

2891

RECEIVED

JAN 22 1993

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 2891 OF WATER RIGHT)
NO. 34-00314 IN THE NAME OF)
STEVEN C. PURSER)
_____)

ORDER

This matter having come before the Idaho Department of Water Resources (department) as a result of the review of pending applications for transfer and review of related Snake River Basin Adjudication claims filed with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 19, 1983, Steven C. Purser (applicant) filed Application for Transfer No. 2891 (application) with the department in connection with water right no. 34-00314. The application proposed a change in the point of diversion.
2. A review of the Snake River Basin Adjudication claim filed by the present owner in connection with the above captioned water right shows that the change proposed on the application has been claimed as already "accomplished" pursuant to Section 42-1416A, Idaho Code.
3. The adjudication claim has been filed pursuant to Section 42-1416A, Idaho Code, as if the change(s) proposed on the pending application and a subsequent change in the point of diversion can be approved and decreed without the necessity of filing for a change as required in Sections 42-108 and 42-222, Idaho Code.

CONCLUSIONS OF LAW

1. Section 42-1416A, Idaho Code, provides in part as follows:

If any person entitled to the use of water has made a change in point of diversion, place of use, period of use or nature of use of all or a part of the water, including a change as part of an exchange as defined in section 42-105, Idaho Code, prior to the entry of an order commencing a general adjudication pursuant to section 42-1408, Idaho Code, and the person entitled to the use of water has not complied with the requirements of sections

42-108 and 42-222, Idaho Code, regarding such changes, the following shall apply:

(a) the water right may be claimed in the general adjudication as changed and an application for change of the water right is not required to be filed pursuant to section 42-222, Idaho Code; and

(b) the water right may be determined by the director in the director's report pursuant to section 42-1411, Idaho Code, and decreed by the district court pursuant to section 42-1412, Idaho Code, as changed, if the change meets the substantive criteria of section 42-222, Idaho Code, for approval of such changes, provided that the change may be approved subject to conditions necessary to satisfy the substantive criteria of section 42-222, Idaho Code, for approval of such changes.

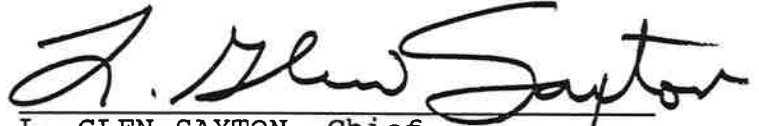
2. The department should set aside Application for Transfer No. 2891, and should consider the change(s) proposed in the application which have been claimed in the related adjudication claim(s) as being combined with and included in the review and recommendation of the adjudication claim in the Director's report required by Section 42-1411, Idaho Code.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 2891 filed in connection with water right no. 34-00314 is set aside and will not be separately considered by the department.

IT IS FURTHER, hereby ORDERED that if the applicant decides to contest this order, the applicant may request a hearing within thirty (30) days of the date of service of this order pursuant to Section 42-1701A, Idaho Code.

Dated this 15th day of December, 1992.


L. GLEN SAXTON, Chief
Water Allocation Bureau

2891

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 2891 OF WATER RIGHT)
NO. 34-00314 IN THE NAME OF)
STEVEN C. PURSER)

ORDER

This matter having come before the Idaho Department of Water Resources (department) as a result of the review of pending applications for transfer and review of related Snake River Basin Adjudication claims filed with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 19, 1983, Steven C. Purser (applicant) filed Application for Transfer No. 2891 (application) with the department in connection with water right no. 34-00314. The application proposed a change in the point of diversion.

2. A review of the Snake River Basin Adjudication claim filed by the present owner in connection with the above captioned water right shows that the change proposed on the application has been claimed as already "accomplished" pursuant to Section 42-1416A, Idaho Code.

3. The adjudication claim has been filed pursuant to Section 42-1416A, Idaho Code, as if the change(s) proposed on the pending application and a subsequent change in the point of diversion can be approved and decreed without the necessity of filing for a change as required in Sections 42-108 and 42-222, Idaho Code.

CONCLUSIONS OF LAW

1. Section 42-1416A, Idaho Code, provides in part as follows:

If any person entitled to the use of water has made a change in point of diversion, place of use, period of use or nature of use of all or a part of the water, including a change as part of an exchange as defined in section 42-105, Idaho Code, prior to the entry of an order commencing a general adjudication pursuant to section 42-1408, Idaho Code, and the person entitled to the use of water has not complied with the requirements of sections

RECORDED

JAN 26 1993

42-108 and 42-222, Idaho Code, regarding such changes, the following shall apply:

(a) the water right may be claimed in the general adjudication as changed and an application for change of the water right is not required to be filed pursuant to section 42-222, Idaho Code; and

(b) the water right may be determined by the director in the director's report pursuant to section 42-1411, Idaho Code, and decreed by the district court pursuant to section 42-1412, Idaho Code, as changed, if the change meets the substantive criteria of section 42-222, Idaho Code, for approval of such changes, provided that the change may be approved subject to conditions necessary to satisfy the substantive criteria of section 42-222, Idaho Code, for approval of such changes.

