

T2165 SIMMONS

2165



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Idaho Falls District Office
940 Lincoln Road
Idaho Falls, Idaho 83401



IN REPLY REFER TO:

IDI-29915

September 28, 1993

RECEIVED

OCT 01 1993

Mr. Ronald Carlson
Department of Water Resources
900 N. Skyline Drive
Idaho Falls, ID 83402-1718

Department of Water Resources
Eastern District Office

Dear Mr. Carlson:

Thanks for your reply to our letter dated August 17, 1993. As you can see from the enclosed decision, we have rejected Birch Creek Ranches' application to divert water from Birch Creek, in the Blue Dome area, and transport it through a pipeline to the applicant's power canal several miles to the south.

At this time we do not know if this decision will be appealed. But we are confident the right decision was made.

Thanks again for your prompt reply to our letter.

Sincerely,

LeRoy Cook
Area Manager
Big Butte Resource Area



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Idaho Falls District Office
940 Lincoln Road
Idaho Falls, Idaho 83401



IN REPLY REFER TO:

IDI-29915

CERTIFIED MAIL, BLM-5649
RETURN RECEIPT REQUESTED

September 24, 1993

DECISION

Birch Creek Ranches
5203 South 11th East
Idaho Falls, ID 83404

Right-of-Way Application

Application Rejected

On July 7, 1993, Birch Creek Ranches submitted an application for a right-of-way to construct a 20" to 24" buried pipeline from the Blue Dome, Idaho area to the applicant's existing power canal located approximately seven miles to the south. The proposed pipeline would basically parallel Birch Creek and cross 30,500' of public land. The pipeline would divert a maximum 23.6 cfs of water from Birch Creek.

After consulting with state and federal land and resource management agencies, it has been determined that the subject right-of-way application is not in the public interest. Therefore, right-of-way application IDI-29915 is rejected for the following reasons:

1. Applicant has not applied for nor received approval to change the point(s) of diversion or place(s) of use of any Birch Creek water rights from the State of Idaho Department of Water Resources.
2. The proposal is inconsistent with the Bureau's Birch Creek Aquatic Habitat Management Plan written in 1975 in cooperation with the Idaho Department of Fish & Game. Management objectives of this plan include improvement of aquatic habitat, increased trout populations and angler success and enhanced conditions for wildlife. The proposal is contrary to these objectives.
3. The Bureau has invested \$125,300 to improve wildlife and aquatic habitat along Birch Creek including the construction of K-dams, digger logs and livestock enclosure fences. The Idaho Department of Fish & Game has contributed an additional \$85,000. The proposed pipeline would remove as much as one-third to one-half of the average flow of Birch Creek (depending on the time of year) thus jeopardizing or destroying this investment in habitat improvements in and along the Birch Creek drainage.
4. The Bureau has invested \$36,800 for restrooms, fire pits, picnic tables and other improvements in the John Day Campground, located adjacent to Birch Creek, to accommodate people utilizing the area. The Bureau also spends \$1,000 annually to maintain these facilities. In 1992 an estimated 6,000 persons used the John Day Campground. Diversion of water from Birch Creek would reduce the fishery, wildlife and riparian habitat enjoyed by people in and around the campground.

5. Executive Order 11990 directs agencies to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. The proposal would be contrary to this E.O.
6. Approval of the subject application would establish a precedent. Other major Birch Creek water users could then request, and expect approval of, their own pipeline diversions which could essentially dry up the Birch Creek flow.

Regulations found at 43 CFR 2802.4(a) states that an application may be denied if the Authorized Officer determines that (1) the proposed right-of-way would be inconsistent with the purpose for which the public lands are managed, or (2) the proposed right-of-way would not be in the public interest. For the reasons listed above, it is clear that both of these criteria apply to the proposal. Therefore, the subject application must be rejected.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR, Part 4. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2804.1 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413), at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to you or other parties if the stay is granted or denied.
2. The likelihood of the success of your appeal.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.


