

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 E. Dale &/or Mildred H. Jolley Phone 756-3461Post office address Route #1, Box 15, Salmon, ID 83467**A. DESCRIPTION OF RIGHT AS RECORDED****1. Right evidenced by:**

a. Decree to E. Dale &/or Mildred H. Jolley 74-0005 and 74-1669B
(Name)
in case of Proposed Finding of Water vs _____
dated Rights in Lemhi River Basin Civil Case No. 4948
in 7th Judicial Dist. county of Lemhi
(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 appurtenantApplicant is original holder of right.**3. Source of water** Geertson Creek tributary to Lemhi River**4. Date of priority** 5/1/1879 (74-0005) 5/5/1893 (74-1669B)**5. Water is used for the following purposes:**4-0005 amount 1.00 for irrigation purposes from 4/1 to 11/14-1669B amount 0.90 for irrigation purposes from 4/1 to 11/1amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)**6. Total amount of water under right:** a. 1.90 cubic feet per second
b. _____ &/or
_____ acre feet per annum**7. Location of original point of diversion is** SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17Township 21N Range 23E, B.M., in Lemhi County

Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
					22.3														
21N	23E	19			31.4											19.3			73.0
		20							9.2										9.2

Total number of acres to be irrigated 82.2**9. Describe any other water rights used for the same purposes as described above** Late priorityrights proposed in stipulation still pending judgement by the court.

DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion
 - a. Amount of water to be diverted 1.90 c.f.s. &/or _____ acre feet
 - b. Point(s) of diversion SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17 Township 21N
Range 23E, B.M., Lemhi County
Additional points ~~SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17, Twp. 21N, Rge. 23E~~ *E.D.J. Aug 7, 1981*
 - c. Description of diverting works headgate diverts water into open ditches.
 - d. Describe the reasons for applying for a change in the point(s) of diversion Consolidates irrigation stream for easier regulation and irrigation. Also portions of place of use can not be irrigated from original point of diversion.