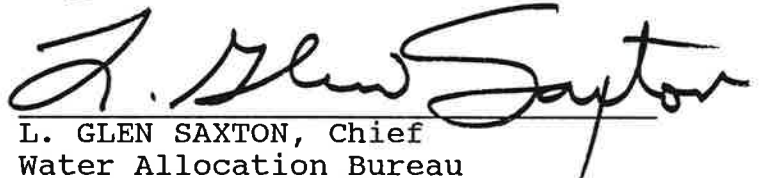
2. The department should set aside Application for Transfer No. 2891, and should consider the change(s) proposed in the application which have been claimed in the related adjudication claim(s) as being combined with and included in the review and recommendation of the adjudication claim in the Director's report required by Section 42-1411, Idaho Code.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 2891 filed in connection with water right no. 34-00314 is set aside and will not be separately considered by the department.

IT IS FURTHER, hereby ORDERED that if the applicant decides to contest this order, the applicant may request a hearing within thirty (30) days of the date of service of this order pursuant to Section 42-1701A, Idaho Code.

Dated this 15th day of December, 1992.


L. GLEN SAXTON, Chief
Water Allocation Bureau

RECEIVED

JAN 26 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant Steven C. Purser Phone 554-2034
Post Office address Rt. 1, Box 119A, Moore, Idaho 83255

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
(195)
a. Decree No. 34-0314 Decreed to John S. Harper (Name)
in case of Utah Construction Co. vs John F. Abbott, et al
dated in 10/21/1925 in U.S. District Court county of Butte & Custer (Name of court)
b. License No. issued by the Idaho Department of Water Resources
c. Claim No. on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant owns ground that right was transferred to by WD #34 in 1948.
3. Source of water Big Lost River tributary to Sinks
4. Date of priority 5/31/1898
5. Water is used for the following purposes:
amount 2.5 cfs for Irrigation purposes from 5-1 to 10-15
amount for purposes from to
amount for purposes from to (month/day — both dates inclusive)
6. Total amount of water under right: a. 2.50 cubic feet per second &/or
b. acre feet per annum
7. Location of original point of diversion is ¼ of NE ¼ of Section 24
Township 6N Range 25E, B.M., in Custer County
Additional points of diversion, if any

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	26E	30	X	X	X	X													*

