

T5115 WEST CACHE IRRIGATION

Eastern

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 5115
WATER RIGHT NO. 13-00946B

RECEIVED
MAY 06 1998
Department of Water Resources
Eastern Region

This is to certify that: **WEST CACHE IRRIGATION CO**
1560 E 1630 N
LOGAN UT 84341

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	9.95 CFS	3611.7 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
DEEP CREEK	BEAR RIVER

Priority: 05/06/1911

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 26, Township 14S, Range 38E
FRANKLIN 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>
14S	38E	14	NENW 40	NWNW 40	SWNW 40	320
			SEnw 40	NESW 40	NWSW 40	
			SWSW 40	SESW 40		
	15		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SEnw 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	640
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
	22		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SEnw 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	640
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
	23		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SEnw 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	

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<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			SESE 40			640
25			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
26			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
27			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
34			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
35			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
36			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
15S 38E	1		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
	2		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	

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<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
3			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
10			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
11			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
12			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
13			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
14			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
15			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	

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		SESE	40			640
22		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
23		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
24		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
25		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
26		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
27		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
34		NENE	40	NWNE	40	
		SENE	40	NENW	40	
		SWNW	40	SENW	40	
		NWSW	40	SWSW	40	
		NESE	40	NWSE	40	
		SESE	40			640
35		NENE	40	NWNE	40	
		SENE	40	NENW	40	

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			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
36			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
39E	7		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
18			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
19			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
29			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
30			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
31			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	

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			SESE 40			640
32			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
16S 38E	1		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
	2		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
	3		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NESE 40	NWSE 40	
			SWSE 40	SESE 40		320
10			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
11			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
12			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
13			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	

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			SESE 40			640
14			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
15			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
23			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
24			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
25			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
26			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
39E	5		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
	6		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	

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<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
7			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
18			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
19			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
30			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
Total number of acres irrigated:						* 33920

CONDITIONS OF APPROVAL AND REMARKS

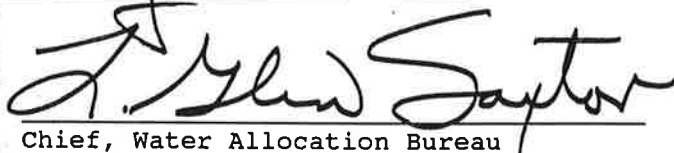
- * 1. Right 13-00946B is limited to the supplemental irrigation of 5,903.1 acres within the 33,920.0 acre permissible place of use described above.
- 2. Use of water under this water right will be regulated by the watermaster of State Water District No. 11.
- 3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
- 4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

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WATER RIGHT NO. 13-00946B

CONDITIONS OF APPROVAL AND REMARKS

5. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. Approval of Transfer 5115 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
8. The use of water approved under Transfer 5115 shall be considered junior to Right 13-02264.

Dated this 1st day of May, 1998


Chief, Water Allocation Bureau

MEMORANDUM

TO: FILE 13-00946

FROM: PAM SKAGGS/STATE OFFICE

SUBJECT: TRANSFER 5115

DATE: February 19, 1998

ok 

Transfer 5115 changes the point of diversion and place of use under a portion of Right 13-00946, splitting the right into Parts A and B.

The West Cache Irrigation Company is trading 9.95 cfs of this right for use on Twin Lakes Canal Company's place of use for an equitable number of shares of storage water from Bear Lake. Both companies will continue to irrigate their original places of use. The transfer approval includes a permissible place of use limitation identifying the proportionate number of acres associated with the transferred amount of water. The unchanged portion of the right has been proportionately reduced to reflect the transfer and avoid enlargement of use under the total right.

Recommended conditions include permissible place of use, watermaster control, measuring device/lockable controlling works, irrigation overlap, right-of-way and standard transfer conditions.

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 9.95 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:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	7	15S	39E	Franklin	

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 15.05 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:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	SE	7	15S	39E	Franklin	

3. Lands irrigated or place of use: See Attached Sheet "B"

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 14,832

Water Right Number - 13-00946

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

WEST CACHE IRRIGATION CO. INC.

1 -

2 -

3 -

City-

State-

Zip-

Phone -

+ - - Priority Date - - +

05/06/1911

+ - - - Region - - - +

15 EASTERN

+ - - - Stage - - - +

D - DECREED

+ - - - Status - - - +

+ - - - - Source - - - - - +

DEEP CREEK

+ - - - - Tributary - - - - - +

BEAR RIVER

+ - - - - Point of Diversion - - - - - +

Tw	Rng	Sec	Tract	Lot	RFlg	County	Diversion Name	Diversion Rate	Diversion No.
----	-----	-----	-------	-----	------	--------	----------------	----------------	---------------

15S	39E	7	NW SE			(41) FRANKLIN			
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+ - - - - Water Use - - - - - +

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
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01 - IRRIGATION		04/20	09/30	25.000	
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+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +

25.000

+ - - - - Place of Use - - - - - +

Tw	Rng	Sec	Tract	Lot	Acres	Code	Description	County
15S	39E	19				01	IRRIGATION	(41) FRANKLIN
15S	39E	20				01	IRRIGATION	(41) FRANKLIN
15S	39E	29				01	IRRIGATION	(41) FRANKLIN
15S	39E	30				01	IRRIGATION	(41) FRANKLIN
16S	39E	4				01	IRRIGATION	(41) FRANKLIN
16S	39E	5				01	IRRIGATION	(41) FRANKLIN
16S	39E	17				01	IRRIGATION	(41) FRANKLIN
16S	39E	19				01	IRRIGATION	(41) FRANKLIN
16S	39E	20				01	IRRIGATION	(41) FRANKLIN
16S	39E	29				01	IRRIGATION	(41) FRANKLIN
16S	39E	30				01	IRRIGATION	(41) FRANKLIN

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - 11-0280

+ - - - - Remarks - - - - - +

P/U INCOMPLETE AC. IRR. = 14,832.

