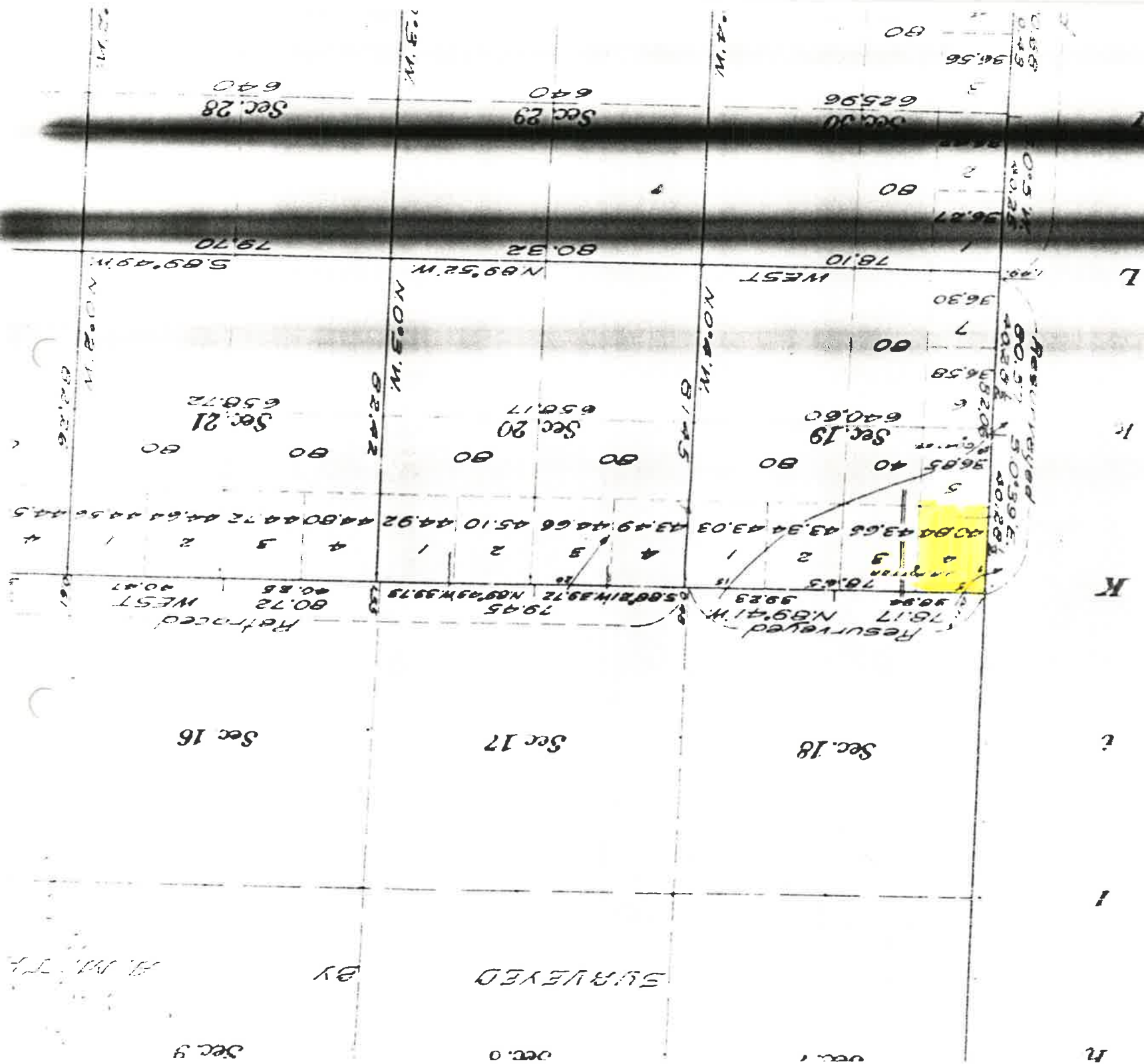
FEB 23 1993

UNRECORDED

MICROFILMED
FEB 23 1993

FEB 23 1993

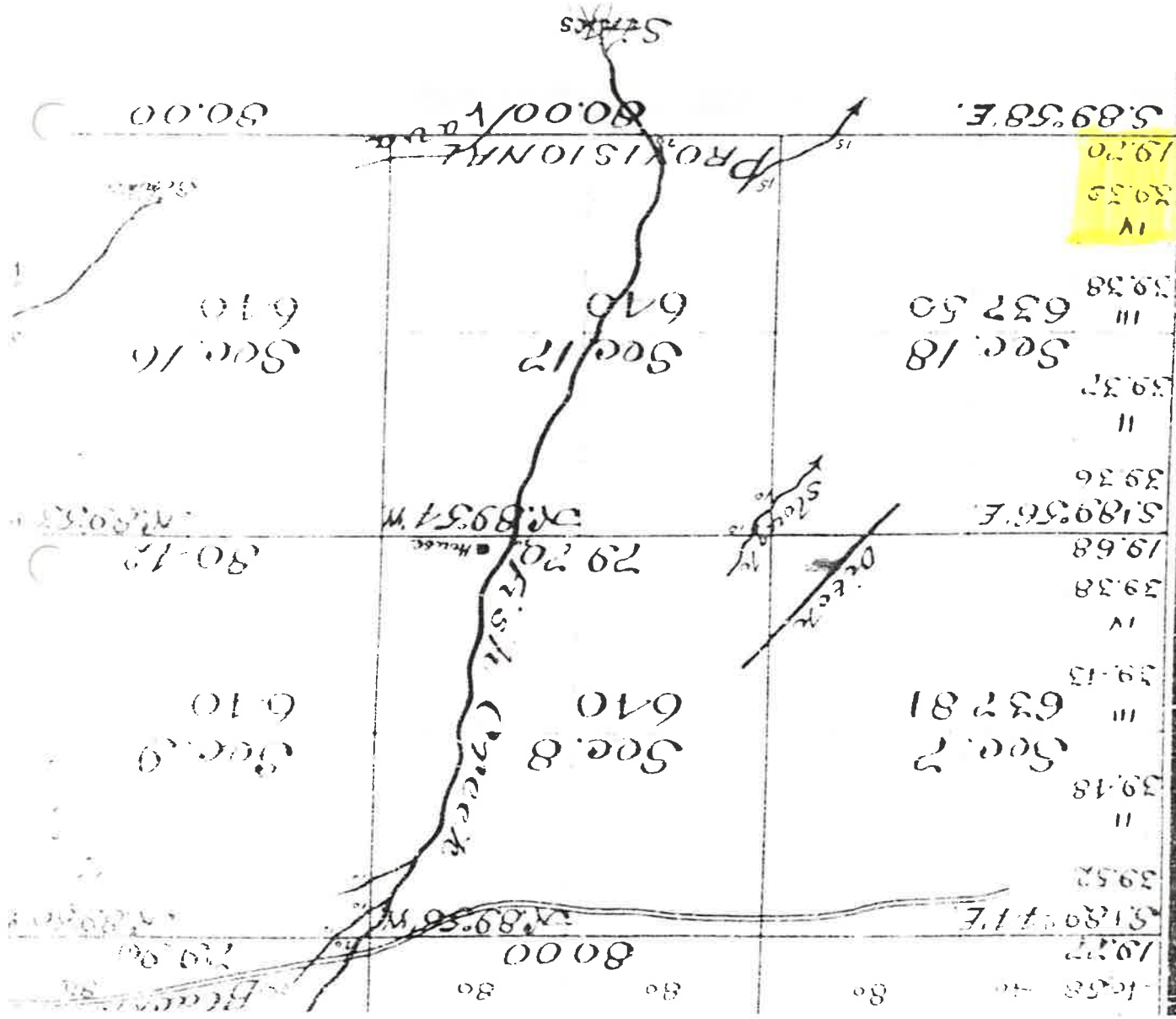
R15
T22E



MICROFILMED

FEB 23 1993

15.22E



Attorneys for L.D. Fitzgerald, Trustee

I, MARY GREEN, EX-OFFICIO RECORDER IN AND FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT COPY OF THAT CERTAIN INSTRUMENT OR RECORD IN MY OFFICE, AS INSTRUMENT NO. 326697 Book RECORDS OF BLAINE COUNTY, STATE OF IDAHO. WITNESS MY HAND AND OFFICIAL SEAL THIS 11 th DAY OF Jan 1991.

(PARTIAL ONLY) A37-13405

(2) 16027

For Value Received Walter L. Peck and Diana R. Peck

whose current address is Route 1 Box 190, Bellevue, Idaho 83313

the following described premises, to-wit:

TOWNSHIP 1 SOUTH, RANGE 22 EAST, BOISE MERIDIAN.

SECTION 18: LOT 4 EXCEPT A STRIP OF LAND 40 FEET WIDE, BEING 40 FEET ON THE SOUTHERLY SIDE OF THE FOLLOWING DESCRIBED CENTER LINE OF SAID HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF THE IDAHO CENTRAL (CAREY-LAVA LAKE) F.A.P. 231 HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE DEPARTMENT OF PUBLIC WORKS OF THE STATE OF IDAHO, AND LYING OVER AND ACROSS LOT 4 SECTION 18, TOWNSHIP 1 SOUTH, RANGE 22 EAST, BOISE MERIDIAN. BEGINNING AT STATION 182+93 OF THE HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET NORTH FROM SOUTHWEST CORNER OF SECTION 18, TOWNSHIP 1 SOUTH, RANGE 22 EAST, BOISE MERIDIAN;

THENCE RUNNING NORTH 39°43' EAST 1277.00 FEET TO A STATION 195.70 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET NORTH AND 1277 FEET EAST FROM SOUTHWEST CORNER OF SECTION 18, TOWNSHIP 1 SOUTH, RANGE 22 EAST, BOISE MERIDIAN.

SECTION 19: LOT 4

together with their appurtenances.

Dated:

Walter L. Peck
WALTER L. PECK

Diana R. Peck
DIANA R. PECK

STATE OF IDAHO, COUNTY OF BLAINE
On this 1st day of October, 190 ,
before me, a notary public in and for said State, personally
appeared Walter L. Peck
Diana R. Peck

known to me to be the person who name
subscribed to the within instrument, and acknowledged to
me that executed the same.

me that

[Handwritten signature]

Residing at Hailey
Comm. Expires 3/28/96

Notary Public
Idaho

STATE OF IDAHO
COUNTY OF BLAINE

I, MARY GREEN, EX OFFICIO RECORDER IN AND FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT COPY OF THAT CERTAIN INSTRUMENT IT ON RECORDS IN MY OFFICE, AS INSTRUMENT NO. 326695 11th RECORDS OF PLAIN COUNTY, STATE OF IOWA.

WITNESS MY HAND AND OFFICIAL SEAL THIS 11th DAY OF Sept, 1991.

BY A. Weaver Mary Green
DEPUTY EX-OFFICIO RECORDER

Furnished by the AMERICAN LAND TITLE CO., Pocatello, Idaho

MICROFILMED

FEB 23 1993

~~At~~ Don St Carter HHT Helen DRS
Southern AJ

February 23, 1993

Attached are copies copy of the Final Memorandum Decision and Order, Certificate of Mailing and cover letter sent in reference to the matter of application for transfer no. 3922 (portions of water right nos. 37-00737 and 37-00780.

Copies forwarded to

← see

IDWR - Northern Region - Bob Haynes

IDWR - Southern Region - Loren Holmes

IDWR - Eastern Region - Ron Carlson

IDWR - Western Region - Dave Tuthill

Legal Division - Phil Rassier

Adjudication Bureau - Dave Shaw

Water Allocation Bureau - Glen Saxton

Karen Gustafson

Tim Luke

JJ Seifert

Pam Skaggs

Erv Ballou

George Austiguy

Darla Block

Brenda Miller

Cindy Zimmerman

Carolyn Andregg

Sharla Curtis

Jim Johnson

MICROFILMED
OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

F41

RECEIVED

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 24, 1993

MAR 01 1993

Department of Water Resources
Southern Region Office

RE: In the Matter of Application for Transfer No. 3922
(portions of water right nos. 37-00737 and 37-00780) in
the name of John and/or Kristy Molyneux

Dear Permit Holder:

Enclosed is a copy of the Final Order issued in reference
to the above mentioned permit.

Any person who does not agree with the decision of the
department may request, in writing, a rehearing before
the Director of the Department within 20 days of the date
of service, or may appeal directly to the district court
within 30 days of the date of service of the order
pursuant to Section 42-311, Idaho Code.

If you have any questions concerning this matter, please
feel free to contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Order
Certificate of mailing

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	FINAL
TRANSFER NO. 3922 (PORTIONS OF WATER	)	MEMORANDUM
RIGHT NOS. 37-00737 & 37-00780) IN	)	DECISION AND ORDER
THE NAME OF JOHN &/OR KRISTY MOLYNEUX	)	
	)	

Exceptions to the proposed decision were filed by the applicant after the Department issued a Proposed Memorandum Decision and Order. This Final Memorandum Decision and Order addresses the exceptions in the following analysis portion of the decision. The final findings of fact and conclusions of law follow the analysis.

ANALYSIS

Molyneuxs object to the proposed decision for the following reasons:

1. Molyneuxs argue they did not "stipulate" the new place of use will require more water than the old place of use. Molyneuxs also submitted a letter from Gail Roberts of the Soil Conservation Service, which purports similarity of the soil at the old place of use and the proposed new place of use.

2. Molyneuxs argue Walter Peck does not own property adjacent to the proposed place of use.

3. Molyneuxs argue water would not be applied to the new place of use earlier than the old place of use, and allege water district records show 1883 rights are delivered in May.

4. Molyneuxs object to the use of the term "other right holders," and argue their offer to contribute a portion of the 1883 rights for carrying loss in the Hot Springs Ditch will compensate for any injury.

5. Molyneuxs argue they satisfied their burden of proof regarding the question of injury and enlargement.

6. Molyneuxs also requested oral argument.

Despite Molyneux's contention that the soils on the Briggs place and the new place of use are of similar soils character, the testimony of Chip Molyneux contradicts the allegation. He testified that "[t]he Briggs place has a heavier soil." When asked if the Briggs place would hold moisture longer, Chip Molyneux

MICROFILMED
OCT 24 1994

answered yes. When asked if the land where the pivot is located is more porous, he answered yes. When asked if the land where the pivot is located must be irrigated more frequently, he answered yes. Chip Molyneux's testimony, without rebuttal, is not technically a stipulation, nor is it technically an admission of a party because Chip Molyneux is not an official party to the filing. He is the brother of the applicant, however, and has farmed the property.

Molyneuxs did not contest the testimony of Chip Molyneux. Instead, Molyneuxs argued, in post hearing briefs, the Department could condition an approval to compensate for the greater water use. Furthermore, other witnesses, including Walter Peck, testified the new place of use is more porous than the old place of use.

The word "stipulate" will be stricken from finding of fact #35. Finding #35 will state that Chip Molyneux, a brother of the applicant, and a witness for the applicant admitted the soil of the proposed place of use is more porous, and must be irrigated more frequently than the present place of use, which is a heavier soil.

The letter submitted by SCS will not be considered. It was submitted as an apparent attempt to augment the record. The consistent and uncontroverted testimony at the hearing established differences in the soils of the current place of use and the proposed place of use, and Molyneuxs should not be allowed to reopen the hearing to submit additional information at this time.

Molyneuxs correctly argue that Walter Peck does not own land adjacent to the proposed place of use. Walter Peck testified he owns land in close proximity and of similar nature to the new place of use. Walter Peck also testified he is well acquainted with the new place of use, having plowed and assisted with livestock located thereon.

Walter Peck testified that in many wet years, the owners of 1883 water appurtenant to the Briggs property and other property located nearby did not need their water until June because the Briggs place and other similar properties did not drain as rapidly. He also stated that gravelly ground similar to the proposed place of use may need water as soon as it can be applied in the spring. Moving the water to a location where it will be delivered earlier in the year at the expense of junior right holders is both an enlargement and injury.

Water district records neither confirm nor disprove Walter Peck's testimony. The watermaster's daily log books do not refer to a water right or a priority. Recorded deliveries are only indexed by wateruser name.

During the period from 1981 through 1987, Walter Peck diverted water during May and sometimes early in June. Gilbert Cross was the only 1883 priority water user identified at the hearing. During times when Walter Peck was diverting water, Cross was often not diverting water. In June, however, when Peck was not diverting water, Cross was often not diverting water. Non-delivery of 1883 water rights cannot be correlated to Peck's ability to divert water. The Department must rely solely on Peck's uncontroverted testimony.

The "other water users" are water users diverting water from the Highline Canal or the Fish Creek Mutual Pipeline. When storage water is no longer available, and cannot be delivered to the users of the Hot Springs Ditch, the watermaster no longer delivers water into the Hot Springs Ditch at its head. The only water reaching the users at the end, other than water delivered through an enclosed system to the Hot Springs Ditch, is water pumped from the Whitby well. When water is no longer delivered into the Hot Springs Canal, the other users benefit from the 1883 water which is no longer delivered into the Hot Springs Canal. If Molyneuxs divert 50 inches of the 1883 water after water is no longer delivered at the head of the Hot Springs Canal, 50 inches of water which was once available will not be available to the other users of the Highline Canal and the Fish Creek Mutual Pipeline. The other users will be identified in the decision as users of water in the Highline Canal and the Fish Creek Mutual Pipeline. Finding of Fact #24 will also explain the injury to the users in greater detail.

The burden of proof borne by Molyneuxs was not satisfied because testimony by Walter Peck coupled with admissions by Chip Molyneux were not rebutted. The Department must find for the protestants because of failure to rebut the evidence of injury and enlargement.

FINDINGS OF FACT

Description of the Application

1. Application for transfer no. 3922 was filed by John &/or Kristy Molyneux (Molyneuxs). The application for transfer proposes both a change in the point of diversion and a change in the place of use for portions of water rights nos. 37-00737 and 37-00780.

2. Water rights nos. 37-00737 and 37-00780 were decreed in the case of Potter v. Patterson, 4th Judicial District (Blaine County, 1914). Right no. 37-00737 authorizes diversion of 70 inches (1.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is described, however:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	NWSE	30
1S	22E	19	Lot 1 (NWNW)	40
			Total	70

3. Water right no. 37-00780 authorizes diversion of 120 inches (2.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is generally described, however:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	SESE	
		24	NENE	
1S	22E	18	Lot 4 (SWSW)	
			Total	120

4. The rights sought to be transferred were claimed in the Snake River Basin Adjudication as A37-00737B and A37-00780B. The point of diversion for both rights, described by the claims, is the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 1S, Range 22E, B.M.

5. Claim no. A37-00737B claims a right to divert 0.70 cfs. Claim no. A37-00780B claims a right to divert 0.80 cfs. Both claims describe the following place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	19	Lot 1 (NWNW)	35
		18	Lot 4 (SWSW)	35
			Total	70

6. The application for transfer and the notice of publication contained a computation error. The front page of the transfer and each succeeding page describe the individual flow rates of right 37-00737 (part) as 0.70 cfs and right no. 37-00780 (part) as 0.80 cfs. The total claimed, however, is 1.4 cfs, 0.10 cfs less than the sum of the two rights listed. The computation error does not fatally flaw the application for transfer.

7. Molyneuxs expressed uncertainty about their entitlement. The watermaster stated only 70 miners inches (1.4 cfs) has been delivered to Molyneuxs in the past. The parties stipulated that a full determination of the flow rates authorized by the rights would be deferred until considered in the Snake River Basin Adjudication, and the traditional diversion rate of 70 miners inches (1.4 cfs) would continue to be delivered to Molyneuxs by the watermaster.

8. The application proposes moving the point of diversion upstream approximately one and one half miles to a large headworks located in Fish Creek, which splits the flows of Fish Creek into three water delivery systems: the Highline Canal, the Fish Creek Mutual Pipeline, and Hot Springs Canal (the old channel of Fish Creek). The headworks will hereafter be referred to as the

trifurcation. Hot Springs Canal follows the old stream bed of Fish Creek, but is considered a canal by the watermaster and the users. The point of diversion described by the adjudication claim is located on the portion of Fish Creek referred to as the Hot Springs Canal.

