

T3582 SOWARDS



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

3582

RECEIVED

OCT 11 1991

Department of Water Resources
Eastern District Office

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 9, 1991

Jack W. Sowards
Box 100
Arco, ID 83255

Dear Mr. Sowards:

Re: Transfer No. 3582 of Water Right No. 34-2467

Enclosed is a copy of the Order Adopting Proposed Memorandum Decision and Order and a copy of the approved Application for Transfer of Water Right.

Anyone who feels agrieved by the decision of the Department may request a rehearing before the Director within twenty (20) days or appeal to the district court within thirty (30) days of the date of mailing.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads 'L. Glen Saxton'.

L. GLEN SAXTON
Chief, Water Allocations Bureau

LGS:rf

Enclosure

c: IDWR
Mitchell Sorensen

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 9th day of October, 1991, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER, was mailed, postage prepaid to:

Jack W. Sowards
Box 100
Arco, ID 83255

Mitchell Sorensen
Route 1, Box 63-C-1
Moore, ID 83255


RITA I. FLECK
Secretary/Records Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER OF WATER RIGHT NO. 34-2467)
IN THE NAME OF JACK W. SOWARDS)
_____)

ORDER ADOPTING PROPOSED
MEMORANDUM DECISION
AND ORDER

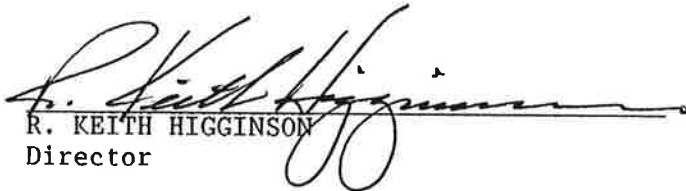
WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on September 17, 1991, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and Application for Transfer of Water Right No. 34-2467 is APPROVED.

Dated this 7th day of OCTOBER, 1991.


R. KEITH HIGGINSON
Director

[illegible]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 34-2467 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority 28 September 1965

5. Water is used for the following purpose:

amount 2.82 for Irrigation purposes from 10 May to 15 September
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.82 cubic feet per second and/or 423 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		<u>NE</u>	<u>SE</u>	<u>34</u>	<u>5N</u>	<u>26E</u>	<u>Butte</u>	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
<u>4N</u>	<u>26E</u>	<u>10</u>	<u>36</u>			<u>26</u>													<u>62</u>
		<u>11</u>						<u>39</u>	<u>40</u>										<u>79</u>

Total acres 141

9. Describe any other water rights used for the same purpose as described above 34-0304

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

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

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

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

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

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

(Signature of Applicant)

Subscribed and sworn to before me this 6th day of May, 1989.

(Notary Public)

My commission expires life

ALSO SWORN 4/24/89
BEFORE EVALYN ADAMS

FOR DEPARTMENT USE ONLYTransfer contains 6 pages and 1 attachmentsReceived by RC Date 4-24-89 Protest filed by _____Prelim. check by DMD Fee 50.00 _____Receipted by RB Date 4-24-89 _____Published in Arco Advertiser Copies of protest forwarded by _____Pub. dates 7-20 & 27, 89 Hearing held by _____ Date _____Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

PART 1**6. General Information:**a. Description of diversion system irrigation well and pumpb. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes NO No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

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

d. Remarks:

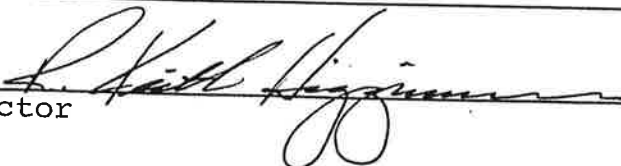
The current system is an open discharge to the East Branch of the Big Lost River. The water is then
redirected to (by) the East Side Canal and [delivered] to the applicants land. Due to the East branch
of the Big Lost River being dry and shrinkage rates charged by the East Side Canal the applicant is not receiving
his licensed amount. See capacity on the license.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCESThis is to certify that I have examined Application for Transfer of Water Rights No. 34-2467And said application is hereby APPROVED, subject to the following limitations and conditions:

PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER AND ORDER
ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER.

Witness my hand this 7TH day of October, 19 91.

Director



BEFORE THE DIRECTOR OF THE DEPARTMENT
OF WATER RESOURCES OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	ORDER ISSUING
TRANSFER NO. 3582 OF WATER RIGHT)	PROPOSED MEMORANDUM
NO. 34-2467 IN THE NAME OF)	DECISION
<u>JACK W. SOWARDS</u>)	

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, L. GLEN SAXTON, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3582 OF WATER)
RIGHT NO. 34-2467 IN THE NAME)
OF JACK W. SOWARDS)

PROPOSED MEMORANDUM
DECISION AND ORDER

BY HEARING OFFICER L. GLEN SAXTON

Jack W. Sowards (applicant) having filed with the Idaho Department of Water Resources (department) an application for transfer, protests having been filed, and the parties having had an opportunity to participate in a hearing, the department finds, concludes and orders as follows:

FINDINGS OF FACT

1. License 34-2467 authorizes the diversion of 2.82 cubic feet per second from a well located in the NESE Section 34, T5N, R26E, BM. for the irrigation of 141 acres in parts of Sections 10 and 11, T4N, R26E, BM. The priority of use is September 28, 1965.