P/U FOR IDAHO, SEE DECREE 13-00974 FOR P/U IN UTAH.

RT. FOR SUPPLEMENTAL IRRIGATION.

#100 Fee RECEIVED

AUG 1 1997

Page 1 of 6STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 5115APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant West Cache Irrigation Co Phone 801-753-0258
Post Office address C/O Mark Buxton 1560 E 1630 N, Logan UT

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 We are trading 9.95 cfs of Deep Creek Water to Twin Lakes Canal Company for shares of storage in Bear Lake

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

- | 1. Right Number | Priority | Amount
(cfs) | Nature
of Use | Period of Use |
|------------------|------------------|-----------------|-------------------|----------------------------|
| <u>13-00946B</u> | <u>5/06/1911</u> | <u>9.95 cfs</u> | <u>Irrigation</u> | <u>4-20</u> to <u>9-30</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 9.95 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Deep Creek tributary to Bear River
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	26	14S	38E	Franklin	Twin Lakes Canal Diversion

5. Lands irrigated or place of use: See Attached Sheet "A"

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	

Permissable Place of use Total acres 33,920

PART 1

6. General Information:

a. Description of diversion system Twin Lakes Canal diversion and ditch system

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:
No affect as we will receive Bear Lake storage shares from Twin Lakes Canal System.

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 _____.