9. The application for transfer seeks to divert the water into the Fish Creek Mutual Pipeline rather than through the Hot Springs Canal (Fish Creek). The proposed point of diversion will be located at the trifurcation in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 33, Township 1N, Range 22E, B.M.

10. The application for transfer also proposes a change in the place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	15	SWSW	35
		16	SESE	<u>35</u>
			Total	70

11. The application for transfer was protested by nine owners of decreed Fish Creek water rights: Walter Peck, Edric L. Wilde, June D. Farnworth, Maurice C. Ellsworth, Lawrence Kimball, Gilbert G. Cross, Jerry Cenarrusa and Catherine L. Sweat.

12. The applicants were represented by James P. Speck. The protestants were represented by Thomas M. Robertson.

13. The protestants object to approval of the application because:

- a. The place of use will be expanded from 70 acres to 140 acres.
- b. A larger annual volume of water will be diverted because the new place of use is a porous, gravel soil, while the old place of use is a heavier soil which is often saturated.
- c. Removing the water from its present delivery system will increase losses borne by the remaining water users, and will impede the ability of the remaining users to rotate.

14. The applicants argue in response:

- a. The Department can approve a permissible place of use, allowing the entire 140 acres to be irrigated with a combination of rights.
- b. The Department can limit the annual volume diverted to the historical average annual volume to prevent greater water use on the new place of use.
- c. The transfer of 0.70 cfs out of the canal will not injure other users because the Hot Springs Canal is a losing channel, and the water which transported the 0.70 cfs to

the field headgate and which was lost during delivery in the canal, will stay in the canal. The applicants allege the transfer will at least not increase the loss borne by the remaining users.

- d. There has been no traditional practice of rotation between the users of water from the Hot Springs Canal.

General Description of Water Delivery from Fish Creek

15. The Department established water district no. 37-U for the administration of water diverted from Fish Creek. The watermaster of water district no. 37-U measures the natural flow of Fish Creek above the reservoir, and adds 200 inches to the natural flow for springs which discharge into the reservoir. Flow out of the reservoir is measured, and the natural flow is subtracted from the total flow to determine the storage flow. The watermaster delivers water to the Fish Creek users at their field headgates, rather than measuring water at the heads of the various canals. Water is not measured into the three canals at the trifurcation. The watermaster adjusts releases from the reservoir to satisfy the demand of the users within the limits of their natural flow rights, and the storage demanded, if storage is available. The watermaster determines how much water is leaving the reservoir, and how much is ultimately diverted by the individual users. The difference between the reservoir release and the cumulative flow rate measured at the field headgates is a shrink applied to both the storage and the natural flow rights.

16. Storage water is delivered to any of the lands within the Fish Creek drainage identified as a place of use for the storage water.

17. As flow in Fish Creek declines, only storage and early priority water rights are deliverable. Some of the earliest rights on the system are 37-00737 and 37-00780 which bear a priority of March 30, 1883.

18. The cumulative flow rate authorized by March 30, 1883 priority water rights (hereafter referred to as the 1883 rights) is 1100 miners inches. When all the 1883 rights are deliverable, the watermaster delivers 570 miners inches to the users at the end of the Hot Springs Ditch.

19. As the natural flow declines further, all the 1883 priority water cannot be delivered, and the delivery at the field headgate for each of the 1883 rights is proportionally reduced.

20. Water delivered into the Hot Springs Canal is lost during transmission.

21. During periods of low flow, an exchange of surface water with groundwater pumped from a well owned by Robert Whitby benefits

all the users. Whitby pumps approximately 160 cfs into the Hot Springs Canal to compensate for 1883 priority surface water delivered to Whitby through the Highline Canal or the Fish Creek Mutual Pipeline.

22. Water right no. 37-07581 describes a well owned by Robert Whitby, located in Section 4, Township 1S, Range 22E. The right authorizes discharge from the well into the Fish Creek Mutual Pipeline. Rather than pump groundwater into the pipeline, Whitby diverts groundwater into the Hot Springs Canal as described above. The arrangement saves Whitby the cost of operating a booster pump. It also saves the Hot Springs Canal users the transmission losses in the canal for the first two miles of the canal.

23. When storage is fully depleted, and the natural flow of Fish Creek is very low, no water is delivered into the Hot Springs Ditch at the trifurcation. The Whitby well supplies nearly all the proportionate share of the 1883 rights to the users at the end of the Hot Springs Ditch. In 1992, the watermaster also delivered some 1883 water to the Hot Springs Ditch through another pressurized system which diverts out of the Highline Canal, and which added to the water injected to the Hot Springs Canal by the Whitby well.

24. When the 1883 water rights are not delivered at the head of the Hot Springs Canal, the flow is split between the Highline Canal and the Fish Creek Mutual Pipeline. The users of the Highline Canal and the Fish Creek Mutual Pipeline may divert the proportional share of the 1883 rights that would have been delivered to the users at the end of the Hot Springs Canal. This conclusion assumes the pro rata share of the Hot Springs Canal users exceeds the amount Whitby is entitled to divert because of his well.

Description of Molyneux Proposal

25. Molyneuxs propose to deliver their portion of the 1883 decreed rights through the Fish Creek Mutual Pipeline to lands irrigated by a circular pivot. The pivot irrigates approximately 140 acres. Molyneuxs propose appurtenance of the decreed rights to 70 acres, or approximately one-half of the pivot.

26. Operation of the pivot requires delivery of 100 inches to the head of the system. Seventy inches is not enough water to operate the pivot alone.

27. Molyneuxs operated the pivot without the decreed water rights in the past, except in 1991, when the decreed rights were delivered to the pivot in the Mutual Pipeline. Molyneuxs used a combination of storage water delivered from Fish Creek Reservoir, and groundwater which is pumped from a well authorized by water right no. 37-02740, located in Section 4, Township 1S, Range 22E,

and owned by P & C Irrigation Association. Molyneuxs own a one-third interest in P & C Irrigation Association, but have exclusively used the P & C wells in recent years.

28. The P & C well which pumps into the Fish Creek Mutual Pipeline discharges approximately 60 inches of water.

29. Molyneuxs want to transfer the decreed rights into the Mutual Pipeline to improve the reliability of the water supply to the system. Chip Molyneux, John Molyneux's brother, testified 100 shares of reservoir storage would be moved to the old place of use. He also stated that in low water years, the 1883 right is more reliable than storage water.

30. Although Molyneuxs would like to transfer the entire 70 inches to the Mutual Pipeline, they are willing to curtail diversion to no more than 50 inches of the 1883 right, and are willing to leave 20 inches of their right in the stream for carrying losses until the water right is reduced because of priority cuts. When streamflows are low, Molyneuxs have not been able to divert the entire 70 inches because of proportionate cuts in the 1883 right. John Molyneux asked, if the application is approved, that Molyneuxs be able to determine their pro rata portion during low flows based on 70 inches rather 50 inches.

31. Witnesses for the protestants stated transfer of 70 inches out of the Hot Springs Canal will result in greater losses prior to delivery. If the water has been delivered and measured by the watermaster at the field headgate in the past, water has been lost in delivering water to the Briggs place. The applicants are willing to limit diversion to 50 inches in the pipeline, leaving the additional 20 inches plus the water previously lost in delivery to carry water for the remaining users.

32. Despite the testimony of the protestants' witnesses, the transfer, as proposed, will not increase the absolute loss, nor will it increase the loss borne by the remaining users.

33. Water users at the end of the Hot Springs Canal have sporadically combined the rights diverted into a single stream and rotated the larger quantity of water. Rotation has not been established as a traditional method of efficiently using water, however.

34. The present place of use (Briggs place) is located in an area with heavy soil that retains moisture. The proposed place of use was characterized as "low lands", where water may remain close to the ground surface during the spring, and the land "subs out" during irrigation season.

35. The proposed place of use is located in an area with porous soil. The porous soil drains more quickly than the heavy

soil. Chip Molyneux, brother of John Molyneux, and a witness for Molyneuxs, admitted the proposed place of use will require more water than the present place of use. Water must be applied on the porous soil more frequently than on the heavy soil.

36. Walter Peck once owned the Briggs place. He owns land proximate to the Briggs place and the proposed place of use. He owns a 1905 priority water right which irrigates some of these lands.

37. Peck is familiar with the present place of use and the proposed place of use. He testified the proposed place of use must be irrigated more frequently. He also testified the proposed place of use must be irrigated early in the year, sometimes as soon as water can be applied. He testified the present place of use doesn't normally require irrigation until June 1.

38. Peck's 1905 water right has been deliverable early in past years because the 1883 water right users at the end of the Hot Springs Ditch do not call for their water. A transfer to the proposed place of use will result in an earlier call for the 1883 water. Mr. Peck and other users with similar rights will lose the 50-70 inches sought to be transferred during the early irrigation season.

39. Diversion of water by Molyneuxs from Fish Creek into the Fish Creek Mutual Pipeline after water is no longer diverted into the Hot Springs Canal may injure other users who have benefitted from the 1883 water which was no longer delivered to the Hot Springs Canal.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of 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, Idaho Code; . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights and is consistent with conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicant bears the ultimate burden of proof regarding all issues.

5. Delivery of water to the circular pivot, and commingling with storage or ground water delivered through the pipeline would not result in an injury provided the circular system is shut down when water from the well or storage cannot be delivered to make up the difference between the deliverable decreed rights and 100 inches.

6. The Department could approve this transfer and allow a permissible place of use for the entire 140 acres irrigated by the circular system, provided the approval is conditioned to prohibit irrigation whenever less than half the water can be supplied from other sources.

7. Protests against a transfer because it will cause greater difficulty in rotation are only valid if the protestants show either a traditional, local custom of rotation, or a contractual obligation to rotate. Sporadic rotation, arranged year to year between various users, is not sufficient evidence of rotation to prevent Molyneuxs from transferring their 1883 water right out to the Hot Springs Canal.

8. Molyneuxs suggest the use of more water on the new place of use, caused by its porous and well drained qualities, can be prevented by limiting the volume to the average annual volume diverted. Protestants rightfully point out that if the applicants divert the average annual volume in a low water year, they will divert more water than their entitlement. The Department might be able to condition the right to prevent excessive use, but there is another reason why this application for transfer should be rejected.

9. Approval of the proposed transfer would result in an enlargement because water will be diverted to the dryer, more porous soils earlier in the year, to the detriment of later in time water rights.

10. With respect to injury to other users resulting after delivery into Hot Springs Canal ceases, the applicants bore the burden of proof regarding the injury question. The applicants did not satisfy their burden of proof.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 3922 is DENIED.

IT IS FURTHER ORDERED that Molyneux's request for oral argument is DENIED.

Dated this 22ND day of February, 1993.


R. Keith Higginson
Director

MICROFILMED
OCT 24 1994

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of February, 1993, I mailed a true and correct copy of the foregoing final Memorandum Decision, postage prepaid, to the following:

John & Kristy Molyneux

Rt 1 Box 190
Bellevue, ID 83313

Jim Speck

PO Box 987
Ketchum, ID 83340

Walter Peck

Carey, ID 83320

Edric L Wilde

PO Box 173
Carey, ID 83320

June Farnworth

PO Box 123
Carey, ID 83320

Maurice Ellsworth

PO Box 158
Carey, ID 83320

Grant Ellsworth

PO Box 246
Carey, ID 83320

Lawrence Kimball

PO Box 275
Carey, ID 83320

Gilbert G Cross

PO Box 245
Carey, ID 83320

Jerry Cenarrusa

PO Box 164
Carey, ID 83320

Catherine L Sweat

PO Box 234
Carey, ID 83320

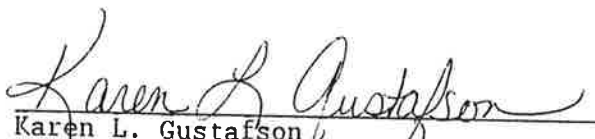
Robert D Whitby

PO Box 395
Carey, ID 83320

Shirl Reay

PO Box 13
Carey, ID 83320

John Coleman
Coleman, Ritchie et al
156 2nd Ave W
Twin Falls, ID 83301


Karen L. Gustafson
Secretary/Records Manager

MICROFILMED
OCT 24 1994

Don St Corte HAT Helen DBS
Southern AJ

February 23, 1993

Attached are copies copy of the Final Memorandum Decision and Order, Certificate of Mailing and cover letter sent in reference to the matter of application for transfer no. 3922 (portions of water right nos. 37-00737 and 37-00780.

Copies forwarded to

IDWR - Northern Region - Bob Haynes
IDWR - Southern Region - Loren Holmes
IDWR - Eastern Region - Ron Carlson
IDWR - Western Region - Dave Tuthill
Legal Division - Phil Rassier
Adjudication Bureau - Dave Shaw
Water Allocation Bureau - Glen Saxton
Karen Gustafson
Tim Luke
JJ Seifert
Pam Skaggs
Erv Ballou
George Austiguy
Darla Block
Brenda Miller
Cindy Zimmerman
Carolyn Andregg
Sharla Curtis
Jim Johnson

MICROFILMED
OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 24, 1993

RE: In the Matter of Application for Transfer No. 3922
(portions of water right nos. 37-00737 and 37-00780) in
the name of John and/or Kristy Molyneux

Dear Permit Holder:

Enclosed is a copy of the Final Order issued in reference
to the above mentioned permit.

Any person who does not agree with the decision of the
department may request, in writing, a rehearing before
the Director of the Department within 20 days of the date
of service, or may appeal directly to the district court
within 30 days of the date of service of the order
pursuant to Section 42-311, Idaho Code.

If you have any questions concerning this matter, please
feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton".

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Order
Certificate of mailing

MICROFILMED
OCT 24 1994

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	FINAL
TRANSFER NO. 3922 (PORTIONS OF WATER)	MEMORANDUM
RIGHT NOS. 37-00737 & 37-00780) IN)	DECISION AND ORDER
THE NAME OF JOHN &/OR KRISTY MOLYNEUX)	

Exceptions to the proposed decision were filed by the applicant after the Department issued a Proposed Memorandum Decision and Order. This Final Memorandum Decision and Order addresses the exceptions in the following analysis portion of the decision. The final findings of fact and conclusions of law follow the analysis.

ANALYSIS

Molyneuxs object to the proposed decision for the following reasons:

1. Molyneuxs argue they did not "stipulate" the new place of use will require more water than the old place of use. Molyneuxs also submitted a letter from Gail Roberts of the Soil Conservation Service, which purports similarity of the soil at the old place of use and the proposed new place of use.
2. Molyneuxs argue Walter Peck does not own property adjacent to the proposed place of use.
3. Molyneuxs argue water would not be applied to the new place of use earlier than the old place of use, and allege water district records show 1883 rights are delivered in May.
4. Molyneuxs object to the use of the term "other right holders," and argue their offer to contribute a portion of the 1883 rights for carrying loss in the Hot Springs Ditch will compensate for any injury.
5. Molyneuxs argue they satisfied their burden of proof regarding the question of injury and enlargement.
6. Molyneuxs also requested oral argument.

Despite Molyneux's contention that the soils on the Briggs place and the new place of use are of similar soils character, the testimony of Chip Molyneux contradicts the allegation. He testified that "[t]he Briggs place has a heavier soil." When asked if the Briggs place would hold moisture longer, Chip Molyneux

MICROFILMED
OCT 24 1994

answered yes. When asked if the land where the pivot is located is more porous, he answered yes. When asked if the land where the pivot is located must be irrigated more frequently, he answered yes. Chip Molyneux's testimony, without rebuttal, is not technically a stipulation, nor is it technically an admission of a party because Chip Molyneux is not an official party to the filing. He is the brother of the applicant, however, and has farmed the property.

Molyneuxs did not contest the testimony of Chip Molyneux. Instead, Molyneuxs argued, in post hearing briefs, the Department could condition an approval to compensate for the greater water use. Furthermore, other witnesses, including Walter Peck, testified the new place of use is more porous than the old place of use.

The word "stipulate" will be stricken from finding of fact #35. Finding #35 will state that Chip Molyneux, a brother of the applicant, and a witness for the applicant admitted the soil of the proposed place of use is more porous, and must be irrigated more frequently than the present place of use, which is a heavier soil.

The letter submitted by SCS will not be considered. It was submitted as an apparent attempt to augment the record. The consistent and uncontroverted testimony at the hearing established differences in the soils of the current place of use and the proposed place of use, and Molyneuxs should not be allowed to reopen the hearing to submit additional information at this time.

Molyneuxs correctly argue that Walter Peck does not own land adjacent to the proposed place of use. Walter Peck testified he owns land in close proximity and of similar nature to the new place of use. Walter Peck also testified he is well acquainted with the new place of use, having plowed and assisted with livestock located thereon.

Walter Peck testified that in many wet years, the owners of 1883 water appurtenant to the Briggs property and other property located nearby did not need their water until June because the Briggs place and other similar properties did not drain as rapidly. He also stated that gravelly ground similar to the proposed place of use may need water as soon as it can be applied in the spring. Moving the water to a location where it will be delivered earlier in the year at the expense of junior right holders is both an enlargement and injury.

Water district records neither confirm nor disprove Walter Peck's testimony. The watermaster's daily log books do not refer to a water right or a priority. Recorded deliveries are only indexed by wateruser name.

During the period from 1981 through 1987, Walter Peck diverted water during May and sometimes early in June. Gilbert Cross was the only 1883 priority water user identified at the hearing. During times when Walter Peck was diverting water, Cross was often not diverting water. In June, however, when Peck was not diverting water, Cross was often not diverting water. Non-delivery of 1883 water rights cannot be correlated to Peck's ability to divert water. The Department must rely solely on Peck's uncontroverted testimony.

The "other water users" are water users diverting water from the Highline Canal or the Fish Creek Mutual Pipeline. When storage water is no longer available, and cannot be delivered to the users of the Hot Springs Ditch, the watermaster no longer delivers water into the Hot Springs Ditch at its head. The only water reaching the users at the end, other than water delivered through an enclosed system to the Hot Springs Ditch, is water pumped from the Whitby well. When water is no longer delivered into the Hot Springs Canal, the other users benefit from the 1883 water which is no longer delivered into the Hot Springs Canal. If Molyneuxs divert 50 inches of the 1883 water after water is no longer delivered at the head of the Hot Springs Canal, 50 inches of water which was once available will not be available to the other users of the Highline Canal and the Fish Creek Mutual Pipeline. The other users will be identified in the decision as users of water in the Highline Canal and the Fish Creek Mutual Pipeline. Finding of Fact #24 will also explain the injury to the users in greater detail.

The burden of proof borne by Molyneuxs was not satisfied because testimony by Walter Peck coupled with admissions by Chip Molyneux were not rebutted. The Department must find for the protestants because of failure to rebut the evidence of injury and enlargement.

FINDINGS OF FACT

Description of the Application

1. Application for transfer no. 3922 was filed by John &/or Kristy Molyneux (Molyneuxs). The application for transfer proposes both a change in the point of diversion and a change in the place of use for portions of water rights nos. 37-00737 and 37-00780.

2. Water rights nos. 37-00737 and 37-00780 were decreed in the case of Potter v. Patterson, 4th Judicial District (Blaine County, 1914). Right no. 37-00737 authorizes diversion of 70 inches (1.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is described, however:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	NWSE	30
1S	22E	19	Lot 1 (NWNW)	<u>40</u>
			Total	70

3. Water right no. 37-00780 authorizes diversion of 120 inches (2.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is generally described, however:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	SESE	
		24	NENE	
1S	22E	18	Lot 4 (SWSW)	
			Total	<u>120</u>

4. The rights sought to be transferred were claimed in the Snake River Basin Adjudication as A37-00737B and A37-00780B. The point of diversion for both rights, described by the claims, is the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 1S, Range 22E, B.M.

