

T1884 WOODFIELD

1 1 1 1 1

Identification No.

32-0034 32-0036

Transfer No. 32-0035 32-0037

APPROVED

RECEIVED

JUN 2 1975

Department of Water Resources
Eastern District Office

- b. License No. _____ issued by the State of Idaho, Department of Reclamation.

[illegible]

NOTE: Attachments B, C, & D are on file with the Department of Water Resources in Boise, Idaho.

9. If applicant was not the original holder of this right explain how it was acquired: Purchased by -
contract. See attachment C

10. CHANGE IN POINT OF DIVERSION

See attachment

- a. Quantity to be diverted at new point: A & D c.f.s. and/or acre feet
- b. New point of diversion: ^{also SW} NW ^{SW} 1/4 NW 1/4, Section 20 ¹⁷ ^{being the old point} Township 10N ^{E.T.W.}
Range 35E, B.M.
- c. Description of method of diversion and conveyance from new points of diversion: During the spring of 1970 we installed a new concrete steel reinforced SCS approved diversion structure at the site of the old diversion structure, License No. 19028, page 476
This new structure diverts the water into the main irrigation ditch which carries it to the lands to be irrigated.
- d. Is water to be conveyed to the lands previously irrigated? Yes Yes No
If not, the place of use should be changed below.
- e. Describe the reasons for applying for a change in the point of diversion:
See attachment No. E

- ^{E.T.W.} but without giving the right to use the old diversion point upon timely notice to the water master as in g
- f. Do you intend to make the transfer permanent? Yes, 1 The old diversion point is boggy in the weir pond and neither my interests nor those of other water users are helped by locating my diversion point there.
- g. Do you intend to abandon completely the old point of diversion? Yes, 1 Measuring my decreed water at the new structure at NW 1/4 of Sec. 20 would save money for me and would save water for the other Medicine Lodge water users. (See enclosed 1972 Watermaster investigations of two weirs.)
- h. Indicate on the above plat the new point of diversion and lands to be irrigated.

11. CHANGE IN PLACE OF USE NO CHANGE

- a. Describe the new lands on which you wish to use your right.

^{E.T.W.} notify the water master each season as to which point of diversion will be used for the decreed water during such season

TWP.	RANGE	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 number of acres to be irrigated

Place of Use Legend	New Point of Diversion	*
32-0034		20
32-0035		
32-0036		
32-0037		
*All of this 9.42 Sec. Ft. of 1887 and 1884 decreed water is delivered in one stream 30 and may be used on any or all of the land indicated on this map by agreement with the water users and with the approval of the Department of Water Administration.		
	R. 34E	31
	R. 35E	32
T. 10N		
T. 9N		
1	6	5
		4
12	7	8
		9

SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

- b. Do you intend to make the transfer permanent? _____
- c. Are you completely abandoning the lands previously irrigated by this right? If not, explain your plans:

- d. Describe any other water rights that you claim for the new ground upon which you wish to transfer this right:

- e. Indicate on the above plat the new land to be irrigated and the point of diversion.

I hereby assert that no one will be injured by such transfer and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

Elman T. Woodfield
 (signature of applicant)

Subscribed and sworn to before me this 25 day of January, 19 73

R. D. [Signature]
 (notary public)
 CLERK OF DISTRICT COURT
 CLARK COUNTY, IDAHO

My commission expires _____

BY _____ DEPUTY

**ACTION OF STATE RECLAMATION ENGINEER
 AND CERTIFICATE OF TRANSFER**

32-0034 32-0036

This is to certify that I have examined Application for Transfer of Water Rights No. 32-0035 32-0037

and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions:

Subject to Memorandum Decision & Order of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 28th day of May, 19 75

[Signature]
 Director ~~State Reclamation Engineer~~
 Idaho Department of Water Resources

FOR DEPARTMENT USE ONLY

Received by ba Date 12/18/72

Prelim. check by RMT Date 12/18/72

Fee received by ba Date 12/18/72 Fee \$ 30.00 # 7049

Approved for publication by _____

Published in [Signature] Dates 2/15&22/73

Hearing held _____

Watermaster Recommendation sent _____

Protest filed by: _____ Date _____

Holmes Bros. by Gerald [Signature]
 Dean Shenton Holmes
 Leland Small _____
 Hollis Shenton _____
 Garrett Roundy _____
 Thomas C. Stelzer _____
 Dave Stelzer _____
 Ben T. Fayle _____
 Kenneth Rowland _____
 Earl Doschades _____
 Hugh R. Webster & Lynn H. Hoggan _____