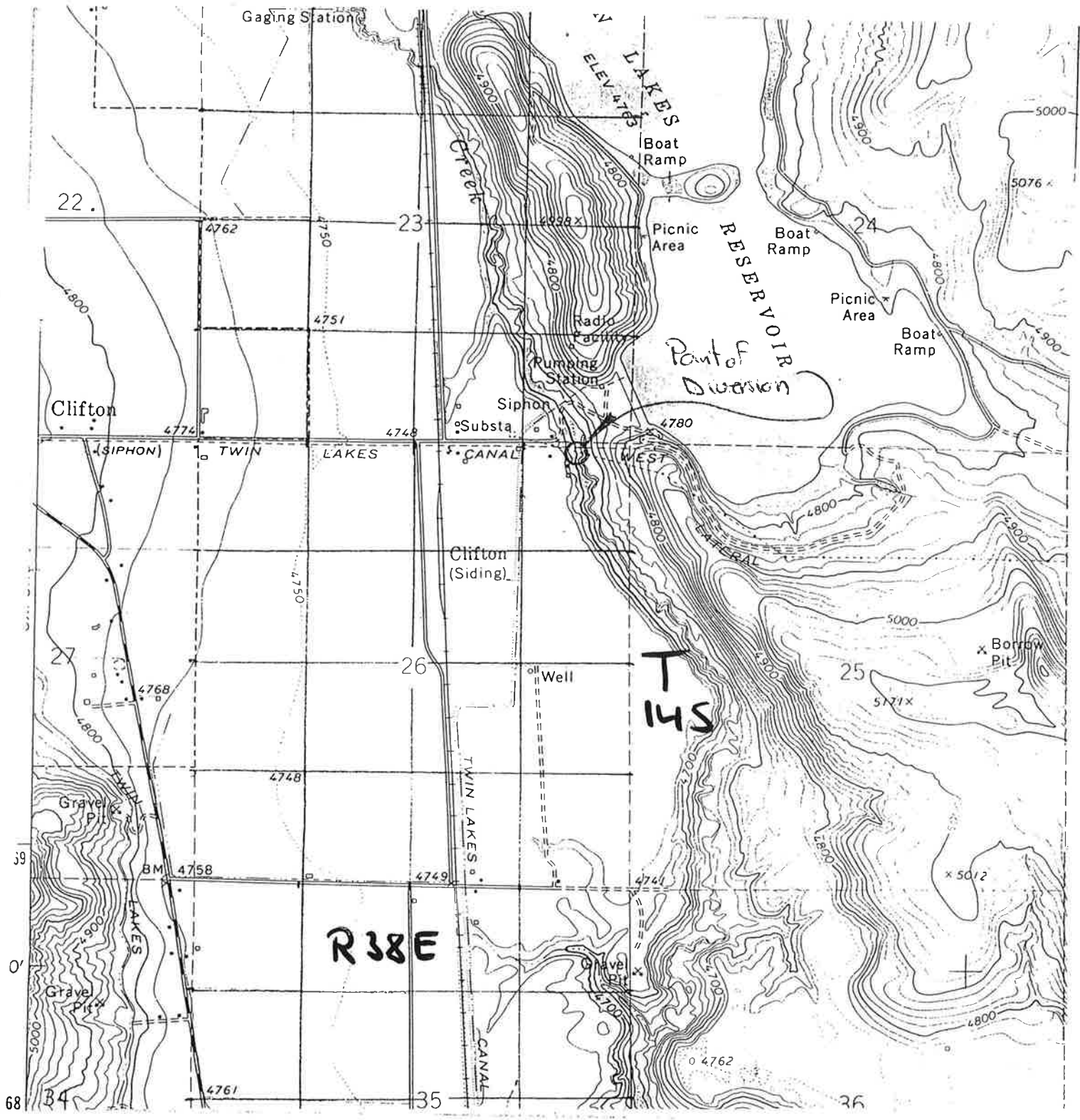
Department of Water Resources

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RECEIVED

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.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

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.

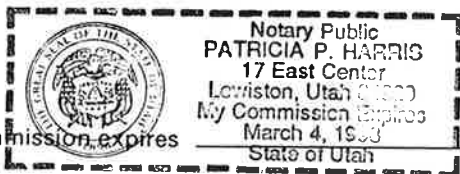
Mark Bryton

(Signature of Applicant)

Subscribed and sworn to before me this 29th day of July, 19 97.

Patricia P. Harris

(Notary Public)



My commission expires

FOR DEPARTMENT USE ONLYTransfer contains 6 pages and 2 attachmentsReceived by HWT Date 8-1-97

Protest filed by _____

Prelim. check by KCW Fee \$100.00Receipted by HWT #E023478 Date 8-1-97Published in Preston Citizen

Copies of protest forwarded by _____

Pub. dates August 21 & 28, 1997

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

Proposed Priority: December 6, 1990 Maximum Diversion Rate: 10.00 CFS

This is to certify, that TWIN LAKES CANAL CO
PO BOX 187
PRESTON ID 83263

has applied for a permit to appropriate water from:

DEEP CREEK

tributary of BEAR RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION STORAGE	10/01 to 04/30		4040.0 AF
IRRIGATION FROM STORAGE	05/01 to 09/30		4040.0 AF
DIVERSION TO STORAGE	10/01 to 04/30	10.00 CFS	
	Totals	10.00 CFS	

LOCATION OF POINT(S) OF DIVERSION: NENENE Sec. 26, Township 14S, Range 38E
FRANKLIN County

<u>PLACE OF USE:</u>		<u>IRRIGATION FROM STORAGE</u>						
<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>	<u>TOTAL</u>
14S	38E	14	NENW 40		NWNW 40		SWNW 40	
			SENW 40		NESW 40		NWSW 40	
			SWSW 40		SESW 40			320
		15	NENE 40		NWNE 40		SWNE 40	
			SENE 40		NENW 40		NWNW 40	
			SWNW 40		SENW 40		NESW 40	
			NWSW 40		SWSW 40		SESW 40	
			NESE 40		NWSE 40		SWSE 40	
			SESE 40					640
		22	NENE 40		NWNE 40		SWNE 40	
			SENE 40		NENW 40		NWNW 40	
			SWNW 40		SENW 40		NESW 40	
			NWSW 40		SWSW 40		SESW 40	
			NESE 40		NWSE 40		SWSE 40	
			SESE 40					640
		23	NENE 40		NWNE 40		SWNE 40	
			SENE 40		NENW 40		NWNW 40	
			SWNW 40		SENW 40		NESW 40	
			NWSW 40		SWSW 40		SESW 40	
			NESE 40		NWSE 40		SWSE 40	
			SESE 40					640
		25	NENE 40		NWNE 40		SWNE 40	
			SENE 40		NENW 40		NWNW 40	
			SWNW 40		SENW 40		NESW 40	
			NWSW 40		SWSW 40		SESW 40	
			NESE 40		NWSE 40		SWSE 40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>		<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
26			SESE	40				640
			NENE	40				
			SENE	40				
			SWNW	40				
			NWSW	40				
			NESE	40				
			SESE	40				
27			NENE	40				640
			SENE	40				
			SWNW	40				
			NWSW	40				
			NESE	40				
			SESE	40				
			NENE	40				
34			SENE	40				640
			SWNW	40				
			NWSW	40				
			NESE	40				
			SESE	40				
			NENE	40				
			SENE	40				
35			SWNW	40				640
			NWSW	40				
			NESE	40				
			SESE	40				
			NENE	40				
			SENE	40				
			SWNW	40				
36			NWSW	40				640
			NESE	40				
			SESE	40				
			NENE	40				
			SENE	40				
			SWNW	40				
			NWSW	40				
15S 38E 1			NESE	40				640
			SESE	40				
			NENE	40				
			SENE	40				
			SWNW	40				
			NWSW	40				
			NESE	40				
2			SESE	40				640
			NENE	40				
			SENE	40				
			SWNW	40				
			NWSW	40				
			NESE	40				
			SESE	40				
3			NENE	40				640
			SENE	40				
			SWNW	40				
			NWSW	40				