5. Claim no. A37-00737B claims a right to divert 0.70 cfs. Claim no. A37-00780B claims a right to divert 0.80 cfs. Both claims describe the following place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	19	Lot 1 (NWNW)	35
		18	Lot 4 (SWSW)	<u>35</u>
			Total	70

6. The application for transfer and the notice of publication contained a computation error. The front page of the transfer and each succeeding page describe the individual flow rates of right 37-00737 (part) as 0.70 cfs and right no. 37-00780 (part) as 0.80 cfs. The total claimed, however, is 1.4 cfs, 0.10 cfs less than the sum of the two rights listed. The computation error does not fatally flaw the application for transfer.

7. Molyneuxs expressed uncertainty about their entitlement. The watermaster stated only 70 miners inches (1.4 cfs) has been delivered to Molyneuxs in the past. The parties stipulated that a full determination of the flow rates authorized by the rights would be deferred until considered in the Snake River Basin Adjudication, and the traditional diversion rate of 70 miners inches (1.4 cfs) would continue to be delivered to Molyneuxs by the watermaster.

8. The application proposes moving the point of diversion upstream approximately one and one half miles to a large headworks located in Fish Creek, which splits the flows of Fish Creek into three water delivery systems: the Highline Canal, the Fish Creek Mutual Pipeline, and Hot Springs Canal (the old channel of Fish Creek). The headworks will hereafter be referred to as the

trifurcation. Hot Springs Canal follows the old stream bed of Fish Creek, but is considered a canal by the watermaster and the users. The point of diversion described by the adjudication claim is located on the portion of Fish Creek referred to as the Hot Springs Canal.

9. The application for transfer seeks to divert the water into the Fish Creek Mutual Pipeline rather than through the Hot Springs Canal (Fish Creek). The proposed point of diversion will be located at the trifurcation in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 33, Township 1N, Range 22E, B.M.

10. The application for transfer also proposes a change in the place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	15	SWSW	35
		16	SESE	<u>35</u>
			Total	70

11. The application for transfer was protested by nine owners of decreed Fish Creek water rights: Walter Peck, Edric L. Wilde, June D. Farnworth, Maurice C. Ellsworth, Lawrence Kimball, Gilbert G. Cross, Jerry Cenarrusa and Catherine L. Sweat.

12. The applicants were represented by James P. Speck. The protestants were represented by Thomas M. Robertson.

13. The protestants object to approval of the application because:

- a. The place of use will be expanded from 70 acres to 140 acres.
- b. A larger annual volume of water will be diverted because the new place of use is a porous, gravel soil, while the old place of use is a heavier soil which is often saturated.
- c. Removing the water from its present delivery system will increase losses borne by the remaining water users, and will impede the ability of the remaining users to rotate.

14. The applicants argue in response:

- a. The Department can approve a permissible place of use, allowing the entire 140 acres to be irrigated with a combination of rights.
- b. The Department can limit the annual volume diverted to the historical average annual volume to prevent greater water use on the new place of use.
- c. The transfer of 0.70 cfs out of the canal will not injure other users because the Hot Springs Canal is a losing channel, and the water which transported the 0.70 cfs to

the field headgate and which was lost during delivery in the canal, will stay in the canal. The applicants allege the transfer will at least not increase the loss borne by the remaining users.

- d. There has been no traditional practice of rotation between the users of water from the Hot Springs Canal.

General Description of Water Delivery from Fish Creek

15. The Department established water district no. 37-U for the administration of water diverted from Fish Creek. The watermaster of water district no. 37-U measures the natural flow of Fish Creek above the reservoir, and adds 200 inches to the natural flow for springs which discharge into the reservoir. Flow out of the reservoir is measured, and the natural flow is subtracted from the total flow to determine the storage flow. The watermaster delivers water to the Fish Creek users at their field headgates, rather than measuring water at the heads of the various canals. Water is not measured into the three canals at the trifurcation. The watermaster adjusts releases from the reservoir to satisfy the demand of the users within the limits of their natural flow rights, and the storage demanded, if storage is available. The watermaster determines how much water is leaving the reservoir, and how much is ultimately diverted by the individual users. The difference between the reservoir release and the cumulative flow rate measured at the field headgates is a shrink applied to both the storage and the natural flow rights.

16. Storage water is delivered to any of the lands within the Fish Creek drainage identified as a place of use for the storage water.

17. As flow in Fish Creek declines, only storage and early priority water rights are deliverable. Some of the earliest rights on the system are 37-00737 and 37-00780 which bear a priority of March 30, 1883.

18. The cumulative flow rate authorized by March 30, 1883 priority water rights (hereafter referred to as the 1883 rights) is 1100 miners inches. When all the 1883 rights are deliverable, the watermaster delivers 570 miners inches to the users at the end of the Hot Springs Ditch.

19. As the natural flow declines further, all the 1883 priority water cannot be delivered, and the delivery at the field headgate for each of the 1883 rights is proportionally reduced.

20. Water delivered into the Hot Springs Canal is lost during transmission.

21. During periods of low flow, an exchange of surface water with groundwater pumped from a well owned by Robert Whitby benefits

all the users. Whitby pumps approximately 160 cfs into the Hot Springs Canal to compensate for 1883 priority surface water delivered to Whitby through the Highline Canal or the Fish Creek Mutual Pipeline.

22. Water right no. 37-07581 describes a well owned by Robert Whitby, located in Section 4, Township 1S, Range 22E. The right authorizes discharge from the well into the Fish Creek Mutual Pipeline. Rather than pump groundwater into the pipeline, Whitby diverts groundwater into the Hot Springs Canal as described above. The arrangement saves Whitby the cost of operating a booster pump. It also saves the Hot Springs Canal users the transmission losses in the canal for the first two miles of the canal.

23. When storage is fully depleted, and the natural flow of Fish Creek is very low, no water is delivered into the Hot Springs Ditch at the trifurcation. The Whitby well supplies nearly all the proportionate share of the 1883 rights to the users at the end of the Hot Springs Ditch. In 1992, the watermaster also delivered some 1883 water to the Hot Springs Ditch through another pressurized system which diverts out of the Highline Canal, and which added to the water injected to the Hot Springs Canal by the Whitby well.

24. When the 1883 water rights are not delivered at the head of the Hot Springs Canal, the flow is split between the Highline Canal and the Fish Creek Mutual Pipeline. The users of the Highline Canal and the Fish Creek Mutual Pipeline may divert the proportional share of the 1883 rights that would have been delivered to the users at the end of the Hot Springs Canal. This conclusion assumes the pro rata share of the Hot Springs Canal users exceeds the amount Whitby is entitled to divert because of his well.

Description of Molyneux Proposal

25. Molyneuxs propose to deliver their portion of the 1883 decreed rights through the Fish Creek Mutual Pipeline to lands irrigated by a circular pivot. The pivot irrigates approximately 140 acres. Molyneuxs propose appurtenance of the decreed rights to 70 acres, or approximately one-half of the pivot.

26. Operation of the pivot requires delivery of 100 inches to the head of the system. Seventy inches is not enough water to operate the pivot alone.

27. Molyneuxs operated the pivot without the decreed water rights in the past, except in 1991, when the decreed rights were delivered to the pivot in the Mutual Pipeline. Molyneuxs used a combination of storage water delivered from Fish Creek Reservoir, and groundwater which is pumped from a well authorized by water right no. 37-02740, located in Section 4, Township 1S, Range 22E,

and owned by P & C Irrigation Association. Molyneuxs own a one-third interest in P & C Irrigation Association, but have exclusively used the P & C wells in recent years.

28. The P & C well which pumps into the Fish Creek Mutual Pipeline discharges approximately 60 inches of water.

29. Molyneuxs want to transfer the decreed rights into the Mutual Pipeline to improve the reliability of the water supply to the system. Chip Molyneux, John Molyneux's brother, testified 100 shares of reservoir storage would be moved to the old place of use. He also stated that in low water years, the 1883 right is more reliable than storage water.

30. Although Molyneuxs would like to transfer the entire 70 inches to the Mutual Pipeline, they are willing to curtail diversion to no more than 50 inches of the 1883 right, and are willing to leave 20 inches of their right in the stream for carrying losses until the water right is reduced because of priority cuts. When streamflows are low, Molyneuxs have not been able to divert the entire 70 inches because of proportionate cuts in the 1883 right. John Molyneux asked, if the application is approved, that Molyneuxs be able to determine their pro rata portion during low flows based on 70 inches rather 50 inches.

31. Witnesses for the protestants stated transfer of 70 inches out of the Hot Springs Canal will result in greater losses prior to delivery. If the water has been delivered and measured by the watermaster at the field headgate in the past, water has been lost in delivering water to the Briggs place. The applicants are willing to limit diversion to 50 inches in the pipeline, leaving the additional 20 inches plus the water previously lost in delivery to carry water for the remaining users.

32. Despite the testimony of the protestants' witnesses, the transfer, as proposed, will not increase the absolute loss, nor will it increase the loss borne by the remaining users.

33. Water users at the end of the Hot Springs Canal have sporadically combined the rights diverted into a single stream and rotated the larger quantity of water. Rotation has not been established as a traditional method of efficiently using water, however.

34. The present place of use (Briggs place) is located in an area with heavy soil that retains moisture. The proposed place of use was characterized as "low lands", where water may remain close to the ground surface during the spring, and the land "subs out" during irrigation season.

35. The proposed place of use is located in an area with porous soil. The porous soil drains more quickly than the heavy

soil. Chip Molyneux, brother of John Molyneux, and a witness for Molyneuxs, admitted the proposed place of use will require more water than the present place of use. Water must be applied on the porous soil more frequently than on the heavy soil.

36. Walter Peck once owned the Briggs place. He owns land proximate to the Briggs place and the proposed place of use. He owns a 1905 priority water right which irrigates some of these lands.

37. Peck is familiar with the present place of use and the proposed place of use. He testified the proposed place of use must be irrigated more frequently. He also testified the proposed place of use must be irrigated early in the year, sometimes as soon as water can be applied. He testified the present place of use doesn't normally require irrigation until June 1.

38. Peck's 1905 water right has been deliverable early in past years because the 1883 water right users at the end of the Hot Springs Ditch do not call for their water. A transfer to the proposed place of use will result in an earlier call for the 1883 water. Mr. Peck and other users with similar rights will lose the 50-70 inches sought to be transferred during the early irrigation season.

39. Diversion of water by Molyneuxs from Fish Creek into the Fish Creek Mutual Pipeline after water is no longer diverted into the Hot Springs Canal may injure other users who have benefitted from the 1883 water which was no longer delivered to the Hot Springs Canal.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of 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, Idaho Code;

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights and is consistent with conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The applicant bears the ultimate burden of proof regarding all issues.

5. Delivery of water to the circular pivot, and commingling with storage or ground water delivered through the pipeline would not result in an injury provided the circular system is shut down when water from the well or storage cannot be delivered to make up the difference between the deliverable decreed rights and 100 inches.

6. The Department could approve this transfer and allow a permissible place of use for the entire 140 acres irrigated by the circular system, provided the approval is conditioned to prohibit irrigation whenever less than half the water can be supplied from other sources.

7. Protests against a transfer because it will cause greater difficulty in rotation are only valid if the protestants show either a traditional, local custom of rotation, or a contractual obligation to rotate. Sporadic rotation, arranged year to year between various users, is not sufficient evidence of rotation to prevent Molyneuxs from transferring their 1883 water right out to the Hot Springs Canal.

8. Molyneuxs suggest the use of more water on the new place of use, caused by its porous and well drained qualities, can be prevented by limiting the volume to the average annual volume diverted. Protestants rightfully point out that if the applicants divert the average annual volume in a low water year, they will divert more water than their entitlement. The Department might be able to condition the right to prevent excessive use, but there is another reason why this application for transfer should be rejected.

9. Approval of the proposed transfer would result in an enlargement because water will be diverted to the dryer, more porous soils earlier in the year, to the detriment of later in time water rights.

10. With respect to injury to other users resulting after delivery into Hot Springs Canal ceases, the applicants bore the burden of proof regarding the injury question. The applicants did not satisfy their burden of proof.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 3922 is DENIED.

IT IS FURTHER ORDERED that Molyneux's request for oral argument is DENIED.

Dated this 22ND day of February, 1993.



R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of February, 1993, I mailed a true and correct copy of the foregoing Final Memorandum Decision, postage prepaid, to the following:

John & Kristy Molyneux

Rt 1 Box 190
Bellevue, ID 83313

Jim Speck

PO Box 987
Ketchum, ID 83340

Walter Peck

Carey, ID 83320

Edric L Wilde

PO Box 173
Carey, ID 83320

June Farnworth

PO Box 123
Carey, ID 83320

Maurice Ellsworth

PO Box 158
Carey, ID 83320

Grant Ellsworth

PO Box 246
Carey, ID 83320

Lawrence Kimball

PO Box 275
Carey, ID 83320

Gilbert G Cross

PO Box 245
Carey, ID 83320

Jerry Cenarrusa

PO Box 164
Carey, ID 83320

Catherine L Sweat

PO Box 234
Carey, ID 83320

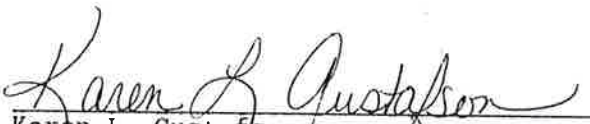
Robert D Whitby

PO Box 395
Carey, ID 83320

Shirl Reay

PO Box 13
Carey, ID 83320

John Coleman
Coleman, Ritchie et al
156 2nd Ave W
Twin Falls, ID 83301


Karen L. Gustafson
Secretary/Records Manager

MICROFILMED
MICROFILMED
OCT 24 1994

37-137B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

FEB 02 2007

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 37-737B & 37-780B _____
Adjudication Claim No(s): _____
2. The following **REQUIRED** information must be submitted with this form:
 - A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
 - B) A **FEE** of \$25.00 per water right or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest

D. L. Evans Bank

P.O. Box 87

Twin Falls, ID 83303
4. Name of Water Right Owner/Claimant(s)

C.E. MOLYNEUX _____
5. Expiration Date of Notification Period November 15, 2011 _____
6. Is this a Renewal of Request for Notification? ☐ YES ☐ NO
7. Signature(s) (and title if applicable)

Andrea Hefland

Loan Processor

For Office Use Only

Received by <u>[Signature]</u>	Date <u>2/5/07</u>	Fee <u>50.00</u>
Receipted by <u>[Signature]</u>	Date <u>2/6/07</u>	Receipt No. <u>3029284</u>
Processed by _____ AJ	Date _____	WR _____ Date _____

Instrument # 542219

HAILEY, BLAINE, IDAHO

2006-11-27 04:02:00 No. of Pages: 7

Recorded for : FIRST AMERICAN TITLE

MARSHA RIEMANN Fee: 21.00

Ex-Officio Recorder Deputy

Index to: DEED OF TRUST-SECOND DEED TRUSTMTG

#191217

Space Above This Line For Recording Data

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 27, 2006. The parties and their addresses are:

MORTGAGOR:

CLARENCE E. MOLYNEUX

A/K/A C.E. MOLYNEUX

AS HIS SOLE AND SEPARATE PROPERTY

80 LAIDLAW PARK ROAD

CAREY, Idaho 83320

LENDER:

D. L. EVANS BANK

Organized and existing under the laws of Idaho

980 S. Lincoln

Jerome, Idaho 83338

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

REFER TO EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER WITH THE WATER RIGHTS REPRESENTED BY IDAHO STATE DEPARTMENT OF WATER RESOURCES WATER RIGHT NO. 37-780B WITH A CLAIMED PRIORITY OF MARCH 30, 1883 TO 1.1 CFS OF WATERS OF FISH CREEK A TRIBUTARY OF THE LITTLE WOOD RIVER, AND WATER RIGHTS NO. 37-737B WITH A CLAIMED PRIORITY OF MARCH 30, 1883 TO 0.7 CFS OF WATERS OF FISH CREEK A TRIBUTARY OF THE LITTLE WOOD RIVER.

TOGETHER WITH 598 1/3 SHARES OF THE CAPITAL STOCK OF THE FISH CREEK RESERVOIR COMPANY, INC., TOGETHER WITH ANY AND ALL OTHER WATER RIGHTS AND DITCH RIGHTS APPURTENANT TO THE ABOVE DESCRIBED PREMISES.

The property is located in BLAINE County at 80 LAIDLAW PARK ROAD, CAREY, Idaho 83320.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed ~~924,991.21~~. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 1812104149/12, dated November 27, 2006, from Mortgagor to Lender, with a loan amount of \$249,691.21 and maturing on November 15, 2011. One or more of the debts secured by this Security Instrument contains a future advance provision.

CLARENCE E. MOLYNEUX

Idaho Mortgage

ID/4cquigley00937100005187039112406Y

©1999 Bankers Systems, Inc., St. Cloud, MN

Initials *CBH*
Page 1

B. All Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument when the evidence of indebtedness specifically states that it is secured by this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument. Mortgagor acknowledges that the interest rate, payment terms, or balance due on the loan may be indexed, adjusted, renewed or renegotiated.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. ASSIGNMENT OF LEASES AND RENTS. Mortgagor absolutely, unconditionally, irrevocably and immediately assigns, grants, bargains, conveys and mortgages to Lender all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Lender grants Mortgagor a revocable license to collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor's default automatically and immediately revokes this license. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Mortgagor agrees that Lender will not be considered to be a mortgagee-in-possession by executing this Security Instrument or by collecting or receiving payments on the Secured Debts, but only may become a mortgagee-in-possession after Mortgagor's license to collect, receive, enjoy and use the Rents is revoked by Lender or automatically revoked on Mortgagor's default, and Lender takes actual possession of the Property. Consequently, until Lender takes actual possession of the Property, Lender is not obligated to perform or discharge any obligation of Mortgagor under the Leases, appear in or defend any action or proceeding relating to the Rents, the Leases or the Property, or be liable in any way for any injury or damage to any person or property sustained in or about the Property. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

13. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Erosion. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce or make possible the production of an agricultural commodity, as further explained by federal law.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

14. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

15. REDEMPTION. The period of redemption after sale on foreclosure will be one year if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land of twenty (20) acres or less. Any agreement to extend the redemption period must be in writing.

16. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

17. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of

any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

18. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

19. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

20. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

21. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

22. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all appraisal and homestead exemption rights relating to the Property.

23. APPLICABLE LAW. This Security Instrument is governed by the laws of Idaho, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

24. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument

or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

25. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

26. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

27. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

SIGNATURES. By signing, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

Clarence E. Molyneux
CLARENCE E. MOLYNEUX

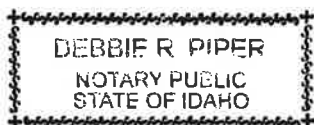
Individually

ACKNOWLEDGMENT.

(Individual)
State of Idaho County of Blaine ss.
On this 27th day of November, 2006, before me
Debbie R. Piper a Notary Public, personally appeared CLARENCE E. MOLYNEUX, AS
HIS SOLE AND SEPARATE PROPERTY, known or identified to me (or proved to me on the oath of
(), to be the person(s) whose name(s) is/are subscribed to the within
instrument, and acknowledged to me that he/she/they executed the same.

My commission expires: 12-01-06

Debbie R. Piper
(Notary Public)



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

SFS

SIGNED
2/24/09

RIGHT NUMBER: 37-737B

NAME AND ADDRESS:

C E MOLYNEUX
080 LAIDLAW PK RD
CAREY ID 83320

SOURCE:

Source:
FISH CREEK

Tributary:

LITTLE WOOD RIVER

QUANTITY:

0.700 CFS

IRRIGATION USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.0 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 140 AF. The water right holder is entitled to this combined amount of water at a point where the water enters the irrigation place of use described below.

Any pro rata reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a combined flow rate of 1.5 cfs for irrigation. The watermaster will only reduce the combined irrigation flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.5 cfs would be reduced to less than 1.0 cfs.

USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.0 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 140 AF.

PRIORITY DATE:

03/30/1883

POINT OF DIVERSION:

T01N R22E S33 SESESE
Within BLAINE County

PURPOSE AND
PERIOD OF USE:

Purpose of use	Period of use:	Quantity:
IRRIGATION	04/15 10/15	0.500 CFS
	04/15 10/31	0.700 CFS

The additional 0.20 cfs of the total diversion rate of this right shall be delivered to Hot Springs Canal for conveyance use during the irrigation season pursuant to transfer no

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

The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 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 this right.

