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MAY 22 2020
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NO. 83160 IN THE
NAME OF JEFFREY AND CHANA
DUFFIN

**STIPULATED
STATEMENT OF FACTS**

The parties to the above-entitled contested case hereby stipulate to the following facts:

1. Water Right No. 35-7667 (hereinafter, simply "35-7667") was originally developed through the water right permitting process currently described in Chapter 2 of Title 42 of the Idaho Code.
2. 35-7667, as currently described on the records of the Idaho Department of Water Resources ("IDWR" or "Department"), is appurtenant to certain property described as the south half of the southeast quarter of the northwest quarter (S1/2SE1/4NW1/4) and the south half of the south half of the northeast quarter (S1/2S1/2NE1/4) of Section 20, Township 6 South, Range 31 East, Boise Meridian.
3. According to conversations with Aberdeen-Springfield Canal Company ("ASCC") and records from ASCC, the below stock certificate for 60 shares was issued to Vern Duffin on April 24, 1970, which describes the same property as the current place of use for 35-7667:

INCORPORATED UNDER THE LAWS OF THE STATE OF IDAHO

No. 3947 **COPY** Shares 60

Aberdeen Springfield Canal Company

CAPITAL STOCK \$75,000.00
75,000 SHARES PAR VALUE \$1.00

This Certifies That Vern R. Duffin
of Aberdeen, Idaho is the holder of
-- Sixty -- shares

of the capital stock of the Aberdeen Springfield Canal Company and this stock certificate is issued and accepted subject to the following conditions which shall be binding upon the holder, his assigns, or successors in interest

1. That this certificate represents a water right which is appurtenant to the following described land, to wit:

The South half of the Southeast quarter of the Northwest quarter (S½SE¼NW¼) and the South half of the South half of the Northeast quarter (S½SE½NE¼) of Section twenty (20) Township six (6) South, Range thirty-one (31) East, Boise Meridian, in Bingham County, State of Idaho,

and a proportionate interest in all of the irrigation works of this corporation.

2. Each share of stock herein represents and is equivalent to and stands for one share of water right as herein defined, and each share of water right is appurtenant to the above described premises.

3. The ownership of each share of stock represented by this certificate carries with it, as an incident thereto, a right to one vote for each share at all stockholders' meetings of this corporation; to have votes delivered to the holder hereof for the irrigation of the lands to which such share of water right is appurtenant during the irrigating season of each year hereafter, the share of stock representing a water right which has a carrying capacity sufficient to deliver one-tenth of one second foot per acre in the main canal and one-fiftieth of one second foot per acre in all laterals, not exceeding two and one-half acre feet in any one year; or a proportionate part of all the water available for distribution by this corporation; and such water may be delivered by a proper system of rotation.

4. Any transfer, whether by gift, grant, or operation of law, of any of the lands to which the water rights represented by these shares of stock are appurtenant, shall operate, whether it be so expressed or not, as a transfer to the grantee, or successor in interest, of all rights to the use of the water for the irrigation of such lands, and all other rights incident to the ownership of these shares of stock, and any transfer, or attempted transfer, of any of said shares shall be of no force or effect except in connection with the transfer of the lands herein described and of the water rights which this stock represents, excepting only such transfers as are made pursuant to law in the separation of such water right from the lands to which the same are now appurtenant.

5. This certificate is transferable only on the books of the Company in person or by attorney, upon the surrender of this certificate properly endorsed.

In Witness Whereof the President and Secretary have hereunto subscribed their names and affixed the Corporate Seal of this Company at Aberdeen, Idaho, this twenty-fourth day of April 1970

ABERDEEN-SPRINGFIELD CANAL COMPANY

Attest: [Signature] By [Signature]
Secretary President

133789

146975

4. According to ASCC, the above 60-share certificate was cancelled on October 20, 1987, but a new certificate for 60 shares were reissued to Vern Duffin immediately thereafter. It is not clear why this was done, but the reissued certificate was for the same number of shares (60) for the same place of use and it remained owned by Vern Duffin until April 24, 2002 when ownership was transferred to Richard and Iris Schelske on that date. A certificate for the same 60 shares for the same place of use was then transferred to the current owners of the 60-share stock certificate, Jeffrey and Chana Duffin, on December 31, 2011.
5. On February 2, 1977, an application for water right permit (which was assigned the identification number of 35-7667) was submitted to the Department by Vern Duffin.