State of Idaho
Department of Water Resources

Permit To Appropriate Water

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PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
10			NWSW 40	SWSW 40	SESW 40	640
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
11			SESE 40			640
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
12			SENE 40	NENW 40	NWNW 40	640
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
13			NWSW 40	SWSW 40	SESW 40	640
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
14			SESE 40			640
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
15			SENE 40	NENW 40	NWNW 40	640
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
22			NWSW 40	SWSW 40	SESW 40	640
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			
			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
23			SESE 40			640
			NENE 40	NWNE 40	SWNE 40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
24			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
25			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
26			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
27			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
34			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
35			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
36			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE
TWN RGE SEC

		<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>		<u>TOTAL</u>
39E	7	SESE	40					640
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
18		NWSW	40	SWSW	40	SESW	40	640
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
19		SENE	40	NENW	40	NWNW	40	640
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
29		SESE	40					640
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
30		NWSW	40	SWSW	40	SESW	40	640
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
31		SENE	40	NENW	40	NWNW	40	640
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
32		SESE	40					640
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
		NWSW	40	SWSW	40	SESW	40	
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	
16S 38E	1	NWSW	40	SWSW	40	SESW	40	640
		NESE	40	NWSE	40	SWSE	40	
		SESE	40					
		NENE	40	NWNE	40	SWNE	40	
		SENE	40	NENW	40	NWNW	40	
		SWNW	40	SENE	40	NESW	40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
2			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
3			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NESE 40	NWSE 40	
			SWSE 40	SESE 40		320
10			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
11			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
12			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
13			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
14			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
15			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>		<u>TOTAL</u>
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
23			NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
24			NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
25			NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
26			NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
39E	5		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
	6		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
	7		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	40	SWSE	40	
			SESE	40					640
	18		NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07481

PLACE OF USE: IRRIGATION FROM STORAGE

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
19			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640
30			NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			640

Total number of acres irrigated: 33920

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **November 1, 1993.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. Use of water under this right is subject to control by the watermaster of State Water District No. 13L.
5. Permanent measuring devices must be installed in such a manner that the amount of water entering the reservoir and the amount of water released from the reservoir can be measured.
6. The storage of water under this right is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
7. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
8. The diversion of water from Deep Creek is under the jurisdiction of Water District 11, Bear River, Watermaster.

WR5808NP
(0)-26)IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

06/26/97 09:55:40

Page 1.

Water Right Number - 13-00974

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

WEST CACHE IRRIGATION COMPANY

1 - C/O ED COTTLE

2 - 1207 S 400 E

3 -

City- TRENTON

State- UT Zip- 84338

Phone - 801-563-3501

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
09/12/1899 15 EASTERN D - DECREED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BEAR RIVER GREAT SALT LAKE+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County Diversion Name Diversion Rate Diversion No.

14S 39E 25 SE SW (41) FRANKLIN WEST CACHE CANAL HEAD(ID)

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION 04/15 10/15 186.000 51912.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
186.000 51912.00+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County

15S	39E	19				01	IRRIGATION	(41) FRANKLIN
15S	39E	20				01	IRRIGATION	(41) FRANKLIN
15S	39E	29				01	IRRIGATION	(41) FRANKLIN
15S	39E	30				01	IRRIGATION	(41) FRANKLIN
16S	39E	4				01	IRRIGATION	(41) FRANKLIN
16S	39E	5				01	IRRIGATION	(41) FRANKLIN
16S	39E	17				01	IRRIGATION	(41) FRANKLIN
16S	39E	19				01	IRRIGATION	(41) FRANKLIN
16S	39E	20				01	IRRIGATION	(41) FRANKLIN
16S	39E	29				01	IRRIGATION	(41) FRANKLIN
16S	39E	30				01	IRRIGATION	(41) FRANKLIN

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +

Use of water under this water right will be regulated by the watermaster of State Water District No. 11, Bear River District, Idaho in conjunction with the equivalent authority for the second point of diversion located within Utah.

Upon a satisfactory showing by the watermaster of Water District

See Second page

Water right number - 13-00974

Prefix Translation: WATER RIGHT

+ - - - - Remarks - - - - - +

No. 11, as determined by the department, that the rate of diversion from the authorized points of diversion cannot be properly controlled to insure there is no injury to other water users and that there is no enlargement in use of water under this transfer, the Director may rescind approval of this transfer. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and method of accounting acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

The total instantaneous diversion of water from all points of diversion under Transfer No. 4914 shall not exceed 186.0 cfs, nor total combined annual volume of 51,912.0 af.

A second point of diversion is authorized within the NENW, Sec 3, T14N, R01W, Cache County, Utah S.L.B.&M.

Right No. 13-00974 is limited to the total combined irrigation of 14,832 acres within the place of use described above located in the state of Idaho and the place of use described below within the state of Utah.

The portion of the place of use located within Utah is described as follows: Sec 34 and 35, T15N, R01W; Sec 03, 04, 09, 10, 11, 15, 16, 21, 22, 23, 25, 26, 27, 28, 33, 34, 35 and 36, T14N, R01W; Sec 01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36, T13N, R01W; Sec 05, 06, 07, 08, 18, 19 and 30, T13N, R01E; Sec 01, 02, 03, 04, 11 and 12, T12N, R01W; S.L.B.&M.

+ - - - - Old Water Right Numbers - - - - - +

No Old Water Right Numbers found.

