

T3687 WHITTAKER

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3687

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant F. James or Paula Whittaker Phone 768-2491
Post Office address Box 240 Leadore, ID 83464

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes I feel the new place of use is better crop
ground.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-----------------|-----------|-----------------------|------------------|---------------|
| 74-0039B | 6-10-1901 | 6.00 | Irrigation | 3-15 to 11-15 |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 6.00 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Big Timber Creek tributary to Lemhi River
4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use:

[illegible]

PART 1

6. General Information:

a. Description of diversion system ditch to pipeline to gravity flow sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

This land will now be used as pasture.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Page _____ of _____

Witness my hand this _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER R**

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by-

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. 74-0039B Decreed to Wilford Shiner
in case of State of Idaho vs. Mary A. Adams
dated Dec. 30, 1982 in District Court county of _____
- 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 Sales Contract

3. Source of water Big Timber Creek tributary to Lemhi River

4. Date or priority 6-10-1901

5. Water is used for the following purpose:

amount 6.00 cfs for Irrigation 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 6.00 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	SE	8	15N	26E	Lemhi	

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	
16N	25E	25									35			40	40	40	40		195

Total acres 195

9. Describe any other water rights used for the same purpose as described above NONE

Page _____ of _____

Transfer No. _____

PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to _____
				to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

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

I understand that any willful misrepresentations made in this application may result in voiding its approval.

F. James Whiteaker
(Signature of Applicant)

Subscribed and sworn to before me this 29th day of March, 1990.

Clara E. Ellis
(Notary Public)

My commission expires 5-1-92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by W Date 4-02-90 Protest filed by _____Prelim. check by _____ Fee 50.00 EO12713Receipted by HCJ Date 4-3-90Published in Recorder Herald Copies of protest forwarded by _____Pub. dates 5-3-90 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

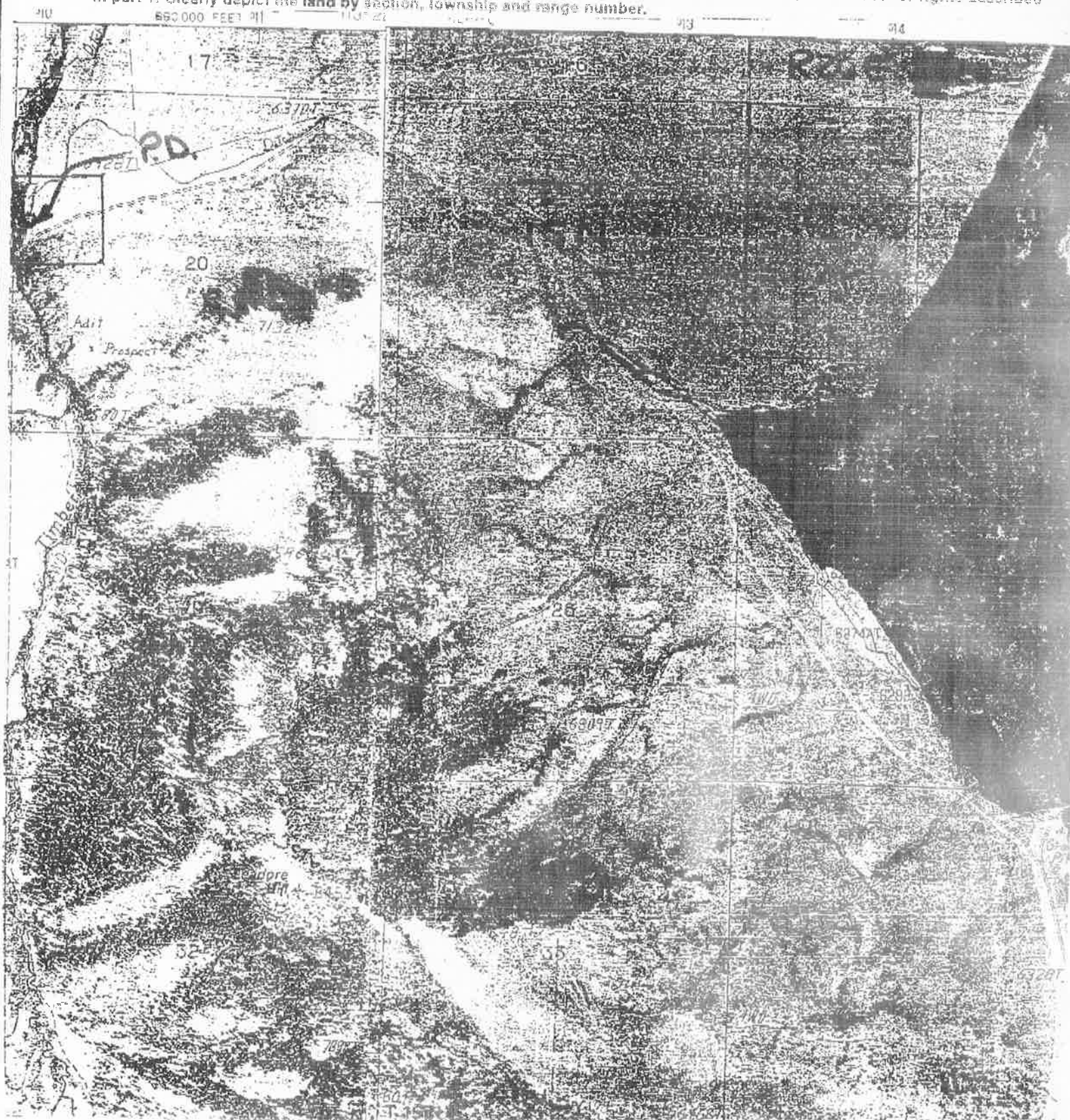
Copy of transfer sent to lien holder _____

