

T3346 FOX

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)
TRANSFER NOS. ~~11-0600~~ AND ~~11-0602~~)
13-00665 13-00665)

SOURCE: South ~~Hoopes~~ ^{Hoops} Creek

WARREN B. FOX,

Applicant;

COUNTY: Franklin

L. JUNIOR WHITE,

Protestant.

AMENDED
FINAL MEMORANDUM DECISION AND ORDER

A Proposed Memorandum Decision and Order approving the transfer of water rights Nos. ~~11-0600~~ and ~~11-0602~~ was issued on May 31, 1989. 13-00665 13-00665

Exceptions to the Proposed Decision were filed by Protestant, L. JUNIOR WHITE, through his attorney, JAY R. MCKENZIE, on October 3, 1989. A response to the exceptions were submitted by Applicant, WARREN B. FOX, through his attorney STEVEN R. FULLER, on October 27, 1989. A rebuttal to the response was received from Mr. McKenzie on November 10, 1989.

On May 10, 1990, the Protestant, through his attorney, withdrew Exceptions 1 through 7 and also agreed to the granting of the transfer if the transfer were conditioned so that the water can be measured and delivered properly.

On May 18, 1990, a Final Memorandum Decision and Order ("FMDO") was issued. On June 18, 1990, WARREN B. FOX, Applicant by and through his attorney CLYDE G. NELSON ("FOX"), filed a Petition for Review and Notice of Appeal in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, Case No. 90-118. On July 2, 1990, L. JUNIOR WHITE, Protestant, by and through his attorney JAY R. MCKENZIE ("WHITE"), filed a Notice of Cross-Appeal. By Stipulation for Remand, Joint Motion for Remand and Order, the parties stipulated and jointly moved the Court for an Order, and the Court entered its Order dated September 4, 1991, remanding the appeal for the purpose of the Idaho Department of Water Resources ("IDWR") to enter this Amended Final Memorandum Decision and Order.

ORDER

IT IS THEREFORE HEREBY ORDERED that Applications for Transfer of decreed water right Nos. 11-0600 and 11-0602 be APPROVED subject to the following conditions:

1. This Order as it relates to the measurement and administration of rights shall apply not only to the water rights of FOX and WHITE on South Hoopes Creek, but also to their water rights on North Hoopes Creek, as follows:

FOX

South Hoopes Creek

Bear River Decree

Par. No. 292 (11-0600)
Par. No. 293 (11-0601)
Par. No. 294 (11-0602)

North Hoopes Creek

Bear River Decree

Par. No. 286 (11-0594)
Par. No. 288 (11-0596)
Par. No. 289 (11-0597)
Par. No. 290 (11-0598)
Par. No. 291 (11-0599)

WHITE

South Hoopes Creek

Bear River Decree

Par. No 295 (11-0603)

North Hoopes Creek

Bear River Decree

Par. No. 287 (11-0595)

Recitation of Decree and Permit Numbers above is for identification; in case of discrepancy, actual Decree and Permit Numbers shall control.

2. A measuring device, which may be of a portable and temporary nature, acceptable to the Bear River Watermaster and IDWR, shall be installed at each of the diversions for rights possessed by FOX and WHITE on South Hoopes Creek and North Hoopes Creek. Diverted water must run through such measuring devices, until such time as removal of the measuring devices is authorized by the water master or his assistant, which removal shall include such times as the water flow in the stream is less than that to which FOX is entitled under his primary water rights in North Hoopes Creek (11-0594 and 11-0597) and in South Hoopes Creek (11-0600 and 11-0601); provided however, the measuring devices on diversion points located above the stream-flow measuring devices provided for under paragraph 4 of this Order, shall not be removed during the irrigation season. Said measuring devices installed at the points of diversion shall be installed, maintained, and repaired at the sole expense of the person diverting water through the same for use upon that party's property.

3. The diversion of water for all water rights on South Hoopes Creek and North Hoopes Creek shall be regulated/distributed by the watermaster or his assistant for Water District 11, Bear River, who shall have the responsibility under the provisions of this Order of properly distributing the water of the creeks for the two parties. Any reasonable cost or expense necessary for the

payment of the watermaster and/or any assistant watermaster to regulate the distribution of waters for South Hoopes Creek and North Hoopes Creek, as between Fox and White, according to the existing decrees and water rights, shall be apportioned and paid for by FOX and WHITE on the same pro rata basis as that provided in Idaho Law and by IDWR. At such times as the watermaster or his assistant determines the water flow in South Hoopes is less than the primary right to which FOX is entitled under Decree No. 11-0600 and Decree No. 11-0601, or the water flow in North Hoopes Creek is less than the primary water right to which FOX is entitled under Decree No. 11-0594 and Decree No. 11-0597, no supervision of the watermaster or his assistant shall be required in regard to regulation of said waters; during such times, any and all services of the watermaster or his assistant shall be billed as follows: In the event that no delivery adjustments are made by the watermaster or his assistant, the party requesting the special services of the watermaster or his assistant during this low flow period shall be assessed the cost for the service; in the event adjustments are made by the watermaster or his assistant as a result of the special service request, the cost for the service shall be apportioned on the pro-rata basis as provided above. Neither FOX nor WHITE shall make unreasonable requests upon the watermaster or his assistant to inspect, check, or regulate water within the streams. Nothing herein shall be deemed to limit or deny the jurisdiction of the watermaster as conferred by law.