+ - - - - Conditions of Approval - - - - - +

- R30 - This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
- T04 - 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.
- T07 - The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
- T08 - Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

+ - - - - Decree Plaintiff - - - +

UTAH POWER AND LIGHT CO.

+ - - - - Decree Defendant - - - +

LAST CHANCE CANAL CO.

+ - Decree Date - +

07/14/1920

+ - - - - Comments - - - - - +

Date: 09/25/1996 User Id: RBODELL Subject: TRANSFER NO. 4914

Transfer No. 4914 was filed to add a second point of diversion under Right No. 13-00974 located in Utah to better serve lands located there.

Water right number - 13-00974

Prefix Translation: WATER RIGHT

+ - - Audit Fields - 02/28/86 05/21/88 CONVERT 10/14/92 CURTIS 09/25/96 RBODELL 10/10/96 RBODELL
12/06/96 PSKAGGS 12/17/96 PSKAGGS

+ - - - - - Water Rights Dates and Flags Area - - - - - +

Proof Due Date - 00/00/0000	Field Exam Made - 00/00/0000	Field Exam Fee -
Approved/Denied - 00/00/0000	Protested Date - 00/00/0000	Swan Falls -
Proof Made Date - 00/00/0000	Hearing Date - 00/00/0000	Temporary Right - P
Exam to S.O. Date- 00/00/0000	Verified Date - 02/28/1986	DLE/Carey Act -
Order Show Cause - 00/00/0000	Receipt Number - C036591	Water District - 11
Licensed Date - 00/00/0000	Appl Received - 00/00/0000	Transfer/Amended - C
Decree Date - 07/14/1920	Name Connector -	POU Ownership Flag- N
Presumption Flag -		

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AUG 13 1999
Department of Water Resources
Eastern Region

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AUG 09 1999
Department of Water Resources

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DISTRICT COURT
GOODING CO. IDAHO
FILED

'99 AUG 6 PM 4 27
GOODING COUNTY CLERK
BY: R. Smith
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5116 IN THE)
NAME OF CHARLES L. BARRON)

Case No.: CV 98-00749

CHARLES L. BARRON,)

Applicant/Appellant,)
vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Respondent.)

RECEIVED

AUG 12 1999

Department of Water Resources
Southern Region

Order on Appeal from the Department of Water Resources, of the State of Idaho

C. TOM ARKOOSH
JOSEPH F. JAMES
ARKOOSH LAW OFFICES, CHTD
301 Main Street
PO Box 32
Gooding, Id 83330
Applicant/Appellant

PHILLIP J. RASSIER
IDAHO DEPARTMENT OF WATER RESOURCES
DEPUTY ATTORNEY GENERAL
PO Box 83720
Boise, Id 83720-0098
Respondent

Bonneville County, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990)). In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record. *Id.*

The Board's zoning decision may only be overturned where its findings: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. *Id.* (citing I.C. § 67-5279(3)). **The party attacking the Board's decision, here Price, must first illustrate that the Board erred in a manner specified in I.C. § 67-5279(3), and then that a substantial right of Price has been prejudiced.** *Id.* (citing *Angstaman v. City of Boise*, 128 Idaho 575, 578, 917 P.2d 409, 412 (Ct. App. 1996)).

(Emphasis added).

Substantial¹ and competent evidence has been defined as evidence that a reasonable mind might accept as adequate to support a conclusion. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602.

Exactly what is meant by the phrase "clearly erroneous," or how to measure it, is not always easy to discern. The United States Supreme court has stated that "[a] finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948). A federal court of appeals stated as follows:

It is idle to try to define the meaning of the phrase "clearly erroneous"; all that can be profitably said is that an appellate court, though it will hesitate less to reverse the findings of a judge than that of an administrative tribunal or of a jury, will nevertheless reverse it most reluctantly and only when well persuaded.

U.S. v. Aluminum Co. of America, 148 F.2d 416, 433 (2d Cir. 1945) (L.Hand, J.).

¹ Substantial does not mean that the evidence was uncontradicted. All that is required is that the evidence be of such sufficient quantity and probative value that reasonable minds *could* conclude that the finding -- whether it be by a jury, trial judge, special master, or agency -- was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds must conclude, only that they *could* conclude. Therefore, only if the evidence is so weak that reasonable minds could not reach the same conclusion the finder of fact has, are the finder's findings properly rejected. *Mann v. Safeway Stores, Inc.*, 95 Idaho 732. See also *Evans v. Hara's Inc.*, 123 Idaho 473, 478 (1993).

Additionally, I.C. § 67-5251(4)(b) allows the agency to take "official notice" of generally recognized technical or scientific facts within the agency's specialized knowledge (notice is required as provided in the statute).

Finally, with respect to the type of evidence to be considered in an application to transfer a water right, I.C. § 42-222(1) provides in relevant part:

Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same,

He shall also advise the watermaster of the district in which such water is used of the proposed change and the water master shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, **which action of the watermaster shall be received and considered as other evidence.**

The director of the department of water resources **shall examine all the evidence and available information.** . . .
(Emphasis added).

V.