*Not listed in decree

Total number of acres to be irrigated

9. Describe any other water rights used for the same purpose as described above

JAN 26 1993

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? NO

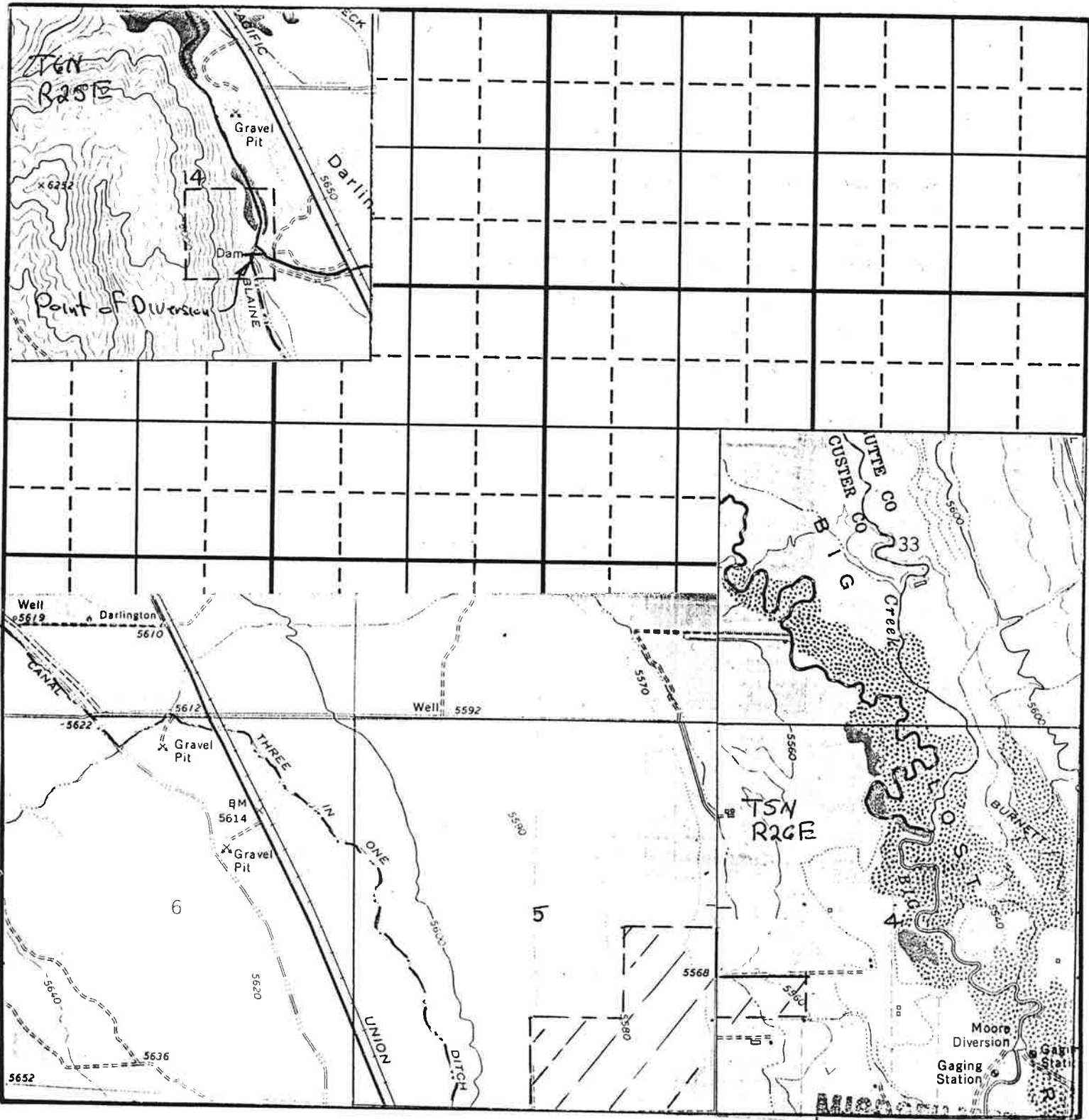
If yes, describe in item D, REMARKS

c. Describe the land or place of use to which the right will be transferred

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	26E	4									5								5
		5												40		40	40		120

Total number of acres to be irrigated 125

4. Describe any other water rights used for the same purpose as described above. 34-0405 and 34-0406
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

JAN 26 1993

D. REMARKS

Actual place of use since 1948 action by Big Lost River is reflected in Section 3C and map section. Water has not been used on the SWSW of Sec. 4, T. 5N, R. 26E.

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 willfull misrepresentations made in this application may result in voiding its approval.

Steven L. Ruan
(Signature of Applicant)

Subscribed and sworn to before me this 5th day of May, 19 83.

Susan Woodward
(Notary Public)

My commission expires Lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 34-0314 and said application is hereby APPROVED, subject to the following limitations and conditions:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

Use of water under this right is subject to control by the watermaster of State Water District No. 34, Big Lost River.

This right when combined with all other rights shall not exceed 0.02 cfs/acre nor 3 acre feet per acre per annum.

Witness my hand this _____ day of October, 19 83.

Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Assist by HWS
Received by CW Date 5-19-83 Protest filed by _____
Prelim. check by EMC Fee 50.00
Receipted by BP Date 6/13/83 # 30844
Published in Custer Publishing Co. Copies of protest forwarded by _____
Pub. dates 7/14 & 7/21/83 Hearing held by _____ Date _____
Watermaster recommendation requested on _____ Recommended for approval denial
_____ rec'd. by Jeni

JAN 26 1993

HARRIET M. HARGER

1884-May 20 ✓

1.6 c. 34. 0310

1884-July 15

0.8-7-15-84 Trans. 462 ✓

1.6 c. 34. 0311

To be diverted from Big Lost River through the Harger-Sullivan ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The East half of the Southeast quarter and the South half of the Northeast quarter of Section 8, Township 4 North, Range 26 East, B. M.

No. 192

CHESTER HARPER

1894-May 31 ✓

0.8 c. 34. 0312

To be diverted from Big Lost River through the West Side ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the Following described land, to-wit:

The Northeast quarter of the Southwest quarter of Section 33, Township 5 North, Range 26 East, B. M.

No. 193

HILDA CHARLOTTE JONES HARPER,
as Executrix of the estate of
Edwin L. Jones, deceased.

To be diverted from Big Lost River through the Jones and Lake ditch having its point of diversion in the Northwest quarter of Section 36, Township 4 North, Range 26 East, B. M., for the irrigation of 135 acres of land in the following described legal subdivisions, to-wit:

1899-May 1 ✓ T 2010

2.7 c. 34. 0313

The East half of the Southwest quarter and Lots 3 and 4 of Section 31, Township 4 North, Range 27 East, B. M.

No. 194

JOHN S. HARPER

1898-May 31 ✓

2.5 c. 34. 0314

T. 2891

To be diverted from Big Lost River through the Lower Burnett ditch having its point of diversion in the Northeast quarter of Section 24, Township 6 North, Range 25 East, B. M., for the irrigation of the following described land, to-wit:

The Northeast quarter of Section 30, Township 6 North, Range 26 East, B. M.

No. 195

PARK HARPER

(Successor in interest
to Ardelia Hutchinson,
also named in plaintiff's
amended complaint as Adelia
N. Hutchinson)

To be diverted from Big Lost River through the Harger-Sullivan ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

1899-March 27 ✓

1013-0.585

0.585 c. 34. 0315

The Northeast quarter of the Southeast quarter of Section 19, Township 4 North, Range 26 East, B. M.

No. 196

JAN 26 1993

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, MARGARET PARKS
Publisher of the Challis Messenger, a
weekly newspaper, published at Challis,
Idaho, do solemnly swear that the notice
hereto attached and made a part hereof,
was published in the regular and entire
issue of the Challis Messenger for 2.....
consecutive weeks, commencing with
the issue dated JULY 14.....