6. The application sought a permit to develop 1.2 cfs of ground water for irrigation purposes from a well to be drilled in the SWNE of Section 20, Township 6 South, Range 31 East in Bingham County. At item 8.b of the application document, the application identified the proposed place of use as 60 acres, with 20 acres each located in the SWNE, SENE, and SENW of Section 20, Township 6 South, Range 31 East:

If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

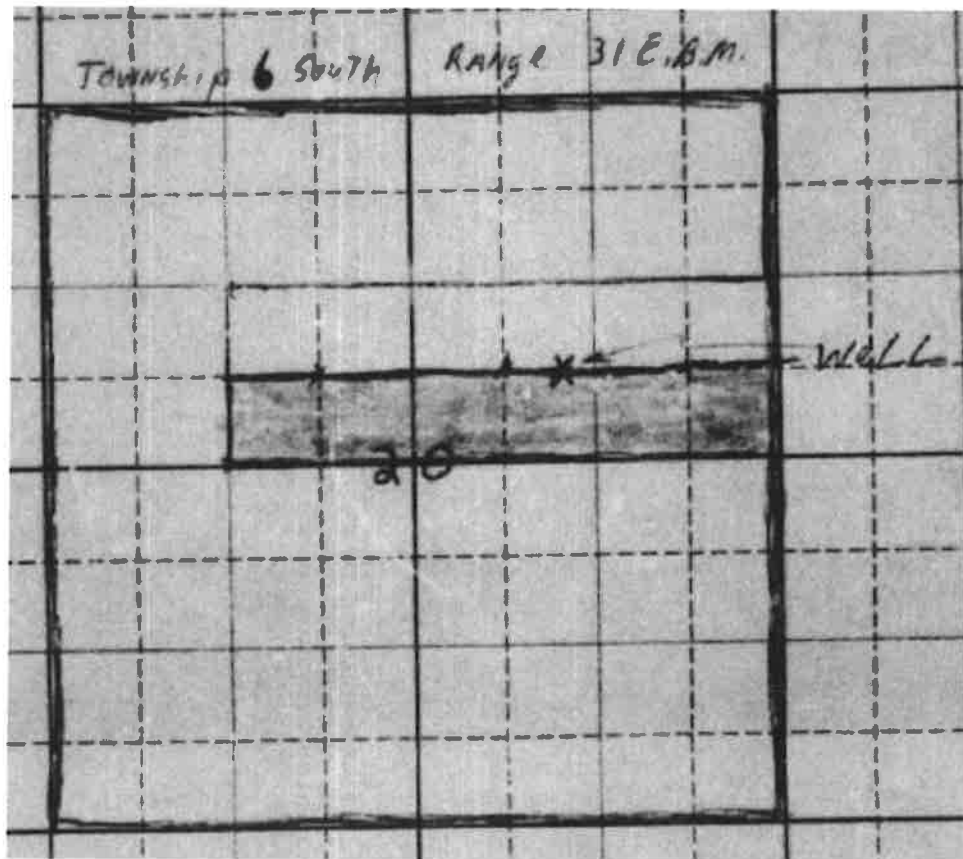
TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL
			SW 1/4	NE 1/4	SE 1/4	SW 1/4	NE 1/4	SE 1/4	SW 1/4	NE 1/4	SE 1/4	SW 1/4	NE 1/4	SE 1/4					
6S	31E	20			20	20			20									60	
Total number of acres to be irrigated																	60		

7. Under Item 8.c of the application, which requests a listing of "any other water rights used for the same purposes as describe above, the application contains the word "none":

c. Describe any other water rights used for the same purposes as described above.

NONE

8. The map contained in the application depicted the following proposed place of use and proposed well location:



9. A permit was issued for 35-7667. The approval notice for the permit (contained in the application document) indicated that proof of beneficial use was due on or before April 1, 1980.
10. On January 31, 1980, the Department sent a proof due notice to the permit holder.
11. On November 2, 1980, the Department sent a lapse notice to the permit holder.
12. On June 11, 1992, Vern Duffin submitted a completed Proof of Beneficial Use form to the Department. As described in the *Order of Reinstatement* associated with 35-7667:

5. Section 42-218a.2., Idaho Code, authorizes the Department to reinstate a lapsed permit, with the priority date advanced to the date that proof of beneficial use was received, upon submittal of evidence clearly establishing the extent of beneficial use prior to the proof due date and a showing of reasonable cause why the proof was submitted late.