LeRoy Cook
Area Manager
Big Butte Resource Area



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

May 18, 1993

RECEIVED

MAY 21 1993

Department of Water Resources
Eastern District Office

Breck Baron
Attorney at Law
305 West Main
Rexburg, ID 83440

Re: Birch Creek Transfers

Dear Mr. Baron:

In November, 1992, you wrote a letter to Ron Carlson of this agency inquiring about the status of transfers filed by Mac and Betty Wagoner. As I recall, I spoke to you on the phone regarding the applications for transfer.

Approximately one year ago, I anticipated setting a hearing for the protested applications for transfer of Mac and Betty Wagoner, as well as a rehearing for transfers filed by Birch Creek Ranches. Because of problems with a liner installed in Birch Creek, I delayed setting the hearing at the request of the parties. When I spoke to you on the phone, you wanted me to set a hearing, and issue a decision for the protested applications for transfer. You expressed urgency about consummating a contract with Ted Sorenson.

This letter is an inquiry about whether I can now set a conference for all the applications for transfer. I will ask Eastern Region to schedule a conference if I do not receive an acceptable request for continuance from the parties. I would appreciate an affirmative response to my inquiry.

Respectfully,

Gary Spackman

C: Mac and Betty Wagoner
Alva Harris
Don Shenton
Geroge Peterson
Blair Grover
Kent Foster
IDWR - Regional Office

Application No. 32-0067/0090/0089
0068/0069/0092
0061/0091/0093

APPLICATION FOR TRANSFER OF WATER RIGHT

To Change the Point of Diversion and or the Place of Use

APPROVED

Post office address Terreton, Idaho 83450

1. Right evidenced by: Jerome F. Reno
a. Decree to Wood Livestock Co., C. B. Watts & Edward M. Kaufman,
(Name)
in case of Agnes B. Reno, et al vs J. R. Richards, et al
dated Sept. 6, 1922 in Ninth Dist. Court county of Fremont
(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 Real Estate
Sale contract dated April 3, 1975 from G. Marshall Bare and H. Margery Bare
See attached copy of recorded notice.

5. Water is used for the following purposes: 5-10-1888 - 32-0089, 32-0069, 32-0092 & 32-0061; 5-01-1901 - 32-0091

8. Lands irrigated or place of use: been at the above locations.)

[illegible]

Total number of acres to be irrigated

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, 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 _____ 18.7
- a. Amount of water to be diverted ~~19.9~~ c.f.s. &/or _____ acre feet
- b. Point(s) of diversion NE ¼ NE ¼, Section 14 Township 10N
Range 29E, B.M., Clark County
Additional points NE¼SW¼, Sec. 11, NW¼NE¼, NE¼SE¼, SE¼NE¼, Sec. 24, T. 10N,
R. 29E; SW¼SW¼, Sec. 29, NW¼NW¼, Sec. 32, T. 10N, R. 30E, B.M.
- c. Description of diverting works 5800 ft. 8" buried mainline with concrete sumps, one 75 Hp. pump, one 100 hp. pump and 16, ½ mile 4" handlines
- d. Describe the reasons for applying for a change in the point(s) of diversion
Upper portion of ranch can be irrigated more efficiently with pumps and
sprinklers system.