ATTACHMENT A

- 32-0034 Decreed to: T. G. Bond, et al
Place of use: $W\frac{1}{2}E\frac{1}{2}$, $W\frac{1}{2}$, Sec. 20, Twp. 10N, Rge. 35E. B.M.
Rate of Diversion: 3.00 cfs
Priority: 10-1-1883
- 32-0035 Decreed to: T. G. Bond
Place of use: $NE\frac{1}{4}$, $W\frac{1}{2}$, $N\frac{1}{2}SE\frac{1}{4}$, Sec. 29, Twp. 10N, Rge. 35E. B.M.
Rate of Diversion: 2.92 cfs
Priority: 10-1-1883
- 32-0036 Decreed to: Stacy V. Bond
Place of use: $E\frac{1}{2}$, Sec. 30, Twp. 10N, Rge. 35E. B.M.
Rate of Diversion: 2.00 cfs
Priority: 4-15-1884
- 32-0037 Decreed to: J. Garfield Bond
Place of use: All Sec. 32, Twp. 10N, Rge. 35E. B.M. $S\frac{1}{2}$ Sec. 4;
 $E\frac{1}{2}$, $W\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, Sec. 5; Lots 1 & 2, $S\frac{1}{2}NE\frac{1}{4}$ Lots 6 & 7, $E\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}$,
Sec. 6; $E\frac{1}{2}$, $E\frac{1}{2}W\frac{1}{2}$, Lots 1, 2, 3, 4, Sec. 7; $W\frac{1}{2}$, $SW\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$,
Sec. 8; All Sec. 9; Twp. 9N, Rge. 35E. B.M. $S\frac{1}{2}$ Sec. 1; All Sec. 12,
Twp. 9N, Rge. 34E. B.M.
Rate of Diversion: 1.50 cfs
Priority: 5-20-1884

ATTACHMENT E

The creek at the old diversion point pond is a sink hole. I can't take my equipment in without going down. It took three men almost three days with two trucks, two tractors, a dozer and farmhand to haul dirt and rocks and install the wier at the old diversion point so that it met the requirements of the watermaster for the study of the two wiers. This wier must be installed like this each spring or another expensive structure like the one at Section 20 must be built. .

Another reason is if the decreed water is measured at the old diversion point, they will not measure my licensed water at any other diversion point. An equitable solution for all water users is to change the decreed water diversion point to the new structure at Section 20 with the automatic water loss for me, which the study indicates, and change the Garretson licensed right from Section 6 over three miles up stream to the new structure at Section 20 with me taking this creek loss and with no water loss or injury to other users from either of these changes of diversion points. (See enclosed 1972 watermaster investigation of two wiers).

RECEIVED

JUN 2 1975

Department of Water Resources
Eastern District OfficeOF THE
STATE OF IDAHO

MEMORANDUM DECISION

AND ORDER

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER
RIGHTS NO. 32-0034, 32-0035, 32-0036, & 32-0037 in
the name of ELMAN T. WOODFIELD

On December 18, 1972, Elman T. Woodfield filed Application for Transfer of Water Rights No. 32-0034, 32-0035, 32-0036 and 32-0037 as obtained in the decree of Robson -vs- Colson, et al. as follows:

- | | |
|---------|--|
| 32-0034 | Decreed to: T. G. Bond, et al
Place of Use: $W\frac{1}{2}E\frac{1}{2}$, $W\frac{1}{2}$, Sec. 20, Twp. 10N, Rge. 35E, B.M.
Rate of Diversion: 3.00 cfs
Priority: October 1, 1883 |
| 32-0035 | Decreed to: T. G. Bond
Place of Use: $NE\frac{1}{4}$, $W\frac{1}{2}$, $NE\frac{1}{4}SE\frac{1}{4}$, Sec. 29, Twp. 10N, Rge. 35E, B.M.
Rate of Diversion: 2.92 cfs
Priority: October 1, 1883 |
| 32-0036 | Decreed to: Stacy V. Bond
Place of Use: $E\frac{1}{2}$, Sec. 30, Twp. 10N, Rge. 35E, B.M.
Rate of Diversion: 2.00 cfs
Priority: April 15, 1884 |
| 32-0037 | Decreed to: J. Garfield Bond
Place of Use: All Sec. 32, Twp. 10N, Rge. 35E, B.M., $S\frac{1}{2}$, Sec. 4; $E\frac{1}{2}$, $W\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, Sec. 5; Lots 1 & 2, $S\frac{1}{2}NE\frac{1}{4}$, Lots 6 & 7, $E\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}$, Sec. 8; All Sec. 9; Twp. 9N, Rge. 35E, B.M., $S\frac{1}{2}$, Sec. 1; All Sec. 12, Twp. 9N, Rge. 34E, B.M.
Rate of Diversion: 1.50 cfs
Priority: May 20, 1884 |

All of the water is diverted from a point located in the $SW\frac{1}{4}SW\frac{1}{4}$, Sec. 17, Twp. 10N, Rge. 35E, B.M.

#1884

The applicant proposed, by this transfer, to establish an additional point of diversion in the $NW\frac{1}{4}NW\frac{1}{4}$, Sec. 20, Twp. 10N, Rge. 35E, B.M., which is approximately one-half mile downstream from the original point of diversion.

This change in the point of diversion was protested by several water users on Medicine Lodge Creek, on the basis that additional water would be lost to the stream for conveyance of the water to a downstream point of diversion.

On March 28, 1973, a conference was held to consider the protest and all parties agreed to allow the Department of Water Resources to reach a decision, based upon the information obtained at the conference and the information contained in the Department's record and gathered during a field study of the proposed change. Therefore, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

(1) The reasonable conveyance loss based upon field measurements for the reach of Medicine Lodge Creek between the existing and proposed points of diversion is 6%.

(2) Water will not be diverted from both points of diversion during a single season.