4. Under direction and supervision of the watermaster and IDWR, FOX and WHITE shall cause to be installed on South Hoopes Creek and North Hoopes Creek stream-flow measuring devices for the purpose of measuring water within the creeks, as may be reasonably required and requested by the watermaster and IDWR within reasonable cost to the parties, in order to determine the amount of waters to be regulated and distributed to FOX and WHITE by the watermaster or his assistant. Such measuring devices shall not be removed during the irrigation season and shall constitute the method of measurement of waters at such times as measuring devices on individual diversions are removed. The costs of the installation of said measuring devices on each of the streams shall be divided between FOX and WHITE equally, and each shall pay one-half of all installation, maintenance and repair costs for said measuring devices, and shall pay the same immediately as said payments become due. Where such measuring devices are installed in connection with existing headgates or other structures, or are installed with headgates or other structures constructed in the future, whereby said headgates and structures are installed for the use of one party for the diversion of water onto his property, installation, maintenance, and repair refers only to the measuring device itself and excludes installation, maintenance and repair to existing or future headgates or other structures, which maintenance and repair shall be the responsibility of the owner thereof.

5. Promptly upon execution hereof, the watermaster shall cause the terms of this Order to be effectuated, including the appointment of an assistant watermaster.

6. FOX and WHITE shall each cooperate and comply with all reasonable directions and instructions of the watermaster or his assistant regarding installation of the above-referenced measuring devices, and regarding regulation and distribution of the water.

7. Neither party shall enter upon the property of the other, other than to obtain access to their respective diversion points and ditches from the streams, and for maintenance of said diversion points and ditches. Each party shall have the right to perform reasonable maintenance upon the streams, if necessary, in accordance with law and Title 42, Chapter 38, Idaho Code, and IDWR rules and regulations governing the alteration of stream channels, as applicable. During the low flow periods referred to in paragraph 3 above, each party shall have reasonable access over the property of the other to inspect the stream-flow measuring devices described in paragraph 4. Neither party shall cause damage to the property of the other in ingress and egress upon the property of the other for the purposes stated in this paragraph. Neither party shall disturb, damage or destroy any measuring device or distribution of water of the other party, nor interfere with any action, regulation or distribution of water, performed by the watermaster or his assistant.

8. Failure of either FOX or WHITE to install the measuring devices at the points of diversion used by each, failure to participate equally in the cost of construction of measuring devices upon the streams as set forth above, failure to pay their respective share for watermaster services as set forth above, or violation of any other term of this Order shall be considered as cause for the Department of Water Resources and/or the watermaster or his assistant to take such action through non-delivery of water or court proceeding as is necessary to compel enforcement of the same.

9. Except as to transfer of water rights Nos. 11-0600 and 11-0602 as approved herein, this Order does not infer that points of diversion used by FOX or WHITE are decreed or department approved, nor does it infer that they are not; this Order does not affect the rights of any party, including IDWR, as to any proceedings relating to such existing points of diversion, or as to any objections thereto.

SIGNED at Boise this 10TH day of September, 1991.


R. KEITH HIGGINSON, Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED

MAY 24 1990

Department of Water Resources
Eastern District Office

IN THE MATTER OF APPLICATIONS FOR
TRANSFER NOS. 11-0600 and 11-0602

3345 # 3346

WARREN B. FOX,
Applicant;
L. JUNIOR WHITE,
Protestant.

SOURCE: South Hoopes
Creek
COUNTY: Franklin

FINAL MEMORANDUM DECISION AND ORDER

A Proposed Memorandum Decision and Order approving the transfer of water rights Nos. 11-0600 and 11-0602 was issued on May 31, 1989.

Exceptions to the Proposed Decision were filed by protestant, L. Junior White, through his attorney Jay R. McKensie, on October 3, 1989. A response to the exceptions was submitted by applicant, Warren B. Fox, through his attorney Steven R. Fuller, on October 27, 1989. A rebuttal to the response was received from Mr. McKenzie on November 10, 1989.

On May 10, 1990, the protestant, through his attorney, withdrew Exceptions 1 through 7 and also agreed to the granting of the transfer if the transfer is conditioned so that the water can be measured and delivered properly. The request of the protestant is reasonable and can be satisfied by an elaboration of the conditions proposed in the Proposed Memorandum Decision and Order.

