

T3573 PHILLIPS



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

3573

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

RECEIVED

December 4, 1989

DEC 07 1989

Department of Water Resources
Eastern District Office

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

RE: APPLICATION FOR TRANSFER NO. 35-7066 - ROSS PHILLIPS

Dear Kent:

I first drafted this letter in August 1989 as a follow up to our telephone conversation on August 3, 1989. If you recall, the department approved the above referenced application with conditions of approval which allowed use of this right on the transferred place of use through August 11, 1989. The right then reverted back to the original land. Enclosed for your information is a copy of the transfer.

As we discussed over the phone, the department did not plan to conduct a hearing on the protested application for transfer, since an agreement had been reached between the applicant and the protestant. For this reason, I advised you that the department would treat your petition for intervention as a request to withhold action on similar applications for transfer in the Mud Lake area until the U.S.G.S. has completed a groundwater study authorized during the last session of the Idaho Legislature.

Enclosed is a copy of an order issuing a moratorium against new irrigation development in the study area. The reason this letter is so late in coming is that I have been waiting for the order to be issued.

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

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 2

c: E. Region

RIGHT APPROVED

AUG 2 1989

Department of Water Resources

Eastern District Office

Name of applicant

Post Office address

Phone (801) 544-8317

Source: Ross M. Phillips Phone (801) 544-8317
370 So. Mountain Rd., Laytonville WA 984037

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes

2. Describe the reason for the proposed changes Original place of use will not be turned thru 1997, and as a result, operator (Roland Walker) has received owners permission to irrigate another place of use with Rt 35-7066

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-7066B	12-26-1968	7.16	Irrigation	4-1 to 11-1
				to
				to
				to

2. Total amount of water being transferred 7.16 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	16	8N	37E	Fremont	
		NE	SE	16	8N	37E	Fremont	
		NE	SW	16	8N	37E	Fremont	
		NE	NW	16	8N	37E	Fremont	

5. Lands irrigated or place of use:

[illegible]

Total acres 528

PART 1

6. General Information:

- a. Description of diversion system 4 Wells at the center of four (4) pivots
Wells were drilled several years ago. Applications 31-7430,
- 7431, - 7432 and 31-7433 Filed on this new place of use.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? ☒ Yes _____ 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:
Will not be farmed from 1988 thru 1997
- d. Remarks:
This Rt will be transferred for 8 years to this new place
of use and applicant has the option of transferring Rt. Back
to old place of use if he so desires.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 35-7066And said application is hereby APPROVED, subject to the following limitations and conditions:

1. Irrigation authorized by this transfer shall cease on August 11, 1989 and the water right will revert to the lands identified on License 35-7066. 2. Use of water under this transfer shall be in compliance with the Memorandum Agreement signed 7/28/89, to the extent the terms of the agreement are within the jurisdiction of the Department of Water Resources.

Witness my hand this

3rd

day of

August, 19 89J. Glen Saxton
Chief, Water Alloc. Bureau

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. 35-7066 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 12-26-1968

5. Water is used for the following purpose:

amount 8.30 for Irrigation purposes from 4-1 to 10-31
(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 8.30 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		<u>NE</u>	<u>NE</u>	<u>36</u>	<u>4N</u>	<u>35E</u>	<u>Teton</u>	

8. Lands irrigated or place of use:

Twp.	Rge.	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	
<u>4N</u>	<u>35E</u>	<u>36</u>	<u>39</u>	<u>40</u>	<u>40</u>	<u>39</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>									<u>318</u>
<u>4N</u>	<u>36E</u>	<u>30</u>									<u>38</u>	<u>2-3</u>	<u>2-4</u>						<u>142</u>
<u>4N</u>	<u>36E</u>	<u>31</u>					<u>40</u>	<u>36</u>	<u>36</u>	<u>40</u>									<u>152</u>

Total acres 612

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

- ⑩ To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 7.16 for Irrigation purposes from 4-1 to 10-30
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	36	4N	35E	Jefferson	

3. Lands irrigated or place of use:

Twp.	Rge.	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	
4N	35E	36	39	40	40	39	40	40	40	40									318
4N	35E	30									38	28	2-4	40					142
4N	35E	31					40			28									68

Total acres 528

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 1.14 cfs for Irrigation purposes from 4-1 to 10-30
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	36	4N	35E	Jefferson	