19. 83 and ending with the issue
dated JULY 21..... 19. 83

Margaret Parks
Subscribed and sworn to before
this 27th day of July
19. 83

Edith M. Beck
Notary Public, residing at Challis,
Idaho. My commission expires on
Life

Life

RECEIVED

AUG 1 1983

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 34-0314

Notice is hereby given that
Steven C. Purser, Moore,
Idaho, has applied to the Dept.
of Water Resources for a
change in the point of diversion
and place of use of the waters
of Big Lost River tributary to
sinks. The right sought to be
changed is evidenced by
Decree No. 34-0314 to John S.
Harper in case of Utah
Construction Co. vs. John F.
Abbott, et al dated in 10-21-1925
in District Court, Butte and
Custer Counties, and is
recorded as follows:

AMOUNT: 2.5 cfs
PRIORITY: 5-31-1898
POINT OF DIVERSION:
NE $\frac{1}{4}$ Sec. 24, T. 6N, R. 25E,
B.M. Custer County;
The water is used to irrigate
lands withing the NE $\frac{1}{4}$ Sec. 30,
T. 6N, R. 26E, B.M.
TO BE CHANGED AS
FOLLOWS:

The water will be diverted
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 14,
T. 6N, R. 25E, B.M. Custer
County and used to irrigate 125
acre within the NW $\frac{1}{4}$ SW $\frac{1}{4}$
Sec. 4, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$
Sec. 5, T. 5N, R. 26E, B.M.
Any protest against the
above proposed change of
water right must be filed with
the Dept. of Water Resources,
150 Shoup Ave., Suite 15, Idaho
Falls, Idaho, 83401, on or
before August 1, 1983.

A. KENNETH DUNN
Director
Published 7/14 & 7/21/83.

RECEIVED

JAN 26 1993

TO WHOM IT MAY CONCERN:

Undersigned certify that they are the present owners of the following described Real Property situated in Custer County, State of Idaho, to-wit:

TOWNSHIP 6 NORTH, RANGE 26 EAST, BOISE MERIDIAN,
CUSTER COUNTY, IDAHO:

SECTION 30: NE $\frac{1}{4}$.

Undersigned further represent that they do not claim any right title or interest in a certain Decreed Water Right from Big Lost River, more particularly described as follows:

Decree No. 34-0314 for 125 miner's inches, with a priority of 5/31/98, which said Right may, at one time, have been appurtenant to, or used on the land above described.

DATED This 22nd day of April, 1983.

Hayes R. White
Hayes R. White

Faye B. White
Faye B. White

STATE OF IDAHO)
County of)

On this 22nd day of April, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared HAYES R. WHITE and FAYE B. WHITE, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

William H. Clark
Notary Public for Idaho,
Residing at , Idaho.

JAN 26 1993

*Please see page 3 under Board of directors
transferring this water, it should have been
for storage water only. There is doubt as to whether it
and assumed it transferred every thing.*

THIS AGREEMENT, made and entered into this 6 day of Oct, 1948, by and between Big Lost River Irrigation District, a duly organized irrigation District of the counties of Butte and Custer, State of Idaho, having its office and principal place of business at Mackay, Custer County, Idaho, the party of the first part, here-in-after called the District, and E. A. Gail, of Boise, Idaho, the party of the second part, WITNESSETH:

WHEREAS, the District is a duly organized irrigation District of the State of Idaho, in the counties of Butte and Custer of said State, and has its office and principal place of business at Mackay, Custer County, Idaho, and as such District is the owner and in possession of all the water rights out of the Big Lost River and its tributaries, Butte and Custer Counties, Idaho formerly owned by the Utah Construction Company, a corporation, and certain individual land owners on said company's Carey Act Project in Butte County, Idaho, said water rights having heretofore been purchased by said District from said Company from the proceeds of a bond issue in the sum of \$238,500.00 voted by the resident land owners of the District on May 16th, 1935; and

WHEREAS, pursuant to and in accordance with the Statutes of Idaho, in such case made and provided, a Petition was filed in the District Court of the County of Custer, State of Idaho, on December 3rd, 1935, by the Board of Directors of said District, for the examination, approval and confirmation among other things, of all proceedings taken by said District connected with the formulation of a plan of operations for said District of all proceedings taken in connection with the assessment and apportionment of benefits, had and taken by said District by reason of the carrying out of such plan, the cost of which is represented by its first issue, first series bonds in the amount of \$238,500.00 issued for the purchase of irrigation works and water rights, and for the examination, approval and confirmation of all proceedings had and taken by said District connected with the authorization, issuance and sale of said bonds, and of all matters in connection with or related to any of the above mentioned proceedings; and

WHEREAS, after due and legal hearing on said petition, a judgment and decree was entered in said Court on January 8, 1936, approving and confirming each and all of the above mentioned proceedings and making an apportionment and distribution of benefits to and upon the lands within said District;

WITNESSETH

which lands are more particularly described in said judgment and decree and in the books and records of the District, and which includes the lands hereinafter described; and that said judgment and decree apportioned the benefits properly assessable against said lands of the party of the second part as to tract acreage, irrigable acres, acres approved for storage water benefits, amount of basic assessment, amount of storage water assessment, and the total amount of assessment as follows; to-wit:

<u>Tract Acreage</u>	<u>Irrigable Acres</u>	<u>Acres approved for storage water benefits</u>	<u>Amount Basic Assess.</u>	<u>Amount storage Water Assessment</u>	<u>Total amount assessment.</u>
160	62	59	124000	501.74	825.74

WHEREAS, the total amount of the aforesaid assessment and apportionment of benefits as fixed by said Court by its said judgment and decree of January 6, 1936, was made and decreed to be a prior and superior lien on said lands first described herein and water rights appurtenant thereto, to all mortgages and other liens against said lands and the appurtenances, and the said supplemental storage water right was decreed by judgment and decree for use upon said lands only and no other lands.