(3) Existing water rights would not be injured if a conveyance loss is charged to the water delivered at the lower point of diversion. No loss should be charged against the water delivered at the upper point of diversion.

CONCLUSIONS OF LAW

(1) The other existing water rights on Medicine Lodge Creek must be protected by charging a conveyance loss of 6% as follows:

<u>Right No.</u>	<u>Decreed Amount</u>	<u>Less 6%</u>	<u>Amount Available at the Lower Diversion</u>
32-0034	3.00	0.18	2.82
32-0035	2.92	0.18	2.74
32-0036	2.00	0.12	1.88
32-0037	1.50	0.09	1.41

(2) No conveyance will be charged to the water diverted from the old point of diversion located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, Twp. 10N, Rge. 35E, B.M.

ORDER

IT IS, THEREFORE, ORDERED and Application for Transfer of Water Rights No. 32-0034, 32-0035, 32-0036 and 32-0037 is hereby APPROVED subject to the following conditions:

1. That measuring devices of a type approved by the Department shall be permanently installed and maintained as a part of the diverting works.
2. That the water can be diverted from only one point of diversion in a single season and that the watermaster be notified of any change in delivery point from the previous season prior to the beginning of irrigation.
3. That the amount of water diverted at the point of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 20, Twp. 10N, Rge. 35E, B.M., shall not exceed the following:

32-0034	2.82 cfs
32-0035	2.74 cfs
32-0036	1.88 cfs
32-0037	1.41 cfs
4. During the years that water is diverted at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, Twp. 10N, Rge. 35E, B.M., no conveyance loss shall be charged, and the amount of water diverted shall not exceed the following:

32-0034	3.00 cfs
32-0035	2.92 cfs
32-0036	2.00 cfs
32-0037	1.50 cfs

Dated this 28 day of May, 1975.


R. KEITH HIGGINSON, Director

BDF:jg

LAW OFFICES OF
ALBAUGH, SMITH & PIKE
P.O. Box 428
IDAHO FALLS, IDAHO 83401

RALPH L. ALBAUGH (1893-1974)
ARTHUR L. SMITH
EDWARD W. PIKE

SIMON S. MARTIN
JAY B. GASKILL

FOURTH FLOOR
ROGERS ANNEX BUILDING
TELEPHONE 208/522-6291

August 1, 1975

RECEIVED

AUG 4 1975

Department of Water Resources
Eastern District Office

Department of Water Resources
State of Idaho
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

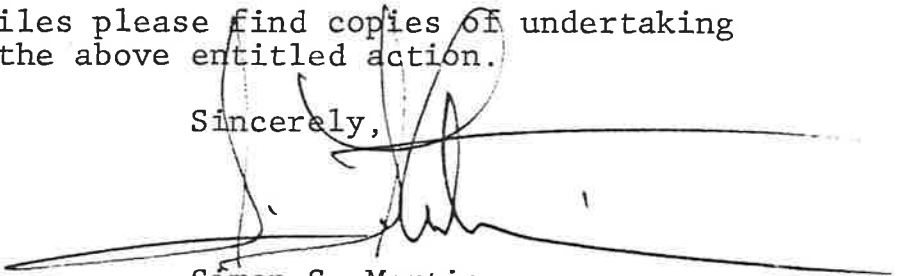
Attention: Ronald D. Carlson

Re: Application of Elman T. Woodfield

Gentlemen:

Enclosed for your files please find copies of undertaking
on appeal filed in the above entitled action.

Sincerely,



Simon S. Martin

fo
enclosure



UNITED PACIFIC Insurance Company

HOME OFFICE TACOMA, WASHINGTON

STATE OF IDAHO,

County of CLARK

IN THE DISTRICT COURT OF THE SEVENTH
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR CLARK COUNTY.

IN RE: APPLICATION OF ELMAN T. WOODFIELD
TO CHANGE POINT OF DIVERSION OF WATER

~~Plaintiff~~

vs.

RIGHT ON MEDICINE LODGE CREEK,
NO. 32-2076.

~~Defendant~~

Undertaking on Appeal

(Costs Only)

Case No. 2-286
2-287

Whereas, the Applicant, Elman T. Woodfield, in the above-entitled
action has appealed ~~about~~ appealed to the District Court of the State of Idaho,
from a Memorandum Decision and Order of the Department of Water Resources,
from a State of Idaho, by it's Director, R. Keith Higginson, ~~entered against~~ in said action,
in said ~~Court, in favor of the~~

entered ~~in said action~~ on the 28th day of May, 19 75,
and whereas, the Applicant desires to provide an undertaking as required by
for Section 42-222 (3), Idaho Code, and Rule 83 (h), IRCP. (\$) ~~Dollars~~
and costs of suit. (\$) ~~Dollars~~.

Now, Therefore, in consideration of the premises and of such appeal, the undersigned UNITED PACIFIC
INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Washington,
and duly authorized to transact a general surety business in the State of Idaho, does hereby undertake and
promise on the part of the Appellant... that said Appellant... will pay all damages and costs which may be

awarded against him
on the appeal, or on a dismissal thereof, not exceeding THREE HUNDRED DOLLARS, to which amount it
acknowledges itself bound.