The timeliness of the installation of the measuring devices is an important consideration and, therefore, a condition is added to the Proposed Memorandum Decision and order that sets a time for the installation and sets consequences for the failure of the applicant to install them.

ORDER

IT IS, THEREFORE HEREBY ORDERED that Applications for Transfer of decreed water right Nos. 11-0600 and 11-0602 be APPROVED subject to the following conditions:

1. A headgate and measuring device of a type acceptable to the Department of Water Resources shall be installed at each of the diversions for right Nos. 11-600 and 11-0602.

2. The diversion of water for right Nos. 11-0600 and 11-0602 is subject to regulation by the watermaster or his assistants for Water District 11, Bear River.

3. The applicant, before diverting the water transferred, must install measuring devices at the points of diversion and shall have entered into an agreement with the protestant for the installation of a measuring device on South Hoopes Creek above the points of diversion and also for the hiring of an assistant to the watermaster who would have the responsibility of properly distributing the water of the Creek between the two parties. The cost of the installation of the measuring devices on the stream and the cost of an assistant watermaster shall be divided between the applicant and the protestant in proportion to the rates of flow evidenced by their water rights.

4. Failure of the applicant to install the measuring devices at the points of diversion, without an acceptable reason, shall be considered as cause for the director of the Department of Water Resources to cancel the approval of the transfers.

Signed at Boise this 18TH day of May, 1990.

for 
R. Keith Higginson, Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 21st day of May, 1990 a true and correct copy of the foregoing FINAL MEMORANDUM DECISION AND ORDER, was mailed, postage prepaid:

Warren B. Fox
16205 North Cleveland Rd.
Preston, ID 83263

L. Junior White
15516 North Cleveland Rd.
Preston, ID 83263

Jay R. McKenzie
McKenzie & Mumford
Five East Oneida
Preston, ID 89263

Steve Fuller
Attorney at Law
P. O. Box 191
Preston, ID 83263


RITA I. FLECK
Secretary/Records Manager

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 11 0602
3346APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Warren B. Fox Phone 427-6652
Post Office address 16205 North Cleveland Road, Thatcher, Idaho 83283

A. PURPOSE OF TRANSFER

1. ☒ Change/^{partial} 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 to transfer water from 11 acres located in Section 14 of Township 12 South, Range 40 East, Boise Meridian, to 11 acres in Section 12, Township 14 South, Range 40 East, Boise Meridian. This transfer will allow a culinary water spring located in ~~this~~ ¹⁴ Section to be recharged with an earlier water right.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number 13-00665 B Priority 5-3-1886 Amount (cfs/ac-ft) .22 cfs Nature of Use Irrigation Period of Use 4-20 9-30
11-0602 5-3-1886 .22 cfs Irrigation 4-1 to 10-31

_____ to _____
_____ to _____
_____ to _____
2. Total amount of water being transferred .22 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water South Hoopes Creek tributary to ~~Bear River~~ Hoopes Creek
Hoops Hoops
4. Point(s) of Diversion: _____

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NW	14	12S	40E	Franklin	South ^{Hoops} Hoopes Creek

5. 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	
12S	40E	12											6	5					11

Total acres 11

PART 1

6. General Information:

- a. Description of diversion system Dam in South Hoopes Creek.

- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? No 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:
11 acres now being irrigated in S1/2SW1/4, Section 12, Township 12 South, Range 40
East, with right No. 11-0600 will be irrigated with water from right No. 11-0602 so
that 11 acres around the spring will be irrigated with an earlier right to allow
maximum recharge available at the spring which is used for culinary water
- d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 11-0602
And said application is hereby APPROVED, subject to the following limitations and conditions:
pursuant to FINAL MEMORANDUM DECISION AND ORDER.

Witness my hand this 18TH day of May, 19 90.

for Norm C. Young
Director

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: 11-0602

a. Decree No. 11-0602 Decreed to John Schutt

in case of Utah Power & Light Company

vs. Last Chance Canal Company

dated 7-14-1920

in Franklin

county of Idaho

b. License No. _____ 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 South Hoopes Creek tributary to Hoopes Creek

4. Date or priority 5-3-1886

5. Water is used for the following purpose:

amount 1.1 cfs for irrigation purposes from 4/20 to 9/30

(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 1.1 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
		NW	NW	14	12S	40E	Franklin	South Hoopes Creek

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	
12S	40E	14	X	X			X	X											

Total acres 55

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 .22 for irrigation purposes from 4/20 to 9/30
 (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	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	NW	14	12S	40E	Franklin	South Hoopes Creek

3. 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	
12S	40E	14	5	6															11

Total acres 11

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

1. amount .88 for irrigation purposes from 4/20 to 9/30
 (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	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NW	14	12S	40E	Franklin	South Hoopes Creek