WHEREAS, bonds duly and regularly issued in the sum of \$238,500.00 by the District pursuant to legal authority therefor, have heretofore been purchased and are now owned by Reconstruction Finance Corporation under the terms and conditions of a certain agreement made, and entered into between the District and Reconstruction Finance Corporation, approved by said District of date, March 20, 1935; and

WHEREAS, George Judd is the owner and in possession of the following described lands situate in the County of Butte, State of Idaho, to-wit:

NE 1/4 Section 30, Twp. 6 North, Range 26 E.B.M.

and said lands having appurtenant thereto 125 inches of waters of Big Lost River with date of priority of May 31, 1898, said water right having been decreed to John S. Harper as right # 196 by decree signed by Judge E. S. Farrington of date of March 15, 1923, in the United States District Court of the District of Idaho, Eastern Division, in the case of the Utah Construction Company, a Corporation, as plaintiff, vs John F. Abbott, et al, as defendants in Equity # 222, which water right has been sold by George Judd to E. R. South, then E. R. South sold said water right to E. B. Call.

WHEREAS, the said George Judd was entitled to the use of said water

using upon said above described lands a certain supplemental storage water right out of the Mackay Reservoir belonging to the District for 59 acres of said lands in the amount of 1.77 acre feet per acre, or such proportion of such stored water as may be available in said reservoir from year to year to the above lands, as have been approved and allotted storage water and benefits by the said decree of confirmation dated January 6, 1936, in the District Court of the Sixth Judicial District for the State of Idaho, and for the County of Custer; and that the aforementioned supplemental storage water was sold by George Judd to E.R. South, then E. R. South sold said supplemental storage right to E.B. Call; and

WHEREAS, the party of the second part desires to change the place of use of said decreed water right, to-wit: 125 inches of the waters of Big Lost River with date of priority of May 31, 1898, and the above described supplemental storage water right of 1.77 acre feet per acre for 59 acres, from the lands above described, to the following described lands owned by the said E.B. Call, situate in the County of Butte, State of Idaho, to-wit:

SE 1/4 SW 1/4, NE 1/4, Sec. 3, Twp. 5 North, Range 26 E.B.M.
SW 1/4, NE 1/4, Section 4, Twp. 5 N. Range 26 E.B.M.

WHEREAS, said District has and holds first and prior lien upon said lands and said water first described herein for the payment of the sum of \$625.74, due thereon as an assessment and apportionment of benefits as aforesaid and it cannot legally agree to the change of place of use of all or any part of the decreed water rights or supplemental storage water rights appurtenant to said lands, unless the amount of said assessment and apportionment of benefits is first paid by the parties of the second part or shall become a first lien upon said lands to which said water rights are sought to be made appurtenant by this agreement, the maintaining of said first lien being required of said District by the said Reconstruction Finance Corporation under its said agreement with the latter; and

WHEREAS, it will be for the best interests of said District and the parties of the second part that the change of the place of use of a portion of the said water right be made as hereinbefore set forth and that such change in place of use thereof will result in a better and more efficient use of said water right and in a better quality of lands;

NOT THEREFORE, this agreement, WITNESSETH:

1. It is agreed that the aforesaid portion of the above decreed

JAN 26 1993

water right supplemental storage water right, to-wit:- 121 inches

May 31, 1898 priority and water supplemental thereto of 1.72

acre feet per acre (58 acres) or portion thereof, appurtenant to said lands first above described herein, may be transferred, or the place of use changed, by proper proceedings filed in the Department of Reclamation of the State of Idaho, from said lands first described herein to the following described lands; to-wit:-

S¹/₄SE¹/₄, SW¹/₄SE¹/₄, NE¹/₄W¹/₄ Sec. 4, Twp. North Range 26 E.B.M. and
SW¹/₄SW¹/₄, E. S¹/₄W¹/₄SE¹/₄, Section 4, Twp. 5 N. Range 26 E.B.M.

such transfer or change of place of use to be made with the distinct understanding and it is specifically agreed, that the sum of \$125.74 consisting of the following assessments, to-wit:-

Basic assessment on the 62 irrigable acres of May 31, 1898 priority	\$124.00
Storage " " " 19 acres of May 31, 1898 priority	501.74

the amount of said original assessment and apportionment of benefits, together with accrued interest, penalties, bond interest and collection charges, shall be fit a first lien in favor of said District on the said lands last above described to which said change in place of use of said water right shall be made, over and above any claim of the parties of the second part and of any and all claimants and mortgagees of said land, which amount the parties of the second part agree to pay to the District in full on the same terms and conditions as assessments and apportionments of benefits are paid by other land owners within said District under the aforesaid bond issue; and it is hereby specifically agreed that the District does not by this agreement waive, and it is hereby granted any and all legal rights provided by Title 42 of the Statutes of Idaho for levy, collection and enforcement of any and all assessments of every kind and character, including assessment for bond interest and sinking fund, hereafter levied by the District against the said lands to which said water rights are herein agreed to be transferred.