PLACE OF USE: IRRIGATION within BLAINE County
T01S R22E S15 SWSW 35.0
T01S R22E S16 SESE 35.0

70 ACRES TOTAL

IRRIGATION USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 70 ACRES IN A SINGLE IRRIGATION SEASON.

~~USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 70 ACRES IN A SINGLE IRRIGATION SEASON.~~

Conveyance use of this right is in the Hot Springs Canal pursuant to Transfer No. 3922.

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.

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 04-14-1998) in the matter of the Application for Transfer No. 3922.

~~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

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

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 04-14-1998) in the matter of the Application for Transfer No. 3922. (As Follows.) IT IS HEREBY ORDERED that application for transfer no. 3922 is CONDITIONALLY APPROVED with the following conditions: The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

-A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

-No less than one-half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

-The combined flow rate of water diverted pursuant to water Right Nos. 37-00737B and 37-00780B is limited to 1.0 cfs.

-Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 140 acre-feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

-Use of water under the transferred water right nos. 37-00737B and 37-00780B will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

-Any pro-rata reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

-Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

NBS NOTES TO FILE 37-737B AND 37-780B (C.E. Molyneux)
3-7-07

Here is the situation with right 37-780B as explained to me by Steve Clelland. In the beginning the right was on a different place of use (the old POU). However, when it was claimed, it was claimed on its current place of use (the new POU) which is the ground covered by the bottom half of a pivot. No portion of the SRBA claim was listed as having the POU on the old POU.

The claim for 37-780B listed a total quantity of 1.1 cfs. However, under the purpose of use of the claim it listed "irrigation .8 cfs." No other use was listed. Therefore there is an ambiguity in the claim, with two different quantities being claimed.

Five months later the transfer was filed. It sought to move the quantity of .8 cfs onto the new POU. **[Steve, if the purpose of the transfer was to move the right to the new POU, how could the claimant claim the new POU in his SRBA claim five months before he filed a transfer to move it to the new POU? Did he move the right first, and then file the transfer to legitimize what he'd already done?]** After a lengthy transfer process the transfer in effect moved the right to the new POU, but left up to the SRBA the determination of whether the quantity being transferred was .8 cfs or .7 cfs.

When Steve Clelland investigated the claim he recommended .8 cfs for the total quantity. However, in the purpose of use portion of the recommendation he inadvertently listed the quantity as follows "irrigation 1.1 cfs" thus carrying over into the recommendation the same ambiguity as was on the claim. Steve has informed Dana Hofstetter of this error, and explained that his intention had been to recommend the right for .8 cfs rather than 1.1 cfs.

We do not know where the "1.1 cfs" on the claim came from, but the weight of evidence (the fact that .8 cfs was claimed for the irrigation use on the claim, the irrigation use was the only use on the claim, and the transfer filed five months later was for the purpose of transferring .8 cfs to the new POU) suggests that the 1.1 cfs was an error. In any event according to Steve there is no portion of this right that is left on the old POU.

Therefore what needs to be determined now is where the 1.1 cfs came from. While it appears that the claimant likely only intended to claim .8 cfs, if in fact he intended to claim and transfer 1.1 cfs, then Jeff Peppersack needs to become involved to determine if the transfer can be amended to reflect this.

Since the law of the case in the SRBA is that IDWR and the claimant are bound by the terms of a license or transfer, Steve was correct in determining under the circumstances that he was required to recommend the right for the quantity approved in the transfer. Since it was left to him to determine whether that quantity was .7 cfs or .8 cfs, he recommended the higher quantity, thereby recommending to the claimant the maximum quantity he could recommend under the circumstances.

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

October 18, 2006

Rule of Evidence 408
For Settlement Purposes Only

RECEIVED

OCT 18 2006

DEPARTMENT OF
WATER RESOURCES

Via Hand Delivery

Susan Hamlin-Nygard
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83702

Re: C.E. Molyneux - SRBA Subcase Nos. 37-737B and 37-780B

Dear Susan:

This letter responds to your request for a summary of the grounds for the Claimant's Objections in SRBA Subcase Nos. 37-737B and 37-780B. The separate streams objections and the period of use objections were thoroughly discussed at the recent Initial Hearing and as I recall, at least preliminarily resolved. The quantity (diversion rate and diversion volume) objections relate to Transfer No. 3922 and are more complex and, therefore, are explained more fully below. In this letter, I refer to the 1914 Decree, SRBA Claim Nos. 37-737B and 37-780B, Transfer Application No. 3922, the Transfer of Water Right certificate and the Second Amended Final Order for Transfer No. 3922. I enclose copies of these documents for your ready reference.

Background

The 1914 Decree in *Potter v. Patterson* confirmed Water Right No. 37-737 from Fish Creek to be associated with 70 (miner's) inches for irrigation of 70 acres under a March 30, 1883 priority and Water Right No. 37-780, also from Fish Creek, to be associated with 120 inches for the irrigation of 120 acres under the same priority.

On or about January 17, 1991, John and Kristy Molyneux submitted SRBA Claims for 37-737B and 37-780B. On SRBA Claim No. 37-737B, they claimed 1.4 cubic feet per second ("cfs") for irrigation of 70 acres and on SRBA Claim No. 37-780B, they claimed 1.1 cfs for irrigation of the same 70 acres.

On May 6, 1991 John and Kristy Molyneux filed Application for Transfer No. 3922 seeking to relocate portions of the place of use¹ for Water Right Nos. 37-737 and 37-780. A review of the Transfer Application indicates that originally 40 miner's inches of each right for a total of 80 miner's inches for irrigation of 80 acres was sought to be transferred. However, for some reason, these quantities subsequently were changed on the application to 35 miner's inches of Water Right No. 37-737 and 40 miner's inches of Water Right No. 37-780B for transfer of a total of 75 miner's inches for 70 acres.²

After numerous protests and extended proceedings, IDWR issued its Second Amended Final Order for Transfer No. 3922 on April 14, 1998 and the Transfer Certificate on April 15, 1998, conditionally approving the Transfer and designating the transferred portions of Rights 37-737B and 37-780B as totaling 1.0 cubic feet per second ("cfs") for irrigation of 70 acres with an additional 0.4 cfs or 0.5 cfs to be allocated to Hot Springs Canal conveyance.

¹ While the Transfer Application also requested a point of diversion change, it appears that no point of diversion change from the source was necessary to accomplish the place of use change. Accordingly, the Second Amended Final Order maintained the same point of diversion.

² It is unclear why the 80 acres the Molyneuxs originally designated on the transfer application was changed to 70 acres, or why the 80 inches was changed to 75 inches. However, 70 is the acreage quantity that also was in their SRBA claims. The diversion rates on the Transfer Application did not correspond to the diversion rates on the SRBA Claims.

TRANS
ISSUE

Discussion of the Quantity Objections

Diversion Rate. The Transfer approval did not finally resolve the diversion rate as the approval noted that the diversion rate quantity was to be finally decided in the SRBA. Finding of Fact No.7, *Second Amended Final Order* at 2. There appeared to be uncertainty as to what portions of the respective rights were owned by the Molyneuxs. For example, in Finding of Fact No. 6 a discrepancy between the flow rate in the Transfer Application and in the published Notice was identified. Further, in Finding of Fact No.45, it was noted that the 40 miner's inches portion of Water Right No. 37-780 not claimed by Cross appeared to belong to Molyneux; but the actual portion of Water Right No. 37-780 that had not been claimed by Cross was 55 miner's inches, instead of 40 inches. In any event, Finding of Fact No.7 indicated that since there was uncertainty about the Molyneuxs' entitlement, "a full determination of the flow rates authorized by the water rights would be deferred until considered in the Snake River Basin Adjudication."

The allocation of a portion of the flow rate to Hot Springs Canal conveyance does not appear to comport with the finding in the Transfer Approval that the watermaster historically delivered the respective decreed water right quantities at the field headgate, rather than measuring water at the heads of the two canals and the pipeline. Finding of Fact Nos. 7, 14 and 29, *Second Amended Final Order* at 5, 7 and 9. Since, the water right quantities had been measured at the field headgate, there was no basis for allocating a portion of those field headgate quantities to conveyance.

In summary, the Transfer Approval expressed uncertainty regarding the diversion rates allocated to the Molyneuxs' portions of the water rights and left this matter for final determination in the SRBA. The allocation of a portion of the diversion rates to conveyance in the Transfer Approval is puzzling in view of the finding that the diversion rate quantities were field headgate quantities.

Diverted Volume. Although the Transfer certificate itself omitted any diverted volume limitation, the conditions of approval in the Second Amended Final Order included a diversion limitation of 140 acre feet annually under Water Right Nos. 37-0737B and 37-0780B, "unless otherwise adjusted as provided herein." This diverted volume limit was 50% of the maximum volume typically required to irrigate 70 acres of land at that location. *Second Amended Final Order* at 2.

From a review of the Findings of Fact and Conclusions of Law, it appears that the 50% limitation was based on a determination 1. that one of the subject water rights (37-737)

was diverted *an average* of 50% of the days of the season over a number of years between 1980 through 1986, 1988 through 1993, and 1996 and 2. that the *average* volume of water diverted under 37-737 during the years 1988 through 1996, except for 1994 was about 140 acre feet. *See* Findings of Fact Nos. 58 and 61, *Second Amended Final Order*. This approach for determining the 140 acre feet volume limitation is problematic in several respects.

The Idaho Supreme Court has denounced reductions in water rights based on historic beneficial use, without reference to the statutory forfeiture criteria. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 744, 947 P.2d 409, 417 (1997). Thus, IDWR's analysis regarding average days and volumes of usage over several years did not comply with this legal authority which had just issued at the time of the *Second Amended Final Order*. Under this authority, it is inappropriate to reduce a water right based on historic beneficial use and, instead, the one asserting partial or complete loss of a water right must prove statutory forfeiture for five years of consecutive non-use by clear and convincing evidence. *Id.*; *See also, Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). Average (days or volumes of) use over a period of time is a completely different concept from five consecutive years of non-use.

In reviewing the historic use data in Finding of Fact 61 and Attachment A to the Second Amended Final Order, there appears to be no factual basis for a forfeiture determination. Apparently, only diversion records for Water Right No. 37-737 provided the basis for the diverted volume limitation applied to both rights subject to the Transfer. In this regard, critical information regarding the use of Water Right No. 37-780 appears to have been omitted from the analysis. Further, it appears that for many days, the actual diversion rate exceeded the approximate 1.4 cfs allowable rate under Water Right 37-737, likely due to rotation practices. Thus, for several years (1980-1986) the calculated diversion volumes on Attachment A significantly exceeded the 280 acre foot standard. However, these critical years were omitted from the historical beneficial use analysis to negate the apparent influence of rotation practices. On the other hand, many of the years, that apparently were considered in the historic use analysis (1988-1996) were subject to the SRBA Court's forfeiture tolling decision and are not relevant in the SRBA. *See Order on Challenge of "Facility Volume" Issue and "Additional Evidence" Issue*, SRBA Subcase Nos. 36-02708 *et al.* (December 29, 1999). It also should be noted that in calculating the *average* annual diversion rate during the 1988-1996 period, only days when Water Right No. 37-737 was diverted at a rate of 1.4 cfs or less was used in the calculation. *See* Finding of Fact No. 61, *Second Amended Final Order*. Thus, even for the post-1987 period of time that was relied on to determine the 140 acre foot limitation, the approach utilized to determine the average

Susan Hamlin-Nygard

October 18, 2006

Page 5

diverted volume incorrectly excluded diversions of the water right under rotation arrangements and applied an assumed diversion rate of 1.4 cfs that would not be finally determined until the SRBA.³

In summary, the analysis by which the 140 acre feet diverted volume limitation was developed incorrectly applied what turned out to be the wrong legal standard. Further, certain assumptions regarding the data artificially underrepresented the extent of actual diversions. In many respects, the applicable legal standards were being clarified by the SRBA Court and the Idaho Supreme Court at the time the Transfer Application was under consideration by IDWR. Presently, the applicable legal standards are better defined and should be correctly applied in the SRBA.

Conclusion

For these reasons, the Claimant believes that the combined diversion volume limitation should be deleted or corrected to the standard for the area, 280 acre feet per year. Additionally, the diversion rates (at the headgate) should be corrected to 0.7 cfs allocated to Water Right No. 37-737B and 1.1 cfs allocated to Water Right No. 37-780B, for a total combined diversion rate of 1.8 cfs, as these rates appear to be the unclaimed portions of these rights that are available to the Molyneuxs. Please let me know if you have any further questions about these matters or need any additional information. Thank you.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink, reading "Dana Hofstetter", with a long horizontal line extending from the end of the signature.

Dana L. Hofstetter

Enclosures
4051.1/7115

³ It should be noted that the incorrectly determined volume limitation also was utilized to limit the final authorized diversion rate. See Conclusion of Law No. 12, *Second Amended Final Order* at 17.

37-A-2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BLAINE.

---oOo---

ADELBERT L. POTTER ET AL,

PLAINTIFFS,

VS.

JOSEPH R. PATTERSON ET AL,

DEFENDANTS.

Transfers Noted #

DECRE E.

37-780

The testimony in this case having been taken by Mr. E. H. Weaver, Referee, pursuant to stipulation and cause submitted for decision at the May 1914 term of said Court, held at Hailey, Blaine County, Idaho and the Court having made and filed its findings of fact and conclusions of law, and the Court being fully advised;

It is hereby ordered, adjudged and decreed that the several parties, plaintiffs and defendants herein named, do have judgement respectively for a right to use for irrigation and other purposes the following number of inches of water, each fifty inches thereof to be equivalent to the flow of one cubic foot per second, as prescribed by law, from Fish Creek and its tributaries, in the County of Blaine, State of Idaho, their priorities to date, from the times hereinafter named to wit;

Alfred, E. A. 11½ inches from March 30, 1883 for the irrigation of the following tract; commencing at a point 45 rods South of the North East corner of the NW¼ of the NE¼, Sec. 13, T. 1 S., R. 21 E.; thence West 80 rods; thence South 22½ rods; thence East 80 rods; thence North 22½ rods to the place of beginning, containing 11½ acres, known as Tax Lot No. 765.

MICROFILMED
MAY 27 1999

37-777 ✓ Sparks, Hyrum 155 inches from June 30, 1899 for the irrigation of E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{2}$ SW $\frac{1}{2}$, Sec. 36, T. 2 N., R. 22 E., containing 160 acres.

37-778 ✓ Sparks, Hannah 110 inches from June 15, 1907 for the irrigation of SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 26, S $\frac{1}{2}$ SW $\frac{1}{2}$, SW $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 25, T. 2 N., R. 22 E., containing 160 acres.

37-779 ✓ Stinson, Alice J. 53 inches from April 21, 1905 from West Fork for the irrigation of SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 4, T. 1 N., R. 22 E., containing 160 acres.

37-780 ✓ Wolpert, B. 120 inches from March 30, 1883 for the irrigation of SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 24, T. 1 S., R. 21 E., Lot 4, Sec. 18, T. 1 S., R. 22 E., containing 120 acres.

37-781 ✓ Welch, A. L. 160 inches from March 30, 1883 for the irrigation of E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 13, T. 1 S., R. 21 E., Lot 3, Sec. 18, T. 1 S., R. 22 E., containing 160 acres.
Trans. # 229

37-782 ✓ Ward, John 60 inches from May 18, 1904, for the irrigation of Lot 1, Sec. 4, T. 1 N., R. 22 E., Lot 1, NE $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 33, T. 2 N., R. 22 E., containing 160 acres.

37-783 ✓ Ward, John 80 inches from May 15th, 1905 for the irrigation of W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 27, SE $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 33, T. 2 N., R. 22 E., containing 160 acres.

That defendants, E. A. Allred, Aaron Boulton, William G. Briggs, G. A. Condie, Ira Eldridge, S. L. Hammer, E. P. Knutson, Joseph R. Patterson, Fred T. Phillips, Teresa Parks, A. L. Welch and B. Wolpert as successors in interest of George W. Case as against Isabella McDougal as successor in interest of W. J. Crooks and John Cameron, are entitled, pro rata, to the amount of land owned by them as such successors, to 750 inches, measured under a four inch pressure of the waters of said Fish Creek; that the defendant Isabella McDougal is thereafter entitled to 100 inches of water measured as aforesaid of the waters of East Fork, a tributary of said Fish Creek, that said defendants, successors of said George W. Case, as aforesaid, are thereafter entitled to 150 inches of the waters of said Fish Creek in addition to said 750 inches, and 150 inches divided pro rata as aforesaid.

That each party hereto be, and he and his agents, servants, employees, successors, assigns and all others acting by, through or under him are hereby perpetually enjoined from in any manner interfering with the flow of the waters of Fish Creek, except as in this decree provided.

That each party hereto pay his own costs and expenses.

Done at Twin Falls, Idaho this 16th day of December, 1914.

EDWARD A. WAITERS

District Judge.

filed Dec. 22, 1914.
W. F. Horne, Clerk.
By L. A. Duvall, Deputy.

---oOo---

STATE OF IDAHO)
) ss.
County of Blaine,)

I, Cassie M. Russell, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a full, true and correct copy of the original Decree in the above entitled action now on file in my office, and recorded in Judgment Book 7, Page 269.

Given under my hand and the seal of said Court in my office, at Hailey, this, the 18th day of May, A. D., 1926.

Attest: Cassie M. Russell, Clerk.

By Geo A. McLeod, Deputy.

(SEAL)

MICROFILMED

MAY 27 1937

37-A-2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE

COUNTY OF BLAINE.

---oOo---

ADELBERT L. POTTER ET AL,

PLAINTIFFS,

VS.

JOSEPH R. PATTERSON ET AL,

DEFENDANTS.

Transfers Noted #

DEGREE.

37-737

The testimony in this case having been taken by Mr. E. H. Weaver, Referee, pursuant to stipulation and cause submitted for decision at the May 1914 term of said Court, held at Hailey, Blaine County, Idaho and the Court having made and filed its findings of fact and conclusions of law, and the Court being fully advised;

It is hereby ordered, adjudged and decreed that the several parties, plaintiffs and defendants herein named, do have judgement respectively for a right to use for irrigation and other purposes the following number of inches of water, each fifty inches thereof to be equivalent to the flow of one cubic foot per second, as prescribed by law, from Fish Creek and its tributaries, in the County of Blaine, State of Idaho, their priorities to date, from the times hereinafter named to wit;

- Allred, E. A. 11 1/2 inches from March 30, 1883 for the irrigation of the following tract; commencing at a point 45 rods South of the North East corner of the NW 1/4 of the NE 1/4, Sec. 13, T. 1 S., R. 21 E.; thence West 80 rods; thence South 22 1/2 rods; thence East 80 rods; thence North 22 1/2 rods to the place of beginning, containing 11 1/2 acres, known as Tax Lot No. 765.

MICROFILMED

MAY 03 1999

37-734 Allred, E. A.

50 inches from April 15, 1910, for the
irrigation of $S\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 34, T. 1 N.,
R. 22 E., and Lots 2 and 3, Sec. 3, T.
1 S., R. 22 E., containing 160 acres.

37-735 Boulton, Aaron

11 $\frac{1}{2}$ inches from March 30, 1883 for the
irrigation of the following tract; com-
mencing at the North East corner of NW $\frac{1}{4}$
NE $\frac{1}{4}$, Sec. 13, T. 1 S., R. 21 E., running
thence West 80 rods; thence South 22 $\frac{1}{2}$ rods
thence East 80 rods; thence North 22 $\frac{1}{2}$ rods
to the place of beginning, containing 11 $\frac{1}{2}$
acres, known as Tax Lot 763.

37-736 Boulton, Aaron

100 inches from May 23rd 1910 for the irr-
igation of $E\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 34, T. 1
N., R. 22 E., containing 160 acres.

37-737 Briggs, William G.

70 inches from March 30, 1883 for the irr-
igation of the following tract; commencing
at the Southeast Corner of NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec.
13, T. 1 S., R. 21 E., running thence North

80 rods; thence West 60 rods; thence South
80 rods; thence East 60 rods to place of
beginning, containing 30 acres, also Lot 1,
Sec. 19, T. 1 S., R. 22 E., containing 40
acres.

37-738 Condie, G. A.

100 inches from March 30, 1883 for irr-
igation of SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 14, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec.
13, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 24, T. 1 S., R. 21 E.
containing 120 acres.

Trans. 887

MICROFILMED
MAY 03 1999

That defendants, E. A. Allred, Aaron Boulton, William G. Briggs, G. A. Condie, Ira Eldridge, S. L. Hammer, E. P. Knutson, Joseph R. Patterson, Fred T. Phillips, Teresa Parks, A. L. Welch and B. Wolpert as successors in interest of George W. Case as against Isabella McDougal as successor in interest of W. J. Crooks and John Cameron, are entitled, pro rata, to the amount of land owned by them as such successors, to 750 inches, measured under a four inch pressure of the waters of said Fish Creek; that the defendant Isabella McDougal is thereafter entitled to 100 inches of water measured as aforesaid of the waters of East Fork, a tributary of said Fish Creek, that said defendants, successors of said George W. Case, as aforesaid, are thereafter entitled to 150 inches of the waters of said Fish Creek in addition to said 750 inches, and 150 inches divided pro rata as aforesaid.

That each party hereto be, and he and his agents, servants, employees, successors, assigns and all others acting by, through or under him are hereby perpetually enjoined from in any manner interfering with the flow of the waters of Fish Creek, except as in this decree provided.

That each party hereto pay his own costs and expenses.

Done at Twin Falls, Idaho this 16th day of December, 1914.

EDWARD A. WALTERS

District Judge.

filed Dec. 22, 1914.
W. F. Horne, Clerk.
By L. A. Duvall, Deputy.

---oCo---

STATE OF IDAHO)
) ss.
County of Blaine,)

I, Cassie M. Russell, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a full, true and correct copy of the original Decree in the above entitled action now on file in my office, and recorded in Judgment Book 7, Page 269.

Given under my hand and the seal of said Court in my office, at Hailey, this, the 18th day of May, A. D., 1926.

Attest: Cassie M. Russell, Clerk.

By Geo A. McLeod, Deputy.

(SEAL)

MICROFILMED

MAY 03 1999

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: A37-00780B
Date Received: 1/17/1991
Receipt No: S012959
Received By: See

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313
OR
Name: KRISTY MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313

2. Date of Priority: MAR 30, 1883

3. Source: FISH CREEK Trib. to: LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01S	22E	9	NW	NW	NW		BLAINE

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.100		

7. Total Quantity Appropriated is:
1.100 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 175.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01S	22E	18	SW	SW	4	IRR	35.0

A37-00780B

Page 1

Date: 01/17/91

MICROFILMED

FEB 23 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	35.0
		19	NW	NW	4 IRR	35.0
					Section Acres	35.0
					Total Acres	70.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

FISH CREEK RESERVOIR SHARES, A37-00737B

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

POTTER, ET. AL.

Decree Plaintiff

vs

PATTERSON, ET. AL.

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s):

Jah Molyneux
Kristy Molyneux

Date: 1-17-91

Date: 1-17-91

A37-00780B

Page 2

Date: 01/17/91

MICROFILMED

FEB 23 1993

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 17th day

of January 19 91

Seal

Steve Callahan
Notary Public

Residing at Twin Falls

My Commission Expires Dec 7 1994

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: A37-00737B
Date Received: 1/17/1991
Receipt No: S012959
Received By: JCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313
OR
Name: KRISTY MOLYNEUX 208-788-2450
Address: RT. 1 BOX 190
BELLEVUE, ID 83313

2. Date of Priority: MAR 30, 1883

3. Source: FISH CREEK Trib. to: LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01S	22E	9	NW	NW	NW		BLAINE

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.400		

7. Total Quantity Appropriated is:
1.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 175.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01S	22E	18	SW	SW	4	IRR	35.0

A37-00737B

Page 1

Date: 01/17/91

MICROFILMED
FEB 23 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	35.0
		19	NW	NW	4 IRR	35.0
					Section Acres	35.0
					Total Acres	70.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

FISH CREEK RESERVOIR SHARES, A37-00780B

14. Remarks:

THIS CLAIM IS FOR THE ENTIRE PORTION OF WR 37-00737.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

POTTER, ET. AL.

Decree Plaintiff

vs

PATTERSON, ET. AL.

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): John Malgus Date: 1/17/91
Kristy Molynux Date: 1-17-91

State of Idaho)

County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 17th day
of January 19 91 Steve Cella
Notary Public

Seal

Residing at Twin Falls
My Commission Expires Dec 7, 1994

MICROFILMED
MAY 03 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-00737 Decreed to William G. Briggs
in case of Albert L. Potter Et Al. vs. Joseph R. Patterson Et Al.
dated 12-16-1914 in Fourth District county of Blaine
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☒ Other Quit Claim

3. Source of water Fish Creek tributary to Little Wood R.

4. Date or priority 3-30-1883

5. Water is used for the following purpose:

amount 1.40 cfs for Irrig. purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 1.40 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	NW	NW	9	15	22E	Blaine	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
15	22E	19						LT 1											~~40~~
	21E	13						~~X 40~~								X 30			~~30~~

Total acres 70

9. Describe any other water rights used for the same purpose as described above shares in Fish Creek Reservoir

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-00780 Decreed to B. Wolpert
 in case of Albert L. Potter Et. Al. vs. Joseph A. Patterson Et. Al.
 dated 12-16-1914 in Fourth District county of Blaire
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice☐ Warranty Deed☒ Other Quit Claim3. Source of water Fish Creek tributary to Little Wood R.4. Date or priority 3-30-1883 5-6-92 1887

5. Water is used for the following purpose:

amount 2.4 cfs for Irrig. purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 2.40 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	NW	NW	9	1S	22E	Blaire	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	21E	13																X	40
		24	X															X	40
	22E	18											1/4					X	40

MICROFILMED
 MAY 8 3 1999

Total acres 1209. Describe any other water rights used for the same purpose as described above shares in Fish Creek Reservoir

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. A37-00232B on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Fish Creek tributary to Little Wood River

4. Date or priority 3/30/1883

5. Water is used for the following purpose:

amount 1.40 for Tr purposes from 3/15 to 11/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 1.40 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	<u>NW</u>	<u>NW</u>	<u>NW</u>	<u>9</u>	<u>15</u>	<u>22E</u>	<u>Blaine</u>	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>15</u>	<u>22E</u>	<u>18</u>											<u>44</u>						<u>35</u>
		<u>19</u>						<u>Lot 1</u>					<u>35</u>						<u>35</u>

MICROFILMED
MAY 03 1999

Total acres 70-35

9. Describe any other water rights used for the same purpose as described above Fish Cr Res. shares

A37-00232B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
 in case of _____ vs. _____
 dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. A37-00780B on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice☐ Warranty Deed☐ Other _____3. Source of water Fish Creek tributary to Little Lost River4. Date or priority 3/30/1883

5. Water is used for the following purpose:

amount 1.10 for irr purposes from 3/15 to 11/15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 1.10 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	NW	NW	9	1S	22E	Blaine	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
1S	22E	18											2+4						35
		19						4+1					35						35

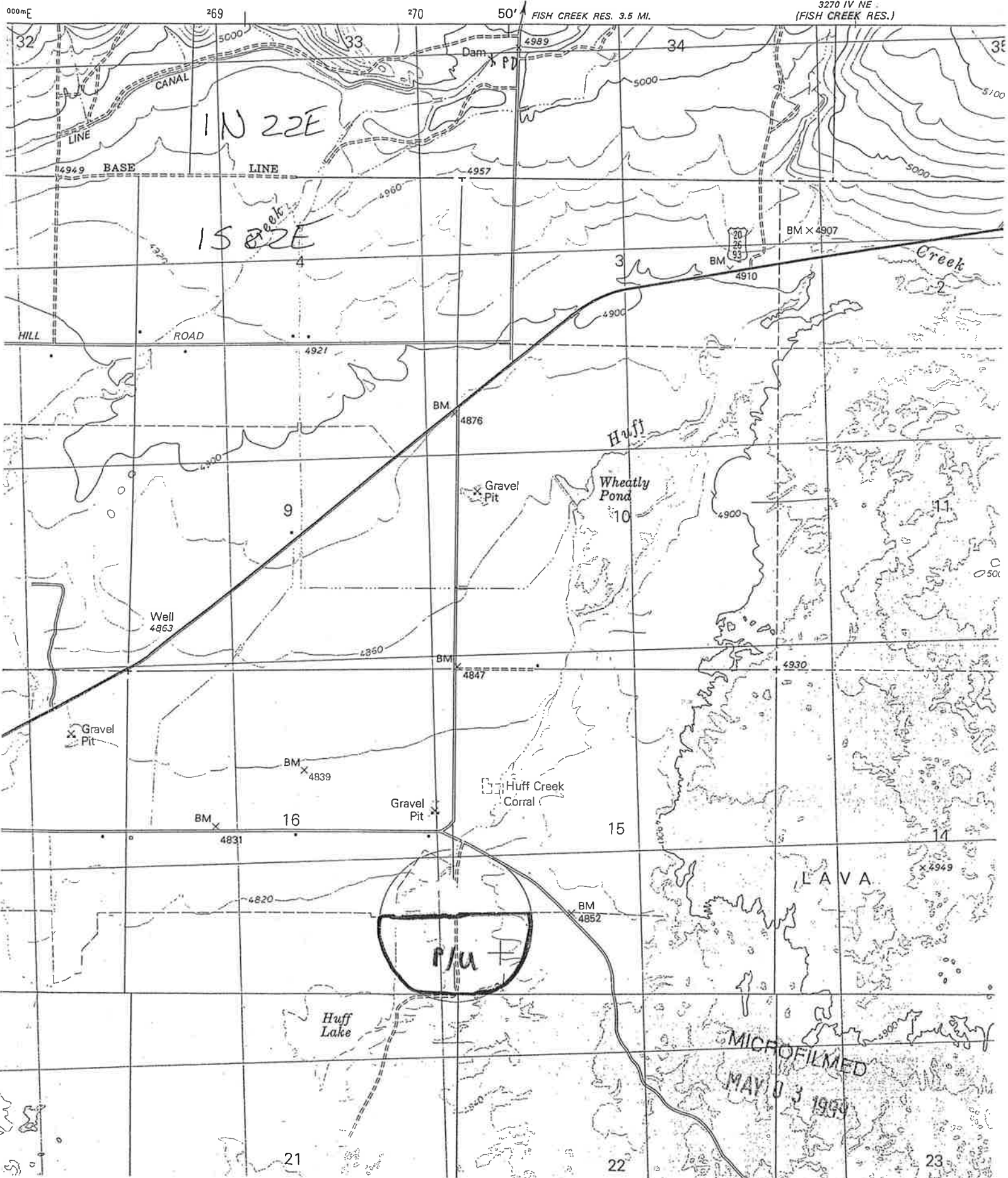
MICROFILMED
 MAY 03 1997

Total acres 709. Describe any other water rights used for the same purpose as described above Fish Cr. Res. shares,

11 of 12

T # 3922

STATES
OF THE INTERIOR
AL SURVEY

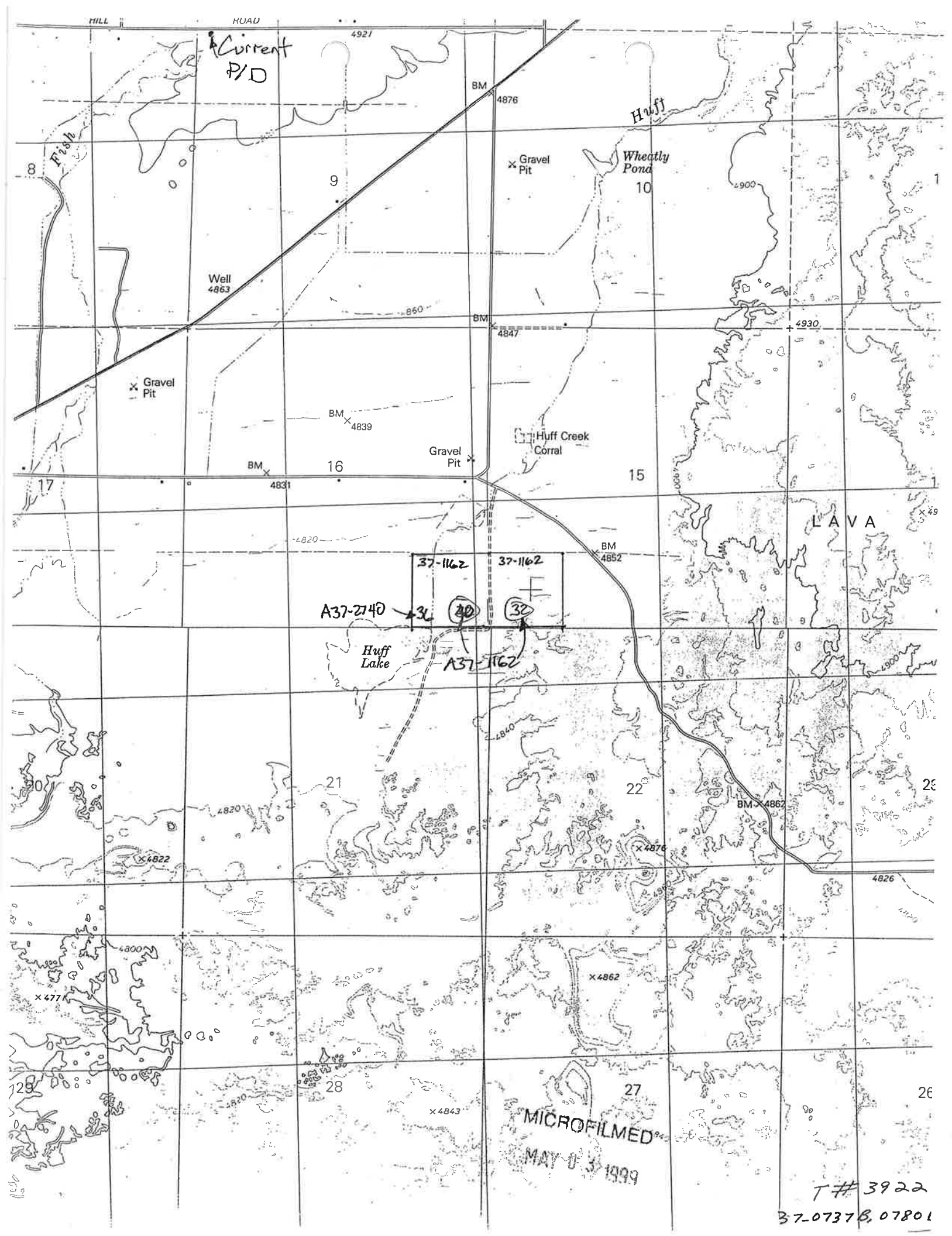


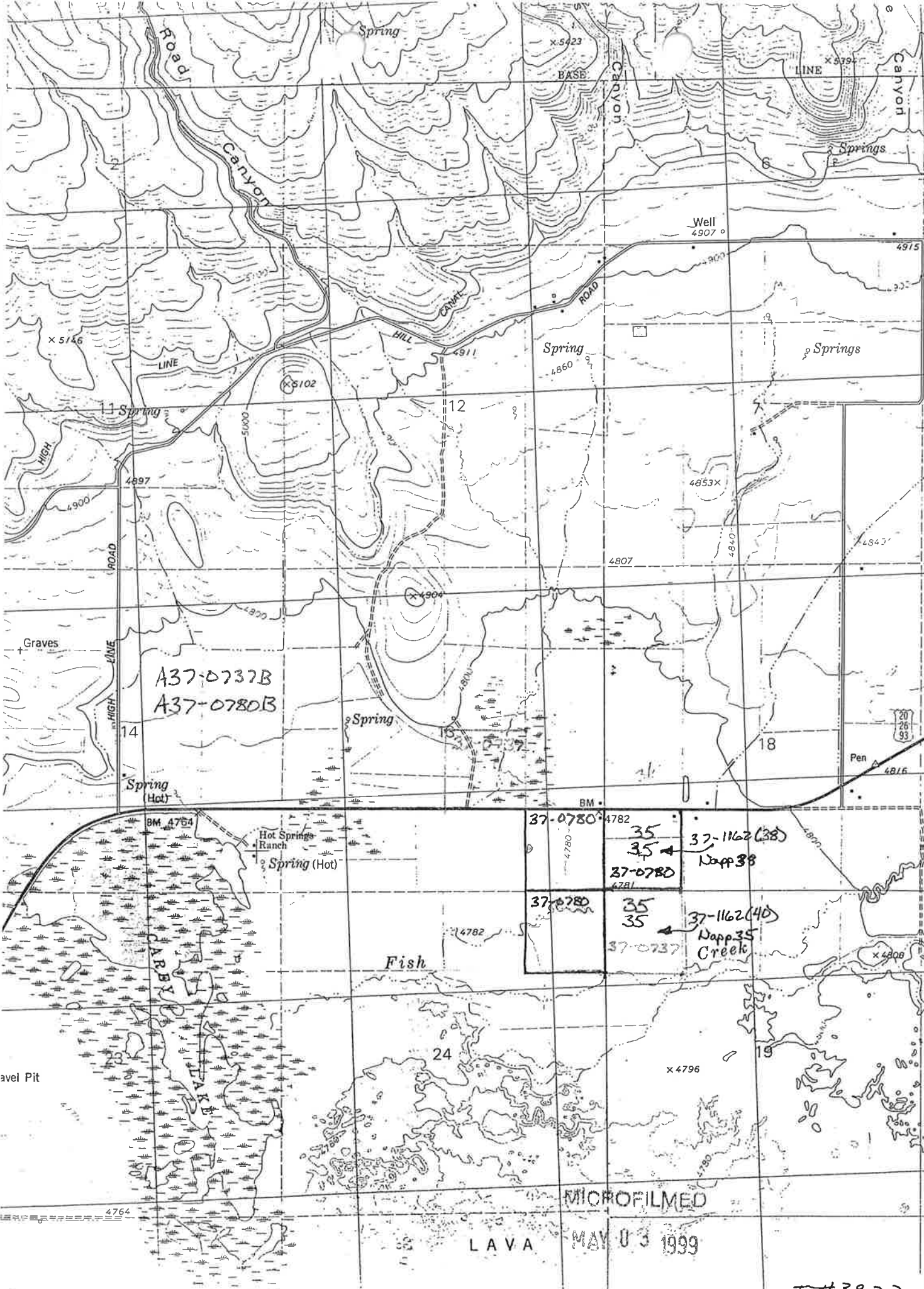
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

A large grid of dashed lines for drawing a map, representing sections, townships, and ranges. The grid is approximately 10 units wide by 10 units high, with a thicker line forming a central cross.

