

T4985 GATES TRUST
Sent to Glen Saxton 10-6-97

STATE OF IDAHO

IN THE NAME OF MARK T. GATES)

Water Resources.

Victor and Scott Johnson, & Lynn Reno on behalf of Reno Ranch.

agreement.

All parties seemed satisfied to continue to work on resolutions.

FALLS, ID. PARK IN THE BACK PARKING LOT AND USE THE REAR

be obtained from the Department upon request.

Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

please advise the Department within ten(10) days prior to the hearing.

Dated this 22nd day of September, 1997.

RONALD D. CARLSON

Eastern Regional Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 1997, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

Steve Aslett
Aslett Ranches
P.O. Box B
Twin Falls, ID 83303

Scott Campbell, ESQ
Elam & Burke PA
P.O. Box 1539
Boise, ID 83701

Mark T. Gates, Jr., Trustee
700 Emerson Street
Palo Alto, CA 94301

Norman M. Semanko, ESQ
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

James P. Speck, ESQ
Hogue, Speck & Aanstead
P.O. Box 987
Ketchum, ID 83340

Victor & Scott Johnson
Churndasher Ranch
Star Route
Mackay ID 83251

Lynn Reno
Reno Ranch
Star Route
Mackay ID 83251



Rita Bodell, Secretary

From: DWR60::AMERRITT 11-APR-1997 11:58:59.57
To: DWR03::GSAXTON,DWR70::HJONES
CC: AMERRITT
Subj: Big Lost Transfers

FROM: Allen Merritt

DATE: April 11, 1997

TO: Glen Saxton, Harold "Skip" Jones

SUBJECT: Second Pre-hearing conference for Transfers 4906 & 4985

On 4/9/97 I conducted a second pre-hearing conference with the parties involved with these transfers as prescribed by the first conference I held on 3/24.

At the conference there were various alternatives to settle the protests discussed including:

Have Aslett transfer his rights to a well and leave water in the creek. (Aslett indicated they did not feel this to be economically feasible due to expense of well.)

Have Aslett transfer his rights downstream and divert below similar to the Gates proposal. (Aslett indicated they did not feel this to be economically feasible due to expense of long pipeline.)

The discussion then centered on the need to have a study of the seepage loss in the ditch so that any transfers out of the ditch could be appropriately conditioned to prevent injury. Semanko had Dr. Brockway come and review with the parties what may be involved to do a study of this issue. All parties agreed to have Brockway visit the area and prepare a study proposal. In principle, all parties agreed to share in cost of this preliminary expense and probably the entire cost of the study. It was agreed that any work to improve individual measuring devices would be at the expense of the owner.

I got a sense that the parties (Aslett, Gates, Reno/Johnson) would continue to work on language for agreement for the transfers to move forward. The other party (Stoecklein) was agreeable to allow this study process to continue but they had additional concerns about the Reno right (34-00470A) which I understand will be modified in the SRBA process. We attempted to contact Mat Howard to get an update on this process but Mat was sick so Speck will contact him later this week. Stoecklein seems to be the wild card in this whole agreement process; I do not know if he will be satisfied without having a hearing.

I discussed with the parties the possibility of scheduling a hearing on either transfer. The dates provided by Glen in May were too soon for the parties to consider so nothing further was discussed. They all seemed satisfied to continue to work on resolution and get the study underway. We did not discuss further conferences.

Do you want me to keep these files or forward back to Eastern?

ASSISTED BY:

[illegible]

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NOS. 4906 & 4985

NOTICE OF
PRE-HEARING CONFERENCE

ASLETT RANCHES, Applicant
MARK GATES, Applicant

SOURCE: Warm Springs Creek
Tributary to Big Lost River
COUNTY: Custer

The above referenced applicants have filed applications to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said applications.

On September 6, 1996-Aslett Ranches filed Application for Transfer No. 4906 to make changes to Water Rights No. 34-00469 and 34-00471. Protests to Transfer No. 4906 have been received from Mark T. Gates, Jr; Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle & Livestock Co.

On December 20, 1996-Mark T. Gates, Trustee filed Application for Transfer No. 4985 to make changes to Water Right No. 34-00870. Protests to Transfer No. 4985 have been received from Steve Aslett; Victor and Scott Johnson; and Lynn Reno. The protest by the Bureau of Land Management has been withdrawn.

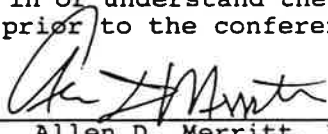
The conference held on March 24, 1997 did not resolve the issues; THEREFORE, the Department has set the matters of protest for a joint conference on Wednesday, April 9, 1997 at 1:00 p.m. in the Conference Room, Department of Water Resources Southern Regional Office, 1341 Fillmore Street-Suite 200; Twin Falls ID 83301.

The purpose of the joint conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 27th day
of March, 1997.


Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March, 1997 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by first class mail to the parties listed:

Mary A. Baldwin
Secretary

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

SCOTT L CAMPBELL ESQ
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

VICTOR & SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

MARK T GATES TRUSTEE
700 EMERSON STREET
PALO ALTO CA 94301

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?
2. Will the proposed transfer constitute an enlargement in the use of the original right?
3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?
4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

FROM: Allen Merritt

DATE: March 25, 1997

TO: Glen Saxton, Harold "Skip" Jones

SUBJECT: Pre-hearing conference for Transfer #4906 in the name
of Aslett and Transfer #4985 in the name of Gates

Transfer #4906 was protested by: Gates (Semanko)
Stoecklein (Speck)

Gates, Semanko & Speck were present. Stoecklein was not
present but was represented by Speck.

The applicant Aslett and his attorney Semanko were present.

Transfer #4985 was protested by: Aslett (Campbell)
BLM

Reno/Johnson

Aslett, Campbell & Johnson were present. Reno was not
present but Johnson represented his interest. BLM was not
present but Fred Price from the BLM State Office in Boise
called and indicated that they were going to withdraw their
protest and would be sending a letter to that affect.

The applicant Gates and his attorney Campbell were present.

Other interested parties present were Jim Gregory representing "Big
Lost Ranch" or Gate's ranch. Also Ross Goddard representing "Bar
13 Ranch" which appears to side with Johnson & Reno's concerns.

The issues involved in the protest of Aslett's transfer is that
Stoecklein feels that the lands being dried up have historically
been irrigated by subwater and to move these acres and irrigate by
pivot would be an expansion. (Issues: Expansion & Local Public
Interest) Gates feels similar (Issues: Expansion & Injury).

The issues involved in the protest of Gate's transfer is mainly
that of injury to users in the ditch if water is taken out.
Reno/Johnson main concern is injury. Aslett reserves to argue
about all four issues. It appears the Aslett protest is also being
used as leverage against the Gates protest of their transfer.

At the conference Semanko presented an outline of a stipulation for
the parties to enter into to resolve the protests. It appeared
that Aslett, Gates & Reno/Johnson are open to study the conveyance
loss issue in the ditch for a time and allow both transfers to go
forward as long as the final conveyance reflects the results of the
study. The idea being that a portion of the Gates right would be
left in the ditch so there would not be injury to the other users.
Stoecklein's position is that he is in favor of the Gates transfer
moving water out of the ditch and down the stream since Stoecklein
wants to see more water flowing down the creek on his property. He
is opposed to the Aslett transfer since he feels the land being
dried up has historically been sub-irrigated so to move these acres
so a pivot can water them is an expansion but since he wasn't there
Speck needs to consult with Stoecklein. It may be he would buy off

on getting the Gates approved in some sort of trade-off.

We ended the conference with the following understanding. All parties would continue to review the Semanko proposal to see if they could come to a workable agreement. Since Stoecklein seem to be the critical person to decide if he wants to go this route we decided to meet again either 4/9 or 4/11 in Twin Falls to either discuss setting hearings or finalizing an agreement. Note that it is the desire of both applicants and the protestants that if hearings are set that they be set separately. They agreed that I could notify them of either 4/9 or 4/11 meeting by regular mail.

Note that one side issue with Stoecklein is the diversion of 34-00470A belonging to someone else. Speck indicated that it is diverted two places but SRBA reports only one place. Johnson said it could be and is diverted thru Hatchery Ditch by exchange agreement. Speck complains that it should only be diverted below as described by SRBA recommendation or they should file a transfer.

ASSISTED BY:

ROSTER OF ATTENDANCE

[illegible]

**OUTLINE OF PROPOSED
JOINT STIPULATION BETWEEN PARTIES
TO TRANSFER NO. 4906 (ASLETT RANCHES)
AND TRANSFER NO. 4985 (GATES)**

1. Parties

- a. Parties to Transfer No. 4906 (Aslett Ranches) are Aslett, Gates and Stoecklein.
- b. Parties to Transfer No. 4985 (Gates) are Gates, Aslett, Johnson, Reno, and the U.S. Bureau of Land Management (BLM).
- c. Gates will seek to have BLM withdraw its protest or enter into a separate stipulation. All other parties will sign joint stipulation.

2. Resolution of Protests

a. Protests to Transfer No. 4906 (Aslett Ranches) will be resolved by agreement by Asletts to install measuring device and agreement by all parties to support conditional approval of Transfer No. 4985 (Gates). The parties agree that Transfer No. 4906 (Aslett Ranches) should be approved by IDWR, subject to this agreement.

b. Protests to Transfer No. 4985 (Gates) will be resolved by agreement to support conditional approval of the transfer. As a condition of approval, Gates will agree to continue to divert a percentage of his water right into the Fish Hatchery Canal. For the first three years, this percentage will be agreed to by the parties. During this three-year period, a jointly sponsored hydrologic study will be conducted to determine the impact of the transfer on other water rights diverted to the Fish Hatchery Canal (see attached "Hatchery Ditch Shrinkage Study" outline). This study will be designed to determine the appropriate percentage of Gates' water right that must be diverted into the Fish Hatchery Canal to prevent injury to others who divert water to the Fish Hatchery Canal. The study will be conducted by a mutually agreeable hydrologist and the parties will agree to the method for measuring shrink prior to the study being conducted. The parties further agree that a final assessment will be made at the end of the three-year period/study regarding the appropriate percentage of Gates' water right which must be diverted to the Fish Hatchery Canal to prevent injury. The parties agree that Transfer No. 4985 (Gates) should be approved by IDWR, conditioned on the three-year hydrologic study and final assessment referred to above.

02289704.NMS

Attachment

Hatchery Ditch Shrinkage Study

for three (3) years

Objectives

Assess shrink in the Hatchery Ditch at each headgate location at three times during the irrigation season under the following two scenarios:

1. When all the water currently allocated to the ditch is being diverted (this includes water owned by the Big Lost Ranch [formerly Zollinger Ranch]).
2. When all water currently allocated to the ditch, except that owned by the Big Lost Ranch, is being diverted.

Protocol

Shrink will be assessed during the early, mid, and late (May, July, and September respectively) irrigation season at each headgate diversion by measuring discharge at each headgate and in the ditch upstream from each headgate.

Immediately upstream from Ross Goddard's diversion
In Ross Goddard's diversion
Immediately upstream from Johnson's diversion
In Johnson's diversion
Immediately upstream from Aslet's first pump station
Immediately downstream from Aslet's last pump station

Shrink will then be calculated for each section (the area between diversions), and a weighted average will be used (shrink per distance) to obtain an average value for shrink over the length of the ditch (from diversion point to Aslet's last pump station).

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER NOS. 4906 & 4985

ASLETT RANCHES, Applicant
MARK GATES, Applicant

NOTICE OF
PRE-HEARING CONFERENCE

SOURCE: Warm Springs Creek
Tributary to Big Lost River
COUNTY: Custer

The above referenced applicants have filed applications to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said applications.

On September 6, 1996-Aslett Ranches filed Application for Transfer No. 4906 to make changes to Water Rights No. 34-00469 and 34-00471. Protests to Transfer No. 4906 have been received from Mark T. Gates, Jr; Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle & Livestock Co.

On December 20, 1996-Mark T. Gates, Trustee filed Application for Transfer No. 4985 to make changes to Water Right No. 34-00870. Protests to Transfer No. 4985 have been received from Steve Aslett; Bureau of Land Management; Victor and Scott Johnson; and Lynn Reno.

The Department has set the matters of protest for a joint conference on **Monday-March 24, 1997 at 1:00 p.m.** in the Conference Room, Department of Water Resources Southern Regional Office, 1341 Fillmore Street-Suite 200; Twin Falls ID 83301.

The purpose of the joint conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this
4th day of March, 1997


Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of March, 1997 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by first class mail to the parties listed:

Mary Baldwin
Secretary

STEVE ASLETT
ASLETT RANCHES
PO BOX B
TWIN FALLS ID 83303

JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

SCOTT L CAMPBELL ESQ
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

REX SMART
USDI BUREAU OF LAND MANAGEMENT
RT 2 BOX 610
SALMON ID 83467

MARK T GATES TRUSTEE
700 EMERSON STREET
PALO ALTO CA 94301

VICTOR & SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

NORMAN M SEMANKO ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

LYNN RENO
RENO RANCH
STAR ROUTE
MACKAY ID 83251

Receipt # E022926

RECEIVED

JAN 30 1997

January 27, 1997

Department of Water Resources
Eastern Region

Idaho Dept. of Water Resources:

We the undersigned parties are filing a formal protest of the proposed change of water right no. 4985. We feel if this water right change is made it will have adverse effects on all other water rights in the canal which this water is decreed at the present time.