6. The permit holder has submitted evidence to confirm that water has been put to beneficial use prior to the proof due date. Evidence includes a copy of a bill from the pump company, proving installation of the pump and motor, dated February 7, 1974. Evidence also include an affidavit from the executive director of the County ASCS office verifying that this tract of land has been irrigated since 1980.

7. The permit holders attorney stated, in a telephone conversation with Jim Johnson of this department, that he thought that he had filed all necessary papers and that he had a valid water right.

13. Based on this evidence, the permit for 35-7667 was reinstated and the priority date was advanced to the date proof of beneficial use was received by the Department (June 11, 1992).
14. The field exam for 35-7667 was performed on August 21, 1996. The overlap review of other water rights contained on the field exam form indicated that there were no other water rights associated with the place of use:

B. OVERLAP REVIEW

1. Other water rights with the same place of use: NONE (35-09000 - HORT. HOLD) APP.
2. Other water rights with the same point of diversion: NONE

15. However, Field Exam Notes found in the same 35-7667 backfile form noted the presence of 60 ASCC shares next to "OTHER WATER RIGHTS SAME POU":

FIELD EXAM NOTES

EXAM # 35-07667

DATE OF EXAM 8/21/96

PERMITEE NAME DEAN DUFFIN

OTHER WATER RIGHTS SAME POD NO

OTHER WATER RIGHTS SAME POU CANAL RIGHTS (ABERDEEN SPRINGFIELD)
CANAL - 60 SHARES

16. The field exam for 35-7667 documented the actual development of 55 acres of irrigation, rather than 60 acres originally described on the permit application for 35-7667. A map from the field exam depicted the developed 55 acres and the developed well location as follows:



17. A photograph from the field exam depicted the well and pump developed and installed by Vern Duffin:



18. The irrigation system documented on the property at the time of the field exam was described as follows:

E. NARRATIVE/REMARKS/COMMENTS

WATER IS PUMPED FROM WELL VIA A VERTICAL TURBINE PUMP TO A 6" MAIN LINE. LATERALS DISTRIBUTE WATER VIA RAIN BIRDS WITH 1/64 NOZZLES TO PLACE OF USE.

19. The field exam did not describe an existing surface water irrigation diversion system.
20. Based on the information from the field exam, 35-7667 was licensed on December 24, 2001, as evidenced by this license document:

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 35-07667

Priority: June 11, 1982 Maximum Diversion Rate: 1.10 CFS
Maximum Diversion Volume: 220.0 AF

It is hereby certified that VERN R DUFFIN
2142 S 2800 W
ABERDEEN ID 83210 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated February 02, 1977; and has
submitted Proof of Beneficial Use on June 11, 1992. An examination indicates that the works have a
diversion capacity of 1.10 cfs of water from:

SOURCE
GROUND WATER

and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL DIVERSION VOLUME
IRRIGATION	04/01 to 10/31	1.10 CFS	220.0 AF

LOCATION OF POINT OF DIVERSION:
GROUND WATER SW1/4SW1/4NE1/4 Sec 20, Twp 06S, Rge 31E, S.M. BINGHAM County

PLACE OF USE: IRRIGATION

Trp	Rge	Sec	NE	NW	SW	SE	Totals
06S	31E	20	20.0	19.0	19.0	19.0	55.0

Total Acres: 55

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 24th day of December, 2001.

Karl J. Dreher
Acting for KARL J. DREHER
Director

MICROFILMED
JAN 09 2002

21. Based on the *Notice of Change In Water Right Ownership* submitted to the Department, Richard and Iris Schelske obtained title to 35-7667 on March 13, 2002.
22. On December 22, 2011, Jeffrey and Chana Duffin obtained title to 35-7667.
23. On August 7, 2015, the Department issued a transfer approval (80188) which split off a 1.1-acre portion of 35-7667, with said 1.1-acre portion identified as Water Right No. 35-14428. Because of this water right split, 35-7667 is now described as authorizing the diversion of 1.08 cfs for the irrigation of 53.9 acres:

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WATER RIGHT NO. 35-7667
As Modified by Transfer No. 80188

In accordance with the approval of Transfer No. 80188, Water Right No. 35-7667 is now described as follows:

Right Holder: JEFFREY DUFFIN AND
CHANA DUFFIN
PO BOX 525
ABERDEEN, ID 83210

Priority Date: 6/11/1992

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Diversion Volume
IRRIGATION	04/01	10/31	1.080 cfs	215.6 af
			1.080 cfs	215.6 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SW/SW/NE Sec 20 Twp 06S Rge 31E BINGHAM County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
06S	31E	20																53.9	
POU Total Acres:			53.9																

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

Transfer No. 80188

24. In 2017, Jeffrey and Chana Duffin converted the place of use for 35-7667 from being irrigated solely with ground water to being exclusively irrigated with surface water

allocated to the 60 ASCC shares described herein. To divert surface water allocated to the 60 ASCC shares, Duffin moved and continues to use the same pump for the surface water system that he previously used to divert ground water at the well location.