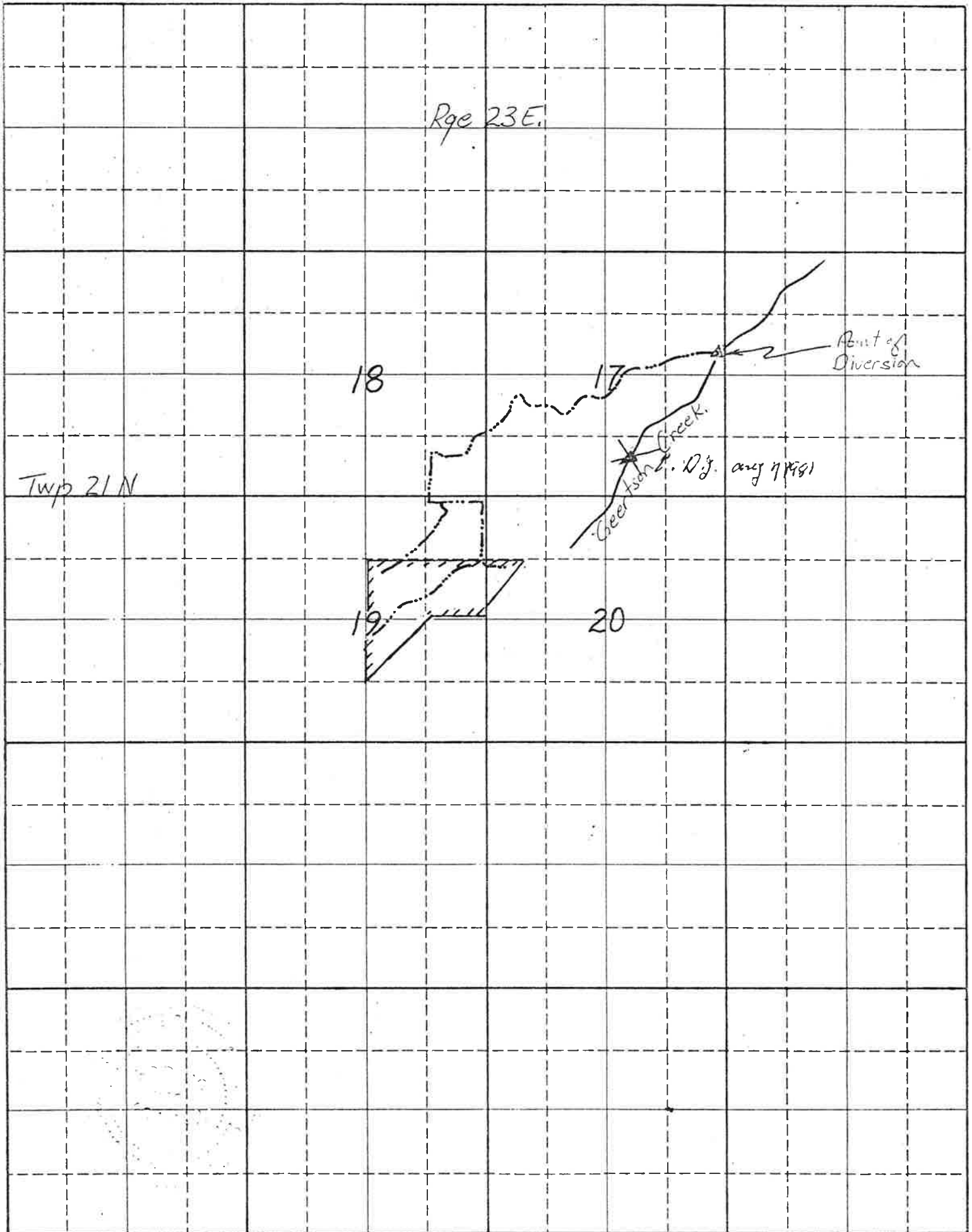
2. Change in place of use NO CHANGE

- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

Total number of acres to be irrigated _____

3. 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.

4. Remarks Right No. 74-0002 and 74-1669A are also diverted from the
point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 17, Twp. 21N, Rge. 23E

I hereby assert that no one will be injured by such change and 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.

E. Dale Kelley
(Signature of applicant)

Subscribed and sworn to before me this 20 day of March, 19 81.

Kathleen A. Walker
(Notary public)

My commission expires 2/15/1983

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 74-0005 & 74-1669B
and said application is hereby APPROVED, subject to the following limitations and conditions:
PURSUANT TO MEMORANDUM DECISION AND ORDER

Witness my hand this 13th day of May, 19 82.

L. GLEN SAXTON, Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by EMC Date March 20, 1981 Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by KW Date 3/20/81 # 17115

Published in Recorder Herald Copies of protest forwarded by _____

Pub. dates 4/02 & 4/09/81 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for approval denial

rec'd. 4-13-1981 by EMC

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 E. Dale &/or Mildred H. Jolley Phone 756-3461Post office address Route #1, Box 15, Salmon, ID 83467**A. DESCRIPTION OF RIGHT AS RECORDED****1. Right evidenced by:**a. Decree to E. Dale &/or Mildred H. Jolley 74-0005 and 74-1669B
(Name)in case of Proposed Finding of Water vs
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dated _____ in 7th Judicial Dist. county of Lemhi
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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

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 is original holder of right.