Please keep us informed on the status of this proposed change of water right. Enclosed is a check in the amount of \$25.00 for the protest fee.

Thank you,



Churndasher Ranch
Victor and Scott Johnson
Reno Ranch, Lynn Reno

Star Route
Maday, ID 83251

**NOTICE OF PROPOSED CHANGE
OF A WATER RIGHT
NO. 4985**

Notice is hereby given that Gates Trustee, Mark T., 700 Emerson Street, Palo Alto, CA 94301, has applied to the Department of Water Resources to change point of diversion of the waters of Warm Springs Creek tributary to Big Lost River. The right sought to be changed is evidenced by a decree and recorded as follows:

No.: 34-00870

Source: Warm Springs Creek tributary to Big Lost River.

Amount: 3.46 cfs Priority: 06/01/1893

Point(s) of Diversion: SWNESE SEC 34 T08N R22E, B.M. CUSTER COUNTY

The water is used for irrigation from 05/01 to 10/15 and stockwater from 10/16 to 04/30 within T07N R23E SEC 05 LOT 4 (NWNW) SWNW, SEC 06 LOT 1 (NENE) LOT 2 (NWNE) SWNE SENE SENW NESW for a total of 220 acres.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SWSE SEC 31 T08N R23E, CUSTER COUNTY.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N. Skyline Dr., Idaho Falls, ID 83402, together with a protest fee of \$25 on or before February 3, 1997. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director
Pub: Jan. 16 & 23, 1997.

RECEIVED

JAN 06 1997

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

Department of Water Resources

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

January 3, 1997

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: In the Matter of Transfer No. 4985

Dear Sir or Madam:

Enclosed please find one original and two copies of the *Notice of Protest* in the above-referenced matter.

Please file the original and one copy and return one conformed copy to this office in the enclosed pre-addressed, stamped envelope.

Thank you.

Very truly yours,

ELAM & BURKE
A Professional Association



KC Colvin
Legal Secretary to Scott L. Campbell

Enclosures

Scott L. Campbell
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho Street
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454

RECEIVED

JAN 06 1997

Department of Water Resources

RECEIVED

JAN 09 1997

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER
NO. 4985

NOTICE OF PROTEST

Steve Aslett, by and through his attorney, ELAM & BURKE, P.A., files his Notice of Protest to the continuance or approval of Application for Transfer No. 4985 filed in the name of Mark T. Gates, Trustee. The basis for the protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all, or a portion of, the criteria set forth in Idaho Code §§ 42-222(1); and
2. For such other and further reasons as may be set forth at the hearing on this matter.

DATED, This 3rd day of January, 1997.

ELAM & BURKE, P.A.

By Scott L. Campbell
Scott L. Campbell

CERTIFICATE OF SERVICE

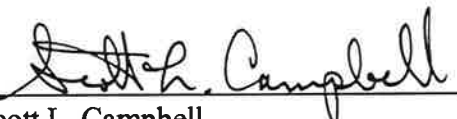
I HEREBY CERTIFY That on this 3rd day of January, 1997, I caused a true and correct copy of the foregoing NOTICE OF PROTEST to be mailed by depositing same in the United States mail, postage prepaid, to:

Idaho Department of Water Resources
Eastern Region Office
900 North Skyline
Idaho Falls, ID 83402

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83720

Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
Post Office Box 1906
Twin Falls, ID 83303-1906

Mark T. Gates, Trustee
700 Emerson Street
Palo Alto, CA 94301



Scott L. Campbell

Memo

From: H.W. Jones - Eastern
To: Allan Merritt - Southern
RE: Prehearing conf. for transf 4906 (Aslett Ranch)
+ Tr 4985 (Gates)

From the correspondence, it appears all parties are available for March 24th, 1997.

Applicants are Aslett Ranch - Tr. 4906
and Mark Gates - Tr. 4985

The main issue is tr. 4906. Protestants are Dave + Walter Stocklin (Jim Speck, Atty) + Mark Gates (Norman Semanko, Atty).

Mark Gates filed his transfer later + Mr. Aslett is one of the protestants. The request was made by Norman Semanko to address this applic. for transfer also since the two applicant / protestants will be there.

There are other protestants of the Gates transfer (BLM + Chuvandashu Ranch) and they should probably be invited to this conference. It may be that Gates + Aslett Ranches just want to hammer out their differences + Gates will address the other protests at some other time.

I asked Mary if she would send out the conference notice + she agreed.

Thanks again!

Skip

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

May 8, 1998

Karl Dreher, Director
Idaho Department of Water Resources
Statehouse Mail
1301 N. Orchard St.
Boise, ID 83706-2237

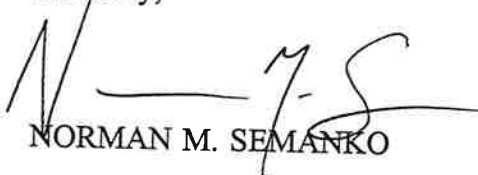
Re: Gates Transfer Application No. 4985 -- Status of Final Order

Dear Karl:

The irrigation season is upon us. Mark Gates would like to begin diverting water consistent with the Recommended Order in the Matter of Transfer Application No. 4985, but a Final Order has yet to be issued. More than fifty-six (56) days have passed since briefing was completed regarding exceptions to the Recommended Order filed by the Protestants Aslett Ranches. As a result, pursuant to the timeline for issuing Final Orders set forth in Rule 720 of the Department's Rules of Procedure, we respectfully request that you issue a Final Order in the Matter of Transfer Application No. 4985 as soon as possible.

Thank you for your consideration.

Sincerely,


NORMAN M. SEMANKO

05089805.NMS

cc: Protestants of Record
Mark T. Gates

RECEIVED

MAY 12 1998

Department of Water Resources
Eastern Region

COPY

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4985

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant GATES TRUSTEE MARK T. Phone (415) 321-5982
Post Office address 700 EMERSON STREET PALO ALTO CA 94301

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 TO INCREASE THE EFFICIENCY OF THE APPLICANT'S IRRIGATION SYSTEM

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 |
|-----------------|------------|--------------------|---------------|----------------|
| 34-00870 | 06/01/1893 | 3.46 CFS | IRRIGATION | 05/01 to 10/15 |
| | | 0.02 CFS | STOCKWATER | 10/16 to 04/30 |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 3.46 cubic feet per second and/or acre-feet per annum.
3. Source of water WARM SPRINGS CREEK tributary to BIG LOST RJVER
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	31	08N	23E	CUSTER	

5. Lands irrigated or place of use: NO CHANGE

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	
07N	23E	05						13	40										53
								L04											
		06	08	36	40	38				40	05								167
			L01	L02															

Total acres 220

PART 1

6. General Information:

- a. Description of diversion system CULVERT ROAD CROSSING IN COMBINATION WITH WEIR; PUMP
- 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:
- 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 _____

COBY

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 34-00870

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	05/01 to 10/15	3.46 CFS
STOCKWATER	10/16 to 04/30	0.02 CFS
Totals		3.46 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
WARM SPRINGS CREEK	BIG LOST RIVER

Priority: 06/01/1893

<u>LOCATION OF POINT(S) OF DIVERSION:</u>	
Injection	SWNESE , Sec. 34, Township 08N, Range 22E
Rediversion	SENE , Sec. 6, Township 07N, Range 23E
	SWSWNW , Sec. 5, Township 07N, Range 23E
	CUSTER 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>
07N	23E	5	Lot 4 (NWNW) 13	SWNW 40		53
		6	Lot 1 (NENE) 8	Lot 2 (NWNE) 36	SWNE 40	
			SENE 38	SENE 40	NESW 5	167
Total number of acres irrigated:						220

PLACE OF USE: STOCKWATER, same as IRRIGATION use

CONDITIONS/REMARKS:

1. RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.
3. WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.
4. POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM UNNAMED SPRING.
5. USE OF THIS RIGHT WITH RIGHT NO. 34-04137 IS LIMITED TO A

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.**

SEE ATTACHED MAP

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.

10th day of December, 1996

(Signature of Applicant)

Patricia E. O'Rourke

(Notary Public)

My commission expires March 3, 2000

Patricia E. O'Rourke
Comm. #1089094
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
Comm. Exp. March 3, 2000

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 2 attachments (map & tax bill/receipt)

Received by Jo Date 12-20-96 Protest filed by

Prelim. check by Fee \$100 -

Receipted by HJS #E02285C Date 12-23-96

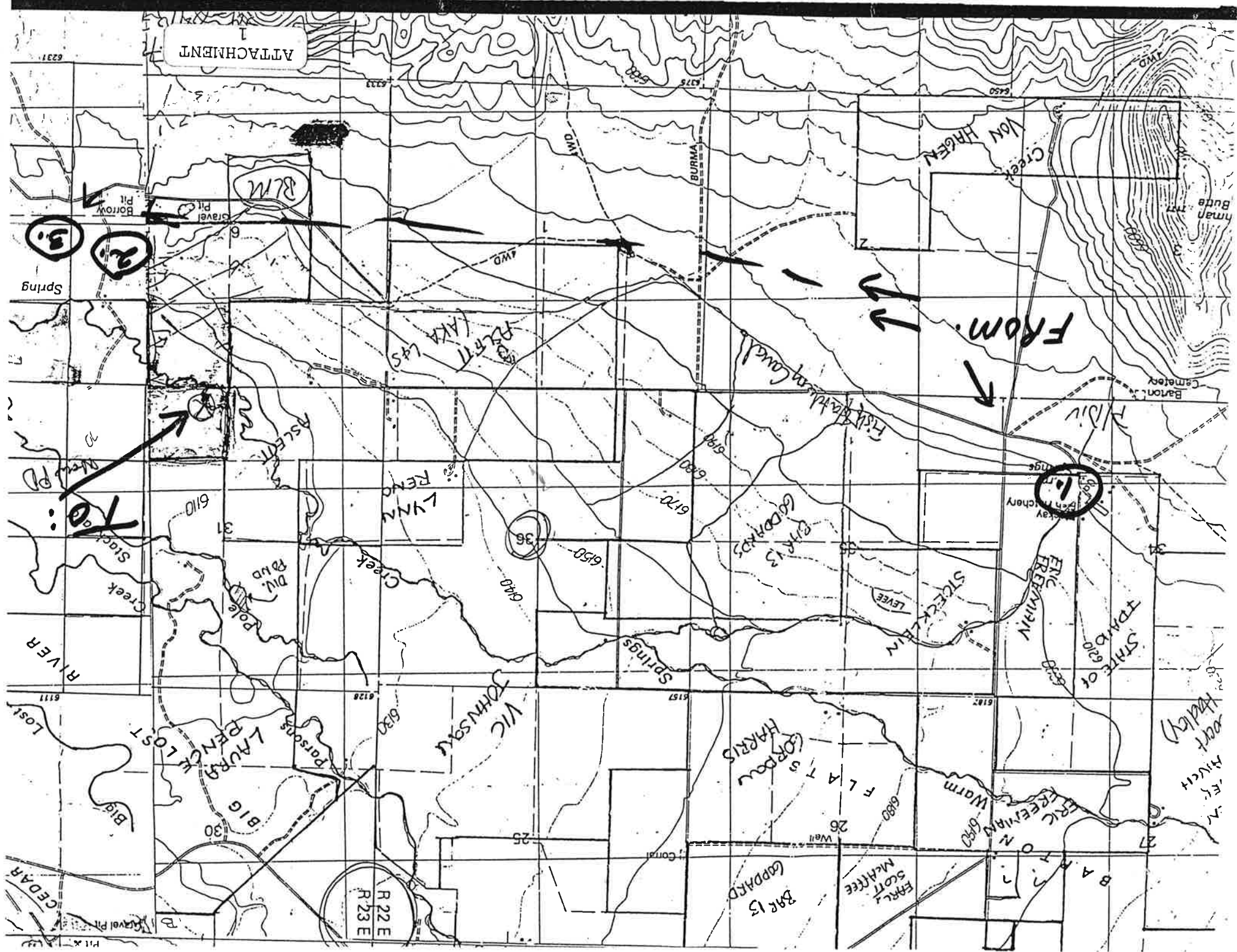
Published in Challis Messenger Copies of protest forwarded by

Pub. dates January 16 & 23, 1997 Hearing held by Date

Watermaster recommendation requested on January 3, 1997 Recommended for ☐ approval ☐ denial

WD-34 Loxentance rec'd. by

Copy of transfer sent to lien holder



MAKE CHECK PAYABLE TO:
CUSTER COUNTY TAX COLLECTOR
P.O. BOX 350
CHALLIS, IDAHO 83226

1996 TAX BILL/RECEIPT
BILL# 4479 CODE AREA 45-00 L

PARCEL NUMBER
RPO7N23E053001A
14,269

1ST HALF DUE
TAX 79.61
PEN
INT
COST
TOT

2ND HALF DUE
TAX 79.61
PEN
INT
COST
TOT

FULL DUE
TAX 159.22
PEN
INT
COST
TOT

TOT MV 14,269
TOT ACS 85.320

WOODS WARD W
& WOODS PRISCILLA
& GATES MARK T & ELIZABETH W
LIVING TRUST
700 EMERSON ST
PALO ALTO CA 94301

TAXING DISTRICT	RATE	AMOUNT
STATE	.000000000	
COUNTY	.001905526	27.18
SCHOOL #102	.004476036	63.18
S. C. AMBULANCE	.000317257	4.52
L. P. HOSE	.001642472	23.44
MACKAY LIBRARY	.000371612	5.30
B.L.R. CEMETERY	.000254904	3.64
BATEND MDS ABAT	.000600633	8.56
LOST RIVER HWY	.000816105	11.64
SD. CUSTER FIRE	.000825114	11.76
AMOUNT DUE	.011161679	159.22

LOT 4
SW4NW4
SEC 5 T7N R23E

*** IMPORTANT ***
PLEASE READ BOTH FRONT AND BACK
PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE
APPLIED TO THE OLDEST DELINQUENT YEAR.
TO AVOID LATE CHARGES, PAYMENTS MUST BE
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KEEP TOP PORTION FOR YOUR RECORDS.
PERSONAL CHECKS ARE YOUR RECEIPT
SUBJECT TO BANK CLEARANCE.

COPY
RECEIPT NOT VALID UNTIL CHECK CLEARS
THANK YOU

Date	12/30/96	Page	2
From	Crystal Creek		
Co.	PR		
Phone #	208-734-0700		
Fax #	208-736-0041		

Post-it[®] Fax Note 7671

To	David Jones
Co./Dept	PR
Phone #	208-525-7161
Fax #	208-525-7177

MAKE CHECK PAYABLE TO:
CUSTER COUNTY TAX COLLECTOR
P.O. BOX 350
CHALLIS, IDAHO 83226

1996 TAX BILL/RECEIPT
BILL# 4482 CODE AREA 45-00

PARCEL NUMBER
RP07N235060001A
L 76,934
I 149,822

1ST HALF DUE
TAX 1,061.43
PEN
INT
COST
TOT

2ND HALF DUE
TAX 1,061.43
PEN
INT
COST
TOT

FULL DUE
TAX 2,122.86
PEN
INT
COST
TOT

TOT MV 226,756
HM- 50,000
NET MV 176,756
TOT ACS 209.360

WOODS WARD W
& WOODS PRISCILLA B
& GATES MARK T & ELIZABETH W
LIVING TRUST
700 EYERSON ST
PALO ALTO CA 94301

TAXING DISTRICT	RATE	AMOUNT
STATE	.000000000	
COUNTY	.001905526	336.80
SCHOOL #162	.004428056	782.68
S. S. AMBULANCE	.000317257	56.08
L. R. HOSP	.001642472	290.32
MACKAY LIBRARY	.000371612	65.68
F.L.R. CEMETERY	.000254904	45.06
BATGND. MDS. A3AT	.000600633	106.16
LOST RIVER HWY	.000816105	144.24
SC. CUSTER FIRE	.000825114	145.84
DISTRICT TOTAL	.011161579	1,972.86
SOLID WASTE		150.00
AMOUNT DUE		2,122.86

LOTS 1,2
SE4NW4, S2A34
SEC 5 T7N R23E

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COPY
RECEIPT NOT VALID UNTIL CHECK CLEARS
THANK YOU

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4985

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant GATES TRUSTEE, MARK T. Phone (415) 321-5982
Post Office address 700 EMERSON STREET PALO ALTO CA 94301

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 TO INCREASE THE EFFICIENCY OF THE APPLICANT'S IRRIGATION SYSTEM

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 |
|-----------------|------------|--------------------|---------------|----------------|
| 34-00870 | 06/01/1893 | 3.46 CFS | IRRIGATION | 05/01 to 10/15 |
| | | 0.02 CFS | STOCKWATER | 10/16 to 04/30 |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 3.46 cubic feet per second and/or acre-feet per annum.
3. Source of water WARM SPRINGS CREEK tributary to BIG LOST RIVER
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	31	08N	23E	CUSTER	

5. Lands irrigated or place of use: NO CHANGE

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	
07N	23E	05						13	40										53
								L04											
		06	08	36	40	38				40	05								167
			L01	L02															

Total acres 220

PART 1

6. General Information:

- a. Description of diversion system CULVERT ROAD CROSSING IN COMBINATION WITH WEIR; PUMP
- 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:
- 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 _____

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 34-00870

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	05/01 to 10/15	3.46 CFS
STOCKWATER	10/16 to 04/30	0.02 CFS
Totals		3.46 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
WARM SPRINGS CREEK	BIG LOST RIVER

Priority: 06/01/1893

<u>LOCATION OF POINT(S) OF DIVERSION:</u>	
Injection	SWNESE , Sec. 34, Township 08N, Range 22E
Rediversion	SENE , Sec. 6, Township 07N, Range 23E
	SWSWNW , Sec. 5, Township 07N, Range 23E
	CUSTER County

<u>PLACE OF USE: IRRIGATION</u>					
<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>
07N	23E	5	Lot 4 (NWNW) 13	SWNW 40	53
		6	Lot 1 (NENE) 8	Lot 2 (NWNE) 36	SWNE 40
			SENE 38	SENW 40	NESW 5
Total number of acres irrigated:					167
					220

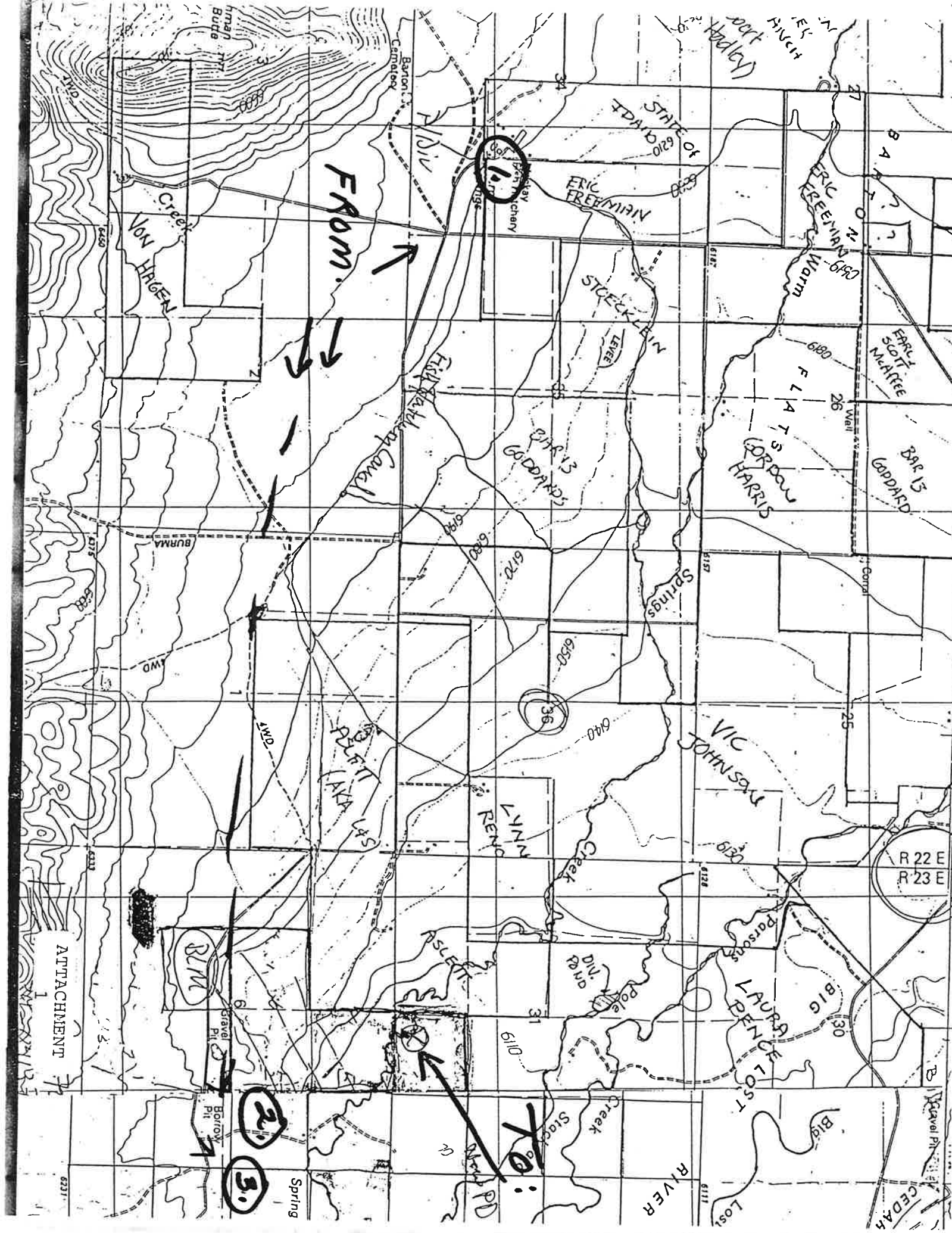
PLACE OF USE: STOCKWATER, same as IRRIGATION use

- CONDITIONS/REMARKS:
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
 - THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.
 - WATER IS DELIVERED THROUGH UPPER FISH HATCHERY CANAL.
 - POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM UNNAMED SPRING.
 - USE OF THIS RIGHT WITH RIGHT NO. 34-04137 IS LIMITED TO A

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.

SEE ATTACHED MAP



Post-it® Fax Note		7671
Date: 12/29/96	From: David Jones	# of Pages: 2
To: David Jones	Co: J.R.R.	
Phone: 208-525-7161	Phone: 208-734-0700	
Fax: 208-525-7177	Fax: 208-734-0041	

MAKE CHECK PAYABLE TO:
 CUSTER COUNTY TAX COLLECTOR
 P.O. BOX 350
 CHALLIS, IDAHO 83226

1996 TAX BILL/RECEIPT
 BILL# 4479 CDDF AREA 45-00 L

PARCEL NUMBER
 RP07N23E053001
 14.26

1ST HALF DUE
 TAX 79.61
 PEN
 INT
 COST
 TOT

2ND HALF DUE
 TAX 79.61
 PEN
 INT
 COST
 TOT

FULL DUE
 TAX 159.22
 PEN
 INT
 COST
 TOT

TOT MV 14.26

TOT ACS 85.32

WOODS WARD W
 6 WOODS PRISCILLA
 2 GATES MARK T & ELIZABETH W.
 LIVING TRUST
 700 EMERSON ST
 PALO ALTO CA 94301

TAXING DISTRICT	RATE	AMOUNT
STATE	.000000000	
COUNTY	.001905526	27.1
SCHOOL DIST	.004418036	63.1
S. P. AMBULANCE	.000317257	4.5
C. P. HOSP	.001642472	23.4
MACKAY LIBRARY	.000371612	5.3
B.L.R. CEMETERY	.000254904	3.6
SAIGND MDS ABAT	.000600633	8.5
LOST RIVER HWY	.000816105	11.6
SO. CUSTER FIRE	.000825114	11.7
AMOUNT DUE	.011161679	159.2

LJT 4
 SW4NW4
 SEC 9 T7N R23E

*** IMPORTANT ***
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 SUBJECT TO BANK CLEARANCE.

COPY
 RECEIPT NOT VALID UNTIL CHECK CLEARS
 THANK YOU

MAKE CHECK PAYABLE TO:
CUSTER COUNTY TAX COLLECTOR
P.O. BOX 350
CHALLIS, IDAHO 83226

1996 TAX BILL/RECEIPT

BILL# 4482 CODE AREA 45-00

PARCEL NUMBER
RPO7N235060001A
L 75,934
I 149,922

1ST HALF DUE
TAX 1,051.43
PEN
INT
COST
TOT

2ND HALF DUE
TAX 1,051.43
PEN
INT
COST
TOT

FULL DUE
TAX 2,102.86
PEN
INT
COST
TOT

TOT MV 226,756
HMV 50,000
NET MV 176,756
TOT ACS 208.360

WOODS WARD W
& WOODS PRISCILLA
& GATES MARK T & ELIZABETH W
LIVING TRUST
700 EMERSON ST
PALO ALTO CA 94301

TAXING DISTRICT	RATE	AMOUNT
STATE	.000000000	
COUNTY	.001925526	336.80
SCHOOL #182	.004428056	782.68
S. C. AMBULANCE	.000317257	56.08
L. R. HOSP	.001642472	290.32
MACKAY LIBRARY	.000371612	65.68
P.L.R. CEMETERY	.000254904	45.06
BATOND. MOS. ABAT.	.000600633	106.16
LOST RIVER HWY	.000816105	144.24
SO. CUSTER FIRE	.000825114	145.84
DISTRICT TOTAL	.011161579	1,972.86
SOLID WASTE		150.00
AMOUNT DUE		2,122.86

LOTS 1,2
SE4NW4,32NE4
SEC 5 T7N R23E

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COPY
RECEIPT NOT VALID UNTIL CHECK CLEARS
THANK YOU

RECEIVED

JAN 06 1997

Department of Water Resources

Scott L. Campbell
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho Street
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454

RECEIVED

JAN 09 1997

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER
NO. 4985

NOTICE OF PROTEST

Steve Aslett, by and through his attorney, ELAM & BURKE, P.A., files his Notice of Protest to the continuance or approval of Application for Transfer No. 4985 filed in the name of Mark T. Gates, Trustee. The basis for the protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all, or a portion of, the criteria set forth in Idaho Code §§ 42-222(1); and
2. For such other and further reasons as may be set forth at the hearing on this matter.

DATED, This 3rd day of January, 1997.

ELAM & BURKE, P.A.