Page _____ of _____

Transfer No. _____

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.



Page _____ of _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

Transfer No. _____

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Name of applicant F. James or Paula Whittaker Phone 768-2491
Post Office address Box 240 Leadore, ID 83464

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes I feel the new place of use is better crop ground.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | 1. Right Number | Priority | Amount
(cfs/ac-ft) | Nature
of Use | Period of Use |
|-----------------|------------------|-----------------------|-------------------|-----------------------------|
| <u>74-0039B</u> | <u>6-10-1901</u> | <u>6.00</u> | <u>Irrigation</u> | <u>3-15</u> to <u>11-15</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 6.00 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Big Timber Creek tributary to Lemhi River
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	20	15N	26E	Lemhi	

5. 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	
15N	26E	22					40	40	40	40		35							195

Total acres 195

PART 1

6. General Information:

a. Description of diversion system ditch to pipeline to gravity flow sprinklers.b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

This land will now be used as pasture.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

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. 74-0039B Decreed to Wilford Shiner
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- 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.

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☐ Tax Notice

☐ Warranty Deed

☒ Other Sales Contract

3. Source of water Big Timber Creek tributary to Lemhi River

4. Date or priority 6-10-1901

5. Water is used for the following purpose:

amount 6.00 cfs for Irrigation 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 6.00 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	SE	8	15N	26E	Lemhi	

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	
16N	25E	25									35			40	40	40	40		195

Total acres 195

9. Describe any other water rights used for the same purpose as described above NONE

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED*(If the entire right is to be changed by the applicant, omit part B and C.)*