2. Change in place of use

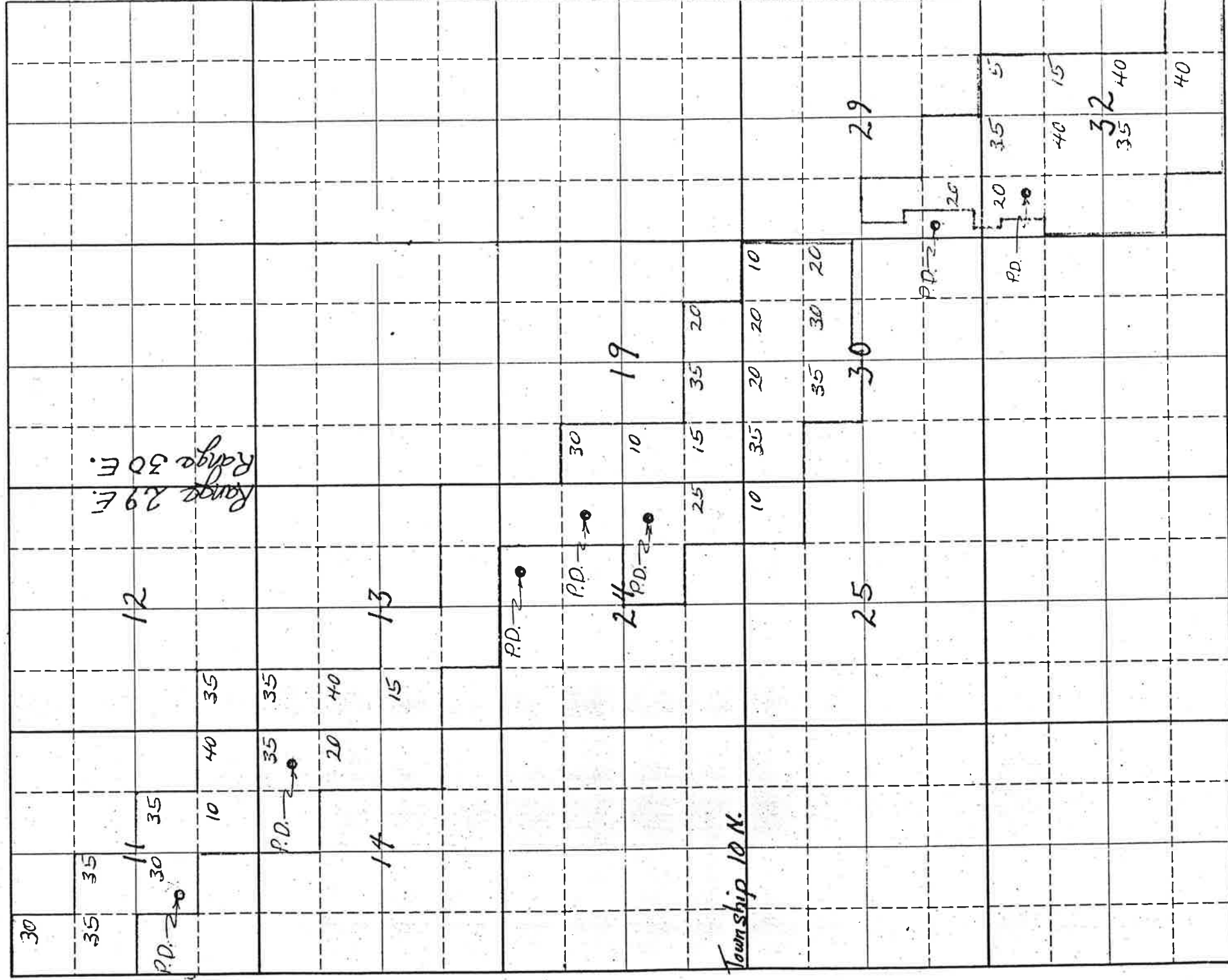
- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
10N	29E	11						30	35	35	30		35			35	10	40	215
		12																	35
		13						35	40			15							90
		14	35			20													55
		24															25		25
		25	10																10
10N	30E	19						30			10	15	35			20			110
		29										20							20
		30	10	20	30	20	20	35		35									170
		32		5	15		35	20*		40	35				40	40			230

Total number of acres to be irrigated 960

* 0.10 cfs of the combination of 32-0091, 32-0092 & 32-0093 has been considered as being appurtenant to Blue Dome property owned by Mrs. Cecil Carlson. Said water will not be affected by this transfer

- b. 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.

3. Remarks

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.