3. Source of water Geertson Creek tributary to Lemhi River4. Date of priority 5/1/1879 (74-0005) 5/5/1893 (74-1669B)**5. Water is used for the following purposes:**74-0005 amount 1.00 for irrigation purposes from 4/1 to 11/174-1669B amount 0.90 for irrigation purposes from 4/1 to 11/1amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)6. Total amount of water under right: a. 1.90 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17
Township 21N Range 23E, B.M., in Lemhi County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
						22.3													
21N	23E	19			31.4											19.3			73.0
		20							9.2										9.2

Total number of acres to be irrigated 82.2

9. Describe any other water rights used for the same purposes as described above Late priority
rights proposed in stipulation still pending judgement by the court.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____

3. 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	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion

- a. Amount of water to be diverted 1.90 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion SE ¼ NE ¼, Section 17 Township 21N
Range 23E, B.M., Lemhi County

Additional points SW¼SE¼, Sec. 17, Twp. 21N, Rge. 23E *E.D.J. Aug 7, 98*

- c. Description of diverting works headgate diverts water into open ditches.

- d. Describe the reasons for applying for a change in the point(s) of diversion Consolidates irrigation stream for easier regulation and irrigation. Also portions of place of use can not be irrigated from original point of diversion.

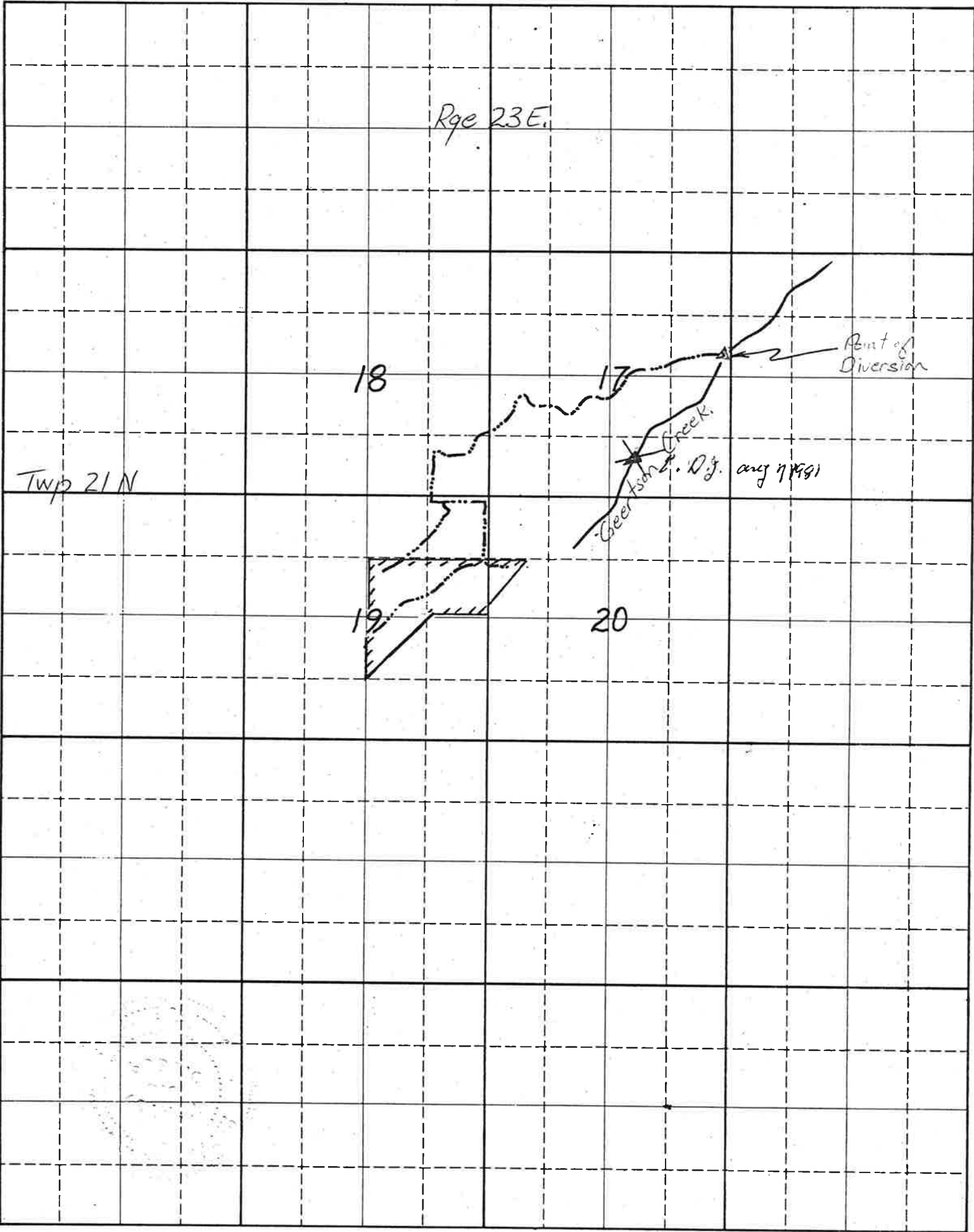
2. Change in place of use NO CHANGE

- a. Describe the lands 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	

Total number of acres to be irrigated _____

3. 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.

4. Remarks Right No. 74-0002 and 74-1669A are also diverted from the
point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 17, Twp. 21N, Rge. 23E

I hereby assert that no one will be injured by such change and 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.

E. Dale Falley
(Signature of applicant)

Subscribed and sworn to before me this 20 day of March, 1981.

Kathlyn A. Walker
(Notary public)

My commission expires 2/15/1983

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 74-0005 & 74-1669B
and said application is hereby APPROVED, subject to the following limitations and conditions:
PURSUANT TO MEMORANDUM DECISION AND ORDER

Witness my hand this 13th day of May, 1982.

L. GLEN SAXTON, Chief, Operations Bureau

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Pub. dates 4/02 & 4/09/81 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for approval denial

_____ rec'd. 4-13-1981 by EMC

Copy sent 74-N 5/21/82 CW