MICROFILMED
MAY 03 1999





T1N
620 000
FEET
T1S
4805
4804
4803
4802
4801
20'
4800
ARCO 89 MI.
ORD FLAT)
IV SE

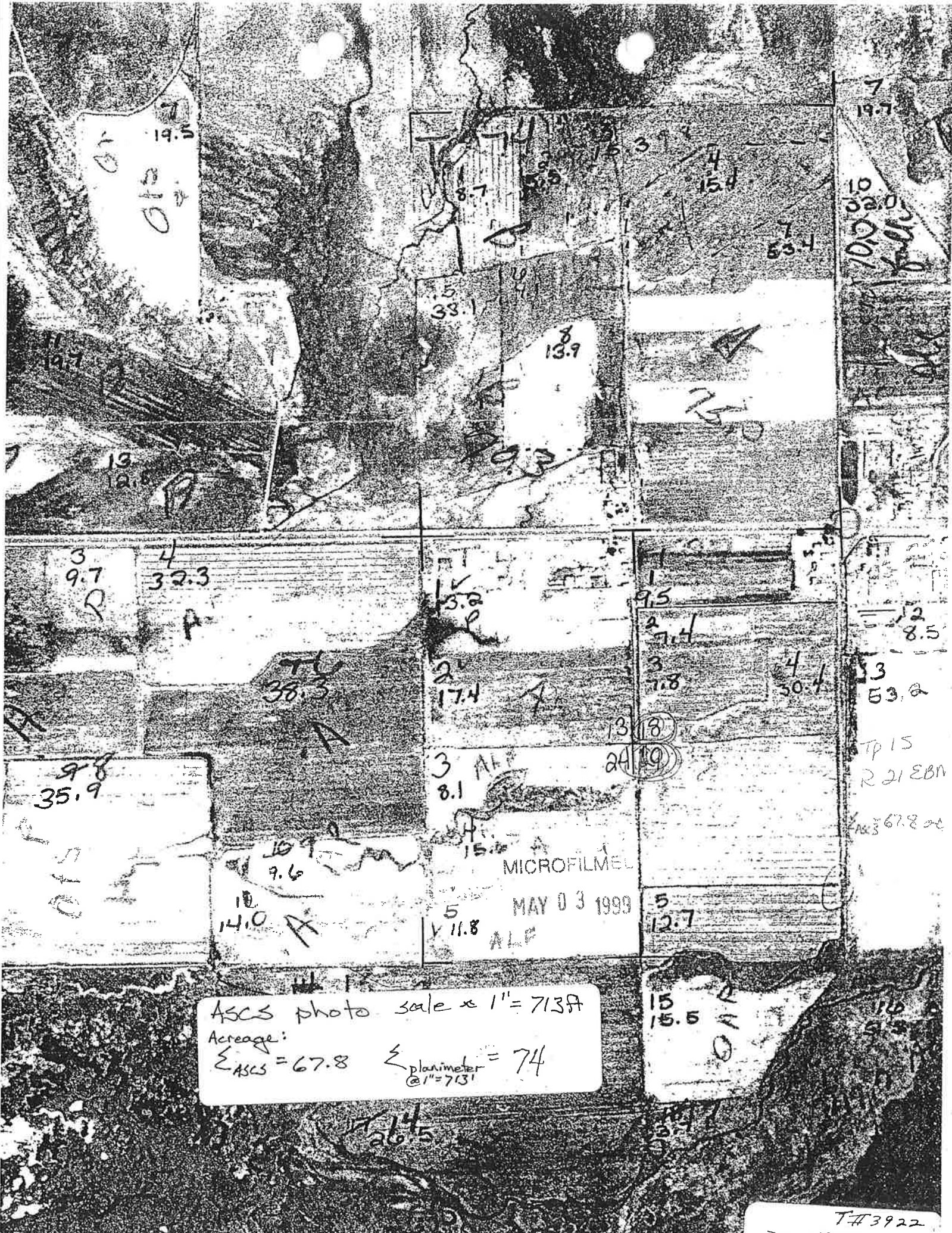
A37-0737B
A37-0780B

37-0780	4782	35	37-1162(38)
	4780	35	Napp 38
37-0780	4781	35	
37-0780		35	37-1162(40)
		35	Napp 35
			Creek

MICROFILMED

LAVA MAY 03 1999

T#3922



7
19.5
012

8.7
15.3
4
15.4
7
53.4

7
19.7
10
32.0
10.0
10.0

1.5
38.1
8
13.9

11
19.7
10
12.8

3
9.7
4
32.3
A

1
3.2
2
17.4

1
9.5
2
7.4
3
7.8
4
30.4

12
8.5
3
53.2

9.8
35.9

38.3
A

3
8.1
ALP

13
18
24
19

TP 15
R 21 EBN
67.8

10
14.0
9.6
A

15.0
5
11.8
ALP

5
12.7

ASCS photo sale @ 1" = 713 ft
Acreage:
 $\sum_{ASCS} = 67.8$ $\sum_{planimeter} = 74$
@ 1" = 713'

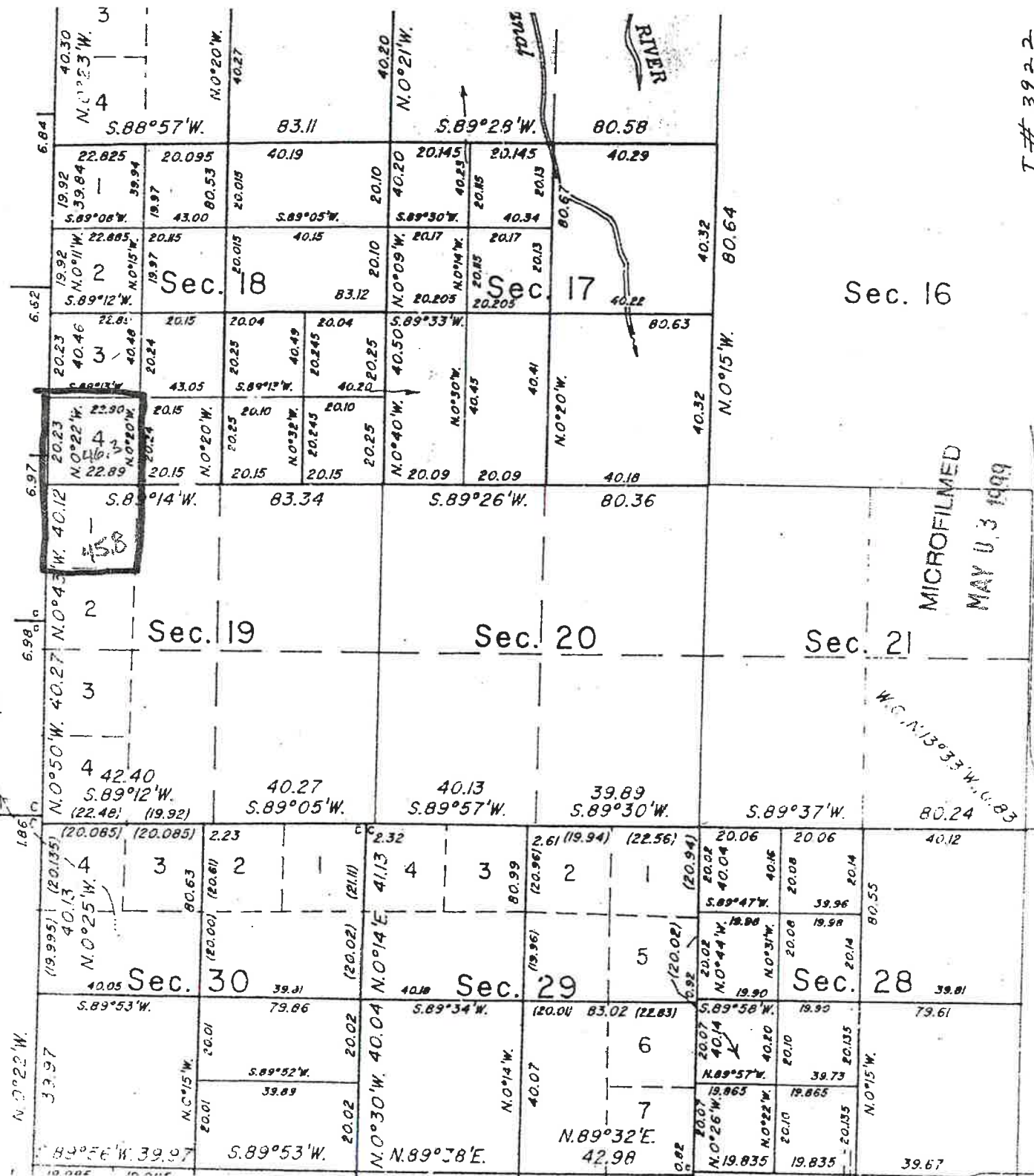
15
15.5
A

16
5.3

T#3922
37 07398

13 22E

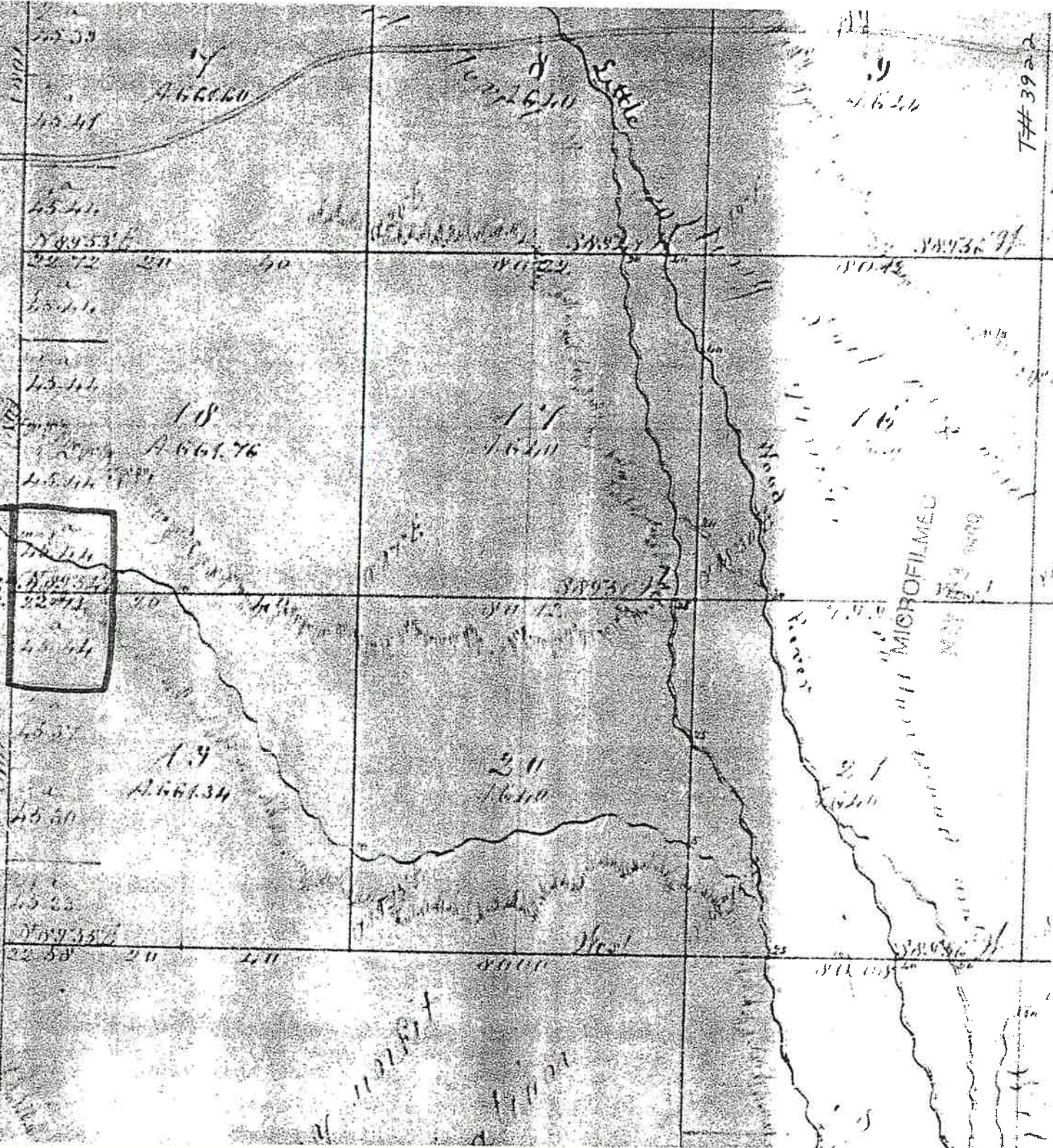
Sec. 25



MICROFILMED
MAY 03 1999

T# 3922
37-07378, 07808

13 22E



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 3922
WATER RIGHT NO(S). 37-00737B/37-00780B

This is to certify that: **JOHN MOLYNEUX**
KRISTY MOLYNEUX
RT 1 BOX 190
BELLEVUE ID 83313

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 TO FISH CREEK MUTUAL PIPELINE</u>	<u>DIVERSION RATE TO HOT SPRINGS CANAL CONVEYANCE</u>
Right No. 37-00737B : IRRIGATION & CONVEYANCE Priority: 03/30/1883	04/15 to 10/15	0.50 CFS	0.20 CFS
Right No. 37-00780B : IRRIGATION & CONVEYANCE Priority: 03/30/1883	04/15 to 10/15	0.50 CFS	0.20 CFS OR 0.30 CFS*
TOTAL:		1.00 CFS	0.40 CFS OR 0.50 CFS*

*To be determined in the Snake River
Basin Adjudication, as stipulated.

SOURCE
FISH CREEK

TRIBUTARY OF
LITTLE WOOD RIVER

LOCATION OF POINT(S) OF DIVERSION:

NESE , Sec. 33, Township 01N, Range 22E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
01S	22E	15	SWSW	35		35
		16	SESE	35		35

Total number of acres irrigated: 70

CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the
Second Amended Final Order in the matter of Application for Transfer No. 3922.

Dated this 15th day of April, 1998.


KARL J. DREHER, Director

MICROFILMED

MAY 03 1999

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 3922 (PORTIONS OF WATER)
RIGHT NOS. 37-00737 & 37-00780) IN THE NAME)
OF JOHN AND/OR KRISTY MOLYNEUX)
_____)

**SECOND AMENDED
FINAL ORDER**

A final memorandum decision and order was issued by the Director of the Department of Water Resources (the "Department") denying application for transfer no. 3922 on February 22, 1993. The final memorandum decision and order was appealed to the District Court of the 5th Judicial District of the State of Idaho (the "Court").

The applicants, John and Kristy Molyneux ("Molyneuxs"), moved the Court for leave to present additional evidence. The Court granted the motion and ordered the following be considered by the Department:

- a. Those portions of the soil survey which describe characteristics of the soils at the existing place of use and the proposed place of use;
- b. The watermaster records and any supporting testimony necessary to determine the dates of delivery of the 1883 and 1905 water rights to users on the Hot Springs Canal during the years of above-normal, normal, and below-normal water supply in the Fish Creek system, including but not limited to the 1993 irrigation season;
- c. The Minutes of the March 1, 1993, Water District No. 37-U meeting and other evidence concerning the method of delivery of the water rights to users along the Hot Springs Canal proposed for the 1993 irrigation season.

The Court also ordered the Department to consider such other evidence as it finds material and admissible for the purpose of determining the weight to be given the soil characteristics set forth in the soil survey.

Additional evidence was presented to the Department at a hearing on February 3, 1994. The U. S. Soil Conservation Service Soil Survey of Blaine County was received into evidence. Expert witnesses also testified regarding the soil survey, and summaries of the soil survey results were also received into evidence. Minutes of the March 1, 1993, meeting of Water District

No. 37-U were received as an exhibit. Finally, the parties called witnesses who further testified about conditions of the soils and compared soil characteristics at the existing and proposed places of use.

In its initial decision the Department considered watermaster records, but at the time determined the records were incomplete and could not be used to compare the timing of water deliveries. At the supplemental hearing, the parties were not prepared to present information regarding the watermaster records. The parties stipulated they would compile a list of water users from the watermaster records for the years 1980 through 1993 and jointly identify the water rights diverted by each of the individuals listed during each respective year. The summary of the water right users and water rights diverted was submitted to the Department on or about April 24, 1994, and was incorporated into the record.

The hearing officer issued an amended recommended order on August 8, 1994 denying the application for transfer. The attorney for the applicants stated he would not file a petition for reconsideration or exceptions to the recommended order. He requested that the Department "make appropriate arrangements to have the agency records supplemented to include the transcript of the hearing conducted to take additional evidence"

On September 13, 1994, the Director issued an order for submittal of proposals seeking suggestions from the parties about conditions that could be imposed to satisfy concerns about enlargement of use and injury to other water users. Suggestions were submitted by the attorney for the applicants (James P. Speck), and the attorney for the protestants (Thomas M. Robertson) opposed the proposed conditions. The Director issued an Amended Final Order conditionally approving application for transfer no. 3922 on May 24, 1996. The applicants and the protestants each filed timely petitions for reconsideration of the amended order through their attorneys. On June 26, 1996, the Director issued an order granting the petitions for reconsideration.

In their petition for reconsideration, the applicants object to any assumption that the soils at the new place of use proposed in the application for transfer may be similar to soils at the place of use under water rights owned and used by Ellsworth Enterprises. Consequently, the applicants reason that: "There is absolutely no basis in the record to conclude that reducing the annual volume of water diverted under the Petitioners' decreed water rights to 50% of the Department's standard for entitlement is necessary or appropriate to prevent an expansion of such water rights." The applicants are correct that the record does not establish that the soils at the place of use proposed in the application for transfer are similar to soils at the place of use under water rights owned and used by Ellsworth Enterprises. Consequently, finding of fact no. 59 in the Amended Final Order (no. 56 in this Second Amended Final Order) has been revised, and finding of fact no. 60 in the Amended Final Order has been deleted. Conclusion of law no. 10 has also been revised. However the applicants are incorrect in concluding that the record does not establish a basis for limiting the annual volume of water diverted under the transfer to 140 acre-feet, or 50 percent of the maximum volume needed to irrigate 70 acres of land in the climatic area for the original place of use under the applicants decreed water rights. The

watermaster records establish that the applicants and their predecessors only diverted water for beneficial use 50 percent of the time that water was available to be diverted, and that the average annual volume of water diverted at 1.4 cfs or less was approximately 140 acre-feet during the appropriate time period for consideration. To allow a higher volume of water to be diverted and used after the transfer than what the applicants had historically used under their decreed water rights during the appropriate time period for consideration would constitute an enlargement in use of the original rights in violation of § 42-222 (1), Idaho Code.

In their petition for reconsideration, the protestants note that ordering condition no. 6 of the order in the Amended Final Order does not explicitly impose the volume limitation of 140 acre-feet. Condition no. 6 of the order has been revised to explicitly include this limitation.

The protestants also continue to allege that even with the limitation on the annual volume that can be diverted, the transfer will result in earlier and more consistent diversions during the early part of the irrigation season. The watermaster records establish that under water right no. 37-00737, water has historically been diverted beginning in early to mid May, and subsequent diversions during the irrigation season were historically sporadic. Furthermore, the record establishes that the applicants have rights to use water from Fish Creek Reservoir. As a result, the applicants can manage the use of their reservoir storage water so that when water can be put to beneficial use, the applicants can presently divert their decreed rights as early and as consistently as the applicants choose, subject of course to water availability and the limitations defined under the water rights. Therefore, the transfer will be approved without imposing any additional limitation on the timing of diversions, even though the soils at the proposed place of use have a permeability which is approximately 30 percent greater than the soils at the present place of use.

The protestants also allege that the Department has not considered the "annual volume of water which is typically delivered under a 1883 right" and that limiting diversions under the transferred water rights to an annual volume of 140 acre-feet (2 acre-feet per acre) may not be "a meaningful limitation." However, the Department specifically analyzed the watermaster records to determine the amount of water historically delivered to the applicants' 1883 decreed water rights. The Department's analysis is reflected in finding of fact no. 61 and Attachment A.

The protestants also claim that the 1.0 cfs diversion rate under the transferred water rights should be subject to reduction by the "shrink factor" which is determined by the watermaster. Finding of fact no. 14 describes how the watermaster measures and delivers water. Because the watermaster measures the water delivered at field headgates rather than at the head works which diverts water from Fish Creek into the Hot Springs Canal, the Highline Canal, and the Fish Creek Mutual Pipeline, the shrink factor is proportionately applied to all of the water delivered regardless of whether individual water users receive water from one of the canals or the pipeline. Therefore, additional reductions will only be made during periods of water shortage as provided in condition no. 6 of the order.

Conclusion of law no. 14 has also been revised to allow the protestants as well as the applicants a period of five (5) years to seek modification of the approval conditions of this transfer relating to enlargement or injury based upon factual evidence resulting from the transfer.

During the Department's reconsideration of the Amended Final Order, the Department took official notice of watermaster records for the years 1994 through 1996, in addition to the watermaster records for the years 1980 through 1993 that were previously considered. With the consent of the attorneys representing the applicants and the protestants, notice that the Department intended to rely in part on these additional watermaster records was not provided prior to issuing this Second Amended Final Order. However, the applicants or protestants can object to the use of the watermaster records for the years 1994 through 1996 by filing such objection as part of or separate from a petition for reconsideration during the fourteen-day (14-day) time period allowed for filing petitions for reconsideration.