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

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

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

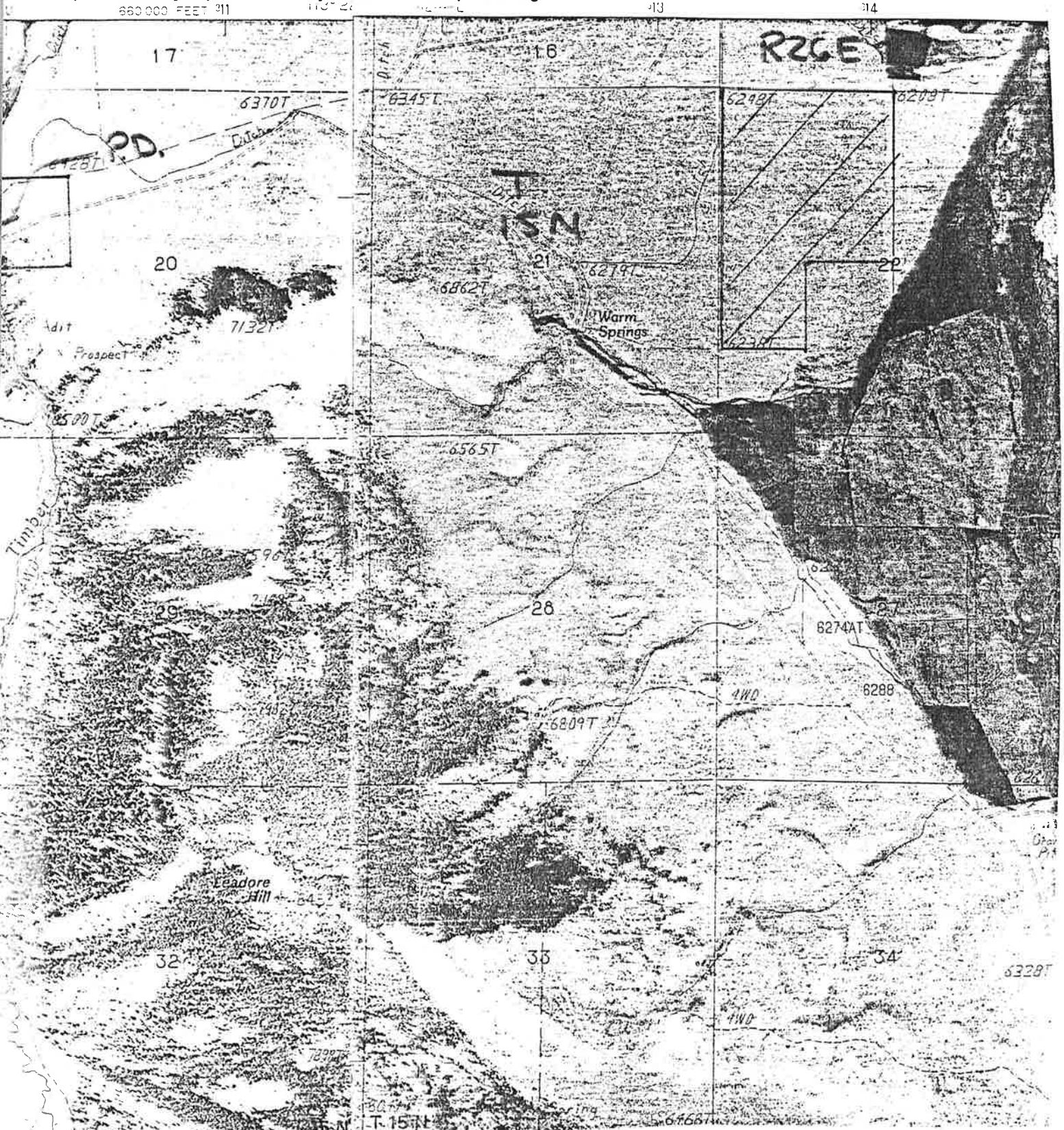
3. Lands irrigated or place of use:

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	

Total acres _____

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.



PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

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

I understand that any willful misrepresentations made in this application may result in voiding its approval.

F. James W. H. H. H.
(Signature of Applicant)

Subscribed and sworn to before me this 29th day of March, 1990.

Clara E. Ellis
(Notary Public)

My commission expires 5-1-92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by PA Date 4-02-90 Protest filed by _____

Prelim. check by _____ Fee 50⁰⁰ 2012733 _____

Receipted by HCS Date 4-3-90 _____

Published in Recorder Herald Copies of protest forwarded by _____

Pub. dates 5-3 & 10-90 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE
STATE OF IDAHO

Denied

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 3687 (WATER RIGHT NO.)
74-00039B) IN THE NAME OF F. JAMES) PROPOSED MEMORANDUM
AND PAULA WHITTAKER) DECISION AND ORDER
_____)