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

MAY 18 1982

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPLICATION FOR TRANSFER)
NO. 74-0005/74-1669B IN THE NAME OF)
E. DALE JOLLEY AND/OR MILDRED H. JOLLEY)

MEMORANDUM DECISION
AND ORDER

On March 20, 1981, E. Dale and or Mildred H. Jolley applied to the Department of Water Resources for an application to add a point of diversion to rights No. 74-0005 and 74-1669B. These rights are listed in the Proposed Finding of Water Rights in the Lemhi River Basin, Case No. 4948 in the Seventh Judicial District Court, Lemhi County. Right No. 74-0005 is based on a previous decree and right No. 74-1669B is based upon diversion and beneficial use of the water. The new point of diversion would be in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M. and would be used in conjunction with the diversion of record located in the SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M., Lemhi County. No change was requested in the place of use.

Notice of the application was published in the Recorder Herald, Salmon, Idaho, on April 2 and 9, 1981. The application was subsequently protested on April 8, 1981, by the Lemhi Irrigation District and Joseph Tonsmeire. Additional protests were received on April 9, 1981 from Vergil O. Olson and Verdell Olson.

On August 7, 1981, the Department conducted a hearing in the matter at the Lemhi County Courthouse, Salmon, Idaho. The protestant, Joseph Tonsmeire, was present and was represented by James C. Herndon, Attorney at Law. As acting secretary, Mr. Herndon, also represented the Lemhi Irrigation District. The protestants, Vergil Olson and Verdell Olson, were present and represented themselves. The applicants were present and represented by Kent Foster, Attorney at Law. At the conclusion of the pre-hearing conference the protestants, Joseph Tonsmeire and the Lemhi Irrigation District, both withdrew their protest against granting the application for transfer.

Kent Foster, on behalf of his clients stated that the intent of this application was to update the Proposed Finding of Water Rights in the Lemhi River Basin to be consistent with existing practice. He indicated that for several years, his clients have been diverting rights No. 74-0005 and 74-1669B

in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E. Dale Jolley acknowledged that the recorded point of diversion was no longer indicated in the Proposed Finding of Water Rights in the Lemhi River Basin and it was not his intention to retain the old point of diversion. Mr. Jolley then amended his application to show a single point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M. Kent Foster emphasized that his clients wished to change only the recorded point of diversion; all other aspects of these rights would remain unchanged.