In Witness Whereof, the said surety has caused these presents to be executed and its official seal attached by
its duly authorized Agent at Dubois,
Idaho, the 30th day of July, A. D. 19 75

UNITED PACIFIC INSURANCE COMPANY

By Raymond Smith
Attorney-in-Fact

Countersigned:

Raymond Smith
Agent at Dubois, Idaho

Dept of Water

CIVIL CASE NO. 2-286

RECEIVED
AUG 28 1975

Department of Water Resources
Eastern District Office

EIMAN T. WOODFIELD

)
Plaintiff

A. L. Smith
Albaugh et al
370 B St. Box 428
Idaho Falls, Idaho

VS.

DEPARTMENT OF WATER RESOURCES)
Defendant

7-15-75	Notice of Appeal and Petition & Copy of
7-25-75	Application for Transfer of Water Right
7-25-75	No. 32-2076
7-30-75	Undertaking
8-7-75	Answer

CIVIL CASE NO. 2-287

ELMAN T, WOODFIELD

Plaintiff

)

A. L. Smith
Albaugh et al
370 B St.
Box 428

VS.

Idaho Falls, Idaho 83401

Department of Water Resources
Defendant

)

7-25-75

Notice of Appeal & Petition & Copy of

7-25-75

Application for Transfer of Water Right

7-25-75

Nos. 32-0034, 32-0035, 32-0036

7-30-75

Undertaking

8-7-75

Answer

NATHAN W. HIGER
Legal Counsel
Idaho Department of
Water Resources
Statehouse
Boise, ID 83720
TELEPHONE: 384-2215

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CLARK

IN RE: APPLICATION OF ELMAN	)	
T. WOODFIELD TO CHANGE POINT	)	CASE NO. 2286
OF DIVERSION OF WATER RIGHT	)	
ON MEDICINE LODGE CREEK, NO.	)	ANSWER
32-2076.	)	

COMES NOW the Respondent, R. Keith Higginson, Director,
Idaho Department of Water Resources, and by way of answer to
the notice of appeal filed by Elman T. Woodfield, states and
answers as follows:

I

The decision rendered by the Director, Idaho Department
of Water Resources, was valid and in conformance with his duty
to protect other water rights and in strict conformance with
Idaho law.

II

The changes if allowed as requested would injure other
water rights, and in conformance with Idaho Code, §42-222 the
Director, Idaho Department of Water Resources could not approve
the change without the conditions imposed.

WHEREFORE, the Appellant is not entitled to the requested
change in point of diversion without the conditions imposed,
and after the trial herein the Respondent's decision should be
affirmed and the appeal dismissed.

DATED this 6th day of August, 1975.


NATHAN W. HIGER
Legal Counsel
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of August, 1975
a true and correct copy of the foregoing ANSWER was mailed,
postage prepaid to:

Mr. A.L. Smith
ALBAUGH, SMITH & PIKE
370 "B" Street
P.O. Box 428
Fourth Floor, Rogers Annex
Building
Idaho Falls, ID 83401


NATHAN W. HIGER

NATHAN W. HIGER
Legal Counsel
Idaho Department of
Water Resources
Statehouse
Boise, ID 83720
TELEPHONE: 384-2215

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CLARK

IN RE: APPLICATION OF ELMAN	)	
T. WOODFIELD TO CHANGE POINT	)	CASE NO. 2287
OF DIVERSION OF DECREED WATER	)	
RIGHTS ON MEDICINE LODGE CREEK,	)	ANSWER
NOS. 32-0034, 32-0035, 32-0036,	)	
and 32-0037.	)	

COMES NOW the Respondent, R. Keith Higginson, Director,
Idaho Department of Water Resources, and by way of answer to
the notice of appeal filed by Elman T. Woodfield, states and
answers as follows:

I

The decision rendered by the Director, Idaho Department
of Water Resources, was valid and in conformance with his duty
to protect other water rights and in strict conformance with
Idaho law.

II

The changes if allowed as requested would injure other
water rights, and in conformance with Idaho Code, §42-222 the
Director, Idaho Department of Water Resources could not approve
the change without the conditions imposed.

WHEREFORE, the Appellant is not entitled to the requested
change in point of diversion without the conditions imposed,
and after the trial herein the Respondent's decision should be
affirmed and the appeal dismissed.

DATED this 6th day of August, 1975.


NATHAN W. HIGER
Legal Counsel
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 6th day of August, 1975
a true and correct copy of the foregoing ANSWER was mailed,
postage prepaid to:

Mr. A.L. Smith
ALBAUGH, SMITH & PIKE
370 "B" Street
P.O. Box 428
Fourth Floor, Rogers Annex
Building
Idaho Falls, ID 83401


NATHAN W. HIGER

RECEIVED

JAN 14 1975

Department of Water Resources

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK

IN RE: APPLICATION OF)
ELMAN T. WOODFIELD TO CHANGE)
POINT OF DIVERSION OF DECREED) MEMORANDUM DECISION
WATER RIGHTS ON MEDICINE LODGE)
CREEK, NOS. 32-0034, 32-0035,)
32-0036, 32-0037 & 32-2076.)