25. The ground water system and surface water system on the Duffin property have never been interconnected such that ground water and surface water have never been used simultaneously to irrigate the Duffin property.
26. Power usage information from the Department's WMIS system confirms the conversion from ground water use to surface water use in 2017 as it contains the following ground water diversion information associated with the Duffin well:

Water Measurement Information System Page 1 of 5

Idaho Department of Water Resources

WMIS
Water Management Information System

Quick Search: [For assistance, email WMIS info](#)

Search Method: WMIS Number [Login](#)

WMIS Number: 600524

You are logged in as LJORDAN

[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#) [Logout](#)

PCC Power Usage *You are viewing 600524; A0006459*

[Click here to insert a new record.](#)

Edit	Delete	Report Year 2018	Utility KWH 33456.00	Total PCC 07/12/13	Acre Feet Volume 0.00	Preferred Method PCC
		Utility Idaho Power	Account Number	Service Number 3943463596	Validated	Tracking No
		Acre Feet Qualifier Z-Zero pumpage	Comments Need to verify source of power. See site visit comments. jbh			
Edit	Delete	Report Year 2017	Utility KWH 29181.00	Total PCC 07/12/13	Acre Feet Volume 0.00	Preferred Method PCC
		Utility Idaho Power	Account Number	Service Number 3943463596	Validated	Tracking No
		Acre Feet Qualifier Z-Zero pumpage	Comments See 2016 Comments jbh --corrected based on site visits. jbh 1-10-2019			
Edit	Delete	Report Year 2016	Utility KWH 23310.00	Total PCC 07/12/13	Acre Feet Volume 50.42	Preferred Method PCC
		Utility Idaho Power	Account Number	Service Number 3943463596	Validated	Tracking No
		Acre Feet Qualifier Q-Other qualifying conditions, see PCC comments for explanation	Comments System has changed between 2015 and 2016. will measure in 2017. jbh			
Edit	Delete	Report Year 2015	Utility KWH 56489.00	Total PCC 07/12/13	Acre Feet Volume 143.77	Preferred Method PCC
		Utility	Account Number	Service Number	Validated	Tracking

<https://research.idwr.idaho.gov/apps/WaterManagement/WMIS/PCCPowerUsage.aspx> 11/7/2019

Idaho Power		3943463596	No		
Acre Feet Qualifier		Comments			
1-Simple system with one operating condition, current valid PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2014	42801.00	07/12/13 385.81	111.20	PCC
	Utility	Account Number	Service Number	Validated	Tracking
	Idaho Power		3943463596		No
Acre Feet Qualifier		Comments			
1-Simple system with one operating condition, current valid PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2013	63620.00	07/12/13 385.81	164.90	PCC
	Utility	Account Number	Service Number	Validated	Tracking
	Idaho Power		3943463596		No
Acre Feet Qualifier		Comments			
4-Multiple op conditions, PCCs differ > 10%, tracking not reported, use low PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2012	71745.00	07/02/08 549.07	130.67	PCC
	Utility	Account Number	Service Number	Validated	Tracking
	Idaho Power		3943463596		No
Acre Feet Qualifier		Comments			
4-Multiple op conditions, PCCs differ > 10%, tracking not reported, use low PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2011	45362.00	07/02/08 549.07	83.00	PCC
	Utility	Account Number	Service Number	Validated	Tracking
	Idaho Power		3943463596		No
Acre Feet Qualifier		Comments			
4-Multiple op conditions, PCCs differ > 10%, tracking not reported, use low PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2010	64203.00	07/02/08 549.07	99.00	PCC
	Utility	Account Number	Service Number	Validated	Tracking
	Idaho Power		3943463596		No
Acre Feet Qualifier		Comments			
4-Multiple op conditions, PCCs differ > 10%, tracking not reported, use low PCC					
Edit Delete	Report Year	Utility KWH	Total PCC	Acre Feet Volume	Preferred Method
	2009	32075.00	07/02/08 549.07	58.00	PCC