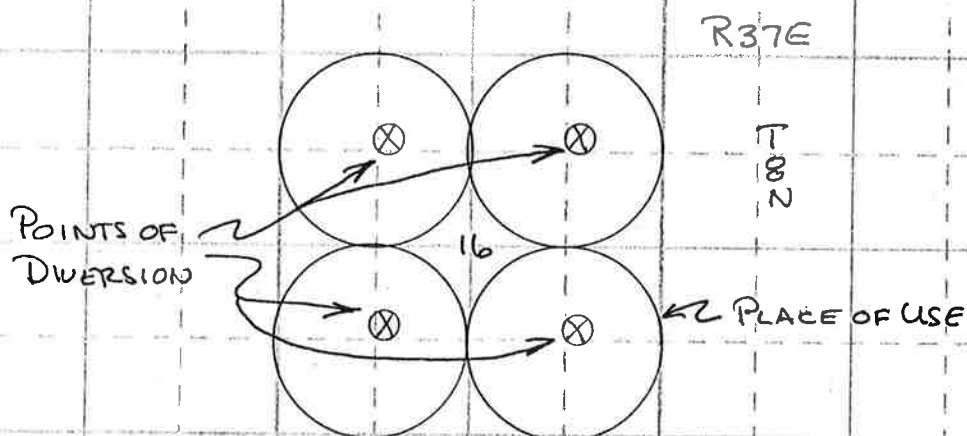
3. Lands irrigated or place of use:

Twp.	Rge.	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	
4N	36E	31						36	36	12									84
								1-1	1-2										

Total acres 84

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



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

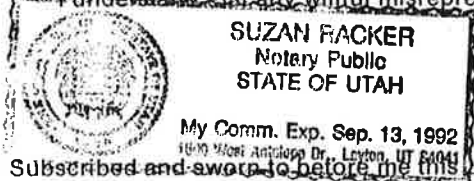
1	<u>New Nature of Use</u>	<u>Amount (cfs/ac-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

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.



14 day of April, 1989
 (Signature of Applicant)
Ross W. Sullivan

Suzan Racker
 (Notary Public)

My commission expires 13 September, 1992

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by SMS Fee 50.00

Received by jo Date 4-17-89 EDD 6874

Published in Jefferson Star Copies of protest forwarded by _____

Pub. dates 6-1-8, 89 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

RECEIVED

AUG 3 1989

Department of Water Resources
Eastern District Office

JUL 31 1989

FWS.PN.0781

Mr. R. Keith Higginson
Director, Idaho Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83720

Re: Protest of Application of Ross M. Phillips to Transfer
Water Right License No. 35-7066 to Lands of Roland Walker

Dear Mr. Higginson:

Protestant United States Fish and Wildlife Service and Applicant Roland Walker, the parties of interest to the above-referenced proceeding, have reached agreement regarding the proposed transfer. Enclosed is a copy of the signed Memorandum of Agreement (Exhibit 1.) Also enclosed is a Stipulation and Joint Motion of the parties. Pursuant to that Stipulation and Joint Motion, we request the Department of Water Resources to affirm that Agreement and implement the pertinent provisions.

Although the Service is concerned with the effect of even a temporary transfer of the subject water right, we have agreed to a short-term transfer in order to save Applicant's 1989 crops in exchange for a moratorium on such transfers through approximately December 31, 1991. The Service does not wish to have any of the terms of the settlement agreement to be construed in any manner as an admission against its interest. Moreover, in the future the Service will continue to strenuously resist further depletions of its water supply resources.

Sincerely,

For the Regional Solicitor

Barbara Scott-Brier
Attorney for United States
Fish and Wildlife Service

Enclosure

cc:

IDWR, 150 Shoup Ave., Suite 15, Idaho Falls, Id 83402

Bart Davis, Esq.

Robert K. Oser, FWS

Chuck Peck, FWS

Jack Richardson, FWS

Sandy Wilbur, FWS

BART M. DAVIS, ESQ.
of the law Firm of
WEINPEL, WOOLF, JUST, COMBO & DAVIS
408 Shoup Ave.
P.O. Box 50190
Idaho Falls , Idaho 83405
(208) 524-5430

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE PROTEST	)	
AGAINST GRANTING OF APPLICATION	)	STIPULATION AND JOINT
FOR TRANSFER OF WATER RIGHT	)	MOTION FOR AN ORDER
LICENSE NO. 35-7066 TO LANDS	)	AFFIRMING AND IMPLE-
OF ROLAND WALKER,	)	MENTING THE MEMORANDUM
	)	OF AGREEMENT
	)	

Applicant, ROLAND WALKER, (Applicant) and
Protestant, United States Fish and Wildlife Service,
(Protestant), through their respective counsel of record
hereby stipulate, agree and move as follows:

1. The Applicant and the Protestant hereby
stipulate and agree that they have entered into a Memorandum
of Agreement (Agreement) and that they will be bound by the
terms of that Agreement. A copy of that Agreement is
attached hereto as Exhibit No. 1 and is incorporated by this

reference.

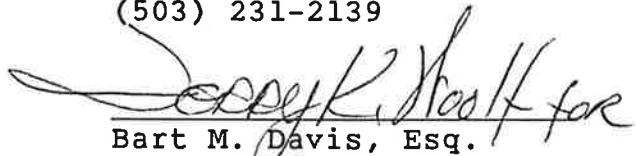
2. Applicant and Protestant hereby move the Department of Water Resources to issue an Order affirming the Memorandum of Agreement and implementing the pertinent provisions of that Agreement.