Elman T. Woodfield is the owner of property located in the County of Clark and in the State of Idaho. Along with the property he owns he has acquired water rights which he uses to obtain water for irrigation of his property. One of the water rights owned by him has been identified as 32-0034 intended for use on the W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$, Sec. 20, Twp. 10N, Rge. 35E. B.M.; 32-0035 used on the Ne $\frac{1}{2}$, W $\frac{1}{2}$, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{2}$, Sec. 29, Twp. 10N, Rge. 35E. B.M.; water right 32-0036 used on E $\frac{1}{2}$ Sec. 30 Twp. 10N, Rge. 35E. B.M. S $\frac{1}{2}$ Sec. 4; E $\frac{1}{2}$, W $\frac{1}{2}$ NW $\frac{1}{2}$, SW $\frac{1}{2}$, Sec. 5; Lots 1 & 2, S $\frac{1}{2}$ NE $\frac{1}{2}$ Lots 6 & 7, E $\frac{1}{2}$ SW $\frac{1}{2}$, SE $\frac{1}{2}$, Sec. 6; E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Lots 1, 2, 3, 4, Sec. 7; N $\frac{1}{2}$, SW $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SE $\frac{1}{2}$ SE $\frac{1}{2}$, Sec. 8; all Sec. 9; Twp. 9N, Rge. 35 E. B.M. S $\frac{1}{2}$ Sec. 1; all Sec. 12, Twp. 9N, Rge. 34 E B.M.

He is also the owner of property and of a water right used on such property described as 32-2076 which is used on property described as NE $\frac{1}{2}$ NE $\frac{1}{2}$, Sec. 6, Twp. 9N, Rge. 35 E. B.M. and 600 acres in Sec. 7 and Sec. 12, Twp. 9N, Rge. 35 E. B.M.

Mr. Woodfield acquired these properties and the water rights that go with them in the year 1963 and ever since the year 1963 he has been using water from Medicine Lodge Creek in accord with water rights mentioned above on the property which belongs to him.

The water rights owned by Mr. Woodfield have early priorities. There are other water users who take water from Medicine Lodge Creek whose priorities are inferior to the rights owned by Mr. Woodfield. Most of the owners of these later water

rights have land situated upstream from the land owned by Mr. Woodfield. In fact, there are no water users taking water from Medicine Lodge Creek downstream from Mr. Woodfield's place.

The closest water user to the point where Mr. Woodfield takes his water is at least one mile upstream. In fact,

When Mr. Woodfield acquired his property in 1963 there was a point of diversion of water from Medicine Lodge Creek in Section 17 of Township 10 North, Range 35 East Boise Meridian, referred hereafter as "Section 17." There was a point of diversion in Section 6 of Township North, 35 East Boise Meridian, referred to hereafter as "Section 6." There was a point of diversion in Section 20 of Township 10 North, Range 35 East Boise Meridian referred to hereafter as "Section 20." The only testimony introduced in the case on this point, however, indicated that at the time Mr. Woodfield purchased the property water used on his property was being diverted from Medicine Lodge Creek at the diversion point in "Section 20." Mr. Woodfield explained that he occasionally took a little water from the creek at the diversion point in "Section 17" which he used on lawns and for domestic purposes around the two houses which were located near that point. However, he did not use this water for general irrigation purposes and the testimony indicates that it was only diverted at this point in order that he did not lose the right to such a diversion. The diversion points in "Section 17" and in "Section 6" were, according to the testimony, the original diversion points for taking water for use on the lands now owned by Mr. Woodfield when water was first so taken. The property had been owned by separate owners and they had been required to establish diversion points on their own property. At the time Mr. Woodfield obtained the property it was being irrigated by water from a diversion point in "Section 20." "Section 20" diversion.

point is about a mile downstream from "Section 17," and it is about three and a half miles upstream from "Section 6." Mr. Woodfield has always since acquisition of the property considered the diversion point in Section 20 as the point from which he drew water for the irrigation of all his property. In fact, Mr. Woodfield testified he cannot irrigate his property from either of the other points of diversion and that in order to irrigate the property he must take the water out of the creek at the diversion point in Section 20.

Sometime in the year 1967 an engineer connected with the State Water Department became concerned about the fact that Mr. Woodfield was diverting his water at a point different than that which had been used when the water rights were first acquired. He told Mr. Woodfield that if he were going to divert his water from a point in Section 20 he should apply to the Board of Water Resources and get permission to change the point of diversion. Mr. Woodfield then undertook to install better control devices at the diversion point in Section 20. He went to considerable expense in arranging for better diversion of his water at that point. He applied to the Department of Water Resources for authority to change the point of diversion although, as a matter of fact, he had actually made the change many years prior thereto. A conference was held about the matter and some of the other water users on the creek became concerned that Mr. Woodfield's use of the water from a point in Section 20 might have an effect upon their right to the use of water from Medicine Lodge Creek. This application by Mr. Woodfield for a change in his point of diversion is what brought about the present lawsuit in which this court is asked to determine whether or not he might change his point of diversion as he has requested and what conditions should be assumed by him if he makes the change.

The law of the State of Idaho, Section 42-108, I.C., provides:

"The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the points of diversion and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion or place of use.