<https://research.idwr.idaho.gov/apps/WaterManagement/WMIS/PCCPowerUsage.aspx>

11/7/2019

27. According to ASCC, water allocated to Duffin's 60 ASCC shares is initially delivered through ASCC's N Lateral and then into the Hege Drain. The below map identifies the location of the place of use for 35-7667, the Hege Drain, and the location of the surface water pump:

DUFFIN PROPERTY



28. 35-7667 was leased into the Idaho Water Supply Bank for a term of January 1, 2017 through December 31, 2017.
29. On April 2, 2019, Jeffrey and Chana Duffin submitted an application for transfer which is now identified as Transfer No. 83160 ("83160") to the Department seeking to change the place of use and point of diversion for 35-7667. The transfer application notes that the current place of use for 35-7667 is irrigated with ASCC shares.
30. 83160 was protested by the Surface Water Coalition, with an initial basis for protest being that 35-7667 was originally developed as a supplemental ground water right for use on the property associated with ASCC shares.
31. The following issues are to be considered in conjunction with a water right transfer application filed pursuant to Idaho Code § 42-222:

ISSUES

Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer reduce the quantity of water under existing Water Rights?
 2. Will the proposed transfer constitute an enlargement in use of the original right?
 3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
 4. Will the proposed transfer conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use and its potential effects on the public water source?
 5. Will the proposed transfer adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?
 6. If the proposed transfer is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B, Idaho Code?
 7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?
32. The parties agree that the issues in this contested case for 83160 concern the supplemental/primary ground water issue. As this issue relates to the issue categories in paragraph 31, they are:
- 32.1 (No. 2 above): Does the proposed transfer constitute an enlargement of the original right? More specifically, is 35-7667 a supplemental ground water right or otherwise limited in its exercise and cannot be used as a primary ground water right at the new proposed place of use?
- 32.2 (No. 3 above): Is the proposed transfer contrary to the conservation of water resources within the State of Idaho?
- 32.3 (No. 4 above): Will the proposed transfer conflict with the local public interest? What is the potential effect of the proposed water use on the public water source?
33. Because these remaining issues are legal issues, the parties have agreed to forego a

formal hearing on this matter to establish facts and instead stipulate to the facts contained herein in order submit briefs on the legal issues. The parties stipulate that other than the issues described in paragraph 32, the other issues described in paragraph 31 under subparts (1), (5), (6), and (7) are not at issue in this contested case.

JEFFREY DUFFIN AND CHANA DUFFIN



By: Robert L. Harris, of the firm Holden, Kidwell,
Hahn, & Crapo, P.L.L.C.

Attorneys for Jeffrey and Chana Duffin

A&B IRRIGATION DISTRICT, BURLEY IRRIGATION
DISTRICT, MILNER IRRIGATION DISTRICT, NORTH
SIDE CANAL COMPANY, AND TWIN FALLS CANAL
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MINIDOKA IRRIGATION DISTRICT

By: W. Kent Fletcher, of the firm Fletcher Law
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Attorneys for Minidoka Irrigation District

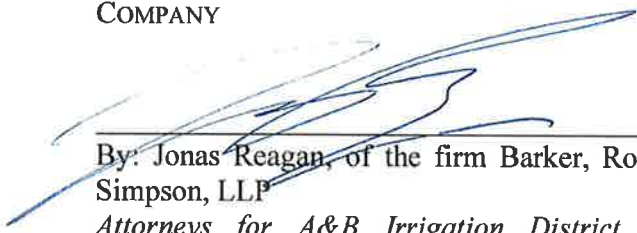
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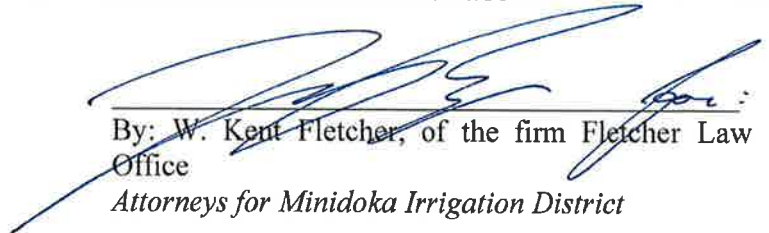
A&B IRRIGATION DISTRICT, BURLEY IRRIGATION
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