By Scott L. Campbell
Scott L. Campbell

RECEIVED

JAN 06 1997

Department of Water Resources

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

ELAM & BURKE

A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

SCOTT L. CAMPBELL

January 3, 1997

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: In the Matter of Transfer No. 4985

Dear Sir or Madam:

Enclosed please find one original and two copies of the *Notice of Protest* in the above-referenced matter.

Please file the original and one copy and return one conformed copy to this office in the enclosed pre-addressed, stamped envelope.

Thank you.

Very truly yours,

ELAM & BURKE
A Professional Association



KC Colvin

Legal Secretary to Scott L. Campbell

Enclosures

RECEIVED

JAN 09 1997

Department of Water Resources
Eastern Region

-34-00870



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Upper Columbia - Salmon Clearwater Districts
Challis Resource Area
Route 2, Box 610
Salmon, Idaho 83467

In Reply Refer To:

7250 (045)

January 24, 1997

Karl J. Dreher, Director
Idaho Department of Water Resources
900 North Skyline
Idaho Falls, Idaho 83402

Re: Protest of Proposed Change of Water Right No. 4985

Dear Mr. Dreher:

The Bureau of Land Management (BLM) is hereby filing official protest against water right number 34-00870 administratively filed by:

Gates Trustee, Mark T.
700 Emerson Street
Palo Alto, CA 94301

The BLM is protesting this claim because portions of the water right filing resides on public land administered by the BLM. The proposed irrigation of forty acres of public land is not sanctioned by this agency. The portion of the filing protested is the point of use (POU) located in NESW of T.07N, R.23E, Sec. 06.

If you have any questions, contact Rex Smart at (208) 756-5400.

Sincerely,

Acting Area Manager

cc: Gates Trustee, Mark T.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Upper Columbia - Salmon Clearwater Districts
Challis Resource Area
Route 2, Box 610
Salmon, Idaho 83467

RECEIVED
JAN 30 1997
Department of Water Resources
Eastern Region

In Reply Refer To:

7250 (045)

January 24, 1997

Karl J. Dreher, Director
Idaho Department of Water Resources
900 North Skyline
Idaho Falls, Idaho 83402

Re: Protest of Proposed Change of Water Right No. 4985

Dear Mr. Dreher:

The Bureau of Land Management (BLM) is hereby filing official protest against water right number 34-00870 administratively filed by:

Gates Trustee, Mark T.
700 Emerson Street
Palo Alto, CA 94301

The BLM is protesting this claim because portions of the water right filing resides on public land administered by the BLM. The proposed irrigation of forty acres of public land is not sanctioned by this agency. The portion of the filing protested is the point of use (POU) located in NESW of T.07N, R.23E, Sec. 06.

If you have any questions, contact Rex Smart at (208) 756-5400.

Sincerely,

Frank B. L.
Acting Area Manager

cc: Gates Trustee, Mark T.

*Copy of this letter and filing fee hand carried
to your office on 1/29/97*

Receipt # E022926

RECEIVED

JAN 30 1997

January 27, 1997

Department of Water Resources
Eastern Region

Idaho Dept. of Water Resources:

We the undersigned parties are filing a formal protest of the proposed change of water right no. 4985. We feel if this water right change is made it will have adverse effects on all other water rights in the canal which this water is decreed at the present time.

Please keep us informed on the status of this proposed change of water right. Enclosed is a check in the amount of \$25.00 for the protest fee.

Thank you,



Churndasher Ranch
Victor and Scott Johnson
Reno Ranch, Lynn Reno

Star Route
Maday, ID 83251

**NOTICE OF PROPOSED CHANGE
OF A WATER RIGHT
NO. 4985**

Notice is hereby given that Gates Trustee, Mark T., 700 Emerson Street, Palo Alto, CA 94301, has applied to the Department of Water Resources to change point of diversion of the waters of Warm Springs Creek tributary to Big Lost River. The right sought to be changed is evidenced by a decree and recorded as follows:

No.: 34-00870

Source: Warm Springs Creek tributary to Big Lost River.

Amount: 3.46 cfs Priority: 06/01/1893

Point(s) of Diversion: SWNESE SEC 34 T08N R23E, B.M. CUSTER COUNTY

The water is used for irrigation from 05/01 to 10/15 and stockwater from 10/16 to 04/30 within T07N R23E SEC 05 LOT 4 (NWNW) SWNW, SEC 06 LOT 1 (NENE) LOT 2 (NWNE) SWNE SENE SENW NESW for a total of 220 acres.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SWSE SEC 31 T08N R23E, CUSTER COUNTY.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N. Skyline Dr., Idaho Falls, ID 83402, together with a protest fee of \$25 on or before February 3, 1997. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director
Pub: Jan. 16 & 23, 1997.

COPY

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
10099605.NMS\kn

RECEIVED

OCT 11 1996

Department of Water Resources
Southern Region

OCT 15 1996

Department of Water Resources
Southern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF)
TRANSFER NO. 4906)
Applicant: Aslett Ranches)

NOTICE OF PROTEST

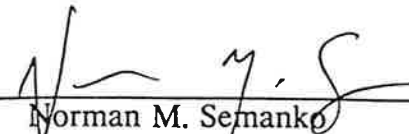
Mark T. Gates, Jr., by and through his attorney, Rosholt, Robertson & Tucker, files his Notice of Protest to the continuance or approval of Application for Transfer No. 4906 filed in the name of Aslett Ranches. The basis for the protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all, or a portion of, the criteria set forth in Idaho Code §§ 42-222(1); and
2. For such other and further reasons as may be set forth at the hearing on this matter.

DATED this 11 day of October, 1996.

ROSHOLT, ROBERTSON & TUCKER

By:


Norman M. Semanko

NOTICE OF PROTEST - 1

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYSTERRY G. HOGUE
JAMES R. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 15, 1996

VIA FACSIMILE -- (208) 525-7177
ORIGINAL TO FOLLOW BY MAIL

RECEIVED

OCT 15 1996

Department of Water Resources
Eastern RegionMr. Ernie Carlson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline, Ste. A
Idaho Falls, ID 83402**Re: Aslett Ranches -- Application for Transfer of Water Right No. 4906**

Dear Mr. Carlson:

I represent Dave Stoecklein, Walter Stoecklein, and Bar Horseshoe Cattle and Livestock Co. My clients own land along and have the right to divert water from Warm Springs Creek which is the source of water for the water rights that are the subject of the above-referenced Application for Transfer. This letter is a protest by my clients against the water right changes proposed by Transfer No. 4906 on the following grounds:

1. The proposed change will injure other water rights;
2. The proposed change constitutes an enlargement in use of the subject water rights;
3. The proposed change is not consistent with the conservation of water resources within the state of Idaho;
4. The proposed change is not in the local public interest.

Receipt # E022673

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4906

APPLICATION FOR TRANSFER OF WATER RIGHT RECEIVED
PART 1 SEP 06 1996

Name of applicant Aslett Ranches *Address* Phone (208) 343-5335
Post Office address P.O. Box B, Twin Falls, ID, 83303 c/o Scott L. Campbell, Elam & Burke, P.A.
P.O. Box 1539, Boise, ID, 83701
(208) 343-5454

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 Applicant desires to re-arrange the place of use.

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>34-00469</u>	<u>11/01/1892</u>	<u>3.20</u>	<u>Irrigation</u>	<u>05/01</u> to <u>10/15</u>
<u>34-00471</u>	<u>07/12/1907</u>	<u>0.80</u>	<u>Irrigation</u>	<u>05/01</u> to <u>10/15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 4.00 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Warm Springs Creek tributary to Big Lost River
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	SE	34	8N	22E	Custer	

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	
7N	22E	1			40														40
7N	23E	6					42 I-3	41 I-4	5 I-5	5									93
8N	23E	31											40 I-4	40					80

Total acres 213

PART 1

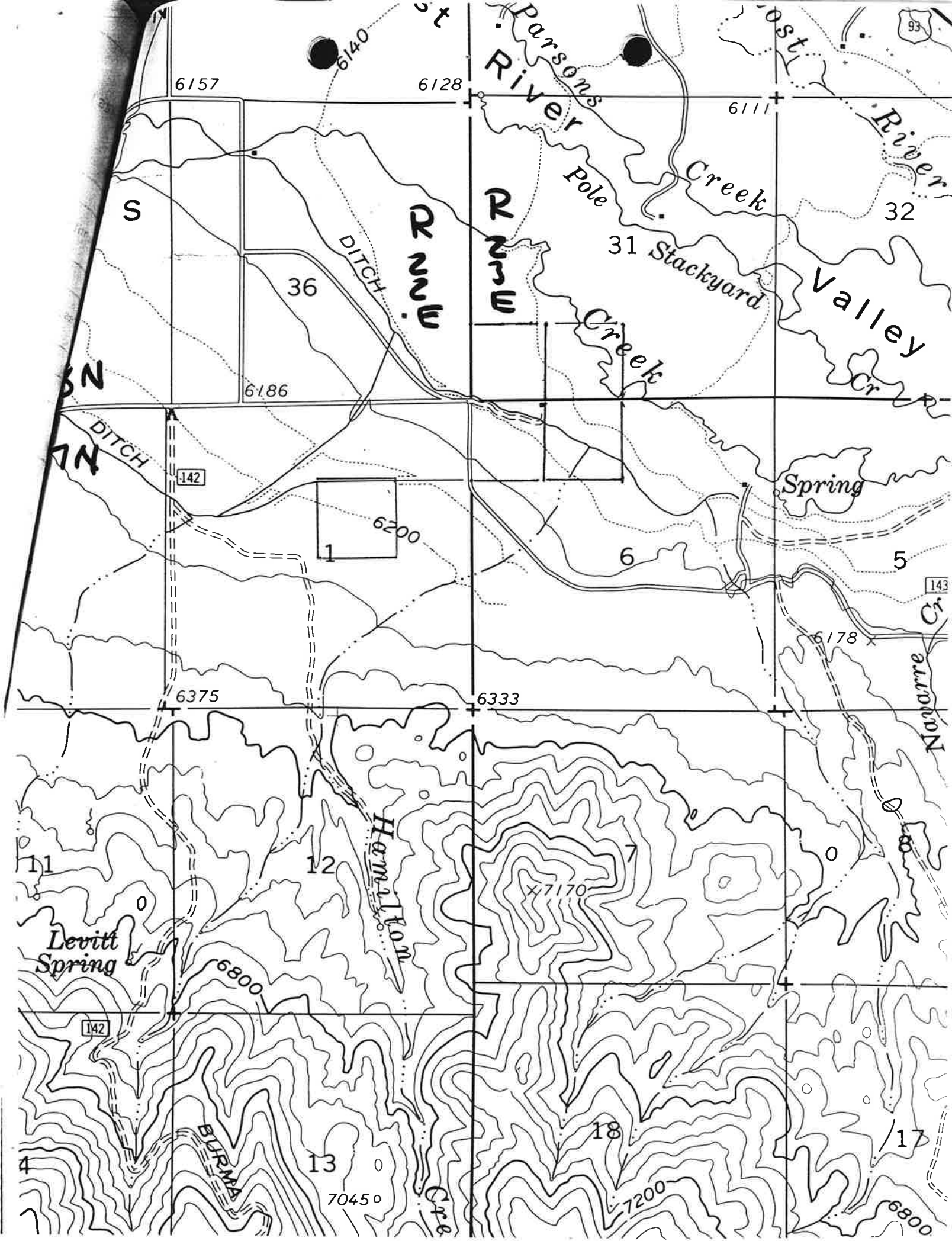
General Information:

- a. Description of diversion system Water is diverted from Fish Hatchery Canal via pump
to sprinklers.
- 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:
NESW of Section 31 will not be irrigated.
- 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 _____.



Form 1861-9
(January 1988)

209387

The United States of America
To all to whom these presents shall come, Greeting:

County of Blaine, Idaho
Custer County, Idaho

3:41 P.M.

8-22-1995

Wendy Murphy
600 Deputy

IDI-31137

WHEREAS**L & S Partnership, an Idaho Partnership**

is entitled to a land patent pursuant to Section 206, Act of October 21, 1976, as amended (43 U.S.C. 1716) for the following described land:

Boise Meridian, Idaho

T. 7 N., R. 22 E.,
sec. 1: S $\frac{1}{2}$ NE $\frac{1}{4}$.

T. 7 N., R. 23 E.,
sec. 6, lot 8.

Containing 121.71 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto L & S Partnership, the land described above; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto L & S Partnership, and its successors and assigns, forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

SUBJECT TO:

1. Those rights for a buried telephone line granted to Mountain States T & T, its successors or assigns, by right-of-way No. IDI 21021, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T. 7 N., R. 23 E.
2. Those rights for an electric line granted to Lost River Electric Cooperative, its successors or assigns, by right-of-way No. IDI 20934, pursuant to the Act of October 21, 1976, as amended, (43 U.S.C. 1761) as to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 1, T. 7 N., R. 22 E., and lot 8 (formally lot 5 prior to a resurvey approved March 17, 1995) of section 6, T. 7 N., R. 23 E.
3. Those rights held by Lost River Highway District, its successors or assigns, for an existing road exercised under RS 2477 and noted under Serial No. IDI 23188.
4. The patentee agrees that it takes the real estate subject to the existing grazing use of Lost River Ranch, holder of grazing authorization No. 114360. The right of Lost River Ranch to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 114360 will cease on March 29, 1997. The patentee is entitled to receive annual grazing fees from Lost River Ranch in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

Patent No. 1145-0034