2. On April 24, 1989, the applicant filed Application for Transfer No. 3582 involving water right no. 34-2467 (application) with the department proposing to add a second point of diversion (well) which would be located within the NWNW Section 11, T4N, R26E, BM. The applicant did not propose other changes to the water right.

3. The department advertised the application in the Arco Advertiser on July 20 and 27, 1989. Mitchell Sorensen, Kurt Acor and Herman Aikele filed protests against approval of the application.

4. The department scheduled a hearing in the matter on May 15, 1991. The applicant did not appear but later provided a satisfactory reason for non-appearance.

5. The department then again scheduled a hearing in the matter to be held on August 20, 1991. Again the applicant did not appear but again provided a satisfactory reason for non-appearance.

6. Kurt Acor and Herman Aikele withdrew their protests without reservation and Mitchell Sorensen entered a conditional withdrawal of protest.

7. By letter dated June 18, 1991, the applicant clarified that even though the application for transfer proposed to add a

well, the applicant's intent is to drill a well on his property in Section 11, T4N, R26E, BM for his own use and to no longer use the existing well to provide water for his right. The existing well would, however, continue to be used to provide water for other existing water rights from the well which are not rights of the applicant.

8. The applicant now beneficially uses water on less acreage than when license 34-2467 was issued. A recent field examination shows that 91 acres are presently irrigated rather than the 141 acres shown on the license.

9. The maximum diversion rate authorized from the existing well shall not exceed the amount determined in the SRBA.

10. Ground water management will be addressed in the Director's report in the Snake River Basin Adjudication (SRBA).

11. Any conveyance losses associated with use of the original well as identified in the Director's report in the SRBA will not be incurred when using the new well. This identified loss should be deducted from the authorized diversion at the new well.

12. The applicant shall not divert and use more water than provided for by the original water right.

CONCLUSIONS OF LAW

1. Section 42-222 (1), Idaho Code, sets forth the criteria that the department can consider in determining whether an application for transfer should be approved:

... The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in Section 42-203A(5) Idaho Code; ...

2. The water right use will not be enlarged if the department limits the place of use to the acreage found during field investigations performed in connection with the SRBA and limits the rate of diversion from the new and existing wells not to exceed authorized diversion rates.

3. The rights of the protestants will not be injured by approval of the application if the applicant does not increase the diversion rate or extent of use of the water and the point of diversion is not moved into close proximity of the protestants' wells.

4. The application is in the local public interest.

5. Approval of the application is consistent with conservation of water.

6. The application should be approved with certain conditions and limitations.

7. The extent of use of right no. 34-2467 and the conditions of use will be determined in the SRBA.

ORDER

IT IS THEREFORE HEREBY ORDERED that Application for Transfer No. 3582 of water right no. 34-2467 is APPROVED subject to the following conditions:

1. This approval provides for the construction of a new well within the NW1/4NW1/4 Section 11, T5N, R26E, BM. The new well shall be the only well to provide water for right 34-2467. The use of the original well in the NE1/4SE1/4, Section 34, T5N, R26E, BM may not be used to provide water for this right.

2. The permit holder shall notify the department at least five (5) days prior to the start of well construction in order that the department can observe the work.

3. The well shall be cased with unperforated casing and sealed to a minimum depth of 150 feet or to the first confining layer, whichever is deeper. Both the owner and well driller are charged with the responsibility of taking whatever steps are necessary to prevent ground water from the cased and sealed interval of the well from entering the well.

4. Prior to diversion of water under this transfer, the right holder shall install and permanently maintain a measuring device of a type approved by the department.

5. The Director retains jurisdiction of the construction of the well to require mitigation or reconstruction of the well if prior rights are injured as determined by the Director.

6. The change authorized by this transfer shall be accomplished within one (1) year of the date of approval of this transfer.

7. The Director retains jurisdiction of this transfer in order to instruct the watermaster of Water District No. 34, the Big Lost River, in the diversion and delivery of the right as determined by the Director to be needed to protect prior water rights.

8. Failure to comply with the conditions of approval of this order is cause for the Director to rescind approval of the transfer.

9. Approval of this transfer limits the extent of the right including the amount of acreage to the amount ultimately determined in the SRBA.