Respectfully submitted,

Dated: 7/28/89



Barbara Scott-Brier, Esq.
Attorney for the United
States Fish and Wildlife
Services
Office of the Regional
Solicitor
500 N.E. Multnomah,
Suite 607
Portland, Oregon 97232
(503) 231-2139



Bart M. Davis, Esq.
Attorney for Walker Produce
P.O. Box 50190
Idaho Falls, Idaho 83405
(208) 524-5380

MEMORANDUM OF AGREEMENT

Protestant United States Fish and Wildlife Service (Protestant) and Applicant Roland Walker (Applicant), the Parties to this Memorandum of Agreement (Agreement), hereby stipulate and agree as follows:

PREAMBLE

1. The Applicant is seeking the transfer of the water right evidenced by License No. 35-7066 to certain lands (the Weaver Property) of Applicant identified in Exhibit A, attached hereto. The Protestant is concerned about the effect of the transfer of that water right on the water resources of the Camas National Wildlife Refuge (Refuge). Consequently, the Protestant has filed a protest with the Idaho Department of Water Resources protesting the proposed transfer.

2. Although the Applicant is currently using groundwater for the irrigation of the Weaver Property, the Applicant has not received approval for such use.

3. Since the Applicant has planted the Weaver Property to grain, and without water that crop may fail, the Protestant and Applicant agree that Protestant will not object to the applying of groundwater to the Weaver Property in 1989 in accord with the following Provisions.

PROVISIONS

4. The Protestant will seek to stay for a period of time not to exceed August 11, 1989, its protest of Applicant's use of groundwater on the Weaver Property so that Applicant may complete his 1989 irrigation of said grain crop on that Property. The Protestant will not object to a temporary grant of a transfer of License No. 35-7066 to the Weaver Property until August 11, 1989. In exchange for this agreement, the Applicant has agreed to eliminate pumping from twenty-three (23) wells in the area identified in Exhibits A and B, attached hereto, from July 20 through July 23, 1989, and agrees for the remainder of the irrigation season to conserve water wherever possible, and to use no more than fifty-one (51) wells at any one time from July 26, 1989, through the remainder of the 1989 irrigation season. Further, the Applicant shall identify to the Protestant those four or more wells which will not be in operation.

5. For the duration of the study of the Mud Lake area, entitled "Effects of Water Use on Recharge/Discharge Relations in the Mud Lake Area, Southeastern Idaho," which is being conducted by the United States Geological Survey and will be completed approximately December 31, 1991, the Applicant will not seek a transfer of License No. 35-7066 to any land North or East of said Refuge. Until the study is completed, the Applicant may apply for a temporary transfer of valid water rights from those presently owned by Applicant, as described in Exhibit B, to the Weaver Property. The Applicant may also apply for transfer to the Weaver Property of valid water rights which may be acquired during this study so long as these rights exist in the same aquifer and are North or East of said Refuge. Any applications made prior to December 31, 1991, for temporary transfers of water rights to any of Applicant's lands North or East of the Refuge shall be for a period of time not to exceed December 31, 1991.

The Protestant retains the right to protest any of the transfers mentioned above; however, the Parties agree to negotiate in good faith to avoid either the filing or enforcement of said protest in an attempt to allow the transfer.

6. The Applicant will not apply water to his lands without a valid water right.

7. This Agreement does not constitute a waiver of any rights of the Protestant or an admission against the interest of the Protestant. The Protestant explicitly reserves the right to protest the transfer of License No. 35-7066 after August 11, 1989, or any other application of Applicant.

8. This Agreement is not severable.

9. The parties hereby assure that no member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or any agreement, understanding, grant, or contract developed pursuant to this Agreement or to any benefit that may arise from them. This clause shall not be construed to extend to this Agreement or any agreements, understanding, grants, or contracts pursuant to this Agreement to the extent they are made with a corporation or company for its general benefit.

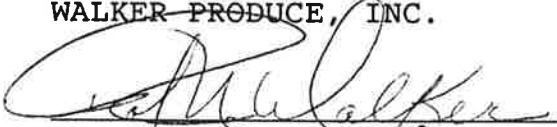
10. The Applicant will provide verification of all his existing water rights on or before the date this Agreement is signed.

11. This Agreement may be modified or terminated by agreement of both Parties.

12. This Agreement shall become effective upon the date of the last signature hereto.

Dated: 7/27/89

WALKER PRODUCE, INC.


By: RANDY N. WALKER
Its: SECRETARY.

Dated: 7/28/89

U.S. FISH AND WILDLIFE SERVICE,
REGION I


By: _____
Its: Attorney

Dated: 7/28/89


By: Acting
Its: Regional Director