Under this statute and the rights thereby conferred upon the owner of water rights there appears to be no question about the right of Mr. Woodfield to change his point of diversion. The question in this case arises from the provision "If the water rights of others are not injured by such change in point of diversion."

Studies were made by engineers from the Water Resource Board and measurements were collected. The Board was not satisfied with a showing of one measurement but made several measurements. On the 19th of April in 1974, for instance, a measurement was made at the point in "Section 17" and on the same date a measurement was made at a point about 75 feet upstream from the point in "Section 20." They showed a percentage of loss between those two points of about 07 percent. It was contended therefore that Mr. Woodfield should bear this percentage of loss rather than other water users and that if he opened his new diversion point he should not get a greater amount of water which flowed past the original point than he would have got if he had taken from the original point. To allow him to take more water it was felt would injure those who had a lower priority right on the stream above him.

However, the state was not satisfied with this single measurement and they measured again on the 31st day of May taking

a measurement at "Section 17" and then taking a measurement in "Section 20" about 100 feet above the point where Mr. Woodfield had his diversion works. They found a loss of .03 percent. It was a bit difficult to explain the difference between a loss shown by this measurement and a loss shown by the measurement in April because the engineer said that the larger the flow of water the greater should be the loss and, of course, the discharge of water in April was considerably larger than the discharge in May. They also said that there should be a greater loss in the early spring when there was considerable runoff than later, but their figures do not bear this out.

On the 31st of May the Department also took a measurement at the point where the water is being diverted by Mr. Woodfield. This measurement was taken through the weir. Using this measurement they found no loss whatever between the two points. The engineer explained, however, that measurements through weirs were not considered by the Department as reliable as measurements in the stream. The Department of Water Resources did not approve measurements made through the weir. At the same time the engineer admitted that most diversion points on Medicine Lodge Creek did use weirs and that measurements by the water master who tried to carry out their decisions would be made through the weir. The engineer explained that sometimes there was leakage around the weirs and this was responsible for their distaste for the use of measurements at the weir. However, in this case leakage would have made the loss even greater rather than less. He did mention that sometimes weirs are set at an angle which causes a pileup which cannot be accounted for in their measurements and causes it to appear that there is more water than there actually is.

Through the engineer confessed that the measurements
Nevertheless the engineer made another measurement. On
the 29th of July he made a measurement at the diversion point in
"Section 17" and a measurement in "Section 20". He found a rate
loss 068 percent. At this same time he also measured through it
the weir and he discovered no loss whatever through the weir.
The measurement which showed a 068 percent of loss was made at
a point 100 feet above the weir.

On the 30th day of August the engineer made another
measurement. This time he made one measurement at the diversion
point in "Section 17" and another measurement at the diversion
point in "Section 20" and this time the measurement in "Section
20" was 150 feet upstream from the diversion point. In this month
of August when the flow of water was lower than at any other
time the rate of loss was 05 percent. This is a bit difficult
to explain also because we were told by the engineer that when
the water was low the rate of loss should be less than when it
was high. However, as compared with the month of April when the
flow was quite high this loss is more. It is difficult to under-
stand why the rate of loss should be different at one time than
at another. The topography of the ground is apparently the same.
The flow of the water is approximately the same. The only
difference is in the amount of water and, of course, in the
time of year. No satisfactory explanation of the differences in
the measurement was made.

On the 30th day of August the engineer also made a
measurement through the weir at "Section 20" and the rate of
loss when compared with the measurement through the weir was
again 0 percent. In the spring of 1973 the engineer had also
made a measurement both at the diversion point in "Section 17"
and at the point above the diversion point in "Section 20". This
measurement showed a 03 percent loss.

Though the engineer contended that the measurements through the weir were not considered accurate by his department no one made any satisfactory explanation to the court why that measurement should be less accurate than the measurement at a point above. Both apparently were subject to fluctuation and it is apparent from the measurements made that those made at a point above the weir showed the greater fluctuation and would therefore appear to be the less dependable. Certainly they are not consistent.

It should be noted further that measurements were made by a former water master who said that he had been shown how to make the measurements by representatives of the Water Resources Board. He made his measurement in 1972 and he made about 29 measurements throughout the year. His measurements were made at the diversion point in "Section 17" and at the diversion point in "Section 20." In "Section 20" his measurements were made through the weir. None of his measurements showed a loss of water. He accounted for that fact by saying that where some water would ordinarily be lost between these points there would be no loss if the water table below the stream were tapped by some means or if there were some sort of artesian or spring flow in the stream between the points. If his suggestions were correct certainly it would be improper to subtract a loss for Mr. Woodfield from his diversion point when actually there was no loss due to an increase in flow of water caused by springs of artesian wells between the points.

The engineers suggested that in arriving at a percentage of loss that could be relied upon an average should be taken of the measurements made and they suggested an average of the measurements made in 1974 using only the measurements at "Section 20" above the weir. This court cannot see why it would make any particular difference, however, which year was used because

Mr. Woodfield will be obtaining water under every kind of conditions in numbers of different years. This court can see no reason why, if an average is taken, the average should not include measurements through the weir.