On April 2, 1990, F. James and Paula Whittaker filed an application to change the point of diversion and place of use for decreed right 74-00039B, which authorizes diversion of water from Big Timber Creek. Notice of the application was advertised in the Recorder Herald on May 3 and 10, 1990. The Department subsequently received protests, dated May 5 and 10, 1990, from Allan Purcell and Kermit Purcell, respectively, objecting to the proposed change. A conference regarding the protested application was conducted on January 28, 1992, in Salmon, Idaho. At the conference, the applicants and protestants agreed that the Department would issue a proposed decision based on information presented at the conference and other pertinent information available to the Department. The Department has now reviewed the matter and proposes the following, Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Water right no. 74-00039B is described in the records of the Department as follows:

Point of Diversion: NWSE, Section 8, T15N, R26E

Place of Use:

	<u>Acres</u>
T16N, R25E, Section 25	
NESW	35
SESW	40
NESE	40
NWSE	40
SWSE	40
Total	195

The old place of use is locally known as "the Clark place."

2. Application for transfer no. 3687 proposes the following changes in the point of diversion and place of use:

Point of Diversion: SWNW, Section 20, T15N, R26E

Place of Use:

	<u>Acres</u>
T15N, R26E, Section 22	
NENW	40
NWNW	40
SWNW	40
SENW	40
NWSW	35
Total	195

3. The protestants contend the proposed change would result in reduced recharge to the shallow aquifer, which would ultimately cause a marsh area located below Allen Purcell's home to dry up and thus deprive Purcell of his source of stockwater.

4. The ditch which transports the water to "the Clark place" traverses a BLM grazing allotment. Between May 6 and July 1 of each year the protestant has relied on the delivery of this right as a source for stockwater on that allotment.

5. The fact that the protestant's cattle have accessed the applicants' ditch does not necessarily create a stock water right. The applicants are not obligated to continue the use of

their ditch simply to provide stock water to the protestant's livestock. The existing ditch has simply been a convenient watering location for the protestant's cattle.

6. There are currently two water rights appurtenant to the 195 acres located within the S $\frac{1}{2}$ of Section 25, T16N, R25E, (the Clark place). In addition to 74-00039B, right 74-00063, bearing a priority of July 18, 1911, and a diversion rate of 0.96 cfs, also from Big Timber Creek, is appurtenant to the same 195 acres.

7. The applicants have filed a notice of claim on each water right in the Snake River Basin adjudication showing the same 195 acres as the place of use.

8. The applicants are proposing to leave water right 74-00063 unchanged and thus would be able to irrigate the "Clark place" whenever sufficient water was available on Big Timber Creek to fill a July 18, 1911, water right.

9. Section 42-222, Idaho Code, requires the Director of the Department of Water Resources to determine that no other water rights will be injured, and that the change does not constitute an enlargement in use of water.

10. The applicants are purchasing the land located in the S $\frac{1}{2}$ of Section 25, T16N, R25E, under a contract of sale. Water right 74-00039B was released as part of the security for this land by Farm Credit Services in March of 1990.

CONCLUSIONS OF LAW

1. The protestant does not have recorded water rights for the watering of stock from the applicant's ditch which currently provides water to the applicants land in Section 25 (the Clark place).

2. The applicant is not obligated to continue the use of the ditch which currently delivers irrigation water to the Clark place.

3. The applicant is not obligated to continue an irrigation practice simply to assure the recharge to the aquifer from which the protestant's livestock water.

4. The separation of 74-00039B and 74-00063 would result in an expansion in use which is prohibited under Section 42-222 Idaho Code and therefore cannot be approved by the Director.

5. The actions of the Department will not prejudice a future application for transfer by the applicants that seeks to remove all water rights from the 195 acres of land currently identified as the place of use for water rights 74-00039B and 74-00063.

ORDER

IT IS THEREFORE HEREBY ORDERED that application for transfer of water right 74-00039B be DENIED.


RONALD D. CARLSON, Hearing Officer
Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November, 1992, I mailed a true and correct copy of the Proposed Memorandum Decision and Order, and the Order Issuing Proposed Memorandum Decision, postage prepaid, to the following individuals:

James Whittaker
P.O. Box 240
Leadore, ID 83464

Allan Purcell
P.O. Box 15
Leadore, ID 83464

E.W. Pike, Attorney at Law
c/o Kermit Purcell
P.O. Box 51630
Idaho Falls, ID 83405

Karen L. Gustafson