

T4071 WHITTAKER

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4071
WATER RIGHT NO(S). 74-00039B/74-00063

RECEIVED

MAY 17 1993

Department of Water Resources
Eastern District Office

This is to certify that: F JAMES WHITTAKER
PAULA WHITTAKER
PO BOX 240
LEADORE ID 83464

has requested a change to the above captioned water rights. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
Right No. 74-00039B :		
IRRIGATION	03/15 to 11/15	6.00 CFS
Priority: 06/10/1901		

Right No. 74-00063 :		
IRRIGATION	03/15 to 11/15	0.96 CFS
Priority: 07/18/1911		

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG TIMBER CREEK	LEMHI RIVER

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 20, Township 15N, Range 26E
LEMHI County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
15N	26E	22	NENW 40	NWNW 40	SWNW 40	
			SEnw 40	NWSW 35		195

Total number of acres irrigated: 195

CONDITIONS/REMARKS:

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 74W.
2. A measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

TRANSFER NO. 4071
WATER RIGHT NO(S). 74-00039B/74-00063

CONDITIONS/REMARKS:

3. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. The total combined rate of diversion under Right Nos. 74-00039B and 74-00063 shall not exceed 6.96 cfs.
7. The total combined rate of diversion at the field headgate under Right Nos. 74-00039B and 74-00063 shall not exceed 0.02 cfs per irrigated acre.

Dated this 26th day of April, 1993.


Chief, Water Alloc. Bureau

Page _____ of _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

Transfer No. _____

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Name of applicant F. JAMES OR PAULA WHITTAKER Phone 768-2491
Post Office address PO BOX 240, LEADORE ID 83464

A. PURPOSE OF TRANSFER

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 I feel the new place of use is better crop ground.

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

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>74⁰-0039B</u>	<u>6-10-1901</u>	<u>6.00 cfs</u>	<u>Irrigation</u>	<u>3-15</u> to <u>11-15</u>
<u>74-00063</u>	<u>7-18-1911</u>	<u>0.96 cfs</u>	<u>Irrigation</u>	<u>3-15</u> to <u>11-15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 6.96 cfs cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Big Timber Creek tributary to Lemhi River
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	20	15N	26E	Lemhi	

5. 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	
15N	26E	22					40	40	40	40		35							195

Total acres 195

PART 1**6. General Information:**

a. Description of diversion system Ditch to pipeline to gravity flow sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X 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:

This land will now be used as pasture.

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. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

74-000398 + 74-00063



35'

T. 15 N.
T. 14 N.

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. 74-00063 Decreed to Wilford Shiner
in case of State of Idaho vs. Mary A. Adams
dated Dec. 30, 1982 in Dist. Court county of _____
- 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 Big Timber Creek tributary to Lemhi River

4. Date or priority 7-18-1911

5. Water is used for the following purpose:

amount 0.96 cfs for Irrigation purposes from 3-15 to 11-15
(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 0.96 cfs cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	8	15N	26E	Lemhi	

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	
16N	25E	25									35			40	40	40	40		195

Total acres 195

9. Describe any other water rights used for the same purpose as described above 74-0039B

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ 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 _____ for _____ purposes from _____ to _____
 (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

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	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (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

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	

Total acres _____

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:

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in case of State of Idaho vs. Mary A. Adams
dated Dec. 30, 1982 in Dist. Court county of _____
- 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 Big Timber Creek tributary to Lemhi River

4. Date or priority 6-10-1901

5. Water is used for the following purpose:

amount 6.00 cfs for Irrigation purposes from 3-15 to 11-15
(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 6.00 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	SE	8	15N	26E	Lemhi	

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	
16N	25E	25									35			40	40	40	40		195

Total acres 195

9. Describe any other water rights used for the same purpose as described above 74-00063

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ 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 _____ for _____ purposes from _____ to _____
 (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