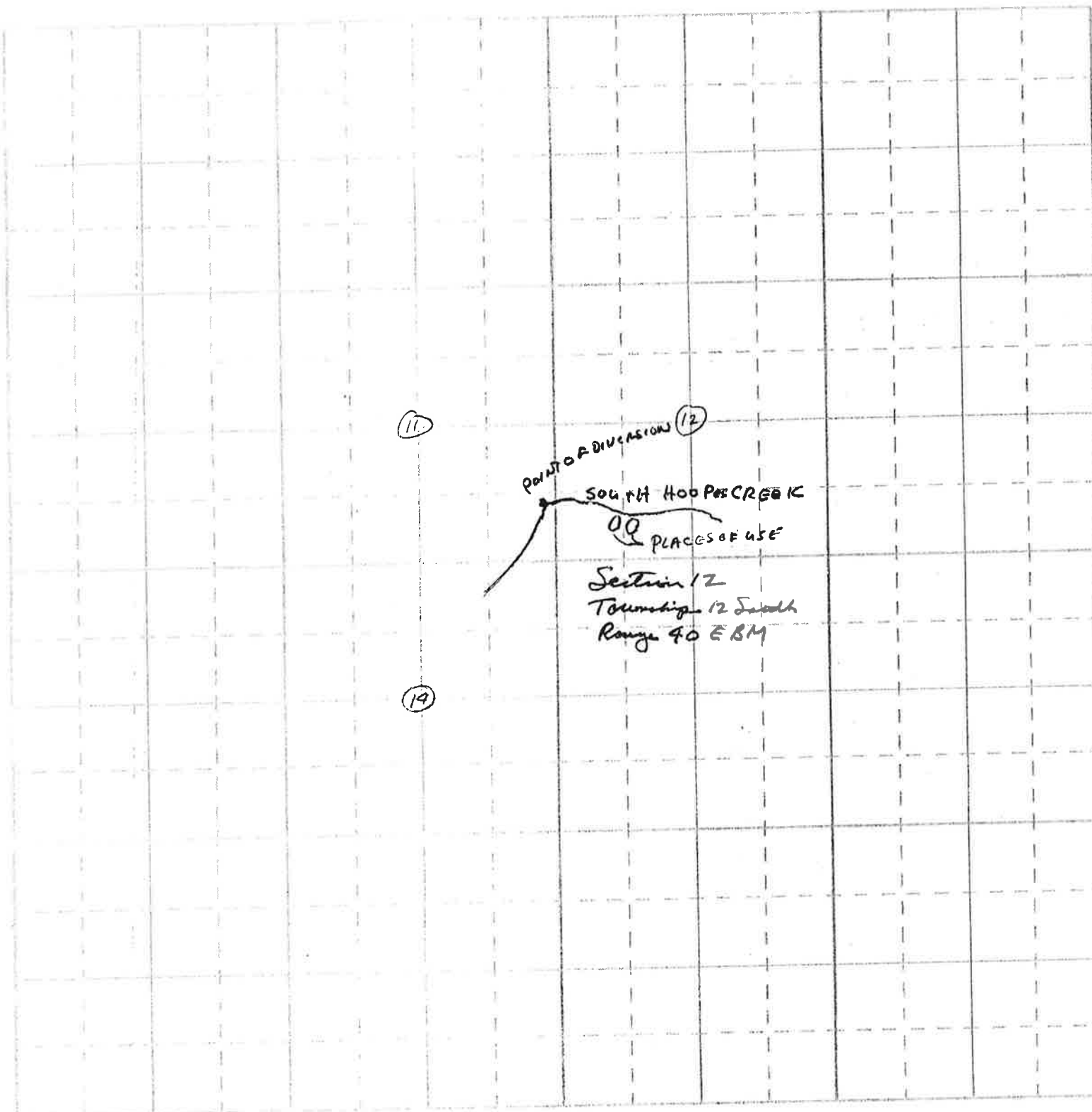
3. Lands irrigated or place of use:

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	
12S	40E	14	16	16			12												44

Total acres 44

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</u> (cfs/ac-ft)	<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.

Warren B. Fox

(Signature of Applicant)

Subscribed and sworn to before me this 7th day of August, 19 87.

[Signature]

(Notary Public)

My commission expires 8-8-87

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and 8-12-87 attachments

Received by CW Date 5-18-87

Prelim. check by AWJ Fee \$50

Receipted by dg 41215 Date 6-9-87

Published in Preston Citizen dg

Pub. dates 9-17 + 9-24-87

Watermaster recommendation requested on 9-10-87

WD #11 rec'd. _____

Copy of transfer sent to lien holder _____

Protest filed by R. James White

Copies of protest forwarded by CW

Hearing held by _____ Date _____

Recommended for ☒ approval ☐ denial

by RDC