The court, therefore, has made its own average. It has used the 7 percent of loss found in April of '74. It has used the 3 percent of loss found in May of '74. It has used the 0 percent of loss found through the weir in May of '74. It has used the 6.8 percent of loss found in July of '74. It has used the 0 percent of loss over the weir in July of '74. It has used the 5 percent of loss found in August of '74. It has used the 0 percent of loss found over the weir in August of '74 and it has used the 3 percent of loss found in '73. Computing an average of all these percentages the court comes up with an average of 3 percent and that will be the amount of loss adopted by this court as proper for deduction from Mr. Woodfield's allotment of

water. Particularly does this seem fair in view of the fact that Mr. Woodfield has been using all of the water to which he is allotted by decree since '63 through "Section 20" and no one has complained until a conference was called for the purpose of investigating a percentage of loss in '67. It should also be noted that no evidence was introduced in this hearing showing the feelings of any of the people who are supposed to be affected by Mr. Woodfield's use of the water. No other water users were called and no one showed how they felt about his use of the water or how their own use of water had been affected.

There was evidence that the upper water users managed to get water they needed regardless of Mr. Woodfield's priority. In dry years they appear to have taken water from his stream at night and thus cut down his flow and Mr. Woodfield admitted

that he could not patrol the stream with guns to prevent such use. Of course, it is also true that Mr. Woodfield who complained seriously about the reduction in the water allotted to him did not undertake to explain to the court how this reduction would affect the growing crops on which he used his irrigation water. There is no doubt, however, that he feels he needs his full allotment if he can get it.

There was also some discussion about the change in the lower point of diversion. Although Mr. Woodfield seems never to have used the point of diversion in Section 6 that appears to be the original point of diversion when the water was first taken. Mr. Woodfield is now using his point of diversion in "Section 20" to obtain water for land which was previously irrigated from a point of diversion in "Section 6". Some of the engineers have argued that the percentage of loss shown on the stream above the diversion point in "20" should be considered the rate of loss throughout the entire creek and should be deducted if he is going to change the point from the lower point to the higher point. This point of loss has been computed by the court at 3 percent per half mile and the distance between the diversion point in "Section 6" and the diversion point in "Section 20" is three and a half miles.

No one bothered to measure the stream below the diversion point in "Section 20". No one bothered to find a rate of loss for this lower area. Engineers for the state contend that they must assume a rate of loss below the point of diversion. Witnesses who have actually used the stream and have been upon it and have observed its flow, however, testified that there did not appear to be any loss. Faced with this type of evidence the court cannot say that there is a preponderance in favor of the finding of a loss below the diversion point. In fact, if there

is a preponderance the court believes it to be in favor of finding that there is no loss. This court therefore will refuse to compute a loss for the change in diversion from the lower point in Section 6 to the diversion point in Section 20.

The attorney for the defendant is requested to prepare the findings of fact and conclusions and decision for the court consistant with the foregoing memoranda.

Done this 8th day of January, 1976.

WILLARD C. BURTON
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing instrument entitled Memorandum Decision by mailing a true and correct copy thereof to the following attorneys, prepaid postage, this 9th day of January, 1976.

Calvin F. Boren
Court Reporter

A. L. Smith
P. O. Box 428
Idaho Falls, Idaho

Nathan W. Higer
State Capitol
Boise, Idaho

JOSEPHINE P. BEEMAN
Assistant Attorney General
Legal Counsel, Idaho Department
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK

IN RE: APPLICATION OF ELMAN &
T. WOODFIELD TO CHANGE POINT
OF DIVERSION OF DECREED WATER
RIGHTS ON MEDICINE LODGE CREEK.
NOS. 32-0034, 32-0035, 32-0036,
32-0037 & 32-2076.

Case No: 2-287
Case No: 2-286

ELMAN T. WOODFIELD.

Respondent .

NOTICE OF APPEAL

v.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Appellant.

TO: The above named respondent, Elman T. Woodfield, and his attorney, Arthur L. Smith, P.O. Box 428, Idaho Falls, Idaho 83401, and the Clerk of the above entitled court.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Idaho Department of Water Resources, appeals against the above named respondent to the Idaho Supreme Court from the Order and Judgment entered in the above entitled action on the 27th day of April, 1978, Honorable Judge Willard C. Burton presiding.

2. The reporter's entire standard transcript as defined in Rule 25(a), L.A.R., is requested, supplemented by any exhibits admitted in evidence, but not read into the record.

WAYNE L. KIDWELL
ATTORNEY GENERAL
STATE OF IDAHO
STATEHOUSE, ROOM 200
BOISE, IDAHO 83720
TELEPHONE 333-1341

3. The appellant does not request any documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

4. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b) That the Clerk of the District Court has been paid \$100.00 as the estimated fee for preparation of the transcript in accordance with Rule 24(b), I.A.R.

(c) That the estimated fee for preparation of the clerk's record in the amount of \$90.00 has been paid to the Clerk of the Court.