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	

Total acres _____

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

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

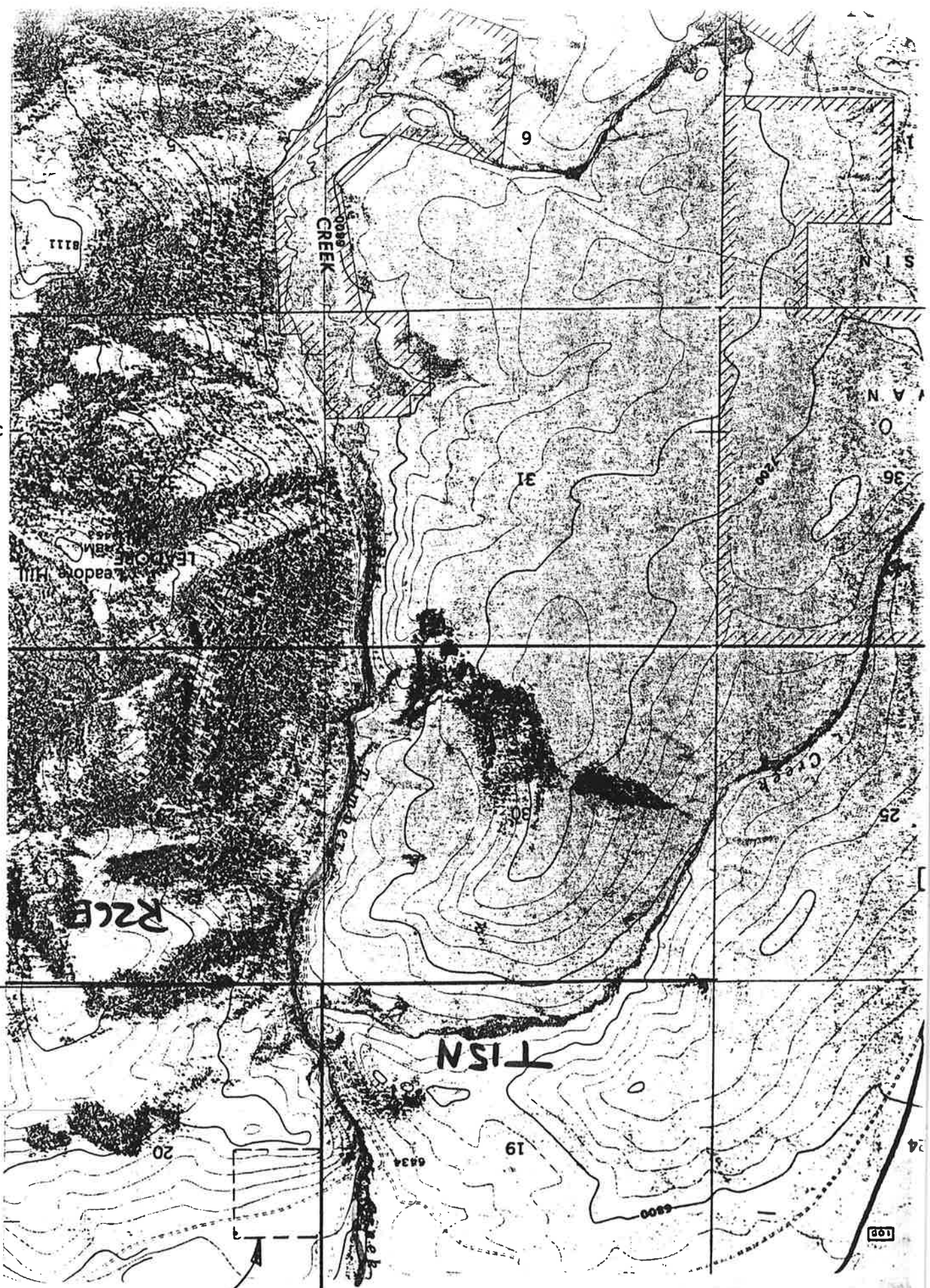
2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

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	

Total acres _____



74-000395 + 74-0003

SW side

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.

F. James Whitaker
(Signature of Applicant)

Subscribed and sworn to before me this 7th day of Dec., 19 92.

Clara E. Ellis
(Notary Public)

My commission expires 5-1-98

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by HWS Date 12-8-92

Protest filed by _____

Prelim. check by _____ Fee #50.00

Receipted by AWJ #2018151 Date 12-8-92

Published in Recorder-Herald

Copies of protest forwarded by _____

Pub. dates 12-17-24-92

Hearing held by _____ Date _____

Watermaster recommendation requested on 12-15-92

Recommended for ☒ approval ☐ denial

_____ rec'd. _____

by REC

Copy of transfer sent to lien holder _____

FROM: H.W. JONES
TO: RON CARLSON
RE: JAMES WHITTAKER TRANSF.

MR. WHITTAKER WAS DENIED HIS PREVIOUS ATTEMPT AT TRANSFER OF HIS BIG TIMBER CREEK RIGHT BECAUSE HE TRIED TO UNSTACK RT. 74-00063 FROM 74-00039B. ON THIS ATTEMPT HE INCLUDES BOTH RIGHTS ON AN ACRE FOR ACRE TRANSFER.

I HAVE TALKED TO ERNIE ABOUT THE SPECTRE OF EXCESSIVE DIVERSION IMPLIED BY 6.96 CFS TO 195 ACRES. HE SUGGESTS APPROVING THE TRANSFER WITH A CONDITION WHICH LIMITS Q TO 0.02CFS/ACRE DIVERSION AT THE FIELD HEADGATE. THE OTHER CONDITION WOULD TO THEN MAKE THE TRANSFER SUBJECT TO EVENTUAL ADJUDICATION REVIEW TO DETERMINE LOSS ASSESSMENT AT THE P.D.

ALL THINGS CONSIDERED, I WOULD RECOMMEND APPROVAL.

From previous Transf. Applic

CONCLUSIONS OF LAW

1. The protestant does not have recorded water rights for the watering of stock from the applicant's ditch which currently provides water to the applicants land in Section 25 (the Clark place).
2. The applicant is not obligated to continue the use of the ditch which currently delivers irrigation water to the Clark place.
3. The applicant is not obligated to continue an irrigation practice simply to assure the recharge to the aquifer from which the protestant's livestock water.
4. The separation of 74-00039B and 74-00063 would result in an expansion in use which is prohibited under Section 42-222 Idaho Code and therefore cannot be approved by the Director.
5. The actions of the Department will not prejudice a future application for transfer by the applicants that seeks to remove all water rights from the 195 acres of land currently identified as the place of use for water rights 74-00039B and 74-00063.

ORDER

IT IS THEREFORE HEREBY ORDERED that application for transfer of water right 74-00039B be DENIED.


RONALD D. CARLSON, Hearing Officer
Department of Water Resources