Vergil Olson indicated that the applicants' practice of diverting these rights through the proposed point of diversion has resulted in the water being used on lands that were not listed in the Proposed Finding of Water Rights. He also stated that improper administration of the creek by the watermaster has benefited upstream diverters, which included the applicants, while adversely effecting delivery of water rights to diversions lower on the creek. Verdell Olson also expressed opposition to the water being used on lands that were developed after the rights were established. The Director having listened to the record made at the hearing in conformance with Idaho Code, Sec. 67-5211 and based upon the testimony obtained at the hearing, the files and records of the Department and his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order.

Review of Evidence

Department Records Considered

1. Application for transfer of water rights No. 74-0005 and 74-1669B receipted March 20, 1981.
2. Affidavit of publication of notice of application for transfer received April 10, 1981.
3. Letters of protest from Lemhi Irrigation District and Joseph Tonsmeire received April 8, 1981 and a letter of protest from Vergil O. Olson and Verdell Olson received April 9, 1981.
4. Proposed Finding of Water Rights in the Lemhi River Basin, Case No. 4948 in the Seventh Judicial District Court, Lemhi County.
5. Withdrawal of protest from Lemhi Irrigation District and Joseph Tonsmeire received August 17, 1981.

FINDINGS OF FACT

1. The Proposed Finding of Water Right, Lemhi River Drainage, describe the point of diversion of right Nos. 74-0005 and 74-1669B as located in the

SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E and the place of use as the 82.2 acres of land in the SW1/4NE1/4, SE1/4NE1/4, NW1/4SE1/4, Sec. 19, SW1/4NW1/4, Sec. 20, Twp. 21N, Rge. 23E. Rights No. 74-0002 and 74-1669A were diverted from a point in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E for the irrigation of 102.4 acres in Lot 3, Lot 4, SE1/4SW1/4, Sec. 18, NE1/4NE1/4, NW1/4NE1/4, SEC. 19, Twp. 21N, Rge. 23E. An additional 8.8 acres in the NE1/4NW1/4, Sec. 19, Twp. 21N, Rge. 23E was also irrigated under right No. 74-1669A.

2. Rights No. 74-1669A and 74-1669B both have a priority of May 5, 1893. If diverted through the same heading, they could be regulated as a single right appurtenant to 193.4 acres. These lands are also the place of use for decreed water right No. 74-0002 and 74-0005.

3. Right No. 74-0002 and 74-0005 have priorities of May 1, 1870 and May 1, 1879 respectively. However, these rights are consecutive in the decree, i.e. there are no intervening rights between them. Thus, these rights could be delivered by the watermaster at a common point of diversion and would be appurtenant to all the lands covered by rights No. 74-1669A and 74-1669B except 8.8 acres in the NE1/4NW1/4, Sec. 19, Twp. 21N, Rge. 23E.

CONCLUSIONS OF LAW

1. The elimination of a point of diversion in the SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E and the subsequent delivery of right No. 74-0002, 74-0005, 74-1669A and 74-1669B in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E will simplify the regulation of these rights by the watermaster.

2. The change proposed by this application does not expand or enlarge rights No. 74-0005 and 74-1669B.

3. The relocation of the point of diversion for right No. 74-0005 and 74-1669B will not adversely affect the protestants' water rights in Water District 74-A, Geertson Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Transfer of Water Right No. 74-0005 and 74-1669B be and is APPROVED subject to the following conditions:

1. 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 at the applicants' point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E B.M., prior to diversion of water under this approval.

2. Use of water under this transfer is subject to control by the watermaster of Water District 74-A, Geertson Creek.

3. Diversion of water under rights 74-0005 and 74-1669B shall be only from the point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E B.M.

4. Each of the rights included in this transfer shall be used only on the lands to which they are appurtenant as listed in the records of the Idaho Department of Water Resources. The right holder shall not use nor demand delivery of water by the watermaster for use on lands to which the rights are not appurtenant.