Subscribed and sworn to before me this 29 day of September, 1977

Wm T. Simmons
(Signature of applicant)

James H. Gerard
(Notary public)

My commission expires

January 5, 1980

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 32-0061C, 32-0067, 32-0068, 32-0069, 32-0089, 32-0090, 32-0091, 32-0092 and 32-0093, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and 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.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 32D, Birch Creek.
3. The maximum rate of diversion under said right shall not exceed 18.6 cfs.

Witness my hand this 22nd day of February, 19 83

L. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by me Date 9-8-77

Prelim. check by LK Fee \$30.00

Receipted by me Date 9-8-77 #8392

Published in The Standard Journal

Pub. dates Sept. 22 & 29, 1977

Watermaster recommendation requested on 9-12-77

Bew Wilding rec'd. #32-D

Protest filed by W.H. Enterprises

Bew Wilding

Copies of protest forwarded by Cal

Hearing held by _____ Date _____

Recommended for approval denial

by JIC. Jim Orr

LAND LIST ATTACHMENT

Description and location of 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	
10N	30E	19						L. 2 40				L. 3 40	L. 4 40	40					160
10N	30E	32							40	40					40	40			160
10N	30E	29										40	40	40					120
		30													40				40
		32				40	40												80
10N	30E	19														40			40
		30	40	40		40													120
10N	29E	11															40		40
		12										40							40
10N	29E	24				40									40	40		40	160

CFS

3.20

1.60

2.50

7.60

2:50

0.50

3.20

.40

1998

3.20

3.7

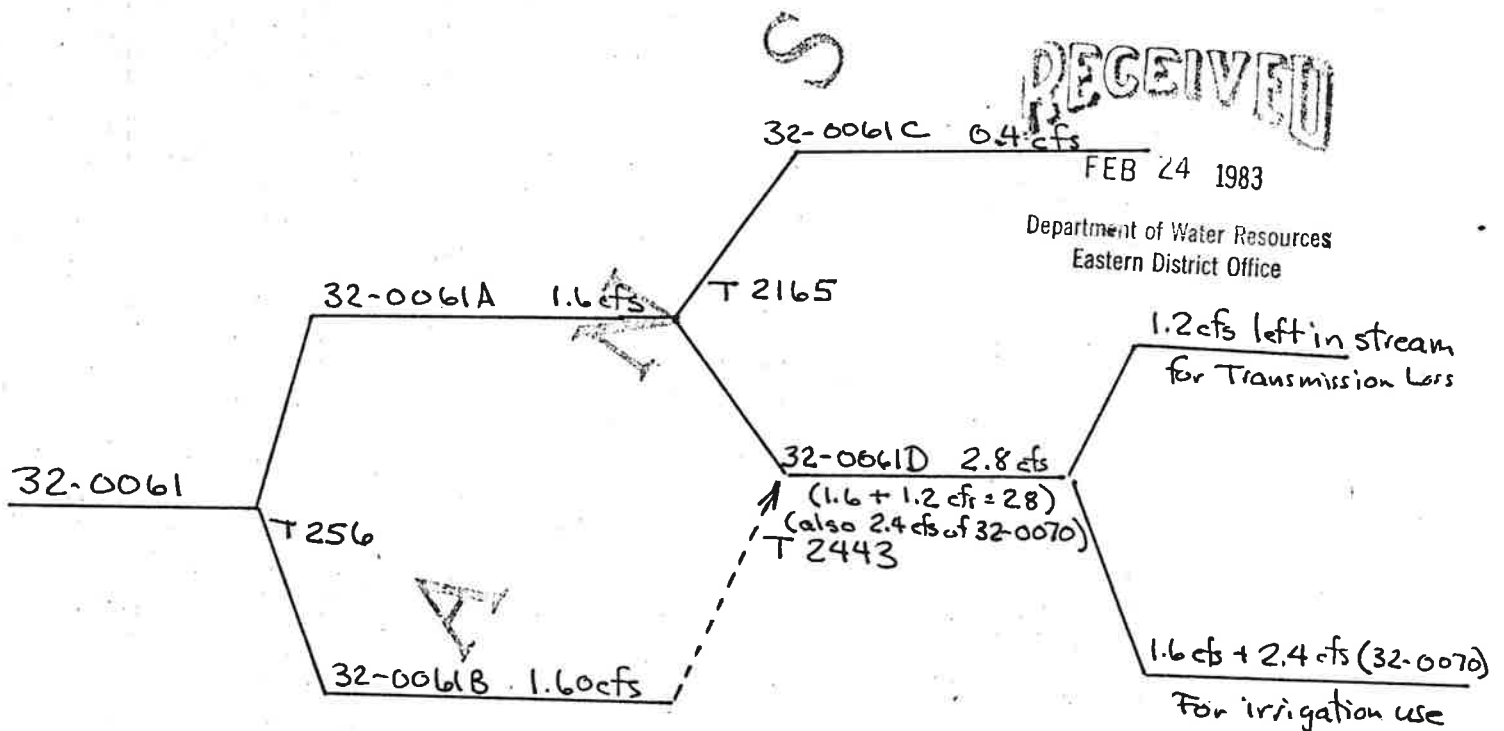
9.9-

Total number of acres irrigated 960

Trans. 2165

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Reno, Jerome F.		3.2	32-0061
256	Reno, Torrey A.		1.6	32-0061B
	Reno, Jerome F.		1.6*	32-0061A
2165	Simmons, William T.		1.6*	32-0061A
2443	D & D Enterprises		2.8*	32-0061D
	Simmons, William T.		0.4	32-0061C

*This right is comprised of 32-0061B and 1.2 cfs of 32-0061A. 1.2 cfs left in river for transmission loss.



May 17, 1977

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

Gentlemen:

It has recently come to our attention, that certain of the water rights listed in the Birch Creek Decree (that is; the decree entered in the case of Agnes B. Reno, et al vs. J. R. Richards, et al, dated September 6, 1922, in the Ninth Judicial District Court of the State of Idaho, in and for the County of Fremont) have not, to our knowledge, ever been used on the lands to which the rights were made appurtenant under the decree, but rather, to our knowledge, have always been used in the manner set forth in this letter. It is our intention by this letter to explain how the water has been used, to release any claims which we may have on the specific water rights mentioned herein, which have been used on the others' property, and to consent to any formal transfer of such rights by the other so that the records will conform to the actual practice.

The first such right has been assigned Right No. 32-0088. The right was decreed to Frank C. and Jesse Worthing, in the amount of 1 cubic feet per second, with a priority date of July 29, 1907, and was decreed to land now owned by William T. and Theola Simmons. The decree indicates that this water right is from Pass Creek, a tributary of said Birch Creek. To the knowledge of the undersigned, this water has never been used in the manner described in the decree; but, in fact, all of the waters of Pass Creek have been used on land owned by Clifton and Blanche Waggoner. The undersigned, William T. and Theola Simmons hereby release any claim which they may have in and to said right, and hereby consent to the formal transfer by the Waggoners or their heirs, assigns or successors in interest of said water right to their lands at any time they might desire to do so.

Also, under said decree, certain portions of the water rights assigned No.s 32-0093, 32-0092, and 32-0091, are shown as being appurtenant to certain acres of land now owned by the undersigned, Clifton and Blanche Waggoner. To the knowledge of the undersigned, these rights have never been used on the lands now owned by Waggoners, and have always been used on lands now owned by William T. and Theola Simmons. The undersigned, Clifton Waggoner and Blanche Waggoner hereby release any claims in or to

the above numbered rights which they may now have by virtue of said decree, and hereby consent to the formal transfer by William T. and Theola Simmons, their heirs, assigns or successors in interest, of all or any portion of said water rights.

In Witness Whereof, we have hereunto set our hands and seals this 14th day of ~~May~~^{June}, 1977.

William T. Simmons
William T. Simmons

Theola Simmons
Theola Simmons

Clifton Waggoner
Clifton Waggoner

Blanche Waggoner
Blanche Waggoner

STATE OF IDAHO)
County of Bonneville) ss.

On this 14th day of ~~May~~^{June}, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared William T. Simmons and Theola Simmons, his wife, 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.

Robert M. Saunders
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 3/10/79

(seal)

STATE OF IDAHO)
County of Bonneville) ss.

On this 28th day of ~~May~~^{June}, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared Clifton Waggoner and Blanche Waggoner, his wife, 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.

Robert M. Saunders
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 3/10/79

(seal)

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

APPROVED

Name of applicant William T. Simmons Phone 663-4322

Post office address Terreton, Idaho 83450

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by: Jerome F. Reno
a. Decree to Wood Livestock Co., C. B. Watts & Edward M. Kaufman,
(Name)
in case of Agnes B. Reno, et al vs J. R. Richards, et al
dated Sept. 6, 1922 in Ninth Dist. Court county of Fremont
(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 Real Estate
Sale contract dated April 3, 1975 from G. Marshall Bare and H. Margery Bare
See attached copy of recorded notice.
3. Source of water Birch Creek tributary to _____ sinks _____
4. Date of priority 9-10-1882 - 32-0067; 5-10-1886 - 32-0090 & 32-0093; 5-10-1887 - 32-0068;
5-10-1888 - 32-0089, 32-0069, 32-0092 & 32-0061; 5-01-1901 - 32-0091
5. Water is used for the following purposes:
d amount 19.9 for Irrigation purposes from Apr. 1 to Nov. 1
ent amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day - both dates inclusive)
6. Total amount of water under right: a. 19.9 cubic feet per second
&/or
b. _____ acre feet per annum
7. Location of original point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 24
Township 10N Range 29E, B.M., in Clark County
Additional points of diversion, if any NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24, T. 10N, R. 29E; SW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, T. 10N, R. 30E(not given in decree but have historically
been at the above locations.)
8. Lands irrigated or place of use: _____

[illegible]

Total number of acres to be irrigated

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, 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
18.7
a. Amount of water to be diverted ~~-19.9-~~ c.f.s. &/or _____ acre feet
b. Point(s) of diversion NE ¼ NE ¼, Section 14 Township 10N
Range 29E, B.M., Clark County
Additional points NE¼SW¼, Sec. 11, NW¼NE¼, NE¼SE¼, SE¼NE¼, Sec. 24, T. 10N, R. 29E; SW¼SW¼, Sec. 29, NW¼NW¼, Sec. 32, T. 10N, R. 30E, B.M.
- c. Description of diverting works 5800 ft. 8" buried mainline with concrete sumps, one 75 Hp. pump, one 100 hp. pump and 16, ¼ mile 4" handlines
- d. Describe the reasons for applying for a change in the point(s) of diversion
Upper portion of ranch can be irrigated more efficiently with pumps and sprinklers system.

2. Change in place of use

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	
10N	29E	11						30	35	35	30		35			35	10	40	215
		12																	35
		13						35	40			15							90
		14	35			20													55
		24															25		25
		25	10																10
10N	30E	19						30			10	15	35			20			110
		29										20							20
		30	10	20	30	20	20	35		35									170
		32		5	15		35	20*		40	35				40	40			230

* 0.10 cfs of the combination of 32-0091, 32-0092 & 32-0093 has been considered as being appurtenant to Blue Dome property owned by Mrs. Cecil Carlson. Said water will not be affected by this transfer

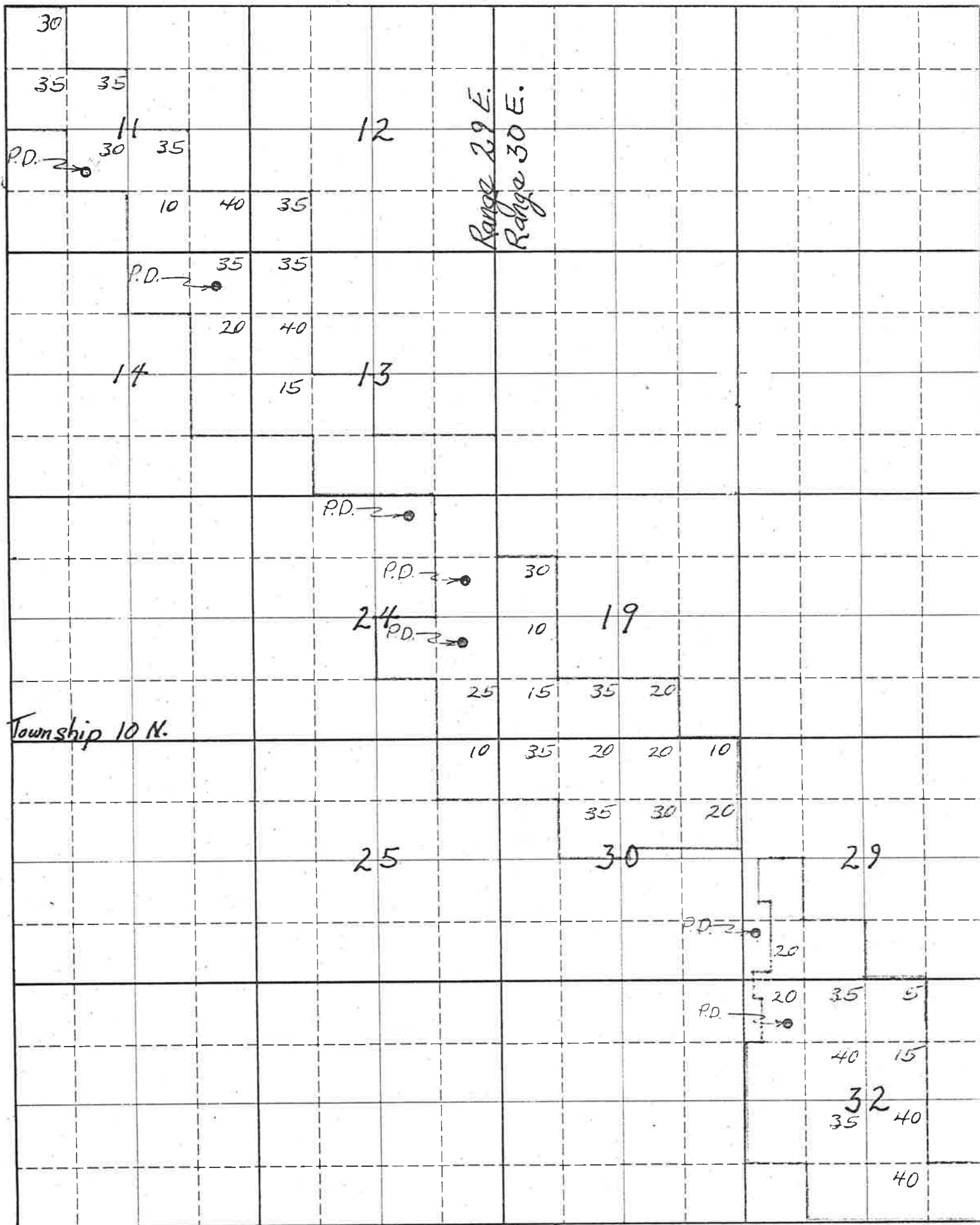
Total number of acres to be irrigated 960

LAND LIST ATTACHMENT

Description and location of place of use:

[illegible]

- b. 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.

3. Remarks _____

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.

Subscribed and sworn to before me this 29 day of September, 1977
Wm T. Simmons
(Signature of applicant)

My commission expires January 5, 1980
James H. Gerard
(Notary public)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 32-0061, 32-0067, 32-0068, 32-0069, 32-0089, 32-0090, 32-0091, 32-0092 and 32-0093, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and 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.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 32D, Birch Creek.
3. The maximum rate of diversion under said right shall not exceed 18.6 cfs.

Witness my hand this 22nd day of February, 19 83

L. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by me Date 9-8-77

Prelim. check by LH Fee \$30.00

Receipted by me Date 9-8-77 #8392

Published in The Standard Journal

Pub. dates Sept. 22 & 29, 1977

Watermaster recommendation requested on 9-12-77

Bert Wedding rec'd. #32-D

Protest filed by W.H. Enterprises

Bert Wedding

Copies of protest forwarded by cal

Hearing held by _____ Date _____

Recommended for approval denial

by MR. Jim Orr

May 17, 1977

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

Gentlemen:

It has recently come to our attention, that certain of the water rights listed in the Birch Creek Decree (that is; the decree entered in the case of Agnes B. Reno, et al vs. J. R. Richards, et al, dated September 6, 1922, in the Ninth Judicial District Court of the State of Idaho, in and for the County of Fremont) have not, to our knowledge, ever been used on the lands to which the rights were made appurtenant under the decree, but rather, to our knowledge, have always been used in the manner set forth in this letter. It is our intention by this letter to explain how the water has been used, to release any claims which we may have on the specific water rights mentioned herein, which have been used on the others' property, and to consent to any formal transfer of such rights by the other so that the records will conform to the actual practice.

The first such right has been assigned Right No. 32-0088. The right was decreed to Frank C. and Jesse Worthing, in the amount of 1 cubic feet per second, with a priority date of July 29, 1907, and was decreed to land now owned by William T. and Theola Simmons. The decree indicates that this water right is from Pass Creek, a tributary of said Birch Creek. To the knowledge of the undersigned, this water has never been used in the manner described in the decree; but, in fact, all of the waters of Pass Creek have been used on land owned by Clifton and Blanche Waggoner. The undersigned, William T. and Theola Simmons hereby release any claim which they may have in and to said right, and hereby consent to the formal transfer by the Waggoners or their heirs, assigns or successors in interest of said water right to their lands at any time they might desire to do so.

Also, under said decree, certain portions of the water rights assigned No.s 32-0093, 32-0092, and 32-0091, are shown as being appurtenant to certain acres of land now owned by the undersigned, Clifton and Blanche Waggoner. To the knowledge of the undersigned, these rights have never been used on the lands now owned by Waggoners, and have always been used on lands now owned by William T. and Theola Simmons. The undersigned, Clifton Waggoner and Blanche Waggoner hereby release any claims in or to

the above numbered rights which they may now have by virtue of said decree, and hereby consent to the formal transfer by William T. and Theola Simmons, their heirs, assigns or successors in interest, of all or any portion of said water rights.

In Witness Whereof, we have hereunto set our hands and seals this 14th day of ~~May~~ ^{June}, 1977.

William T. Simmons
William T. Simmons

Clifton Waggoner
Clifton Waggoner

Theola Simmons
Theola Simmons

Blanche Waggoner
Blanche Waggoner

STATE OF IDAHO)
County of Bonneville) ss.

On this 14th day of ~~May~~ ^{June}, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared William T. Simmons and Theola Simmons, his wife, 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.

Robert M. Saunders
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 3/10/79

(seal)

STATE OF IDAHO)
County of Bonneville) ss.

On this 28th day of ~~May~~ ^{June}, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared Clifton Waggoner and Blanche Waggoner, his wife, 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.

Robert M. Saunders
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 3/10/79

(seal)

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Reno, Jerome F.		3.2	32-0061
256	Reno, Torrey A.		1.6	32-0061B
	Reno, Jerome F.		1.6*	32-0061A
2165	Simmons, William T.		1.6*	32-0061A
2443	D & D Enterprises		2.8*	32-0061D
	Simmons, William T.		0.4	32-0061C

*This right is comprised of 32-0061B and 1.2 cfs of 32-0061A. 1.2 cfs left in river for transmission loss.