FINDINGS OF FACT

Description of the Application

1. Application for transfer no. 3922 was filed by John and/or Kristy Molyneux ("Molyneuxs"). The application for transfer proposes both a change in the point of diversion and a change in the place of use for portions of water right nos. 37-00737 and 37-00780 (the "decreed rights").
2. The decreed rights were decreed in the Blaine County case of *Potter v. Patterson*, (4th Jud. Dist. Idaho 1914). Water right no. 37-00737 authorizes the diversion of 70 inches (1.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is described as follows:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	NWSE	30
1S	22E	19	Lot 1 (NWNW)	<u>40</u>
Total				70

3. Water right no. 37-00780 authorizes the diversion of 120 inches (2.4 cfs) of water from Fish Creek with a priority of March 30, 1883. The decree does not describe a point of diversion. The place of use is generally described as follows:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	21E	13	SESE	-
		24	NENE	-
1S	22E	18	Lot 4 (SWSW)	_____
Total				120

4. The rights sought to be transferred were also claimed in the Snake River Basin Adjudication as claim nos. A37-00737B and A37-00780B. The point of diversion for both claims, as described in the claims, is the NW1/4, NW1/4, Section 9, Township 1S, Range 22E, B.M.

5. Claim no. A37-00737B asserts a right to divert 0.7 cfs. Claim no. A37-00780B asserts a right to divert 0.8 cfs. Both claims describe the following place of use:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	19	Lot 1 (NWNW)	35
		18	Lot 4 (SWSW)	35
Total				70

6. The current place of use for water right nos. 37-00737 (part) and 37-00780 (part) is commonly known as the "Briggs place." The application for transfer and the resulting notice of publication contained an error. The front page of the transfer and each succeeding page described the individual flow rates of 0.7 cfs for right no. 37-00737 (part) and 0.8 cfs for right no. 37-00780 (part). However, the total flow listed in the published notice was 1.4 cfs, 0.1 cfs less than the sum of the two parts described. This discrepancy is not a fatal flaw in the application for transfer.

7. Molyneuxs expressed uncertainty about their entitlement. The watermaster stated that only 1.4 cfs (70 miners inches) has been delivered to Molyneuxs in the past. The parties stipulated that a full determination of the flow rates authorized by the water rights would be deferred until considered in the Snake River Basin Adjudication, and in the interim, 1.4 cfs (70 miners inches) would continue to be delivered to Molyneuxs by the watermaster.

8. The application for transfer proposes moving the point of diversion upstream approximately 1 ½ miles from the point of diversion described in the adjudication claims, which is on the portion of Fish Creek referred to as the Hot Springs Canal (the old channel of Fish Creek). The proposed new point of diversion is the large head works located in Fish Creek which splits the flows of Fish Creek into three water delivery systems: the Hot Springs Canal; the Highline Canal; and the Fish Creek Mutual Pipeline. The head works is located in the NE1/4, SE1/4, Section 33, Township 1N, Range 22E, B.M., and will be referred to herein as the "trifurcation."

9. The application for transfer seeks to divert the Molyneuxs portion of the water authorized by the decreed rights through the Fish Creek Mutual Pipeline rather than through the Hot Springs Canal.

10. The application for transfer also proposes to change the place of use from the Briggs place to the following, which is commonly known as the "Coates place":

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Tract</u>	<u>Acres</u>
1S	22E	15	SWSW	35
		16	SESE	<u>35</u>
			Total	70

11. The application for transfer was protested by nine owners of decreed Fish Creek water rights: Walter Peck; Edric L. Wilde; June D. Farnworth; Maurice C. Ellsworth; Lawrence Kimball; Gilbert Cross; Jerry Cenarrusa; Catherine Sweat; and Robert Whitby.

12. The protestants object to approval of the application for transfer on the following grounds:

- a. The place of use will be expanded from 70 acres to a pivot irrigating 140 acres;
- b. A larger annual volume of water will be diverted because the new place of use is a porous, gravelly soil while the old place of use is a finer-textured soil which is often saturated; and
- c. Removing the water proposed to be transferred from its present delivery system will increase losses borne by the remaining water users and will impede the ability of the remaining users to rotate water supplies.

13. The applicants argue in response:

- a. The Department can approve a permissible place of use, allowing the entire 140 acres to be irrigated with a combination of other rights;
- b. The Department can limit the annual volume diverted to the historical average annual volume to prevent greater water use on the place of use;
- c. The transfer of 1.4 cfs out of the Hot Springs Canal will not injure other users because although the Hot Springs Canal is a losing channel, the water which was lost in conveying the 1.4 cfs to the existing place of use will continue to be diverted and lost in the canal -- consequently, the

applicants allege the transfer will not increase the loss borne by the remaining users;

d. There has been no traditional practice of rotation among the users of water from the Hot Springs Canal; and

e. The characteristics of the soils at the current and proposed places of use do not differ significantly enough to warrant denial of the application on the basis that more water will be diverted to the new place of use.

General Description of Water Delivery from Fish Creek

14. The Department established Water District No. 37-U for the administration of water diverted from Fish Creek. The watermaster for Water District No. 37-U measures the natural flow of Fish Creek above the reservoir and adds 200 inches to the natural flow for springs which discharge into the reservoir. Flow out of the reservoir is measured, and the natural flow (including the allowance for spring discharge into the reservoir) is subtracted from the total flow to determine the flow released from storage. The watermaster delivers water to the Fish Creek water users at their field headgates rather than measuring water at the heads of the two canals and the pipeline. Water flow into the two canals is not measured nor is water flow measured into the pipeline at the trifurcation. The watermaster adjusts releases from the reservoir to satisfy the demands of the water users within the limits of their natural flow water rights and their rights to use portions of the storage water right. The watermaster determines how much water is discharging from the reservoir and how much is ultimately diverted by the individual water users. The difference between the reservoir release and the cumulative flow rate measured at the field headgates is the water lost (shrink) which is allocated to both the storage and the natural flow for all water users regardless of whether individual water users receive water deliveries from one of the canals or the pipeline.

15. Storage water is delivered to all of the lands within the Fish Creek drainage included in the place of use for the storage water right.

16. As the flow in Fish Creek declines, only storage water and early priority water rights are deliverable. Some of the earliest water rights on the system are water right nos. 37-00737 and 37-00780, which have a priority date of March 30, 1883.

17. The cumulative flow rate authorized for March 30, 1883 priority water rights (herein referred to as the 1883 rights) is 22.0 cfs (1100 miners inches). When all the 1883 rights are deliverable, the watermaster delivers 11.4 cfs (570 miners inches) to the water users on the Hot Springs Canal.

18. As the natural flow declines, the 1883 rights cannot be satisfied fully, and the delivery of natural flow at the field headgates for each of the 1883 rights is proportionally reduced. When storage water is no longer available, water deliveries to the 1883 priority rights are further reduced 25 percent by the watermaster to account for the proportionately higher losses that occur with lower flows in the water delivery system.

19. Water right no. 37-07581 authorizes diversion and use of water from a well owned by Robert Whitby and located in Section 4, Township 1S, Range 22E, B.M. The water right authorizes diversion of ground water from the well into the Fish Creek Mutual Pipeline. Prior to 1993, Whitby's practice was to divert approximately 3.2 cfs (160 miners inches) of ground water into the Hot Springs Canal, rather than pump ground water into the pipeline, in exchange for water he diverted out of the pipeline. The exchange saved Whitby the cost of operating a booster pump. Because a portion of the water delivered into the Hot Springs Canal is lost during conveyance, the exchange by Whitby also offset some conveyance losses in the first two miles of the Hot Springs Canal.

20. At the annual water district meeting of Water District No. 37-U held on March 1, 1993, the water district members passed a resolution stating "that if an individual pumps water, that he pump it into his own system and not into the canal to be used some other place." Whitby was thus prohibited in 1993 from pumping water into the Hot Springs Canal and exchanging the pumped water for water delivered to the Fish Creek Mutual Pipeline.

21. Prior to 1993, no water was delivered to the Hot Springs Canal at the trifurcation when the natural flow of Fish Creek was low and storage was fully depleted. During such periods of time, the Whitby well exchange resulted in some water being supplied to the 1883 rights held by users along the Hot Springs Canal.

22. No testimony regarding use of water pumped from the Whitby well was offered at the supplemental hearing. Without any evidence of change to the 1993 prohibition against discharge from Whitby's well into the Hot Springs Canal, it is presumed that all the water for the 1883 rights was delivered at the trifurcation in 1993 and subsequent years.

Description of Molyneux Proposal

23. Molyneuxs propose to have their portion of the 1883 rights delivered through the Fish Creek Mutual Pipeline to lands irrigated by a circular pivot. The pivot irrigates approximately 140 acres. Molyneuxs propose to make their portion of the 1883 rights appurtenant to 70 acres, or approximately one-half of the area covered by the pivot on the Coates place.

24. Operation of the pivot requires delivery of 2.0 cfs (100 miners inches). The 1.4 cfs (70 miners inches) sought to be transferred is not enough water to operate the pivot.

25. Molyneuxs operated the pivot without natural flow rights in the past, except in 1991 when water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) was illegally delivered to the pivot through the Fish Creek Mutual Pipeline. During other years, Molyneuxs operated the pivot using a combination of storage water delivered from Fish Creek Reservoir and ground water pumped from a well authorized by water right no. 37-02740, located in Section 4, Township 1S, Range 22E, B.M., and owned by P & C Irrigation Association (the "P & C well").

26. The P & C well, which pumps into the Fish Creek Mutual Pipeline, discharges approximately 1.2 cfs (60 miners inches) of water. Molyneuxs own a one-third interest in P & C Irrigation Association and have been the exclusive users of the P & C well in recent years.

27. Molyneuxs propose to transfer their portion of the 1883 rights into the Fish Creek Mutual Pipeline to improve the reliability of the water supply to the pivot. Chip Molyneux, John Molyneux's brother, testified that reservoir storage water would be moved to the existing place of use (the Briggs place) to replace the portions of the 1883 rights sought to be transferred. He also testified that in low water years, the portions of the 1883 rights sought to be transferred are more reliable than storage water.

28. Although Molyneuxs sought to transfer the entire 1.4 cfs (70 miners inches) to the Fish Creek Mutual Pipeline, they offered to limit diversion to no more than 1.0 cfs (50 miners inches) of the 1883 rights and leave 0.40 cfs (20 miners inches) of the 1883 rights in the Hot Springs Canal for conveyance losses until the 1883 water rights are reduced. When stream flows are low, Molyneuxs have not been able to divert the entire 1.4 cfs (70 miners inches) because of the proportionate reductions in the 1883 rights. John Molyneux asked that if the application is approved to transfer diversion of 1.0 cfs to the Fish Creek Mutual Pipeline, the Molyneuxs pro rata portion of losses during low flows be based on a diversion rate of 1.4 cfs (70 miners inches) rather than a diversion rate of 1.0 cfs (50 miners inches). Molyneuxs proposal to limit diversion of the 1883 rights to a rate of 1.0 cfs will be treated as an amendment to the application for transfer.

Analysis

29. Witnesses for the protestants stated that transfer of 1.4 cfs (70 miners inches) out of the Hot Springs Canal will result in greater losses borne by the remaining users. Because the watermaster delivers and measures water at the field headgates and losses are not allocated based on whether individual water users receive water deliveries from one of the canals or the pipeline, the remaining water users do not bear a greater loss if the natural flow water rights are transferred from the Briggs place. The transfer will not increase the total loss to the overall delivery system.

30. From time to time, water users at the end of the Hot Springs Canal combined the water diverted to the canal and rotated the larger quantity of water among them. However,

MAY 13 1999

rotation was not established formally nor was the continuation of rotation binding on the water right holders.

31. The Briggs place is located in an area with fine-grained soil that retains moisture. The location can be appropriately characterized as "low lands" where water typically remains close to the ground surface during the spring, and the land "subs out" (retained water is depleted by growing vegetation) during the irrigation season. At the second hearing, witnesses compared characteristics of the soils at the Briggs place and the Coates place. The applicant offered a soil survey for Blaine County prepared by the U. S. Soil Conservation Service and individual maps from the survey depicting the various soil types. The applicant also offered a summary analysis of the soils at the Coates place and the Briggs place.

32. The protestants submitted their own summary of information from the survey and also called Dr. Charles E. Brockway as an expert witness.

33. The original decision and order in this matter dated February 22, 1993, referred to the porous nature of the soil at the Coates place as being a factor affecting the amount of water required for irrigation. The summaries of soil characteristics submitted by the applicant and protestant do not show distinguishable differences in the porosity of the soils at the Briggs place as compared to the soils at the Coates place.

34. Porosity describes the volume of pore space in the soil. It does not describe the ability of the soil to accept water or to drain water rapidly. It is commonly assumed that a coarse soil is more porous than a fine-grained soil, such as a clay soil. But in fact, a clay soil with very small soil particles is more porous and has a greater porosity than a coarse soil. As a result, comparisons of porosity alone do not indicate whether a soil is well drained or how rapidly it will accept water.

35. A better indicator of whether a soil is well drained or how rapidly it will accept water is permeability. Although the porosity of a clay may be high, its permeability or the rate at which water moves through the soil is slow (low permeability value). Based on the testimony of Dr. Brockway, the soils at the Coates place have an average permeability which is approximately 30 percent higher than the permeability of the soils of the Briggs place.

36. The soil survey for Blaine County confirms that the soils on the Coates place are generally more permeable and contain less clay than the soils on the Briggs place.

37. More permeable soils generally require more water to adequately irrigate crops when the method of irrigation is inefficient or the operator does not carefully monitor and regulate the application of water.

38. At the original hearing, testimony by Chip Molyneux contradicts the applicants' assertions that the soils on the Briggs place and at the Coates place are similar. Chip Molyneux

testified that "the Briggs place has a heavier soil." When asked if the soils at the Briggs place would hold moisture longer, Chip Molyneux answered yes. When asked if the soils at the Coates place are more porous, he answered yes. When asked if the land at the Coates place must be irrigated more frequently, he answered yes. His answer about porosity is interpreted to mean he believes the Coates place is better drained, and that the soils at the Coates place are more permeable.

39. Testimony at the hearing established that there were gravel pits located near both the Coates place and the Briggs place. Testimony established that water stands in the gravel pit near the Briggs place at a much higher level relative to the surrounding land and for longer durations of time than in the gravel pit near the Coates place. Soils at the Briggs place are not as well drained as soils at the Coates place and retain moisture for a longer period of time than soils at the Coates place.

40. Walter Peck once owned the Briggs place. He now owns land proximate to the Briggs place and the Coates place. He owns a 1905 priority water right which is used to irrigate lands near the Briggs place.

41. Walter Peck testified that the water table underlying the Briggs place is often near the land surface. He testified that shallow swales, no deeper than three feet, occupy six to seven percent of the Briggs property. He testified that many times, even in September, grain cannot be harvested in these swales because of the high water table.

42. Walter Peck is familiar with the Briggs place and the Coates place. He testified the Coates place must be irrigated more frequently. He also testified the Coates place must be irrigated early in the year, sometimes as soon as water can be applied. He testified the Briggs place normally does not require irrigation until approximately June 1.

43. Walter Peck testified that his 1905 water right was deliverable early in past years because the 1883 water right users who irrigate land at the end of the Hot Springs Canal and near the Briggs place do not call for their water until later in the summer. He testified a transfer to the Coates place will result in an earlier call for delivery of water under the 1883 water right than if the water was used to irrigate the Briggs place.

44. At the second hearing, the parties had not sufficiently organized water district information to link the names of water users written in the daily record books with the actual water rights. The parties agreed to submit a summary, prepared by the local water users, which identified the water users written in the watermaster daily record books with water right numbers for the years 1980 through 1993. The summary, approved by the applicant and the protestants, was submitted to the Department in April 1994.

45. The summary shows Walter Peck owned water right no. 37-00737 through 1990. John Molyneux was first shown as an owner of water right no. 37-00737 in 1991. Gilbert Cross

("Cross") is shown as owning water right no. 37-00780 through 1993 which authorized the diversion of 1.6 cfs (80 miners inches). Molyneuxs claimed the right to divert 0.8 cfs (40 miners inches) under water right no. 37-00780 in the Snake River Basin Adjudication. The flow rate claimed by Molyneuxs and the authorized rate of diversion shown in the watermaster records for Cross totals the 2.4 cfs (120 miners inches) which was originally decreed under water right no. 37-00780. The part of water right no. 37-00780 claimed by Molyneuxs appears to be the residual portion of water right no. 37-00780 not owned by Cross.

46. Claim no. A37-00737A, filed by Ellsworth Enterprises in the Snake River Basin Adjudication and claim no. A37-00737B filed by Molyneuxs total 1.4 cfs (70 miners inches), which is the entire flow rate authorized by water right no. 37-00737.

47. The summary of water users and water rights submitted by the parties recognizes the right of Molyneuxs to divert 1.4 cfs (70 miners inches). Adding 0.8 cfs (40 miners inches) claimed under A37-00780B to the 0.7 cfs (35 miners inches) claimed under A37-00737B essentially equals the 1.4 cfs (70 miners inches) diversion rate listed in the watermaster's records as the authorized rate for Molyneuxs and their predecessors. (See discussion regarding deferred determination of flow rates in finding of fact nos. 6 and 7).

48. The summary of water users and water rights submitted by the parties does not corroborate the testimony of Walter Peck. Mr. Peck is not shown as having any interest in a 1905 priority water right until 1993, when the summary shows him owning an interest in water right no. 37-00776 which authorizes the diversion of 5.8 cfs (290 inches) of water from the Hot Springs Canal with a priority of August 18, 1905. There is no reference to water right no. 37-00776 in the watermaster records for the years 1987 through 1992. In 1986 and previous years, Leon Peck is shown as the owner of water right no. 37-00776.

49. Both water right nos. 37-00737 and 37-00780 were identified as water rights delivered either to the Briggs place or to lands proximate to the Briggs place. Periods of non-delivery under water right nos. 37-00737 and 37-00780 do not consistently correlate with periods of delivery of later-in-time rights in the watermaster records.

50. The summary of water users and water rights submitted by the parties shows that beginning in 1980 through 1990, Walter Peck owned or controlled water right no. 37-00737. The watermaster records establish that during most years, Walter Peck began diverting water under water right no. 37-00737 in early to mid May and then diverted water sporadically through the remainder of the irrigation season. Walter Peck's early diversion of water on the Briggs place conflicts with his testimony that the Briggs place normally does not require irrigation until approximately June 1.

51. The watermaster records establish that after 1990 John Molyneux, like Walter Peck, began diverting water under water right no. 37-00737 in early to mid May but did not consistently divert water under the water right after the initial diversion and use of water.

52. Attachment A to this Second Amended Final Order portrays the history of water diversions under the decreed rights for irrigation of the Briggs place. Attachment A was prepared from watermaster records for Water District No. 37-U for the years 1980 through 1996 and the list of water users and water rights for the years 1980 through 1993 compiled by the parties. The diversions recorded by the watermaster for Water District No. 37-U under water right no. 37-00737 are used as the diversions under the decreed rights sought to be transferred (see Findings of Fact nos 45 through 47).

53. Using the daily watermaster records, the number of days annually that Walter Peck or John Molyneux diverted water were counted for the years 1980 through 1986, 1988 through 1993, and 1996. The number of days annually that diversions exceeded the authorized flow rate of 1.4 cfs (as stipulated by the parties) were also counted. The years 1987 and 1994 were not considered because water was not diverted by Walter Peck or John Molyneux under water right nos. 37-00737 or 37-00780. Records of daily diversions during 1995 were unavailable.

54. Based on the daily watermaster records for the years 1980 through 1986, 1988 through 1993, and 1996, Walter Peck or John Molyneux diverted water under water right no. 37-00737 an average of 92 days annually.

55. One cfs (cubic foot per second) of water diverted for 24 hours accumulates a volume of 1.9835 acre-feet. If the authorized diversion rate of 1.4 cfs (as stipulated by the parties) was diverted continuously during 92 days annually, an annual volume of 255 acre-feet of water would be diverted. However, this is not a true representation of the quantity of water beneficially used by Walter Peck or John Molyneux because neither person diverted the full authorized rate continuously.