2. As a further consideration for said transfer or change of place of use, the parties of the second part specifically agree to pay any and all Irrigation District bond interest charges hereafter accruing against said lands last above described, when and as the same shall become due and under the same terms and conditions as required other land owners in said District, and they also agree to pay all assessments and apportionment of benefits and bond interest charges levied against said original lands so that there shall be no delinquent charges of any kind or character against

JUL 26 1993

said land at the time of making of this agreement.

3. It is fully agreed that before this agreement shall be fully operative and the parties bound by the provisions thereof, all mortgagees and other claimants against said lands, if any there be, shall consent in writing of such character that the claims of said mortgagees and claimants shall be subject to and inferior to the claim of the said District on said lands in which said water rights shall be transferred in the aforesaid sum of \$600.00, together with accrued interest, penalties, based on interest and collection charges.

4. It is further agreed that the parties of the second part shall at their own expense file with the Department of Reclamation of the State of Idaho, an application for the change in place of use of said water rights and they shall bear all expenses connected therewith, and this agreement shall be incorporated in and become a part of such application for transfer and should the same be approved by the Department of Reclamation it shall be issued subject to the terms and conditions of this agreement and not otherwise, and the District agrees to file a written consent to such transfer with the said Department of Reclamation provided only that such transfer is made in accordance herewith.

5. It is further agreed that should it become legally necessary subsequent hereto, in order to effectuate the change of place of use on transfer of the water rights herein described, and carry out the terms and conditions of this agreement, the parties of the second part agree to pay any and all the necessary expense thereof, including the expense of any legal action and the recording of this contract in the proper county.

6. It is further agreed that this agreement is made and entered into subject to the approval of the Reconstruction Finance Corporation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 5th October day of 1948, at Mackay, Idaho, in triplicate, one copy as signed being retained by each of the parties hereto, and one copy filed with the Department of Reclamation of the State of Idaho.

WITNESSED BY

Spencer L. Dack
J. E. McNeal

WITNESSED BY

BIG Lost RIVER IRRIGATION DISTRICT

BY *August S. Leonard*
President
Party of the first part

E. B. Carlisle
Party of the second part

WARRANTY DEED
(Idaho)

No. 10543

JUL 29 1981

LOIS J. COBURN, unmarried

Idaho, hereinafter called the Grantor, for and in consideration of ONE HUNDRED FIFTY & NO/100- DOLLARS (\$131,150.00), GRANTS, CONVEYS, and WARRANTS to STEVEN C. PURSER and DIANA A. PURSER, his wife, of Butte County, Idaho currently residing at Route #1, Box 391, Rigby, Idaho, hereinafter called the Grantee, as a community property estate, the following-described premises situated in Butte County, Idaho:

TOWNSHIP 5 NORTH, RANGE 26 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO:

SECTION 4: S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$
SECTION 5: SE $\frac{1}{4}$

TOGETHER With all water and water rights, ditch and ditch rights, including, but not limited to: 60 miner's inches of Decreed Water, priority of May 1, 1898; 125 miner's inches of Decreed Water, priority of May 31, 1898; and 6 miner's inches of Decreed Water, priority of June 1, 1895, all in Big Lost River; and water under Application No. 34-2447, approved by the Department of Water Resources on July 16, 1963.

TOGETHER With all irrigation equipment of every kind and character, used in the irrigation of the above premises, as follows:

1400' Steel Mainline (buried), 10", used;
300' Steel Mainline (buried), 10", new;
880' Steel Mainline 8", new;
1200' Steel Mainline, 6", new;
6 Wheel lines, Wade Rain, 1400', new;
1 Wheel line, Wade Rain, 1960', new;
14 Joints, handline, 3" 40', new;
1 Pump, 50 h.p., used;
1 Booster Pump, 75 h.p.,
1 Pump, 100 h.p., 1450 gpm, used.

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 Grantor does hereby covenant to and with the Grantee, that the Grantor is lawfully seized in fee simple of said premises; that they are free from all encumbrances, except as above described, and that Grantor will warranty and forever defend the title thereto against all lawful claims and demands whatsoever.

Dated this 28th day of July, 1981

Lois J. Coburn
Lois J. Coburn

STATE OF IDAHO
COUNTY OF Butte

ss:

ACKNOWLEDGMENT

On this 28th day of July, 1981, before me,
the undersigned officer, personally appeared

LOIS J. COBURN

known to me or satisfactorily proven to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(S.E.A.L.)

William G. Carlson
William G. Carlson Notary Public

My commission expires: Lifetime
Bond expires: 11/5/83

Residing at Arco, Idaho

JAN 26 1993



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

December 22, 1992

STEVEN C PURSER
RT 1 BOX 119A
MOORE ID 83255

RE: Transfer No. 2891 of Water Right No. 34-00314

Dear Mr. Purser:

Enclosed please find an Order which sets aside the above referenced transfer from further consideration by the Department.

Please be advised that if you do not agree with the decision of the Department you may, within thirty (30) days of the receipt of the order, request a hearing before the Director. Failure to timely petition the Director within thirty days of receipt of the order may prevent you from further contesting the order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Johnson', written over the typed name and title.