(d) That the appellate filing fee of \$20.00 has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 6th day of June, 1978

WAYNE L. KIDWELL
Attorney General of Idaho
Josephine F. Beeman
JOSEPHINE F. BEEMAN
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14 IN THE SUPREME COURT OF THE STATE OF IDAHO

15 IN RE: APPLICATION OF ELMAN)
16 T. WOODFIELD TO CHANGE POINT)
17 OF DIVERSION OF DECREED WATER)
18 RIGHTS ON MEDICINE LODGE CREEK)
19 NOS. 32-0034, 32-0035, 32-0036,)
20 32-0037 & 32-2076)

21 ELMAN T. WOODFIELD,
22 RESPONDENT,
23 v.
24 IDAHO DEPARTMENT OF WATER
25 RESOURCES,
26 APPELLANT.

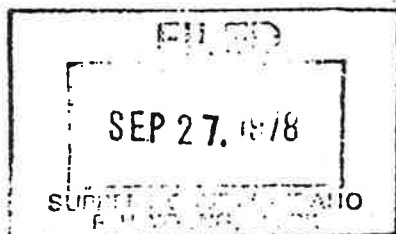
NO. 13068

STIPULATION FOR DISMISSAL

27 COME NOW The parties hereto, by and through their
28 respective attorneys and stipulate and agree pursuant to Rule 33
29 of the Supreme Court Rules that this action be dismissed, with no
30 costs to the Respondent.

31 DATED This 20th day of September, 1978.

32 WAYNE L. KIDWELL
 Attorney General of Idaho



36 *Josephine P. Beeman*
37 JOSEPHINE P. BEEMAN
38 Assistant Attorney General
39 Attorneys for Appellant

40 * * * * *

41 *A. L. Smith*
42 A. L. SMITH
43 Albaugh, Smith, Pike & Martin
44 Attorney for Respondent

JOSEPHINE P. BEEMAN
Assistant Attorney General
Legal Counsel, Idaho Department
of Water Resources
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IN RE: APPLICATION OF ELMAN
T. WOODFIELD TO CHANGE POINT
OF DIVERSION OF DECREED WATER
RIGHTS ON MEDICINE LODGE CREEK
NOS. 32-0034, 32-0035, 32-0036,
32-0037 & 32-2076

NO. 13068

ORDER

DATED This 27th day of September, 1978.

~~Vice Chief Justice~~

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK

IN RE: APPLICATION OF	)	
ELMAN T. WOODFIELD TO CHANGE	)	Case No. 2-287
POINT OF DIVERSION OF DECREED	)	Case No. 2-286
WATER RIGHTS ON MEDICINE LODGE	)	
CREEK, NOS. 32-0034, 32-0035,	)	ORDER AND JUDGMENT
32-0036, 32-0037 & 32-2076	)	

The Court having heard and considered the evidence at
the trial hereof, having made and entered its Memorandum
Decision and its Findings of Fact and Conclusions of Law herein,
having been fully advised as to the law and good cause appearing,
IT IS ORDERED AND ADJUDGED:

I

All of the rights to the waters of Medicine Lodge Creek
flowing in Clark County, Idaho, evidenced by the following water
rights or licenses shall be delivered at a diversion point in the
NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 20, Twp. 10N, Rge. 35 E.B.M. Said water rights
appear in the records of the Idaho Department of Water Resources
and in the records of Clark County, Idaho, as follows:

- (a) Water Right License No. 32-2076 (old Garretson
No. 16804) with priority date 1-2-28 for the diversion
of 10 cfs of the waters of Medicine Lodge Creek.
- (b) Water Right License No. 32-2019 (Old Thomas Right)
with priority date 4-16-11 for the diversion of 1.7 cfs.

ORDER AND JUDGMENT

of the waters of Medicine Lodge Creek.

(c) Water Right No. 32-0034 with priority date 10-1-83 for the diversion of 3.00 cfs. of the waters of Medicine Lodge Creek.

(d) Water Right No. 32-0035 with priority date 10-1-83 for the diversion of 2.92 cfs. of the waters of Medicine Lodge Creek.

(e) Water Right No. 32-0036 with priority date 4-15-84 for the diversion of 2.00 cfs. of the waters of Medicine Lodge Creek.

(f) Water Right No. 32-0037 with priority date 5-20-84 for the diversion of 1.5 cfs. of the waters of Medicine Lodge Creek.

II

That a three percent (3%) conveyance loss shall be deducted from the original amount of the following designated water rights so that the amount of water diverted at the point of diversion set forth in Paragraph I above shall not exceed the following:

No. 32-2019	- - - - -	1.65 cfs.
No. 32-0034	- - - - -	2.91 cfs.
No. 32-0035	- - - - -	2.83 cfs.
No. 32-0036	- - - - -	1.94 cfs.
No. 32-0037	- - - - -	1.45 cfs

III

That no deduction for conveyance loss or other deduction shall be made for the following designated water right:

No. 32-2076

IV

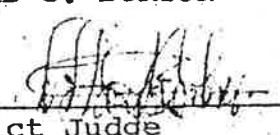
IT IS FURTHER ORDERED that a measuring device of a type approved by the Idaho Department of Water Resources should be permanently installed and maintained at the diversion point referred to in Paragraph I above to measure the flow of Medicine Lodge Creek at that point.

V

That any provision contained in the orders of the Department of Water Resources by the Director dated May 28, 1975, and not modified or reversed herein shall remain in effect.

Done and dated in Rexburg, Idaho, this 20th day of April, 1978.

WILLARD C. BURTON



District Judge