56. To estimate the volume of water which could be needed and beneficially used by Walter Peck or John Molyneux in a typical year under water right no. 37-00737, the regularity of diversions by Walter Peck and John Molyneux was compared with the regularity of diversions by other water users diverting from the Hot Springs Canal and the Highline Canal under 1883 rights for the years 1980 through 1993. Cross, who irrigated land located near the Briggs place by diverting an 1883 right from the Hot Springs Canal, historically irrigated for several days and then did not irrigate for several days. This pattern occurred during both dry years and wet years, although during dry years Cross diverted water more consistently. Maurice Ellsworth and Jack York, later succeeded by Austin Welch and then Jerry Cenarrusa, also owned 1883 rights delivered through the Hot Springs Canal. Like Peck and Molyneux, these water right holders consistently did not divert water under the 1883 rights during substantial periods of the irrigation seasons for 1980 through 1993. In contrast, Ellsworth Enterprises diverted water pursuant to the 1883 rights almost continuously through the Highline Canal from the beginning to the end of each irrigation season.

57. Based on the regularity water right no. 37-00737 was diverted by Walter Peck or John Molyneux for irrigating the Briggs place as compared with the regularity 1883 rights were diverted by Ellsworth Enterprises through the High Line Canal, Walter Peck diverted water on average 58 of every 100 days water was available at the trifurcation for the 1883 rights from 1980 through 1986. From 1988 through 1993, excluding 1991 when water right no. 37-00737 was illegally diverted through the Fish Creek Mutual Pipeline, Walter Peck or John Molyneux diverted water on average 43 of every 100 days water was available to the 1883 rights at the trifurcation.

58. The Department recognizes a maximum beneficial use of 4 acre-feet of water per acre of land irrigated in the climatic area where the 1883 rights are used. If diversions under water right no. 37-00737 provide the sole source of irrigation for the 70 acres irrigated at the Briggs place, a maximum of 280 acre-feet of water would be required annually. Based on the daily watermaster records, water right no. 37-00737 was used to irrigate the Briggs place approximately 50 percent of the time water was available in some quantity at the trifurcation to supply the 1883 rights. Consequently, the maximum volume of water beneficially used historically to irrigate the Briggs place on an average annual basis is estimated to be about 50 percent of 280 acre-feet, or 140 acre-feet.

59. During the years 1980 through 1986, the annual volume of water diverted under water right no. 37-00737, as reported by the watermaster, consistently and significantly exceeded the annual volume of 280 acre-feet recognized by the Department as the maximum amount that could beneficially be used to irrigate the 70 acres at the Briggs place (see Attachment A). During this same time period, water was diverted at a rate exceeding the authorized rate of 1.4 cfs on more than half the days diversions under water right no. 37-00737 were recorded by the watermaster. By comparison, the authorized diversion rate of 1.4 cfs was exceeded on substantially fewer days and by smaller amounts during the years 1988 through 1996.

60. The annual volume of water diverted under water right no. 37-00737 during the years 1980 through 1986, as reported by the watermaster, cannot be used as a measure of the historical beneficial use under water right no. 37-00737 because the recorded volumes included water delivered in accordance with informal rotation among water users, included water other than what was actually diverted under water right no. 37-00737, or were simply inaccurate.

61. Using the watermaster's daily records of diversions for water right no. 37-00737 during the years 1988 through 1996, excluding 1994 when no water was diverted, the annual volumes of water diverted at diversion rates equal to or less than the authorized rate of 1.4 cfs were computed as follows:

<u>Year</u>	<u>Annual Volume Diverted at 1.4 cfs or less</u>
1988	233 acre-feet
1989	131
1990	134
1991	186
1992	40
1993	67
1995	137
1996	144

The average annual volume diverted at 1.4 cfs or less equals 134 acre-feet which approximately equals 140 acre-feet, the maximum volume of water estimated to have been beneficially used historically on an average annual basis as described in finding of fact no. 58.

62. Without proper conditions and restrictions, a transfer to the proposed place of use of water right nos. 37-00737 (part) and 37-00780 (part) could result in the diversion of more water during the irrigation season than beneficially used historically at the existing place of use.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

The director of the department of water resources shall examine all of 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, Idaho Code . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use, will not injure other water rights, and is consistent with the conservation of water resources.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than any public interests with which it conflicts.

4. Delivery of water to the circular pivot and commingling with storage or ground water delivered through the Fish Creek Mutual Pipeline would not result in an injury provided the circular system is shut down when water from the well or reservoir storage cannot be delivered to make up the difference between the deliverable decreed rights and the 100 inches required to operate the pivot.
5. Objections to a transfer on the grounds that it will cause greater difficulty in rotation are only valid if the protestants show either a traditional, local custom of rotation or a contractual obligation to rotate. Sporadic rotation, arranged year to year between various users, is not sufficient to obligate Molyneuxs to continue to informally participate in rotation arrangements with other water users or prevent Molyneuxs from transferring their 1883 water right out of the Hot Springs Canal.
6. Molyneuxs suggest the use of more water on the Coates place, because of its higher permeability, can be prevented by limiting the volume diverted to the Coates place to the average annual volume historically diverted to the Briggs place. Protestants rightly point out that if the application for transfer is approved and the applicants divert the average annual volume to the Coates place in a low water year, more water could be diverted than would have otherwise been diverted to the Briggs place.
7. Molyneuxs submitted innovative proposals, including one which would allow Molyneuxs to divert no more water than diverted under the Cross water right during a given irrigation season. Protestants rightly point out that this condition would be almost impossible to enforce because unless water usage is tracked on a daily basis, no enforcement mechanism can be implemented to ensure that injury does not occur. An analysis of the total volume withdrawn at the end of the year would not prevent injury.
8. Approval of the transfer as proposed would result in an enlargement because water could be diverted to more permeable soils on a more consistent basis through the irrigation season to the detriment of later-in-time water rights unless the approval is properly conditioned.
9. Molyneuxs are entitled by law to transfer their water rights provided the transfer satisfies the criteria of Idaho Code § 42-222. Conditions are difficult to impose where water requirements change annually. Molyneuxs did not propose a satisfactory method of delivering the water rights under the transfer as proposed to protect other water right holders who would be injured. As a result, the Department should only approve the transfer upon sufficient conditions to protect against reasonably anticipated injury to other water rights.
10. After careful review of the watermaster records, it is concluded that water diverted under water right nos. 37-00737 (part) and 37-00780 (part) was used to provide one-half of the irrigation requirement on the Briggs place, or 140 acre-feet annually. This is consistent with the annual volume of water historically diverted at a rate of 1.4 cfs or less during the years 1988 through 1996. Allowing the transfer of 140 acre-feet annually from diversion through the Hot

Springs Canal for use on the Briggs place to diversion through the Fish Creek Mutual Pipeline for use on the Coates place is not an enlargement.

11. The Department allows a total annual volume diverted of four acre feet per acre in the climatic area where the proposed place of use is located.

12. Because 2.0 cfs (100 miners inches) is necessary to operate the pivot and because water diverted under water right nos. 37-00737 (part) and 37-00780 (part) after transfer can only irrigate half the area covered by the pivot (70 acres), the maximum rate of diversion authorized under water right nos. 37-00737 (part) and 37-00780 (part) after transfer shall be limited to 1.0 cfs (50 miners inches). When water right nos. 37-00737 (part) and 37-00780 (part) are in priority, this diversion rate less any pro rata reduction during periods of water shortage is not an enlargement and there is no injury to other water rights that can reasonably be anticipated at any time during the irrigation season.

13. For the watermaster's use in regulating water rights numbered 37-00737 (part) and 37-00780 (part), a measuring device which measures instantaneous flow rate and accumulates total volume diverted must be installed and be operative at all times water is being diverted under these rights. The watermaster shall regulate the total volume of water diverted by Molyneuxs. When 140 acre-feet have been diverted, any surface water delivered to the new place of use (the Coates place) must be reservoir storage water, unless otherwise provided by order of the Department.

14. Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 3922 is CONDITIONALLY APPROVED with the following conditions:

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

2. A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

3. No less than one half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

4. The combined flow rate of water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) is limited to 1.0 cfs.

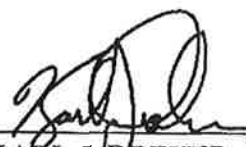
5. Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737 (part) and 37-00780 (part) is limited to 140 acre-feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

6. Use of water under the transferred water right nos. 37-00737 (part) and 37-00780 (part) will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

7. Any pro rata reduction of water right nos. 37-00737 and 37-00780 during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

8. Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

Dated this 14th day of April, 1998.


KARL J. DREHER
Director

ATTACHMENT A

HISTORY OF DIVERSIONS UNDER WATER RIGHT NO. 37-00737					
Year	Owner ¹	Annual Volume ² (acre-feet)	Number of Days Water Diverted Under Right	Number of Days Diversion Exceeded 1.4 cfs ³	Typical Diversion Rate Exceeding 1.4 cfs ³
1980	Walter Peck	323	127	40	1.6 - 3.2 cfs
1981	Walter Peck	274	64	48	1.6 - 3.2 cfs
1982	Walter Peck	358	103	69	1.5 - 3.2 cfs
1983	Walter Peck	323	82	74	2.0 - 4.0 cfs
1984	Walter Peck	396	120	77	1.5 - 4.0 cfs
1985	Walter Peck	416	100	82	1.5 - 5.0 cfs
1986	Walter Peck	426	71	67	1.5 - 6.0 cfs
1987	Walter Peck	0	0	-	-
1988	Walter Peck	257	135	31	1.5 - 2.0 cfs
1989	Walter Peck	209	50	39	1.5 - 3.0 cfs
1990	Walter Peck	157	72	23	1.6 - 2.5 cfs
1991	John Molyneux	186	157	0	-
1992	John Molyneux	40	88	0	-
1993	John Molyneux	76	39	10	1.5 - 2.0 cfs
1994	John Molyneux	0	0	-	-
1995 ⁴	John Molyneux	144	unavailable	unavailable	-
1996 ⁴	John Molyneux	137	73	0	-

¹ From Watermaster's Daily Records and list of water users compiled by parties from watermaster records

² Computed from Watermaster's Report (annual) except for 1994 and 1996 which were computed from Watermaster's Daily Records

³ Determined from Watermaster's Daily Records

⁴ Diversions reported in Watermaster's Daily Records and Watermaster's Report (annual) include some diversions of water released from reservoir storage

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 17th day of April, 1998, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

James P Speck
HOUGE SPECK AANESTAD
PO Box 987
Ketchum ID 83340

John Coleman Esq
Thomas M Robertson Esq
COLEMAN RITCHIE ROBERTSON
PO Box 525
Twin Falls ID 83303-0525


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

04/14/2005

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

RIGHT NUMBER: 37-737B

NAME AND ADDRESS: C E MOLYNEUX
080 LAIDLAW PK RD
CAREY ID 83320

SOURCE: FISH CREEK

TRIBUTARY: LITTLE WOOD RIVER

QUANTITY: 0.700 CFS

USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 1.0 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 140 AF.

* sep 2

PRIORITY DATE: 03/30/1883

POINT OF DIVERSION:

T01N R22E S33 SENESE Within BLAINE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/15 10/31

0.700 CFS

PLACE OF USE:

IRRIGATION Within BLAINE County

T01S R22E S15

SWSW

35.0

T01S R22E S16

SESE

35.0

70 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 37-780B IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 70 ACRES IN A SINGLE IRRIGATION
SEASON.

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

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

EXPLANATORY MATERIAL: Decreed

04/14/2005

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

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 04-14-1998) in the matter of the Application for Transfer No. 3922. (As Follows.) IT IS HEREBY ORDERED that application for transfer no. 3922 is CONDITIONALLY APPROVED with the following conditions: The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

No less than one-half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

The combined flow rate of water diverted pursuant to water Right Nos. 37-00737B and 37-00780B is limited to 1.0 cfs.

Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 140 acre-feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

Use of water under the transferred water right nos. 37-00737B and 37-00780B will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

Any pro rata reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will

reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

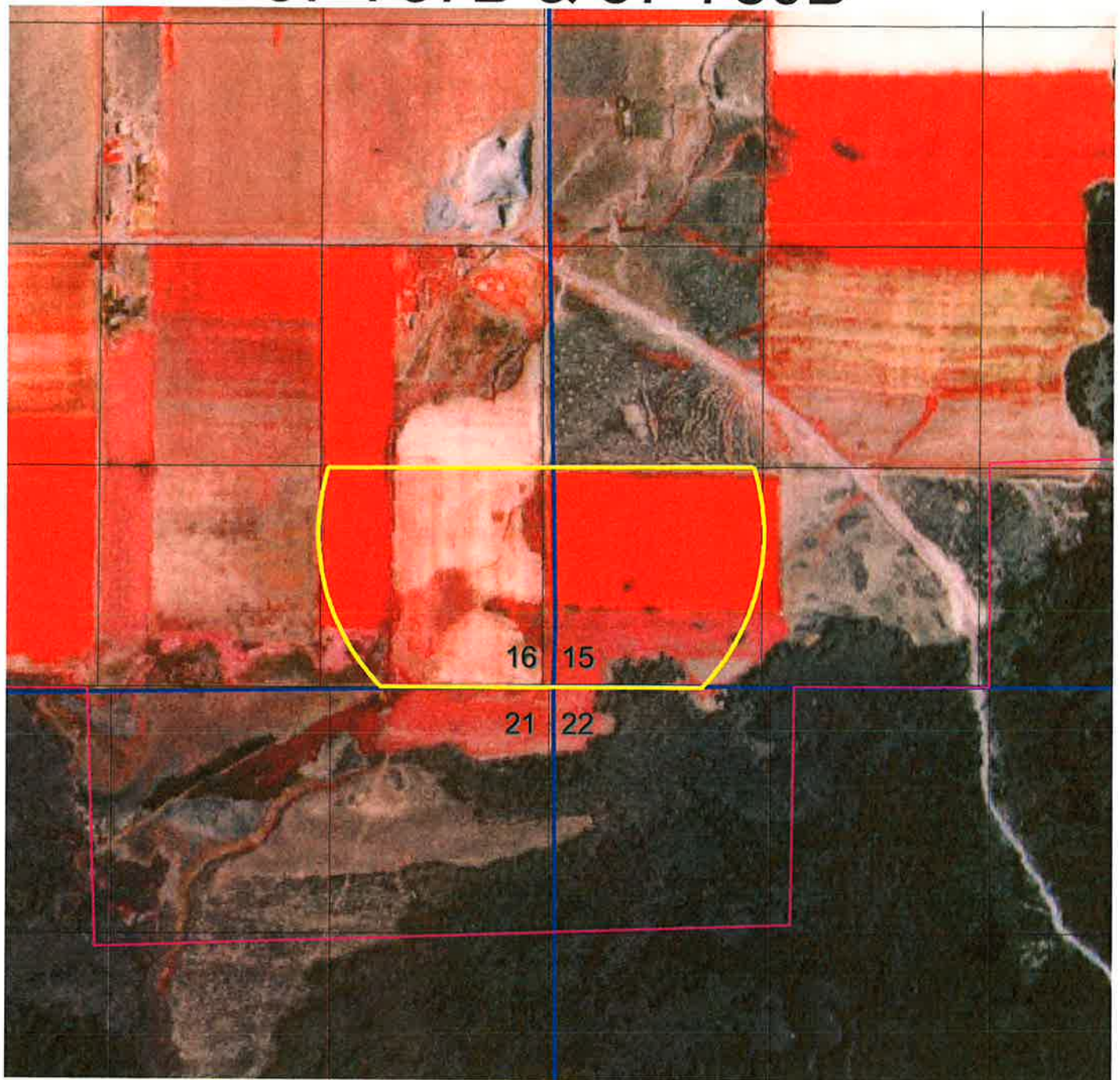
Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

only

All to
Q
Remnet

IDAHO DEPT OF WATER RESOURCES

37-737B & 37-780B



1320 0 1320 Feet

-  Basin 37 part 1-POU
-  Basin 37 part 1-POD
-  Ownership FED-Private
-  Streams
-  Section Lines
-  Quarter - Quarter lines

TWN: 1S
RNG: 22E
SEC. 15, 16



GIS Place of Use Presentation
NAPP Aerial Photo 1987/1988
By Steve Clelland

Date: APRIL 14, 2005

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-737BWATER RIGHT NUMBER: **37-737B**

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOHN MOLYNEUX RT 1 BOX 190 BELLEVUE, ID 83313 (208)788-2450
Original Owner	WILLIAM G BRIGGS , ID
Current Owner	KRISTY MOLYNEUX 10407 HWY 75 BELLEVUE, ID 83313 (208)788-2450

Priority Date: 03/30/1883

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
FISH CREEK	LITTLE WOOD RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/15 to 10/15	0.700 CFS	
	<u>Total Diversion:</u>	0.700 CFS	

Location of Point(s) of Diversion

FISH CREEK	NE1/4SE1/4	Sec. 33, Twp 01N, Rge 22E, B.M.
BLAINE 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	
01S	22E	15											35.0						35.0
01S	22E	16																35.0	35.0

Total Acres: 70

Conditions of Approval:Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-737B

1. General

Right Nos. 37-00737B and 37-00780B are subject to the conditions of the Second Amended Final Order (dated 04-14-1998) in the matter of the Application for Transfer No. 3922. (As Follows.) IT IS HEREBY ORDERED that application for transfer no. 3922 is CONDITIONALLY APPROVED with the following conditions: The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

A totalizing measuring device that measures instantaneous flow rate, accumulates total volume, includes a lockable controlling works, and is of a type approved by the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

No less than one-half of the flow rate diverted to the circular pivot must be derived from either storage water or from ground water rights appurtenant to or leased to the land irrigated by the pivot.

The combined flow rate of water diverted pursuant to water Right Nos. 37-00737B and 37-00780B is limited to 1.0 cfs.

Unless otherwise adjusted as provided herein, the total volume of water diverted pursuant to water right nos. 37-00737B and 37-00780B is limited to 140 acre-feet annually. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 4.0 acre-feet per acre for the place of use.

Use of water under the transferred water right nos. 37-00737B and 37-00780B will be regulated by the watermaster of State Water District No. 37-U, Fish Creek.

Any pro rata reduction of water right nos. 37-00737B and 37-00780B during periods of water shortage shall be calculated as if the water right holder is entitled to divert a flow rate of 1.4 cfs. The watermaster will only reduce the flow rate below 1.0 cfs by an amount equal to the amount that a water right which authorized diversion of 1.4 cfs would be reduced to less than 1.0 cfs.

Any party shall be entitled to petition the Department within five (5) years from the effective date of this order seeking to modify the approval conditions of this transfer relating to enlargement or injury, provided the petition is based upon factual evidence resulting from the transfer one or more years following approval and implementation of the transfer. The petitioner shall serve a copy of the petition upon the other parties to this proceeding or their successors in interest. The petition shall be considered and resolved by the Department as a separate proceeding.

***** Per Transfer 3922 approval document: The diversion rate to Hot Springs Canal Conveyance under Right 37-00780B shall be determined to be either 0.20 cfs or 0.30 cfs in the Snake River Basin Adjudication, as stipulated. *****

Comments:

1. SKAGGS 4/29/1993 TRANSFER 3922/DENIED

Comment: Transfer No. 3922 was filed to change the point of diversion & place of use under a portion of Right Nos. 37-00737 & 37-00780, splitting each right into parts A & B. The transfer was denied per Memorandum Decision and Order dated 02-22-93. (See Microfilm)

2. PSKAGGS 1/13/1997 TRANSFER 3922/CONDITIONALLY APPROVED.

Comment: This matter was appealed to the District Court & finally conditionally approved by the Department thru Second Amended Final Order 04-14-1998.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-737B

Dates and Other Information:

Licensed Date:
Decreed Date: 12/16/1914
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number: 37U
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

37-137B

12/2/02
SEC

GW overlap
37-2740

T13
R22E

35

35

16

15

21

22