JIM JOHNSON
Water Right Supervisor

JJ:cz

Enclosure

26 033



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 11, 1990

Steven C. Purser
Rt 1, Box 119A
Moore, ID 83255

RE: APPLICATION FOR TRANSFER NO. 2891 OF RIGHT NO. 34-0314

Dear Mr. Purser:

On May 19, 1983, you submitted to the department the above referenced application for transfer which is still pending in department files. Final action to either approve or deny the application has not occurred.

A review of department records shows that you have not filed a Snake River Basin adjudication claim in connection with the right but that the right has apparently been claimed by Jack Walker under identification number A34-10802. The right has been claimed differently than the original right and differently from the pending application for transfer.

Since the adjudication claim is likely the more current representation of the water right than the application for transfer, the department plans to void the application for transfer and allow the adjudication claim to be the document to represent the right unless you can show within thirty (30) days why the application for transfer should be considered separately by the department.

Please feel free to contact the department if you have questions.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region - Water rights
- Adjudication
- Harold Jones

JAN 26 1991

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: A34-10802
Date Received: 1/12/1990
Receipt No: S010947
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JACK WALKER 208-554-3282
Address: RT 1 BOX 119
MOORE, ID 83255

AND/OR

Name: LOIS WALKER 208-554-3282
Address: RT 1 BOX 119
MOORE, ID 83255

2. Date of Priority: MAY 01, 1898

3. Source: BIG LOST RIVER Trib. to: SINKS

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County
06N 26E 32 NW NW BUTTE

5. Description of diverting works:
HEADGATE, DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S. ✓	(or)	A.F.A.
IRRIGATION	05/01	10/15	2.500		

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

8. Total consumptive use is 625.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
05N	26E	4	NE SW		IRR	20.0

A34-10802

Page 1

Date: 10/04/90

JAN 26 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	26E	4	NW	SW		IRR	20.0
			SW	SW		IRR	40.0
Section Acres							80.0
		5	NE	SE		IRR	45.0
			NW	SE		IRR	45.0
			SW	SE		IRR	40.0
			SE	SE		IRR	40.0
Section Acres							170.0
Total Acres							250.0

11. Place of use in counties: BUTTE

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

13. Other Water Rights Used:
A34-00405, 02447

14. Remarks:
CLAIMANTS RECORDS SHOW 125" FROM SPECIFIED DECREE WITH 1898 PRIORITY. OUR P/U RECORDS FAIL TO LIST THAT PRIORITY FOR THE ACRES CLAIMED. DECREE 34-00406 IS LISTED, BUT HAS A 1906 PRIORITY AND IS FOR 130". FURTHER RESEARCH AS TO EXACT DECREE NUMBER REQUIRED.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

UTAH CONSTRUCTION
Decree Plaintiff

JOHN F. ABBOTT, ET AL
Decree Defendant

vs

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): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

JAN 10 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: HWT

1. Right number _____ Applicant Purser
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____

4. Check:
- ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
- ☒ Description of original point of diversion.
- ☒ Description of original place of use.

5. Amount of land &/or water transferred:
- ☒ All of right.
- ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
- ☒ Check description of point(s) of diversion.
- ☒ Check description of place of use.
- ☒ Check map (shows p.d. and p.u. after transfer).
- ☒ Check for correct signature, notarization, and fee.
- ☒ Check proof of ownership of right &/or land from which water is transferred.
- ☒ Check for expansion in use of right. Comments None apparent

- i. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) T575 / 34-0405 / 34-0406

- ☒ Is use within a Watermaster District? ☒ Yes ☐ No

If yes, what district? WD #34 - Big Lost R.

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☐ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny

3. Conditions* Code 01E, 05(W.D.#34, Big Lost R.)

This right when combined with all other rights shall not

exceed 0.02 cfs/acre nor 3 acre-feet per acre ^{per} annum.

4. By Ernest Carlson Date Aug 26, 1983

9-30-83 USE CONDITIONS SHOWN ABOVE

* All uses within Watermaster Districts require special conditions.

RECEIVED
AUG 30 1983
Department of Water Resources

MEMORANDUM

TO: File 34-0314
FROM: Ernest
RE: Item 9- Other Water Rights

DATE: Jan. 13, 1984

Department records indicate that there are no other water rights for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 30, T. 6N, R. 26E, currently owned by Melvin McAffee. The remainder of the NE $\frac{1}{4}$ which was owned by Hayes White (died Nov. 1983) only has one water right. This right identified by no. 34-0049 and described by transfer no. 2247 is appurtenant to 40 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 30 T. 6N, R. 26E. There is no water appurtenant to the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 30, T. 6N, R. 26E.

RECEIVED

JAN 26 1993

March 26, 1984

Steven C. Purser
Rt. 1, Box 119A
Moore, ID 83255

RE;; Application for Transfer of Water Right No. 34-0314

Dear Mr. Purser:

Our office continues to hold the above captioned application pending receipt of a disclaimer from Mr. Melvin McAfee. This disclaimer is needed in order for you to remove water from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 30, T. 6N, R. 26E.

In order for you to keep the file on your application current, we need some direction on how you want the Department to proceed. The Department can either extend the period for holding the application or proceed with administrative action.

Final action could only grant the transfer of that portion of the right once appurtenant to the property previously owned by Mr. Hayes White. Because of the decree's vague description for the place of use, additional evidence would be needed to determine the amount eligible for transfer.

To continue postponing administrative action, we need a report of what you have done to obtain a disclaimer and a tentative date when you feel the action will be concluded.

If you need assistance or have questions, feel free to call or contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:bp

MAILED

JAN 26 1993

CONVERSATION MEMORANDUM

DATE January 13, 1984

FILE 34-0314

NAME OF PARTY Rita Lundy

EMPLOYEE Ernest Carlsen

RE: I described to Rita Lundy, Secretary of Big Lost Irrigation District, the difficulty we were having in obtaining a disclaimer from Mr. Melvin McAfee, allowing Mr. Purser's transfer of right no. 34-0314 off of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 30, T. 6N, R. 26E. According to her records, Mr. McAfee who is an older gentleman, lives out of state and traditionally is slow in responding to correspondence. To help expedite obtaining the disclaimer, Rita volunteered to contact Mr. Purser and confirm that the disclaimer had been sent to Mr. McAfee.. She will follow this up with a letter asking Mr. McAfee to return the disclaimer. If the disclaimer is not received by March 1, 1984, we need to send Mr. Purser another letter urging him to follow-up on this matter.

JAN 26 1984

November 3, 1983

Steven C. Purser
Rt. 1, Box 119A
Moore, ID 83255

RE: Application for Transfer No. 34-0314

Dear Mr. Purser:

Several months ago you filed the above application for consummate the transfer of right 34-0314 as described in an agreement between E.B. Call and the Big Lost River Irrigation District, dated October 5, 1948.

Since you do not own the decreed place of use identified as the NE 1/4 Sec. 30, T. 6N, R. 26E, the Department cannot consider approval of the application unless we are convinced the current owners of said land are agreeable to removal of the water right. This was partially accomplished by the disclaimer from Mr. Hayes White. However, we have not received a disclaimer from Mr. Melvin McAfee who is the owner of record for the NE 1/4 Sec. 30, T. 6N, R. 26E. To assist you in providing a disclaimer, from Mr. McAfee, we have enclosed an affidavit form intended to satisfy this requirement. Once the document has been signed and notarized return it to this office.

If you have questions or encounter problems in obtaining Mr. McAfee's disclaimer, please call or contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:bp

Enclosure

JAN 26 1983

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT

AUG 8 1983

NO. 34-0314

Department of Water Resources
Eastern District Office

RECOMMENDATION OF WATERMASTER

I, Eugene Gabert, watermaster of Big Lost River,
of Water District No. 34, County of Custer, State of Idaho,
whose address is Box 206 Mackay, Idaho 83251
have read the attached copy of the application for transfer of water right for _____
Purser, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: None ✓

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Mackay, Idaho, this 5 day of August 19 83.

Eugene Gabert
(signature)

JAN 26 1993

July 14, 1983

Eugene Gabert, Watermaster
Water District No. 34
Box 206
Mackay, ID 83251

RE: Applications For Transfer No. 34-0314 PURSER
34-0446A McAffee
34-0503B McAffee

Dear Mr. Gabert:

Please find enclosed a copy of the above referenced applications and watermaster recommendation forms. Please review the applications and complete the forms, returning them to this office on or before Aug. 1, 1983.

Thank you for your cooperation in this matter.

Sincerely,

BARBARA L. POWERS
Secretary

Enclosures

RECORDED

JAN 26 1983

CONVERSATION MEMORANDUM

DATE 6-9-1983

FILE _____

NAME OF PARTY Charley Burns - County Surgeon, ✓EMPLOYEE Ernest Carlson.

RE: Telecon w/ Charley Burns at Custer County Assessor's Office
Records indicate ownership of NE 1/4 Sec. 30 T.6N
Rge 26E as follows:

NE 1/4 NE 1/4 - Melvin McAffee, ✓

W 1/2 NE 1/4, SE 1/4 NE 1/4 - Hayes White. ✓

Telecon w/ Mrs. Steven Purson: Advised Mrs. Purson of
need for disclaimer from Melvin McAffee, and that
we would initiate processing of the application, but
final action would be delayed pending receipt of
McAffee disclaimer. ✓

RECEIVED

JAN 26 1993

U

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 34-0314

Notice is hereby given that Steven C. Purser, Moore, Idaho, has applied to the Dept. of Water Resources for a change in the point of diversion and place of use of the waters of Big Lost River tributary to Sinks. The right sought to be changed is evidenced by Decree No. 34-0314 to John S. Harper in case of Utah Construction Co. vs. John F. Abbott, et al dated in 10-21-1925 in District Court, Butte and Custer Counties and is recorded as follows:

AMOUNT: 2.5 cfs

PRIORITY: 5-31-1898

POINT OF DIVERSION: NE $\frac{1}{4}$ Sec. 24, T. 6N, R. 25E, B.M.
Custer County;

The water is used to irrigate lands within the NE $\frac{1}{4}$ Sec. 30, T. 6N, R. 26E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 14, T. 6N, R. 25E, B.M. Custer County and used to irrigate 125 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 4, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 5, T. 5N, R. 26E, B.M. .

Any protest against the above proposed change of water right must be filed with the Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before August 1, 1983

A. KENNETH DUNN

Director

Published in the Custer County Publishing Co. on 7/14 & 7/21/83.

JAN 26 1983