The Burden of Proof under I.C. § 42-222

I.C. § 42-222 does not explicitly state who has the burden of proof in water right transfer proceedings. However, the Idaho Supreme Court has at least twice held (in a suit to quiet title to a water right) that the burden of proof is upon the one seeking to change the place of use. *Federal Land Bank of Spokane v. Union Central Life Insurance Co.*, 51 Idaho 490, 494 (1931); and in a second opinion with the same parties, 54 Idaho 161, 166 (1934).

One commentator stated the following:

The burden of persuasion ordinarily never shifts; for a given issue it is assigned by the law to a particular party and dictates how the trier of fact should balance the evidence for and against a proposition in determining the issue. The applicable burden of persuasion tells the trier of fact how to resolve matters left uncertain by the proof. *See Cole-Collister Fire Protection Dist. v. Boise*, 93 Idaho 558, 468 P.2d 290 (1970) (discussion of distinctions between burdens).

The concept of “**prima facie proof**” refers to **proof sufficient to justify a finding of the matter in question by the trier of fact**. When prima facie proof of a matter has been presented the opponent must meet it with countervailing proof or suffer whatever judgment the prima facie proof will support. *Miller v. Belknap*, 75 Idaho 46, 266 P.2d 662 (1954).

However, a failure to rebut prima facie proof does not necessarily compel a directed finding on the issue. If the party who presented the prima facie proof bears the burden of persuasion on the issue and the proof is such that a factfinder reasonably could choose to disbelieve it, the issue properly should be submitted to the factfinder. *See Bongiovi v. Jamison*, 110 Idaho 734, 718 P.2d 1172 (1986) (discussion of relationship between presumptions, burdens of production, and directed verdicts).

(Emphasis added).

VI.

I.C. § 42-222(1) Requests for a transfer

This being a surface irrigation right sought to be transferred (as opposed to a proposed municipal right or a storage right), I.C. § 42-222(1) provides that the Director of IDWR (upon examining all the evidence and available information), shall approve the change in whole, or in part, or upon conditions, provided:

1. No other water rights are injured thereby;
2. The change does not constitute an enlargement in the use of the original right; The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right;
3. The change is consistent with the conservation of water resources within the

was conveyed by a ditch to the licensed place of use because, and according to information provided by the applicants in 1905, water did not run in Camas Creek below the point of diversion past the middle of July. R., p. 89.

In 1948, authority for a change in the point of diversion for 6 cfs of the original right (the original right was for 12 cfs) was granted from the point four miles upstream on Camas Creek to a point located near the confluence of Threemile Creek and Camas Creek, where the water was to be pumped from Threemile Creek. The stated reason for the change in the point of diversion was that the original point of diversion was impracticable due to the low grade at which the four-mile ditch was constructed. R., p. 93. The legal description of the new point of diversion is in Section 30, T1S, R 14E, B.M. According to a map, Camas Creek does not flow through Section 30, but flows through Section 31 which is immediately to the south of Section 30. R., p. 10. According to this same map, Threemile Creek is a tributary to Camas Creek, with its confluence at Camas Creek downstream from the original point of diversion established in 1905.

In 1968, a second alternative point of diversion lower down on Threemile Creek, closer to the confluence of Camas Creek, was approved. The license holder/appropriator stated it was desired that a portable pumping system was to be moved between the two alternate points of diversion. R., p. 106. However, by the legal descriptions of both alternate points of diversion, each is still north of Camas Creek and are out of Threemile Creek.

Therefore, the confusion as to the "source" issue appears to be that while the 1905 application and all subsequent transfers (change in point of diversion) lists the source as Camas Creek, since at least 1948 the water was actually diverted from Threemile Creek, above its confluence with Camas Creek. Hence, on paper the "source" is listed as Camas Creek, and on the ground the "source" is in reality Threemile Creek.

In 1973, Lynn E. Stevenson (owner of the licensed place of use at the time) established licensed groundwater right 37-07295 to irrigate the same ground to which 37-02801B is appurtenant.

Barron stated in an affidavit that he and his family have owned and used water right 37-02801B since 1978 to irrigate and for stock water. R., p. 45. As noted by

clearly a concern of IDWR. R., pp. 16-17 and p. 23. In *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384 (1982), the Idaho Supreme Court stated:

Based on the foregoing decisions and statute, we conclude that the director of the Department of Water Resources has jurisdiction to determine **the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights.** While ordinarily abandonment and forfeiture are to be determined in a separate proceeding, it is clear that when a water right is sought to be transferred and protestors allege that it has been abandoned or forfeited, and that to allow resumption of that right would cause some injury, a determination of abandonment or forfeiture is necessary for the performance of his powers of determining injury. The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights. If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. I.C. § 42-222(2); *Graham v. Leek*, 65 Idaho 279, 144 P.2d 475 (1943). Other parties may then perfect a water right in those waters. *Sears v. Berryman*, 101 Idaho 843, 623 P.2d 455 (1981); *Gilbert v. Smith*, 97 Idaho 735, 552 P.2d 1220 (1976). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, *Sears v. Berryman*, *supra*, and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. See Id. Const. Art. 15, § 3; *Martiny v. Wells*, 91 Idaho 215, 419 P.2d 470 (1966). See also *Farmers Irrigation Co. v. Game & Fish Comm'n.*, 149 Colo. 318, 369 P.2d 557 (1962); *Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist.*, 605 P.2d 1060, 1069 (Mont. 1979).

103 Idaho 387, 388 (Emphasis added).

With the foregoing principles in mind, what the applicable findings of fact essentially state is that Barron has not provided the necessary information to allow IDWR to make a finding on the issue of forfeiture. R., pp. 77-78, Findings 7, 10, 11 and 12.

IDWR specifically requested evidence from Barron as to the historic consumptive use of this water right on three (3) separate occasions. Letter of December 18, 1997, R., p. 25; letter of January 9, 1998, R., pp. 31-32; and in letter dated April 1, 1998 R., pp. 51-52. Given the definition of consumptive use as being "that portion of the annual volume of water diverted under a water right...[which] does not return to the waters of the state", Barron's conclusory statements in his affidavits beg the factual question:

In 1991, and again in 1996, we used water right no. 37-02801B to irrigate the licensed place of use. During some years in the 1980's, we used the right to irrigate (other lands) ...instead of the licensed place of use. Since on or about 1978, my family has owned and used water right no. 37-02801B to irrigate and for stock water. (See R., pp. 53 and 54).

The direct question posed to Barron in the January 9, 1998 letter from IDWR was to present competent evidence of the historical consumptive use². R., pp. 31-32. As demonstrated above, Barron did not comply. His answers to meaningful questions were not responsive. Instead, Barron's counsel filed a document entitled *Synopsis of Water Right No. 37-02801B and Transfer No. 5116*, dated March 24, 1998. R., pp. 35-44. In paragraph 9A, it stated: "The affidavits submitted with this application **indicate full use of the right** on the licensed place of use in 1991 and 1996." (Emphasis added).

The affidavits referred to are those of Barron, R., pp. 45-47, and of John Faulkner, R., pp. 48-49. Counsel's assertion that the affidavits "indicate **full use** of the right on the licensed place of use in 1991 and 1996" is not supported by a fair reading of the

² The letter requested the following:

1. Evidence to show when and where this water right has been used during the last ten years or so. Please provide a legal description together with supporting documentation.
2. Evidence to show whether the right has been used as a primary right or supplemental right for past irrigation. A supplemental water right can not become a primary right due to enlargement considerations.
3. Evidence of the extent of beneficial use made of this right, in terms of the rate and period when water has been diverted or other quantitative information. As an example of the information sought, if water from Threemile Creek has not historically been available in July or August of most years due to decreased flow of the creek, the department can not issue a transfer which would authorize diversion of water at a new point of diversion during July or August even though water may be available at the new source. You may wish to seek and provide information from watermaster record relative to historic delivery of this right.

irrigated at an apparent double rate³, and (2) that Wolf would not know about it. Under such circumstances, for IDWR to ask Barron, who seeks the transfer, to provide independent evidence of his claimed use in 1991 and 1996, was clearly reasonable.

Stated another way, the case is to be decided by the Director on "the record as a whole," not just on what Barron presented, even in the absence of a protest. Evidence and other information in the Department's records and files, in and of itself, may refute a claimant's claim or assertion. In this case, in light of Barron's amended affidavit and the contradictory evidence presented by Agent Stanton, to suggest that Barron's statement provides substantial and competent evidence of the historical use clearly illustrates the problem with Barron's position, i.e., that IDWR is "locked in" to Barron's self-described "prima facie case."

Additionally, if Barron's *Amended Affidavit* means that he irrigated the licensed place of use only once in 1991 and once again in 1996 (affidavit states "neither time was Shannon Wolf present"), this may have a direct bearing on the water supply issue hereinafter addressed.

Therefore, Barron failed to produce substantial and competent evidence of the historical consumptive use. IDWR's decision to deny the transfer in this regard is well supported.

Enlargement of Use – 37-02801B vs. 37-07295

Another significant concern expressed by I.C. 42-222(1), and hence by IDWR, is if the proposed transfer of water right 32-02801B were approved, would there be an enlargement by virtue of irrigation of the presently licensed place of use under water right 37-07295? Barron made the bold assertion in his transfer application that "this land will be farmed as dry land." R., p. 2. The record is undisputed that Barron neither owns nor exercises lawful control of the land upon which either of the water rights is licensed to

³ If Barron was making "full use" of the right to irrigate the licensed place of use, i.e., 6cfs and Wolf was also irrigating the licensed place of use as stated by Agent Stanton, Wolf would necessarily have to be using the ground water right. Likewise, if the diversion works from Threemile Creek for diversion of the surface right were in fact in place and available for use in 1991 and 1996 in the form of a portable pump as described in the 1968 Transfer, that these could be used by Barron for the irrigation season on the licensed place of use, it would seem quite odd that this use would go unnoticed by Wolf.

factual questions of the actual water supply available to satisfy water right 37-02801B. More specifically, the record reflects that from the time this right was established in 1905, there has been an inadequate supply of water after the spring run-off.

Barron said in his *Amended Affidavit*, paragraph 6:

I grew up on the Camas Prairie, and have spent most of my adult life there. Camas/Malad Creek does not dry up during the irrigation season. We have been able to irrigate with this right th[r]ough July and August with a pump lift station located in the Malad River.⁴

R., p. 54.

John Faulkner's affidavit provides:

For the years that I have been traveling in Camas County, I have observed water in Camas/Malad Creek flowing through near where the creek crosses the county line at the sheep bridge into Blaine County. Every year to my knowledge the Camas/Malad Creek has carried significant water downstream from the current place of use and diversion of Water Right No. 37-2801, throughout the summer. This water ultimately flows into Magic Reservoir. The proposal for use of this water downstream contemplates that the water would merely be released from Magic Reservoir.

Assuming the statements in the two affidavits provide information on the question of availability of water at the actual points of diversion for water right 37-02801B, there is at least equally competent evidence to the contrary. Specifically, there is the 1905 application with the direct statement that "no water runs later than the middle of July" R., p. 89. There is the issuance of the 1973 groundwater right 37-07295 for irrigation on the same place of use to supplement the 1905 right. There is the statement from Agent Jim Stanton on July 17, 1997 that the licensed place of use has been farmed by Shannon Wolf for the last 7 years and that "Wolf has only irrigated with groundwater during this period." R., p. 17. Then there is the "Recommendation of the Water Master" in which he states that "these rights are strictly flood rights ..." R., p. 19. Pursuant to I.C. § 42-

⁴ This Court construes Barron's statement of "Malad River" to mean Camas/Malad Creek.

More importantly, however, and as noted with the issue of the available supply of water, Barron's evidence in this regard is the conclusory statement in the *Affidavit of John Faulkner* to the effect that the "transfer ... will not injure any downstream senior rights." R., pp. 48-49.

Consideration of the question of injury clearly contemplates injury to any water right, senior or **junior**. *Jenkins*, supra. Further, there is substantial and competent evidence that clearly demonstrates Barron has failed to provide substantial and competent evidence of no injury to other water rights. Again, this Court cannot substitute its judgment for that of the agency as to the weight of the evidence presented. This Court cannot hold that IDWR's findings on this issue are clearly erroneous.

Finally, it must again be emphasized that the burden is on Barron to provide accurate and detailed information so IDWR can make a legitimate assessment of whether there is, or may be, an injury to another water right. Therefore, Barron's argument that he has to prove the negative is without merit, i.e., it begs the factual question of injury. Specifically, IDWR may not be able to determine if injury will or may occur, but that is because Barron has failed to provide adequate information of the recent use of the water under 37-02801B.

Issue Two

The second major issue Barron raises is whether IDWR's decision was a violation of constitutional or statutory provisions. Essentially stated, Barron's position is two fold. First is **because no one protested** this transfer application, all Barron has to do is make a *prima facie* showing as to the statutory elements of I.C. § 42-222(1). Barron asserted this showing was "substantially uncontested by the evidence before the Department," and "therefore Mr. Barron met his burden of proof as to the elements of § 42-222." Appellant Reply Brief, p. 10. Second, Barron asserts that IDWR adopted an erroneous "burden of satisfaction" rather than making its determination based upon Barron's claimed *prima facie* case and then whether an adverse party provided specific evidence to rebut his *prima facie* case.

it is clearly understood that “a water right is tantamount to a real property right, and is legally protected as such”, *State v. Nelson*, 131 Idaho 12, 16 (1998), it is equally understood that a water right (or the use thereof) is a “conditional right” in the sense that it is “subject to the regulations and control of the state in the manner prescribed by law.” Idaho Const. art. 15, § 1. The conditions imposed by I.C. § 42-222 protect the interests of the citizens of the state of Idaho, and must be satisfied irrespective of whether there has been a protest. For these reasons, the Court affirms the action taken by IDWR.

Issue Three

The third issue Barron raised is that the Department’s denial of his application exceeded its statutory authority. This issue had already been discussed. Again, even if Barron has made a *prima facie* case, in the absence of a protest, the Director is not required to accept it “hook, line, and sinker.” As discussed under both Issues 1 and 2 above, the Director must consider all the evidence and available information in the record. Given the record as a whole, there is substantial and competent evidence that strongly refutes Barron’s “*prima facie* case.”

It should also be noted, as was discussed in paragraph IV of this *Order*, the type of evidence and information the agency is properly allowed to consider does not have to meet the more rigid standards of the Idaho Rules of Evidence. Worth mentioning again in this regard by way of an illustration, is Barron’s argument that the recommendation of the watermaster is not competent, is a conclusion not based upon foundational facts and cannot be considered. I.C. § 42-222(1) requires the Director to consider the watermaster’s recommendation. More particularly, while the written recommendation itself, (R., p. 19) does not state the factual basis for the statement that “these rights are strictly flood rights,” there is significant evidence to support his statement, whether one describes it as a “flood right” or a “run-off” right. The point is there is substantial evidence that the surface water supply diminishes early in the summer.

VII.

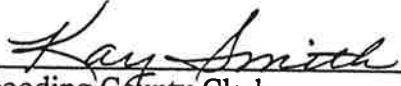
Conclusion

CERTIFICATE OF MAILING
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I hereby certify that true and correct copies of the **ORDER ON APPEAL FROM THE DEPARTMENT OF WATER RESOURCES, OF THE STATE OF IDAHO** were mailed on August 6, 1999, with sufficient first-class postage, to the following:

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