5. The right holder shall provide reasonable access to the watermaster to inspect the point of diversion and place of use for water being diverted under this transfer.

6. Failure of the right holder to comply with the conditions of this approval shall constitute cause for the Director of the Idaho Department of Water Resources to revoke approval of this transfer.

7. The Director of the Idaho Department of Water Resources retains jurisdiction of this approval to insure compliance with the conditions listed herein.

8. This approval is not intended to confirm the validity of claim to a water right No. 74-1669B.

Signed this 12 day of May, 1982.



A. KENNETH DUNN

Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

JUL 28 1982

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPLICATION FOR TRANSFER)
OF WATER RIGHT NOS. 74-0005 & 74-1669B IN)
THE NAME OF E. DALE &/OR MILDRED H. JOLLEY)

ORDER

WHEREAS, on May 12, 1982, the Director of the Department of Water Resources approved transfer No. 2537 to change the point of diversion of water right Nos. 74-0005 and 74-1669B; and,

WHEREAS, on June 1, 1982, a response, an objection and a request for a new proceeding was received from Matthew Mullaney, attorney for Vergil and Verdell Olson; and,

WHEREAS, the petition raised three objections to the decision as follows:

1. The Olsons have not waived their right to a Proposed Memorandum Decision and Order under the Administrative Procedure Act. The final action of the Director of May 12, 1982 is premature. A proposed decision should issue.

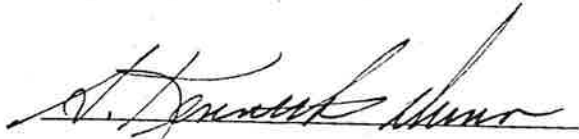
2. The action of the Director is contrary to law. Sections 42-108 and 42-222 require that a party gain prior approval to change a point of diversion or place of use. The evidence is uncontradicted that Jolley has already moved the point of diversion for right 74-0005 and 74-1669B to the higher point of diversion.

3. There is no competent and probative recommendation by the watermaster on the application for transfer as required by Section 42-222. The watermaster did not attend the hearing on the protest. Consequently, in the absence of any opportunity to confront the watermaster and to cross-examine him, there is no probative evidence from the watermaster to support the transfer of water rights.

WHEREAS, 1. the Director's review of the record would make oral argument and reiteration of that record by the parties meaningless; 2. the act of changing the point of diversion without receiving the required approval does not preclude a proper application for change ever being made; the remedy of a change being made without the necessary approval is to obtain that approval as quickly as possible; 3. the recommendation of the watermaster was received as required by Sec. 42-221, Idaho Code. The protestants could have, if they felt the watermaster's testimony critical to their position availed themselves of the procedure to assure the watermaster's presence.

THEREFORE, the petition for rehearing of Application for Transfer of water right Nos. 74-0005 and 74-1669B is hereby DENIED.

Dated this 20 day of July, 1982.

A handwritten signature in black ink, appearing to read "A. Kenneth Dunn", written over a horizontal line.

A. KENNETH DUNN

DIRECTOR

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER

NO. 74-0005/74-1669B IN THE NAME OF

E. DALE JOLLEY AND/OR MILDRED M. JOLLEY

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of July, 1982 a true and correct
copy of the foregoing ORDER was mailed postage prepaid to:

E. Dale and Mildred H. Jolley
Route 1, Box 15
Salmon, ID 83467

Joseph Tonsmeire
c/o James Herndon
Herndon Hotel Block
Salmon, ID 83467

James C. Herndon
Acting Secretary
Lemhi Irrigation District
Herndon Hotel Block
Salmon, ID 83467

Vergil O. Olson
Route 1 Box 12
Salmon, ID 83467

Verdell Olson
Route 1, Box 17-A
Salmon, ID 83467

Matthew Mullaney
802 W. Bannock St.
Boise, ID 83702


RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources