

Eastern 4848

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

RECEIVED

NOV 08 1996

Department of Water Resources
Eastern District Office

TRANSFER NO. 4848
WATER RIGHT NO. 13-00870B

This is to certify that: **BLAISDELL COTTONWOOD GRAZING CORP**
359 W ST JOHN RD
MALAD ID 83252

has requested a change to the above captioned water right(s). 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>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	3.20 CFS	560.0 AF

SOURCE

TRIBUTARY OF

COTTONWOOD CREEK
SHINGLE CREEK
UNNAMED STREAM

BEAR RIVER
COTTONWOOD CREEK
COTTONWOOD CREEK

Priority: 09/01/1916

LOCATION OF POINT(S) OF DIVERSION:

SWSW , Sec. 28, Township 11S, Range 39E
NWSE , Sec. 5, Township 12S, Range 39E
SWNE , Sec. 9, Township 12S, Range 39E
BANNOCK 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>
12S	39E	8	NENE 40	SENE 40	NESE 40	160
			SESE 40			160

Total number of acres irrigated: 160

CONDITIONS OF APPROVAL AND REMARKS

Right No. 13-00870B is subject to the conditions of the Final Order in the Matter of Application for Transfer No. 4848.

Dated this 1st day of November, 1996.

J. Glen Saylor
Chief, Water Alloc. Bureau

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4848 OF WATER RIGHT NO.)
13-00870B IN THE NAME OF BLAISDELL)
COTTONWOOD GRAZING CORPORATION)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of an application for transfer with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 4, 1920, In the case of Utah Power & Light Company v. Last Chance Canal Company (Dietrich Decree), the U.S. District Court of Idaho, Eastern Division decreed a water right identified in department files as No. 13-00870 which provides the following:

Owner: J.R. Rencher, J.L. Rencher, Eli Beckstead and Leo Meacham (permit holder)
Priority: September 1, 1916
Source: Cottonwood Creek
Rate: 6.4 cubic feet per second (cfs)
Use: Irrigation
Place of use: 320 acres in SE1/4NW1/4, NE1/4SE1/4, SE1/4SE1/4 Section 5, E1/2NE1/4 Section 8, NE1/4NE1/4 Section 17, all in T12S, R39E, B.M.
Conditions: Provided, however, that the priority and the amount of this appropriation is conditioned upon compliance with the terms of the permit upon which said appropriation is based, to-wit: Permit No. 12454, issued by the State Engineer of the State of Idaho, and the same is subject to the provisions of the laws of the State of Idaho governing the issuance by the Commissioner of Reclamation of the State of Idaho.

2. Permit No. 12454, which is also identified in department files as Permit No. 13-02076 was cancelled by the department on June 25, 1974 for failure of the permit holder of record to submit to the department proof of beneficial use depositions which were to have been taken on April 3, 1919.

3. On July 19, 1995, Blaisdell Cottonwood Grazing Corporation (applicant) filed Application for Transfer No. 4848 of water right No. 13-00870B (application) with the department

proposing to change the point of diversion and place of use of the right.

4. On March 15, 1996 and on May 14, 1996, the department corresponded with the applicant's attorney and requested information to show that the water right had been delivered and used. The applicant's attorney did not respond.

5. On June 11, 1996, the department issued a preliminary order which denied the application for transfer and declared that water right No. 13-00870 had been forfeited through five (5) consecutive years of non-use.

6. On June 17, 1996, the applicant contacted the department advising that the applicant had not received any letters from the department and requested reconsideration of the June 11, 1996 preliminary order.

7. On June 20, 1996, the department rescinded its June 11, 1996 preliminary order.

8. On August 15 and August 22, 1996, the department advertised the application for transfer and did not receive any protests to its approval.

9. Notice given in 1974 to the permit holder of record of a defect in the proof submittal which was required some 55 years earlier (in 1919), may not be considered adequate notice to the permit holder even though the department complied with the specific provisions of the then existing law for giving notice.

10. Due to the long time expanses between correspondence, the department should consider that the proof submittal requirements described in the Dietrich Decree are constructively waived for water right No. 13-00870B.

CONCLUSIONS OF LAW

1. Section 42-218a, Idaho Code, authorizes the department to reinstate permits upon a reasonable showing by a permit holder or upon an error or mistake of the department.

2. Although in 1974 the department followed the provisions of existing law for notifying the permit holders of the deficiency in submitting proof of beneficial use for Permit No. 13-02076, the department should give the benefit of any doubt as to the validity and history of past use of a water right to the right holder in order to protect and preserve existing water rights.

3. The department should reinstate Permit No. 13-02076 with no advance in priority and should waive the examination to determine the extent of beneficial use of water which is a usual step before issuing a license of water right. The department

should also waive the issuance of a license, since the decree is the more recent description of the water right and adequately defines the water right.

4. The department should approve Application for Transfer No. 4848 with certain conditions and limitations.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Permit No. 13-02076 is **REINSTATED**.

IT IS FURTHER HEREBY ORDERED that Application for Transfer No. 4848 of water right No. 13-00870B is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this transfer is subject to the control of the watermaster of State Water District 13M, Cottonwood Creek.

2. This right when combined with all other rights shall provide no more than 0.02 cfs of water per acre nor more than 3.5 AFA per acre for the lands above.

3. Approval of this transfer does not grant any right-of-way or easement for the use of a delivery system owned by persons other than the right holder.

4. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the department from all authorized points of diversion which will allow determination of the total rate of diversion.

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

6. Failure to comply with the conditions of this transfer is cause for the director to void the transfer approval.

7. Approval of this transfer does not confirm the extent of the right which has been used through the years and does not preclude the opportunity for review of the validity of the water right in a subsequent adjudication.

Dated this 1st day of November, 1996.


L. GLEN SAXTON, Chief
Water Allocation Bureau

STATE OF IDAHO

Page _____ of _____

DEPARTMENT OF WATER RESOURCES

Transfer No. 4848
RECEIVEDAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 1JUL 30 1996
Department of Water Resources
Eastern RegionName of applicant Blaisdell Cottonwood Grazing Corp. Phone 208-766-2698
Post Office address 359 W. St. John Road, Malad, ID 83252

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 Change source.
2. Describe the reason for the proposed changes To conform this water right and the
Department's records with actual and historic use by applicant since
1947 and their predecessors since approximately 1928.

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 |
|-----------------|----------|-----------------------|------------------|---------------|
| 13-00870B | 9/1/1916 | 3.20 | Irrigation | 4/20 to 9/30 |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 3.20 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Shingle Creek, Cottonwood tributary to Cottonwood Creek, Bear River,
Creek, Mine Hollow Cottonwood Creek
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	5	12S	39E	Bannock	Shingle Creek
		SW	NE	9	12S	39E		Mine Hollow
		SW	SW	28	11S	39E		Cottonwood 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	39E	8	40			40									40			40	160

Total acres 160

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 **PENDING REINSTATEMENT**

1. Right evidenced by:

- a. Decree No. 448 (13-00870) Decreed to J.R. Rencher, et al
in case of Utah Power & Light Company, Pltf. Last Chance Canal Co., Defendant
dated 7/14/1920 in U.S. District Court county of Idaho, Eastern Div.
- 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 Title Report

3. Source of water Cottonwood Creek tributary to Bear River

4. Date or priority 9/01/1916

5. Water is used for the following purpose:

amount 6.4 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 6.4 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: NOT LISTED IN DECREE

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

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	
12S	39E	5								A					A			A	
12S	39E	17	A																
12S	39E	8	A			A													

*NOTE: Decree identifies 320 acres irrigated, but only describes 240 acres.

Total acres 320*

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 3.20 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) _____
2. Point(s) of Diversion: NOT LISTED.

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	
12S	39E	5																A	
		8	A			A													
		17	A																

Total acres 160***C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT** (omit if there is no change)

1. amount 3.20 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) _____
2. Point(s) of Diversion: NOT LISTED.

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	
12S	39E	5								A					A				

*Decree says 320 acres total.

Total acres 160*

PART 1

6. General Information:

- a. Description of diversion system Ditches to flood irrigation.

- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? N/A 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:
N/A. This water was moved to these properties back in the late 1920's.

- d. Remarks:

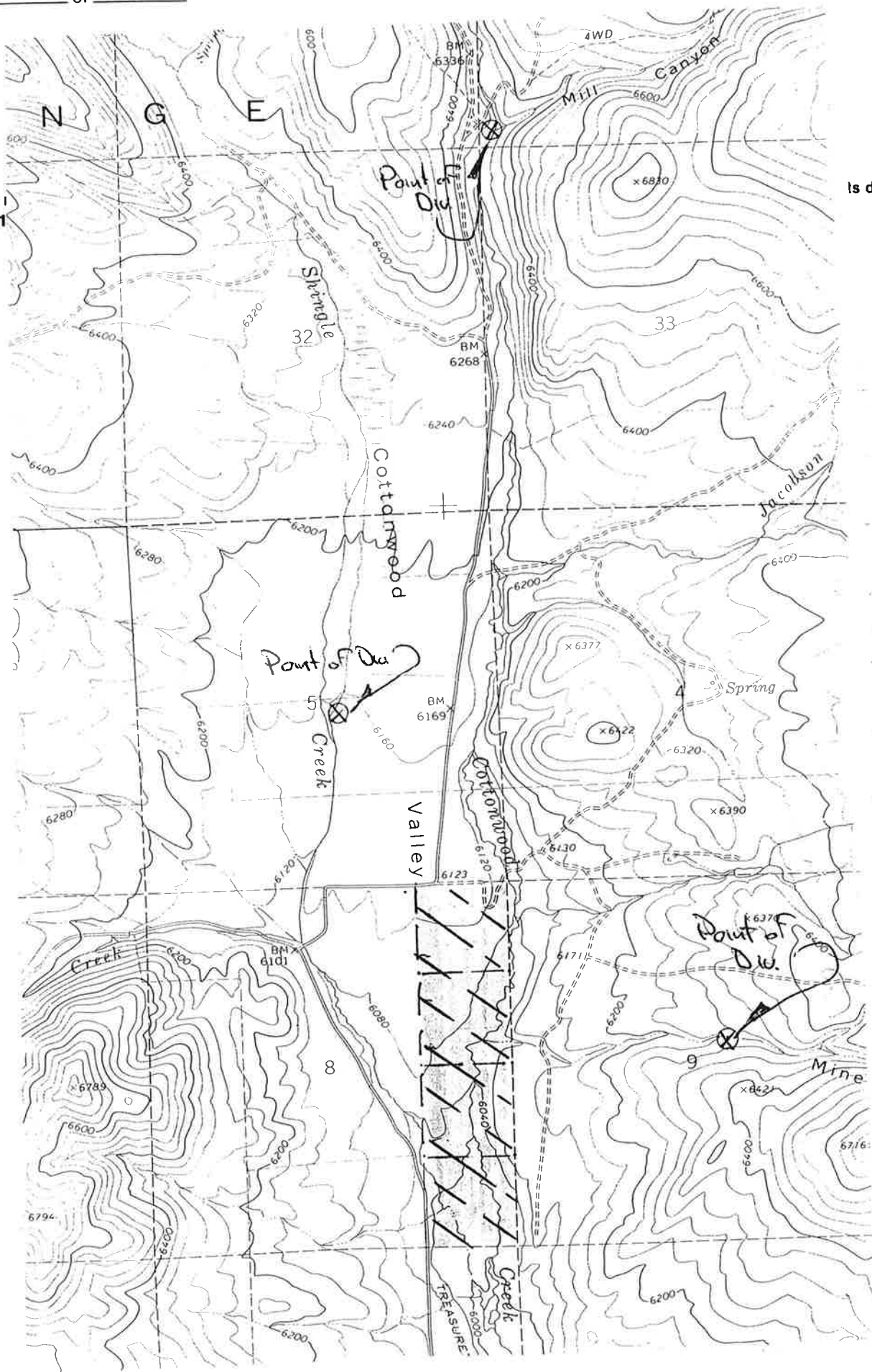
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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 _____

A. Draw a
in part 1

Is described



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.

Lela D. Blairdell
(Signature of Applicant)

Subscribed and sworn to before me this 25th day of July, 1996.

Joan Williams
(Notary Public)

My commission expires 5-6-97

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee \$100.00

Received by HWT #E021301 Date 7-19-95 8-3-95

Published in Idaho State Journal Copies of protest forwarded by _____

Pub. dates Aug 15, 22-96 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____