10. Use of water under this transfer is subject to other findings, conclusions, conditions and management plans which are determined in the SRBA to the extent the findings, conclusions, conditions and management plans may be applicable to this transferred water right.

Dated this 17th day of September, 1991.

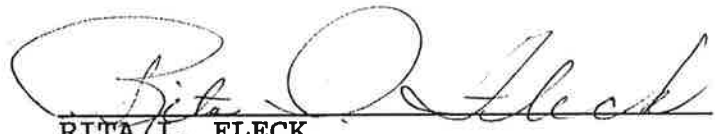

L. GLEN SAXTON
Hearing Officer

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Arco, ID 83255

Mitchell Sorensen
Route 1, Box 63-C-1
Moore, ID 83255

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RITA I. FLECK
Secretary/Records Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

SEP 18 1991

Department of Water Resources
Eastern District Office

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FOR TRANSFER NO. 3582 OF WATER)
RIGHT NO. 34-2467 IN THE NAME)
OF JACK W. SOWARDS)

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4. The application is in the local public interest.

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2. The permit holder shall notify the department at least five (5) days prior to the start of well construction in order that the department can observe the work.

3. The well shall be cased with unperforated casing and sealed to a minimum depth of 150 feet or to the first confining layer, whichever is deeper. Both the owner and well driller are charged with the responsibility of taking whatever steps are necessary to prevent ground water from the cased and sealed interval of the well from entering the well.

4. Prior to diversion of water under this transfer, the right holder shall install and permanently maintain a measuring device of a type approved by the department.

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6. The change authorized by this transfer shall be accomplished within one (1) year of the date of approval of this transfer.

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10. Use of water under this transfer is subject to other findings, conclusions, conditions and management plans which are determined in the SRBA to the extent the findings, conclusions, conditions and management plans may be applicable to this transferred water right.

Dated this 17th day of September, 1991.


L. GLEN SAXTON
Hearing Officer

BOX 100 ARCO IDAHO
83213-0100

RECEIVED

NOV 18 1991

Department of Water Resources
Eastern District Office

IDAHO DEPARTMENT OF WATER RESOURCES

ERIC VERNER

PAUL SAXTON

KEITH HIGGINSON

GENTLEMEN;

CONFIRMING DISCUSSIONS WITH YOURSELVES AND
PARTICULARLY ERIC VERNER (WHO SPENT A VERY GOOD &
SUBSTANTIAL AMOUNT OF TIME STUDYING MY RANCH)
AND BASED ON A LIFETIME OF MY EXPERIENCE AS A
LICENSED ENGINEER AND PROFESSOR WITH A SUBSTANTIAL FRACTION
SPENT IN TEACHING, EXPLORING, AND CONSULTING IN GEOLOGY,
HYDROLOGY, GEOHYDROLOGY, AND RELATED FIELDS FOR
SEVERAL FAMOUS AND WELL-KNOWN UNIVERSITIES,
COMPANIES, AND BRANCHES OF THE GOVERNMENT.

I SUBMIT THE FOLLOWING:

(1) THE ACTION WHICH IS MOST ECONOMIC AND LEAST
IN RISK IS THAT DIRECTED BY ERIC VERNER; THE
USE OF SHALLOW WELL(S) TO UTILIZE THE AQUIFER
FLOWING FROM THE ADJACENT MOUNTAIN EASTWARD,
WHICH IS VISIBLE AT THE SURFACE AND WHICH I
WAS ABLE TO USE TO IRRIGATE THE EAST HALF OF
THE RANCH UNTIL THE WATER TABLE WAS LOWERED.

FOR THE WEST SIDE,
I WOULD NOT FOR THE PRESENT PURSUE THE
DRILLING OF A ONE-HUNDRED-FIFTY FOOT WELL,
SEALED ALL THE WAY DOWN AND WITH NO PERFORATIONS,
BUT WOULD INSTEAD UTILIZE THE WATER WHICH I HAVE
FROM THE MACKAY RESERVOIR AND THE WELL WHICH I
HAVE HAD FOR MANY YEARS ON OUR FAMILY RPOPERTY
NORTH. THE SEALED WELL WOULD BE VERY EXPENSIVE
AND SEEMS TO ME FROM THE GEOLOGY TO BE QUITE RISKY.

VERY TRULY,

DR. JACK SOWARDS, P.E.

A handwritten signature in cursive script, reading "Jack Sowards". The signature is written in dark ink and is positioned to the right of the typed name "DR. JACK SOWARDS, P.E.".

I HAVE INTENDED TO COMMUNICATE WITH YOURSELVES
EARLIER BUT HAVE HAD TO SPEND MANY UNSCHEDULED
HOURS BECAUSE OF A BROKEN LEG AND MOVING CATTLE
BECAUSE OF THE UNSEASONABLE STORMS IN THE MOUNTAINS.